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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 16, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT NOVEMBER 20, 1989

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RULE PROPOSALS

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **January 17, 1990.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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Filing Deadlines

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Discovery: Private Passenger Automobile Insurance Rate Hearings

Proposed New Rule: N.J.A.C. 1:11-10.1

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1989-683.

Submit written comments by January 17, 1990 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza Bldg. 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule limits the availability of discovery in private passenger automobile insurance rate hearings. These hearings are conducted in accordance with N.J.S.A. 17:29A-14c, which provides severe limitations on the amount of time in which such hearings may be conducted and decided. In order to hear and decide automobile insurance rate matters promptly and within the time provided, the Department of Insurance has proposed rules that require private passenger auto insurance rate filers to provide substantial information in the initial filing (see 21 N.J.R. 2182(a)). The Department of Insurance has also proposed rules that set forth processes for its internal review of those filings, which rules further provide an opportunity during the review for the parties to exchange relevant information (see 21 N.J.R. 3422(a)). Because of the extensive opportunity to obtain relevant information prior to a determination that a hearing is necessary, these proposed rules permit additional discovery during the hearing process only upon a showing of good cause.

Additionally, under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-2.1, "judge" means an administrative law judge "or any other person authorized by law to preside over a hearing in a contested case . . ." Normally contested cases are heard either by an administrative law judge or an agency head. In these matters, N.J.S.A. 17:29A-14c provides that an employee of the Department of Insurance who is appointed by the Commissioner may preside at the hearing. Therefore, in these cases, the "judge" may be either an administrative law judge, the Commissioner or an employee of the Department of Insurance.

Social Impact

The proposed new rule limits the discovery rights set forth in the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-10. An adequate opportunity to obtain and exchange information, however, will be provided by N.J.A.C. 11:3-16 and 11:3-18. This rule, therefore, should expedite the hearing and disposition of private passenger automobile insurance rate hearings, and thus carry out the policy set forth in N.J.S.A. 17:29-14c for an expeditious resolution of these matters.

Economic Impact

These proposed rules involve the Office of Administrative Law, the Department of Insurance, and the parties to private passenger automobile insurance rate hearings, specifically the company or rating organization proposing the rates and the Division of Rate Counsel of the Department of the Public Advocate, who represents consumer interests in these matters. No significant economic impact on any party is anticipated because these rules serve as a compliment to rules of the Department of Insurance that provide for an opportunity to obtain information in the agency proceedings prior to the hearing.

Regulatory Flexibility Analysis

The proposed new rule imposes no reporting or record keeping requirements. However, parties to a private automobile insurance rate hearing wanting discovery beyond the information specified in N.J.A.C. 11:3-16 and 18 are required to do so by motion for good cause shown. In addition, information or documents voluntarily exchanged must be provided to all parties. Some of the insurance companies or rating organizations involved in these rate hearings may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As part of a fair, uniform administrative rate-setting process, and because the costs of compliance with the aforesaid requirements are expected to be minimal relative to the overall process costs, lesser requirements for small business are not provided.

Full text of the proposal follows:

SUBCHAPTER 10. DISCOVERY

1:11-10.1 Discovery

(a) In cases involving a private passenger automobile rate filing pursuant to N.J.S.A. 17:29A-1 et seq., parties shall have the right to obtain the information specified in N.J.A.C. 11:3-16 and 11:3-18.

(b) No other discovery shall be provided except upon motion to the judge for good cause shown. Copies of such motions shall be served upon the Department of Insurance as well as upon each other party.

(c) Nothing in this rule shall preclude the parties from voluntarily exchanging any information or documents at any time. When information or documents are voluntarily provided to any party, they shall be provided to the Department of Insurance and to all other parties.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Health, Safety and Physical Education

Proposed Readoption with Amendments: N.J.A.C. 6:29

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:28-7, 18A:16-2, 18A:35-5, 18A:36-19, 18A:40A, 18A:40-16, and 18A:42-1, 18A:40A-1, 18A:40A-2, 18A:40-4, 18A:40A-10, 18A:40A-22, 18A:40A-12, 18A:40A-13, 18A:40A-14, 18A:40A-15 and 42 CFR 2.
Proposal Number: PRN 1989-596.

Submit written comments by January 17, 1990 to:
Irene Nigro, Rules Analyst
State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the provisions of Executive Order No. 66 (1978), N.J.A.C. 6:29, Health, Safety and Physical Education, is due to expire on March 25, 1990. The Department has reviewed these rules and finds that they are necessary to ensure the health and safety of students and personnel within the school setting. Many of the rules contained in Chapter 29 were promulgated to implement laws which date back to 1903. These rules were developed to address diseases prevalent at that time. Additions over the last 10 years were developed to address the changing issues found in society. These issues include family life education, substance abuse and school attendance by HIV (Human Immunodeficiency Virus) infected children. Although the Department has made additions to the health, safety and physical education rules, there has been little change in the original provisions required by N.J.A.C. 6:29. The Department of Education is proposing to repeal and replace N.J.A.C. 6:29-1, 2, 3, and 5. Proposed new subchapter 1, General Provisions, incorporates and reorganizes for clarity and continuity the rules contained in the current subchapters. Subchapter 7, Family Life Education, has been recodified as subchapter 4, Comprehensive Health Education. New language is

included in the new subchapter 4 to mandate AIDS prevention education. The remaining subchapters have been recodified to reflect the organizational restructuring of Chapter 29. A new subchapter 7, requiring employee physical examinations, has been added pursuant to N.J.S.A. 18A:6-2.

A review of the subchapters proposed for readoption with amendments follows:

Current subchapters 1, 2, 3 and 5 are being repealed and replaced with a new subchapter 1, which includes the general requirements in those rules. The new subchapter provides clarity and continuity and deletes language which was duplicated. Included are health services personnel, policy and procedure requirements, compliance with health regulations, records and reports, equipment and supplies and safe drinking water.

N.J.A.C. 6:29-4 has been recodifed to N.J.A.C. 6:29-2. N.J.A.C. 6:29-4.1 has been deleted as unnecessary since the new N.J.A.C. 6:29-2.2 allows for the establishment of district dental clinics. In N.J.A.C. 6:29-2.1, new language identifies the student health examination and requires district boards of education to develop a vision screening program. N.J.A.C. 6:29-2.3, testing for tuberculosis, has been revised to require district boards of education to provide tuberculin testing in accordance with standards developed by the Department of Health. In N.J.A.C. 6:29-2.4, a new subsection has been added to ensure student confidentiality. N.J.A.C. 6:29-2.5 has been added to require district boards of education to provide school personnel with training and appropriate supplies for the handling of blood and body fluids, regardless of whether pupils or employees with HIV infection are present. N.J.A.C. 6:29-4.5 has been deleted and included in the new N.J.A.C. 6:29-1. N.J.A.C. 6:29-4.6 has been deleted as unnecessary.

N.J.A.C. 6:29-6 has been recodified to N.J.A.C. 6:29-3 and the text changed minimally due to the legislature's consideration of revisions in the physical education statute. In N.J.A.C. 6:29-3.2, the heading has been changed to "Physical education exemption procedures" to more clearly reflect the section's content. Additionally, some language in this section has been recodified and revised to provide clarity. At N.J.A.C. 6:29-3.4(d)3, a provision was added to require a health history update for subsequent athletic team participation.

N.J.A.C. 6:29-7 has been recodified to N.J.A.C. 6:29-4. The subchapter 4 title has been changed to "Comprehensive Health Education" to provide direction for the development and implementation of health education. This change has been made as most school districts currently teach health in a comprehensive curriculum. Existing mandates for family life education and drug and alcohol education are integrated in this subchapter and HIV prevention education is now mandated. Proposed N.J.A.C. 6:29-4.2 has been amended to encourage positive health practices. A new subsection requires district boards of education family life curriculum to respond to the health and social issues created by a changing society.

N.J.A.C. 6:29-8 has been recodified to N.J.A.C. 6:29-5. Language has been amended for consistent terminology and clarity of the procedure for audiometric screening.

N.J.A.C. 6:29-9 has been recodified to N.J.A.C. 6:29-6. Laws cited at N.J.S.A. 18A:40A-1 through 18A:40A-21 became effective January 13, 1988 and are intended to implement the recommendations included in the Governor's Blueprint for a Drug-Free New Jersey, by establishing a coherent program on substance abuse education within the schools. Recent amendments to N.J.A.C. 6:29-9, Substance Abuse, were adopted in the September 5, 1989 issue of the New Jersey Register at 21 N.J.R. 2784(b). These rules, although recodified by this proposal, have not been further amended.

N.J.A.C. 6:29-7 has been added to address minimum standards for school employee physical examinations as required in N.J.S.A. 18A:16-2.

Social Impact

N.J.A.C. 6:29 when originated responded to prevalent diseases and social conditions. The effectiveness of the rules is reflected by the control of those diseases. As preventive medicine has become accepted many of the conditions have been alleviated, with new health issues emerging. The new rules have been developed to address these issues and are preventative in nature. The entire student population, over one million students in 1988-89, personnel and parents are affected by these rules. Also affected are the Departments of Health and Human Services. The public reaction has been generally positive. Potential physical defects or disease have been identified and safety measures instituted. These rules provide students and personnel with education in current social issues and raise the awareness of these issues within the greater community. If these rules are not readopted schools would not have guidance in implementing existing health, safety and physical education laws. The new requirement prohibiting smoking in school buildings will improve the air quality of the school environment. The Department does not anticipate an adverse impact on the school population or the community. The new mandate for HIV education will ensure that students are provided with information to develop behavioral responses necessary for HIV prevention.

Economic Impact

The rules in Chapter 29 impact economically upon school districts and upon State and Federal grants. These rules are important for meeting the criteria for the continuation of grant funding in the area of HIV prevention education, and for providing State services related to school health. Economic conditions have changed since the earliest rules were promulgated with an improved standard of living, medical advancements and availability of health care. Additions to these rules have responded to these changes. District boards of education will be required to provide school employees with training and appropriate supplies for the handling of blood and body fluids. Costs associated with training and the purchase of supplies will vary depending on the number of staff to be trained and student enrollment. The minimum requirements for the annual school employee physical examination will have little or no economic impact on district boards of education. The approximate cost for physical examinations ranges between $40.00 and $125.00, depending on the provider. The provision allowing the medical evaluation of new employees to be done by the school medical inspector will serve to contain such costs within a low range. The prohibition of smoking within school buildings will require the posting of signs or some form of notification to employees and the public.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules impact solely upon New Jersey school districts and on schools operated by the New Jersey Department of Education.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:29.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C 6:29-1, 2, 3 and 5.

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

[FOREWORD]

[The Office of Health, Safety and Physical Education assists local schools in the development and implementation of programs designed to promote the health, safety and well-being of school age children in this State.

The functions of the Office of Health, Safety and Physical Education being met by the staff members include: school health services; school health instruction; school safety instruction; driver education; physical education and athletics.]

SUBCHAPTER 1. GENERAL PROVISIONS

6:29-1.1 Purpose

These rules provide standards to district boards of education in their development of policies and procedures to insure the health and safety of students and personnel within the school setting.

6:29-1.2 Health services personnel

(a) Every district board of education shall appoint at least one medical inspector pursuant to N.J.S.A. 18A:40-1.

1. The medical inspector, under the general supervision of the chief school administrator, shall direct the conduct of physical examinations or health screenings, shall develop and provide standards governing professional techniques, and shall direct the professional duties or activities of other medical staff.

(b) Every district board of education in this State shall appoint at least one school nurse pursuant to N.J.S.A. 18A:40-1.

1. Under the direction of the school medical inspector and the chief school administrator, the duties of the school nurse shall include, but not be limited to:

i. Assisting with physical examinations pursuant to N.J.S.A. 18A:40-4.

ii. Conducting yearly screenings for scoliosis on all pupils 10 years of age through 18 years of age pursuant to N.J.S.A. 18A:40-4.3;

iii. Annually conducting audiometric screening in grades preschool through 4, 6, 8 and 10 pursuant to N.J.S.A. 18A:40-4 and N.J.A.C. 6:29-5.2(c);

iv. Maintaining student health records pursuant to N.J.S.A. 18A:40-4;

v. Observing and recommending to the school principal the exclusion of students who show evidence of communicable disease pursuant to N.J.S.A. 18A:40-7 and 8; and

vi. Lecturing to teachers on communicable diseases and other health concerns pursuant to N.J.S.A. 18A:40-3.

6:29-1.3 Policies and procedures

(a) District boards of education shall adopt written policies and procedures for:

1. Care of pupils who are injured or become ill at school or during participation on a school athletic team or squad;

2. Isolation, exclusion, and readmission of pupils suspected of having a communicable disease;

3. Notification of parents or guardians of students determined to be in need of further immediate medical care;

4. Transportation of students determined to be in need of further immediate medical care;

5. Safe and sanitary operation and maintenance of school buildings and grounds according to the provisions established in N.J.A.C. 6:22;

6. Supervision of pupil safety in the school district which shall include:

i. Safe storage and use of potentially hazardous materials on school property;

ii. Prevention of accidents, panic and fire; and

iii. Provision for and maintenance of suitable and safe equipment;

7. Organization of school safety patrols pursuant to N.J.S.A. 18A:42.1, if the decision is made to organize safety patrols;

8. Prohibition of smoking in public school buildings pursuant to P.L. 1989, c.96; and

9. Administration of medication, in consultation with the medical inspector.

(b) All employees shall be informed of such policies and procedures at the beginning of each school year.

(c) District boards of education, medical and other staff shall comply with the rules and regulations of the local boards of health and the State Department of Health.

(d) N.J.A.C. 8:57, pertaining to reportable diseases, shall guide district boards of education in developing their policies and procedures.

(e) Any pupil absent or excluded from schoool by reason of having or suspected of having communicable disease shall not be readmitted to school until written evidence is presented that risk of contagion is not present. Such evidence shall be by a physician licensed to practice medicine or the school medical inspector who has examined the pupil.

6:29-1.4 Records and reports

(a) The results of student physical examination and health screening procedures by the medical inspector or district personnel shall be recorded upon a record form recommended by the Commissioner of Education.

(b) Such form shall be kept in a permanent file and shall be the property of the district board of education and shall be preserved. The original health record shall be forwarded with other school records of pupils who transfer to another school distict. If a child leaves for any other reason than transfer, the record shall remain the property of the school.

(c) The results of physical examinations and screenings shall be provided to the pupil's parent or guardian when any condition is identified which requires follow-up by a physician or family health care provider.

6:29-1.5 Health facilities, equipment and supplies

District boards of education shall provide the necessary facilities, equipment and supplies for the performance of the duties required, under State law and rule, by the medical staff.

6:29-1.6 Safe drinking water

(a) District boards of education shall assure the availability of potable drinking water through sanitary means in school buildings or upon school grounds in accordance with the Safe Drinking Water Act, N.J.S.A. 58:11-1 et seq. and the rules promulgated pursuant thereto, N.J.A.C. 7:10.

(b) Testing of school drinking water quality shall be in accordance with the Safe Drinking Water Act, N.J.S.A. 58:11-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and N.J.A.C. 6:22, School Facility Planning Services.

SUBCHAPTER [4]2. SCHOOL HEALTH SERVICES [PROCEDURES]

[6:29-4.1 Dental examination

(a) The school dentist shall direct the professional duties or activities of the dental assistant or of the nurse assigned to the dental service.

(b) Reparative dentistry shall be limited to pupils whose parents indicate consent to such treatment. In no case shall a pupil be required to undergo treatment against his or her will.

(c) Each school dentist or any dentist examining or treating pupils with the approval of the district board of education shall record the results of examinations, treatment administered, and recommendations upon the health records of the pupils.

(d) The results of dental examinations or of treatment administered or recommended shall be reported to parents.]

6:29-2.1 Student physical examination

(a) Every pupil shall be examined to learn whether any physical defect exists pursuant to N.J.S.A. 18A:40-4.

(b) The examination shall include as a minimum the following components contained in the record form recommended by the Commissioner of Education:

1. Immunizations pursuant to N.J.A.C. 8:57-4.1 to 8:57-4.16;

2. Health history including allergies, past serious illnesses, injuries and/or operations and current health problems;

3. Health screenings including height, weight, hearing and vision; and

4. Physical examination of the body by the school medical inspector.

(c) Medical inspectors may accept a record of a thorough physical examination made by a physician licensed to practice medicine. Such examination shall not be at the expense of the district board of education but shall be reported on a form furnished by the district board of education.

(d) District boards of education shall develop a vision screening program in consultation with the medical inspector, for the early detection of visual problems among pupils. District boards of education may employ one or more optometrists, licensed to practice optometry within the State, pursuant to N.J.S.A. 18A:40-1.

6:29-2.2 Dental clinics

District boards of education may maintain and conduct dental clinics for the treatment of children pursuant to N.J.S.A. 44:6-2.

[6:29-4.2] **6:29-2.3** Testing for tuberculosis infection

(a) The following are **the** rules of the State Department of Education concerning testing for tuberculosis infection by district boards of education for implementation of N.J.S.A. 18A:16-2 and 40-16.

1.-2. (No change.)

3. [In every school district, a] **A** Mantoux intradermal tuberculin test shall be given upon employment to all newly hired employees (full-time and part-time), all student teachers, school bus drivers [on] **for companies under** contract with the district and other persons who have contact with pupils.

i. An employee with a documented Mantoux test administered within the previous six months does not have to be [re-tested] **retested.**

ii. An employee transferring between school districts within New Jersey would not have to be tuberculin tested if there is a documented record of a Mantoux tuberculin skin test being administered upon his or her initial employment in a New Jersey public school. [In-

dividuals who are currently employed (on the effective date of this amendment) shall also be tuberculin tested if there is no valid record that a Mantoux tuberculin test was administered during the previous four years.]

[4. Any pupil or employee shall be exempt from these requirements upon presentation of documentation of a prior significant reaction evidenced by vesiculation following the administration of a multiple puncture tuberculin test or a significant reaction (that is, 10 mm or more of induration) following a Mantoux intradermal tuberculin test with five tuberculin units of stabilized PPD tuberculin. Any other exemption from these requirements shall be because of medical contraindications subject to review by the medical inspector.]

4. Procedures for the administration of the Mantoux test, interpretation of tuberculin reactions, follow-up procedures (including a chest x-ray and medical evaluation) and reporting shall be in accordance with the New Jersey Department of Health's document, School Tuberculin Testing in New Jersey, Reference Guide for Physicians and Nurses. For copies contact the New Jersey State Department of Health, Division of Epidemiology and Disease Control, Communicable Disease Control Program, CN 360, Trenton, New Jersey 08625-0360.

[5. All tuberculin reactors as defined in (a)4 above shall be referred to the family physician and appropriate official health agency for necessary follow-up. The following shall constitute standards for referral:

i. If there is documentation showing that vesiculation resulted from a previous multiple puncture test, the individual shall be recorded as a significant tuberculin reactor, and no further tuberculin testing is required;

ii. If the reaction to the Mantoux intradermal tuberculin test is between five to nine mm of induration, it shall be repeated on the other arm. If the result of the second Mantoux intradermal tuberculin test is also five to nine mm of induration, the individual shall be recorded as tuberculin not significant. If the result of the second Mantoux test shows 10 or more mm of induration, the individual shall be recorded as a significant tuberculin reactor, and no further tuberculin skin testing is required.

6. A chest X-ray shall be administered to all pupils, employees and other personnel who have a significant reaction to a Mantoux intradermal tuberculin test as defined in (a)4 above.]

[7.]**5.** All pupils, employees and other personnel [required to have a chest X-ray shall be referred to their family physician or other medical facility for the necessary medical evaluation, including a chest X-ray] **referred for the necessary chest X-ray and medical evaluation shall submit a physician's report.** If the physician's report is not received by the school [physician] **medical inspector** within four weeks, or if the [school physician] **medical inspector** is unwilling to accept the findings, the pupil, employee or other persons [who have contact with the pupil] shall have a chest X-ray examination in the manner prescribed by the district board of education.

[8. If the chest X-ray of a significant tuberculin reactor is negative for evidence of tuberculosis, chemoprophylaxis or preventive therapy, with at least six months of isoniazid (INH) is strongly recommended.

9. Employees and pupils who have a significant reaction to the Mantoux intradermal tuberculin test and an initial chest X-ray that was negative, or who present a medical certificate from a licensed physician showing a significant tuberculin reaction and a subsequent negative chest X-ray, shall require no further tuberculin skin testing for tuberculosis infection.]

6. In accordance with standards, referenced in paragraph 4, above, provided by the New Jersey Department of Health, any pupil or employee shall be exempt from tuberculin skin testing upon presentation of documentation from a licensed physician showing a significant tuberculin reaction and a subsequent negative chest X-ray.

[10. The reporting of the testing for evidence of tuberculosis infection by each district board of education shall be as follows:

i. The name and address, grade (of pupils), age and school of all newly discovered significant tuberculin reactors, chest X-ray results and prescription of preventive therapy are to be reported immediately upon discovery to the New Jersey State Department of Health, and to the local health department or local tuberculosis control center, on a special form provided for this purpose so that the appropriate tuberculosis control measures can be instituted;

ii. At the end of the annual tuberculosis testing program for staff and in grades and schools as specified by the New Jersey Department of Health, the following information shall be reported to the New Jersey State Department of Health, and the local health department or tuberculosis control center, with one copy to be retained by the district board of education:

(1) The number of Mantoux tuberculin tests performed by grade and school, on pupils, employees and other persons who have contact with pupils;

(2) Mantoux tuberculin test results;

(3) X-ray findings;

(4) Number of pupils and employees for whom isoniazid prophylaxis was prescribed; and

(5) The name, address, date of birth, school and grade of each significant tuberculin reactor found as a result of the Mantoux intradermal tuberculin testing program.]

[6:29-4.3 Communicable disease

(a) The rules of a district board of education pertaining to the prevention of communicable disease, including a readmission policy in schools shall be distributed to all principals, medical inspectors, and nurses. The rules shall be explained by the health service staff to the entire school personnel at the beginning of each school year.

(b) Any pupil who appears to be ill or who is suspected of having a communicable disease shall be excluded from school or isolated at school to await instructions from or the arrival of an adult member of his or her family, the medical inspector or the school nurse.

(c) Any pupil retained at home or excluded from school by reason of having or suspected of having communicable disease shall not be readmitted to his or her classroom until he or she presents written evidence of being free of communicable disease. Such evidence may be by a qualified physician or the medical inspector who has examined the pupil.

(d) The rules of the local board of health or the State Department of Health pertaining to communicable diseases among school children shall apply in determining periods of incubation, communicability, quarantine, and reporting.]

6:29-[4.4]**2.4** Attendance at school by HIV (Human Immunodeficiency Virus)[; also known as HTLV-III or LAV)] infected children

(a) For pupils with HIV infection who are enrolled or seeking enrollment in a school program, the regulations and procedures in this section shall apply.

1. All information about the identity of a student with HIV infection shall be kept confidential and shall comply with the provisions of N.J.A.C. 6:3-2.

(b) Pupils with HIV infection shall not be excluded from attending school unless they manifest those exceptional conditions identified by the State Department of Health and contained in N.J.A.C. 8:61-1.1. **A district board of education must reach a determination on the admissibility of a pupil to school no later than 10 days after the request to admit such pupil.**

(c) In accordance with N.J.A.C. 8:61-1.1:

1. (No change.)

2. The presence of HIV infection in and of itself may not serve as a basis for excluding a pupil by way of classification as eligible for home instruction in accordance with N.J.A.C. 6:28-3.5[(d)](c) 2[.]ii.

3. (No change.)

[(d) A district board of education must reach a determination on the admissibility of a pupil to school no later than 10 days after the request to admit such pupil.]

[(e)(**d**) A district board of education may act to exclude a pupil with HIV infection only when:

1. The district medical inspector, the pupil's parent(s) or guardian(s) and physician agree that he or she manifests those exceptional conditions delineated in N.J.A.C. 8:61-1.1. In such cases, the pupil must be provided an appropriate education pursuant to N.J.A.C. 6:28[-1.1 et seq].

2. Conflicting medical opinion exists between the district medical inspector and the pupil's personal physician as to whether the pupil manifests those exceptional conditions set forth in N.J.A.C. 8:61-1.1. In such instances, the procedures delineated in [(f)](e) below must be immediately followed. A district board of education may not avoid compliance with the procedures in [(f)(e) below by excluding a pupil for reasons other than those listed herein.

[(f)](e) If, based upon advice of the district medical inspector, the pupil is deemed to manifest any of the exceptional conditions contained in N.J.A.C. 8:61-1.1 and the pupil's personal physician is in disagreement, the district board of education shall immediately submit a request for a review by the Medical Advisory Panel established by the Department of Health in accordance with the following procedures:

1. (No change.)

2. Home instruction shall be provided as specified below during the pendency of a [commissioner's]**Commissioner's** determination.

i.-iv. (No change.)

3. (No change.)

4. The assistant commissioner shall immediately request the designated official within the State Department of Health to convene the Medical Advisory Panel according to N.J.A.C. 8:61-1.1(c) at the earliest possible time and shall transmit the information required in [(f)](e)1 above to the designated official for panel consideration.

5. (No change.)

6. The Medical Advisory Panel shall render a written determination to the [commissioner]**Commissioner** as to whether the district board of education has demonstrated that the exclusion is warranted.

i.-ii. (No change.)

7. The written determination of the Medical Advisory Panel shall be transmitted to the [commissioner]**Commissioner** who shall forward the determination to the parties.

8. Within 10 days of the receipt of the Medical Advisory Panel's written determination, the parties may file with the [commissioner] **Commissioner** written exceptions to those findings of the panel which the parties believe to be based upon disputed issues of fact or conclusions of law.

9. The [commissioner]**Commissioner** shall review the determination of the Medical Advisory Panel and the exceptions of the parties and within [ten] **10** days of the receipt of the exceptions or the expiration of the time for so filing issue a written determination which shall:

i.-ii. (No change.)

iii. Determine that the matter is a contested case and direct that it be transmitted to the Office of Administrative Law for further determinations. If the [commissioner]**Commissioner** determines the matter is a contested case, the exceptions filed by the parties to the Medical Advisory Panel's determination shall constitute the pleadings which shall establish the issues for the proceedings before the Office of Administrative Law. The hearing in the matter shall be conducted on an expedited basis.

10. Copies of the [commissioner's]**Commissioner's** determination shall be forwarded to the parties, the Commissioner of Health, the Medical Advisory Panel and the county superintendent of schools.

6:29-2.5 Routine procedures for sanitation and hygiene when handling body fluids

(a) District boards of education shall develop written policies and procedures for sanitation and hygiene when handling blood and body fluids in conformance with N.J.A.C. 8:61-1.1(j) and in conformance with guidelines from the Centers for Disease Control, "Recommendations for Prevention of HIV Transmission in Health Care Settings," MMWR Supplement, August 1987, and "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings" from MMWR, June 24, 1988, Vol. 37, No. 24, pp. 337-382, 387-388. Copies are available through the National AIDS Information Clearinghouse, P.O. Box 6003, Rockville, MD 20850.

(b) District boards of education shall make available to school personnel, compensated and uncompensated (volunteer), training and appropriate supplies for the handling of blood and body fluids, whether or not pupils or school staff with HIV infection are present. School nurses, custodians and teachers in particular should have knowledge of the proper techniques in the handling and disposal of materials.

[6:29-4.5 Record and reports

(a) Each medical inspector shall record the results of examinations upon a record form recommended by the Commissioner of Education. Such form shall be kept in a permanent file and shall be the property of the district board of education and shall be preserved. The original health record shall be forwarded with other school records of pupils who transfer to another school district. If a child leaves for any other reason, the record shall remain the property of the school.

(b) The results of health examinations or of emergency treatment administered or recommended by the medical inspector shall be reported to parents.

6:29-4.6 Nursing services

All nurses engaged in any capacity in the public schools shall comply with the rules and regulations of the district board or boards of education having jurisdiction, and shall be subject to the administrative authority of such school and school district.]

SUBCHAPTER [6]3. PHYSICAL EDUCATION AND ATHLETICS PERSONNEL AND PROCEDURES

6:29-[6.1]**3.1** Physical education personnel

(a) In all schools not having the services of certificated physical education teachers, the responsibility for the program of activities and instruction shall be that of each teacher, or such responsibility may be delegated to one or more teachers designated by the [superintendent of schools] **chief school administrator.**

(b) (No change.)

6:29-[6.2]**3.2** Physical education **exemption** procedures

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

(d) A district board of education may adopt a policy to permit pupils to receive graduation credit in physical education while participating in interscholastic team activity, alternative programs of athletics, or alternative programs of physical education activities that meet the requirements of N.J.A.C. 6:28-4.2 and are consistent with local district's physical education program goals and instructional objectives. Health and safety requirements must be satisfied, pursuant to the provisions of N.J.S.A. 18A:35-5. Any policy adopted under this authority shall include, but need not be limited to, the following provisions:

(1) (No change.)

(2) To be eligible to receive graduation credit in physical education through interscholastic team activity, alternative programs of athletics, or alternative programs of physical education activities, the pupil must[:

i. Be enrolled in a four-year or senior high school;

ii. D]demonstrate that the interscholastic activity or alternative program will provide activity and development equivalent to that provided by the physical education program.

3. Credit and grading for the alternative program shall be [given through the administrative procedures of the local physical education program] **based on proficiencies established by the district board of education.**

4.-5. (No change.)

6:29-[6.3]**3.3** Athletics personnel

(a) [No] **Any** person not certified as a teacher and not in the employ of a **district** board of education shall **not** be permitted to organize public school pupils during school time or during any recess in the school day for purposes of instruction[;], or coaching or for conducting games, events or contests in physical education or athletics.

(b) (No change.)

(c) In the event there is no qualified and certified applicant, the holder of a county substitute certificate is authorized to serve as an athletic coach in the district in which he or she is employed for a designated sports season, provided that:

1. The district [superintendent] **chief school administrator** demonstrates to the county superintendent that:

i.(No change.)

ii. There was no qualified applicant based on the written standards of the district board of education[.];

2. The district [superintendent] **chief school administrator** will provide a letter to the county superintendent attesting to the prospective employee's knowledge and experience in the sport in which he or she will coach; **and**

3. Approval of the county superintendent shall be obtained prior to such employment by the district board of education. The 20-day limitation noted in N.J.A.C. 6:11-4.[7(c)]**4(i)** shall not apply to such coaching situations.

6:29-[6.4]**3.4** Athletics procedures

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

(d) [Good physical condition, freedom from injury and full recovery from illness shall be prerequisites to participation in athletics, whether in practice or in competition.] Each candidate for a place on a school athletic squad or team shall be given a medical examination by the medical inspector or designated team doctor no more than 60 days prior to the first practice session or in lieu thereof, the medical inspector may accept the report of such an examination by a physician licensed to practice medicine.

1. Any examination which shall be used to determine the fitness of a pupil to participate in athletics shall not be given before the first day of the school year, as defined in N.J.S.A. 18A:36-1, for which such fitness is being determined.

2. Each candidate must undergo one medical examination in each school year.

3. To participate on a subsequent athletic squad or team, a health history update shall be completed by the parent or legal guardian in accordance with district policy.

4. The parent or legal guardian shall receive written notification signed by the medical inspector or team doctor [testifying to] **approving** the pupil's [physical fitness to participate] **participation** in athletics **based upon the medical examination**. The reasons for the medical inspector's or team doctor's [approval or] disapproval of the pupil's participation shall be included in such notification. The health findings of the medical examination for participation shall be made a part of the [general] **pupil's** health [examination] record.

(e) A medical examination to determine the fitness of a pupil to participate in athletics shall include, as minimum, no less than the following:

1. A medical history questionnaire, completed by the parent or legal guardian of the pupil, to determine if the pupil:

i.-vi. (No change.)

vii. Has allergies including hives, asthma [and] **or** reaction to bee stings;

viii.-xi. (No change.)

2. A physical examination which shall include, as a minimum, no less than the following:

i.-xiv. (No change.)

xv. Neurological examination to assess balance and coordination and the presence of abnormal reflexes[; and].

(f) The district board of education shall adopt **a** policy regarding the content and procedures for the administration of the medical examination required in [(d)] **(e)** above. Nothing in this section shall be interpreted as precluding the district board of education from adopting content and procedures in excess of the minimum requirements set forth herein.

(g) Any examination conducted by a physician other than the medical inspector or designated team doctor must be reported to the medical inspector or designated team doctor on a form furnished by the district board of education and, as a minimum, include that content adopted by the board. If, at the request of the parent or legal guardian, the medical examination is conducted by a physician other than the medical inspector or designated team doctor, such examination shall not be at the expense of the district board of education.

[(g)]**(h)** A pupil representing his or her school in interscholastic athletic competition shall sign a form furnished by the district board of education, the wording of which shall embody a request to be enrolled as a candidate for a place on a school team in a specified sport. The parent or legal guardian must execute an acknowledgement that physical hazards may be encountered.

[(h)](i) Every candidate for a place on the school athletic squad or team shall submit a form furnished by the district board of education conveying the consent of his or her parent or legal guardian to participate.

SUBCHAPTER [7] 4. [FAMILY LIFE EDUCATION PROGRAM] COMPREHENSIVE HEALTH EDUCATION

6:29-4.1 General requirements

(a) District boards of education shall provide for the development of a comprehensive health education program through a coordinated sequential elementary and secondary curriculum with instructional units appropriate to the age, growth and development, and maturity of the pupils.

(b) Comprehensive health education means health education in a school setting that is planned and carried out with the purpose of maintaining, reinforcing, or enhancing the health, health-related knowledge, skills, and health attitudes and practices of children and youth that are conducive to their good health and that promote wellness, health maintenance, and disease prevention.

(c) Comprehensive health education includes but is not limited to instruction in personal health and hygiene, growth and development, dental health, mental and emotional health, accident prevention and safety, consumer health, community/environmental health, family life education, substance abuse (including alcohol and tobacco), disease prevention and control and human immunodeficiency virus (HIV) infection.

(d) District boards of education shall provide instruction for drug and alcohol education in accordance with the curriculum and instruction provisions cited in N.J.A.C. 6:29-6.6.

(e) HIV prevention education shall be conducted as follows:

1. Each district board of education shall develop an HIV prevention education program.

i. The HIV prevention education curriculum shall be developed through appropriate consultation and participation of teachers, school administrators, parents and guardians, students, physicians, members of the clergy and representative members of the community. The district board of education shall demonstrate prior to the initiation of any education program that such consultation and participation have taken place. The process of consultation shall be continued as the program is revised in future years. Upon the request of parents and guardians, the curriculum shall be made available for their review.

2. The district board of education shall provide for in-service education to those teachers responsible for HIV prevention education.

3. The State Department of Education shall provide training assistance and guidelines to district boards of education in the development of HIV prevention education programs.

4. The district board of education shall establish procedures whereby any pupil, whose parent or guardian presents to the school principal a signed statement that any part of the instruction in HIV prevention education is in conflict with his or her conscience, or sincerely held moral or religious beliefs, shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom (see N.J.S.A. 18A:35-4.6 et seq.).

6:29-[7.1] **4.2** Family life education

(a) As used in this subchapter, ["]family life education [program"] means instruction to develop an understanding of the physical, mental, emotional, social, economic, and psychological aspects of interpersonal relationships; the physiological, psychological and cultural foundations of human development, sexuality, and reproduction, at various stages of growth; **and to provide** the opportunity for pupils to acquire knowledge which will support the development of responsible personal behavior, **encourage positive health practices,** strengthen their own family life now, and aid in establishing strong family life for themselves in the future thereby contributing to the enrichment of the community.

(b) The family life education curriculum shall be developed through appropriate consultation and participation of teachers,

school administrators, parents and guardians, pupils in grades 9 through 12, [community members,] physicians, members of the clergy and representative members of the community. The district board of education shall demonstrate prior to the initiation of any district board of education program that [the above] **such** consultation and participation have taken place. The process of consultation shall be continued as the program is revised in future years.

1. (No change.)

[(c) The district's family life education program shall be implemented comprehensively through the coordinated sequential elementary/secondary curriculum with instructional units appropriate to the age, growth and development, and maturity of the pupils.]

(c) Family life education instruction should include necessary information on emerging health and social issues.

(d) District boards of education shall develop an elementary/secondary family life education program.

[(d)] **(e)** Districts that develop their program with an interdisciplinary approach may use teachers from other disciplines to assist those staff members authorized to give instruction in family life education.

[(e)] **(f)** Teaching staff members holding one of the following certificates are authorized to teach in the district's family life education program:

1.-8. (No change.)

9. Teacher of psychology; **or**

10. Special Education.

[(f)] **(g)** Districts may use resource people to assist with their program; that is, physicians, members of the clergy, attorneys, parents and guardians, school social workers, school psychologists, law enforcement personnel, and others as necessary.

[(g)] **(h)** The district board of education shall provide for in-service education to those teachers responsible for family life education programs.

[(h)] **(i)** The State Department of Education shall provide technical assistance **and guidelines** to district boards of education in the development of family life education programs.

[(i)] **(j)** The district board of education shall establish procedures whereby any pupil, whose parent or guardian presents to the school principal a signed statement that any part of the instruction in family life education is in conflict with his or her conscience, or sincerely held moral or religious beliefs, shall be excused from that portion of the course where such instruction is being given and no penalties as to credit or graduation shall result therefrom (N.J.S.A. 18A:35-4.6 et seq.).

[(j)] **(k)** This [subchapter] **section** is subject to all of the provisions of N.J.A.C. 6:8-7.1.

SUBCHAPTER [8] 5. AUDIOMETRIC SCREENING

6:29-[8.1] **5.1** Definitions

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

"Audiometer" means an electroacoustical generator which provides pure tones at selected frequencies of output through calibrated earphones mounted in MX-41/AR earmuffs. ["Audiometers shall be calibrated annually in accordance with ANSI S3.6-1969, American National Standard Specifications for Audiometers, which with all subsequent amendments and supplements is hereby adopted as a rule. This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.]

. . .

"Pupils at risk for hearing impairment" means pupils with communication disorders, pupils with cleft palate, pupils with allergies, pupils with frequent upper respiratory or middle ear infections, pupils taking ototoxic medication, **and** pupils who are exposed to sudden or continuous loud noises.

. . .

6:29-[8.2] **5.2** Screening procedures

(a) (No change.)

(b) [Auditory] **Audiometric** screening shall be conducted for pupils who are:

1.-2. (No change.)

3. Enrolled in grades 6, 8,[,] and [9 or] 10;

4. Entering the district with no recent record of [hearing] **audiometric** screening;

5.-7. (No change.)

(c) The medical inspector, certified school nurse or the health care personnel shall conduct the [hearing] **audiometric** screening. All screening shall be conducted in cooperation with the school nurse.

(d) [Each pupil shall be screened individually] **Audiometric screening shall be conducted** with an audiometer which is calibrated annually in accordance with ANSI S3.6-1969, American National Standard Specifications for Audiometers, **which with all subsequent amendments and supplements is incorporated herein by reference. These standards may be purchased from the American National Standards Institute, Inc. 1430 Broadway, New York, New York 10018.** [at 20dB HL in a screening room at the following frequencies: 500Hz, 1000Hz, 2000Hz, 3000Hz and 4000Hz.]

(e) Each pupil shall be screened individually at 20dB HL in a screening room at the following frequencies: 500Hz, 1000Hz, 2000Hz, 3000Hz and 4000Hz.

Recodify existing (e)-(i) as **(f)**-**(j)** (No change in text.)

SUBCHAPTER [9] 6. SUBSTANCE ABUSE

6:29-[9.1 to 9.4] **6.1 to 6.4** (No change in text.)

6:29-[9.5] **6.5** Reporting, notification and examination procedures

(a) In instances involving alcoholic beverages, controlled dangerous substances or any chemical or chemical compound as identified in N.J.A.C. 6:29[9.3]**6.3**(a), the following shall apply:

1.-11. (No change.)

6:29-[9.6] **6.6** (No change in text.)

SUBCHAPTER 7. SCHOOL EMPLOYEE PHYSICAL EXAMINATIONS

6:29-7.1 Scope and purpose

This subchapter designates the minimum assessments to be used by district boards of education in establishing physical examinations for candidates for employment and district employees.

6:29-7.2 Definitions

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

"Employee" means the holder of any full- or part-time position of employment.

"Health history" means the record of a person's past health events obtained in writing, completed by the individual or their physician.

"Health screening" means the testing of people, using one or more diagnostic tools, to determine the presence or precursors of a particular disease.

"Employee assurance statement" means a statement signed by the employee, certifying that information supplied by the employee is true to the best of his or her knowledge.

"Medical evaluation" means the examination of the body by the school medical inspector or by any physician licensed to practice medicine.

"Physical examination" means the assessment of an individual's health.

"Psychiatric examination" means an examination for the purpose of diagnosis and treatment of mental disorders.

6:29-7.3 Policies and procedures for employee physical examinations

District boards of education shall adopt written policies and procedures for the physical examination of employees, and may adopt written policies and procedures for candidates for employment.

6:29-7.4 Requirements of physical examinations

(a) Any candidate for employment may be required to undergo a physical examination that may include, but not be limited to health history, health screenings and medical evaluation.

(b) Newly employed staff shall be required to undergo a physical examination which shall include, but not be limited to:

1. A health history completed by the individual or their physician which shall include:

i. Past serious illnesses and injuries;

ii. Current health problems;

iii. Allergies; and

iv. Current medications.

2. Health screenings including:

i. Height and weight;

ii. Blood pressure;

iii. Pulse and respiratory rate; and

iv. Vision screening, hearing screening and Mantoux test for tuberculosis.

3. A medical evaluation.

(c) Each school employee shall undergo an annual physical examination, which shall include, but not be limited to:

1. An updated employee health history of:

i. Current health problems; and

ii. Current medications.

2. Any updated information provided in accordance with (c)1i and ii above shall require an assurance statement signed by the employee. If an employee refuses to provide updated information with a signed assurance statement, the employee shall undergo a physical examination which includes (b)1 and 3 above.

(d) Any physical examinations required under this subchapter shall be limited to those assessments necessary to determine the individual's fitness to function in the position which he or she seeks or currently holds, and to detect any health risks to students and other employees.

(e) All employee medical records for the district shall be stored and maintained separately from other personnel files. Only the employee, the chief school administrator, school medical inspector and/or certified school nurse, shall have access to the medical information in that individual's file.

(f) Individual psychiatric or physical examinations of any employee may be required by the district board of education whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health.

(g) Cost for examinations made by a physician or institution designated by the district board of education shall be borne by the district board of education. If, however, the examination is performed by a physician or institution designated by the employee, with approval of the district board of education, the cost shall be borne by the employee.

(a)

STATE BOARD OF EDUCATION

State Library Assistance Programs

Proposed Readoption with Amendments: N.J.A.C. 6:68

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

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:74-3.3, 18A:74-6, 18A:74-10, and 18A:74-14.

Proposal Number: PRN 1989-584.

Submit comments by January 17, 1990 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:68, State Library Assistance Programs, expires on April 12, 1990. The Department has thoroughly reviewed the rules and determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. They are being proposed for readoption at this time with additions and amendments.

Existing N.J.A.C. 6:68-1 was originally adopted after the enactment of the State Library Aid Law, N.J.S.A. 18A:74-3 in 1967. Revisions for N.J.A.C. 6:68-1 were approved in October 1975. N.J.A.C. 6:68-2 was originally adopted in October 1970 to implement the provisions of N.J.S.A. 18A:74-6 and was readopted, with amendments, in April 1985. N.J.A.C. 6:68-3 was originally adopted in July 1974 to implement the provisions of the New Jersey Library Construction Incentive Act (N.J.S.A. 18A:74-4) with revisions in September 1975.

N.J.A.C. 6:68-5 and 6 were originally adopted in June 1986 after enactment of the Library Development Aid Act, N.J.S.A. 18A:74-3.3 and 3.4. N.J.A.C. 6:68-7, 8 and 9 were originally adopted in April 1987 after enactment of the Library Development Aid Act, N.J.S.A. 18A:74-3.2(a), 3.2(b) and 3.2(c).

It is necessary to retain these rules in order to give full force and effect to the existing statutes. If the rules were not readopted, the Department of Education could not implement the statutes.

Chapter 68 has been reorganized to create a more uniform format and to provide consistent definitions of terms in its subchapters. This has eliminated unnecessary repetition of general sections in subchapters. Each subchapter now has a statement of purpose which permits the reader to more easily ascertain the type and scope of the grant program being described.

To accomplish this, a new subchapter 1, titled "General Provisions" has been added. As a result, all subchapters and many sections have been renumbered. The new subchapter 1 contains general definitions and information and procedures common to most of the subchapters in Chapter 68.

Where substantial changes are proposed, the subchapters are being repealed and replaced with new text. These subchapters are the Incentive Grant Program, Institutional Library Services and Municipal Branch Library Services.

A review of the chapter follows.

N.J.A.C. 6:68-1 General Provisions

This new subchapter describes the general requirements which apply to State funded library grant programs. Included here are new grant application procedures, new criteria for approval, reports and audits required, notification of applicants, and appeals procedures. Also included are definitions which apply throughout the chapter.

N.J.A.C. 6:68-2 State Library Aid

This subchapter is proposed for recodification from N.J.A.C. 6:68-1 and prescribes quantitative criteria, with no changes from existing rules, for the receipt of per capita State library aid to municipalities with a municipal, association, or joint library. New rules are proposed to describe the purpose of the grant program, to revise the requirements for materials purchased and to clarify the requirement for hours of service. In order to receive any per capita State aid, public libraries must now meet all criteria in N.J.A.C. 6:68-2.2 to 2.6. The section on definitions has been repealed and all necessary definitions have been added to N.J.A.C. 6:68-1.2.

N.J.A.C. 6:68-3 Incentive Grant Program

The Incentive Grant Program is currently codified at N.J.A.C. 6:68-2. It is being proposed for repeal and replacement by this subchapter describing new grant programs to encourage the formation and development of larger units of library service. The descriptive format of the two types of grants has been restructured to clarify the grant options available to municipal and county libraries.

Program A provides grants of $30,000 to $50,000 to municipal libraries to assist in the planning and development of joint libraries. Program B provides grants of $20,000 to $50,000 to county libraries to assist in planning and development of expanded county library services.

New requirements, including master plan requirements, population base, maintenance of effort and per capita State aid criteria have to be met by applicants.

N.J.A.C. 6:68-4 Emergency Aid

This subchapter is proposed for recodification from N.J.A.C. 6:68-3 and describes funding to public libraries which have suffered unforeseeable emergencies. New language is proposed to describe the purpose of the grant program. A definition for "adequate insurance" and

revised definition for "reimbursable loss" are proposed to clarify the intent of the subchapter requirements.

New language has been added to N.J.A.C. 6:68-4.4, method of application, to require evidence of an applicant's maintenance budget and assurance that the applicant has adequate insurance. New text for eligibility which requires adequate insurance and preventive maintenance is proposed.

N.J.A.C. 6:68-5 Library Construction Incentive Program

This subchapter is proposed for recodification from N.J.A.C. 6:68-4 and describes grant programs to encourage and support the construction and expansion of public library buildings. Existing definitions have been moved to N.J.A.C. 6:68-1.2, while a definition of "Library Construction Advisory Board" has been added to this subchapter. New language clarifies eligible projects and reimbursable eligible project costs, requirements for project criteria and maximum grant amounts for projects. New rules are proposed to describe the creation and responsibilities of the Library Construction Advisory Boards exception requirements for approval and to clarify the application process.

N.J.A.C. 6:68-6 Audio-Visual Public Library Services

This subchapter is proposed for recodification from N.J.A.C. 6:68-5 and describes grant programs to support audio-visual public library services on the local, regional, and State level. Existing language for definitions, grant application procedures, criteria for approval, reports and audits and appeal procedures has been moved to N.J.A.C. 6:68-1.

N.J.A.C. 6:68-7 Institutional Library Service

This new subchapter replaces N.J.A.C. 6:68-6 which is proposed for repeal. The subchapter describes grant programs for improving and expanding library services to persons institutionalized in health, mental health, mental retardation, veterans, residential, correctional and other similar facilities operated by the State, county or municipal governments. New language is proposed to revise the organization of the sections and the names of the grant programs and to change priorities and the funding levels for the various grant programs.

N.J.A.C. 6:68-8 Municipal Branch Library Services

This new subchapter replaces N.J.A.C. 6:68-7 which is proposed for repeal. The subchapter describes grant programs for municipal public libraries to maintain, operate and improve municipal branch library services. New text is proposed to restructure the grant process for the two basic programs: (1) planning for services and (2) development of services. New funding awards of $20,000 to $50,000 are proposed and applicants must meet new requirements (per capita State aid criteria, as listed in N.J.A.C. 6:68-2).

N.J.A.C. 6:68-9 Collection Evaluation And Development

This subchapter is proposed for recodification from N.J.A.C. 6:68-8 and describes grants to public libraries for evaluation and development of library collections. Existing language for definitions, grant application procedures, criteria for approval, reports and audits and appeal procedures has been moved to N.J.A.C. 6:68-1.

N.J.A.C. 6:68-10 Maintenance of Library Collections

This subchapter is proposed for recodification from N.J.A.C. 6:68-9 and describes grants to libraries for housing, protection, preservation, repair, restoration and maintenance of collections of historical or special interest. New language is proposed to establish annual priorities for the awarding of funds.

Social Impact

The proposed readoption of Chapter 68, with amendments and new rules, is designed to continue State funded grant programs to New Jersey libraries. Academic, institutional, public, school and special libraries and library collections found in historical societies, museums and media centers in New Jersey contain a vast array of documentary resources. These library resources collectively improve the quality of life for New Jersey residents. They provide information on which to base personal, business and public decisions. They serve as a primary means by which our culture and experience is passed from one generation to another. Library informational resources also assist in continued self-education and self-improvement and provide stimuli for individual contemplation and entertainment.

Access to information is fundamental to education and reasoned social change, to growth and prosperity in business and industry, and to sound and equitable government. The proposed readoption of Chapter 68 will continue to assure quality library service, facilities and materials in all formats to New Jersey residents.

Economic Impact

N.J.A.C. 6:68-2, rules for the State Library Aid Law, have provided much needed funding for the State's public libraries. The Fiscal Year 1989 expenditure of $9,127,809 provided approximately 5.2 percent of the 1987 total expenditures for public libraries. Readoption of this subchapter is necessary to maintain adequate State support of good library services.

Readoption of N.J.A.C. 6:68-3, Incentive Grant Program, will have a positive economic impact on public libraries, since it will continue to act as a catalyst in developing larger units of service for municipal and county libraries. The amendments will impact favorably on public libraries which will be eligible to receive funding for planning and development of joint libraries. There will be no additional costs to public libraries resulting from the proposed amendments, since they eliminate the matching fund requirements from the existing rules.

Readoption of N.J.A.C. 6:68-4, Emergency Aid, will require public libraries to provide adequate insurance and to budget for preventive maintenance before being eligible for aid under this program. It will have a positive economic impact on the State since it will eliminate requests for funding that should be provided for at the local level.

N.J.A.C. 6:68-5, Library Construction Incentive Program, has allowed the State to fund grants for new facilities, additions or renovations to public libraries. In Fiscal Year 1989 $1.5 million was appropriated for public library construction.

The rules in N.J.A.C. 6:68-6, Audio-Visual Public Library Services, have allowed public libraries to provide expanded audio-visual service on a more cost efficient, cost effective basis through cooperative programs, purchases and services. Audio-visual materials provided through public libraries are used by New Jersey residents, businesses and organizations for a wide variety of purposes related to education, information and training, all of which impact on the State's economic well-being as a whole. In Fiscal Year 1989, an appropriation of $300,000 was made.

Under the rules of N.J.A.C. 6:68-7, Institutional Library Services, library services have supported literacy, education, and training programs in New Jersey correctional and human services institutions. These programs share a common goal of preparing the residents of institutions to return to their communities as working, productive persons. In Fiscal Year 1989, an appropriation of $112,422 was made.

The rules in N.J.A.C. 6:68-8, Municipal Branch Library Services, provide for State funding to municipal libraries with branches. Data was gathered from a questionnaire sent to all 33 municipal libraries that have branch library facilities. Results of that survey indicated that, because of economic difficulties, only six libraries were able to operate a full service branch facility (open at least 30 hours a week, provision of a full-time librarian and programs for children and adults). There is therefore a great need to provide State funds as an incentive to local municipalities to expand and upgrade library services in their branch facilities. This program has not been funded since its adoption in 1987.

Programs initiated under N.J.A.C. 6:68-9, Collection Evaluation and Development, will allow for more effective utilization of library collection budgets. The appropriation for this program was $100,000 in both Fiscal Year 1988 and Fiscal Year 1989.

Under the rules in N.J.A.C. 6:68-10, Maintenance of Library Collections, library collections already purchased, cataloged, and available to users will have their useful lives extended. In Fiscal Year 1988, $81,108 was appropriated for the preservation and conservation of materials with permanent significance to New Jersey's documentary heritage and for preservation planning. For Fiscal Year 1989, $83,900 was appropriated. If this subchapter was not readopted, valuable collections of New Jersey subject matter would be irretrievably lost.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption do not impose reporting, recordkeeping or other compliance requirements for small businesses. The rules impact only upon New Jersey libraries.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:68.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 6:68-2, 6 and 7.

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

SUBCHAPTER 1. GENERAL PROVISIONS

6:68-1.1 Purpose

The purpose of this chapter is to describe the library grant programs available from State funds and to establish general rules for the application process and for the awarding of these funds to libraries. These general rules will govern the State Library grant process unless different procedures are given in the rules relating to a specific grant program.

6:68-1.2 Definitions

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

"Academic library" means a library within a publicly or privately supported institution of higher education.

"Associate librarian" means a person who holds an associate educational media specialist certificate in accordance with N.J.A.C. 6:11-12.22.

"Association library" means a library established pursuant to N.J.S.A. 15A:1-1 et seq. and receiving public funds pursuant to N.J.S.A. 40:54-35.

"Audio-visual" means communications resources which rely on a device for transmission, reproduction, or enlargement to be effectively utilized or understood. Also included are non-print resources such as art works and objects.

"Audio-visual materials" means materials in audio and visual formats which convey information primarily by sound and image rather than by text and which rely on a device for transmission, reproduction or enlargement to be effectively utilized or understood. Excluded are print and print substitutes such as microform, but included are computer software, art works and objects.

"Audio-visual public library services" means provision of access to audio-visual materials to clientele of a public library.

"Branch library" means an auxiliary public library (county or municipal) which has all of the following, but which is administered from a central unit:

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

"Central library" means the main library building of a municipality, county or other type of public library or those facilities which house the administrative headquarters of a public library system, including system-wide services provided from a single location.

"Collection development" means activities relating to the development of a library collection, including but not limited to the determination and coordination of selection policies, assessment of needs of users and potential users, collection use studies, collection evaluation, identification of collection needs, selection of materials, planning for resource sharing, collection maintenance and weeding, and purchase of library materials in any format.

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

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

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

"Collection" means library materials in any format.

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

"County library" means a public library established pursuant to N.J.S.A. 40:33-1 to 13 and 40:33-15 to 23.

"Evening hours" means any two hours the library is open after 6:00 P.M.

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

"Extended long-term loan" means a loan of 12 months or more.

"In kind" means the current and recurring costs of the operation of the library and its programs/services that were present before the development and implementation of the grant program.

"Institution" means an adult or juvenile health, mental health, mental retardation, veterans, residential, correctional and other similar facility other than a public school, which is operated by or under contract to the State or to county or municipal governments to carry out health, welfare, educational and correctional programs. Excluded are general hospitals, nursing homes and boarding homes.

"Institutional library" means any library within an institution directly serving the institutional client group.

"Interlibrary loan" means a transaction between libraries, a form of resource sharing by which one library's collection is utilized by another library in response to a mediated request for a specific item on behalf of its users. The original or a copy of the item may be provided.

"Joint library" means a library established pursuant to N.J.S.A. 40:54-29.3 to 29.26.

"Librarian" means a professional librarian, an educational media specialist or an associate educational media specialist who holds, or is eligible to hold, a certificate in accordance with N.J.A.C. 6:11-12.7 Professional librarian; N.J.A.C. 6:11-12.21, Educational media specialist; or N.J.A.C. 6:11-12.22, Associate educational media specialist.

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

"Library clerk" means a person employed in a library who performs clerical or support functions.

"Library materials" means print, non-print items and electronic software.

"Library-related agency" means a county audio-visual aids commission established under N.J.S.A. 18A:51; a learning resource center; a regional curriculum services unit; or any other nonprofit organization meeting the criteria for membership in a regional library cooperative in accordance with N.J.A.C. 6:70-1.5(b).

"Library services" means all activities rendered by the library to its users.

"Municipal library" means a library established pursuant to N.J.S.A. 40:54-1 to 29.2.

"Overhead" means current or recurring expenses such as rent, insurance, lighting, heating, accounting or office expenses.

"Part-time employee" means an employee whose regular hours of duty are less than the normal work week for that class or agency in accordance with Civil Service Rule N.J.A.C. 4:1-2.1.

"Periodical" means a serial publication which is issued in a continuous series under the same title, usually published at regular intervals, more frequently than annually, over an indefinite period, individual issues in the series being numbered consecutively or each issue being dated.

"Periodical indexes" means subject indexes to a newspaper or to a group of periodicals which are provided for patron and staff use whether in print, micro or electronic format.

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

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

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

"Regional library" means a library established pursuant to N.J.S.A. 40:33-13.3 et seq.

"School library" means a library/media center within any publicly or privately supported elementary or secondary school, or in any post-secondary vocational or technical school.

"Special census" means a census conducted by the United States Secretary of Commerce pursuant to 13 U.S.C. 196.

"Special library" means a library/information center of a business, a professional, scientific, or trade association, a government, hospital or other for-profit or nonprofit institution or organization which

provides that organization with information, library materials, and technical bibliographic and research services.

"Subject collection" means a collection of materials on a subject covering a specific topic, specific period of time or pertaining to a specific geographic area.

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

6:68-1.3 Grant application procedures

(a) The State Library requires the use of a standard application for the grant programs unless otherwise specified. Application forms, unless otherwise specified, may be obtained from:

New Jersey State Library
Grant Applications
185 West State Street
CN 520
Trenton, New Jersey 08625-0520.

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

6:68-1.4 Criteria for approval

(a) Evaluation of the applications may be based on, but not necessarily be limited to, the following criteria:

1. A statement of the applicant's need as it relates to the Request for Proposal's stated purpose;

2. A rationale providing a description of the potential project and the basis for the selection of a particular solution or method for the project;

3. Goals and objectives describing the outcomes or results expected from the project;

4. An action plan describing the activities and resources needed to reach the stated objectives of the project;

5. An evaluation plan describing the applicant's proposed method to evaluate the progress and outcomes of the project; and

6. A budget listing how requested funds will be used to support the action plan. Appropriate budget forms are supplied with application forms.

(b) Each application will contain specific, expanded definitions of these criteria to assist applicants to develop appropriate information for the grant application.

6:68-1.5 Reports and audits

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

6:68-1.6 Notification of applicants

Applicants will be informed of the State Librarian's recommendations of approval or rejection within 90 days of application deadline.

6:68-1.7 Appeal procedures

(a) If a recipient agency requests the results of a denied proposal, the State Librarian will provide a written explanation of the denial.

(b) Applicants whose projects have been rejected may submit a written request for an informal fair hearing before the State Librarian. A hearing will be held only if it is alleged that the State Library has violated a statutory or regulatory provision in the awarding of a grant. An appeal will not be heard based upon a challenge to the final evaluation score of a grant proposal.

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

SUBCHAPTER [1]**2.** STATE LIBRARY AID

[6:68-1.1 Definitions

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

"Area library" means any library with which the State contracts for specialized services to all residents of an area specified in the contract.

"Association library" means one established, governed and supported by an association of citizens. Such an association is incorporated, forms its own constitution, appoints or elects its own board, and is responsible for the operation of the library. It may receive tax support from the local governing body.

"Audio-visual material" means material which rely on a device for transmission, reproduction or enlargement to be effectively utilized or understood. Excluded are print and print substitutes such as microform but included are art works and objects.

"County library" means one established by law following a county-wide referendum passed by a majority of voters or by resolution of the board of chosen freeholders in counties with populations of less than 150,000. It is supported by taxes and governed by a board known as the county library commission composed of five members appointed by the freeholders.

"Extended long-term loan" means a loan of one year (12 months) or more.

"Full-time" shall be defined as a minimum of 30 hours per week. For municipalities of under 5,000 population full-time may be defined as two part-time persons. At no time shall either part-time employee work less than ten hours per week.

"Joint library" means one established by law following a referendum in two or more municipalities in which the majority of voters vote to establish such a library. It is governed by a board appointed by the mayors of the participating municipalities.

"Municipal library" is one established by law following a referendum in which the majority of voters vote to establish such a library. It is supported by taxes and is governed by a seven-member board, five of whom are appointed by the mayor. The mayor and the superintendent of schools serve as ex-officio members of the board.

"Periodical" means a serial publication which is issued in a continuous series under the same title, usually published at regular intervals, more frequently than annually, over an indefinite period, individual issues in the series being numbered consecutively or each issue being dated.

"Periodical indexes" include the following examples:

1. Abridged Readers Guide to Periodical Literature;
2. Readers Guide to Periodical Literature;
3. Applied Science and Technology Index;
4. Business Periodical Index;
5. Education Index;
6. Library Literature;
7. Social Sciences and Humanities Index;
8. Popular Periodical Index;
9. Subject Index to Magazines for Children.

"Professional librarian" shall be defined as an individual holding a New Jersey professional librarian certificate.]

6:68-2.1 Purpose

The purpose of this program is to provide per capita library aid to public libraries according to N.J.S.A. 18A:74-1 et seq.

6:68-[1.2]**2.2** Governance

(a) Any municipal library which has been established pursuant to N.J.S.A. 40:54-1 et seq. or pursuant to any special Act shall provide for a library board of trustees in the manner and with the duties and powers specified in [said statute] **N.J.S.A. 40:54-1 et seq. or any special Act.**

(b) Association libraries receiving local tax support under N.J.S.A. 40:54-35 shall be governed by a board of trustees **and shall be** incorporated as a non-profit corporation pursuant to [N.J.S.A. 15] **N.J.S.A. 15A:1-1 et seq.**

(c) Any joint library which has been established pursuant to N.J.S.A. **40:54-**[1]**29.3** et seq. shall provide for a library board of trustees in the manner and with the duties and powers specified in N.J.S.A. **40:54-12**, 40:54-29.10, [and] 40:54-29.12 **and 40:54-29.13.**

6:68-[1.3]**2.3** (No change in text.)

6:68-[1.4]**2.4** Employees

(a) All **public** libraries [established pursuant to N.J.S.A. 40:54-1 et seq. and N.J.S.A. 40:33-1 et seq.] (municipal, joint, association and county) shall meet the following [minimal] **minimum** requirements

based on the population of the area from which the library receives tax support:

1. Number of employees: All libraries shall employ a minimum of one full-time staff member. In addition, one full-time employee or the equivalent thereof in part-time paid employment for the initial 4,000 population and each succeeding 4,000 population shall be employed as set forth in Chart A [annexed hereto and made a part thereof] **below**. All of the above are exclusive of **security,** janitorial or custodial employees.

Chart A
(No change in text.)

i. Full-time means a minimum of 30 hours per week except that for municipalities of under 5,000 population, full-time may be defined as two part-time persons. At no time shall either part-time employee work less than 10 hours per week.

2. Professional staff:

i.-ii. (No change in text.)

iii. Libraries serving **a** population[s] over 50,000 must employ a minimum of one full-time professional librarian or the full-time equivalent for every 10,000 population up to 50,000 and one additional full-time professional librarian or the full-time equivalent for each 20,000 population over 50,000 as set forth in Chart B [annexed hereto and made a part thereof] **below**.

Chart B
(No change in text.)

6:68-[1.5]**2.5** Library materials

(a) A minimum collection of 8,000 volumes or one volume per capita, whichever is greater, shall be available in all libraries established pursuant to the provisions of N.J.S.A. 40:54-1 et seq., **N.J.S.A. 40:54-29.3 et seq.** and N.J.S.A. 40:33-1 et seq.

(b) A minimum of 1/10 of volume per capita shall be purchased annually. Audio-visual materials**, computer software and electronic reference services** may be equated to volumes purchased. To equate audio-visual **materials, computer software and electronic reference services** with print purchases:

1. (No change.)

2. Divide total expenditure for audio visual materials**, computer software and electronic reference services** by average price per volume **as computed in New Jersey Library Statistics** for the preceding calendar year. Add resulting figure to number of volumes purchased. The total of the two figures should be equal to or exceed the minimum requirement of 1/10 volume.

(c) (No change.)

(d) Those libraries which are in municipalities providing tax support for a county library may [reduce the requirements in subsections (a), (b) and (c) of this section in exact proportion to the number of items provided by the county library on extended long-term loan] **count the materials provided by the county library to the local library toward meeting the requirements of (a), (b) and (c) above. The materials provided can be used to satisfy the requirements for volumes purchased, minimum collection, and periodical subscriptions and holdings by the exact number provided by the county library in each category.**

6:68-[1.6]**2.6** Hours of service

(a) (No change.)

(b) Minimum hours open to the public must be scheduled to provide some service five days per week with a minimum of three evenings and some weekend hours every week. Seasonal **(summer or other special)** variations are permitted for three months per year. **The State Librarian may authorize other variations to accommodate local conditions.**

(c) (No change.)

6:68-[1.7]**2.7** [Reduction] **Loss** of aid for failure to meet minimum requirements

[(a)] Failure to meet the requirements of N.J.A.C. 6:68-[1.2]**2.2** [and] **through** 6:68-[1.3]**2.6** will result in the loss of all per capita State Aid.

[(b) Failure to meet the requirements specified in N.J.A.C. 6:68-1.4 through 6:68-1.6 will result in the loss of per capita State Aid by a percentage in proportion to the number of requirements not yet achieved, each requirement to have the following weights:

1. N.J.A.C. 6:68-1.4:
i. Employees: 30 percent
2. N.J.A.C. 6:68-1.5:
i. Basic book collection: 10 percent
ii. Annual purchases: 30 percent
iii. Periodicals: 10 percent
3. N.J.A.C. 6:68-1.6:
i. Hours of service: 20 percent]

6:68-[1.8]**2.8** Use of per capita aid; decision by public library board of trustees or county library [commissioners] **officials**

(a) Upon receipt of State Aid checks pursuant to N.J.S.A. 18A:74-3, municipal and county treasurers shall make these funds immediately available to public library trustees, [or] county library commissioners **or, in counties which have reorganized the administrative structure of county government according to N.J.S.A. 40:41A-1 et seq., the board of chosen freeholders** as the case may be. Decisions on the use and expenditures of per capita State Aid rest with the board of trustees of municipal, joint and association libraries and with the county library commission of the county libraries **or the county board of chosen freeholders.** The State Librarian may require a certified audit if he [/] **or** she deems necessary.

(b) State Aid funds must be expended within two years of the date of receipt of the funds. If not expended, the board of trustees, [or] the county library commission **or the board of chosen freeholders** must submit to the State Librarian a plan for the use of the unspent balances **at least 60 days before the deadline for expenditure.** Failure to submit such a plan, or disapproval of the plan by the State Librarian, shall result in the withholding of State Aid payments.

(c) (No change.)

6:68-[1.9]**2.9** Application of special census

An application for the use of a special census for the receipt of aid pursuant to N.J.S.A. 18A:74-3 shall be submitted in writing to the State Librarian for transmittal to the State Commissioner of Education on or before October 15 of the year preceding that in which the special census would be used as a basis for the payment of per capital aid [or area library grants]. The application must include the new census figure to be used, and written verification from the United States Bureau of Census.

6:68-[1.10]**2.10** Library buildings; submission of program

Any library planning to use State Aid moneys for new construction, an addition **or structural changes** to the present building[, or extensive renovation] shall submit its building program and preliminary building plans to the State Librarian for review and approval.

6:68-[1.11]**2.11** Revision of criteria

The State Librarian shall review all State Library Aid rules and regulations periodically, and at least every five years the Advisory Council of the Division of the State Library[, Archives and History,] shall recommend appropriate revision to the State Board of Education to ensure that libraries throughout the State move toward the achievement of national standards and develop appropriate systems of library service.

6:68-[1.12]**2.12** State Library Aid application [form]

(a)[This] **An application** form is available at the following address:

[Department of Education]
New Jersey State Library
[Library Development Bureau]
Per Capita State Aid
185 West State Street CN520
Trenton, New Jersey 08625-**0520**

6:68-2.13 Appeals procedure

Appeals arising from any action of the State Librarian in administering the rules of this subchapter may be requested, and an opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such an informal hearing, appellants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24,

and 18A:6-27. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

SUBCHAPTER 3. INCENTIVE GRANT PROGRAM

6:68-3.1 Purpose

(a) The intention of the incentive grant program is to encourage the establishment of expanded or enhanced forms of service through the development of larger units of library service. It is designed to maximize the use of established library services and to encourage the dissolution of small, inefficient units of service.

(b) There are two separate incentive grant categories:

1. Program A—Municipal library assistance aid for planning and development of joint libraries; and

2. Program B—County library assistance aid for planning and development for expanded county library service.

(c) The priority for grant categories and percentage of funds allocated to each category shall be established each year by the State Librarian.

6:68-3.2 Definitions

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

"Expand" means to add services or to extend existing services to previously unserved clienteles.

"Larger units of library service" means the creation of a new entity encompassing a broad geographic area or population base for the delivery of library services. This may include the creation of an entity where none exists or the combining of existing entities through appropriate legal steps to serve a broader area or population base. Examples of larger units of service include but are not limited to:

1. Formation of a joint library by an existing municipal library or existing association library and a municipality which is not currently supporting library services;

2. Formation of a joint library by two or more existing municipal libraries or two or more existing association libraries;

3. Formation of a joint library by an existing association library and an existing municipal library;

4. Development of a new branch library for a county library system;

5. Reorganization of county library services through the county library reorganization law (N.J.S.A. 40:33-13.2d et seq.);

6. Expansion of county library services to new populations; and

7. Enhancement/strengthening of county library services.

"Operating expense" means the current and recurrent costs necessary to the provision of library service, such as personnel, library materials, binding, supplies, repair or replacement of existing furnishings and equipment, and costs incurred in the operation and maintenance of the physical facility.

6:68-3.3 Program A—Municipal library assistance for planning and development of joint libraries

(a) There are two phases to Program A: Phase 1—Planning for joint libraries and Phase 2—Aid for development and implementation of joint libraries.

(b) Phase 1 provides municipal library assistance aid for planning.

1. Municipal library assistance aid for planning will make funds available to develop a master plan on the feasibility of uniting two or more contiguous municipalities in a larger unit of service through the formation of a joint library. This program will be in effect only in counties where a county library has not been established.

2. The result of the municipal planning assistance aid will be a written master plan documenting the feasibility of establishing and maintaining a larger unit of library service through a joint library. The master plan must contain the following elements:

i. The goal of the master plan;

ii. Objectives of the master plan;

iii. A report on the demographic characteristics of the communities;

iv. A report on library resources, if applicable;

v. A report on library services, if applicable;

vi. A report on estimated cost of the project;

vii. A recommendation on feasibility of the project;

viii. A recommendation on a possible site for the joint library; and

ix. A projected three year timetable for implementation.

3. All costs directly associated with the development of a master plan are eligible for funding, except for overhead expenses and inkind costs. Eligible costs include, but are not limited to, the employment of a library consultant to conduct the study; costs associated with administering and conducting any surveys related to the plan, such as a community survey or patron survey; and any support costs directly associated with the project including data processing costs and mailing costs.

4. Applications will be evaluated on the basis of the following criteria:

i. One of the municipal or association libraries must, at the time of application, meet in full the quantitative State Aid rules for libraries servicing its population (N.J.A.C. 6:68-2).

ii. First priority in funding shall be given to the project anticipated to serve the largest number of individuals.

iii. Applications will also be evaluated against the "Criteria for approval" in N.J.A.C. 6:68-1.4.

5. A grant not to exceed $30,000 will be made for the development of a master plan for library service for a population up to 50,000.

6. A grant not to exceed $50,000 will be made for the development of a master plan for library service for a population up to 100,000.

7. The boards of trustees of any association, joint or municipal libraries investigating the possibility of entering into a joint library agreement must file a joint application. If there is currently no library service in a municipality, the local governing body would be eligible to apply as a joint applicant.

(c) Phase 2 provides municipal library assistance aid for development.

1. Grant funds will be available to assist in the development and initial financing of a joint municipal library. Any library entering Phase 2 must have a master plan for joint library service approved by the State Librarian. The municipalities entering into the joint library agreement must meet the following criteria:

i. Serve a combined population base of not less than 15,000;

ii. Serve contiguous municipalities; and

iii. In order to participate in the municipal library assistance aid program for development, participating municipalities must pass a resolution stating that no less money would be generated for library services in the municipalities than was generated in the year prior to the formation of the joint library.

2. Upon establishment of a joint free public library pursuant to N.J.S.A. 40:54-29.3 et seq., a library shall be eligible for a minimum grant of $50,000 for initial operating costs associated with the establishment of a new library. Additional funding may be available for this purpose.

i. Examples of eligible costs that can be included are personnel, books and materials, equipment, data processing equipment and furnishings.

ii. These grant funds may not be used for construction or renovation projects costing in excess of $10,000.

3. The board of trustees of the newly created joint library shall be eligible for funding under this program.

4. During the initial year of operation of the joint library, grant funds will be awarded to the municipalities which created the library. These funds will be awarded on a per capita basis. This per capita grant shall be used by the municipalities to fund additional library services. It may not be used to reduce local required support of library service.

5. The governing officials of municipalities who disestablish their existing local public libraries shall be eligible for funding under this program.

6:68-3.4 Program B—County library assistance aid for planning and development for expanded county library service

(a) There are two phases to Program B: Phase 1—Assistance aid for planning and Phase 2—Development and implementation of expanded county library services.

(b) In Program B, Phase I, county library assistance aid for planning will be available to fund or update a master plan to study the feasibility of developing options for expanded county library service. There are

three possible options: development of new branch libraries; expansion of county library service to new populations; and enhancement or strengthening of county library branch service.

1. The product of county library assistance aid will be a written or updated master plan documenting the feasibility of developing any of the options listed above. The master plan shall contain the following elements, which may be further defined in the annual Request for Proposal for this program:

i. The goal of the master plan;

ii. Objectives of the master plan;

iii. A report on the demographic characteristics of the county;

iv. A report on library resources;

v. A report on library services;

vi. A report of estimated cost for options;

vii. The feasibility of options; and

viii. A projected timetable for implementation of the options.

2. All costs directly related to the development of a master plan are eligible for funding except overhead expenses and inkind costs. Eligible costs include, but are not limited to, the employment of a library consultant to conduct the study; costs associated with administering and conducting any surveys related to the plan, such as community survey and patron survey; and any support costs directly associated with the project, including data processing costs and mailing costs.

3. Additional criteria for approval are as follows:

i. The county library must, at the time of the application, meet in full the quantitative State Aid rules for library service to its population (N.J.A.C. 6:68-2).

ii. All initial applications shall be ranked in terms of the counties' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion used to determine financial ability shall be the ratio of equalized valuation of the year preceding the date of application to the population estimate of the county for the same year. (Equalized valuations shall be as listed in the Table of Equalized Valuation published by the New Jersey Division of Taxation and population shall be based upon estimates of the Department of Labor.)

4. The county library commission shall be eligible to receive funding under this program. In counties which have reorganized the administrative structure of county government according to N.J.S.A. 40:41A-1 et seq., the board of chosen freeholders shall be eligible to receive funding. In either case, the awards of grant funds shall be made payable to the treasurer of the county.

5. A grant not to exceed $20,000 will be available for the development of a master plan for library service for a population up to 50,000. A grant not to exceed $30,000 will be available for the development of a master plan for library service for a population up to 100,000. A grant not to exceed $40,000 will be available for the development of a master plan for library service for a population over 100,000.

(c) In Program B, Phase 2 a library applying for funding must have a master plan for county library services which contains the same elements required under Program A of this subchapter, and it must be approved by the State Librarian. There are three options in Program B, Phase 2. Each option has several stages of funding. The three options are: county library branches; expansion of county library services to populations; and strengthening/enhancing county library services.

1. Option 1 will fund grants to assist in the development and initial operation of county library branches. There are four stages under this option. Applications for these stages must be made sequentially. In order to be eligible for the next stage, applicants must meet requirements for the preceding stage(s).

i. In Stage 1, a grant up to $20,000 will be provided to fund additional planning and preparation costs associated with the establishment of a county library branch. This planning must ensure that the county library branch meets the following qualifications:

(1) A county branch must be established as part of an overall master plan for county-wide library service;

(2) It must be under the full-time supervision of a paid certified librarian;

(3) It must have a population service base of not less than 15,000 nor more than one quarter of the entire population serviced by the county library system; and

(4) It must have a library building adequate to house the collection, a separate meeting room, and at least three readers' seats for every 1,000 population in the branch service area. The building may be owned by either a municipality or the county, or it may be rented.

ii. In order to be eligible for Stage 2, the county library making the application must meet all applicable State Library Aid criteria (N.J.A.C. 6:68-2) as well as the requirements listed in Stage 1.

(1) The newly established branch must be established in accordance with the provisions of the county master plan and must also meet the four basic qualifications of a county branch enumerated in N.J.A.C. 6:68-3.4(c)1i.

(2) An exception may be granted to the quantitative State Aid criteria (N.J.A.C. 6:68-2) if it can be shown that the criteria will be met by the end of the year.

(3) Exceptions may be granted for N.J.A.C. 6:68-3.4(c)1i, if the exception requested can be justified by the county master plan and is approved by the State Librarian.

(4) A county library having newly established and contracted for a branch meeting the above minimum criteria or having been granted by the State Librarian one or more exceptions to those criteria shall be eligible in the first year of the branch's operation for an incentive grant of 25 percent of the branch's budget, not to exceed $50,000.

iii. In order to be eligible for Stage 3, during the second year of operation under this program, the newly established branch must meet all of the quantitative State Aid criteria (N.J.A.C. 6:68-2) as well as the four basic qualifications of a county branch library and all the requirements listed in Stage 2.

(1) Where the branch to be funded meets these criteria, the county library shall be eligible for an incentive grant of 20 percent of the amount of the branch library's operating budget, not to exceed $50,000.

iv. In Stage 4, during the third year of the operation under this program, the branch must continue to meet all of the State Aid criteria as well as the four basic qualifications of a county branch library and all the requirements listed in Stage 3. The county library will be eligible for an incentive grant of 15 percent of the amount of the branch's operating expenditure, not to exceed $30,000.

v. The county library commission shall be eligible to receive funding under this program. In counties which have reorganized the administrative structure of county government, the board of chosen freeholders shall be eligible to receive funding. In either case, the award of grant funds shall be made payable to the treasurer of the county.

2. Option 2 will provide funding to assist a county library to expand library service to a community which had previously maintained a municipal free public library. Before funding will be awarded under this option, the municipal library must be disestablished through appropriate legal methods.

i. The county library and the local municipality applying for this grant shall jointly share the funding received. Under this option, the county library commission shall be eligible to receive one-half of the grant funding of this project on behalf of the county library. In counties which have reorganized the administrative structure of county government, the board of chosen freeholders shall be eligible to receive this funding for the county library. In either case the award of grant funds shall be made payable to the treasurer of the county.

ii. The governing officials of the local municipality shall be eligible to receive one-half of the grant funding for this project.

iii. Under this option, the county library shall use its portion of the per capita grant for any operating expense. The millage rate for county library service shall not be reduced as a result of this program.

iv. The municipality shall use its portion of the grant award to offset the local residents' portion of the county dedicated tax for library service.

v. This grant option shall be phased in over a three year grant cycle. A per capita grant shall be awarded during the first year of funding under this option. The award shall be shared equally by the county library and the local municipality. A per capita grant equal to 75 percent of the first year grant shall be shared during the second year of this option. A per capita grant equal to 50 percent of the first year grant shall be shared during the third year of this option.

3. Option 3 will provide funds to expand or enhance county library services by providing additional hours or services at county branch

facilities. Methods for expanded/enhanced library service include, but are not limited to:

i. Expansion of branch library hours to include evenings or Saturday or Sunday hours,

ii. Expansion of branch library services to include adult or children's programming,

iii. Enhancement of branch library service through increased telecommunication with main library, and

iv. Enhancement of branch library service through increased access to technology, such as commercial bibliographic utilities, electronic database reference services, and telefacsimile.

(1) The county library commission shall be eligible to receive funding under this program. In counties which have reorganized the administrative structure of county government, the board of chosen freeholders shall be eligible to receive funding. In either case, the award of grant funds shall be made payable to the treasurer of the county.

(2) In general, all costs directly associated with the project will be eligible for funding. These include personnel, books and other library materials, equipment and overhead costs such as electricity or heat.

(3) Under this option, grant funding must be matched by an expenditure of local county funds which is equal to 50 percent of the total cost of the project. Inkind services, such as release time for staff, are not eligible to be considered matching funds.

(4) Grant funding shall not exceed $20,000 for this option.

(5) A county library may receive only one grant under this option per year. Libraries may apply to have projects continued for up to an additional two years after the first grant. These continuation applications will be evaluated, as are first year applications, on the criteria found in N.J.A.C. 6:68-1.4.

SUBCHAPTER [3]4. EMERGENCY AID

6:68-4.1 Purpose

The purpose of this emergency aid grant program is to help alleviate unforeseeable, emergency conditions in any municipal or county library.

6:68-[3.1]**4.2** Definitions

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

"Adequate insurance" means insurance covering, at a minimum, losses of 80 percent of replacement value, resulting from fire, floods, lightning, aircraft, earthquake, vehicles, explosions, riots, civil commotion, vandalism or malicious mischief.

"Emergency" means any damage or loss suffered by a public library in excess of **$50,000 or** 10 percent of that library's current operating budget, **whichever is less,** [or in excess of $50,000] and which [, in the judgment of the State Librarian,] directly affects the [operation of the library] **accessibility to the library and its collections to the public. Damages or losses caused by normal wear and tear, deterioration, defect, mechanical breakdown or neglect are not considered emergencies.**

. . . .

6:68-[3.2]**4.3** (No change in text.)

6:68-[3.3]**4.4** Method of application

(a) **A letter of** [Application] **application** for emergency aid under N.J.S.A. 18A:74-6 must be sent by certified mail to the State Librarian. [Such] **This letter of** application, made by an authorized representative of the library's [Board of Trustees] **board of trustees,** shall include:

1.-6. (No change.)

7. The library's maintenance budget for the preceding five years;

8. An assurance that the library holds adequate insurance; and

[7] **9.** Any additional reports or information the State Librarian may request. [; and]

(b) [Application for emergency aid must be received by the State Librarian within one year of the date of damage or loss.] **An intent to file request for emergency aid must be received by the State Librarian within 30 days of damage or loss.**

(c) Actual application for emergency aid must be received by the State Librarian within 90 days of damage or loss.

6:68-[3.4]**4.5** [Effort to correct emergency condition] **Eligibility**

(a) In order to be eligible for assistance, the library must demonstrate that [reasonable effort will be made to correct the condition which caused the emergency.]:

1. Adequate insurance was in effect for 12 months prior to the emergency;

2. Preventive maintenance was budgeted for and performed during each of five years prior to the emergency; and

3. Reasonable effort has been made to correct the condition that caused the emergency. Written documentation, such as copies of bills, requests for quotations, work orders, must be submitted.

[6:68-3.5 Appeal procedures

Applicants whose applications for emergency aid have been rejected will be given, upon request, opportunity for an informal fair hearing before the State Librarian.]

SUBCHAPTER [4]5. [STATE LIBRARY ASSISTANCE PROGRAMS] **LIBRARY CONSTRUCTION INCENTIVE PROGRAM**

6:68-[4.1]**5.1** [Scope and purpose] **Purpose**

Under the provisions of the New Jersey Library Construction Incentive Act, N.J.S.A. 18A:74-14, the State Librarian, as the designated representative of the Commissioner of Education of the State of New Jersey, is authorized to supervise and administer State funds to assist in the construction, expansion, [rehabilitation] **renovation** or acquisition of a public library building. The following are minimum requirements for participation in the grant **program** [and may provide for only basic services].

6:68-[4.2]**5.2** Definitions

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

["Association library" means a library established pursuant to N.J.S.A. 15:1 et seq. and receiving public funds pursuant to N.J.S.A. 40:54-35.

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

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

"Central library" means the main library building of a municipality, county or other type of public library or those facilities which house the administrative headquarters of a library system, including system-wide services provided from a single location.

"County library" means a library established pursuant to N.J.S.A. 40:33-1 to 33-13.2c and N.J.S.A. 40:33-15 et seq.

"Joint library" means a library established pursuant to N.J.S.A. 40:54-29.3 to 29.26.]

"Library Construction Advisory Board" means a Board appointed by the State Librarian whose members have had extensive experience in the planning and construction of at least two public library buildings. The Board shall review and recommend projects for approval to the State Librarian.

["Municipal library" means a library established pursuant to N.J.S.A. 40:54-1 to 29.2.

"Regional library" means a library established pursuant to N.J.S.A. 40:33-13.3 et seq.]

6:68-[4.3]**5.3** Eligible projects

(a) The following types of construction are eligible for a grant:

1. Construction of a new building;
2. Acquisition of an existing building adaptable [to] **for** use as a public library;
3. Addition to an existing building; **or**
4. [Rehabilitation] **Renovation** of an existing building.

(b) If the project is an addition to an existing building, the new construction for the addition must [be at least 3,500 square feet. However, in determining the total square feet of floor space required

to meet the minimum size criteria in N.J.A.C. 6:68-4.5(f), the usable floor space of the existing structure plus the floor space to be provided by the new addition shall be added together] **result in total floor space which, when added to the floor space of the existing structure, shall meet the minimum size criteria in N.J.A.C. 6:68-5.5(f).**

(c) The acquisition or the substantial [rehabilitation] **renovation** of an existing structure may be an eligible project. In order to be eligible, the acquisition or the [rehabilitation] **renovation** must be extensive and comprehensive [and shall result in a near approach to or substitute for a completely new building] **as distinguished from routine maintenance and repair projects.** In no case may costs for furnishings and equipment in excess of 30 percent of the total acquisition or [rehabilitation] **renovation** costs of the project be considered eligible for matching.

(**d**) An application may [also] be submitted which combines [rehabilitation] **renovation** [or] **and** construction of an addition. An acquisition or [rehabilitation] **renovation** application must [meet the minimum square footage requirements and other requirements and criteria applicable] **result in total floor space which, when added to the floor space of the existing structure, shall meet the minimum size criteria in N.J.A.C. 6:68-5.5(f).** An acquisition or [rehabilitation] **renovation** analysis and program must be prepared by a registered architect and shall be part of the application. The architect shall also certify that the proposed acquired or [rehabilitated] **renovated** structure and all its component parts shall have a life expectancy of 20 years or more. Studies made by the architect regarding the following shall be submitted in substantiation of the suitability and practicality of the acquisition or [rehabilitation] **renovation:**

1. The building shall be examined to determine that it is structurally sound;

2. All interior and exterior finishes, general construction, safety factors, ceiling lights, **and** ventilation [, and so forth,] shall be examined to determine if the existing structure is suitable for acquisition or [rehabilitation] **renovation** and upon completion will require no more than normal, annual maintenance;

3. Careful analysis of the space requirements and allocation of space shall be made to determine if the structure, as acquired or [rehabilitated] **renovated**, will meet [the] modern concepts of library services to the community it serves;

4. All mechanical aspects of construction shall be carefully analyzed [as] to **determine the need for** replacement or improvement.

[(d)] (**e**) Minimum size for any **new construction** project shall be 3,500 square feet of floor space.

[(e)] (**f**) [The Library Construction Advisory Board may accept for review preliminary applications] **Preliminary applications may be accepted for review** which, while being innovative **or providing a unique service** fail to meet the criteria outlined [herein] **in this section**. Exceptions may be considered where the public library building program demonstrates initiative and seeks to solve local problems in an original or cost-effective manner.

[(f)] (**g**) The signing of construction contracts before full approval by the State Librarian shall make the project ineligible for participation in the grant program.

6:68-[4.4]**5.4** Eligible project costs

(a) (No change.)

(b) [In addition, in] **In** order to [discourage elaborate or extravagant design or materials and to] promote the construction of projects in an [economic] **economical** manner, a ceiling periodically shall be set by the State Librarian describing a maximum per square foot project cost beyond which project cost, will not be eligible in the computation of the State share of funding.

(c) Should some portion of the proposed construction be intended for use for other than library purposes, such as municipal offices[,] **or a** general municipal meeting room [and so forth], this space may not be included in the computation of available square feet of space. Construction costs relating to these nonpublic-library-use areas [are not reimbursable (that is,] are not eligible to be used for matching purposes[)]. The application must clearly designate the nonpublic-library-use areas and [the] **their** related costs. Reimbursable costs must **be reduced by the amount of those related costs** [show a prorated reduction on the basis of the proration]. [Any] **The cost of any** shared-space [costs] submitted for reimbursable purposes must [also be documented in detail] **be prorated on the basis of the percentage of library use, for example a meeting room that will be used 50 percent of the time by the public library is eligible to be reimbursed only 50 percent of those costs.**

(d) Costs for renovation of an existing structure to be included together with costs of an addition will be computed separately and not averaged to determine amount of grant.

6:68-[4.5]**5.5** Project criteria

(a) [In order to receive approval,] **All** applications must meet the requirements and criteria [enumerated in] **of** these regulations. Those interested in applying for possible [changes should, by registered mail directed to the State Librarian,] **exceptions must** request an interview with the Library Construction Advisory Board. [and, in unusual cases, changes] **Exceptions** [in] **to** the requirements and criteria may be allowed.

(b) During the calendar year prior to submission of application, a municipal, joint[,] or association library[,] shall have received tax support at the level equal to at least 1/3 of a mill on every [$1.00] **dollar** of assessable property within such municipality **based on the equalized valuation of such property as certified by the Director of Taxation in the Department of the Treasury.**[; a] **A** county or regional library, during the calendar year prior to submission of application, shall have received tax support at the level equal to at least 1/15 of a mill [per $1.00] on **every dollar of** the apportionment valuation.

(c) During the calendar year prior to submission of application, the library shall have met the minimum criteria for receipt of State Library Aid (N.J.A.C. 6:68-[1]**2** [et seq.]) or submit a plan detailing steps to meet all the criteria which is acceptable to the Library Construction Advisory Board.

(d) The applicant must be in possession of a fee simple title or such other estate or interest in the site, including access thereto, as is sufficient to assure undisturbed use and possession of the facilities for not less than 20 years. Ownership of site by the applicant includes ownership of the land by the **municipality(ies)** [(municipalities)] of the applicant or the **county(ies)** [(counties)] in the case of a county or regional library application, provided that such land has been formally dedicated to library use. In the case of an association library, title to the land and building shall be in the name of the municipality in which the library is located.

(e) The applicant must have local matching funds for the project (the difference between project costs and the potential grant award) before final approval can be given[:]. **Within three months following notification of eligibility for a grant award, evidence must be submitted that funds have been appropriated for financing of the project. Such evidence shall include copies of the ordinance of appropriation passed on final reading and approved.**

[1. Construction Project: Tentative approval of a project may be given to those applicants submitting a resolution by the governing body of the municipality or county demonstrating intent to provide funds for the financing of the project. However, final approval of a project shall be contingent upon submission of evidence of appropriation of funds for the financing of the project. Such evidence, which must be submitted within two months following notification of tentative approval, shall include copies of the ordinance of appropriation passed on final reading and approved. Municipal libraries shall comply with the provisions of N.J.S.A. 40:54-25, as amended, 1971.]

(f) Floor space is meant to include total square footage of space available for public library purposes including outer walls. This shall include areas provided for mechanical equipment and maintenance requirements. In calculating square footage, only those areas shall be included that have heat, light and ventilation adequate for public and staff usage, excepting that those areas designated for mechanical, maintenance and storage purposes have heat, light and ventilation and square footage commensurate with their purposes[:].

1. [Population base for size calculations:] The estimated population [ten] **10** years [hence from] **after** the year in which application is made shall be used to determine the population base of the area served by the applicant library. For areas experiencing a population decline, the population estimate of the New Jersey Department of

Labor [and Industry] for one year prior to the fiscal year in which the grant application is made shall be used as the population base.

2. [The] **For new construction, the** population base as determined above shall be used to compute the minimum project size required to qualify as an applicant for a grant **as specified in Table A** [:].

Table A

[Population Base of Municipality or County (10 Year Projection)]

Population to be Served by the Project	Minimum Square Feet of Floor Space
Under 10,000	3,500 sq. ft. + .7 sq. ft. per capita over 5,000 pop.
10,000-25,000	7,000 sq. ft. + .6 sq. ft. per capita over 10,000 pop.
25,000-50,000	16,000 sq. ft. + .45 sq. ft. per capita over 25,000 pop.
50,000-100,000	27,250 sq. ft. + .35 sq. ft. per capita over 50,000 pop.
100,000-200,000	44,750 sq. ft. + .25 sq. ft. per capita over 100,000 pop.
200,000-500,000	69,750 sq. ft. + .2 sq. ft. per capita over 200,000 pop.
500,000+ [and so forth.]	129,750 sq. ft. + .15 sq. ft. per capita over 500,000 pop.

[3. Central library: projects for the construction, acquisition, or rehabilitation of a central library building or an addition to the central library building of a municipal, joint, or association library must meet the minimum floor space requirements shown in Table A. Population served by a central library is the total population of the municipality or municipalities.]

3. If the project is an addition to an existing building, the new construction for the addition must result in total floor space, which when added to the floor space of the existing structure, shall meet the minimum size criteria as shown in Table A.

[4. Branch library of a county or municipal library: Projects for the construction, acquisition, or rehabilitation of a branch library building or an addition to a branch library building, upon submission of evidence to the Library Construction Advisory Board of the necessity and desirability of a reduction in size, may reduce the square footage requirements as determined in Table A (subject to the 3,500 square foot minimum). The population to be served by a branch shall be determined by the applicant. Population of branch service area shall be identified with reference to United States Census Tract Reports when possible. Documentation of the size of the population to be served by the branch shall include a plan based on a comprehensive survey of the municipality (municipalities) showing present and future branch and main library service area and programs. Generally, the population shall not be less than 10,000.

5. Central county or regional library: Application for the construction, acquisition or rehabilitation of a central library building of a county or regional library or an addition to the central library building of a county or regional library may reduce the floor space requirements in Table A by the percentages in Table B:]

4. The percentages in Table B below may be used to reduce the floor space requirements in Table A above for the construction, acquisition or renovation of a central library.

Table B

[Population Served by County or Regional Library]

Population Served by Central Library	Percent of Allowable Reduction
Under [40,000] **39,999**	25
40,000- [50,000-] **49,999**	26
50,000- [60,000-] **59,999**	27
60,000- [70,000-] **69,999**	28
70,000- [80,000-] **79,999**	29
80,000- [90,000-] **89,999**	30
90,000- [100,000-] **99,999**	31
100,000- [110,000-] **109,999**	32
110,000- [120,000-] **119,999**	34
120,000- [130,000-] **129,999**	36
130,000- [140,000-] **139,999**	38
140,000- [150,000-] **149,999**	40
150,000- [160,000-] **159,999**	42
160,000- [170,000-] **169,999**	44
170,000- [180,000-] **179,999**	46
180,000- [190,000-] **189,999**	48
190,000- [200,000-] **199,999**	50
200,000- [210,000-] **209,999**	52
210,000- [220,000-] **219,999**	54
Over [220,000] **219,999**	55

(g) Library buildings and facilities shall be designed in accordance with the minimum standards contained in the ["American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped People.] **"Buildings and Facilities for Providing Access and Usability for Physically Handicapped People,"** ANSI A117.1—[1980] **1986.** The [1980] **1986** edition of this publication with all subsequent amendments and supplements is hereby incorporated by reference and adopted as a rule.

1. This document is available for review at the Division of the State Library, [Archives and History,] Department of Education, 185 West State Street, CN 520, Trenton, New Jersey 08625-**0520**. [or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.]

2. This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

3. The applicant shall also comply with [the rules promulgated by the New Jersey Department of the Treasury implementing Chapter 220, Laws of 1975, "An Act to provide facilities for the handicapped in public buildings"] **N.J.A.C. 5:23-7, Barrier-Free Subcode pursuant to N.J.S.A. 52:32-4 through 12.**

(h) (No change in text.)

(i) All [construction] contracts [(including equipment procurement over $4,500)] shall be awarded to the lowest qualified bidder on the basis of open competitive bidding as specified in the ["]Local Public Contracts Law"[, [(]N.J.S.A. 40A:11-1 et seq.[).]]

(j) In developing plans for public library facilities, the local and State codes with regard to fire and safety will be observed.[; and in] **In** situations where local fire and safety codes do not apply, recognized **State** codes shall be observed.

6:68-[4.6]**5.6** Priorities for the receipt of construction grants

(a) General provisions for priorities for the receipt of construction grants **shall** include the following:

1. Those applications properly submitted and found to be in an approvable form shall first be assigned to [respective] **one of two** priority groupings **as described in this section.** All applications of the first priority fulfilling the criteria of these rules shall be awarded grants before applications of the second priority are funded. Availability of funds and number of applications within each priority grouping shall, within any one fiscal year, determine the projects to be funded.

2. Within each of the two priority groupings, all applications shall be ranked in terms of ability to pay by the municipalities and counties. The ratio of the average equalized valuation[1] * of the three years preceding the date of the application to the population estimate of the municipality(**ies**) [(municipalities)] or county(**ies**) [(counties)] by the New Jersey Department of Labor [and Industry] for the year preceding the date of application shall be used as the criterion determining this financial ability. The first grant within each priority grouping shall be awarded that applicant demonstrating the least financial resources through the lowest ratio of equalized valuation to population [(per capita wealth)]. Each succeeding grant shall be awarded to the remaining applicant whose ability to pay is lowest.

i. First priority in award of grant shall be given to applications for construction of, acquisition of a building adaptable to, an addition to[,] or [rehabilitation] **renovation** of [,] a central or branch building of a municipal, joint[,] **or** county [or regional] library.

ii. Second priority in award of grant shall be given to applications for construction of, acquisition of a building adaptable to, an ad-

dition to[,] or [rehabilitation] **renovation** of a central or branch building of an association library.

(b) Any governmental jurisdiction, board of trustees[,] or library commission which has previously received a construction grant shall be placed automatically in the second priority and be ranked last in the priority for two fiscal years succeeding the fiscal year in which the grant was awarded, after which time it shall resume its normal status.

[1]*Equalized Valuation as listed in the "Certification of Table of Equalized Valuations" promulgated annually on October 1, by the Division of Taxation, New Jersey Department of Treasury.

6:68-[4.7]**5.7** Amount of grant and method of allocation

(a) Generally, the minimum State share of eligible project costs of any project eligible for a grant shall be no less than [20] **25** percent.

(b) Should funds be insufficient to allow all projects eligible for a grant to receive at least [20] **25** percent of eligible project costs, funds shall be distributed according to priority ranking ([See] **see** N.J.A.C. 6:68-[4.6]**5.6**) until the funds are depleted.

(c) Should funds be sufficient to allow **all approved** projects to receive more than [20] **25** percent of eligible project costs, the [20] **25** percent grants shall be considered as base grants and remaining funds shall be distributed to approved applicants on the basis of the ratio of [total eligible project cost to ability to pay, subject to a maximum grant to 50 percent of eligible project cost of $500,000,] **each project's square footage to the total square footage of all approved projects. The maximum grant will not exceed 50 percent of eligible project costs or $500,000,** whichever is less. [Ability to pay is the ratio of average equalized valuation of property to the population estimate promulgated by the New Jersey Department of Labor and Industry for one year previous to the fiscal year in which application is made.]

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

6:68-[4.8]**5.8** [Approval] **Review and approval** procedures

(a) Application for a grant[, to be in approvable form] must be in the completed official form NJLCIA-2, "Application for Construction Grant."

(b) The application shall be made by the body charged with the responsibility for the establishment and maintenance of the library (board of trustees or county library commission, **or county board of chosen freeholders as appropriate**). The governing body of the municipality in which the library is located, [(]or of the county(ies) in the case of a county [or regional] library[)], shall be cosignator of the application.

(c) If a library facility is to be constructed by a municipality with the provision that it be equipped or stocked or staffed or supported by a library not an agency of that municipality (for example, [if a municipality constructs a] **a municipally constructed** building which will be operated by a county library as a branch library), [then] the application shall be in the names of both or all parties concerned.

(d) The person authorized to submit the application shall be an officer of the body named as applicant[.], [Preferably] **preferably**, [this shall be] the president or chairperson of this body. A statement to be signed and completed by the responsible officer of the applicant, [(]for example, secretary of a board of trustees[)], shall certify this authorization. If the application is jointly submitted, an individual from each body shall be authorized and certified. The signature of each authorized person is required on the application.

[(e) The person to whom routine inquiries may be addressed and information sent shall be designated by the application. This person shall act as the agent of the applicant, clarifying problems and responding to routine requests. All official submissions, however, should be made over the signature of the person designated: Person Authorized to Submit Application.

(f) The Library Construction Advisory Board shall make recommendations to the State Librarian concerning the award of construction grants and advise on the development and formulation of regulations and criteria for the construction grant program. The Board, appointed by the State Librarian, is composed of not less than three persons who together have had wide experience relating to public library services and the construction of public library buildings. Its responsibilities include the evaluation of the applicants' building plans, building site, and program of service, and the communication of this evaluation to the State Librarian and the applicant.]

(e) The State Librarian shall appoint a Library Construction Advisory Board which is composed of no fewer than three persons who each have had experience in public library services and the construction of at least two public library buildings. The responsibilities of the Library Construction Advisory Board shall include the evaluation of the applicant's building plans, building site and program of service. It shall recommend to the State Librarian for approval those applicants whose projects will result in efficient and effective library buildings.

(f) Applicants seeking an exception to the provisions and criteria enumerated in these rules must request an interview with the Library Construction Advisory Board. Requests for exceptions must be directed to the State Librarian.

(g) In addition, the Board shall advise the State Librarian on the development and formulation of rules and criteria for the construction grant program.

[(g) The review process shall consist of three phases of review. For Phase I the basic application documents, community survey, building program and schematic plans including outline specifications and cost estimate shall be reviewed. For Phase 2, preliminary plans shall be reviewed. For Phase 3, final contractual documents (working drawings, specifications, and so forth) shall be checked to assure their conformance with approved preliminary plans. Each applicant shall be required to appear before the Library Construction Advisory Board to present its building program and plans for review for Phase 1 and may be required to appear and present Phase 2 plans.]

(h) The application process shall consist of two phases. In Phase I, a notice of intent shall be submitted by each applicant. Upon acceptance of this document, the State Librarian shall assign a member of the Library Construction Advisory Board to work with each applicant to assist in the preparation of Phase II required documents. In Phase II, a community survey, a building program and schematic plans, including outline specifications, shall be submitted for review by the Library Construction Advisory Board. Applicants may be required to appear before the Board to present the plans. Upon successful completion of Phase I and Phase II, applicants shall receive notification of eligibility for a grant award. Documents required for Phase II must be submitted to the Library Construction Advisory Board within six months of the acceptance of the Phase I document.

[(h)](i) Building plans shall be prepared by an architect licensed by the State of New Jersey.

[(i)](j) Any changes or revisions affecting the application, **including any structural changes in the building plans,** shall be submitted on appropriate forms for approval. [This shall include any substantial changes in the building plans.] The State Librarian shall have the power to revoke approval of any application or grant for failure to submit and receive approval of substantial changes in the application.

[(j) Before the project is advertised for bidding, the final working drawings and specifications must be submitted to and approved by the State Librarian.]

(k) Full approval of the proposed construction project must be given by the State Librarian before construction contracts are signed.

(l) Architectural or engineering supervision and inspection will be provided by the applicant at the construction site to [insure] **ensure** that the completed work conforms to the approved plans and specifications. [Representatives] **For the purpose of inspection, representatives** of the State Librarian will have access at all reasonable times [for the purpose of inspection] to all construction work being done under the **New Jersey Library Construction Incentive Act, N.J.S.A. 18A:74-14 et seq.**[, and the] **The** owner and contractor will be required to facilitate such access and inspection.

(m) (No change.)

(n) In general, the grant shall be paid to the applicant in [four] **three** installments as shown below, but only upon receipt of satisfactory evidence of completion of each phase. Architect's certification and on-site inspection shall be considered satisfactory evidence.

1. [Twenty] **Forty** per cent upon approval of the award of construction contract(s);

2. Fifty per cent when construction is 50 per cent complete; **and**

3. [Twenty per cent upon final inspection (open to the public);]
[4.] Ten per cent upon submission and acceptance of audit of expenditure, subject to adjustment to reflect the actual cost.
(o) (No change.)

[6:68-4.9 Fair hearing
Applicants whose projects have not been approved shall be given upon request, opportunity for an informal fair hearing before the State Librarian. In the event of an adverse decision after such informal hearing applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 6-24, and 6-27. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.A.C 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1.1).]

SUBCHAPTER [5]6. AUDIO-VISUAL PUBLIC LIBRARY SERVICES

6:68-[5.1]**6.1** [Scope and purpose] **Purpose**
(No change in text.)

[6:68-5.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:
"Audio-visual" means communications resources which rely on a device for transmission, reproduction, or enlargement to be effectively utilized or understood. Also included are art works and objects.
"Audio-visual public library services" means provision of access to audio-visual resources to clientele of a public library.
"Public library" means a municipal, county, association or joint library which receives public funding.]

6:68-[5.3]**6.2** (No change in text.)

[6:68-5.4 Grant application procedures
(a) Application forms for the program may be obtained from the Library Development Bureau of the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement.]

6:68-[5.5]**6.3** Categories in award of grants
(a) (No change in text.)
(b) The priority of [category] **categories** and the percentage of funds allocated to each category shall be established each year by the State Librarian.

[6:68-5.6 Criteria for approval
(a) Applications will be evaluated on the basis of the following criteria:
1. Contribution of the proposed service to the published document, "A Developing State Plan for Library Services", New Jersey State Library, January, 1980.
2. Contribution of the proposed service to the Regional Library Cooperative Plan for Service",
3. Impact of the service on the population to be served;
4. Evidence of interest, need or demand for the proposed service;
5. Clearly defined goals and objectives for the service;
6. Proposed method of measurement and evaluation;
7. Adequacy and realism of budget and cost estimates;
8. Provision of adequate staff and staff training;
9. Provision for the dissemination of information regarding the proposed service;
10. Documentation to the effect that proposed services could not be provided solely with local funds.

6:68-5.7 Reports and audits
Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-5.8 Appeal procedures
(a) Applicants whose projects have been rejected shall be given, upon written request, an opportunity for an informal fair hearing before the State Librarian.
(b) In the event of an adverse decision after such informal hearing applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provision of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1.1).]

SUBCHAPTER 7. INSTITUTIONAL LIBRARY SERVICES

6:68-7.1 Purpose
(a) The rules in this subchapter provide for the development of library services in State, county and municipal institutions, pursuant to the provisions of the Library Development Aid Law, (P.L. 1985, c.297), N.J.S.A. 18A:74-3.2 through 3.4.
(b) Three separate institutional grant categories have been developed:
1. Institutional Library Services per capita State aid grants provide funds to institutions whose library services meet minimum standards and maintain a level of expenditure for library service equal or above the level of the preceding calendar year.
2. Institutional Library Services Developmental Grants provide funds to assist institutions in meeting minimum standards for library services.
3. Institutional Library Services Incentive Grants provide funds to institutions whose library services meet minimum standards, for the purpose of expanding or developing library services.
(c) To be eligible for any of the three programs, institutions must establish a library advisory committee. Membership on the committee will include one person from each of the following: the institutional library staff, representatives of the administration, the departments of the institution, client population, and the community. The primary model for institutional library services is that of public library services.

6:68-7.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:
"Access" means the on-site use of the library facility and its resources and services or the ability to use library materials and services from remote locations; in institutions, access includes open hours of the library facility and service hours to rooms, cells or wards unduplicated by library facility hours. Limitations on access include permissions required and restrictions imposed on client use of services.
"Client groups" means mentally disabled, mentally retarded, and physically handicapped persons; also adults and juveniles in correctional and related programs. Excluded are residents of general hospitals, nursing homes and boarding homes.
"Institution" means an adult or juvenile health, mental health, mental retardation, veterans, residential, correctional and other similar facility other than a public school, which is operated by or under contract to the State or to county or municipal governments to carry out health, welfare, educational and correctional programs. Excluded are general hospitals, nursing homes and boarding homes.
"Institutional library" means any library, within an institution, directly serving the institutional client group.
"Institutional library services developmental grants" means funds made available to institutions to bring library services up to the minimum standards.
"Institutional library services incentive grants" means funds made available to institutions already meeting minimum standards to expand or develop programs of library services.
"Institutional library services per capita State aid grants" means funds made available to institutions whose library services meet minimum standards and maintain a level of library expenditures for library services equal or above to the level in the preceding calendar year.
"Library advisory committee" is a group within the institution which will assist in the development of a plan for library services.
"Library facility" means a space devoted solely or primarily to library services and materials and may include circulation desk, reading and study area, group program area, book stacks and other shelving for materials, office space for library staff, work room or space for cataloging and other related functions, and storage for materials and equipment.
"Library materials" means print, non-print items and electronic software accessible through a library and its services. Library materials

do not include texts or curriculum materials; they do include a range of recreational, cultural, and informational items.

"Library service" is a general term for all of the activities performed and programs offered by libraries in meeting the need of their target groups. As such, it can encompass a range of services, such as information services or circulation services, which are determined in a particular library by its roles and goals. The primary model for institutional library services is the public library services model.

"Plan of library service" is a written plan for all of the activities to be performed and programs to be offered by a library in order to meet the needs of its target group(s). Such a plan is based on the mission and roles adopted by a library and generally includes goals, objectives and activities to be implemented.

"Room/cell/ward library service" means those activities performed and programs offered by an institutional library in meeting the information needs of those groups unable to avail themselves of the library facility within an institution due to limitations on mobility.

"Titles" are unique monographs (books) or distinctly titled materials held; this is not the same as volumes or items, which includes all multiple copies of a single title. This definition applies to books, to audio-visual materials, and to computer software.

6:68-7.3 Minimum standards for institutional library services

(a) The following minimum standards shall apply to institutional library services:

1. Staff shall be assigned by the institution in accordance with the chart set forth below:

Average Annual Resident Population	Minimum Number of Paid Staff
Less than 100	One staff member part-time.
100 to 300	Associate librarian full-time. One library clerk, part-time.
301 to 999	One librarian full-time. Two library clerks, one of whom must be full-time.
1,000 or more	One librarian full-time. Three library clerks, two of whom must be full-time.

2. Materials to meet the informational, educational and recreational needs of the population shall be provided as follows:

i. A minimum of five titles per client. Titles can include print and non-print materials; and

ii. Equipment to support library materials.

3. Access shall be provided to client groups as follows:

i. A library with only part-time staff shall provide library services at least 20 hours per week; and

ii. A library with full-time staff shall provide library services at least 30 hours per week.

4. Facilities and furnishings will be adequate to support the library and its services and will be determined in accordance with guidelines established by the State Librarian.

6:68-7.4 Institutional library services per capita State aid grants

(a) Per capita State aid grants will provide funds to institutions which meet minimum standards for library services.

(b) Institutions which meet minimum standards and maintain a level of library expenditures for library services equal to or above the level in the preceding calendar year will be eligible, annually, for a grant of $1,000 per institution plus a minimum of $7.50 per capita.

(c) The sum payable as State aid, as finally determined by the Commissioner, shall be payable on October 1. Payment shall be made payable to the governing body of each institution qualifying for aid under this chapter.

6:68-7.5 Institutional library services developmental grants

Developmental grants will provide funds to assist institutions in bringing their library services to minimum standards.

6:68-7.6 Institutional library services incentive grants

Incentive grants will provide funds to institutions to develop or expand programs of library services. Institutional library services must meet minimum standards prior to an application for this grant. Library services may be provided through cooperation with other institutions or with other libraries.

6:68-7.7 Priorities and funding among grant categories

The priorities among the three institutional grant categories and the percentage of funds allocated in each program shall be established annually by the State Librarian.

6:68-7.8 Use of funds

Funds received pursuant to these rules shall not be applied to any purpose other than institutional library services. Institutional library services budgets shall not be reduced due to receipt of institutional state library aid.

6:68-7.9 Reports and audits

(a) On or before March 1 in each year, each institutional library receiving institutional library services per capita State aid grants according to this subchapter shall prepare and transmit a report to the State Librarian of such information, as the State Librarian shall require, based upon the records and statistics of the preceding calendar year.

(b) On or before August 1 in each year, each institutional library receiving institutional library services developmental or institutional library services incentive State aid according to this subchapter shall prepare and transmit a report to the State Librarian of such information, as the State Librarian shall require, based upon the records and statistics of the preceding fiscal year.

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

SUBCHAPTER 8. MUNICIPAL BRANCH LIBRARY SERVICES

6:68-8.1 Purpose

(a) The rules in the subchapter provide funds to any municipal library which receives State aid pursuant to N.J.S.A. 52:27D-178 et seq. and maintains one or more branch libraries to assist in maintaining, operating and improving branch libraries, pursuant to the provisions of the Library Development Aid Law (P.L. 1985, c. 297, N.J.S.A. 18A:74-3.2 through 3.4).

(b) There are two separate grant programs which are eligible for funding: Program A—Municipal branch library assistance aid for planning, and Program B—Municipal branch library assistance aid for operations and improvements.

6:68-8.2 Program A—Municipal branch library assistance for planning

(a) Municipal branch library assistance aid for planning will be available to fund or update a master plan for municipal branch library service.

(b) The master plan which results from this planning process shall contain the following elements, which may be further defined in the grant application issued annually by the State Library:

1. Goal of the master plan;
2. Objectives of the master plan;
3. Report on the demographic characteristics of each branch library or proposed branch library;
4. Report on library resources of the municipal branch library system;
5. A report on other existing library and information resources in the community;
6. Report on library services of the municipal branch library system;
7. Options for library service through the municipal branch library system;
8. Report on estimated costs for these options;
9. Feasibility of options; and
10. Projected timetable for implementation of the options.

(c) All costs directly associated with the development of a master plan for a municipal branch library system are eligible for funding, except overhead expenses and inkind costs.

1. Examples of costs that can be included are the employment of a library consultant to conduct the study; costs associated with administering and conducting any surveys related to the plan, such as a community survey or a patron survey; and any support costs directly related to the project including data processing and mailing costs.

(d) The amount of award will fall into the following categories:

1. A grant not to exceed $20,000 will be available for the development of a master plan for library service for a population up to 50,000.

2. A grant not to exceed $30,000 will be available for the development of a master plan for library service for a population up to 100,000.

3. A grant not to exceed $40,000 will be available for the development of a master plan for library service for a population over 100,000.

(e) Additional criteria for approval are as follows:

1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion to be used in determining financial ability shall be the ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application of the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application.

2. The municipal library must at the time of the application meet in full the quantitative State Aid rules for library service to its population, N.J.A.C. 6:68-2.

(f) The boards of trustees of municipal libraries located in municipalities which receive State Aid pursuant to N.J.S.A. 52:27D et seq. and maintain one or more branch libraries are eligible applicants.

6:68-8.3 Program B—Municipal branch library assistance for operations and improvements

(a) Any library applying for funding under this program must have a plan for municipal branch library service which has been approved by the State Librarian. This master plan may have been developed under a planning grant provided by Program A of this subchapter or a master plan which contains the same elements required for a master plan funded under Program A and was completed within and approved the five years preceding the application for this program.

(b) Options for municipal branch library service include but are not limited to:

1. Expansion of branch library hours to include evenings or weekend hours;

2. Expansion of branch library services through additions of staff, materials or equipment;

3. Expansion of branch library service to include adult or children's programming;

4. Expansion of branch library service through programs targeted for special populations;

5. Expansion of branch library services through employment of a coordinator for specialized services; and

6. Expansion of branch library services through cooperation with other types of libraries.

(c) Projects funded under this program may involve one branch of the system or several branches of the system.

(d) In general, any operating expense directly associated with the project will be eligible for funding. These include personnel, books and other library materials, equipment and overhead costs such as electricity or heat. Grant funds may not be used for construction or renovation projects costing in excess of $10,000.

(e) Under this program grant funding shall not exceed $50,000 per library.

1. Under this program, a municipal library may apply annually for only one branch library grant.

2. The application may be for either a new project or for a continuation of a previously funded grant.

3. Grants may be funded for a total of three years, the initial grant and two continuation grants.

4. Initial and continuation applications will be evaluated by the criteria found in N.J.A.C. 6:68-1.4.

(f) Additional criteria for approval are as follows:

1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion to be used in determining financial ability shall be the ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application of the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application.

2. The municipal library must at the time of the application meet in full the quantitative State Aid rules for library service to its population N.J.A.C. 6:68-2.

(g) The boards of trustees of municipal libraries located in municipalities which receive state aid pursuant to N.J.S.A. 52:27D et seq. and maintain one or more branch libraries are eligible applicants.

SUBCHAPTER [8]9. COLLECTION EVALUATION AND DEVELOPMENT

6:68-[8.1]9.1 [Scope and purpose] Purpose

(No change in text.)

[6:68-8.2 Definitions

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

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

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

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

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

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

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

6:68-[8.3 and 8.4]9.2 and 9.3 (No change in text.)

[6:68-8.5 Grant application procedures

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

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

6:68-8.6 Criteria for approval

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

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

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

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

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

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

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

7. Adequacy and realism of budget and cost estimates;

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

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

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

6:68-8.7 Reports and audits

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

6:68-8.8 Appeal procedures

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

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

SUBCHAPTER [9]**10**. MAINTENANCE OF LIBRARY COLLECTIONS

6:68-[9.1]**10.1** [Scope and purpose] **Purpose**

(No change in text.)

6:68-[9.2]**10.2** Definitions

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

. . .

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

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

. . .

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

. . .

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

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

. . .

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

. . .

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

. . .

6:68-[9.3]**10.3** Eligible projects

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

(c) **The State Librarian may establish annual priorities for the awarding of funds.**

6:68-[9.4]**10.4** Funding allocation

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

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

[6:68-9.5 Grant application procedures

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

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

6:68-9.6 Criteria for approval

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

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

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

3. Evidence of prior preservation interest or development;

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

5. Provision of adequate staff and staff training;

6. Provision of consultants who meet the following requirements:

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

ii. Familiarity with preservation and conservation in library applications;

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

7. Evidence of the need for the project;

8. Clearly defined goals and objectives for the project;

9. Adequacy and realism of budget and cost estimate;

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

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

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

6:68-9.7 Reports and audits

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

6:68-9.8 Appeal procedures

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

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

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments For the Sale of Water From the Delaware and Raritan Canal—Spruce Run/Round Valley Reservoir System

Proposed Amendments: N.J.A.C. 7:11-2.1, 2.2, 2.3 and 2.9

Authorized By: New Jersey Water Supply Authority, Christopher J. Daggett, Chairman, and Commissioner, Department of Environmental Protection.

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

DEP Docket Number: 052-89-11.

Proposal Number: PRN 1989-675.

A **public hearing** concerning these proposed amendments will be held on:

February 15, 1990 at 9:30 A.M. to close of comments
Rutgers University Continuing Education Center, Room D
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey 08903

Submit written comments on or before March 23, 1990 to:

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

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
P.O. Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in further detail the financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
P.O. Box 5196
Clinton, New Jersey 08809

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to amend its schedule of rates, charges and debt service assessments for the Delaware and Raritan Canal—Spruce Run/Round Valley Reservoir System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1990. It is also proposing to adjust its existing annual debt service on outstanding loans beginning July 1, 1990.

The general rate schedule for operations and maintenance in N.J.A.C. 7:11-2.2, was last adjusted effective July 1, 1989 (increased from $94.64 to $102.78 per million gallons (mg)) to cover the operation expenses of the System.

Projected operating costs for fiscal year 1991 now indicate that an operations and maintenance rate component of $111.88 will be needed starting July 1, 1990. Most of the increased operations and maintenance expenses are due to the increased cost of employee salary requirements; employee benefit costs; electrical energy costs; service and maintenance contract costs; special and professional services costs; and insurance costs. In addition, the operations and maintenance expense component sales base has decreased from 152.966 million gallons per day (mgd) in Fiscal Year 1990 to 152.362 mgd for Fiscal Year 1991.

The Authority is currently in the final stages of construction of the new Manasquan Reservoir System to provide an untreated water supply for use throughout Monmouth County. In addition to this major system, the Authority is also constructing and will operate a water treatment plant and transmission system for the Monmouth County Improvement Authority (M.C.I.A.).

The Manasquan Reservoir System and the Manasquan Treatment Plant and Transmission System are both scheduled to begin operations on July 1, 1990. As a result, the Authority will be operating, maintaining and managing three distinct systems, the Manasquan Reservoir System, the Manasquan Treatment Plant and Transmission Systems, and Delaware and Raritan Canal—Spruce Run/Round Valley Reservoir System, each with its own budget, cost accountability and revenue stream.

The Authority's headquarters staff located in Clinton will be providing general and administrative support services for all three systems noted above. These services include, but are not limited to, such things as fiscal management, payroll, personnel, procurement, contract administration, risk management and overall management.

The Authority is scheduled to begin the operation of the two new systems (the Manasquan Reservoir System and the Manasquan Treatment Plant and Transmission System) on July 1, 1990. To deal with the contingency of a delay in the startup of these systems this proposed rate adjustment has been prepared to reflect the rate requirements for the Delaware and Raritan Canal—Spruce Run/Round Valley Reservoir System without any contribution of revenues from the Manasquan Reservoir System. Also included is a proposed rate adjustment which reflects the receipt of revenues from the Manasquan Reservoir System. Final action on the rate adjustment is scheduled for the April 2, 1990 meeting of the Authority. At that time the Authority will be in a better position to judge whether the new systems will start operation as scheduled.

Without the allocation of headquarters general and administrative costs to the Manasquan Reservoir System the projected operating costs for Fiscal Year 1991 indicate that an operations and maintenance rate component of $111.88 per mg will be needed starting July 1, 1990. Allocation of headquarters general and administrative costs to the Manasquan Reservoir System will result in a proposed operation and maintenance component of $104.06 mg.

The debt service assessment rate for the 1969 bonds involved in the Construction of the Spruce Run/Round Valley Reservoir System Outlet Pipeline and dam rehabilitation projects was previously adjusted effective July 1, 1989 (Fiscal Year 1990), based on a sales base of 151.768 mgd. The Authority anticipates that the applicable sales base for Fiscal Year 1991 will now be 151.80 mgd. Application of this new sales base results in a slight decrease (.02) in the per mg rate assessment from 13.92 to 13.90 per mg for the 1969 bonds, as contained in N.J.A.C. 7:11-2.3(b).

The debt service assessment rate for the 1981 water supply bond funds used to finance the removal of sediment from 32 miles of the Delaware and Raritan Canal was previously adjusted effective July 1, 1989 (Fiscal Year 1990) based on a sales base of 152.926 mg. The Authority anticipates that the applicable sales base for Fiscal Year 1991 will be 152.292 mgd. Application of this new sales base coupled with a slight reduction in the required debt service payment results in an increase (.06) in the per mg rate component from $33.22 to $33.28 per mg for the 1981 bonds (N.J.A.C. 7:11-2.3(c)).

The debt service assessment rate for the 1988 water system revenue bonds issued to finance the Authority's current capital improvement program was based on a sales base of 152.926 mgd. The Authority anticipated that the applicable sales base for Fiscal Year 1991 will be 151.292 mgd. Application of this new sales base results in an increase (.18) in the per mg rate component from $44.79 to $44.97 per mg for the fiscal years starting July 1, 1990 (Fiscal Year 1991) and July 1, 1991 (Fiscal Year 1993) (see N.J.A.C. 7:11-2.3(d)). This Debt Service Assessment is also projected to increase to $55.04 in Fiscal Year 1993 and to $56.88 in Fiscal Year 1994 (see N.J.A.C. 7:11-2.3(d)).

Social Impact

The proposed amendments will have minimum social impact. The proposed amendments represent the Authority's efforts to ensure that rates for raw water withdrawn diverted or allocated from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Complex are equitably assessed and sufficient to provide the revenues required by the Authority.

The 11 billion gallon capacity Spruce Run Reservoir and the 55 billion gallon capacity Round Valley Reservoir in Hunterdon County in conjunction with the 60 mile long Delaware and Raritan Canal in Hunterdon, Mercer, Somerset, and Middlesex Counties provide both active and passive recreational opportunities to the public in addition to a basic raw water supply for approximately 1,200,000 individuals living in central New Jersey.

Economic Impact

The proposed adjustment to the rate schedule will result in a net increase ranging from $16.47 in Fiscal Year 1991 to $28.38 in Fiscal Year 1994 per mg of water supplied in the total charge for the raw water supplied from the System due to a $9.10 increase in the operations and maintenance rate component and an increase of $7.37 in the debt service assessments. It is estimated that the annual impact of the proposed wholesale water rate increase on the typical household will amount to $1.65 in Fiscal Year 1991—increasing to $2.84 in Fiscal Year 1994 provided these increased costs are passed through by the wholesale water customer without further fees.

If the new Manasquan Reservoir System and the treatment plant/transmission system become operational on July 1, 1990 as is currently expected, a portion of the Authority's headquarters general and administrative expenses will be charged to these separate systems resulting in an anticipated $7.82 per mg reduction in the proposed rate adjustment.

Environmental Impact

The adequate financing of systems upkeep and operation, which is provided by the proposed amendments, will result in a positive environmental impact. Properly maintained Authority systems and operations protect not only the water users but also the surrounding environment of the Spruce Run/Round Valley Reservoirs and Delaware and Raritan Canal.

The reservoirs and canal provide habitat for many species of waterfowl and wildlife in an increasingly urbanized region of the State.

The Authority's Raritan Basin System is capable of supplying a dependable water supply of 225 mg per day throughout a re-occurrence of the worst drought of record while still maintaining adequate river flows through release of stored waters to support the ecological systems and wildlife which are dependent upon adequate stream flows in the River Basin.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that this rule would not impose reporting, recordkeeping or other compliance requirements on

small businesses because the amendments affect only the rate charged to users for water purchase from the Authority. The water companies which contract to purchase water from the Authority and which are impacted by this rule do not qualify as "small businesses" pursuant to 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]):

7:11-2.1 General provisions

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

(d) The rate charged under N.J.A.C. 7:11-2.2(b) and 2.9(a) will be determined by the Authority at the April 2, 1990 monthly business meeting. All purchasers will be notified of the rate determination by regular mail by May 2, 1990.

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of [152.966] **152.362** million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

1. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	[$102.78] **$111.88**

2. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:

Allocation	**Rate/Million Gallons**
Million Gallons per Day (MGD)	**$104.06**

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of [151.768] **151.801** million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallon
[7/1/89] **7/1/90** to 6/30/2002	Million Gallons per Day (MGD)	[$13.92] **$13.90**

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following debt service assessment rate, based on a sales base of [152.926] **152.292** million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallon
[7/1/89] **7/1/90** to 10/30/2006	Million Gallons per Day (MGD)	[$33.22] **$33.28**

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of 152.926 million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallon
[7/1/89 to 6/30/90]	[Million Gallons per Day (MGD)]	[$37.64]
7/1/90 to 6/30/92	Million Gallons per Day (MGD)	[$44.79] **$44.97**
7/1/92 to 6/30/93	Million Gallons per Day (MGD)	[$54.82] **$55.04**
7/1/93 to 6/30/94	Million Gallons per Day (MGD)	[$56.65] **$56.88**

7:11-2.9 Standby [Charge] **charge**

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly [Standby Charge] **standby charge**, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

i. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	[$102.78] **$111.88** plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

ii. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity	**Charge per month**
Each 1 MGD (700 GPM) or fraction thereof.	**$104.06 plus annual debt service assessments rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.**

2. For Standby Contracts within the Raritan River Basin:

i. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	[$102.78] **$111.88** plus annual debt service assessment rate for the 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

ii. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity	**Charge per month**
Each 1 MGD (700 GPM) or fraction thereof.	**$104.06 plus annual debt service assessments rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.**

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System

Proposed New Rules: N.J.A.C. 7:11-4

Authorized By: New Jersey Water Supply Authority, Christopher J. Daggett, Chairman, and Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-1 et seq., specifically N.J.S.A. 58:1B-7.

DEP Docket Number: 056-89-11.

Proposal Number: PRN 1989-677.

A **public hearing** concerning these proposed new rules will be held on:
February 1, 1990 at 10:30 A.M. to close of comments
Allaire State Park, Administration Building
Route 524
Farmingdale, New Jersey

Interested persons should submit any questions relevant to the proposal before or at the public hearing. Submit written comments by March 9, 1990 to:

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

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
P.O. Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in further detail the financial justification for the rate schedule proposed at N.J.A.C. 7:11-4.

Rocco D. Ricci, Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to establish a Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System (Manasquan Reservoir System), to cover operation and maintenance costs and debt service assessments for the fiscal year starting on July 1, 1990.

The proposed new rules will establish the rates and related conditions governing the sale of water from the Manasquan Reservoir System, N.J.A.C. 7:11-4. The proposed new rules will provide consistent practices for the Manasquan Reservoir Water Supply System as administered by the Authority. The Authority plans a July 1, 1990 effective date for the proposed new rules.

Projected operating costs for Fiscal Year 1991 indicate that an Operations and Maintenance rate component of $351.35 per million gallons (mg) and a debt service assessment of $654.91 per mg will be needed starting July 1, 1990.

The debt service assessment will increase to $687.66 per million gallons on February 1, 1991, $720.52 per million gallons on February 1, 1992, $753.39 per million gallons on February 1, 1993 and $786.29 per million gallons on February 1, 1994 in accordance with the debt service coverage schedule specified in the project financing program.

The calculation of the operations and maintenance component as well as the debt service assessments is based upon a contractual sales base of 14.505 million gallons per day as of July 1, 1990 which is the initial system operations date.

A brief summary of the text of each section of the proposed new subchapter follows:

N.J.A.C. 7:11-4.1 General provisions, discusses the purpose of the rate schedule, the composition of charges, and cross references the Rules for the Use of Water from the Manasquan Reservoir Water Supply System, N.J.A.C. 7:11-5.

N.J.A.C. 7:11-4.2 Definitions, contains definitions for terms used in this subchapter.

N.J.A.C. 7:11-4.3 Operations and maintenance expense component, details the items which comprise the expenses for operations and maintenance. These expenses include all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the Manasquan Reservoir System and performance of the water purchase contract, including, but not limited to, all of the following:

1. All repairs and ordinary replacements and reconstruction of the Manasquan Reservoir System; all wages, salaries and other personnel costs, including costs of pension, retirement, health and other employee benefit programs; all fuel, utilities, supplies and equipment, and all supervisory, engineering, accounting, auditing, legal and financial advisory services;
2. All taxes and payments in lieu of taxes;
3. All claims not covered by the Authority's insurance;
4. All fees and expenses incurred in connection with any credit rating agency or the issuance of any bonds, and fees and expenses of counsel, fiduciaries and others in connection with any such credit rating agency or bonds to the extent not capitalized;
5. Any other current costs, expenses or obligations required to be paid by the Authority under the provisions of any agreement or instrument relative to Authority bonds or by-laws;
6. All amounts to be paid into any reserve fund established for operation and maintenance expenses; and
7. Allowance for depreciation with respect to equipment and property having a value in excess of $300.00 and a depreciable life of greater than three years but less than 10 years.

N.J.A.C. 7:11-4.4 Debt service cost component, provides the basis for the debt service assessment including a progressive schedule of coverage up to 120 percent to help insure that adequate funds will be available to cover scheduled debt service payments. It establishes an initial debt service cost component of $654.91 per million gallons effective July 1, 1990 through January 31, 1991, with increases to $687.66, $720.52, $753.39 and $786.29 effective February 1, 1991, February 1, 1992, February 1, 1993 and February 1, 1994, respectively. It also provides for a delayed water purchase surcharge to all water purchasers entering into contracts after the initial System operation date.

N.J.A.C. 7:11-4.5 Payments, describes the payment requirements for water purchased from the Manasquan Reservoir System and establishes a quarterly payment schedule.

N.J.A.C. 7:11-4.6 Uninterruptible service, outlines the cost factors which purchasers of uninterruptible service must cover, and establishes the basis for determining annual rates.

N.J.A.C. 7:11-4.7 Short term service, establishes the related terms and conditions for charges, payments and handling of revenues for short term service.

N.J.A.C. 7:11-4.8 Standby service, defines this type of water supply and establishes terms and conditions for charges, payments and the handling of related revenues for standby service.

N.J.A.C. 7:11-4.9 Standby charge, provides the minimum monthly charge for standby service.

N.J.A.C. 7:11-4.10 Payment for other services, establishes that payment for services other than uninterruptible service shall be made within 30 days following receipt of the Authority's invoice.

N.J.A.C. 7:11-4.11 Late payment interest charge, imposes an extra fee of two percent above the prime rate in the event of delinquent payments.

N.J.A.C. 7:11-4.12 Rate adjustments, describes the general provisions which govern rate adjustment actions by the Authority.

N.J.A.C. 7:11-4.13 Procedures for rate adjustments, details the procedures to be followed by the Authority in the event that a rate adjustment is needed.

Social Impact

The proposed new rules will have a positive social impact and effect. The proposed new rules represent the New Jersey Water Supply Authority's efforts to ensure that rates for the untreated water purchased from the Manasquan Reservoir System are equitably assessed to all purchasers and sufficient to provide the revenues required by the Authority.

The rules provide the basis and amounts to be charged for the use of water from the new Manasquan Reservoir System. This new surface water supply will provide a needed water supply to keep pace with the continuing growth in Monmouth County while reducing the dependence of water purveyors on the stressed ground water resources of the region.

Economic Impact

The proposed rate schedule will result in a total charge for the uninterruptible untreated water supply from the new Manasquan Reservoir System of $1,006.26 per mg ($351.35 for operation and maintenance plus $654.91 for debt service) starting July 1, 1990 and $1039.01 per million gallons effective February 1, 1991 ($351.35 for operation and maintenance plus $687.66 per for debt service). The debt service assessment component will increase to 105 percent ($687.66), 110 percent ($720.52), 115 percent ($753.39) and 120 percent ($786.29) of debt service coverage on February 1, 1991, February 1, 1992, February 1, 1993 and February 1, 1994, respectively, to help ensure that sufficient revenues exist to cover debt service payments. The untreated water supply from the Manasquan Reservoir System has been sold to 16 different water utilities throughout Monmouth County including publicly owned and investor owned systems. Each of the purchasers must provide for the additional costs of treatment and transmission associated with their supply from the Manasquan Reservoir System. Existing costs to the consumer for the 16 different systems range from about $125.00 per year per household to about $380.00 per year per household. Most of the existing consumers in the region pay about $250.00 per year per household. It is estimated

that the increased costs associated with the purchase of the untreated Manasquan Reservoir System supply plus the costs associated with treatment and transmission of this new supply will result in a total annual cost per household which ranges from about $300.00 to $475.00. The actual total cost will vary among the 16 different systems and will reflect the continuing costs (including residual debt) of operating their individual systems.

Enivornmental Impact

The adequate financing of upkeep and operation of the Manasquan Reservoir System, which is provided by the proposed new rules, will result in a positive environmental impact. Sixty percent of the existing water supply in Monmouth County currently is derived from stressed ground water resources. The Manasquan Reservoir System will replace the use of a portion of the existing ground water supply and meet the needs of a developing area. This new water supply system will have a very important and positive environmental impact since its operation will reduce the stress on the valuable ground water resources of the region by providing an alternate surface water supply. By reducing the pumping of ground water, salt water intrusion will be limited and present ground water levels will not be further reduced.

The 30 million gallon per day water supply which the system will provide will help to ameliorate the urgent need to protect the region's threatened ground water resources from further depletion. In addition, the Manasquan Reservoir will provide for the protection of waterfowl and wildlife in the region through the construction of a 740 acre reservoir with several protected wetlands sites for the rearing of waterfowl and wildlife.

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 these rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because these rules impact upon municipalities and major water purveyors all of which fail to qualify as small businesses as defined in N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows:

SUBCHAPTER 4. SCHEDULE OF RATES, CHARGES AND DEBT SERVICE ASSESSMENTS FOR THE SALE OF WATER FROM THE MANASQUAN RESERVOIR WATER SUPPLY SYSTEM

7:11-4.1 General provisions

(a) The schedule of rates, charges and debt service assessments for the sale of water from the Manasquan Reservoir System established in this subchapter shall constitute the rate schedule for the Manasquan Reservoir System (rate schedule).

(b) The rates, charges and debt service costs contained in this subchapter shall be paid for raw water, withdrawn or allocated from the Manasquan Reservoir System. The rates, charges and debt service costs set forth herein shall be incorporated in all water purchase contracts.

(c) The rates, charges and debt service costs established in this subchapter provide revenue to cover the annual requirements of the Manasquan Reservoir System. These annual requirements consist of the aggregate amount required during each annual payment period to pay all operation and maintenance expenses, debt service costs and special or reserve fund requirements of the Manasquan Reservoir System.

(d) The total rate charged under this rate schedule shall include the operations and maintenance expenses component under N.J.A.C. 7:11-4.3, and the debt service costs under N.J.A.C. 7:11-4.4.

(e) This rate schedule complements N.J.A.C. 7:11-5 which establishes rules for the use of water from the Manasquan Reservoir System.

7:11-4.2 Definitions

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

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

"Delayed water purchase contract" means a water purchase contract entered into for uninterruptible service, commencing subsequent to the initial operation date of the Manasquan Reservoir System.

"Delayed water purchase surcharge" means any amount by which the debt service cost component of payments to be made under any delayed water purchase contract for uninterruptible service exceeds the debt service cost component payable by initial water purchasers.

"Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, orders of the Government of the United States or the State or any agency or instrumentality thereof or of any civil or military authority, acts of terrorism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, explosions, breakage or accidents to machinery, pipelines, dams or canals, partial or entire failure of water supply, arrests, civil disturbances, acts of any public enemy, and any other causes not reasonably within the control of the party claiming inability to timely comply with its obligations.

"Initial water purchase contract" means a water purchase contract providing for uninterruptible service commencing on the initial operation date of the Manasquan Reservoir System.

"Manasquan Reservoir Intake Facility" means the location on the Manasquan River at Hospital Road in the Township of Wall, County of Monmouth, where water is diverted by the Authority from the Manasquan River to supply purchasers or for pumping to the Manasquan Reservoir System for storage.

"Manasquan Reservoir System" means the water supply system constructed by the Authority in Monmouth County, the major components of which are a 740 acre, four-billion gallon reservoir facility in Howell Township, a raw water intake facility and pump station located adjacent to the Manasquan River in Wall Township, and a five mile transmission pipeline connecting the reservoir and the intake facility, together with all component plants, structures and other real or personal property, and additions and improvements thereto.

"Point of delivery" means the location where the Manasquan Reservoir System's delivery equipment interconnects with the purchaser's interconnection system.

"Purchaser" means the party who contracts with the Authority to purchase water from the Manasquan Reservoir System.

"Purchaser interconnection system" means the buildings, structures, piping, valves, meters and other control apparatus and equipment, located on properties or facilities owned by the Authority, installed by or on behalf of, and owned by, the purchaser to connect purchasers' water supply system with the Manasquan Reservoir System.

"Short-term service" means the supply of Manasquan Reservoir System water for interim or short-term uses, such as growing agricultural or horticultural products or meeting extraordinary requirements in consumer demand for potable water, provided on a non-guaranteed or interruptible basis.

"Standby service" means the supply of Manasquan Reservoir System water for certain occasional uses, such as fire protection or other emergencies, natural or otherwise.

"Uninterruptible service" means the supply of Manasquan Reservoir System water which the purchaser is authorized to continuously withdraw without interruption, for public water supply purposes.

7:11-4.3 Operations and maintenance expense component

(a) The operations and maintenance expense component per million gallons set forth in (c) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the Manasquan Reservoir System, and minor additions or improvements thereof or thereto.

(b) The operation and maintenance expense component of all rates is based upon the point of delivery being located at the Authority's Manasquan River intake facility, and any purchaser taking delivery of Manasquan Reservoir System water at a different point of delivery will be assessed an additional charge to cover additional operation and maintenance expense associated with establishment of and making delivery at such point of delivery. Such charges may include, but are not limited to, in the case of any purchaser establishing a point of delivery on the transmission line between the Manasquan River

intake facility and the reservoir, an additional charge to cover the cost of pumping water to the reservoir to replace water delivered from the reservoir to such purchaser.

(c) Operations and maintenance expense component:

Effective Date	Rate/Million Gallons (based upon a 14.505 mg per day sales base)
July 1, 1990	$351.35

7:11-4.4 Debt service cost component

(a) The debt service costs component is based upon the amount to be included for debt service costs with respect to each annual payment period or portion thereof, and will be that amount accruing in the bond year (starting on August 1 of each calendar year and ending on the next following July 31) or corresponding portion thereof, commencing during the fiscal year (starting on July 1 of each calendar year and ending on the next following June 30) within which such annual payment period or portion thereof falls. The debt service costs include the aggregate amounts payable during the specified period for:

1. Interest accruing during such period on the bonds, but not including any interest accruing on the State loan bonds which is to be deferred and added to principal, until payment in respect of such deferred interest is to commence;

2. That portion of each required principal payment or mandatory redemption or sinking fund payment on the Authority bonds (together, "principal installment") which would accrue during such period;

3. Such additional amounts as are required to provide a debt service coverage in accordance with the following schedule:

Twelve Month Period Beginning on	Coverage Percent of Gross Debt Service
2/1/91	105 percent
2/1/92	110 percent
2/1/93	115 percent
2/1/94	120 percent; and

4. Any amounts payable into any debt service reserve fund established for any authority bonds.

(b) The following debt service rates based on a sales base of 14.505 million gallons per day, will be applied to all persons who enter into a water purchase contract before the date upon which the Authority commences operation of the Manasquan Reservoir System (initial water purchase contract) and begins to make uninterruptible service available to the purchasers (system operation date).

Period	Rate/Million Gallons
7/1/90 to 1/31/91	$654.91
2/1/91 to 1/31/92 (Coverage 105 percent)	$687.66
2/1/92 to 1/31/93 (Coverage 110 percent)	$720.52
2/1/93 to 1/31/94 (Coverage 115 percent)	$753.39
2/1/94 (Coverage 120 percent)	$786.29

(c) A delayed water purchase surcharge will be assessed to all persons who enter into a water purchase contract for an uninterruptible service commencing subsequent to the system operation date (delayed water purchase contract). This includes a purchaser under an initial water purchase contract which provides for an increase in the amount of uninterruptible service effective subsequent to the system operation date.

(d) In place of the imposition upon any delayed water purchaser of delayed water purchaser surcharges with respect to any one or more items, a delayed water purchaser may, at the time of entry into a delayed water purchase contract, make a single lump sum payment in respect of such items in a manner to be agreed upon between the Authority and the delayed water purchaser.

7:11-4.5 Payments

(a) The annual payment consists of the aggregate amount projected by the Authority to be payable to the Authority by the purchaser during each annual payment period for uninterruptible service. This is derived by multiplying the applicable rates and charges in the rate schedule in effect for the relevant annual payment period by the number of gallons available to purchaser on an annual uninterruptible service basis (subject to the provisions of the water purchase contract) and subject to adjustment to reflect:

1. Any delayed water purchaser surcharges applicable to the purchaser;

2. Any credits to allocate benefits of any delayed water purchaser surcharges to the purchaser; and

3. Other charges, credits or adjustments provided for in the water purchase contracts.

(b) The annual payment period shall commence on July 1 and end on the next ensuing June 30.

(c) The purchaser shall make quarterly water payments for uninterruptible service not later than the 10th day of January, April, July and October in each year for uninterruptible service with respect to the calendar quarter ending on the last day of the immediately preceding month. The amount of the quarterly water payments shall be derived by dividing the amount of the purchaser's annual payment or adjusted annual payment for any fiscal year by four or in such other or different required quarterly payments of which the Authority gives notice to the purchaser pursuant to the water purchase contract.

(d) The Authority will notify the purchaser not later than 30 days prior to the beginning of each annual payment period of the amount of the purchaser's annual payment for uninterruptible service and, if the Authority determines that the quarterly water payments under the water purchase contracts should be made on a basis other than in equal installments, in order to permit the Authority to meet its obligations as they become due, it will, concurrently with such notice, provide the purchaser with a schedule of the amounts of each of the quarterly water payments to be made by the purchaser.

7:11-4.6 Uninterruptible service

(a) The rates, charges and debt service assessments per mg of water set forth for the rate schedule for uninterruptible service under initial water purchase contracts for the fiscal year are based upon:

1. The projected annual requirements for the fiscal year, after deducting therefrom projected net revenues in connection with the ownership or operation of the Manasquan Reservoir system from sources other than payment for uninterruptible service except to the extent that such other revenues are to be applied to obligations not included in such projected annual requirements. Such other obligations include payments, credits or rebates to purchasers for:

i. Delayed water purchase surcharges collected;

ii. Compensation for any amounts charged to system water purchasers in prior fiscal years by reason of default in payment of any obligation under any water purchase contract which obligation is subsequently collected by the Authority; and

iii. Distribution of the proceeds of surplus water sold.

(b) The rate is obtained by dividing the adjusted projected annual requirements set forth in (a)1 above by the number of mg per day of Manasquan Reservoir System water which are required by the terms of all water supply contracts for uninterruptible service during the fiscal year, multiplied by 365.

(c) The Authority may exclude for any period, for purposes of the computation in (a) and (b) above, the uninterruptible service provided in any water purchase contract if an event of default has occurred. This will not affect the Authority's right to enforce the provisions of the water purchase contract against the defaulting party; however, any payment received from a defaulting water purveyor for such uninterruptible service with respect to such period shall be rebated or credited to the non-defaulting purchasers.

(d) The purchaser will not be required to make payment to the extent that the Authority does not make water available under the terms of the contract for uninterruptible service.

7:11-4.7 Short term service

(a) The rates for short-term service shall be an amount per mg of water equal to the sum of the debt service component established in N.J.A.C. 7:11-4.4, and the operations and maintenance component established in N.J.A.C. 7:11-4.3.

(b) The monthly payment for water provided to the purchaser pursuant to short-term service shall be based upon the Manasquan

Reservoir System water actually consumed at the rate per mg stated in (a) above.

(c) Payment for water provided to the purchaser pursuant to short-term service shall be made within 30 days following receipt of the Authority's invoice.

(d) Payments received in any fiscal year with respect to short-term service during such year shall not be included in actual or projected revenues for such year for purposes of determining the rates applicable to that year but shall be included in revenues for the fiscal year succeeding the year in which payment is received for purposes of determining the rates for uninterruptible service in such succeeding fiscal year.

7:11-4.8 Standby service

(a) The rates for standby service shall consist of:

1. A standby charge established in N.J.A.C. 7:11-4.9 for each month during which standby service is available equal to the capacity, in mgd per day, of the purchaser's withdrawal facilities to be served by such standby service multiplied by the rate per mg for uninterruptible service set forth in N.J.A.C. 7:11-4.3 and 4.4; and

2. A charge for water actually consumed in any month at the rate per mg of water established by the rates for short-term service as set forth in N.J.A.C. 7:11-4.7 at the time of such consumption, minus the standby charge for such month.

(b) Payment for water provided to the purchaser pursuant to standby service shall be made within 30 days following receipt of the Authority's invoice.

(c) Payments received in any fiscal year pursuant to (a)1 and 2 above shall not be included in actual or projected revenues for that year for purposes of determining the rates applicable to such year but shall be included in revenues for the fiscal year succeeding that in which payment is received for the purpose of determining the rates for uninterruptible service in the succeeding fiscal year.

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof	$351.35 plus annual debt service assessment rate established in N.J.A.C. 7:11-4.4

7:11-4.10 Payments for other services

Payment for any other charges payable by reason of excessive withdrawals or otherwise, shall be made within 30 days following receipt of the Authority's invoice and shall be based upon Manasquan Reservoir System water actually consumed. The rate for excessive withdrawal shall be the rate set forth in N.J.A.C. 7:11-4.7.

7:11-4.11 Late payment interest charge

All amounts not paid when due shall be subject to a late payment charge at two percent above the prime rate of the First Fidelity Bank, N.A., prevailing on the due date, but not to exceed 18 percent per annum, from the date when due until paid.

7:11-4.12 Rate adjustments

(a) The Authority reserves the right from time to time to adopt adjustments to the rate schedule in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and this subchapter.

(b) A purchaser shall be notified of such proposed changes not less than six months in advance of the effective date of such new rates.

7:11-4.13 Procedures for rate adjustments

(a) Prior to amending the schedule of rates, charges and debt service assessments established by this subchapter, the Authority shall:

1. Provide notice and an explanation outlining the need for the proposed rate adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the Board of Public Utilities and other interested persons at least six months prior to the proposed effective date. This notice and explanation shall be deemed to be part of the record of the proceedings;

2. Provide supporting documents and financial records of the Authority, at the Authority's cost, in support of the proposed adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the Board of Public Utilities and other interested persons upon request, and make such documents and records available for review at the Authority's offices in Clinton, New Jersey at the time notice of the proposed amendment to the rates is given. These supporting documents and financial records shall be deemed to be part of the record of the proceedings for purposes of preparing the hearing officer's report required under (a)7 below;

3. Afford purchasers, the Department of the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons, the opportunity to submit written questions and requests for additional data prior to the time of the meeting required under (a)4 below. The Authority staff shall provide written answers to the questions and supply the additional data requested prior to the meeting;

4. Schedule a meeting with the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons, within 45 days after sending them notice of the proposed amendments to the rate schedule regarding the proposed amendments:

i. At the meeting the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons, will be invited to submit written questions which will be put into the hearing record and which will be answered by the Authority at the public hearing;

ii. In order to be answered at the public hearing, questions must be received by the Authority no later than 15 days prior to the public hearing. The Authority will make every reasonable effort to answer those questions received less than 15 days prior to the public hearing at the time of the hearing. All questions will be answered as part of the record and the comments and responses will be included in the hearing report prepared pursuant to (a)9 below;

5. Hold a public hearing on the proposed rate adjustment. One or more members of the Authority will serve as the hearing officer. The public hearing agenda shall include, but not be limited to:

i. An opening statement by the hearing officer;

ii. The Authority's answers to the questions raised prior to the hearing by the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and other interested persons;

iii. Oral statements, written statements and any supporting evidence presented by interested persons; and

iv. Questions of the Authority by the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities, and any interested persons on any aspect of the need for, the basis of, or any provision of the proposed rate adjustment. Follow up questions relative to the answers of the Authority may also be directed to the Authority during the public hearing;

6. Attempt to answer all questions raised at the public hearing. In the event that a response cannot be immediately given at the public hearing, then a written response shall be prepared within 10 working days after the public hearing, and a copy of that written response will be provided to all contractual water purchasers, the Public Advocate, Division of Rate Counsel, Board of Public Utilities and attendees at the hearing and made a part of the hearing record;

7. Permit, within 10 working days after receipt of the answer, contractual water purchasers, the Public Advocate, Division of Rate Counsel, the Board of Public Utilities and attendees to respond in writing to the answers of the staff for the record;

8. Hold the public comment period open for at least 25 working days after the public hearing in order to allow additional written comments to be submitted; and

9. After the public comment period is closed, require a hearing officer's report, which shall include findings of fact and specific

responses to all issues and questions raised during the public hearing proceedings, to be prepared and submitted to the Authority prior to the Authority taking final action on the proposal.

(b) In addition to the above requirements, the Authority will follow all the requirements for rulemaking established pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(a)

DIVISION OF COASTAL RESOURCES

Redelineation of Rowe Brook

Proposed Amendment: N.J.A.C. 7:13-7.1

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 58:16A-50 et seq.
DEP Docket Number: 055-89-11.
Proposal Number: PRN 1989-678.

A **public hearing** concerning this proposed amendment will be held on:
January 10, 1990 at 11:00 A.M.
Division of Coastal Resources
5 Station Plaza, First Floor
501 East State Street
Trenton, New Jersey

Submit written comments by January 17, 1990, to:
Jane Engel, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated floodways, by revising the existing floodway and flood fringe area delineation along Tributary "A" (Rowe Brook) from the confluence of the Lamington River and Rowe Brook to a point 2,000 feet upstream in the vicinity of McCanns Mill Road in Tewksbury Township, Hunterdon County.

The proposed redelineation of Rowe Brook is based upon more detailed topographic mapping, current survey data and revised HEC-2 hydraulic stream modelling performed by Fellows, Read and Associates, Inc., on behalf of Robert and Sharon Delventhal, owners of property adjacent to Rowe Brook. Review of the submitted information indicates that the ground along this area of Rowe Brook is approximately three feet lower, and that the McCanns Mill Road bridge is approximately two feet higher, than originally shown on the present delineation of Rowe Brook. Overall, the new information indicates that the 100-year flood plain and the flood hazard area as defined at N.J.A.C. 7:13-1.2 is much larger than originally delineated.

On the right bank looking upstream of the aforementioned portion of Rowe Brook, the floodway becomes 50 feet wider at a location approximately 600 feet upstream from McCanns Mill Road, 40 feet narrower at a location approximately 750 feet upstream from the road, 80 feet wider at a location approximately 1,000 feet upstream from the road, 50 feet wider at a location approximately 1,350 feet upstream from the road, and 90 feet wider at a location approximately 1,500 feet upstream from the road. With respect to the flood fringe area on the right bank, the redelineation shows that the flood fringe area is approximately 200 feet wider for an approximate reach of 1,000 feet upstream from the road, and that it is approximately 100 feet wider for the remaining area redelineated. No change in the floodway limits along the left bank is proposed. For a reach of approximately 400 feet upstream from the road, however, the proposed redelineation shows that the flood fringe area on the left bank is approximately 150 feet wider, and that for the remaining length of Rowe Brook, the flood fringe area is approximately 50 feet wider. As a result of its review of the submitted information, the Department is proposing to update the present floodway limits and flood fringe area delineations to reflect the new information.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and its surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and the regulations promulgated pursuant thereto at N.J.A.C. 7:13. This proposed redelineation will have a positive social impact since it accurately presents the floodway and flood fringe limits of Rowe Brook.

Economic Impact

The proposed redelineation is the result of the application of existing field conditions in an updated hydraulic model used to calculate floodway limits and flood profiles. As a result of this proposed amendment, there may be an adverse economic impact to property owners in the area since the scope of permissible development is restricted within the newly defined delineated area.

Environmental Impact

The purpose of this proposed redelineation is to more accurately define the floodway and flood hazard area of Rowe Brook. The scope of permissible development is restricted within the delineated area, thereby preventing and minimizing potential flood damage. This proposed amendment is not expected to have any adverse environmental impact.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment will not impose compliance, reporting or recordkeeping requirements on small businesses. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated 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, Flood Plain Delineation Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the Clerk of Tewksbury Township and to the Hunterdon County Engineering Department.

(b)

DIVISION OF COASTAL RESOURCES

Redelineation of Pond Run

Proposed Amendment: N.J.A.C. 7:13-7.1

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 58:16A-50 et seq.
DEP Docket Number: 054-89-11.
Proposal Number: PRN 1989-679.

A **public hearing** concerning this proposed amendment will be held on:
January 10, 1990 at 9:30 A.M.
Division of Coastal Resources
5 Station Plaza, First Floor
501 East State Street
Trenton, New Jersey

Submit written comments by January 17, 1990 to:
Jane Engel, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated floodways, by revising the existing floodway and flood hazard area delineation along Pond Run, from a location 230 feet downstream of Hamilton Avenue, upstream to a location 2,400 feet upstream from the confluence of Pond Run with the North Branch Pond Run, from stream station 7288+50 to station 7330+00, within Hamilton Township, Mercer County. This proposed redelineation affects 4,150 feet of Pond Run.

This proposal to redelineate the aforementioned portion of Pond Run is based upon an ongoing flood control project, entitled the Assunpink Creek Watershed Project, conducted by the United States Department of Agriculture/Soil Conservation Service and Hamilton Township. This proposed redelineation reflects changes to the floodway and the flood hazard area detailed in Stream Encroachment Permit Application Nos. 12886 and 16196. As part of the redelineation, the Department performed HEC-2 hydraulic analyses to accurately locate the proposed floodway limits and flood hazard areas. The new information indicates that there is a narrower floodway and a smaller flood hazard area than presently delineated. The proposed flood hazard area design flood profile ranges from 0 to 1.4 feet lower than the original flood profile. The most significant flood hazard reductions occur between Hamilton Avenue and Kuser Road in Hamilton Township.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and its surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:13.

As part of the stream encroachment applications, the present floodway limits were re-evaluated and relocated. No additional social impact is expected beyond that which was reasonably foreseeable at the time of the original delineation.

Economic Impact

A positive economic impact is expected to result in favor of property owners along Pond Run. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed in areas where it was previously prohibited.

Environmental Impact

No additional environmental impact will result from this amendment since its purpose is to more accurately define the floodway and flood hazard area of Pond Run.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment would not impose compliance, reporting or recordkeeping requirements on small businesses. Any small business located within the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated 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, Flood Plain Delineation Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the Hamilton Township Clerk and the Mercer County Engineering Department.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

List of Hazardous Constituents for Groundwater Monitoring

Proposed New Rule: N.J.A.C. 7:26-8.21

Proposed Amendments: N.J.A.C. 7:14A-6.15 and 7:26-12.2

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

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6, and N.J.S.A. 58:10A-1 et seq., particularly 58:10A-5.

DEP Docket Number: 053-89-11.

Proposal Number: PRN 1989-676.

Submit written comments by February 16, 1990 to:

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

The agency proposal follows:

Summary

These proposed amendments would change the New Jersey Pollution Discharge Elimination System (NJPDES) rules (N.J.A.C. 7:14A) addressing groundwater monitoring requirements for suspected contamination at facilities required to have groundwater monitoring and/or compliance monitoring programs. The amended requirements reference a list of hazardous constituents which is being concurrently added at N.J.A.C. 7:26-8.21.

Presently, N.J.A.C. 7:14A-6.15(i) and (j) require monitoring for hazardous constituents listed at N.J.A.C. 7:26-8.16(a). The proposed amendments to N.J.A.C. 7:14A-6.15(i) and (j) reference the new list rather than the present list. The new list, at N.J.A.C. 7:26-8.21, is being added to comply with amendments to Federal regulations at 40 C.F.R. Part 264 Appendix IX, which became effective on September 28, 1987. This new constituent list at 40 C.F.R. Part 264, App. IX was added because the United States Environmental Protection Agency (EPA) encountered a number of problems when using the old constituent list (40 C.F.R. Part 261, App. VIII) for purposes of groundwater monitoring. These problems included listings which were actually large categories of chemicals, the dissociation or actual decomposition of many Appendix VIII constituents when placed in water, and the lack of analytical standards or analytical screening methods for many constituents.

The new Federal list at 40 C.F.R. Part 264, App. IX is based on those compounds from the list of 40 C.F.R. Part 261, App. VIII for which it is feasible to analyze for in groundwater samples, plus 17 chemicals which are routinely monitored in the Federal Superfund program. The new list at N.J.A.C. 7:26-8.21 is identical to the new Federal list at 40 C.F.R. Part 264, App. IX.

The amendment at N.J.A.C. 7:14A-6.15(i)8ii will require the owner or operator to determine the concentration of all hazardous constituents included on the list at N.J.A.C. 7:26-8.21 (as well as other permit-limited pollutants), rather than the list at N.J.A.C. 7:26-8.16(a), whenever there is a statistically significant increase for parameters or constituents specified pursuant to N.J.A.C. 7:14A-6.15(i)1 at any groundwater monitoring well at the compliance point. Since this provision requires the owner or operator to also determine concentrations of permit-limited pollutants, the State's rule is more stringent than the Federal regulations in this respect.

The amendment at N.J.A.C. 7:14A-6.15(i)8iii will require the owner or operator to establish a background value for each hazardous constituent on the list at N.J.A.C. 7:26-8.21, rather than the list at N.J.A.C. 7:26-8.16(a), that has been found at the compliance point under N.J.A.C. 7:14A-6.15(i)8ii.

The amendment at N.J.A.C. 7:14A-6.15(i)8iv(1) will require the owner or operator, as part of an application for a permit modification already required under N.J.A.C. 7:14A-6.15(i)8, to identify concentrations of the constituents, found in the groundwater at each groundwater monitoring well at the compliance point, on the list at N.J.A.C. 7:26-8.21, rather than the list at N.J.A.C. 7:26-8.16(a).

The amendment at N.J.A.C. 7:14A-6.15(j)6 will require owners or operators subject to this subsection to analyze samples from all groundwater monitoring wells for all hazardous constituents contained in N.J.A.C. 7:26-8.21, rather than the list at N.J.A.C. 7:26-8.16(a). It will also require reporting of constituents listed at N.J.A.C. 7:26-8.21, rather than those listed at N.J.A.C. 7:26-8.16(a), that are not identified in the permit as hazardous constituents. Since this provision requires sampling of the uppermost aquifer, uppermost zone of groundwater, or any other groundwater aquifer impacted by the discharge and the Federal regulations requires sampling only of the uppermost aquifer, the State's rule is more stringent than the Federal regulations in this respect.

The proposal at N.J.A.C. 7:26-12.2(g)4 will require owners and operators of all hazardous waste surface impoundments, land treatment units, landfills, underground storage tanks and all other hazardous waste facilities subject to groundwater monitoring requirements under N.J.A.C. 7:26-8.16(a) to identify concentrations of each hazardous constituent identified in N.J.A.C. 7:26-8.21, rather than those listed at N.J.A.C. 7:26-8.16(a), contained in any plume of contamination that has entered the groundwater from the facility as part of the Part B Permit application.

As an alternative to this requirement, the owner or operator may identify the maximum concentrations of each hazardous constituent on the list at N.J.A.C. 7:26-8.21, rather than the list at N.J.A.C. 7:26-8.16(a), in the plume.

Social Impact

The proposed amendments and new rule will affect businesses required to have a groundwater detection and/or compliance monitoring program. The amendments will have a positive social impact in requiring analysis for the compounds listed at N.J.A.C. 7:26-8.21. The new list clearly identifies those compounds for which groundwater analysis is feasible for purposes of a detection and/or compliance monitoring program.

Economic Impact

The proposed amendments and new rule will have a positive economic impact on the regulated community by requiring groundwater analysis only for those hazardous constituents which it is possible to analyze for in groundwater samples. By requiring groundwater analysis of hazardous constituents on the previous list, N.J.A.C. 7:26-8.16(a), the regulated community experienced problems including listings which were actually large categories of chemicals, the dissociation or actual decomposition of constituents when placed in water, and the lack of analytical standards or analytical screening methods for many constituents. Eliminating these problems, by referencing a list of hazardous constituents for which groundwater monitoring and analysis is possible, should lessen the economic impact on persons subject to groundwater monitoring and analysis requirements.

Environmental Impact

The proposed amendments and new rule will reduce the total number of hazardous constituents which affected owners and operators must analyze for in groundwater. However, since the analytical methods for many compounds on the present list at N.J.A.C. 7:26-8.16(a) are either imprecise or non-existent for purposes of groundwater monitoring, their omission from the new list will not have a discernible adverse environmental impact.

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 amendments and new rule will not impose additional reporting, recordkeeping, or other compliance requirements on small businesses because, for purposes of groundwater detection and compliance monitoring, the proposed list clearly identifies which compounds can be feasibly analyzed for in groundwater samples, as opposed to the previous list which exhibited analytical difficulties such as individual listings which were large categories of chemicals, the dissociation or actual decomposition of many constituents when placed in water, and the lack of analytical standards or analytical screening methods for many constituents.

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

7:14A-6.15 Criteria for groundwater protection and response

(a)-(h) (No change.)

(i) The owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

1.-7. (No change.)

8. If the owner or operator determines, pursuant to (i)7 above, that there is a statistically significant increase for **any** parameters or **any** constituents specified pursuant to (i)1 above at any groundwater monitoring well at the compliance point, the owner or operator shall:

i. (No change.)

ii. Immediately sample the groundwater in all monitoring wells and determine, if present, the concentration of all **hazardous** constituents identified in N.J.A.C. 7:26-[8.16] **8.21** and other permit-limited pollutants that are present in groundwater;

iii. Establish a background value for each N.J.A.C. 7:26-[8.16] **8.21** hazardous constituents that has been found at the compliance point under (i)8ii **above,** as follows:

(1)-(3) (No change.)

iv. Within 45 days, submit to the Department an application for a permit modification to establish a compliance monitoring program meeting the requirements of (j) below. The application shall include the following information:

(1) An identification of the concentration of any N.J.A.C. 7:26-[8.16] **8.21 hazardous** constituents found in the groundwater monitoring well at the compliance point;

(2)-(3) (No change.)

v. (No change.)

9-11. (No change.)

(j) An owner or operator required to establish a compliance monitoring program under this subsection shall, at a minimum, discharge the following responsibilities:

1.-5. (No change.)

6. The owner or operator shall analyze samples from all groundwater monitoring wells at the compliance point for all **hazardous** constituents contained in N.J.A.C. 7:26-[8.16] **8.21** at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer, uppermost zone of groundwater or any other groundwater aquifer that may be impacted by the discharge. If the owner or operator finds N.J.A.C. 7:26-[8.16] **8.21 hazardous** constituents in the groundwater that are not identified in the permit as hazardous constituents **to be monitored**, then the owner or operator shall report the concentrations of these additional **hazardous** constituents to the Department within seven days after completion of the analysis.

7.-13. (No change.)

(k) (No change.)

7:26-8.20 (Reserved.)

7:26-8.21 Hazardous constituents for groundwater monitoring

(a) The following table lists the hazardous constituents for which groundwater samples are to be analyzed when such analysis is required, pursuant to the detection monitoring program of N.J.A.C. 7:14A-6.15(i) or the compliance monitoring program of N.J.A.C. 7:14A-6.15(j), or both.

List of Hazardous Constituents for Groundwater Monitoring[1]

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100	200
			8270	10
Acenaphthylene	208-96-8	Acenaphthylene	8100	200
			8270	10
Acetone	67-64-1	2-Propanone	8240	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	10
Acrolein	107-02-8	2-Propenal	8030	5
			8240	5
Acrylonitrile	107-13-1	2-Propenenitrile	8030	5
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1α,4α,4aβ,5α,8α,8aβ)-	8080	0.05
			8270	10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010	5
			8240	100
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine	8270	10
Aniline	62-53-3	Benzenamine	8270	10
Anthracene	120-12-7	Anthracene	8100	200
			8270	10
Antimony	(Total)	Antimony	6010	300
			7040	2,000
			7041	30
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester	8270	10
Arsenic	(Total)	Arsenic	6010	500
			7060	10
			7061	20
Barium	(Total)	Barium	6010	20
			7080	1,000
Benzene	71-43-2	Benzene	8020	2
			8240	5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100	200
			8270	10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100	200
			8270	10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100	200
			8270	10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100	200
			8270	10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100	200
			8270	10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010	3
			7090	50
			7091	2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5β,6β)-	8080	0.05
			8250	10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2β,3α,4β,5α,6β)-	8080	0.05
			8250	40
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3α,4β,5α,6β)-	8080	0.1
			8250	30
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5α,6β)-	8080	0.05
			8250	10
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-[methylenebis (oxy)]bis[2-chloro-	8270	10
Bis(2-chloroethyl)ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-	8270	10
Bis(2-chloro- 1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether	106-60-1	Propane, 2,2'-oxybis[1-chloro-	8010	100
			8270	10
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	8060	20
			8270	10
Bromodichloromethane	75-27-4	Methane, bromodichloro-	8010	1
			8240	5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010	2
			8240	5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8270	10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060	5
			8270	10
Cadmium	(Total)	Cadmium	6010	40
			7130	50
			7131	1
Carbon disulfide	75-15-0	Carbon disulfide	8240	5
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010	1
			8240	5
Chlordane	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	8080	0.1
			8250	10
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010	2
			8020	2
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-ethyl ester	8270	10
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-	8040	5
			8270	20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010	5
			8240	10
Chloroform	67-66-3	Methane, trichloro-	8010	0.5
			8240	5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120	10
			8270	10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040	5
			8270	10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8270	10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010	50
			8240	5
Chromium	(Total)	Chromium	6010	70
			7190	500
			7191	10
Chrysene	218-01-9	Chrysene	8100	200
			8270	10
Cobalt	(Total)	Cobalt	6010	70
			7200	500
			7201	10
Copper	(Total)	Copper	6010	60
			7210	200
m-Cresol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	40
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
4,4'-DDE	72-55-9	Benzene 1,1'-(dichloroethylidene)bis[4-chloro-	8080	0.05
			8270	10
4,4'-DDT	50-29-3	Benzene 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-	8080	0.1
			8270	10
Dialfate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100	200
			8270	10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010	1
			8240	5
1,2-Dibromo-3-chloropropane; DBCP	96-12-5	Propane, 1,2-dibromo-3-chloro-	8010	100
			8240	5
			8270	10
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo	8010	10
			8240	5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060	5
			8270	10
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010	2
			8020	5
			8120	10
			8270	10
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-	8010	5
			8020	5
			8120	10
			8270	10
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010	2
			8020	5
			8120	15
			8270	10
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8240	5
Dichlorodifluoromethane	75-71-8	Methane, dichlorodifluoro-	8010	10
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-	8010	1
			8240	5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-	8010	0.5
			8240	5
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010	1
			8240	5
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010	1
			8240	5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040	5
			8270	10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-	8010	0.5
			8240	5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010	20
			8240	5
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010	5
			8240	5
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β,6aα,7β,7aα)-	8080	0.05
			8270	10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060	5
			8270	10
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	8270	10
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	8270	10
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	8270	10
alpha, alpha-Dimethylphenethylamine	122-09-8	Benzeneethanamine, α,α-dimethyl-	8270	10
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-	8040	5
			8270	10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060	5
			8270	10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	10
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040	150
			8270	50
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-	8040	150
			8270	50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090	0.2
			8270	10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090	0.1
			8270	10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150	1
			8270	10
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060	30
			8270	10
1,4-Dioxane	123-91-1	1,4-Dioxane	8015	150
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)- S-[2-ethyl]ester	8140	2
			8270	10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aβ,6α,9α,9aβ)-	8080	0.1
			8250	10
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β,9aα)-	8080	0.05
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide	8080	0.5
			8270	10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aβ,3α,6α,6aβ,7β,7aα)-	8080	0.1
			8250	10
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β,2aβ,4β,4aβ,5β,6aβ,6bβ,7R*)-	8080	0.2
			8270	10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020	2
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015	10
			8240	5
			8270	10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	10
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester	8270	10
Fluoranthene	206-44-0	Fluoranthene	8100	200
			8270	10
Fluorene	86-73-7	9H-Fluorene	8100	200
			8270	10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	8080	0.05
			8270	10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ,2α,5α,5aβ,6β,6aα)	8080	1
			8270	10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120	0.5
			8270	10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	8120	5
			8270	10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120	5
			8270	10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120	0.5
			8270	10
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	8270	10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone	591-78-6	2-Hexanone	8240	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno[1,2,3-cd]pyrene	8100	200
			8270	10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015	50
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-	8270	10
Isophorone	76-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090	60
			8270	10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta- [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	8270	10
Lead	(Total)	Lead	6010	40
			7420	1,000
			7421	10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015	5
			8240	5
Methapyrilene	91-80-5	1,2,Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienyimethyl)-	8270	10
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2,trichloroethylidene)bis[4-methoxy-	8080	2
			8270	10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010	20
			8240	10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010	1
			8240	10
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010	15
			8240	5
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010	5
			8240	5
Methyl ethyl ketone; MEK	78-93-3	2-Butanone	8015	10
			8240	100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010	40
			8240	5
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015	2
			8240	5
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	8140	0.5
			8270	10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015	5
			8240	50

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (µg/L)[6]
Naphthalene	91-20-3	Naphthalene	8100	200
			8270	10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010	50
			7520	400
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	50
Nitrobenzene	98-95-3	Benzene, nitro-	8090	40
			8270	10
o-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040	5
			8270	10
p-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040	10
			8270	50
4-Nitroquinoline 1-oxide	56-57-5	Quinoline, 4-nitro-, 1-oxide	8270	10
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	10
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8270	10
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-	8270	10
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosomorpholine	59-89-2	Morpholine, 4-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	10
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	10
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester	8270	10
Polychlorinated biphenyls; PCBs	See Note 7	1,1'-Biphenyl, chloro derivatives	8080	50
			8250	100
Polychlorinated dibenzo-p-dioxins; PCDDs	See Note 8	Dibenzo[b,e][1,4]dioxin, chloro derivatives	8280	0.01
Polychlorinated dibenzofurans; PCDFs	See Note 9	Dibenzofuran, chloro derivatives	8280	0.01
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloroethane	76-01-7	Ethane, pentachloro-	8240	5
			8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	10
Pentachlorophenol	37-86-5	Phenol, pentachloro-	8040	5
			8270	50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)	8270	10
Phenanthrene	85-01-8	Phenanthrene	8100	200
			8270	10
Phenol	108-95-2	Phenol	8040	1
			8270	10
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(cthylthio)methyl] ester	8140	2
			8270	10
2-Picoline	109-06-8	Pyridine, 2-methyl-	8240	5
			8270	10
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015	60
			8240	5
Pyrene	129-00-0	Pyrene	8100	200
			8270	10
Pyridine	110-36-1	Pyridine	8240	5
			8270	10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)	8270	10
Selenium	(Total)	Selenium	6010	750
			7740	20
			7741	20
Silver	(Total)	Silver	6010	70
			7760	100
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020	1
			8240	5

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (µg/L)[6]
Sulfide	18496-25-8	Sulfide	9030	10,000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	Dibenzo [b,e][1,4]dioxin, 2,3,7,8-tetrachloro-	8280	0.005
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010	5
			8240	5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010	0.5
			8240	5
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-	8010	0.5
			8240	5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Tetraethyl dithiopyrophosphate; Sulfotepp	3689-24-5	Thiodiphosphoric acid ($[(HO)_2P(S)]_2O$), tetraethyl ester	8270	10
Thallium	(Total)	Thallium	6010	400
			7840	1,000
			7841	10
Tin	(Total)	Tin	7870	8,000
Toluene	108-88-3	Benzene, methyl-	8020	2
			8240	5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	8001-35-2	Toxaphene	8080	2
			8250	10
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8270	10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8240	5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1-2-trichloro-	8010	0.2
			8240	5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010	1
			8240	5
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-	8010	10
			8240	5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040	5
			8270	10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010	10
			8240	5
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Total)	Vanadium	6010	80
			7910	2,000
			7911	40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8240	5
Vinyl chloride	75-01-4	Ethene, chloro-	8010	2
			8240	10
Xylene (total)	1330-20-7	Benzene, dimethyl-	8020	5
			8240	5
Zinc	(Total)	Zinc	6010	20
			7950	50

1. The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

2. Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

3. Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

4. CAS index names are those used in the 9th Cumulative Index.

5. Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

6. Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds: PQLs are not a part of the regulation.

7. Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

8. This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. The PQL shown is an average value for PCDD congeners.

9. This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans. The PQL shown is an average value for PCDF congeners.

7:26-12.2 Permit application

(a)-(f) (No change.)

(g) The following additional information regarding protection of groundwater is required from owners and operators of all hazardous waste surface impoundments, land treatment units, landfills, underground storage tanks and all other hazardous facilities subject to groundwater monitoring requirements under N.J.A.C. 7:14A-6;

1.-3. (No change.)

4. A description of any plume of contamination that has entered the groundwater from the facility at the time that the application is submitted that:

i. (No change.)

ii. Identifies the concentrations of each hazardous constituent identified in N.J.A.C. 7:26-[8.16] **8.21** throughout the plume or identifies the maximum concentration of each hazardous constituent identified in N.J.A.C. 7:28-[8.16] **8.21** in the plume.

5.-8. (No change.)

(h)-(l) (No change.)

LABOR

(a)

DIVISION OF WORKERS' COMPENSATION

Uninsured Employer's Fund

Proposed New Rules: N.J.A.C. 12:235-14

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:15-120.1 et seq., specifically 34:15-120.7.

Proposal Number: PRN 1989-667.

Submit comments by January 17, 1990 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

N.J.S.A. 34:15-120.1 created a fund known as the uninsured employer's fund (Fund), which is designed to provide for the payment of temporary and medical benefits to employees who are injured while working for uninsured defaulting employers.

Pursuant to N.J.S.A. 34:15-120.7, the Commissioner of Labor (Commissioner) is authorized to promulgate rules to establish and administer an application and review process for claims made against the fund. The proposed new rules set forth these application and review procedures.

N.J.A.C. 12:235-14.1 sets forth the purpose and scope of the proposed new rules. Specifically, the Fund is authorized to pay benefits for temporary disability and medical costs, but shall not be authorized to pay permanent benefits.

N.J.A.C. 12:235-14.2 outlines the procedures to be followed with regard to the filing of a notice of an uninsured claim, how the petitioner is to make personal service on the respondent, the serving of a subpoena duces tecum and third-party joinder.

N.J.A.C. 12:235-14.3 provides that petitioner's attorney shall submit a certification which is essentially an interrogatory pertaining to the petitioner's employment history and the accident in question. Failure to complete the certification will result in the certification being returned to the petitioner's attorney for resubmission, and the case will not be listed for hearing until the certification is returned.

N.J.A.C. 12:235-14.4 allows the Fund to review all medical bills to determine if the costs were reasonable and necessary to order an examination of a petitioner by an authorized physician and, if necessary, to require the petitioner to be treated by the Fund's physician to contain costs.

N.J.A.C. 12:235-14.5 states that the Fund cases will be heard in three vicinages—South, Central and North Jersey—and that the Director shall establish the hearing dates and schedules.

N.J.A.C. 12:235-14.6 provides that counsel fees shall be awarded at the discretion of the Director, and that all fee requests shall be supported by an affidavit from the petitioner's attorney justifying the amount of the fee.

Social Impact

The proposed new rules will advise attorneys that an uninsured employer's fund is available to pay benefits to injured employees, and will outline the procedures which must be followed when making a claim against the Fund. The proposed new rules will establish a process for the payment of benefits to workers, which will enable them to receive temporary disability and the medical benefits to pay for the treatment necessary to help them recover from their accidents.

Economic Impact

The proposed new rules will have a positive impact on employees, as they will provide benefits for injured employees who are injured while working for an uninsured employer. The Department will experience some increased administrative costs as a result of the proposed new rules, but expects to absorb these costs in the existing budget.

Regulatory Flexibility Statement

The proposed new rules do impose some minor additional recordkeeping, reporting and compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they will require attorneys handling uninsured employers' fund cases to follow certain established filing procedures. However, the statute provides express authority to promulgate such rules, and the Department intends to make the rules applicable to all attorneys to ensure that the Fund operates as smoothly as possible.

Full text of the proposal follows:

SUBCHAPTER 14. UNINSURED EMPLOYER'S FUND

12:235-14.1 Purpose; scope

(a) The uninsured employers' fund ("Fund") has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards against uninsured defaulting employers. This subchapter sets forth the procedures by which the Fund will be operated.

(b) The Fund shall be authorized to pay benefits for temporary disability and medical costs in accordance with N.J.S.A. 34:15-120.1. The Judge of Compensation shall also enter an award for the payment of permanent benefits at the end of the hearing, if appropriate; however, this shall not be payable out of the Fund.

12:235-14.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third-party joinder

(a) The petitioner's attorney shall notify the Fund of a claim against it within 45 days of the date petitioner is aware that the employer is uninsured.

1. Petitioner's attorney shall notify the Fund by the filing of a motion with the Division to join the Fund.

(b) Petitioner's attorney shall contact, in writing, the Compensation Rating and Inspection Bureau to receive confirmation that the employer is uninsured. A copy of the Rating Bureau's response shall be included in the motion.

(c) Petitioner's attorney shall make personal service of the claim petition and the motion to join the Fund on respondent.

1. Proof of service is to be filed with the Division and with the attorney representing the Fund.

2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Director for substitute service pursuant to Civil Practice Rule 4:4-4(e). The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

(d) Petitioner's attorney shall also serve the respondent with a subpoena duces tecum requiring the respondent to appear and to produce all records pertaining to petitioner, returnable on the date the case is listed for hearing.

(e) The Fund shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is involved in the cause of action.

12:235-14.3 Certification

(a) Petitioner's attorney shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information:

1. The date of hire;
2. The length of employment: If not continuous, list all dates of employment;
3. Copies of petitioner's W-2 for all dates of employment;
4. Pay stubs for all salary received from respondent for previous year;
5. The total wages received from respondent for 12 months preceding the accident;
6. The name, address (business and personal) and phone number of the respondent and any officer or manager of the company;
7. All documents relating to the employer/employee relationship or lack thereof;
8. Complete and detailed facts which establish the employer/employee relationship;
9. The name, address and phone number of all persons with knowledge of the existence of an employer/employee relationship between petitioner and respondent;
10. The place where the injury occurred, including the name of the owner of the property and the reason why the employee was at the location where the injury occurred;
11. The name, address and phone number of all witnesses to the accident, and whereabouts of respondent when the accident occurred;
12. The name, address and phone number of all persons with any knowledge of the accident;
13. How soon after the accident was a physician contacted;
14. The name and address of all treating physicians and the name and address of any hospital, laboratory or other facility where treatment was received;
15. Copies of all medical reports from the hospitals and treating physicians;
16. Medical insurance coverage for employee and/or spouse, and if available, the name and address of the company and the policy number;
17. How medical expenses have been paid; and
18. Any other information that the Director may deem necessary to assess the factual situation surrounding the accident.

(b) Failure to disclose pertinent information will result in the certification being returned to the petitioner's attorney for resubmission and the case will not be listed for hearing until the certification is returned.

12:235-14.4 Medical bills; physician's examination

(a) The fund shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.

1. The Fund shall consider a medical fee schedule employed by the New Jersey Department of the Treasury, Bureau of Risk Management when making a determination on the reasonableness of the medical costs.
2. Any medical bills that are found to be in excess of the charges prescribed in the medical fee schedule shall be presumed to be unreasonable.

(b) The Fund may order an examination of a petitioner by an authorized physician at any time when the Fund is involved or when it appears the Fund may become involved in a case. The authorized physician will be asked to offer an opinion on:

1. The appropriateness of petitioner's current medical treatment; and
2. The prognosis for the petitioner.

(c) Fees for the independent medical evaluation shall be paid by the Fund.

(d) If it is determined that the petitioner is entitled to benefits from the Fund, then the Fund may direct the petitioner to the appropriate treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one named by the Fund shall be deemed to be unauthorized treatment, and costs for such treatment shall not be chargeable to the Fund.

(e) When necessary, the physician shall be required to appear in court to testify concerning his or her evaluation.

12:235-14.5 Assignment of cases; schedules

(a) The Director shall assign the Fund cases to specific judges who shall handle all cases.

(b) The Director shall establish the vicinages in which the cases shall be heard;

1. South Jersey cases (Atlantic City, Bridgeton, Burlington, Camden and Toms River) shall be heard in Camden;
2. Central Jersey cases (Elizabeth, Freehold, Flemington, Morristown, New Brunswick, Newton, Phillipsburg, Somerville and Trenton) shall be heard in New Brunswick; and
3. North Jersey cases (Hackensack, Jersey City, Newark and Paterson) shall be heard in Newark.

i. The Director may, in his or her discretion, change the vicinages to accommodate changes in the caseload.

(c) The Director shall establish the hearing dates and schedules for all uninsured employer cases.

12:235-14.6 Attorney fees

(a) Attorney fees for uninsured employer's cases shall be awarded at the discretion of the Director.

(b) All fee requests shall be supported by an affidavit from petitioner's attorney justifying the amount of the fee.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Licensing Service

New Jersey Licensed Motor Vehicle Dealers

Proposed Amendment: N.J.A.C. 13:21-15.3

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:10-4, 39:10-19 and 39:10-20.

Proposal Number: PRN 1989-625.

Submit comments by January 17, 1990 to:

Glenn R. Paulsen, Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The New Jersey Division of Motor Vehicles' mandatory requirements for motor vehicle dealer licensing pursuant to N.J.S.A. 39:10-19 and N.J.A.C. 13:21-15 include individuals, companies and corporations who lease vehicles to the public for periods of 60 days or more.

The Division proposes to amend N.J.A.C. 13:21-15.3 to provide that an established place of business, for a license applicant in the business of leasing motor vehicles for periods of 60 days or more, shall be considered suitable without a vehicle display area and without an exterior sign; however, the license issued to such applicant will be restricted to the leasing of motor vehicles and the sale of such leased vehicles to the vehicle's lessee, a family member of the lessee, an employee of the lessee or at wholesale to another dealer. If such a license applicant desires to sell leased vehicles without the aforementioned restrictions, it must comply with all of the dealer licensing requirements imposed pursuant to N.J.S.A. 39:10-19 and N.J.A.C. 13:21-15 including the vehicle display area and exterior sign requirements.

The proposed amendment also makes several grammatical changes to the rule and deletes an outdated reference to "Dealer License Section, Bureau of Agencies", replacing it with an appropriate reference to the Division of Motor Vehicles' Business License Compliance Unit.

Social Impact

The proposed amendment will benefit license applicants in the business of leasing motor vehicles for periods of 60 days or more by easing the physical licensure requisites. Such applicants will not be required to meet the rule's vehicle display area and exterior sign requirements; however,

such an applicant will be issued a license restricted to the leasing of motor vehicles and the sale of such leased vehicles to the vehicle's lessee, a family member of the lessee, an employee of the lessee or at wholesale to another dealer. The Division anticipates no social impact on either itself or the general public.

Economic Impact

The Division anticipates a positive economic impact on license applicants in the business of leasing motor vehicles for periods of 60 days or more. Such applicants for this type of business will not have to bear the expense of satisfying the vehicle display area and exterior sign requirements imposed upon other applicants for motor vehicle dealer licenses. The Division is uncertain whether the limitations on such leasing licensees' sales activities would be economically limiting to a person or entity in the leasing business. However, if such a license applicant desires to sell leased vehicles without such restrictions, it must comply with all of the dealer licensing requirements imposed pursuant to N.J.S.A. 39:10-19 and N.J.A.C. 13:21-15, including the vehicle display area and exterior sign requirements. No economic impact is foreseen upon either the Division or the public by this amendment.

Regulatory Flexibility Analysis

Industry estimates indicate that there are between 1,500 and 2,500 motor vehicle leasing companies doing business in New Jersey. While it is supposed that many of these leasing companies qualify as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it is not known how many of those businesses engage in long-term leasing so as to qualify for the proposed exemptions to the license application requirements.

The proposed amendment imposes no reporting or recordkeeping requirements. While all license applicants must pay the $100.00 application fee required under N.J.S.A. 39:10-19, the Division does not anticipate that small businesses will require professional services to complete the application. The proposed amendment eliminates for certain applicants the capital costs of meeting the rule's vehicle display area and exterior sign requirements. As the proposed amendment will not increase small business applicant costs, no differentiation in requirements based on business size is proposed.

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

13:21-15.3 Established place of business

(a) (No change.)

(b) [The] **Such** established place of business shall display an exterior sign permanently affixed to the land or building which is consistent with local ordinances and which has letters easily readable from the major avenues of traffic. [Said] **This** sign must reflect the dealer name or trade name, providing such trade name has been previously disclosed to the Division of Motor Vehicles.

(c) An established place of business, for an applicant in the business of leasing motor vehicles for periods of 60 days or more, shall be considered suitable without a vehicle display area and without an exterior sign; however, the license issued to such applicant will be restricted to the leasing of motor vehicles and the sale of such leased vehicles to the vehicle's lessee, a family member of the lessee, an employee of the lessee or at wholesale to another dealer.

[(c)]**(d)** A proposed place of business will not be considered suitable for approval if there are two or more **dealer** licenses issued for the same premises, except where there is absolutely common identity of ownership or where an affiliated motor vehicle leasing company is also licensed as a motor vehicle dealer and in such cases a record of the transactions of each licensed dealer shall be separately maintained.

[(d)]**(e)** Any licensed dealer who changes his business location or intends to open a branch operation must notify the [Dealer License Section, Bureau of Agencies] **Business License Compliance Unit** of the Division of Motor Vehicles prior to doing so.

(a)

BOARD OF MARRIAGE COUNSELOR EXAMINERS

Examination Fee

Proposed Amendment: N.J.A.C. 13:34-1.1

Authorized By: Board of Marriage Counselor Examiners, Edward G. Haldeman, Chairman.

Authority: N.J.S.A. 45:8B-13 and 45:1-3.2.

Proposal Number: PRN 1989-656.

Submit written comments by January 17, 1990 to:

Jeannette Balber, Executive Director
Board of Marriage Counselor Examiners, Room 512
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:34-1.1(a)3 increases the written examination fee from $100.00 to $225.00. This amendment is necessary since the Association of Marital and Family Therapy Regulatory Boards has raised the cost per candidate for the administration of the Marriage and Family Therapy Licensing Examination.

Social Impact

The proposed amendment will impact only those applicants who, as a part of the licensure process, must sit for the written examination. The licensing process itself enables only qualified individuals to service the public, thus protecting health and welfare.

Economic Impact

Individuals seeking initial licensure will be affected economically by this increase. However, the proposed amendment to the Board's fee schedule is necessary to prevent a fiscal loss to the Board, which is required to cover expenses.

Regulatory Flexibility Statement

The proposed amendment to the Board of Marriage Counselor Examiners' fee schedule will affect only individual applicants for licensure; no regulatory flexibility analysis pursuant to N.J.S.A. 52:14B-16 is, therefore, necessary.

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

13:34-1.1 Annual license fees and charges

(a) There shall be paid to the State Board of Marriage Counselor Examiners the following fees:

1.-2. (No change.)

3. Examination fee ..... [$100.00]**$225.00**;

4.-10. (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS

Board of Nursing

New Jersey Board of Nursing Rules

Proposed Readoption: N.J.A.C. 13:37

Authorized By: Board of Nursing, Marjorie Blomberg, President

Authority: N.J.S.A. 45:11-24 and 45:1-3.2

Proposal Number: PRN 1989-680.

Submit comments by January 17, 1990 to:

Sister Teresa Harris, Executive Director
Board of Nursing, Room 508
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:37 is scheduled to expire on February 11, 1990. The Board of Nursing has reviewed the current rules and has found them to continue to be reasonable, necessary and effective for the purposes for which they were originally promulgated.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the nursing profession by enabling the Board to have in place procedures which maintain high standards of practice, thus serving and protecting the public's best interests. However, some changes in its rules are anticipated in the near future; the Board is for the present proposing readoption without change because of time constraints.

The rules in this chapter regulate programs in nursing education, licensure by examination professional, practical and foreign nurses, licensure by endorsement, nursing procedures, the Board's fee schedule, and nurse anesthetist qualifications.

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operation to ensure that truly qualified individuals are practicing in the nursing profession. The present rules have satisfied the Board's desire to protect and serve the public with high levels of professionalism. It is, therefore, anticipated that this readoption will have an advantageous social impact in that it will maintain these high standards.

Economic Impact

The rules proposed for readoption do not economically impact directly on the general public. The fee schedule imposes a quantifiable impact on license applicants and licensees. Satisfaction of the licensure requirements for education, examination, etc., are also costs to be borne by those seeking to be licensed as nurses in this State. The Board does not consider the fees to be unduly burdensome, and the training and examination requirements are necessary to protect the public health. As the fee structure partially supports the Board's operation, these rules have a positive economic impact on the Board.

Regulatory Flexibility Statement

Since this proposed readoption does not impose reporting, recordkeeping or other compliance requirements upon small businesses, but upon individual applicants/licensees, the analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:37.

(a)

BOARD OF PHYSICAL THERAPY

Educational Requirements for Applicants for Licensure as Physical Therapists

Reproposed Amendment: N.J.A.C. 13:39A-5.1

Authorized By: Board of Physical Therapy, Thomas K. Charles, Chairperson.

Authority: N.J.S.A. 45:9-38.18(f), 45:9-37.23.

Proposal Number: PRN 1989-657.

Submit written comments by January 17, 1990 to:

Patricia E. Stuart, Executive Director
Board of Physical Therapy, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency reproposal follows:

Summary

The Board of Physical Therapy is reproposing this amendment, originally published on September 6, 1988 at 20 N.J.R. 2243(a).

During the comment period, two letters were received, urging greater specificity in course and credit hour requirements. The Board of Physical Therapy considered the comments but ultimately decided to repropose the amendment without change. The Board considers the course list clear as stated. Also, in the Board's experience, fixed credit hour requirements are unwieldy where foreign-trained applicants are concerned. While a foreign-trained applicant must have graduated from a recognized program, and must show successful completion of both general and professional courses substantially equivalent to those in a United States program, the Board believes that variances in the credit system of foreign training programs mandate a more flexible approach. Equivalency of course value will be determined by an independent agency competent to do so.

As explained in the original proposal, this amendment is undertaken pursuant to N.J.S.A. 45:9-37.23, which states in pertinent part:

"An applicant for licensure who is a graduate of a foreign school of physical therapy shall furnish evidence satisfactory to the board that:

a. He has completed a course of study in physical therapy which is **substantially equivalent** to that provided in an accredited program as described in section 12a. of this act . . ." (Emphasis added.)

N.J.S.A. 45:9-37.22, the "section 12a" referred to above, requires a ". . . program in physical therapy which has been approved for the education and training of physical therapists or physical therapist assistants by an accrediting agency recognized by the Council on Post-Secondary Accreditation and the United States Department of Education . . ."

This reproposed amendment to N.J.A.C. 13:39A-5.1 sets forth the subjects that are included in physical therapy programs in the United States and describes course content rather than the number of credits necessary to fulfill the "substantially equivalent" statutory requirement. The list of courses was developed as the result of a Board survey of over 90 United States college and university physical therapy programs. Of the institutions queried, 54 responded that the courses outlined were necessary for graduation from a four-year program.

Social Impact

The reproposed amendment lists specific courses which must have been completed by a graduate of an approved physical therapy program outside the United States. This amendment thereby clarifies the "substantially equivalent" training mandate of N.J.S.A. 45:9-37.23, which relates to foreign-trained applicants. While the amendment directly impacts only upon applicants, the ultimate impact upon the public will be beneficial in that high standards of professional preparation will be maintained.

Economic Impact

The reproposed amendment will have no discernible economic impact. The amendment merely specifies certain courses which must be taken prior to examination and licensure of an applicant from a physical therapy program at a foreign school.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it has been determined that this regulation will not impose reporting, recording or other compliance requirements on small businesses within New Jersey, since it relates to individual applicants and not to licensees.

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

13:39A-5.1 Educational credentials for applicants for licensure as physical therapists

(a) Applicants for examination shall submit to the Board satisfactory proof of:

1. Graduation from a program in physical therapy which has been approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post-secondary Accreditation and the United States Department of Education; or

2. [With respect to foreign trained applicants for licensure as physical therapists, graduation from or successful completion of an approved physical therapy program which shall have included 120 credits of which 60 or more shall be in courses relating to the practice of physical therapy and at least 45 of which shall be in courses of general academic study. English General College Equivalent A level courses will be accepted toward the necessary credits in general education.] **With respect to foreign trained applicants for licensure as physical therapists, the applicant shall demonstrate satisfactory evidence of graduation from a physical therapy program that is substantially equivalent to a physical therapy program approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post Secondary Accreditation and the United States Department of Education. The applicants shall show successful completion of course work in both general and professional education. General education courses shall include, but not be limited to, mathematics, physics, chemistry, biology, sociology, psychology, history and the arts. The professional component of the program shall include, but not be limited to, human anatomy, pathology, physiology, neurologic science and clinical practice.**

(a)

BOARD OF PHYSICAL THERAPY

Language Comprehension Requirements

Proposed Amendment: N.J.A.C. 13:39A-5.7

Authorized By: Board of Physical Therapy, Thomas K. Charles, Chairperson.
Authority: N.J.S.A. 45:9-37.18(f), 45:9-37.23.
Proposal Number: PRN 1989-658.

Submit written comments by January 17, 1990 to:
Patricia E. Stuart, Executive Director
Board of Physical Therapy, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:39A-5.7, which relates to language comprehension requirements, incorporates two changes and is more specific than the present rule.

First, the requirement of a score of 600 on the Test of English as a Foreign Language (TOEFL) examination has been revised to 550; this is a score consistent with the TOEFL requirement in other states. The second part of the proposed amendment requires an applicant to submit proof of attaining a score of 550 simultaneously with his or her application for licensure; the issuance of a temporary license or the scheduling of examination of the applicant will no longer be permitted without prior achievement of the necessary TOEFL score. Presently, an applicant might practice in New Jersey for as long as a year before proving competency in English. That will no longer be possible.

Also, the present rule requires an applicant who has trained in a country "wherein the primary language is other than English" to submit an acceptable TOEFL score. This wording created problems in the administration of the provision. Determination of the "primary" language of a country proved to be less useful than originally anticipated. For instance, the language spoken in a foreign school might not be the "primary" language of the country where the school was located. Certain countries have therefore been specifically identified as training locales which qualify the applicant for exemption from TOEFL. In addition, the Board in special circumstances may waive the requirement.

Social Impact

The proposed amendment will be beneficial to applicants as well as to the administration of licensing procedures. In the Board's opinion, a score of 550 indicates an acceptable conversational level of competency in the English language and adequately protects the consumer, while easing the burden on the prospective licensee. While the TOEFL score has been lowered, the Board believes that high professional standards are being maintained and that the public's best interests continue to be protected. As for the new requirement of submission of the TOEFL score at the time of original application, although there may be some delay in the issuance of a temporary license to foreign-trained applicants, the ability of qualified persons to practice physical therapy in this State would not be impaired.

Economic Impact

As a result of the proposed amendment, there will be some economic impact on applicants who have not yet attained the required TOEFL score. They will not be permitted to practice with a temporary license or be scheduled for examination until proficiency in English is demonstrated by achievement of the 550 score.

Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physical therapists are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed amendment applies uniformly to individual applicants, not licensees, and will not have any effect on businesses, regardless of size. Thus, there is no need for these rules to be designed to minimize any adverse impact on small businesses.

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

13:39A-5.7 Language comprehension requirements

Any applicant for licensure as a physical therapist or a physical therapist assistant who has received his or her physical therapy training in a country [wherein the primary language is other than English] **other than the United States of America, the United Kingdom, the Republic of Ireland, Canada except Quebec Province, Australia or New Zealand**, shall submit to the Board evidence of attainment of a score of at least [600] **550** on the Test of English as a Foreign Language (TOEFL) examination, **which test shall have been taken** within the two years immediately preceding the filing of the application for licensure. Such evidence must be submitted [prior to the issuance of a physical therapist or physical therapist assistance license, but need not be submitted prior to the scheduling of an examination or the issuance of a temporary license.] **with the application for licensure. This requirement may be waived for applicants who have received their training in countries other than those listed above upon submission of a written application to the Board demonstrating good cause for the granting of the waiver. In such cases the Board may also require a personal interview with the applicant.**

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Proposed Readoption with Amendments: N.J.A.C. 13:70

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1989-664.

Submit comments by January 17, 1990 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
CN 088
200 Woolverton Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 13:70 is scheduled to expire on February 25, 1990. The current rules have been reviewed pursuant to the Executive Order and the Commission has found them to continue to be reasonable, necessary, and effective for the purposes for which they were originally promulgated, which is to regulate the thoroughbred racing industry. The business of racing and legalized gambling attendant thereupon are strongly affected; therefore, close regulatory supervision is very appropriate. Upon review of the rules, it was discovered that there are non-substantive changes required due to the following: grammatical errors, typing errors, legislative changes (for example, secretary to the Commission is now the Executive Director of the Commission, the stewards are now appointed and employees of the Racing Commission rather than the track associations) and changes in terminology (for example, track police are now referred to as track security).

N.J.A.C. 13:70-3.28, regarding availability of purse money to winners, was amended to increase the time requirement for availability from 48 hours to 72 hours, as a result of the time necessary for the laboratory to conduct their analyses of samples acquired from horses. The initial analysis is done at a screening laboratory and then transported to a confirmatory laboratory and additional time is necessary to enable the chemist to adequately analyze the samples. At N.J.A.C. 13:70-22.5, the fee for an authorized agent license has been changed from $10.00 to $25.00 to accurately reflect a change made in licensing fees in 1984 in N.J.A.C. 13:70-4.1, which states the fee for an authorized agent license shall be $25.00. Upon a review of the rules, it was found that this section had not been changed at the same time as N.J.A.C. 13:70-4.1.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the licensees and permit holders in the thoroughbred racing industry. This chapter contains 31 subchapters:

Subchapter 1 describes the general rules;

Subchapter 2 lists definitions of racing terms;
Subchapter 3 describes requirements of the racing associations;
Subchapter 4 describes the procedures for licensure;
Subchapter 5 describes the procedures for licensing entities;
Subchapter 6 describes the requirements for entries and subscriptions;
Subchapter 7 describes the procedures for declarations and scratches;
Subchapter 8 describes the method of assigning weights to horses;
Subchapter 9 describes the requirements for jockeys, jockey apprentices and jockey agents;
Subchapter 10 describes the requirements for horses from the paddock to the post;
Subchapter 11 describes the requirements from post to finish;
Subchapter 12 describes the procedures required to claim horses;
Subchapter 13 describes the procedures to lodge objections and protests;
Subchapter 14 describes what constitutes illegal practices;
Subchapter 14A sets forth the medication and testing procedures;
Subchapter 15 identifies the racing officials and certain restrictions placed upon them;
Subchapter 16 describes the qualifications for stewards and the authority granted to them by the Commission;
Subchapter 17 describes the qualifications for starters and the responsibilities placed upon him;
Subchapter 18 describes the duties of the racing secretary;
Subchapter 19 describes the qualifications and duties placed on other officials;
Subchapter 20 describes the qualifications and responsibilities placed upon the trainers;
Subchapter 21 describes the qualifications and responsibilities placed upon the owners;
Subchapter 22 describes the qualifications and responsibilities placed upon authorized agents of owners;
Subchapter 23 sets forth certain disciplinary action;
Subchapter 24 describes the procedures for steeplechase racing;
Subchapter 25 sets forth the procedures in the event of dead heats in races;
Subchapter 26 describes the qualifications for produce races;
Subchapter 27 describes the procedures for licensing vendors;
Subchapter 28 describes the procedures used for computing winnings of horses;
Subchapter 29 (Mutuel) describes the procedures and method for computing prices to be paid to the patrons in the various types of wagering and the duties of the Supervisor of Mutuels and Mutuel Manager;
Subchapter 30 describes the qualifications for a permit for an initial track application; and
Subchapter 31 describes the violations of the rules and regulations and provides for penalties to be imposed.

Social Impact

The rules proposed for readoption provide various procedures and requirements for the orderly administration and control of the Racing Commission's statutory mandate to regulate the thoroughbred racing industry and participants therein. The racing industry and the wagering thereon strongly affects the public's interest to strongly regulate racing. By its rules, the Racing Commission attempts to keep undesirables and people convicted of crimes of moral turpitude from involvement in racing as either patrons or participants. The readoption of these rules will assist the Racing Commission in its statutory mandate to provide revenue to the State of New Jersey, the orderly continuation of a racing circuit to maintain and enhance the employment it provides, providing the public with a recreational opportunity where the racetracks are situated and to improve the State's position in competition with neighboring jurisdictions.

Economic Impact

Horse racing is one of New Jersey's most important industries, provides substantial direct and indirect benefits to the State, providing employment and recreational opportunities to thousands of people and, at the same time, helps to preserve valuable agricultural farmland. In excess of six million people attended the racetracks in 1988 and they wagered a record Statewide handle in excess of $1,250,000,000. Slightly more than $1,000,000,000 was returned to the patrons. The State of New Jersey received more than $8,000,000 in revenue for the general treasury. The track associations, the horsemen and the horsemen's organizations received $244,000,000 in 1988. Each track association conducts three charity days in which the State's revenue is forwarded to the Developmental Disabilities Council to be distributed to organizations designated by the council; this amounted to $239,000 in 1988. The Commission also distributed $70,000 to qualifying municipalities to offset increases in expenses from the operating of private tracks located in their areas. The readoption of the rules will have no unfavorable economic impact upon the participants in racing, since the licensing fees have been the same for several years. The fees as set forth in N.J.A.C. 13:70-4.1 are reasonable and transmitted to the General Treasury as revenue to the State which amounted to approximately $400,000 in 1988.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required since the proposed readoption of the thoroughbred rules will have no effect upon small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., with the exception of practicing veterinarians. Practicing veterinarians are required to make daily reports to the State veterinarians and to the stewards of all horses under treatment by them. The cost of imposing this reporting and/or recordkeeping on the practicing veterinarian is minimal. The only requirement imposed upon owners who may be involved in a stable name, and, thus perhaps small businesses, is the completion of an application for a license as an owner and as an assumed name.

Full text of the proposed readoption may be found in New Jersey Administrative Code at N.J.A.C. 13:70.

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

13:70-1.6 Discharge of groom or attendant; notice

When an owner or trainer discharges a groom or other attendant, or when a groom or other attendant voluntarily leaves the employ of an owner or trainer, the said owner or trainer shall immediately notify the track [police] **security** of such discharge or resignation by such employee. Failure to so notify the track [police] **security** shall subject the owner or trainer to disciplinary action.

13:70-1.10 Suspended person or horse

No person or horse ruled off by, or under suspension by, any recognized turf authority[, trotting association included,] shall be admitted to the grounds of any association; except that the stewards may permit a jockey under suspension for routine riding offenses to gallop horses during training hours, and to lodge on the grounds of an association.

13:70-1.18 Police reports

The track security police and any other law enforcement agency acting in, or on **or** about the licensed premises of any race track, or any approved farms or stabling facilities, shall furnish two copies of their daily police report **to the State Police Racetrack Unit**, together with any additional pertinent information available to the said police agency, obtained either orally or in writing. The two copies shall be delivered to the New Jersey State Police detail assigned to the race track at the close of each racing day. One copy, with evaluation, comments and further action by the said State Police shall be delivered to the New Jersey Racing Commission.

13:70-1.23 Restrictions on transmittal of information

(a) All radios, receivers and transmitters on the licensed premises of any race track shall be operated, monitored or tape recorded under the supervision of the security director. A complete list of operating and maintenance personnel shall be submitted to the track [police] **security**, the State Police and the New Jersey Racing Commission.

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

13:70-2.1 Definitions

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

"Added money" means the money which in a stake race an association adds to **the purse,** the nominating and starting fees.

"Age" of a horse means the time reckoned as beginning on the first of January in the year [in which] **after** the horse is foaled.

"Apprentice" means a jockey apprentice.

"Arrears" includes all money due for entrance forfeits, fees (including jockey fees), fines, subscriptions, purchase money in **a** claiming race and also any default in money incident to the rules.

. . .

"Disciplinary action" means revocation of a license, suspension, ruling off, fine or reprimand [of] **or** any combination thereof.

"Drug" means:

1. Articles recognized in the official U.S. Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and

2. Articles intended for use in the diagnosis, cure mitigation, treatment, or prevention of disease in man or other animals; and

3. Articles (other than food) intended to affect the structure or any function of the body or other animals; and

4. Articles intended for use as a component of any article specified in paragraphs 1, 2, or 3 [erase] but does not include devices or their components, parts or accessories.

"Entry" means:

1. [according]**According** to the requirement of the text, a horse made eligible to run in a race, [and] **or**

2. [two]**Two** or more horses which are entered or run in a race and are coupled because of common ties.

. . .

"Field" (or mutuel field) means the individual horses competing in **a** race exceed the numbering capacity of the tote; the highest numbered horse within the capacity of the tote and all horses of a higher number shall be grouped together for wagering purposes and called the "field" and a bet on one is a bet on all.

. . .

"Forfeit" means money due because of an error, fault, neglect of duty, breach of contract or a penalty.

"Foul **or careless** riding" means any and all acts of a jockey committed in the running of a race designed to gain unfair or unsportsmanlike advantage, to the end of improving his own chance or position in a race or of lessening the chance or position of another in the race.

. . .

"Race" means a contest for purse, stakes, premium or wager. It includes among others all races defined in the following paragraphs:

1.-7. (No change.)

8. "Overnight race" means any race other than a stake [for] **or** added money race.

9.-14. (No change.)

. . .

13:70-3.7 Application forms; approval

Approval may only be given to such persons who make application therefor on the form prescribed by the New Jersey Racing Commission and only when such application is filed with the [secretary] **Executive Director** of the Racing Commission properly completed and executed in all respects.

13:70-3.9 Review of application approval

Applications may be approved, after due consideration by the Executive Director of the Racing Commission to whom such power is delegated, but the New Jersey Racing Commission may, in its discretion, review any such findings made by the [secretary] **Executive Director** to determine whether any applicant merits approval.

13:70-3.15 Fire inspection stable

(a) The Racing Commission shall appoint annually a qualified [engineering firm] **engineer** to inspect the stable area at all tracks licensed by the Commission to insure that said stable areas are adequately guarded against the hazards of fire.

(b) The [engineering firm] **engineer** so appointed shall be paid by the track associations in an amount established by the Commission and shall conduct two such inspections of each stable during the racing season and report thereon to the Commission.

(c) All recommendations of the [engineering firm] **engineer** relating to fire conditions in the stable areas shall be acted upon immediately by the permit holder.

13:70-3.25 Communication system

An association shall install and maintain, in good service, a communication system between the stewards stand, pari-mutuel department, starting gate, clerk of scales, patrol judges and the State veterinarian.

13:70-3.28 Availability of purse money to winners

All portions of purse money shall be made available to the winners thereof [48] **72** hours (Sundays excluded) following their winning.

13:70-3.35 Division of departments

(a) The departments shall be divided and designated as follows:

1.-2. (No change.)

3. Mutuel department (including manager of the mutuel department and all employees under his control including calculators, sheet writers, supervisors, money room, messengers and runners, outbook clerks, program clerks, porters, information and change clerks, approximate odds board calculator clerks and boardmen, miscellaneous assistants, cashiers and sellers)[:];

i. All of the individuals mentioned in (a)3 above, when assigned to work, shall be prohibited from wagering. Violation of the above may subject the individual to a fine, suspension or both, or to revocation of his or her license;

4.-7. (No change.)

8. Department of [police] **Security** (including detectives, policemen, watchmen and fire protection and miscellaneous employees under the control of the chief of [police] **Security** of the race track);

9.-12. (No change.)

13:70-4.1 Persons required to have licenses

(a) The following persons [shall be] **are** required to take out a license from the Racing Commission and the annual fee [shall] **will** be as follows:

1.-4. (No change.)

5. **Certificate of** Identification [license]: $5.00

6.-17. (No change.)

(b) All persons licensed by the Commission and all employees of the racing associations and/or employees of contractors doing work for the track associations will be required to be fingerprinted and photographed at the discretion of the [Commissioner] **Commission.** The applicant must pay for the cost of the fingerprint card checks. The Commission will direct the fee, which will be consistent with the charge set by the reviewing agency for the type of inquiry requested; for example, State, Federal **or** State and Federal, name check. Owners who, because of extenuating circumstances, cannot come into New Jersey to be fingerprinted and photographed during a racing year, will be issued conditional licenses only and will not be permitted access to the stable area or paddock at any New Jersey track until photographed and fingerprinted by the Racing Commission. Holders of a conditional license will not be eligible for passes at any of the tracks in New Jersey.

13:70-4.2 Items requiring registration

(a) The following must be registered with the Racing Commission **annually** and the fee payable for such registration shall be as follows:

1. Stable name—[initial registration] $50.00;

2. **Corporate** [Stable] **stable** name—[annual registration] $50.00;

3. [Corporate stable name] **Multiple ownership**—[initial registration] $50.00;

[4. Corporate stable name—annual registration $50.00]

13:70-4.4 Fees

The fee shall accompany each application for license or registration. All licenses and/or registrations expire December 31 of the year [of the issue] **issued.**

13:70-4.6 Examination of applications

(a) A board of examiners composed of the State Steward and two [association] **associate** stewards shall examine each of the following applications for and on behalf of the New Jersey Racing Commission:

1. Assistant Trainer;

2. Authorized Agent;

3. [Jockey] **Corporate Stable Name**;

4. Jockey [Agent];
5. Jockey [Apprentice] **Agent**;
6. [Owner-Colors] **Jockey Apprentice**;
7. [Stable Employee] **Multiple Ownership**;
8. [Stable Name] **Owner**;
9. [Trainer] **Plater**;
10. **Stable Employee;**
11. **Stable Name; and**
12. **Trainer**

13:70-4.7 Qualifications

[The board of examiners referred to in Section 6 of this Subchapter] **The stewards** shall, during the course of examination of the applications for a license, ascertain if the applicant is qualified as to ability, integrity, and financial responsibility, and shall report to the New Jersey Racing Commission [its] **their** findings.

13:70-4.8 Burden of proving qualifications

(a) In considering each application for a license, [the board of examiners referred to in Section 6 of this Subchapter,] **the stewards** may require the applicant, as well as the applicant's endorsers, to appear before [it] **them**.

(b) The burden shall be upon the applicant to show that he, she or it [are] **is** qualified in every respect to receive the license applied for.

(c) (No change.)

13:70-4.9 Refusal to issue or renew license

The Commission may refuse to issue or renew a license or may suspend or revoke a license issued pursuant to this [Section] **section** if it shall find that the applicant, or any person who is a partner, agent, or employee or associate of the applicant, has been convicted of a crime in any jurisdiction, or is associating or consorting with any person or persons who have been convicted of a crime or crimes in any jurisdiction or jurisdictions, or is consorting or associating with, or has consorted with bookmakers, touts or persons [or] **of** similar pursuits, or is financially irresponsible, or has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, or has violated or attempted to violate any law with respect to racing in any jurisdiction or any rule, regulation or order of the Commission, or shall have violated any rule of racing which shall have been approved or adopted by the Commission, or has been guilty of or engaged in similar related or like practices.

13:70-4.11 False or misleading statements

Any person making any false, untrue or misleading statement [or] **on** an application for license or registration or in a written or oral examination in connection with such an application may be disciplined as provided for in these rules and regulations.

13:70-4.13 Disqualification of spouses; exception

Disqualification of either husband or wife applies equally to both, unless the spouse of the disqualified person shows to the satisfaction of the Commission that ownership and racing of his or her horses [are] **is** independent of [or] **and** not under the control or influence of the disqualified spouse.

13:70-4.14 Temporary application

Where in the case of extenuating circumstances an owner may be unavailable to complete the license application, permission may be granted by the Racing Commission for the horses of said owner to [be entered] **start**. The trainer **or assistant trainer** for the owner in question will be required to promptly [fill out] **complete** a temporary application and pay all license fees.

13:70-4.18 Badges

(a) All licensed personnel who enter the stable area of any track under the jurisdiction of the New Jersey Racing Commission, in any capacity whatsoever, shall wear upon their outside apparel, in a prominent position, the authorized badges containing picture identification supplied by the Commission. This rule shall also apply to State, track, veterinarian personnel, as well as the vendors and suppliers authorized in the stable area, and the badges shall be readily available and produced by such personnel upon request of track [police] **security**, county and city police, State police, TRPB operatives, [commission] **Commission** inspectors, and stewards at said request. Failure to comply with this rule will result in a $5.00 fine for the first offense; $10.00 fine for the second; $25.00 for the third and ejection from the grounds upon the fourth offense.

(b) Any person losing his identification license will be subject to a fine of not less than $2.00 or more than $10.00. The amount of **the** fine to be determined by the New Jersey Racing Commission.

13:70-5.2 Disputes concerning colors

Any dispute between [claimants] **persons** to the right of particular racing colors shall be decided by the stewards.

13:70-6.10 Unreported racing starts

A horse during the past calendar year **that** has started in a race which is not reported in the daily racing form monthly chart books[;], or a maiden which at any time has started in such a race[;], shall not be entered at a New Jersey track until all pertinent data relating to such race is available to the racing secretary.

13:70-6.11 Person attempting establishment of horse's identity

Any [persons] **person** attempting to establish the identity of a horse or its ownership shall be held to account, the same as the owner, and shall be subject to the same penalty in case of fraud or attempted fraud.

13:70-8.9 Failure to finish second or lower

No horse shall be given a weight allowance for failure to finish second [in] **or** any lower place in any race.

13:70-8.22 Weighing after race

After a race has been run, the jockey shall ride promptly to the [finish line] **proper designated area** and there dismount and present himself to the clerk of scales to be weighed in.

13:70-8.23 Assistance after race

If a jockey is prevented from riding his mount to the [finish line] **proper designated area** because of an accident or illness either to himself or his horse, he may walk or be carried to the scales, or he may be excused by the stewards from weighing in.

13:70-8.24 Touching horse after race

Except by permission of the stewards, every jockey must, on returning to the [finish line] **proper designated area**, unsaddle the horse he has ridden and no person shall touch said horse except by its bridle.

13:70-8.26 Jockey carries equipment to scales

Each jockey shall, in weighing in, carry over **to** the scales all pieces of equipment with which he weighed out.

13:70-9.17 Touting information; jockey

A jockey shall not give to anyone directly or indirectly any information or advice, or engaged [on] **in** the practice commonly known as "touting", for the purpose of influencing any person in the making of a wager on any race.

13:70-10.6 Time period

After entering the track, not more than 12 minutes shall be consumed in the parade to the post, except in cases of unavoidable delay. After passing the stands once, the horses will be allowed to canter, warm up or go as they please to the post. When horses have reached the post, they shall be started without unnecessary delay.

13:70-11.10 Jockey's best effort

A jockey shall put forth every reasonable effort and exercise the greatest diligence in riding a race. If, in the opinion of the stewards, a jockey does not put forth every reasonable effort or use proper diligence in the riding of **the** race, such jockey shall be penalized by the stewards according to the gravity of the offense.

13:70-14.7 Disqualified persons or horses

If any person willfully enters or causes to be entered or to start for any race, a horse which he knows to be disqualified; or if any person fraudulently offers or receives any amount of money for declaring an entry out of **a** purse or stakes **race**; or if any person, without making it known to the officials, is a part owner or acts as trainer of any horse in which a jockey possesses any interest, or makes

any bet with or on behalf of any jockey, unless on a horse he is riding; or offers or gives, except through his employers, or the owner or trainer of the horse ridden, a jockey any present, money or other reward in connection with his riding of any race; or if any person be guilty of any other corrupt or fraudulent practices on the turf, in this or any other country, then such person shall be ruled off the course.

13:70-14.16 Equine fatality report

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

(d) Failure to file the foregoing in a timely fashion or filing in an incomplete fashion may subject the trainer, custodian or veterinarian to disciplinary action.

1. Any falsification or misstatement submitted in connection with an equine fatality report may also subject the trainer, custodian and/or veterinarian to disciplinary action as provided in N.J.A.C. 13:71-[2.3] **31.3**.

(e) An equine fatality report shall not be required in connection with any pony or mascot.

13:70-15.1 List of racing officials

(a) The racing officials shall include:

1. Three stewards, [one of whom shall be] appointed by the Racing Commission and paid by the Association;

2.-12. (No change.)

13:70-15.2 Appointment

[One of] **The** stewards, a State Veterinarian and Associate State Veterinarians, and a supervisor of mutuels shall be appointed by the Racing Commission. One of the duly appointed State Veterinarians shall also be designated by the Racing Commission as the Chief State Veterinarian and shall so serve at the pleasure of the Racing Commission. All other racing officials listed in N.J.A.C. 13:70-15.1 shall be appointed by the association, subject to the approval of the [commission] **Commission**.

13:70-16.1 Qualifications

Before being appointed or approved by the Racing Commission [(or racing board)] to serve in the capacity of steward, an applicant shall have been employed as steward, racing secretary, assistant racing secretary, starter, placing judge, patrol judge, paddock judge or clerk of the scales at a recognized meet or meetings for a period of not less than 60 racing days per year, during at least three of the five preceding calendar years; provided, however, that if no applicant possesses the foregoing qualifications, whenever possible, the person or persons appointed or approved as steward should have had prior experience in some other branch of racing, such as owner, trainer, jockey, breeder or such other related experience as the Commission may deem sufficient.

13:70-16.10 Exclusion of ejectment of certain persons

The stewards shall have the power to exclude [or eject] from all premises and enclosures of the association any person who is disqualified for corrupt practices on the turf in any country; or so exclude [and eject] any other improper or objectionable persons.

13:70-16.19 Filling vacancies; stewards

If there is only one steward present, at race time, said steward shall fill all vacancies occurring in the stewards stand and in his absence the [Secretary] **Executive Director or his designee** of the New Jersey Racing Commission shall assume this responsibility.

13:70-19.33 Preserving order

It is the duty of the track superintendent to preserve order, enforce decorum, and prevent petty games of chance on the grounds of the association at such time as a meeting is not in progress. When a meeting is in progress, those duties shall fall upon the association [police] **security** force.

13:70-19.35 Duties of Chief State, State and Associate State Veterinarians

(a) The Chief State Veterinarian shall have the duty to supervise the activities of the various State Veterinarians and [Associated] **Associate** State Veterinarians in the performance of their prescribed duties.

(b) (No change.)

13:70-19.41 Veterinary reports

Veterinary practitioners shall make daily reports to the State Veterinarian and to the stewards of all horses under treatment by them, on forms to be furnished by the association. Treatment of any horse with a drug for which the practitioner has not submitted a report pursuant to this rule shall be accompanied by a written report to the State Veterinarian of such administration or intended administration but in [on] **no** event less than 72 hours before any such horse shall start. The pharmaceutical inserts accompanying such drug shall be made a part of said report which shall also be accompanied by a sample of the drug when so directed by the State Veterinarian. Failure to comply with the foregoing may subject the practitioner to disciplinary action by the stewards.

13:70-20.1 Trainer's license

Each trainer must obtain a license from the Racing Commission. Trainers not previously licensed in New Jersey may be required to submit to [such] **oral, written and barn** tests for qualifications as may be prescribed by the stewards and/or the Racing Commission.

13:70-20.3 Trainer's actions pending application approval

The stewards may permit a trainer to [act] **conduct business** pending action on his **or her** application.

13:70-20.6 Absence of trainer; substitutes

When a trainer is to be absent from his **or her** stable or the grounds where his **or her** horses are racing, for a period of more than two racing days, and horses are entered or are to be entered, he **or she** must provide a licensed trainer **or his or her assistant trainer** to assume the complete responsibility of the horses he **or she** is entering or running. Such licensed trainer shall sign in the presence of the stewards a form furnished by the Racing Commission accepting complete responsibility for [the] **said** horses being entered and running. [This rule need not apply to trainers having in their employ a licensed assistant trainer.]

13:70-20.9 Registering employees

A trainer shall register with [the Racing Commission] **backstretch security** every person in his **or her** employ, and it shall be his **or her** duty to see to it that his **or her** employees obtain licenses from the Commission. Trainers employing or harboring unlicensed or disqualified personnel may be subject to disciplinary action.

SUBCHAPTER 22. AUTHORIZED **GRANTS** [AGENTS]

13:70-22.5 License fees

The fee for each license shall be [$10.00] **$25.00**. If an agent represents more than one owner, a separate written instrument shall be filed for each owner and the fee paid in each case.

13:70-23.9 Objectionable persons

The stewards shall have the power to exclude [or eject] from all premises and enclosures of the association any person who is disqualified for corrupt practices on the turf in any country; or so exclude [or eject] any other improper or objectionable persons.

13:70-27.1 Licenses

All persons, including the employees and agents thereof, who engage in the profession or business of selling, at retail or wholesale, or otherwise disposing thereof, of any kind of merchandise, equipment, drugs or medication for animals or humans, or pharmaceutical horse food or nutrient of any kind, providing that such substances, or the sale or disposition thereof is not otherwise prohibited by law, shall be licensed by and be subject to the jurisdiction of the Racing Commission. All applicants for vendor license shall be recommended by the **director of** security [officer] of the track where application for license is made.

13:70-29.10 Payoff prices

(a) (No change.)

(b) Before the mutuel department of any race track posts the payoff prices of any pool for any race, the mutuel manager shall require

each of the (calculating sheets) computer print-out sheets of such race to be proven by the (calculator) computer and the winners verified. Such proof shall show pay[-], breaks, commission, and added together shall show they equal total pool.

(c) (No change.)

13:70-29.26 Errors in pay-off figures

(a) If an error is made in posting the pay-off figures on the public board, it shall be corrected promptly and only the correct amounts shall be used in the pay-off irrespective of the error [of] **on** the public board.

(b) (No change.)

13:70-29.48 Daily double

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

(c) In the event of a dead heat for the straight pool in the first half of the daily double, [on] **in** the event of a consolation pool, it shall not be deemed necessary to compute and post the actual pay-off prices on all the various combinations of the daily double before the running of the second half of the double. However, an effort should be made to compute the double prices and to announce them to the public over a loudspeaker system prior to the running of the second half of the double.

(d)-(r) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Proposed Readoption with Amendments: N.J.A.C. 13:71

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1989-665.

Submit comments by January 17, 1990 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
CN 088
200 Woolverton Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:71 is scheduled to expire on February 25, 1990. The current rules have been reviewed pursuant to the Executive Order and the Commission has found them to continue to be reasonable, necessary, and effective for the purposes for which they were originally promulgated which is to regulate the harness racing industry. The business of racing and legalized gambling attendant thereupon are strongly affected; therefore, close regulatory supervision is very appropriate. Upon review of the rules, it was discovered that there are non-substantive changes required due to the following: grammatical errors, typing errors, legislative changes (for example, secretary to the Commission is now the Executive Director of the Commission, the stewards are now appointed and employees of the Racing Commission rather than the track associations) and changes in terminology (for example, track police are now referred to as track security).

N.J.A.C. 13:71-7.24 has changed the fine for the loss of an identification card from $1.00 to not less than $2.00 or not more than $10.00 since the Racing Commission no longer issues fingerprint identification cards, but, rather, photo identification cards which cost more to process. N.J.A.C. 13:71-7.31(c) has been amended to require license applications from persons owning more than five percent of the capital stock instead of 10 percent. This change was brought about to be consistent with legislation that was enacted which requires stockholders owning more than five percent of stock in a racing association to receive Racing Commission approval. At N.J.A.C. 13:71-24.5, the fee for an authorized agent license has been changed from $10.00 to $25.00 to accurately reflect a change made in licensing fees in 1984 in N.J.A.C. 13:71-7.1, which states the fee for an authorized agent license shall be $25.00. Upon a review of the rules, it was found that this section had not been changed at the same time as N.J.A.C. 13:71-7.1.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the licensees and permit holders in the harness racing industry. This chapter contains 28 subchapters:

Subchapter 1 describes the general rules;

Subchapter 2 describes violations;

Subchapter 3 describes the procedures and requirements for requesting an appeal;

Subchapter 4 describes the definition of racing terminology in the harness industry;

Subchapter 5 establishes requirements placed upon the tracks;

Subchapter 6 describes the qualifications placed upon the associations;

Subchapter 7 describes the procedures for licensure;

Subchapter 8 describes the qualifications, duties and power of the officials;

Subchapter 9 describes the qualifications and responsibilities of the veterinarians;

Subchapter 10 contains provisions for printing a program;

Subchapter 11 describes the procedures and qualifications for identification of horses and their eligibility to race;

Subchapter 12 describes the procedures for licensure of entities;

Subchapter 13 sets forth the qualifications for the eligibility and classification of horses;

Subchapter 14 sets forth the qualifications and procedures for claiming horses;

Subchapter 15 sets forth the qualifications and standards for stakes and futurations;

Subchapter 16 describes the method of declaring horses to start and the drawing of horses into races;

Subchapter 17 describes the procedures used in the starting of races;

Subchapter 18 describes the procedures for implementation of breathalyzer and human urine testing;

Subchapter 19 describes the qualifications for drivers, colors and attire;

Subchapter 20 describes the general rules of racing;

Subchapter 21 describes the general rules of placing conditions and purses;

Subchapter 22 describes the prohibitions of radio receivers and transmitters during racing hours;

Subchapter 23 describes the medication and testing procedures;

Subchapter 24 describes the procedures for licensure of authorized agents;

Subchapter 25 describes the licensing procedures for vendors;

Subchapter 26 describes illegal practices;

Subchapter 27 (Mutuel) describes the procedures and method for computing prices to be paid to the patrons in the various types of wagering and the duties of the Supervisor of Mutuels and Mutuel Manager; and

Subchapter 28 describes the qualifications for a permit for an initial track application.

Social Impact

The rules proposed for readoption provide various procedures and requirements for the orderly administration and control of the Racing Commission's statutory mandate to regulate the harness racing industry and participants therein. The racing industry and the wagering thereon strongly affects the public's interest to strongly regulate racing. By its rules, the Racing Commission attempts to keep undesirables and people convicted of crimes of moral turpitude from involvement in racing as either patrons or participants. The readoption of these rules will assist the Racing Commission in its statutory mandate to provide revenue to the State of New Jersey, the orderly continuation of a racing circuit to maintain and enhance the employment it provides, providing the public with a recreational opportunity where the racetracks are situated and to improve the State's position in competition with neighboring jurisdictions.

Economic Impact

Horse racing is one of New Jersey's most important industries, provides substantial direct and indirect benefits to the State, provides employment and recreational opportunities to thousands of people and, at the same time, helps to preserve valuable agricultural farmland. In excess of six million people attended the racetracks in 1988 and they wagered a record Statewide handle in excess of $1,250,000,000. Slightly more than $1,000,000,000 was returned to the patrons. The State of New Jersey received more than $8,000,000 in revenue for the general treasury. The track associations, the horsemen and the horsemen's organizations re-

ceived $244,000,000 in 1988. Each track association conducts three charity days in which the state's revenue is forwarded to the Developmental Disabilities Council to be distributed to organizations designated by the council; this amounted to $239,000 in 1988. The Commission also distributed $70,000 to qualifying municipalities to offset increases in expenses from the operating of private tracks located in their areas. The readoption of the rules will have no unfavorable economic impact upon the participants in racing, since the licensing fees have been the same for several years. The fees as set forth in N.J.A.C. 13:71-7.1 are reasonable and transmitted to the General Treasury as revenue to the State which amounted to approximately $600,000 in 1988.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required since the proposed readoption of the harness rules will have no effect upon small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., with the exception of practicing veterinarians. Practicing veterinarians are required to make daily reports to the State veterinarians and to the stewards of all horses under treatment by them. The cost of imposing this reporting and/or recordkeeping on the practicing veterinarian is minimal. The only requirement imposed upon owners who may be involved in a stable name, and thus, perhaps, small businesses, is the completion of an application for a license as an owner and as an assumed name.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:71.

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

13:71-1.20 Authority to impose penalties; report; payment

(a) (No change.)

(b) No race official other than the steward, the Board of Judges, and the starter shall have the right to impose a fine or suspension, in the first instance[. (See Subchapter 3 (Appeal)] **(see N.J.A.C. 13:71-3, Appeal** for exception[.]). A race official imposing a fine or suspension shall report it promptly to the [secretary] **Executive Director** of the racing Commission and the race secretary, in writing. All fines imposed shall be paid to the race secretary within 48 hours after the imposition thereof. Fines collected by the race secretary shall be paid promptly to the Racing Commission. An unpaid fine may not be rescinded except with the approval of the Racing Commisssion.

13:71-4.1 Definitions

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

. . .

"Amateur driver" means a driver who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past [ten] **10** years.

. . .

"Jersey Bred" means a horse dropped by a mare in the State of New Jersey, which circumstance is necessary to qualify for registration with the Standardbred Breeders Association of New Jersey. Such registration is a requirement for eligibility to be entered or to start in races exclusively for horses foaled in New Jersey.

. . .

"Length of race and number of heats or dashes" means races or dashes shall be given at a stated distance in units not shorter than 1/16 of a mile. The length of a race and the number of heats shall be stated in the conditions. If no distance or number of heats or dashes are specified all races shall be a single mile dash. No two-year old shall be permitted to start in a dash or heat exceeding one mile in distance. Except where elimination heats or dashes are required, two-year olds may start only in races conditioned not to exceed two dashes or in a two in three race which shall terminate in three heats or dashes. In two-year old races any colt may default at the end of a second heat or dash and the remaining colt shall be declared the winner. Any colt withdrawing under this rule shall forfeit all right to the winners' share of the purse or to the award of the trophy. [Any arrangement between contestants for sharing purse money shall be a violation of Racing Rule 5, Section 3 (Hippodroming).] In the event all eligibles withdraw, the sponsor may retain the [ten] **10** per cent and the trophy.

. . .

"Paddock" means a man tight enclosure in which horses scheduled to compete in a race program are confined prior to racing under the supervision of paddock judge[:].

[1. To be eligible to be entered or to start in races exclusively for horses foaled in New Jersey, each horse must be registered with the standardbred breeders association of New Jersey. To qualify for such registration the said horse must have been dropped by a mare in the State of New Jersey. "Breeder" of a horse is the owner of its dam at the time of foaling.]

. . .

"Post position" means [post] **race** positions shall be determined publicly by lot in the presence of one or more [stewards] **Judges** or their deputies, and at least one trainer licensed by the Racing Commission. Post positions shall be drawn at scratch time. Beginning from the inside rail, the horse shall take their positions at the post in keeping with the numerical order resulting from the public drawing.

"Protest" means a protest, except a protest involving fraud may be filed only by the owner (or his authorized agent), trainer or driver of a horse engaged in the race over which the protest is made or by a racing official of the meeting. A protest involving fraud may be made by any person. A protest, except a claim growing out of happenings in the running of the race, must be made in writing, signed by the complainant, and filed with the [stewards] **Judges** at least 60 minutes before post time of the race in question. To merit consideration, any protest over the status of an alleged maiden must be made in writing, signed by the complainant, and filed with the [stewards] **Judges** at least two hours before and programmed post time for the race in which the protested maiden is scheduled to run. A protest against a horse engaged in a race, and filed with the [stewards] **Judges** not less than 60 minutes before post time, shall receive immediate consideration; and in default of proof within 30 minutes of post time that the horse is qualifed to start, the horse may be disqualified from starting. To merit consideration, a protest against the programmed distance of a race must be made at least 30 minutes before post time for that race. To merit consideration, a protest against a horse based on a happening in a race must be made to the [stewards] **Judges** before the placing of the horses for that race has been officially confirmed. If a driver wishes to protest a happening in a race, he must so notify the [stewards] **Judges** immediately after the finish of said race. Before the consideration of a protest, the [stewards] **Judges** may demand a deposit of $25.00 to be made with the racing secretary. This deposit shall be applied to the costs and expenses, as provided by this rule. Any excess shall be refunded unless the protest is found to be frivolous, in which case the deposit may be assessed as a fine. A person or persons lodging a protest must pay all the costs and expenses incurred in determining the objection unless his objection is upheld in which case the cost shall be paid by the offender. Pending the determination of a protest, any money or prize won by a protested horse, or any other money affected by the outcome of the protest shall be paid to and held by the racing secretary until the protest is determined. The [stewards] **Judges** are vested with power to determine the extent of disqualification in cases of fouls. They may place the offending horse behind such horses as in their judgment it interefered with, or they may place it last. A protest may not be withdrawn without permission of the [stewards] **Judges**. No person shall make frivolous protests. The [stewards] **Judges** shall keep a record of all protests and complaints, and of any action taken thereon[;], and shall report both daily to the Racing Commission.

. . .

13:71-7.1 Persons required to have licenses; **fingerprints and photographs**

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

13:71-7.7 Applications

(a) All applications for owner, driver and trainer license and registration of stable name and multiple owner registration must be exam-

ined by the steward for and on behalf of the New Jersey Racing Commission. The steward shall ascertain if the applicant is qualified as to ability and integrity, and shall report [its] **his** findings to the New Jersey Racing Commission.

1. In considering each application for a license, the steward may require the applicant, as well as the applicant's endorsers, to appear before him.

2. The burden shall be upon the applicant to show that he, she or it is qualified in every respect to receive the license applied for.

3. Ability, as well as integrity, must be clearly shown by the applicant in order to receive the steward's recommendation to the New Jersey Racing Commission for the granting of the license.

13:71-7.24 Loss of identification card

All persons who have in their possession [a fingerprint] **an** identification card issued by the New Jersey Racing Commission and lose same are subject to a fine of [$1.00] **not less than $2.00 or more than $10.00**, to be paid before a duplicate card can be issued.

13:71-7.25 Application for driver's license

(a) Every person desiring to drive a harness horse at a race meeting licensed by the Commission shall be required to obtain a license from the Commission. Such application shall be on forms provided by the Commission; applications may be filed at any Commission office. Such license shall be presented to the clerk of the course before driving.

[1. A driver must have a minimum of 20-40 vision in one eye, corrected, according to certification by a licensed optometrist, or ophthalmologist. All drivers must be examined at least biannually by one of the aforementioned doctors. Proof of such examination must be submitted with his application for a license.]

(b) (No change.)

(c) Any applicant who has complied with the requirements of (a) and (b) above, may be eligible for a license in New Jersey in the following categories:

1. [(f)] **F** (Fair) A License valid for fair meetings. Drivers holding a license valid for fairs only who have driven at fairs must demonstrate an ability to drive satisfactorily before they will be granted a (Q) license valid for qualifying races.

2.-5. (No change.)

(d) (No change.)

13:71-7.31 Qualification for owner's license

(a) Every applicant for a license as an owner in addition to any other requirements mentioned herein shall:

1. Be at least 18 years of age unless a parent or legal guardian expressly assumes responsibility for an applicant who is under 18 years of age;

2. Submit evidence of good moral character; **and**

3. Furnish a completed application form[;].

[4.] **(b)** Where a horse is owned jointly by two or more parties, all parties must comply with [subsections] **(a)**1, 2 and 3 above.

[5.] **(c)** Where a horse is owned by a corporation, all officers, directors and person owning more than [10] **five** percent of the capital stock must comply with [subsections] (a)1, 2 and 3 above.

13:71-7.35 Badges

(a) All licensed personnel who enter the stable area of any track under the jurisdiction of the New Jersey Racing Commission in any capacity whatsoever shall wear upon their outside apparel in a prominent position the authorized badges containing picture identification supplied by the Commission. This rule shall also apply to State, track, veterinarian personnel, as well as the vendors and suppliers authorized in the stable area, and the badges shall be readily available and produced by such personnel upon request of track [police] **security**, county and city police, State police, [HTS operatives,] Commission inspectors and stewards at said request. Failure to comply with this rule will result in a $5.00 fine for the first offense; $10.00 fine for the second; $25.00 for the third; and ejection from the grounds upon the fourth offense.

1. (No change.)

(b) (No change.)

13:71-8.24 Procedure of judges

(a) It shall be the procedure of the judges to:

1. Be in the stand 15 minutes before the first race and remain in the stand for [ten] **10** minutes after the last race and at all times when the horses are upon the track;

2.-6. (No change.)

7. Post the objection sign, or inquiry sign, on the odds board in the case of a complaint or possible rule violation, and immediately notify the announcer of the objection and of the horse or horses involved. As soon as the judges have made a decision, the objection sign shall be removed, the correct placing displayed and the "Official" sign flashed. [The "Official" sign shall not be displayed until all horses and drivers of the race have returned to the judges' stand and saluted. Horses and drivers unable to finish the race are excepted.] In all instances the judges shall post the order of finish and the "Official" sign as soon as they have made their decision;

8.-9. (No change.)

13:71-8.33 [Secretary to] **Executive Director of** the [commission] **Commission**

The [secretary] **Executive Director** appointed by the [commission] **Commission** shall be a representative at large [or] **of** the [commission] **Commission**. He shall have general supervision over all race officials, licensees and employees or appointees of the [commission] **Commission**. He shall supervise the licensing of all those persons required to be licensed by the Commission and supervise the security provisions of all associations. He shall generally supervise the conduct of racing, the pari-mutuel operations and the testing of horses. He shall have the authority to conduct inquiries and in connection therewith to issue subpoenas, to compel the attendance of witnesses and the production of all relevant and material reports, books, papers, documents, correspondence and other evidence as directed by the [commission] **Commission**. He shall have the power to administer oaths and examine witnesses and shall submit a report of all proceedings thereon. He shall at all times have access to all parts of the course, plant and grounds, including the pari-mutuel department. The compensation of the [secretary] **Executive Director** shall be fixed and paid by the [commission] **Commission**. The [commission] **Commission**, in its discretion, may appoint such assistants to the [secretary] **Executive Director** or stewards as it may deem necessary who shall have the same authority as the [secretary] **Executive Director** in his absence but such assistants or stewards shall be junior in authority to the [secretary] **Executive Director** at all times.

13:71-12.1 Registration

A racing, farm, corporate or stable name may be used by the owners or lessees of horses if currently registered with the United States Trotting Association. The names of all persons interested in the stable or operating thereunder shall be listed in such registry and shall not exceed [ten] **35** in number.

13:71-15.29 Elimination heats or two divisions

(a) In any stake event or futurity where the number of horses declared in to start exceeds 12 on a half mile track, 14 on a 5/8 mile track or 16 on a mile track, the race may at the option of the association be raced in elimination heats or divisions. The association exercising such option, however, must do so before positions are drawn. In the event a stake or futurity is split into division, the added money for each division shall be at least 20 percent of all nomination, sustaining and starting fees paid into such stake or futurity.

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

13:71-18.1 Breathalyzer test

Officials, drivers, trainers and grooms shall, when directed by the presiding judge, submit to a breathalyzer test and if the results thereof show a reading of more than .05 percent of alcohol in the blood, such person shall not be permitted to continue his duties. The [stewards] **Judges** may fine or suspend any participant who records a blood alcohol reading of .05 percent or more. Any participant who records a reading above the prescribed level on more than one occasion shall be subject to expulsion, [on] **or** such penalty as the [stewards] **Judges** may deem appropriate.

13:71-20.18 Fradulent breaking

If a driver allows his horse to break for the purpose of fraudulently losing a heat or dash, he shall be liable to the penalties [thereunder] **provided for in N.J.A.C. 13:71-2.3.**

13:71-22.1 Radios, receivers and transmitters

(a) All radios, receivers and transmitters on the licensed premises of any race track shall be operated, monitored or tape recorded under the supervision of the security director. A complete list of operating and maintenance personnel shall be submitted to the track [police] **security**, the State Police and the New Jersey Racing Commission. Instant dismissal and further appropriate action shall be taken for the transmittal of information either in vernacular or code, regarding performances of horses, races, race-results, mutuel odds, pay-off prices or any other pertinent information.

(b) Final approval shall rest with the New Jersey Racing Commission before the sets become operational.

13:71-24.5 License fees

The fee for each license shall be [$10.00] **$25.00**. If an agent represents more than one owner, a separate written instrument shall be filed for each owner and the fee paid in each case.

13:71-27.45 Calculating the pay-off in dead heats

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

(d) Where two or more horses racing for one interest or field horses participate in dead heats, each horse of the entry [of] **or** field is entitled to his proportionate share of the profits in the pool in which the dead heat occurs and the other pools affected. For example: where two horses of any entry or field "dead heat" for straight, the straight and place prices are calculated as straight pools and the entry is entitled to two-thirds of the profits of the show pool.

(e) (No change.)

13:71-27.53 Super-Six

(a)-(j) (No change.)

(k) If, for any reason, any race or races of a Super-Six program is cancelled and declared "No Race," the Super-Six pool shall be distributed to the holders of the most winning selections of the remaining races pursuant to (f)1 and 2 above. In the event the [Stewards] **Judges** cancel or declare as "No Race" three or more of the Super-Six races for any given date, all pari-mutuel tickets for that Super-Six pool shall be refunded and the Super-Six cancelled for that day.

(l)-(p) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Motions For Protective Orders

Proposed New Rule: N.J.A.C. 14:1-8.6

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: AX89070649.

Proposal Number: PRN 1989-661.

Submit comments by January 17, 1990 to:

Karen Kennedy, Esq.
Assistant Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 14:1-8.6 has been formulated to clarify the requirements for, and the procedures to be followed by, those persons or parties seeking a protective order concerning documents filed with the Board of Public Utilities, or submitted within the context of a proceeding before the Board, and those persons or parties seeking access to protected documents.

Social Impact

The proposed new rule sets forth the process for seeking a protective order, or seeking access to documents protected by such an order. This clarification of procedures is beneficial to parties concerned in a protective order issue. The social impact of protective orders themselves, or obtaining access to documents protected by such orders, cannot be addressed generally, since such impact arises only under individual sets of circumstances affecting parties as yet unspecified.

Economic Impact

No significant economic impact is anticipated from the proposed new rule, since it clarifies an administrative process. The direct expense involved for those seeking protective orders or documents protected thereunder would be the motion process. Consideration of such motions is part of the Board's administrative budget. The economic impact of the issuance of protective orders or the release of protected documents is unpredictable, depending as it does on the individual circumstances in each case.

Regulatory Flexibility Analysis

As the proposed new rule clarifies an administrative process, the requirements of such process must be followed by those seeking protective orders or the release of protected documents. Parties to such actions may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the preparation and filing of the motions is normally done by an attorney, such professional assistance is not a requirement; a person or entity may act on its own behalf. Since the costs of motion preparation and filing are not directly related to the business size of the filing party, and because the rule's purpose is to provide a uniform, fair procedure, no differentiation of requirements is made based upon business size.

Full text of the proposal follows:

14:1-8.6 Protective orders

(a) The Board, upon its own initiative or upon motion by a party or by a person from whom information is sought, and for good cause shown, may issue a protective order requiring that documents filed with or maintained by the Board or submitted within the context of a proceeding before the Board not be disclosed or be disclosed only in a designated way. Such protective order may include a provision that documents be sealed and maintained by the Secretary of the Board.

(b) Any party or person may agree to treat materials confidential pending the filing of a motion for protective order. When such an agreement is made, the parties seeking confidentiality shall within 10 days make a motion to the Board for protective order.

(c) Any motion seeking a protective order shall be supported by affidavit and shall clearly set forth the facts upon which the motion is based. The Board may issue an order providing for confidential treatment of any documents which are the subject of a motion for a protective order pending the Board's decision on the motion.

(d) A party or person seeking a protective order shall have the burden of proving good cause by a preponderance of the evidence.

(e) In considering a request for the issuance of a protective order, the Board may require that the subject documents be available to it for *in camera* inspection.

(f) Grounds for issuing a protective order may include but shall not be limited to the following:

1. The documents sought to be protected constitute the trade secrets or other proprietary or confidential research, development or commercial information of a party or person; and/or

2. The documents sought to be protected contain information which if disclosed, would cause a party or person undue embarrassment, annoyance, oppression, deprivation of privacy or undue burden or expense.

(g) Documents under protective order shall not be deemed to be public records subject to the Right to Know Law, N.J.S.A. 47:1A-1 et seq., and may be disclosed only to the extent specifically permitted in the protective order. Disclosure beyond that authorized in the protective order may not occur without the approval of the Board upon motion and notice to all parties. Said motion shall be supported

by affidavits and shall set forth with particularity the identity of the movant, the reasons for the request for disclosure and the harm to the movant, if any, if the documents are not released.

(a)

BOARD OF PUBLIC UTILITIES

Meter Tampering

Proposed New Rule: N.J.A.C. 14:3-4.11

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: AX89100855.
Proposal Number: PRN 1989-660.

A **public hearing** concerning this proposed new rule will be held on:
January 11, 1990 at 10:00 A.M.
Board's Hearing Room
Two Gateway Center—10th floor
Newark, New Jersey

Submit written comments by January 17, 1990 to:
Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 14:3-4.11 has been formulated to outline utility responsibility in allegations of meter tampering. It provides guidelines for dissemination of customer information and utility procedures for detection and prevention of meter tampering.

Subsection (a) of the new rule outlines specific informational and monitoring procedures for implementation by the utility. It provides for customer education by the utility in meter tampering detection, as well as customer and utility responsibility for meter tampering. It requires each utility to establish monitoring and detection procedures which include additional employee training. It further includes a suggested employee incentive plan regarding the detection of incidences of meter tampering.

Subsection (b) of the rule identifies specific items to be evaluated by the Board in assessing liability in meter tampering disputes.

Subsection (c) provides a formula for reimbursement in meter tampering cases where there is a showing by a preponderance of the evidence of wrongdoing on the part of the customer of record.

Social Impact

The proposed new rule will provide all customers of record and utilities with guidelines for determining responsibility in allegations of meter tampering. It requires utilities to take more pro-active measures to prevent meter tampering and to detect those meters which have been tampered with. The guidelines should also facilitate a more specific and equitable assessment of liability than was previously possible.

Economic Impact

The proposed new rule will have a positive economic impact on electric and gas utilities as well as the customers paying the rates charged by those utilities. Implementation of the customer information and tampering detection procedures mandated by the rule will enable the utilities to discover meter tampering in a timely manner, thus reducing the amount of utility uncollectible expenses and mitigating the erosion of revenues.

In turn, early detection of evidence of meter tampering protects the economic interest of the ratepayer, who ultimately bears the costs associated with uncollectible expenses.

The incremental costs to the utility related to computer programming, development of customer information and meter reading are clearly outweighed by the potential savings inherent in a systematic monitoring and tampering detection program.

Regulatory Flexibility Analysis

The proposed new rule imposes compliance requirements on all electric and gas utilities in the State, one of which is a small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule requires the development of a meter tampering detection program, a program of customer information and a monitoring program. The costs of these programs will vary depending upon a utility's customer base and the extent of its meter tampering prevention efforts to date. A utility may have to engage professional services, at varying cost, regarding the customer information (advertising, design or public relations firm) and monitoring programs (electronic and/or computer professionals). However, the Board anticipates that success in an anti-meter tampering effort will more than offset any costs involved. Since the problem of meter tampering is industrywide, regardless of the size of the utility, and because of the prescribed programs' expected cost offset, no lesser requirements are provided for small businesses.

Full text of the proposal follows:

14:3-4.11 Meter tampering

(a) Each electric and gas utility shall implement the following customer information and tampering detection procedures:

1. The utility shall provide to new customers at the time of service connection, and existing customers on an annual basis, notification describing meter tampering and an explanation of customer and utility responsibility for meter tampering as provided for in this section.

2. The utility shall visually inspect each customer meter at the time of initial service connection for purposes of detecting existing tampering devices.

3. The utility shall monitor the monthly consumption of its customers recorded on utility meter equipment.

4. In all cases wherein two consecutive months registered normalized consumption at a premises falls by 30 percent or more below the weather normalized usage during the same two months of the prior year at the same premises, the utility shall investigate the existence of meter tampering devices at the premises no later than during the next scheduled meter reading.

5. The utility shall insure that its meter reading employees are fully trained in the detection of meter tampering.

6. The utility shall implement a meter tampering detection program within the standard meter reading operation which provides for the visual inspection of each customer meter at least once during every six-month period. The utility may provide reasonable financial or other incentives to meter readers who discover meter tampering.

(b) In assessing meter tampering disputes, the Board will take into consideration the following factors in determining liability:

1. Utility compliance with the requirements set forth in (a) above;

2. Evidence presented by the utility of alleged wrongdoing by a customer of record;

3. Any efforts made by the customer of record to ascertain the accuracy of the billings;

4. The degree to which the utility could have reasonably detected the alleged tampering in such a manner as to have minimized its losses; and

5. Any other circumstances deemed relevant.

(c) Where there is a showing by a preponderance of the evidence of wrongdoing on the part of the customer of record, such customer shall have the burden of reimbursing the utility for the reasonable estimated cost of unmetered service, as well as for costs associated with the investigation of meter tampering, including legal costs.

(b)

BOARD OF PUBLIC UTILITIES

Discontinuance of Residential Service to Tenants; Notice

Proposed Amendment: N.J.A.C. 14:3-7.14

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: 0X8806-0738.
Proposal Number: PRN 1989-659.

Submit comments by January 17, 1990 to:
Karen Kennedy, Esq.
Assistant Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 14:3-7.14 is designed to prevent health and safety hazards resulting from the discontinuance of electric, gas, water and sewer utility service to a multiple family premises. The proposed amendment will require affected utilities to advise municipalities in writing of a pending discontinuance of service to a multiple family premises, to post a notice of intent to discontinue service in or at the premises and to give individual notice to tenants 14 days in advance of discontinuance, and to maintain records of same.

Social Impact

The proposed amendment will give tenants of a multiple family premises who are not customers of a utility greater protection against the loss of utility service caused by the failure of their landlord to pay for such service. The additional notice time provided by the amendment will give tenants a greater opportunity, whether directly or through local officials, to organize and prevent discontinuance of service by causing their landlord to pay a delinquent utility bill or obtaining the transfer of the utility account into the name of the tenant or an association of tenants, thus allowing tenant control of the payments.

Economic Impact

The proposed amendment will have a slight economic impact upon affected utilities as they will now be required to notify municipal officials, as well as tenants, of a pending discontinuance of service to a multiple family premises and to maintain records of such notification. The affected utilities may have to carry three days additional charges for service before discontinuing service or transferring the name of the account to the tenant or association of tenants.

Regulatory Flexibility Analysis

The proposed amendment will apply to electric, gas, water and sewer utilities which the Board regulates within the State, some of which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The furnishing of notice to municipal officials and the maintenance of a record of such notice and of notice to tenants are new requirements. No professional service will be needed to comply with the requirements. The initial capital costs and annual cost of compliance with the proposed amendment should be minimal. The proposed amendment merely expands upon the existing rule and, therefore, there should be little adverse economic impact upon affected utilities, whether they be large or small businesses.

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

14:3-7.14 Discontinuance of residential service to tenants

Electric, gas, water and sewer public utilities shall make every reasonable attempt to determine when a landlord-tenant relationship exists at residential premises being serviced. If such a relationship is known to exist **and the landlord is the current customer for such service**, discontinuance of residential service is prohibited unless the utility has posted [notice of discontinuance] **notification of intent to discontinue service at least 14 days** in the common areas of **and/or at access points to** multiple family premises and has given individual **written** notice to occupants of single and two-family dwellings and has offered the tenants continued service to be billed to [the] **a tenant or an association of** tenants, unless the utility demonstrates that such billing is not feasible. **In addition, the utility shall notify the local municipal health department in writing of a pending discontinuance of service to multiple family premises. If there is no municipal health department, the utility shall notify the municipal department or official responsible for the function of a health department. Such notification shall be made at the time the notice of intention to discontinue service is made. Such posted notice and individual notice shall be at least 10 days in advance of any discontinuance of service. The utility shall maintain records of such notices of intent to discontinue distributed to tenants and municipalities.** The continuation of service to a tenant shall not be conditioned upon payment by the tenant of any outstanding bills due upon the account of any other person. The utility shall not be held to the requirements of this provision if the existence of a landlord-tenant relationship could not be reasonably ascertained.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Adoption of Traffic Regulations, Highway Signs, Application Procedures for the Approval of Traffic Signals and of Channelization on County and Municipal Road and Streets; Certification of Traffic Control Devices

Proposed Amendments: N.J.A.C. 16:27-1.1, 1.2, 2.1 through 2.4, 4.1 through 4.3, 4.5 through 4.7

Proposed New Rule: N.J.A.C. 16:27-5.1

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44 and 27:1A-51.
Proposal Number: PRN 1989-649.

Submit comments by January 17, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN-600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will effect Departmental title changes in N.J.A.C. 16:27 to comply with the Department's Reorganization Plan (see 20 N.J.R. 937). The proposed new rule, N.J.A.C. 16:27-5.1, in proposed new subchapter 5, Certification of Traffic Control Devices, will establish a new fee for requests for certification from private citizens and/or attorneys representing clients, as to whether or not a specific traffic control device has received the approval of the Commissioner of Transportation.

Under the provisions of N.J.S.A. 27:1A-44, certain powers and duties performed by the Division of Motor Vehicles were transferred to the Commissioner of Transportation. The Department, over the years, has charged a fee of $5.00 for processing of traffic control device certifications within the guidelines of N.J.S.A. 39:2-10. However, a review and analysis conducted by the Bureau of Traffic Engineering and Safety Programs has indicated that the number of requests continue to rise primarily due to the increase of traffic fines resulting from traffic summonses and the fact that a summons can result in an increase in insurance rates as well as surcharges and the potential loss of driver's license. Additionally, the analysis proved that the time invested to process each document averages $20.00, not including overhead costs.

Therefore, in view of the analysis and review, under the provisions of the authority granted the Commissioner of Transportation under N.J.S.A. 27:1A-5(h)(4), the Department proposes new rule N.J.A.C. 16:27-5.1.

Social Impact

The proposed amendments will reflect title changes in N.J.A.C. 16:27 to comply with the recent Department's Reorganization Plan (see 20 N.J.R. 937). Additionally, proposed new rules at N.J.A.C. 16:27-5 are being added to provide the requirement for a fee increase in the certification of traffic control devices in view of the time required to complete such searches. No social impact beyond regulatory clarity is expected from the proposed title changes. It is envisioned that an increase in fee under the proposed new rule may reduce the number of requests for certification of traffic control devices.

Economic Impact

The Department will incur direct and indirect costs required in completing searches for the certification of traffic control devices on all roads

and streets as requested by private citizens and/or attorney(s) representing private citizens. Requesters of certification(s) will experience an increase of costs involved in providing such information. No impact will occur due to the title changes through the proposed amendments.

Regulatory Flexibility Statement

The proposed amendments do 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 proposed new rule increases the fees charged by the Department for certification of traffic control devices. While such certification requests are usually made by or on behalf of private citizens, such requests on behalf of small businesses require the same Departmental costs in response. Thus, no basis exists for charging a lesser fee for certification requests made by or on behalf of small businesses.

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

CHAPTER 27
BUREAU OF TRAFFIC ENGINEERING
AND SAFETY PROGRAMS

16:27-4.5 Submission

(a) One of the following methods shall be used in preparing and submitting the signal design:

1.-2. (No change.)

3. The municipality or county may submit a sepia tracing of an intersection plan showing the information set forth in [Section 4.4(a)1 of this Subchapter] **N.J.A.C. 16:27-4.4(a)1** and request the Bureau of Traffic Engineering **and Safety Programs** to accomplish the design. The Bureau of Traffic [Engineering's] **Engineering and Safety Programs'** engineers will maintain liaison with local officials to insure their concurrence with the final design.

NOTE: (No change.)

16:27-4.6 Installation of signal and submission of signal ordinance

(a) Having obtained the Bureau of Traffic [Engineering's] **Engineering and Safety Programs'** authorization, local officials may proceed with the installation, modification or revamping of the traffic signal.

(b) Upon completion of the authorized signal work, local officials should prepare a traffic signal ordinance (a model traffic signal ordinance is available for inspection at the Division of [Transportation Operations] **Traffic Engineering** and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625). If the signalized intersection involves a county roadway, it is necessary that the municipality must also obtain a resolution of consent from the Board of Chosen Freeholders. The proposed municipal ordinance, and county resolution of consent from the Board of Chosen Freeholders if applicable, must be submitted to the [Chief Engineer, Transportation Operations] **Manager, Bureau of Traffic Engineering** and [Local Aid,] **Safety Programs** for approval.

SUBCHAPTER 1. ADOPTION OF TRAFFIC REGULATIONS

FOREWORD

(No change.)

'A copy of this manual may be inspected at the Office of the Division of [Transportation Operations] **Traffic Engineering** and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, **CN 600**, Trenton, NJ during normal business hours.

OAL NOTE: The preceeding footnote relates to the Foreword to N.J.A.C. 16:27-1, which is not changed by this proposal and is, therefore, not reproduced herein.

16:27-1.1 Requirements

(a) All matters concerning traffic regulations shall be referred to the Bureau of Traffic Engineering **and Safety Programs**, Division of [Transportation Operations] **Traffic Engineering** and Local Aid.

(b) (No change.)

16:27-1.2 Notification

(a) Copies of the regulation with letters of transmittal indicating dates of adoption and approval shall be prepared by the Bureau of Traffic Engineering **and Safety Programs** and forwarded to the following:

1.-4. (No change.)

5. Bureau of Maintenance **Support** (N.J.D.O.T.);

6.-7. (No change.)

16:27-1.3 to 16:27-1.6 (No change.)

16:27-2.1 Requirements

All construction plans, including specifications, designed by any agency other than the [department] **Department**, and which affect the interests of the [department] **Department**, shall be furnished to the Bureau of Traffic Engineering **and Safety Programs** for approval prior to the erection of any signs.

16:27-2.2 Requests

All requests for signs, or revisions thereof, shall be submitted in writing to the Bureau of Traffic Engineering **and Safety Programs**, Division of [Transportation Operations] **Traffic Engineering** and Local Aid.

16:27-2.3 Authorization

(a) The [Chief] **Manager**, Bureau of Traffic Engineering **and Safety Programs,** shall authorize all signs or changes to existing signs, by memorandum or by a plan drawing signed by him.

(b) All complaints or suggestions regarding signs received by the Department shall be referred to the Bureau of Traffic Engineering **and Safety Programs** for investigation, study and action.

16:27-2.4 Erection

All signs shall be erected only as specified by the [Chief,] **Manager**, Bureau of Traffic Engineering **and Safety Programs,** whose specifications shall include message, size of sign, letter size and spacing, material, [reflecting] **reflectivity** or lighting requirements, location, height and any other requirements he may deem necessary.

16:27-4.1 Initial application

(a) An initial application shall be submitted by the authority having jurisdiction, except that on county roads, a municipality may submit an application if accompanied by a letter of consent from county officials. This initial application will enable the Bureau of Traffic Engineering **and Safety Programs** to determine if a traffic signal or channelization is warranted before time consuming work begins.

(b) (No change.)

16:27-4.2 Information required and initial application

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

NOTE: Traffic count and accident summary forms are available upon request from the Division of [Transportation Operations] **Traffic Engineering** and Local Aid, New Jersey Department of Transportation, 1035 Parkway Avenue, **CN 600,** Trenton, New Jersey 08625.

16:27-4.3 Method of applying

(a) Upon receipt of the information indicated in [Section 4.2 of this Subchapter] **N.J.A.C. 16:27-4.2**, the Bureau of Traffic [Engineering's] **Engineering and Safety Programs'** engineers will review the material and if it is determined that a traffic signal and/or channelization is warranted, the Division of [Transportation Operations] **Traffic Engineering** and Local Aid will authorize the design of the appropriate device.

(b) (No change.)

16:27-4.7 Inspection and approval

(a) The following methods shall be used to insure that the signal installation conforms with the authorized design.

1. After the installation is completed, and before it is placed in operation, responsible officials must notify the Bureau of Traffic Engineering **and Safety Programs** and request an inspection; or, the responsible professional engineer should forward a letter certifying that the installation has been inspected by him **or her**, or a member of his **or her** staff, and conforms with the authorized design.

2. When the installation conforms to the authorized design, and the various regulations set forth in the design have been approved, the Bureau of Traffic Engineering **and Safety Programs** will recommend approval of the appropriate signal ordinance and/or resolutions.

SUBCHAPTER 5. [(RESERVED)] CERTIFICATION OF TRAFFIC CONTROL DEVICES

16:27-5.1 Information requests

All requests for information concerning whether or not a specific traffic control device has received the approval of the Commissioner of Transportation must be submitted in writing to the Bureau of Traffic Engineering and Safety Programs, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625 accompanied by a payment in the amount of $20.00.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits
Route N.J. 168 in Camden County
Proposed Amendment: N.J.A.C. 16:28-1.12

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.
Proposal Number: PRN 1989-662.

Submit comments by January 17, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish a "school zone speed limit" within the Gloucester Township Elementary School zone along Route N.J. 168 in Gloucester Township, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children during recess or while they are going to or leaving school during opening or closing hours.

Based upon a request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "school zone speed limit" within the Gloucester Township Elementary School was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.12 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish a "school zone speed limit" within the Gloucester Township Elementary School along Route N.J. 168 in Gloucester Township, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safety of children during recess or while they are going to or leaving school during opening or closing hours. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zones signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment 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 amendment primarily affects the motoring public.

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

16:28-1.12 Route 168

(a) The rate of speed designated for the certain [part] **parts** of State highway [route number] **Route 168** described in this [section] **subsection** shall be [and hereby is] **established** and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i. (No change.)

ii. Zone 2: 40 miles per hour in Gloucester Township, **Camden County,** to 200 feet south of Lake Avenue; thence

(1) School zone: 25 miles per hour within the Gloucester Township Elementary School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.

iii. through x. (No change.)

(b)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT

Outdoor Advertising Tax Act Rules
Proposed Readoption: N.J.A.C. 16:41A

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-52, 54:40-64 and 54:51-1
Proposal Number: PRN 1989-648.

Submit comments by January 17, 1990 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), N.J.A.C. 16:41A, Outdoor Advertising Tax Act, will expire on February 19, 1990. Additionally, the Department of Transportation (NJDOT) is required to review its existing rules periodically to determine their continuing usefulness and necessity. Accordingly, NJDOT has undergone such a review of its rules contained in N.J.A.C. 16:41A by the staff of the Bureau of Maintenance Support, Division of Construction and Maintenance Support, which revealed that the rules should be readopted as it was found to be necessary and required for the purpose for which promulgated. The rules were amended to conform with the Department's Reorganization Plan and current procedural changes at 21 N.J.R. 2237(a) and adopted at 21 N.J.R. 3312(b).

These rules were proposed to implement provisions and purposes of the Outdoor Advertising Tax Act, formerly undertaken by the Division of Taxation in the Department of Treasury in accordance with N.J.S.A. 27:1A-52. Additionally, they continue the permit fee schedule presently being charged for space used for outdoor advertising along the state's highway system, and no increase in fees is being proposed.

The chapter prescribes the requirements of the New Jersey Department of Transportation governing the licensing of outdoor advertising and providing for the issuance of permits to persons desiring to erect or maintain a billboard or other structure for the display of advertising in the State of New Jersey. It has been adopted to establish a comprehensive regulation of licensing the business of outdoor advertising and provide for a graduated schedule of fees based upon the size of the space to be used for outdoor advertising and is established consistent with N.J.S.A. 54:40-64.

The subchapters are summarized as follows:

N.J.A.C. 16:41A-1 outlines the definitions used within the rules.

N.J.A.C. 16:41A-2 provides the guidelines required in obtaining a license.

N.J.A.C. 16:41A-3 outlines the provisions and requirements in obtaining a permit.

N.J.A.C. 16:41A-4 establishes the requirements and conditions under which conditional permits are issued.

N.J.A.C. 16:41A-5 depicts conditions under which and to whom "no fee" permits are issued.

N.J.A.C. 16:41A-6 establishes permit fees based upon the size and space or advertising surface to be used for outdoor advertising.

N.J.A.C. 16:41A-7 outlines the conditions under which the requirement for permits would be exempted.

N.J.A.C. 16:41A-8 establishes penalties to be imposed and the appeals process.

Social Impact

The proposed readoption will continue the impact on persons desiring to erect or maintain a billboard or other structure for the display of advertising matter in the State, in that they will be subject to the licensure, permitting, exemption and penalty requirements of this chapter. Outdoor advertising operations will also continue to be subject to these provisions. The impact on the general public will be beneficial in that the aesthetics will be assured along the highway system of New Jersey.

Economic Impact

The rules proposed for readoption have an economic impact on the outdoor advertising industry through the license and permit fees and the cost of compliance with the requirements of subchapters 2 through 4. Advertisers have been operating under the fee schedule established by these rules and will benefit as these fees are not increased by this readoption. Any person not complying with the provisions of these rules is liable to a penalty and a fee for late filing. There is no direct economic impact on the public. The Department's processing expenses are part of its administrative budget.

Regulatory Flexibility Analysis

The rules proposed for readoption impose no reporting or record keeping requirements. Compliance requirements are imposed by way of the license and permit application requirements, including fees, and the licensure and permit conditions in subchapters 2 through 4. These requirements are imposed on persons or entities engaged in outdoor advertising; an undetermined number of the latter are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For new outdoor advertising businesses, these requirements may increase their start-up capital costs; for ongoing businesses, the compliance costs of the required procedures should be part of their business process and are largely administrative in nature. There should be no need for any outdoor advertising business to engage professional services for compliance with these rules. As these rules effectuate a statutory scheme, and serve to promote the aesthetics of outdoor advertising for the benefit of the general populace, no differentiation in requirements is provided for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:41A.

TREASURY-GENERAL

(a)

STATE AFFIRMATIVE ACTION OFFICE (PUBLIC CONTRACTS)

Notice of Comment Period Extension
Affirmative Action Rules
Establishment of Goals

Proposed Amendment: N.J.A.C. 17:27-2.1
Proposed Repeals and New Rules: N.J.A.C. 17:27-5.2 and 7.3

Take notice that the State Affirmative Action Office (Public Contracts) has extended the public comment period for the proposed amendment to N.J.A.C. 17:27-2.1 and the proposed repeals and new rules at N.J.A.C. 17:27-5.2 and 7.3, published in the November 6, 1989 New Jerey Register at 21 N.J.R. 3439(b), to Decemer 28, 1989.

Submit comments by December 28, 1989 to:
William Parrish, Chief
State Affirmative Action Office
(Public Contracts)
Department of the Treasury
CN 207
Trenton, New Jersey 08625

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Making and Removal of Wagers; Approval of Minimum Wagers

Proposed Amendment: N.J.A.C. 19:47-1.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69(c), 5:12-70(f) and 5:12-100(e).

Proposal Number: PRN 1989-647.

Submit comments by January 17, 1990 to:
Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building—4th floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:47-1.3(d) would eliminate the new come out roll as the determining factor as to whether or not a Don't Come Bet may be replaced or increased after such bet is removed or reduced. Moreover, the proposed amendment would not allow the replacement or increase of a Don't Come Bet after such bet is removed or reduced.

Social Impact

The proposed amendment merely deletes the new come out roll as a determining factor for the Don't Come Bet and, therefore, would have no social impact of any significance.

Economic Impact

The proposed amendment will serve to maintain the viability and vitality of craps revenues for the industry and, therefore, has a positive benefit for the industry.

Regulatory Flexibility Statement

This proposed amendment will only affect the operations 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 proposed amendment follows (deletions indicated in brackets [thus]):

19:47-1.3 Making and removal of wagers; approval of minimum wagers

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

(d) A Don't Come Bet and a Don't Pass Bet may be removed or reduced at any time but may not be replaced or increased after such removal or reduction [until a new come out roll].

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

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Code Interpretation; FRT Plywood
Proposed New Rule: N.J.A.C. 5:23-9.3

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1989-653.

Submit comments by January 17, 1990 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802

The agency proposal follows:

Summary

It has come to the attention of the Department that fire-retardant-treated (FRT) plywood, once grade marked in a manner approved by the American Plywood Association (APA) and approved for use under the Building Officials and Code Administrators (BOCA) National Building Code referenced in the State Uniform Construction Code, for use as roof sheathing, is no longer considered to have been proven safe over the life of the average building. The material has not been proven to maintain structural strength and fire-retardancy when used in code complying buildings. Product failures have occurred in New Jersey and elsewhere. The proposed new rule establishes a testing and approval process that will have to be complied with as a precondition to the use of the material in New Jersey.

In February 1989, the Department wrote to all construction code officials in the State to inform them of the following facts. Historically, FRT plywood has been used in building construction for years, and had previously been used for marine applications. In April 1987, the APA issued Bulletin T-180, addressed to their member mills, indicating that their previously issued span ratings and design information would apply only to untreated wood and that the information would be invalid for wood treated with fire retardants. In subsequent Bulletins T-184, issued September 1987, and T-185, issued December 1987, the APA suggested that FRT plywood failed in roof sheathing applications in the presence of heat and moisture, and that reactions leading to failure could vary based on geographical location of structures containing the wood, ventilation of the roof structure, color and surface treatment of the roof and its exposure to sunlight. The APA also noted possible variations in different FRT plywood products, based on the proprietary formulas of the FRT manufacturers. In February, the Department asked code officials to remain alert and to report any problems which might occur with FRT plywood in their jurisdictions and to anticipate further advice from the Department.

In March of 1989, the Department wrote to all identifiable major FRT manufacturers and their trade associations, as well as other interested parties. The Department explained that the APA's withdrawal of its span ratings and the incidence of FRT failure had given the Department reason to believe that FRT plywood did not meet the code for use as roof sheathing and that its use in New Jersey should be limited. Prior to any Statewide action, the Department invited the FRT manufacturers to submit their formulas and any evidence of code-conforming product performance in conditions of heat and humidity usually encountered in New Jersey in roof sheathing applications.

The responses from FRT manufacturers over the following months ranged from simple denial that their products failed in code complying applications and claims that their proprietary information was protected by trade secret privileges to presentation of extensive data and patent information. Following review of all information submitted, Department personnel, along with a building industry expert and a chemist, concluded that no rational distinction could be drawn between various FRT plywood products that would be predictive of product performance in the field.

The Forest Products Laboratories (FPL) in Madison, Wisconsin, is currently developing a test protocol for FRT plywood products. Although the protocol may yet be available this year, it has not thus far been completed and been made available to certify FRT products. There is no current standard for that purpose. In reviewing submissions by manufacturers, the Department has noted that what testing has been done is inconclusive, as it is often not comprehensive, or may involve testing only some products under some atmospheric conditions, or may rely only on accelerated exposures of products to intense heat and humidity for short, constant periods of time, without subjecting materials to cyclic exposure which would occur during successive days with seasonal variations in the field in a temperate climate, or cannot account for additive factors such as poor ventilation and high heat and humidity, so that actual performance in the field where all variables are uncontrolled cannot be predicted. In addition, manufacturers' repeated changes in their formulations have complicated the reliance on performance data for what is currently installed in the State. Newer installations are made of different materials. Similarly unaddressed are questions of product performance based on in-plant processes, procedures and quality control checks.

Because the Department has been unable to find proof of predictable adequate performance of FRT materials, it has chosen to require testing prior to the use of such materials in the State for roof sheathing applications.

The Department's rule provides that whenever a manufacturer submits verified test data ensuring a product's performance, the proven product shall be accepted for use in the State. Products shown to perform adequately would be approved in writing by the Department and the Department would then direct the use of a grade stamp on the product to indicate State approval.

Without this rule, individual municipal officials would be required to review data and information from manufacturers to determine whether to allow the use of FRT plywood products in their municipalities. Municipal officials would probably not have the specialized knowledge needed to properly evaluate this data and, in any event, their determinations could create the sort of patchwork regulatory scheme that the New Jersey Uniform Construction Code was enacted to prevent. It is ultimately more efficient and more accurate to make product compliance determinations on the State level.

In addition to its duty of regulating construction in the State and providing that only properly tested and approved materials are used in the State, the Department is interested in the use of FRT plywood products because of its responsibilities under the New Home Warranty and Builders' Registration Act. The Department has determined that the failure of roof sheathing is a major structural defect, warranted by its program through year 10 of the warranty. The Department's liability for roof sheathing repairs under the warranty program has been estimated at between 30 and 132 million dollars, depending on percentage failure, time of failure, and repair costs and methods. Within this range, the Warranty Trust Fund could be either severely depleted or consumed by repair costs for replacements of non-performing FRT alone.

Social Impact

The social impact of this proposed new rule is complex. It is necessary to regulate the use of FRT plywood in roof sheathing applications in the State because failures of the products create life and fire safety hazards. Product failures have been so dramatic that roofs literally crumble. While some FRT products, or some applications, may well be safe and code complying, available data does not, at this time, show this to be the case. It is the Department's duty to ensure to the best of its ability that the State's housing stock is constructed of safe and durable material.

While limiting the use of FRT products may temporarily slow construction, and may raise construction costs as new construction methods are found and employed, these costs must be borne to insure the health and safety of the State's population and to ensure the soundness of the State's building stock.

The Department, along with BOCA and some interested private parties, has already issued advice on alternate building methods which are neither prohibitively costly nor difficult to install.

Economic Impact

Limiting the use of FRT products can have a profound impact on FRT manufacturers before adequate testing is completed. Nonetheless, testing is necessary to ensure product performance. Many manufacturers, already aware of difficulties with FRT product applications, have discontinued the manufacture of former products, have placed restrictions on the use of their products in environments with uncontrolled conditions of heat

and humidity, and have begun serious product testing programs on their own.

While builders and owners may be temporarily inconvenienced by the requirements of this rule, they will ultimately benefit from more durable safe structures which will not require roof sheathing replacement during the initial years of a structure's life.

The limit on the use of FRT plywood products will help to ensure the fiscal soundness of the State's New Home Warranty Trust Fund. Its liability for roof sheathing replacement has been estimated at from 30 to 132 million dollars. Similarly, private plans could suffer proportionate liability based on their enrollment levels. It would not be cost effective for the Department to allow the continued use of a product once there is evidence of product failure.

Failing FRT plywood reduces the average life of a building by compromising its structural integrity, thereby endangering human life and health, and creating the fire hazard which the product was intended to counteract. Potential economic loss from these dangers is great.

Regulatory Flexibility Analysis

The Department's rule has no differential provisions for small and large businesses. FRT manufacturers and their affiliates cannot be sheltered at the expense of public health and safety, and the use of possibly defective products which will later require costly replacement cannot be permitted. It is likely that smaller businesses will be more greatly impacted by the Department's limitations, and by the need for product testing. The impact might be mitigated by smaller business's smaller number of products, reduced market share, and ability to share in the test results of larger concerns. In any event, product failures, with or without Departmental action, would disproportionately affect small and undercapitalized businesses.

Full text of the proposal follows:

5:23-9.3 Use of fire retardant treated plywood products for roof sheathing

(a) Fire retardant treated (FRT) plywood for roof sheathing shall not be approved for use as roof sheathing in New Jersey unless it meets the conditions set forth in either (b) or (c) below.

(b) The Department shall approve the use of FRT plywood products for roof sheathing if the manufacturer has submitted the following to the Department:

1. Verifiable proof that the fire retardant treatment reaction to prevent or retard combustion of the wood cannot occur at the atmospheric conditions encountered in code complying roof applications in this State, throughout the full range of normal 100 year seasonal variations with respect to temperature, and humidity; or in the absence of more specific findings, reaction non-occurrence at temperatures up to and including 220° Fahrenheit, and 100 percent humidity; or

2. Both accelerated and cyclic test data, specifically:

i. Verifiable evidence of satisfactory product performance compared to a control sample of equivalent plywood which has not been treated with a FRT formulation when the samples are exposed to accelerated test conditions equal to or greater than 180° Fahrenheit constant temperature and 20 percent humidity for 500 successive hours; and

ii. Verifiable evidence of laboratory simulated or actual field studies of product performance under one of the alternate sets of temperature and humidity conditions in (b)1 for 1,000 eight hour cycles to simulate a full year of product exposure. Studies shall be conducted with reference to a control sample of equivalent plywood which has not been treated with a FRT formulation.

3. Test results submitted pursuant to (b)2 above, to be acceptable to the Department as a basis for product approval, shall show no significant loss of a product's structural integrity of fire retardancy as a result of testing.

4. A manufacturer shall provide all additional information requested by the Department and its experts during review of evidence submitted pursuant to this subsection or to (c) below.

(c) When a national test protocol for product performance is established and approved by the Department, a manufacturer may submit evidence that its product has been subjected to and has successfully met the protocol's standards.

(d) When a product has met the requirements of (b)1, (b)2 or (c) above, and is satisfactory for use as roof sheathing in the State, the Department shall approve the product in writing and shall direct the use of a grade stamp to so indicate.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding Houses

Proposed Readoption: N.J.A.C. 5:27

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

Authority: N.J.S.A. 55:13B-4.

Proposal Number: PRN 1989-654.

Submit written comments by January 17, 1990 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Regulations Governing Rooming and Boarding Houses, N.J.A.C. 5:27, are scheduled to expire on June 1, 1990. The Department has reviewed these rules and finds that they continue to be necessary for the orderly enforcement of the Rooming and Boarding House Act of 1979, P.L. 1979, c.496 (N.J.S.A. 55:13B-1 et seq.).

N.J.A.C. 5:27 contains rules concerning administration and enforcement of the act, the rights of residents, general building requirements, security, residents' comfort, maintenance of records, food and laundry services, other personal services, financial services and fire safety loans. These rules are intended to implement the Rooming and Boarding House Act of 1979 by assuring rooming and boarding house residents a homelike environment in which their health, safety and welfare are adequately protected.

Social Impact

The rules proposed for readoption contain the standards under which rooming and boarding houses must be operated and upon which they are judged during license inspections. These standards are designed to protect the health, safety and welfare of the residents of these facilities, many of whom are elderly, or handicapped in some way, and thus in special need of protection.

Economic Impact

The standards for the operation of rooming and boarding houses set forth in the rules proposed for readoption impose compliance costs on both facility owners and operators and those seeking licensure of such facilities. The amount of such costs varies depending upon the extent of non-compliance. Grants are available for owners/operators under N.J.A.C. 5:27-12 as long as a building continues as a boarding house. The Department's costs in enforcing the rules are within its current budget.

Regulatory Flexibility Analysis

The rules proposed for readoption impose reporting, recordkeeping and compliance requirements on owners and operators of rooming and boarding houses, most of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The capital costs incurred by such small businesses to comply with these rules, and the need for professional services to effectuate compliance, depends upon the degree of non-compliance and the internal staff resources of the facility. Since compliance with the rules is necessary for the safety, health and welfare of facility residents, no differentiation in the requirements can be granted based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:27.

HEALTH

(a)

HEALTH FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE)

Proposed Readoption: N.J.A.C. 8:31A

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-1 et seq., specifically 26:2H-5b.

Proposal Number: PRN 1989-674.

Submit written comments by January 17, 1990 to:

Charles O'Donnell, Director
Health Facilities Rate Setting
New Jersey Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Health is proposing the readoption of the Standard Hospital Accounting and Rate Evaluation (SHARE) rules without amendment to avoid the expiration of this chapter on March 18, 1990. Proposed amendments to the present rules are under review and will be forthcoming in the near future.

The Health Care Facilities Planning Act of 1971, N.J.S.A. 26:2H-1 et seq., mandated use of a uniform system of cost accounting for health care services (see N.J.S.A. 26:2H-18c). Sections 18b and 18d of the Act provide further for approval of payment rates for health care services provided by government agencies (for example, Medicaid) and hospital services corporations (for example, Blue Cross). In establishing this system, the Commissioners of Health and Insurance were required by law to consider the total costs of the health care facility. In April 1975, the Standard Hospital Accounting and Rate Evaluation (SHARE) Rate Review Guidelines were established with the purpose of developing a hospital cost containment program whereby a "reasonable reimbursement" formula was developed.

Prior to the SHARE System, hospital reimbursement was controlled and administered by the Hospital Research and Education Trust (HRET), a subsidiary of the New Jersey Hospital Association. This represented a voluntary effort of New Jersey hospitals for cost containment.

The implementation of the SHARE System has enabled the Department of Health to effectively contain hospital costs through the regulatory system, in comparison with states that are without a similar system.

Since the implementation in 1980 of a Prospective Reimbursement System based on patient case mix in New Jersey hospitals, the SHARE Guidelines have been primarily applicable to the specialized and rehabilitation hospitals only.

The SHARE Manual, N.J.A.C. 8:31A, contains subchapters 1 through 10. Since the implementation of the SHARE System, amendments to the subchapters have been made as appropriate, with the public comments being recognized in the New Jersey Register.

A brief review of the contents of the subchapters follows:

N.J.A.C. 8:31A-1 Accounting

This subchapter cites the Health Care Facilities Planning Act of 1971, N.J.S.A. 26:2H-1, particularly N.J.S.A. 26:2H-18c, and considerations to be given in the payment rate approval process. It specifies the accounting guidelines and principles to be followed to achieve the goal of a uniform data reporting procedure.

N.J.A.C. 8:31A-2 Definitions

This subchapter assists the institutions in reporting costs in a uniform manner in accordance with the definitions as stated for general cost centers, inpatient and outpatient cost centers, ancillary and physician cost centers and definitions for reporting the cost of fundings not elsewhere defined as pensions, interest, education and research, etc.

N.J.A.C. 8:31A-3 References

This subchapter references special cost considerations, abbreviations, certain definitions and certain reporting forms used in the SHARE system, for example, A = Actual; A and G = Administrative and General; BCT = Blue Cross Totals; and BY = Budget Year. These references assist the institution in the proper completion of the SHARE forms.

N.J.A.C. 8:31A-4 Statistics

This subchapter contains the statistical definitions required for reporting on the SHARE forms by the hospital and includes units of service, admission classification by payor, visits, procedures and the application of relative value units for specific services rendered, such as laboratory and diagnostic radiology.

N.J.A.C. 8:31A-5 Reporting

This subchapter addresses the reporting objective of SHARE, which is to gather data from hospitals on a uniform basis to be used in the approval procedure for hospital rates for New Jersey Blue Cross and Medicaid. Specific instructions are given for the proper placement of costs on the SHARE forms.

N.J.A.C. 8:31A-6 Rate Setting

This subchapter provides the hospitals with the computational procedures that are used by the Department of Health, under the SHARE System, to develop the data for calculation of the proposed Alternate and Global rates. The subchapter does not appear in the New Jersey Administrative Code, but is available from the Department and is on file at the Office of Administrative Law.

N.J.A.C. 8:31A-7 Rate Review

This subchapter represents the principal part of the total chapter, as it elaborates on the formulation of the rate setting procedure; addresses the appeal process to be followed when a payment rate is not acceptance to the hospital; and specifies the peer comparison reasonableness test used in the development of an approved rate for the hospital by the analyst. A review of this subchapter is accomplished each year with appropriate amendments being proposed and adopted with a period of public comment allowed in the best interests of the health care consumers and the industry. All proposed amendments, comments and adoptions are published in the New Jersey Register.

N.J.A.C. 8:31A-8 Reports: Case Mix

This subchapter specifies the data elements required to be submitted by each hospital to the Department of Health for the purpose of making an assignment to the appropriate Diagnosis Related Group (DRG) based on a patient's discharge diagnosis. This information can be utilized in the development of a State standard cost per case when linked to the patient's hospital bill. This information is presented being used for specialized and rehabilitation hospitals in the establishment of a uniform reporting data base.

N.J.A.C. 8:31A-9 Inflation

This subchapter establishes the final economic factor and the methodology for retroactive adjustments to the interim economic factor for previous years. The proxies used and their sources are displayed for hospital informational purposes.

N.J.A.C. 8:31A-10 Miscellaneous

This subchapter has five sections that are reserved for future use. The remaining section states the procedure to be followed for the treatment of the distribution of net worth and/or surplus either on dissolution of the New Jersey Hospital Association Underwriters, Inc. of the withdrawal by one hospital.

All of the N.J.A.C. 8:31A subchapters are interrelated and form a total framework in which the ratesetting procedure is accomplished for specialized and rehabilitation hospitals.

Social Impact

The implementation of the SHARE ratesetting system has provided a protective measure for the consumer against escalating hospital costs and will continue to do so for the specialized and rehabilitation hospitals, since all others are regulated by the Diagnosis Related Group (DRG) Prospective Payment System under the P.L. 1978, Chapter 83 amendments to N.J.S.A. 26:2H-1 et seq.

In the case of specialized and rehabilitation hospitals, it is difficult to employ the method of ratesetting used in the DRG system, which operates on a case basis. Due to the unique population of specialized and rehabilitation hospitals, it is difficult to establish an average length of stay. Therefore, SHARE guidelines, which operate on a per diem basis, are used by specialized and rehabilitation hospitals.

Economic Impact

The requirement for an effective regulatory system for cost containment in specialized and rehabilitative hospitals continues to exist. This system has been successful in controlling costs for the hospital, payor and consumer. Without the SHARE guidelines, the alternative would be voluntary cost containment on the part of the affected hospitals, which could possibly be subject to indiscriminate patient costs.

Regulatory Flexibility Statement

The facilities regulated by this chapter employ more than 100 employees, and, therefore, do not fall into the category of small business, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:31A and can be reviewed at Health Facilities Rate Setting, New Jersey Department of Health, Room 600, John Fitch Plaza, Trenton, New Jersey, or the Office of Administrative Law.

(a)

HOSPITAL REIMBURSEMENT

Appropriate Collection Procedures; Alternative Means of Collection

Proposed Amendment: N.J.A.C. 8:31B-4.40

Authorized By: Thomas A. Burke, Ph.D., Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-18.4 et seq. and N.J.S.A. 26:2H et seq., specifically 26:2H-5(b) and 26:2H-18(d).

Proposal Number: PRN 1989-610.

Submit comments by January 17, 1990 to:

Scott Crawford, Director
Health Care for the Uninsured Program, 8th Floor
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment allows hospitals additional flexibility in collection efforts by instituting a system whereby hospitals may submit a proposal to use alternative methods of collection. The Department will review the proposal to determine whether the alternative method meets or exceeds the effectiveness of the required steps. Approval for the use of any alternative collection efforts must be obtained from the Commission. An amendment to N.J.A.C. 8:31B-4.40 was proposed on August 21, 1989 at 21 N.J.R. 2449(a) and is adopted elsewhere in this issue of the New Jersey Register.

Social Impact

This proposed amendment will afford the hospitals additional flexibility to use equally or more effective collection efforts. Moreover, this flexibility will allow the Department to evaluate alternative collection efforts and, if appropriate, utilize such methods in other hospitals.

Economic Impact

This proposed amendment will have a positive economic impact, in that only alternative collection efforts likely to be equally or more effective will be approved. Successful innovation may be replicated throughout the system, thus decreasing the costs of uncompensated care.

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 (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

8:31-4.40 Appropriate collection procedures

(a)-(h) (No change.)

(i) Nothing in this section shall prohibit a hospital from requesting approval to use alternative collection efforts that meet or exceed the effectiveness of the collection efforts required above. Such requests shall be submitted to the Department and approved by the Commission, and shall comply with the Trust Fund Law.

(b)

HOSPITAL REIMBURSEMENT

Diagnosis Related Groups (DRG) List

Proposed Amendment: N.J.A.C. 8:31B-5.3

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-1 et seq., specially 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1989-669.

Sumbit written comments by January 17, 1990 to:

Pamela Dickson, Assistant Commissioner
Health Planning and Resources Development, Room 601
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Department of Health has withdrawn the proposed amendment to the Diagnosis Related Group (DRG) List Regulation, as published in the New Jersey Register on October 16, 1989 at 21 N.J.R. 3279(b), to enable a complete DRG List to be proposed with the current high and low outlier trim points. These new trim points were not previously available.

In response to the concern of the industry to maintain currency of the data collected for prospective reimbursement, through the Diagnosis Related Group (DRG) classification, the Department is proposing amendments to the present New York State GROUPER Version 6.0. Through the utilization of 64 new DRGs, the GROUPER will be updated to the New York State GROUPER Version 7.0. The new DRGs are reflective of some DRG refinements, as developed by Yale University, which more clearly identify those patients having comorbid conditions along with the principal diagnosis. New York State has also evaluated the Version 6.0 GROUPER, beyond the Yale DRG refinements, and incorporated these revisions into Version 7.0 GROUPER for non-Federal patients.

Additional DRGs have been added to 19 Major Diagnostic Categories, which will separate those patients having a major complication or comorbidity from the patients having less severe conditions. Three new DRGs were created to further define those obstetrical patients who have diagnoses, complications and/or procedures during pregnancy or childbirth which would classify them as high risk, thus providing a more appropriate rate structure to be utilized. A new DRG has been added to include babies who have reached 28 days of age, are less than one year of age, and are referred to a community hospital setting for purposes of weight gain following tertiary care. A DRG for adults transferred to a community hospital setting for aftercare from tertiary care, such as a trauma center, has also been added. DRG 635, Neonatal After Care for Weight Gain, has been removed from Major Diagnostic Category (MDC) 23 and placed more appropriately in MDC 15, Normal Newborn and Other Neonates with Certain Conditions Originating in the Perinatal Period. DRGs 214 and 215, Back and Neck Procedures, have been eliminated from the DRG List and more definitive DRGs for these procedures have been added, specifically DRGs 755 through 758.

The high and low outlier trim points have been set statistically, as was done for GROUPER Version 6.0.

The data collected from January 1, 1990 will be utilized at final hospital reconciliation, which will occur after the adoption of this amendment.

Social Impact

New Jersey hospitals have been on the DRG prospective reimbursement system since 1982. The concept of the DRG classification and the associated length of stay for each DRG have been the basis for the payment rate since that time. This proposed amendment is only a further refinement of the DRG classification, to keep it current. Thus, there should be no adverse social impact for the consumer, provider, payer or other interested parties.

Under the proposed amendment, New Jersey hospital rates will be based on the most current grouping of patients. Keeping the system current is a priority of the Department and a commitment made to the hospital industry and payers. Moving to this more current GROUPER will allow New Jersey rates to be established on the better-defined DRGs.

Economic Impact

The Statewide economic impact of the proposed amendment is budget neutral. Use of the version 7.0 GROUPER simply assigns patients to the most appropriate diagnostic category, but neither increases nor decreases the total dollars in the reimbursement system. The use of this more current version should result in individual patients receiving a bill which more closely resembles their use of hospital services than does the current version of the GROUPER.

Regulatory Flexibility Statement

These proposed amendments apply to hospitals which have rates established by the Hospital Rate Setting Commission. 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.

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

8:31B-5.3 Listing of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Groups follows:

MAJOR DIAGNOSTIC CATEGORY 01: DISEASES AND DISORDERS OF THE NERVOUS SYSTEM

		OUTLIER TRIM POINT LOW		HIGH	
(001)	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	[5]	**4**	[65]	**55**
(002)	CRANIOTOMY AGE FOR TRAUMA AGE >17	3		[61]	**51**
(004)	SPINAL PROCEDURES	[4]	**3**	[62]	**44**
(005)	EXTRACRANIAL VASCULAR PROCEDURES	2		[31]	**25**
(006)	CARPAL TUNNEL RELEASE	1		[8]	**14**
(007)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W CC	[4]	**2**	[79]	**42**
(008)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W/O CC	[2]	**1**	[13]	**12**
(009)	SPINAL DISORDERS & INJURIES	2		[29]	**25**
(010)	NERVOUS SYSTEM NEOPLASMS W CC	3		[47]	**39**
(011)	NERVOUS SYSTEM NEOPLASMS W/O CC	2		[24]	**22**
(012)	DEGENERATIVE NERVOUS SYSTEM DISORDERS	2		[40]	**36**
(013)	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	2		[27]	**22**
(014)	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	3		[45]	**38**
(015)	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	2		[24]	**20**
(016)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W CC	[3]	**2**	[38]	**27**
(017)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W/O CC	2		[22]	**20**
(018)	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	2		[30]	**26**
(019)	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	2		[18]	**15**
(020)	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	3		[37]	**27**
(021)	VIRAL MENINGITIS	2		[16]	**15**
(022)	HYPERTENSIVE ENCEPHALOPATHY	2		[23]	**19**
(023)	NON-TRAUMATIC STUPOR & COMA	2		[25]	**23**
(024)	SEIZURE & HEADACHE AGE >17 W CC	2		[26]	**23**
(025)	SEIZURE & HEADACHE AGE >17 W/O CC	2		13	
(026)	SEIZURE & HEADACHE AGE <18	1		9	
(027)	TRAUMATIC STUPOR & COMA, COMA >1 HR.	2		[30]	**23**
(028)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W CC	2		[36]	**27**
(029)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W/O CC	2		[14]	**16**
(030)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE <18	1		[9]	**10**
(031)	CONCUSSION AGE >17 W CC	2		20	
(032)	CONCUSSION AGE >17 W/O CC	1		9	
(033)	CONCUSSION AGE <18	1		5	
(034)	OTHER DISORDERS OF NERVOUS SYSTEM W CC	2		[38]	**25**
(035)	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	2		[14]	**15**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(530)	**CRANIOTOMY W MAJOR CC**	**6**		**94**	
(531)	**NERVOUS SYSTEM PROCEDURES EXCEPT CRANIOTOMY W MAJOR CC**	**6**		**93**	
(532)	**TIA, PRECEREBRAL OCCLUSION, SEIZURE & HEADACHE W MAJOR CC**	**3**		**41**	
(533)	**OTHER NERVOUS SYSTEM DISORDERS W MAJOR CC**	**4**		**60**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(737)	VENTRICULAR SHINT REVISION AGE <18	2		[24]	**21**
(738)	CRANIOTOMY AGE <18 W CC	4		[50]	**52**
(739)	CRANIOTOMY AGE <18 W/O CC	2		[27]	**31**

MAJOR DIAGNOSTIC CATEGORY 02: DISEASES AND DISORDERS OF THE EYE

		OUTLIER TRIM POINT LOW		HIGH	
(036)	RETINAL PROCEDURES	[2]	1	[7]	6
(037)	ORBITAL PROCEDURES	[2]	1	[14]	9
(038)	PRIMARY IRIS PROCEDURES	1		[8]	4
(039)	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	1		[6]	7
(040)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	1		[8]	6
(041)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE <18	1		5	
(042)	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	1		[10]	12
(043)	HYPHEMA	2		[9]	8
(044)	ACUTE MAJOR EYE INFECTIONS	2		[13]	14
(045)	NEUROLOGICAL EYE DISORDERS	2		[13]	15
(046)	OTHER DISORDERS OF THE EYE AGE >17 W CC	2		[22]	25
(047)	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	[2]	1	[13]	18
(048)	OTHER DISORDERS OF THE EYE AGE <18	1		8	
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	2	[38]	37
(534)	**EYE PROCEDURES W MAJOR CC**	**2**		**34**	
(535)	**EYE DISORDERS W MAJOR CC**	**2**		**29**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	129

MAJOR DIAGNOSTIC CATEGORY 03: DISEASES AND DISORDERS OF THE EAR, NOSE, MOUTH, AND THROAT

		OUTLIER TRIM POINT LOW		HIGH	
(049)	MAJOR HEAD & NECK PROCEDURES	3		[48]	42
(050)	SIALOADENECTOMY	1		7	
(051)	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1		[7]	5
(052)	CLEFT LIP & PALATE REPAIR	[2]	1	[9]	7
(053)	SINUS & MASTOID PROCEDURES AGE >17	1		8	
(054)	SINUS & MASTOID PROCEDURES AGE <18	1		[7]	9
(055)	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1		6	
(056)	RHINOPLASTY	1		4	
(057)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE >17	1		[15]	8
(058)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE <18	1		[4]	3
(059)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	1		[3]	2
(060)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE <18	1		[2]	5
(061)	MYRINGOTOMY W TUBE INSERTION >17	1		[7]	11
(062)	MYRINGOTOMY W TUBE INSERTION <18	1		[8]	12
(063)	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	2		[17]	15
(064)	EAR, NOSE, MOUTH & THROAT MALIGNANCY	2		[42]	26
(065)	DYSEQUILIBRIUM	2		[15]	13
(066)	EPISTAXIS	2		[12]	11
(067)	EPIGLOTTITIS	2		[12]	10
(068)	OTITIS MEDIA & URI AGE >17 W CC	2		[20]	17
(069)	OTITIS MEDIA & URI AGE >17 W/O CC	2		[12]	10
(070)	OTITIS MEDIA & URI AGE <18	2		8	
(071)	LARYNGOTRACHEITIS	1		[9]	7
(072)	NASAL TRAUMA & DEFORMITY	1		[15]	8
(073)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE >17	[2]	1	[15]	10
(074)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE <18	1		[10]	12
(168)	MOUTH PROCEDURES W CC	2		[23]	32
(169)	MOUTH PROCEDURES W/O CC	1		[11]	8
(185)	DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE >17	2		[21]	11
(186)	DENTAL EXTRACTIONS & RESTORATIONS AGE <18	2		[11]	9
(187)	DENTAL EXTRACTIONS & RESTORATIONS	1		8	
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	54

(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(536)	**ENT & MOUTH PROCEDURES EXCEPT MAJOR HEAD & NECK W MAJOR CC**	**2**		**28**	
(537)	**ENT & MOUTH DISORDERS W MAJOR CC**	**2**		**38**	
(735)	MOUTH, LARYNX OR PHARYNX DISORDERS WITH TRACHEOSTOMY	[4]	**5**	[71]	**74**
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 04: DISEASES AND DISORDERS OF THE RESPIRATORY SYSTEM

		OUTLIER TRIM POINT LOW		HIGH	
(075)	MAJOR CHEST PROCEDURES	[4]	**3**	[45]	**36**
(076)	OTHER RESP SYSTEM O.R. PROCEDURES W CC	[4]	**3**	[55]	**37**
(077)	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	2		[24]	**16**
(078)	PULMONARY EMBOLISM	3		[28]	**26**
(079)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	[4]	**3**	[50]	**37**
(080)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	2		[31]	**28**
(081)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE <18	2		[22]	**18**
(082)	RESPIRATORY NEOPLASMS	2		[32]	**28**
(083)	MAJOR CHEST TRAUMA W CC	2		[26]	**23**
(084)	MAJOR CHEST TRAUMA W/O CC	2		11	
(085)	PLEURAL EFFUSION W CC	2		[30]	**26**
(086)	PLEURAL EFFUSION W/O CC	2		[15]	**16**
(087)	PULMONARY EDEMA & RESPIRATORY FAILURE	2		[23]	**22**
(088)	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	2		[31]	**27**
(089)	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	[3]	**2**	[32]	**28**
(090)	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	2		[17]	**16**
(091)	SIMPLE PNEUMONIA & PLEURISY AGE <18	2		[12]	**11**
(092)	INTERSTITIAL LUNG DISEASE W CC	2		[28]	**27**
(093)	INTERSTITIAL LUNG DISEASE W/O CC	2		[17]	**16**
(094)	PNEUMOTHORAX W CC	2		[25]	**22**
(095)	PNEUMOTHORAX W/O CC	2		[12]	**13**
(096)	BRONCHITIS & ASTHMA AGE >17 W CC	2		[24]	**21**
(097)	BRONCHITIS & ASTHMA AGE >17 W/O CC	2		[12]	**13**
(098)	BRONCHITIS & ASTHMA AGE <18	2		8	
(099)	RESPIRATORY SIGNS & SYMPTOMS W CC	2		[21]	**16**
(100)	RESPIRATORY SIGNS & SYMPTOMS W/O CC	2		9	
(101)	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	2		[29]	**22**
(102)	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	2		[11]	**12**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(475)	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3		46	
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(538)	**MAJOR CHEST PROCEDURES W MAJOR CC**	**4**		**51**	
(539)	**RESPIRATORY PROCEDURES EXCEPT MAJOR CHEST W MAJOR CC**	**5**		**73**	
(540)	**RESPIRATORY INFECTIONS INFLAMMATIONS W MAJOR CC**	**4**		**58**	
(541)	**RESPIRATORY DISORDERS EXCEPT INFECTIONS, BRONCHITIS & ASTHMA W MAJOR CC**	**3**		**42**	
(542)	**BRONCHITIS & ASTHMA W MAJOR CC**	**2**		**29**	
(631)	BPD AND OTHER CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PERIOD	2		[39]	**19**
(632)	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	2		[25]	**10**
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(740)	CYSTIC FIBROSIS	[2]	**3**	[23]	**24**

MAJOR DIAGNOSTIC CATEGORY 05: DISEASES AND DISORDERS OF THE CIRCULATORY SYSTEM

		OUTLIER TRIM POINT LOW	HIGH	
(103)	HEART TRANSPLANT	6	69	
(104)	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	5	[58]	**48**
(105)	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	3	[43]	**34**
(106)	CORONARY BYPASS W CARDIAC CATH	4	[40]	**35**
(107)	CORONARY BYPASS W/O CARDIAC CATH	3	[31]	**24**

(108)	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	[4]	**3**	[47]	**33**
(109)	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	[3]	**2**	[41]	**28**
(110)	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	4		[60]	**50**
(111)	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2		[21]	**20**
(112)	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2		[31]	**20**
(113)	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	[6]	**5**	[86]	**73**
(114)	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	4		[54]	**49**
(115)	PERM CARDIAC PACEMAKER IMPL W AMI, HEART FAILURE OR SHOCK	4		[37]	**44**
(116)	PERM CARDIAC PACEMAKER IMPL W/O AMI, HEART FAILURE OR SHOCK	2		[34]	**30**
(117)	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	[3]	**2**	[33]	**19**
(118)	CARDIAC PACEMAKER DEVICE REPLACEMENT	2		[27]	**21**
(119)	VEIN LIGATION & STRIPPING	[2]	**1**	[18]	**13**
(120)	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	[4]	**3**	[62]	**45**
(121)	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	3		[31]	**30**
(122)	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	2		[20]	**18**
(123)	CIRCULATORY DISORDERS W AMI EXPIRED	2		[25]	**22**
(124)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	2		[19]	**16**
(125)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1		[8]	**7**
(126)	ACUTE & SUBACUTE ENDOCARDITIS	[6]	**5**	[63]	**56**
(127)	HEART FAILURE & SHOCK	2		[30]	**26**
(128)	DEEP VEIN THROMBOPHLEBITIS	2		[25]	**22**
(129)	CARDIAC ARREST, UNEXPLAINED	2		[27]	**13**
(130)	PERIPHERAL VASCULAR DISORDERS W CC	2		[29]	**25**
(131)	PERIPHERAL VASCULAR DISORDERS W/O CC	2		[17]	**16**
(132)	ATHEROSCLEROSIS W CC	2		[24]	**18**
(133)	ATHEROSCLEROSIS W/O CC	2		[14]	**13**
(134)	HYPERTENSION	2		[19]	**18**
(135)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	2		[26]	**23**
(136)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	2		[14]	**11**
(137)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE <18	2		[19]	**23**
(138)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	2		22	
(139)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	2		[14]	**13**
(140)	ANGINA PECTORIS	2		16	
(141)	SYNCOPE & COLLAPSE W CC	2		[20]	**21**
(142)	SYNCOPE & COLLAPSE W/O CC	2		[13]	**12**
(143)	CHEST PAIN	2		10	
(144)	OTHER CIRCULATORY SYSTEM DIAGNOSIS W CC	2		[29]	**24**
(145)	OTHER CIRCULATORY SYSTEM DIAGNOSIS W/O CC	2		[13]	**12**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(543)	**CIRC DISORDER EXCEPT AMI ENDOCARDITIS, CHF & ARRHYTHMIA W MAJOR CC**	**2**		**37**	
(544)	**CHF & CARDIAC ARRHYTHMIA W MAJOR CC**	**3**		**45**	
(545)	**CARDIAC VALVE PROCEDURE W MAJOR CC**	**5**		**70**	
(546)	**CORONARY BYPASS W MAJOR CC**	**4**		**49**	
(547)	**OTHER CARDIOVASCULAR PROCEDURES W PUMP W MAJOR CC**	**4**		**57**	
(548)	**OTHER CARDIOTHORACIC PROCEDURES W PUMP W MAJOR CC**	**4**		**54**	
(549)	**OTHER CARDIOVASCULAR PROCEDURES W/O PUMP W MAJOR CC**	**5**		**81**	
(550)	**NON-MAJOR CARDIOVASCULAR PROCEDURES W MAJOR CC**	**3**		**53**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 06: DISEASES AND DISORDERS OF THE DIGESTIVE SYSTEM

		OUTLIER TRIM POINT			
		LOW		HIGH	
(146)	RECTAL RESECTION W CC	[4]	**3**	[41]	**39**
(147)	RECTAL RESECTION W/O CC	[3]	**2**	[21]	**18**
(148)	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	4		[52]	**41**
(149)	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	[3]	**2**	[23]	**22**
(150)	PERITONEAL ADHESIOLYSIS W CC	3		[38]	**34**
(151)	PERITONEAL ADHESIOLYSIS W/O CC	2		[18]	**17**

(152)	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2		[33]	**25**
(153)	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2		[15]	**11**
(154)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3		[45]	**40**
(155)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	2		[19]	**22**
(156)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE <18	2		[27]	**21**
(157)	ANAL & STOMAL PROCEDURES W CC	2		[22]	**21**
(158)	ANAL & STOMAL PROCEDURES W/O CC	1		8	
(159)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	2		[23]	**20**
(160)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	[2]	**1**	[9]	**8**
(161)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	2		[17]	**16**
(162)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	1		5	
(163)	HERNIA PROCEDURES AGE <18	1		5	
(164)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	3		[26]	**29**
(165)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	2		[13]	**14**
(166)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	2		[19]	**15**
(167)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	2		7	
(170)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	[4]	**3**	[60]	**44**
(171)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	2		[19]	**16**
(172)	DIGESTIVE MALIGNANCY W CC	[3]	**2**	[38]	**29**
(173)	DIGESTIVE MALIGNANCY W/O CC	[2]	**1**	[18]	**13**
(174)	GASTROINTESTINAL HEMORRHAGE W CC	2		[24]	**20**
(175)	GASTROINTESTINAL HEMORRHAGE W/O CC	2		[12]	**11**
(176)	COMPLICATED PEPTIC ULCER	2		[24]	**17**
(177)	UNCOMPLICATED PEPTIC ULCER W CC	2		[17]	**20**
(178)	UNCOMPLICATED PEPTIC ULCER W/O CC	[2]	**1**	[10]	**8**
(179)	INFLAMMATORY BOWEL DISEASE	2		[25]	**20**
(180)	GASTROINTESTINAL OBSTRUCTION W CC	2		[28]	**25**
(181)	GASTROINTESTINAL OBSTRUCTION W/O CC	2		13	
(182)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W CC	2		[20]	**19**
(183)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W/O CC	[2]	**1**	[11]	**9**
(184)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE <18	[2]	**1**	[9]	**8**
(188)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	2		[22]	**20**
(189)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	1		[12]	**8**
(190)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE <18	1		[7]	**9**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(551)	**GASTROENTERITIS W MAJOR CC**	**2**		**37**	
(552)	**DIGESTIVE SYSTEM DISORDERS EXCEPT GASTROENTERITIS W MAJOR CC**	**3**		**40**	
(553)	**DIGESTIVE SYSTEM PROCEDURES EXCEPT HERNIA PROCEDURES W MAJOR CC**	**4**		**64**	
(554)	**HERNIA PROCEDURES W MAJOR CC**	**2**		**37**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 07: DISEASES AND DISORDERS OF THE HEPATOBILIARY SYSTEM AND PANCREAS

		OUTLIER TRIM POINT LOW		HIGH	
(191)	PANCREAS, LIVER & SHUNT PROCEDURES W CC	[5]	**4**	[63]	**59**
(192)	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	[2]	**3**	[25]	**33**
(193)	BILIARY TRACT PROC W CC EXCEPT ONLY TOTAL CHOLECYST W OR W/O C.D.E.	4		[51]	**42**
(194)	BILIARY TRACT PROC W/O CC EXCEPT ONLY TOTAL CHOLECYSTECTOMY W OR W/O C.D.E. (COMMON DUCT EXPLORATION)	3		[30]	**27**
(195)	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	3		[36]	**27**
(196)	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	2		[20]	**19**
(197)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	2		[26]	**21**
(198)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	2		[12]	**11**
(199)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	[4]	**3**	[54]	**41**
(200)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	[3]	**2**	[42]	**29**
(201)	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2		[36]	**41**

(202)	CIRRHOSIS & ALCOHOLIC HEPATITIS	[3]	**2**	[34]	**28**
(203)	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	2		[31]	**29**
(204)	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	2		[25]	**22**
(205)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W CC	2		[32]	**25**
(206)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W/O CC	2		[16]	**13**
(207)	DISORDERS OF THE BILIARY TRACT W CC	2		[24]	**20**
(208)	DISORDERS OF THE BILIARY TRACT W/O CC	2		[11]	**12**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(555)	**PANCREAS, LIVER & OTHER BILIARY TRACT PROCEDURES W MAJOR CC**	**5**		**64**	
(556)	**CHOLECYSTECTOMY AND OTHER HEPATOBILIARY PROCEDURES W MAJOR CC**	**3**		**45**	
(557)	**HEPATOBILIARY AND PANCREAS DISORDERS W MAJOR CC**	**3**		**40**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(741)	LIVER TRANSPLANT	NA		NA	

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES OF MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

		OUTLIER TRIM POINT			
		LOW		HIGH	
(209)	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	[4]	**3**	[42]	**34**
(210)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	[5]	**4**	[59]	**46**
(211)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	3		[38]	**32**
(212)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE <18	[3]	**2**	[36]	**29**
(213)	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	[4]	**3**	[53]	**40**
[(214)	BACK & NECK PROCEDURES W CC	4		48]	
[(215)	BACK & NECK PROCEDURES W/O CC	2		23]	
(216)	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	[3]	**2**	[46]	**36**
(217)	WOUND DEBRID & SKIN GRAFT EXC HAND, FOR MUSCULOSKEL & CONN TISS DIS	[3]	**2**	[59]	**42**
(218)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W CC	3		[46]	**35**
(219)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W/O CC	2		[20]	**17**
(220)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE <18	2		[17]	**12**
(221)	KNEE PROCEDURES W CC	2		[32]	**23**
(222)	KNEE PROCEDURES W/O CC	1		[9]	**10**
(223)	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	2		[19]	**17**
(224)	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	1		[8]	**7**
(225)	FOOT PROCEDURES	1		[13]	**12**
(226)	SOFT TISSUE PROCEDURES W CC	2		[29]	**30**
(227)	SOFT TISSUE PROCEDURES W/O CC	1		[10]	**9**
(228)	MAJOR THUMB OR JOINT PROC, OR OTHER HAND OR WRIST PROC W CC	[2]	**1**	[16]	**9**
(229)	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	1		[7]	**4**
(230)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES OF HIP & FEMUR	[2]	**1**	[20]	**14**
(231)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES EXCEPT IP & FEMUR	1		[17]	**8**
(232)	ARTHROSCOPY	1		[14]	**12**
(233)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W CC	3		[42]	**39**
(234)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W/O CC	[2]	**1**	[14]	**13**
(235)	FRACTURES OF FEMUR	[4]	**3**	[56]	**49**
(236)	FRACTURES OF HIP & PELVIS	3		[39]	**34**
(237)	SPRAINS, STRAINS & DISLOCATIONS OF HIP, PELVIS & THIGH	2		24	
(238)	OSTEOMYELITIS	[4]	**3**	[47]	**38**

(239)	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISSUE MALIGNANCY	3		[38]	**36**
(240)	CONNECTIVE TISSUE DISORDERS W CC	2		[33]	**27**
(241)	CONNECTIVE TISSUE DISORDERS W/O CC	2		[20]	**18**
(242)	SEPTIC ARTHRITIS	[3]	**2**	[34]	**24**
(243)	MEDICAL BACK PROBLEMS	2		[20]	**18**
(244)	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	2		[30]	**25**
(245)	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	2		[19]	**16**
(246)	NON-SPECIFIC ARTHROPATHIES	2		[21]	**15**
(247)	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDER	2		[17]	**14**
(248)	TENDONITIS, MYOSITIS & BURSITIS	2		[18]	**13**
(249)	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	[2]	**1**	[23]	**12**
(250)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W CC	2		[27]	**21**
(251)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W/O CC	1		[12]	**9**
(252)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE <18	1		5	
(253)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG, EXC FOOT AGE >17 W CC	2		[34]	**28**
(254)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG, EXC FOOT AGE >17 W/O CC	2		[15]	**13**
(255)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG, EXC FOOT AGE <18	1		[11]	**10**
(256)	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	2		[15]	**16**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(471)	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	[6]	**5**	[68]	**59**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(558)	**MAJOR MUSCULOSKELETAL PROCEDURES W MAJOR CC**	**6**		**77**	
(559)	**OTHER MUSCULOSKELETAL PROCEDURES W MAJOR CC**	**4**		**54**	
(560)	**MUSCULOSKELETAL DISORDER EXCEPT MEDICAL BACK & FRACTURE OF FEMUR W MAJOR CC**	**4**		**56**	
(561)	**MEDICAL BACK W MAJOR CC**	**3**		**43**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(755)	**BACK & NECK PROCEDURES W SPINAL FUSION W CC**	**3**		**41**	
(756)	**BACK & NECK PROCEDURES W SPINAL FUSION W/O CC**	**2**		**19**	
(757)	**BACK & NECK PROCEDURES W/O SPINAL FUSION W CC**	**3**		**39**	
(758)	**BACK & NECK PROCEDURES W/O SPINAL FUSION W/O CC**	**2**		**19**	

MAJOR DIAGNOSTIC CATEGORY 09: DISEASES OF THE SKIN, SUBCUTANEOUS TISSUE AND BREAST

		OUTLIER TRIM POINT LOW		HIGH	
(257)	TOTAL MASTECTOMY FOR MALIGNANCY W CC	2		[24]	**17**
(258)	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	2		[11]	**9**
(259)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	2		[29]	**19**
(260)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	1		[9]	**4**
(261)	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1		[7]	**4**
(262)	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	1		[12]	**8**
(263)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W CC	5		[76]	**70**
(264)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W/O CC	[3]	**2**	[38]	**35**
(265)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W CC	2		[37]	**27**
(266)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W/O CC	[2]	**1**	[14]	**8**
(267)	PERIANAL & PILONIDAL PROCEDURES	1		[6]	**7**
(268)	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1		[11]	**7**
(269)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W CC	2		[39]	**28**
(270)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W/O CC	[2]	**1**	[12]	**11**
(271)	SKIN ULCERS	3		[43]	**39**
(272)	MAJOR SKIN DISORDERS W CC	2		[36]	**30**
(273)	MAJOR SKIN DISORDERS W/O CC	2		18	

(274)	MALIGNANT BREAST DISORDERS W CC	[3]	**2**	[39]	**29**
(275)	MALIGNANT BREAST DISORDERS W/O CC	[2]	**1**	[13]	**6**
(276)	NON-MALIGNANT BREAST DISORDERS	[2]	**1**	[12]	**8**
(277)	CELLULITIS AGE >17 W CC	2		[28]	**27**
(278)	CELLULITIS AGE >17 W/O CC	2		[17]	**18**
(279)	CELLULITIS AGE <18	2		11	
(280)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W CC	2		[26]	**18**
(281)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W/O CC	1		[10]	**9**
(282)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE <18	1		[8]	**7**
(283)	MINOR SKIN DISORDERS W CC	2		[33]	**25**
(284)	MINOR SKIN DISORDERS W/O CC	[2]	**1**	[12]	**7**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(562)	**MAJOR SKIN & BREAST DISORDERS W MAJOR CC**	**3**		**50**	
(563)	**OTHER SKIN DISORDERS W MAJOR CC**	**3**		**36**	
(564)	**SKIN & BREAST PROCEDURES W MAJOR CC**	**5**		**74**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 10: ENDOCRINE, NUTRITIONAL, AND METABOLIC DISEASES

		OUTLIER TRIM POINT LOW		HIGH	
(285)	AMPUTATION OF LOW LIMB FOR ENDOCRINE, NUTRIT, & METABOLIC DISORDERS	6		[88]	**80**
(286)	ADRENAL & PITUITARY PROCEDURES	3		[41]	**34**
(287)	SKIN GRAFT & WOUND DEBRID FOR ENDOC, NUTRIT & METABOLIC DISORDERS	5		[76]	**63**
(288)	O.R. PROCEDURES FOR OBESITY	2		[17]	**14**
(289)	PARATHYROID PROCEDURES	2		[19]	**20**
(290)	THYROID PROCEDURES	2		[15]	**10**
(291)	THYROGLOSSAL PROCEDURES	1		[6]	**3**
(292)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W CC	4		[59]	**63**
(293)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W/O CC	2		[19]	**15**
(294)	DIABETES AGE >35	2		[28]	**24**
(295)	DIABETES AGE <36	2		[15]	**17**
(296)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	2		[35]	**32**
(297)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	2		[19]	**21**
(298)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE <18	2		[19]	**14**
(299)	INBORN ERRORS OF METABOLISM	[2]	**1**	[17]	**15**
(300)	ENDOCRINE DISORDERS W CC	2		[31]	**26**
(301)	ENDOCRINE DISORDERS W/O CC	2		[14]	**17**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(565)	**ENDOCRINE, NUTRITIONAL & METABOLIC PROCEDURES EXCEPT LOWER LIMB AMP W MAJOR CC**	**5**		**80**	
(566)	**ENDOCRINE, NUTRITIONAL & METABOLIC DISORDERS W MAJOR CC**	**3**		**44**	
(735)	MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	[4]	**5**	[71]	**74**
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(740)	CYSTIC FIBROSIS	[2]	**3**	[23]	**24**
(753)	**COMPULSIVE NUTRITION DISORDER REHABILITATION**	**6**		**85**	

MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT

		OUTLIER TRIM POINT LOW	HIGH	
(302)	KIDNEY TRANSPLANT	4	[48]	**50**
(303)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NEOPLASM	3	[40]	**34**
(304)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W CC	3	[39]	**33**

(305)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W/O CC	2		[18]	**17**
(306)	PROSTATECTOMY W CC	3		[39]	**29**
(307)	PROSTATECTOMY W/O CC	2		[21]	**16**
(308)	MINOR BLADDER PROCEDURES W CC	2		[32]	**35**
(309)	MINOR BLADDER PROCEDURES W/O CC	2		[15]	**13**
(310)	TRANSURETHRAL PROCEDURES W CC	2		[19]	**17**
(311)	TRANSURETHRAL PROCEDURES W/O CC	[2]	**1**	[9]	**6**
(312)	URETHRAL PROCEDURES AGE >17 W CC	2		[21]	**15**
(313)	URETHRAL PROCEDURES AGE >17 W/O CC	1		[10]	**8**
(314)	URETHRAL PROCEDURES AGE <18	[1]	**2**	[11]	**14**
(315)	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	[4]	**3**	[58]	**40**
(316)	RENAL FAILURE	2		[31]	**30**
(317)	ADMIT FOR RENAL DIALYSIS	1		[10]	**8**
(318)	KIDNEY & URINARY TRACT NEOPLASMS W CC	2		32	
(319)	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1		11	
(320)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	2		32	
(321)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	2		14	
(322)	KIDNEY & URINARY TRACT INFECTIONS AGE <18	2		11	
(323)	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	2		11	
(324)	URINARY STONES W/O CC	1		7	
(325)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	2		22	
(326)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	2		12	
(327)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE <18	1		11	
(328)	URETHRAL STRICTURE AGE >17 W CC	2		19	
(329)	URETHRAL STRICTURE AGE >17 W/O CC	1		7	
(330)	URETHRAL STRICTURE AGE <18	1		5	
(331)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	2		27	
(332)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	2		15	
(333)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE <18	[2]	**1**	[13]	**11**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(567)	**KIDNEY & URINARY TRACT PROCEDURES EXCEPT KIDNEY TRANSPLANT W MAJOR CC**	**5**		**74**	
(568)	**RENAL FAILURE W MAJOR CC**	**3**		**47**	
(569)	**KIDNEY & URINARY TRACT DISORDER EXCEPT RENAL FAILURE W MAJOR CC**	**3**		**40**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 12: DISEASES AND DISORDERS OF THE MALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT LOW		HIGH	
(334)	MAJOR MALE PELVIC PROCEDURES W CC	3		[28]	**25**
(335)	MAJOR MALE PELVIC PROCEDURES W/O CC	3		[18]	**19**
(336)	TRANSURETHRAL PROSTATECTOMY W CC	2		[27]	**22**
(337)	TRANSURETHRAL PROSTATECTOMY W/O CC	2		12	
(338)	TESTES PROCEDURES, FOR MALIGNANCY	2		[25]	**20**
(339)	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1		[10]	**11**
(340)	TESTES PROCEDURES, NON-MALIGNANCY AGE <18	1		[5]	**4**
(341)	PENIS PROCEDURES	2		[18]	**14**
(342)	CIRCUMCISION AGE >17	1		11	
(343)	CIRCUMCISION AGE <18	1		[3]	**4**
(344)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY	2		[28]	**14**
(345)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	[2]	**1**	[17]	**10**
(346)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	2		[32]	**25**
(347)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1		[7]	**11**
(348)	BENIGN PROSTATIC HYPERTROPHY W CC	[2]	**1**	[19]	**12**
(349)	BENIGN PROSTATIC HYPERTROPHY W/O CC	1		[8]	**4**
(350)	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	2		[14]	**11**
(351)	STERILIZATION, MALE	1		[3]	**1**
(352)	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	1		[10]	**7**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**

(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(570)	**MALE REPRODUCTIVE DISORDERS W MAJOR CC**	**2**		**34**	
(571)	**MALE REPRODUCTIVE PROCEDURES W MAJOR CC**	**3**		**52**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX, OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 13: DISEASES AND DISORDERS OF THE FEMALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT			
		LOW		HIGH	
(353)	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	3		[37]	**31**
(354)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W CC	2		[28]	**24**
(355)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W/O CC	2		[11]	**14**
(356)	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	2		[13]	**11**
(357)	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	3		[32]	**31**
(358)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	2		[18]	**15**
(359)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	2		[10]	**9**
(360)	VAGINA, CERVIX & VULVA PROCEDURES	1		[14]	**5**
(361)	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1		8	
(362)	ENDOSCOPIC TUBAL INTERRUPTION	1		[5]	**3**
(363)	D&C CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	[2]	**1**	[24]	**9**
(364)	D&C CONIZATION EXCEPT FOR MALIGNANCY	1		[7]	**9**
(365)	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2		[32]	**30**
(366)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	3		[37]	**38**
(367)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	[2]	**1**	11	
(368)	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	2		[10]	**12**
(369)	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	1		[10]	**8**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(572)	**FEMALE REPRODUCTIVE DISORDERS W MAJOR CC**	**2**		**41**	
(573)	**NON-RADICAL FEMALE REPRODUCTIVE PROCEDURES W MAJOR CC**	**3**		**39**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 14: PREGNANCY, CHILDBIRTH, AND THE PUERPERIUM

		OUTLIER TRIM POINT			
		LOW		HIGH	
(370)	CESAREAN SECTION W CC	2		[14]	**12**
(371)	CESAREAN SECTION W/O CC	2		[9]	**8**
(372)	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	2		9	
(373)	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	1		5	
(374)	VAGINAL DELIVERY W STERILIZATION &/OR D&C	2		[7]	**6**
(375)	VAGINAL DELIVERY W O.R. PROC EXCEPT STERILIZATION &/OR D&C	[2]	**1**	[10]	**6**
(376)	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	2		10	
(377)	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1		[9]	**8**
(378)	ECTOPIC PREGNANCY	2		8	
(379)	THREATENED ABORTION	1		[9]	**10**
(380)	ABORTION W/O D&C	1		[5]	**4**
(381)	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	1		[4]	**5**
(382)	FALSE LABOR	1		3	
(383)	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	2		11	
(384)	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	1		[8]	**7**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(650)	**HIGH RISK CESAREAN SECTION W CC**	**2**		**26**	
(651)	**HIGH RISK CESAREAN SECTION W/O CC**	**2**		**16**	
(652)	**HIGH RISK VAGINAL DELIVERY W STERILIZATION AND/OR D&C**	**2**		**10**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 15: NORMAL NEWBORN AND OTHER NEONATES WITH CERTAIN CONDITIONS ORIGINATING IN THE PERINATAL PERIOD

		OUTLIER TRIM POINT LOW	HIGH
(600)	NEONATE, DIED WITHIN ONE DAY OF BIRTH	1	1
(601)	NEONATE, TRANSFERRED <5 DAYS OLD	1	4
(602)	NEONATE, BIRTH WT <750G, DISCHARGED ALIVE	3	46
(603)	NEONATE, BIRTH WT <750G, DIED	3	48
(604)	NEONATE, BIRTH WT 750-999G, DISCHARGED ALIVE	11	73
(605)	NEONATE, BIRTH WT 750-999G, DIED	5	53
(606)	NEONATE, BIRTH WT 1000-1499G, W SIGNIF O.R. PROC, DISCHARGED ALIVE	17	105
(607)	NEONATE, BIRTH WT 1000-1499G, W/O SIGNIF O.R. PROC, DISCHARGED ALIVE	9	73
(608)	NEONATE, BIRTH WT 1000-1499G, DIED	3	46
(609)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	9	68
(610)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	11	81
(611)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	7	69
(612)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	5	58
(613)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	5	60
(614)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	4	53
(615)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	11	85
(616)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	5	56
(617)	NEONATE, BIRTH WT 2000-2499 G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	5	56
(618)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	3	49
(619)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	3	48
(620)	NEONATE, BWT 2000-2499G, W/O SIGNIF O.R. PROC, W ONLY NORM NEWBORN DIAG.	2	10
(621)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	24
(622)	NEONATE BIRTH >2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	6	61
(623)	NEONATE BIRTH WT >2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	2	46
(624)	NEONATE, BIRTH WT >2499G, W MINOR ABDOMINAL PROCEDURE	2	9
(625)	NOT VALID	NA	NA
(626)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	3	48
(627)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	2	22
(628)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	22
(629)	NEONATE, BWT >2499G, W/O SIGNIF O.R. PROC, W ONLY NORMAL NEWBORN DIAG.	1	6
(630)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	12
(635)	**NEONATAL AFTERCARE FOR WEIGHT GAIN**	**3**	**51**

MAJOR DIAGNOSTIC CATEGORY 16: DISEASES AND DISORDERS OF THE BLOOD AND BLOOD-FORMING ORGANS AND IMMUNITY

		OUTLIER TRIM POINT LOW	HIGH
(392)	SPLENECTOMY AGE >17	3	[39] **40**
(393)	SPLENECTOMY AGE <18	2	[17] **16**
(394)	OTHER O.R. PROCEDURES OF BLOOD AND BLOOD FORMING ORGANS	[2] **1**	[43] **11**

(395)	RED BLOOD CELL DISORDERS AGE >17	2		[22]	**18**
(396)	RED BLOOD CELL DISORDERS AGE <18	2		[12]	**13**
(397)	COAGULATION DISORDERS	2		[20]	**16**
(398)	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	[3]	**2**	[45]	**19**
(399)	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	[2]	**1**	[14]	**10**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[57]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[58]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(574)	**BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL DISORDERS W MAJOR CC**	**2**		**32**	
(575)	**BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL PROCEDURES W MAJOR CC**	**4**		**68**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(742)	BONE MARROW TRANSPLANT	11		81	

MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISORDERS AND POORLY DIFFERENTIATED MALIGNANCY, AND OTHER NEOPLASMS NEC

		OUTLIER TRIM POINT LOW		HIGH	
(400)	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	3		[48]	**36**
(401)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	[4]	**3**	[51]	**37**
(402)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	[2]	**1**	[17]	**10**
(403)	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	[3]	**2**	[41]	**35**
(404)	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	[2]	**1**	[18]	**17**
(405)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18	2		[30]	**23**
(406)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W CC	[4]	**3**	[52]	**38**
(407)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W/O CC	2		[20]	**17**
(408)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W OTHER O.R. PROC.	2		[30]	**23**
(409)	RADIOTHERAPY	[3]	**2**	[40]	**31**
(410)	CHEMOTHERAPY	1		[9]	**7**
(411)	HISTORY OF MALIGNANCY W/O ENDOSCOPY	1		[7]	**6**
(412)	HISTORY OF MALIGNANCY W ENDOSCOPY	1		[5]	**3**
(413)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W CC	3		[39]	**38**
(414)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W/O CC	[2]	**1**	[21]	**14**
(473)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3		48	
(576)	**ACUTE LEUKEMIA W MAJOR CC**	**5**		**69**	
(577)	**MYELOPROLIF DISORDERS OF POORLY DIFF NEOPLASMS W MAJOR CC**	**2**		**36**	
(578)	**LYMPHOMA & NON-ACUTE LEUKEMIA, W MAJOR CC**	**4**		**59**	
(579)	**PROCEDURES FOR LYMPHOMA, LEUKEMIA, MYELOPROLIF DISORDERS W MAJOR CC**	**6**		**82**	
(735)	MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	[4]	**5**	[71]	**74**
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(742)	BONE MARROW TRANSPLANT	11		81	

MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND PARASITIC DISEASES (SYSTEMIC)

		OUTLIER TRIM POINT LOW		HIGH	
(415)	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	[5]	**3**	[72]	**45**
(416)	SEPTICEMIA AGE >17	3		[38]	**35**
(417)	SEPTICEMIA AGE <18	2		[15]	**17**
(418)	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	2		[24]	**22**
(419)	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	2		[27]	**20**
(420)	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	2		[13]	**15**
(421)	VIRAL ILLNESS AGE >17	2		[14]	**13**
(422)	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE <18	2		[8]	**7**
(423)	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	2		[38]	**20**
(580)	**SYSTEMIC INFECTIONS & PARASITIC DISORDERS W MAJOR CC**	**3**		**45**	
(581)	**SYSTEMIC INFECTIONS & PARASITIC DISORDERS/PROCEDURES W MAJOR CC**	**7**		**99**	

(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(742)	BONE MARROW TRANSPLANT	11		81	

MAJOR DIAGNOSTIC CATEGORY 19: MENTAL ILLNESS

		OUTLIER TRIM POINT LOW		HIGH	
(424)	O.R. PROCEDURE W PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	5		[84]	**79**
(425)	ACUTE ADJUST REACTION & DISTURBANCE OF PSYCHOSOCIAL DYSFUNCTION	2		[24]	**22**
(426)	DEPRESSIVE NEUROSES	2		[26]	**25**
(427)	NEUROSES EXCEPT DEPRESSIVE	2		28	
(428)	DISORDERS OF PERSONALITY & IMPULSE CONTROL	2		[47]	**30**
(429)	ORGANIC DISTURBANCES & MENTAL RETARDATION	3		[52]	**56**
(430)	PSYCHOSES	3		40	
(431)	CHILDHOOD MENTAL DISORDERS	3		[49]	**46**
(432)	OTHER MENTAL DISORDER DIAGNOSES	[5]	**2**	[69]	**17**
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 20: SUBSTANCE USE DISORDERS AND SUBSTANCE INDUCED ORGANIC DISORDERS

		OUTLIER TRIM POINT LOW	HIGH	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	[125]	**129**
(743)	OPIOID ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	[11]	**9**
(744)	OPIOID ABUSE OR DEPENDENCE W CC	2	[26]	**23**
(745)	OPIOID ABUSE OR DEPENDENCE W/O CC	2	[23]	**18**
(746)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	[10]	**11**
(747)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W CC	2	[30]	**24**
(748)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W/O CC	2	[22]	**20**
(749)	ALCOHOL ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	9	
(750)	ALCOHOL ABUSE OR DEPENDENCE, W CC	2	24	
(751)	ALCOHOL ABUSE OR DEPENDENCE, W/O CC	2	[19]	**17**

MAJOR DIAGNOSTIC CATEGORY 21: INJURY, POISONING, AND TOXIC EFFECTS OF DRUGS

		OUTLIER TRIM POINT LOW		HIGH	
(439)	SKIN GRAFTS FOR INJURIES	2		[39]	**24**
(440)	WOUND DEBRIDEMENTS FOR INJURIES	2		[43]	**36**
(441)	HAND PROCEDURES FOR INJURIES	[2]	**1**	[14]	**12**
(442)	OTHER O.R. PROCEDURES FOR INJURIES W CC	[3]	**2**	[43]	**33**
(443)	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	2		[21]	**19**
(444)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W CC	2		[22]	**18**
(445)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W/O CC	[2]	**1**	[11]	**9**
(446)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE <18	1		[9]	**8**
(447)	ALLERGIC REACTIONS AGE >17	[2]	**1**	[9]	**10**
(448)	ALLERGIC REACTIONS AGE <18	1		[5]	**7**
(449)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	2		[21]	**22**
(450)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	1		12	
(451)	POISONING & TOXIC EFFECTS OF DRUGS AGE <18	1		[11]	**10**
(452)	COMPLICATION OF TREATMENT W CC	2		[23]	**19**
(453)	COMPLICATION OF TREATMENT W/O CC	2		[11]	**12**
(454)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W CC	2		[29]	**23**
(455)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W/O CC	1		[10]	**9**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[48]	**53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[57]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(582)	**INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC**	**2**		**33**	
(583)	**PROCEDURES FOR INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC**	**5**		**69**	

(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(752)	LEAD POISONING	2		[11]	**10**

MAJOR DIAGNOSTIC CATEGORY 22: BURNS

		OUTLIER TRIM POINT LOW		HIGH	
(456)	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2		[51]	**37**
(457)	EXTENSIVE BURNS W/O O.R. PROCEDURE	2		[42]	**19**
(458)	NON-EXTENSIVE BURNS W SKIN GRAFT	4		[56]	**50**
(459)	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROCEDURE	2		[32]	**27**
(460)	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	2		[17]	**20**
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4		[48]	**53**
(472)	EXTENSIVE BURNS W O.R. PROCEDURE	[7]	**8**	[94]	**98**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5		[57]	**54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3]	**2**	[38]	**37**
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**

MAJOR DIAGNOSTIC CATEGORY 23: SELECTED FACTORS INFLUENCING HEALTH STATUS AND CONTACT WITH HEALTH SERVICES

		OUTLIER TRIM POINT LOW		HIGH	
(461)	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	[2]	**1**	[33]	**18**
(462)	REHABILITATION	5		61	
(463)	SIGNS & SYMPTOMS W CC	2		[28]	**29**
(464)	SIGNS & SYMPTOMS W/O CC	[2]	**1**	12	
(465)	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1		[10]	**5**
(466)	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1		[16]	**6**
(467)	OTHER FACTORS INFLUENCING HEALTH STATUS	1		[16]	**23**
(633)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	2		[12]	**29**
(634)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	2		8	
[(635)	NEONATAL AFTERCARE FOR WEIGHT GAIN	3		34]	
(636)	**INFANT AFTERCARE FOR WEIGHT GAIN, AGE >28 DAYS <1 YEAR**	**3**		**51**	
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10		[125]	**129**
(754)	**TERTIARY AFTERCARE**	**3**		**47**	

MAJOR DIAGNOSTIC CATEGORY 24: HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTIONS

		OUTLIER TRIM POINT LOW		HIGH	
(700)	HIV WITH SPECIFIED RELATED CONDITION, AGE <13	[3]	**2**	[47]	**32**
(701)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W OPIOID USE, AGE >12	4		51	
(702)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W/O OPIOID USE, AGE >12	5		[54]	**70**
(703)	(NOT VALID)	NA		NA	
(704)	HIV RELATED MALIGNANCY, W OPIOID USE, AGE >12	5		58	
(705)	HIV RELATED MALIGNANCY, W/O OPIOID USE, AGE >12	4		[49]	**50**
(706)	(NOT VALID)	NA		NA	
(707)	HIV RELATED INFECTION, W OPIOID USE, AGE >12	4		51	
(708)	HIV RELATED INFECTION, W/O OPIOID USE, AGE >12	4		54	
(709)	(NOT VALID)	NA		NA	
(710)	HIV WITH OTHER RELATED CONDITION, W OPIOID USE, AGE >12	[4]	**2**	[52]	**26**
(711)	HIV WITH OTHER RELATED CONDITION, W/O OPIOID USE, AGE >12	2		[43]	**30**
(712)	HIV W/O SPECIFIED RELATED CONDITION, AGE <13	1		[3]	**24**
(713)	HIV W/O SPECIFIED RELATED CONDITION, W OPIOID USE, AGE >12	7		65	
(714)	HIV W/O SPECIFIED RELATED CONDITION, W/O OPIOID USE, AGE >12	3		[46]	**34**

MAJOR DIAGNOSTIC CATEGORY 25: MULTIPLE SIGNIFICANT TRAUMA

		OUTLIER TRIM POINT LOW	HIGH
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	[57] **53**
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	[58] **54**
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	[3] **2**	[38] **37**
(730)	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	[6] **5**	[95] **98**
(731)	HIP, FEMUR AND LIMB REATTACHMENT PROC FOR MULTIPLE SIGNIFICANT TRAUMA	6	[83] **79**
(732)	OTHER O.R. PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	4	[61] **57**
(733)	HEAD, CHEST AND LOWER LIMB DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	3	[45] **46**
(734)	OTHER DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	2	[25] **31**

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Surgical Facilities

Proposed Readoption: N.J.A.C. 8:33A

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., specifically 26:2H-5.

Proposal Number: PRN 1989-671.

Submit comments by January 17, 1990 to:

John J. Gontarski, Chief
Health Systems Review Program, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

N.J.A.C. 8:33A, which contains Certificate of Need requirements for surgical facilities, will expire on April 15, 1990, pursuant to Executive Order No. 66(1978). The Department has evaluated these rules and has found them reasonable, necessary and proper for the purpose for which they were proposed and is now proposing the readoption of these rules without change. The chapter will be operative for a period of two years from the date of publication of the adoption in the New Jersey Register. This shorter operative period, recommended by the State Health Coordinating Council, is intended to provide adequate time to evaluate the current need methodology in the chapter. This need methodology is somewhat cumbersome and should be simplified, which will be done over the course of the next two years.

The rules provide minimum standards and criteria, as well as surgical need methodology, for the replacement, reduction, or addition of inpatient and ambulatory or same-day surgery in the State. The rules, furthermore, facilitate greater availability of ambulatory or same-day surgery, which is forming an increasingly larger percentage of all surgeries performed nationally and in New Jersey. This proposed readoption also retains Department policy regarding the amendment made to N.J.A.C. 8:33A-2.6 (see 17 N.J.R. 2497(a), 18 N.J.R. 172(a)), which provides for a waiver of other parts of the Surgical Facilities rules, when the facility opts to trade inpatient operating rooms for an equal number of ambulatory operating rooms. This amendment has promoted an appropriate increase in ambulatory surgical facilities. The trend toward ambulatory surgery which was noted at the time of this amendment continues. Current estimates show that as much as 60 percent of all surgical procedures performed may be performed on an ambulatory or outpatient basis. Recent technological advances in the areas of anesthesiology, endoscopy and lasers have augmented the initial benefits recognized from ambulatory surgery.

Social Impact

The chapter being proposed for readoption serves to support Department policies that recognize the division of surgical and non-surgical technologies, such as laser surgery and lithotripsey, that have permitted greater numbers of what were formerly inpatient surgical procedures to be performed on an ambulatory basis. This chapter also facilitates the greater availability of alternatives to inpatient surgery.

Economic Impact

The State Health Coordinating Committee, through its adoption in 1985 of the amendment to N.J.A.C. 8:33A-2.6, has recognized the advantage of ambulatory or same-day surgery as a cost-effective alternative to inpatient surgery. The use of these ambulatory alternatives has been shown to decrease costs dramatically, due to the elimination of the inpatient hospital stay.

The chapter being proposed for readoption without change permits appropriate expansion of ambulatory surgical services to meet community need and accommodates the transition of hospital inpatient operating rooms to dedicated ambulatory surgery operating rooms. Quality of care is stressed while the increased cost effectiveness of ambulatory surgery and a balanced approach to shift in surgical settings is encouraged. Recent statistical analysis by third party payors demonstrates a cost savings from ambulatory surgery from 38 percent to 57 percent, compared to inpatient surgery. Provision for care to the medically indigent continues to be included in the rules as well as provisions which promote participation in the cost effective HMO plans on the part of providers. The rules continue to minimize systemic increases in health care costs. The actual amount of surgery has not changed significantly for the years 1986 through 1988 in New Jersey. However a trend is reported nationally of a rapid increase proportionally in coronary angioplasty, fetal monitoring, and cardiac catheterization.

Regulatory Flexibility Analysis

Facilities affected by these rules consist largely of hospitals with more than 100 beds. These hospitals typically employ well over 100 full-time employees. It is possible, however, that smaller entities that are not specifically affiliated with hospitals will be considered as surgical facilities under these rules. The requirements contained in these rules do require personnel to perform limited number of recordkeeping, and report functions. Such requirements do not necessitate the dedication of staff and should not be considered overly burdensome to the applicants that might be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing these rules for readoption, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of these rules would endanger public health and safety and, therefore, no exception from coverage is provided.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33A.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

Certificate of Need: Designation of Trauma Centers, Level I and Level II

Proposed New Rules: N.J.A.C. 8:33P

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. 26:2K-35 et seq. and 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1989-670.

Submit comments by January 17, 1990 to:
John A. Calabria, Director
Health Systems Services, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Emergency medical service (EMS) is provided to patients with severe, life-threatening, or potentially disabling conditions that require immediate intervention. In furtherance of the overall EMS objectives of the Department of Health, the purpose of this chapter is to integrate trauma center services into a coordinated network of EMS care in New Jersey. This network includes basic life support ambulance service; advanced life support mobile intensive care units; helicopter air ambulance services; local emergency room services; and emergency communication and dispatch, in addition to Level I and Level II Trauma Centers.

The proposed chapter would be used in reviewing certificate of need applications from hospitals applying to be designated as Level I or Level II Trauma Centers. The Committee on Trauma of the American College of Surgeons (ACS) has provided national leadership in the development of professional standards and criteria for Level I—the highest, most specialized level—and Level II Trauma Centers. This chapter, particularly the clinical standards in subchapters 3 through 5, is based on the most recent (1987) revision of the ACS document entitled "Hospital and Prehospital Resources for Optimal Care of the Injured Patient".

In the 1987 document, the ACS stated that "On the basis of available evidence, a system designed specifically for trauma care would effect a reduction in mortality and morbidity due to trauma. The system must necessarily address . . . the personnel and resources of the hospital with a specific commitment to trauma care." In general, a Level I or Level II regional trauma center is a hospital which is specially staffed and equipped, 24 hours a day, to receive seriously injured trauma victims and to provide systemized medical and nursing care to the trauma patient. The trauma hospital must be committed to providing immediately available personnel to care for trauma victims, must have the capability to perform complicated surgical procedures on a 24-hour basis, and must have ancillary services, such as computerized tomography (CT) scans and laboratory testing, ready at a moment's notice. A clearly defined trauma service is mandatory. Additionally, a Level I center has an ongoing commitment to teaching and research.

Social Impact

N.J.S.A. 26:2H-1 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, hospitals and health care services, and health facility cost containment programs . . ."

In accordance with this State policy, the criteria and standards contained in the proposed rules are designed to promote high quality, accessible, and responsive regionalized specialized services for trauma patients, which are provided at a reasonable cost. The regionalization and coordination of Level I and Level II trauma center services as part of an integrated Statewide EMS network has the documented potential for saving lives by improving the timeliness and effectiveness of treatment intervention.

Economic Impact

By assuring the trauma centers will be operating at a reasonable minimum volume, these certificate of need criteria will promote efficiency through economies of scale and thereby contribute to containing unit costs and charges. This is accomplished by requiring that Trauma Centers cover an area and a population that will generate an appropriate level of demand.

Regulatory Flexibility Statement

Since only large hospitals having over 100 employees would be capable of qualifying for a certificate of need for Trauma Center designation, the proposed rules place no recordkeeping, reporting, or other compliance requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

CHAPTER 33P
CERTIFICATE OF NEED: DESIGNATION OF TRAUMA CENTERS, LEVEL I AND LEVEL II

SUBCHAPTER 1. GENERAL PROVISIONS

8:33P-1.1 Scope and purpose

The purpose of this chapter is to establish criteria and standards for review of certificate of need applications from hospitals applying to be designated as Level I or Level II trauma centers and to specify the personnel, equipment, organization, and other resources required for hospitals to qualify for, and operate as, specialized trauma centers.

8:33P-1.2 Definitions

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

"Advanced life support" means an advanced level of prehospital, interhospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized by the Commissioner.

"Basic life support" means a level of prehospital care which includes patient stabilization, airway clearance, external closed chest cardiopulmonary resuscitation, control of hemorrhage, initial wound care, fracture stabilization, victim extrication, and other techniques and procedures authorized by the Commissioner, and contained in the most recent curriculum of the Emergency Medical Technician—Ambulance: National Standard Curriculum, U.S. Department of Transportation—National Highway Traffic Safety Administration, available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Department" means the New Jersey State Department of Health.

"Desirable" applies to a criterion or standard which is not mandated or required for a trauma center but is suggested, compliance with which may be considered in competitive review of certificate of need applications.

"Emergency medical technician" (EMT) means an individual who has completed a course of instruction and who has been issued certification by the Commissioner to provide basic life support services, in accordance with the standards contained in the most recent curriculum of the Emergency Medical Techinician—Ambulance: National Standard curriculum, U.S. Department of Transportation—National Highway Traffic Safety Administration, available from the U.S. Printing Office, Washington, D.C. 20402.

"Essential" applies to a criterion or standard, compliance with which is mandated or required for trauma center designation.

"Health care facility" means a facility so defined in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq.

"In-hospital" means present at all times and immediately available to the trauma center. On call personnel are not considered to be in-hospital.

"Injury severity score" means the score calculated in accordance with the Abbreviated Injury Scale, 1985 revision, prepared by the Committee on Injury Scaling of the American Association for Automotive Medicine, Morton Grove, Illinois.

"Medical control" means direction by a hospital-based physician of basic and/or advance life support services delivered in the field by authorized personnel from a licensed emergency room.

"Mobile intensive care paramedic" means a person trained in advanced life support services.

"Mobile intensive care unit" (MICU) means a specialized emergency medical service vehicle staffed by mobile intensive care paramedics or mobile intensive care nurses trained in advanced life support nursing and operated for the provision of advanced life support services under the direction of an authorized hospital.

"On call" means that personnel are responsible for attendance at the trauma center when their presence is required, in accordance with an on call roster.

"Promptly available" means that personnel can be attending patients at the trauma center within a maximum of 30 minutes from the time they are called.

"Trauma" means a physical wound or injury. For purposes of this chapter, "major trauma" refers to a wound or injury which is sufficiently serious or severe to be treated at a Level I or Level II trauma center, as measured by whether it is immediaetly life-threatening; the presence of injuries to multiple systems; Injury Severity Score or other trauma scoring systems; and/or the application of appropriate trauma triage decision criteria.

8:33P-1.3 Advertising and marketing of trauma services

Only a hospital which has been designated by the Department of Health as a Level I or Level II Trauma Center may use the terms "Trauma Center", "Trauma Service", "Trauma Unit", "Trauma Facility", "Trauma Program", "Trauma Hospital" or any similar terms in advertising or marketing materials, or may in any other way hold itself out to the public as providing trauma treatment or services of the type offered by Level I or Level II Trauma Centers, as described in this chapter.

SUBCHAPTER 2. CRITERIA FOR PLANNING AND CERTIFICATE OF NEED REVIEW

8:33P-2.1 Submission dates for certificate of need applications.

(a) Applications for designation as a Level I or a Level II trauma center shall be competitively reviewed at each level pursuant to batching procedures set forth in N.J.A.C. 8:33-1.5. The following schedule shall apply for the submission of certificate of need applications for trauma center designation during calendar years 1990 and 1991:

Deadlines for Submission	Cycle Begins
March 1, 1990†	April 15, 1990†
April 1, 1990†	May 15, 1990†
April 1, 1991	May 15, 1991

†For one time only, applications for designation as a Level I Trauma Center in EMS Region II as shown in Appendix A, which is identical to HSA Region IV as shown in Appendix B, shall be submitted on March 1, 1990 rather than April 1, 1990. Level II applications shall be submitted on April 1, 1990.

(b) Beginning in calendar year 1992, the schedule shall be:

Deadlines for Submission	Cycle Begins
April 1	May 15
October 1	November 15

8:33P-2.2 Types of applications

(a) The application for a trauma center certificate of need shall specify whether the applicant seeks designation as:

1. A Level I Trauma Center only;
2. A Level II Trauma Center only; or
3. A Level I Trauma Center, but also seeks designation as a Level II Trauma Center if it is not designated as a Level I Trauma Center.

(b) Applications shall identify a single hospital and single site for the trauma center.

8:33P-2.3 Availability of hospital resources

(a) Applicants for designation at either Level I or Level II shall demonstrate that they will have the following resources available 24 hours a day, seven days a week, as further specified for each Level in N.J.A.C. 8:33P-3 through 5, as soon as possible after certificate of need approval, but in no case later than 12 months after such approval:

1. A general surgeon;
2. A neurosurgeon;
3. An anesthesiologist;
4. Radiology equipment and personnel;
5. A clinical laboratory; and
6. An operating room equipped and staffed and available at all times for trauma cases.

(b) The availability of the resources specified in (a) above shall be documented during this period to the Health Systems Agency in the area and to the Department of Health.

(c) Applicants for designation at either Level I or Level II shall also demonstrate that they have developed the written protocols and policies described in N.J.A.C. 8:33P-5.3(g)1 through 7 as soon as possible after certificate of need approval, but in no case later than 12 months after such approval. These protocols and policies shall be documented during this period to the Health Systems Agency in the area and to the Department of Health.

8:33P-2.4 Need criteria

(a) There is a need for one Level I trauma center in each of the three EMS regions shown on the map in Appendix A, incorporated herein by reference. No certificate of need application shall be accepted from any EMS region with an existing designated Level I trauma center.

(b) The need for Level II trauma centers shall be calculated as follows: The total number of trauma centers, including both Level I and Level II centers, needed in each of the four HSA regions shown in Appendix B, incorporated herein by reference, shall be equal to the total population for the region, according to the most recent Department of Labor estimates, divided by one million (1,000,000), rounded to the nearest whole number. Any currently designated trauma centers in the region, either Level I or Level II, shall be subtracted from this total to determine net need for Level II trauma centers in each HSA region.

(c) Within 24 months of the first designation of Level II trauma centers subsequent to the adoption of this chapter, the Department of Health shall develop a State Health Plan element on trauma services, which shall include data analysis and a revised need methodology.

8:33P-2.5 Minimum volume requirements

(a) Applicants shall submit data on their current volume of major trauma cases and project a volume of major trauma cases of at least 350 per year for Level II centers and at least 600 per year for Level I centers by the end of the second full year after designation. In making these projections, the applicants shall take the following into account:

1. Current trauma volume, particularly for those trauma patients with an Injury Severity Score of 10 or greater;
2. Service area covered, with regard to population and proximity to other hospitals treating trauma cases;
3. Patterns in the service area of motor vehicle transportation and accidents; and
4. Patterns of seasonal and transient population in the service area.

8:33P-2.6 Geographic access

Applicants shall address the accessibility of their trauma center to emergency transport vehicles via ground and air transportation routes.

8:33P-2.7 Letters of support

Applicants shall submit to the Department any letters of support from pre-hospital advanced life support and basic life support providers in their service areas.

8:33P-2.8 Competitive review criteria

(a) If the number of applications for designation as a Level I or Level II trauma center in an EMS or HSA region exceeds the number calculated according to the method described in N.J.A.C. 8:33P-2.4, the applications shall be competitively reviewed according to the following factors, in addition to the criteria in N.J.A.C. 8:33P-3 through 5:

1. Existence, size, and experience of accredited surgical residency program;

2. Medical and nursing staff credentials, experience, and qualifications specific to treatment of major trauma cases, particularly surgical trauma cases;

3. Current and projected volumed of major trauma cases treated, in particular those with Injury Severity Scores of 10 or greater;

4. Geographic location and accessibility to major transportation routes;

5. Support or endorsement from the Health Systems Agency, other hospitals, and advanced life support and basic life support providers;

6. Most cost effectiveness in terms of operating costs;

7. Implementation and availability, in the shortest period of time, of the following resources 24 hours a day, seven days a week, as further specified for each Level in N.J.A.C. 8:33P-3 through 5:

i. A general surgeon;

ii. A neurosurgeon;

iii. An anesthesiologist;

iv. Radiology equipment and personnel;

v. A clinical laboratory; and

vi. An operating room equipped and staffed and available at all times for trauma cases;

8. Development, in the shortest period of time, of the written protocols and policies described in N.J.A.C. 8:33P-5.3(g)1 through 7; and

9. Availability of acute hemodialysis capability in-house, as a first preference, or through an Interhospital Outreach Program (IHOP), as a second preference.

8:33P-2.9 Compliance by designated trauma centers

(a) After designation, Level I and Level II trauma centers shall have the burden of demonstrating to the Department of Health full and continuing compliance with all applicable "essential" Level I or Level II criteria, including the minimum volume requirement, according to a process specified by the Department of Health. Designated Trauma Centers shall be first evaluated for compliance no later than 24 months after initial designation.

(b) The process for evaluation of compliance referred to in (a) above shall be adopted by the Department of Health within 18 months after the first designations made after adoption of this chapter.

(c) Hospitals which are found by the Department of Health to be out of compliance with the requirements of this chapter shall be subject to certificate of need, licensure, and reimbursement sanctions, including termination of designation as a trauma center.

SUBCHAPTER 3. HOSPITAL ORGANIZATION

8:33P-3.1 Trauma service

(a) Except as otherwise noted, the following are essential for both Level I and Level II:

1. Specified delineation of privileges for the trauma service shall be made by the medical staff Credentialing Committee;

2. The trauma team shall be organized and directed by a general surgeon expert in and committed to care of the injured. All patients with multiple-systems or major injury shall be initially evaluated by the trauma team. The surgeon who will be responsible for overall care of a patient (the team leader) shall be identified as such within the institution. A team approach is required for optimal care of patients with multiple-system injuries;

3. There shall be an individual who is identified and accountable for operation of the trauma service and who shall be qualified to serve in the capacity. The standards for this individual are:

i. Evidence of clinical qualifications, including:

(1) Educational preparation, by Continuing Medical Education (CME) documentation or fellowship;

(2) Experience in traumatology; and

(3) Board certification in surgery;

ii. Evidence of continuing medical education that is trauma related, which shall include 100 hours of continuing medical education (CME) credit in the prior two-year period for Level I and 70 hours of CME credit in the prior two-year period for Level II;

iii. Participation in the development of trauma care systems on a local, regional, state, or national level (essential for Level I, desirable for Level II).

iv. Educational involvement, such as:

(1) The Advanced Trauma Life Support (ATLS) course;

(2) Teaching at the undergraduate, graduate, and/or postgraduate levels; and

(3) Training programs within the department of surgery;

v. Participation in clinical, epidemiological, or basic research in trauma and publication of the results; and

vi. Evidence of active participation in the resuscitation or surgery, or both, of multisystem trauma patients;

vii. The provision of a written job description and organizational chart defining the relationship between the trauma service director and other hospital services; and

4. There shall be evidence of a structured method for monitoring and evaluating trauma patients throughout their hospital stay. Such plan shall show evidence of interface and collaboration between nursing management responsible for the trauma nursing service and the physician management responsible for the trauma service.

8:33P-3.2 Surgery departments/divisions/services/sections

(a) Surgery departments/divisions/services/sections shall be staffed by qualified specialists in the following specialties:

1. Essential for both Level I and Level II:

i. Orthopaedic Surgery;

ii. General Surgery; and

iii. Neurologic Surgery.

2. Essential for Level I; desirable for Level II:

i. Plastic/Maxillofacial Surgery;

ii. Urologic Surgery;

iii. Obstetrics-Gynecologic Surgery;

iv. Ophthalmic Surgery;

v. Cardiothoracic Surgery;

vi. Pediatric Surgery; and

vii. Otorhinolaryngologic Surgery; and

3. Desirable for both Level I and Level II:

i. Oral Surgery—Dental.

8:33P-3.3 Emergency department/division/service/section

The emergency department staff, including the emergency department physician, shall function to insure immediate access and appropriate care to the trauma patient. The emergency department physician should function as a designated member of the trauma team and the relationship between emergency department physicians and other participants of the trauma team shall be established on a local level, consistent with resources but adhering to established standards and ensuring optimal care. A working relationship, directed toward the goal of patient care, shall be established in-hospital as well as with other hospitals that refer patients to the Level I or Level II trauma center.

8:33P-3.4 Surgical specialties availability

(a) The following qualified specialists shall be available in-hospital 24 hours a day, as an essential requirement for both Level I and Level II:

1. General Surgery. This requirement shall be fulfilled by attending surgeons credentialed in trauma care by the institution and capable of assessing emergent situations; and

2. Neurologic Surgery. An attending neurosurgeon shall be promptly available to the trauma service. The in-hospital requirement

may be fulfilled by an in-hospital neurosurgeon or a surgeon who has special competence (as judged by the Chief of Neurosurgery) in the care of patients with neural trauma, and who is capable of initiating measures directed at stabilizing the patient and initiating diagnostic procedures.

(b) For Level II trauma centers, but not for Level I, the requirements specified in (a) above may be fulfilled by senior residents (Post-Graduate Year 4 or Post-Graduate Year 5) in the hospital's accredited surgical training program capable of assessing emergent situations in their specific specialties, providing surgical treatment immediately, and providing control and surgical leadership to the trauma team. Whenever a senior resident is used to fulfill the availability requirement, a staff specialist shall be on call and promptly available.

(c) The following qualified specialists shall be on call and promptly available from inside or outside the hospital as follows:

1. Essential for both Level I and Level II:
i. Orthopaedic Surgery;
ii. Plastic/Maxillofacial Surgery;
iii. Urologic Surgery;
iv. Ophthalmic Surgery;
v. Otorhinolaryngologic Surgery; and
vi. Thoracic Surgery; and
2. Essential for Level I; desirable for Level II:
i. Obstetrics-Gynecologic Surgery;
ii. Oral Surgery—Dental;
iii. Microsurgery capabilities;
iv. Hand Surgery;
v. Cardiac Surgery; and
vi. Pediatric Surgery

8:33P-3.5 Non-surgical specialties availability

(a) The following qualified non-surgical specialists shall be available in-hospital 24 hours a day, as an essential requirement for both Level I and Level II, as follows:

1. Emergency Medicine. A specialist in emergency medicine shall be available 24 hours a day. This requirement may be fulfilled by senior level emergency medicine residents in the hospital's accredited training program who are capable of assessing emergency situations in trauma patients and who are capable of directing and providing for indicated treatment. When residents are used to fulfill this requirement, a staff specialist shall be immediately informed and promptly available.

2. Anesthesiology:

i. For Level I, this requirement shall be fulfilled by an attending anesthesiologist capable of assessing emergent situations in trauma patients and providing for any indicated treatment.

ii. For Level II, this requirement may be fulfilled by an anesthesiology resident in the hospital's accredited training program or certified nurse anesthetist (CRNA) capable of assessing emergent situations in trauma patients and providing for any indicated treatment. When an anesthesiology resident or CRNA is used to fulfill this requirement, the staff anesthesiologist on call shall be advised and promptly available.

(b) The followng qualified non-surgical specialists shall be on call and promptly available from inside or outside the hospital as follows:

1. Essential for both Level I and Level II:
i. Cardiology;
ii. Hematology;
iii. Internal Medicine;
iv. Nephrology;
v. Pathology;
vi. Pediatrics; and
vii. Radiology; and
2. Essential for Level I; desirable for Level II:
i. Psychiatry;
ii. Infectious diseases;
iii. Chest medicine; and
iv. Gastroenterology; and
3. Desirable for Level I:
i. Neuroradiology.

SUBCHAPTER 4. SPECIAL FACILITIES/RESOURCES/ CAPABILITIES

8:33P-4.1 Emergency department (ED)

(a) The following emergency department (ED) personnel and equipment are essential for both Level I and Level II:

1. A designated physician director;
2. A physician with special competence in care of the critically injured who is a designated member of the trauma team and physically present in the ED 24 hours a day;
3. RNs, LPNs, and nurses' aides in adequate numbers; and
4. Equipment for resuscitation and to provide life support for the critically injured or seriously injured, which shall include, but not be limited to:
i. Airway control and ventilation equipment including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, oxygen, and mechanical ventilator;
ii. Suction devices;
iii. Electrocardiograph-oscilloscope-defibrillator;
iv. Apparatus to establish central venous pressure monitoring;
v. All standard intravenous fluids and administration devices, including intravenous catheters;
vi. Sterile surgical sets for procedures standard for ED, such as thoracostomy and cut-down;
vii. Gastric lavage equipment;
viii. Drugs and supplies necessary for emergency care;
ix. X-ray capability, 24-hour coverage by in-hospital technician;
x. Two-way radio lined with vehicles of emergency transport system; and
xi. Skeletal traction device for cervical injuries.

8:33P-4.2 Intensive care units (ICUs) for trauma patients

(a) ICUs may be separate specialty units or surgical ICU's. The following are essential for ICUs in both Level I and Level II:

1. A designated medical director;
2. A physician on duty in ICU 24 hours a day, or immediately available from in-hospital, who is not the emergency department physician;
3. A nurse-patient minimum ratio of 1:2 on each shift;
4. Immediate access to clinical laboratory services; and
5. Equipment as follows:
i. Airway control and ventilation devices;
ii. Oxygen source with concentration controls;
iii. Cardiac output monitoring;
iv. Temporary transvenous pacemaker;
v. Electrocardiograph-oscilloscope-defibrillator;
vi. Cardiac output monitoring;
vii. Electronic pressure monitoring;
viii. Mechanical ventilator-respirators;
ix. Patient weighing devices;
x. Pulmonary function measuring devices;
xi. Temperature control devices;
xii. Drugs, intravenous fluids, and supplies; and
xiii. Intracranial pressure monitoring devices.

8:33P-4.3 Postanesthetic recovery room

A postanesthetic recovery room shall be essential for both Level I and Level II. The room shall be staffed by registered nurses and other essential personnel 24 hours a day. The room shall contain appropriate monitoring and resuscitation equipment. A surgical intensive care unit shall be considered to fulfill the requirement for a postanesthetic recovery room.

8:33P-4.4 Acute hemodialysis capability

(a) Full in-house acute hemodialysis capability shall be essential for Level I.

(b) Acute hemodialysis capability shall be essential for Level II, in accordance with the following preferences:

1. First preference: full in-house capability;
2. Second preference: inter-hospital outreach program (IHOP);
3. Third preference: transfer agreement with a Level I or Level II trauma center with full acute hemodialysis capability, including clinically appropriate criteria for safe transfer of trauma patients who also need acute hemodialysis.

8:33P-4.5 Organized burn care

(a) The following are essential for both Level I and Level II:

1. There shall be an organized burn center staffed by physicians and nursing personnel trained in burn care. In facilities that cannot provide for a burn center within the institution, there shall be a written and signed transfer agreement between the institution and a nearby burn center;

2. The burn center shall be properly staffed and equipped for care to the extensively burned patient; and

3. The burn center shall have a designated physician director who has had specialized training in burn therapy or equivalent experience in burn care.

8:33P-4.6 Acute spinal cord/head injury management

(a) A team approach to the initial care and continued management of the acute spinal cord injury victim shall exist and shall include active participation for members of rehabilitation services.

(b) In circumstances where another hospital in the region is a spinal cord/head injury center, a written and signed transfer agreement with the hospital shall be prepared.

8:33P-4.7 Perinatal services

As an essential requirement for both Level I and Level II, any trauma center which is not itself designated as a Level III or Level IIA perinatal center shall have a written transfer agreement with a New Jersey hospital designated as a Level III perinatal center, with clinically appropriate criteria for safe transfer of trauma patients who also need specialized perinatal or neonatal services.

8:33P-4.8 Radiological special capabilities

(a) The following radiological special capabilities are essential for both Level I and Level II:

1. Angiography of all types; and

2. In-hospital computerized tomography, with technician.

(b) The following radiological special capabilities are essential for Level I and desirable for Level II;

1. Sonography, and

2. Nuclear scanning.

8:33P-4.9 Rehabilitation medicine

(a) The following are essential for both Level I and Level II.

1. The applicant shall provide documentation that the rehabilitation potential of each trauma patient will be assessed by a psychiatrist and that a written rehabilitation plan of care will be implemented by the applicant in accordance with the patient's needs;

2. The applicant shall provide documentation that a multi-disciplinary trauma team, including a social worker or discharge planner, will develop and implement a discharge plan for each trauma patient; and

3. To assure continuity of care for trauma patients who may require inpatient comprehensive rehabilitation, as it is defined in N.J.A.C. 8:33M-1.2, applicants which are not themselves licensed rehabilitation hospitals shall submit documentation of existing or anticipated transfer agreements with licensed rehabilitation hospitals located throughout the proposed service area.

8:33P-4.10 Social services

(a) Social work staff shall intervene with the patient, patient's family, significant others, community, and members of the interdisciplinary team and/or hospital staff, as indicated, providing diagnostic, therapeutic and concrete services.

(b) There shall be documentation in the patient's record of the social work services provided.

SUBCHAPTER 5. OTHER REQUIREMENTS

8:33P-5.1 Operating suite special requirements

(a) The following equipment-instrumentation shall be required for both Level I and Level II:

1. An operating room, adequately staffed, in-hospital. Both the operating room and the staff shall be immediately available 24 hours a day;

2. Thermal control equipment:

i. For patients; and

ii. For blood.

3. X-ray capability;

4. Endoscopes, all varieties;

5. A craniotome; and

6. Monitoring equipment.

(b) The following equipment-instrumentation is essential for Level I and desirable for Level II:

1. Cardiopulmonary bypass capability; and

2. An operating microscope.

8:33P-5.2 Clinical laboratory service

(a) The following clinical laboratory services shall be available 24 hours a day, as an essential requirement for both Level I and Level II:

1. Standard analyses of blood, urine, and other body fluids;

2. Blood typing and cross-matching;

3. Coagulation studies;

4. Comprehensive blood bank or access to a community central blood bank and adequate hospital storage facilities;

5. Blood gases and pH determinations;

6. Serum and urine osmolality;

7. Microbiology; and

8. Drug and alcohol screening.

8:33P-5.3 Quality assurance

(a) Level I and Level II trauma centers shall have organized quality assurance programs (Level II programs shall be coordinated with the regional Level I center), which shall include the following:

1. A special unit for all trauma deaths and other specified cases;

2. A morbidity and mortality review;

3. A multidisciplinary trauma conference;

4. A medical nursing audit, utilization review, and tissue review; and

5. A trauma registry review, as follows:

i. A registry shall be maintained of all major trauma admissions with pertinent treatment and outcome data, as determined by the New Jersey State Department of Health, Office of Emergency Medical Services. The registry shall be based at the Level I centers, and all Level II centers shall participate; and

ii. The trauma registry shall include, at a minimum:

(1) Severity of injury, including the probability of death;

(2) Anatomic site(s) of injury (injuries);

(3) Nature of injury (injuries);

(4) Mechanism of injury;

(5) Classification of patient injuries, including subgroups;

(6) Demographic information as to age, sex, and other factors;

(7) Appropriate injury severity scores and/or trauma scores, as determined by the Department of Health at various points in the patient's treatment;

(8) Information on the patient's length of stay, including length of stay in the trauma ICU, and step-down units, and regular patient areas; and

(9) Outcome;

iii. All data and statistics in the registry shall be reviewed for completeness by the trauma center staff and missing information supplied before final analysis is begun; and

iv. An analysis shall be made of data collected, with the resulting findings and conclusions sent monthly to the New Jersey State Department of Health, Office of Emergency Medical Services; and

6. A review of prehospital and regional systems of trauma care.

(b) The hospital shall provide written protocols and policies to support a systematic and comprehensive approach to the care of trauma patients with the following identified requirements:

1. Trauma patient triage protocols;

2. Trauma team response protocols;

3. Trauma patient resuscitation and stabilization protocols;

4. Operating room protocols for support of the trauma team with explicit recognition to the priority given to trauma patients;

5. Trauma patient transport protocols, both for emergency department to the operating room, and from one hospital to another;

6. A special audit for trauma deaths at least every month;

7. A morbidity review and cost-of-care review monthly; and

8. For a Level II center, a transfer agreement with the regional Level I trauma center.

8:33P-5.4 Outreach program

The outreach program shall be based at the Level I centers, and Level II centers shall cooperate in its implementation. The program shall include telephone and on-site consultations with physicians of the community and outlying areas. The Level I trauma center shall serve as a resource on outreach programs for all Level II trauma centers and providers of EMS services in its region.

8:33P-5.5 Public education

Both Level I and Level II centers shall provide education regarding injury prevention in the home and industry, and on the highways and athletic fields; standard first-aid; and problems confronting the public, the medical profession, and hospitals regarding optimal care for the injured.

8:33P-5.6 Trauma research program

The Level I centers shall conduct a trauma research program, including analysis of trauma registry data, in which the Level II centers shall participate.

8:33P-5.7 Training program

(a) Both Level I and Level II centers shall provide formal programs in continuing education, with the Level II programs provided in cooperation with the Level I center, for:

1. Staff physicians;
2. Nurses;
3. Allied health personnel, such as emergency medical technicians and paramedics;
4. Community physicians; and
5. Community nurses, including registered and licensed practical nurses.

8:33P-5.8 Nursing requirements

(a) The following nursing requirements in (b) through (i) shall be essential for both Level I and Level II.

(b) The hospital shall define the roles of the nursing team members and their areas of responsibility, accountability, and authority.

(c) The hospital shall designate an individual as the trauma nurse coordinator.

(d) The trauma nurse coordinator shall be responsible for monitoring the quality of care given by the nursing staff as the trauma patient moves through the hospital system.

(e) The trauma nurse coordinator shall have the responsibility to monitor and promote all truma related activities associated with patient care.

(f) The truma plan for the nursing department shall include:

1. The ability to immediately mobilize qualified nursing resources from inpatient areas for initial multiple resuscitation efforts; and
2. A defined and structured role for the trauma nurse coordinator or the nurse administrator responsible for the overall coordination and integration of the trauma service.

(g) The standards for the individual who shall be designated the trauma nurse coordinator are:

1. Evidence of qualification, including:
   i. Educational preparation;
   ii. Certification; and
   iii. Experience;
2. Evidence of continuing education related to trauma care and the trauma system;
3. Participation in the development of trauma care systems on a local, regional, state, or national level;
4. Documentation of participation as either program coordinator, consultant, or as a faculty member, in trauma education activities comparable to the Advanced Trauma Life Support (ATLAS) course which are separate from the institution's in-hospital trauma education program and which offer evidence of the application of the trauma nursing activities; and
5. Participation in trauma research either through promoting or coordinating such research.

(h) There shall be a written job description and organizational chart defining the relationship between the trauma nurse coordinator and other hosptial services.

(i) There shall be evidence of the participation of the trauma nurse coordinator in establishing programs to influence the nursing care of the trauma patient.

8:33P-5.9 Participation in regional EMS and trauma systems

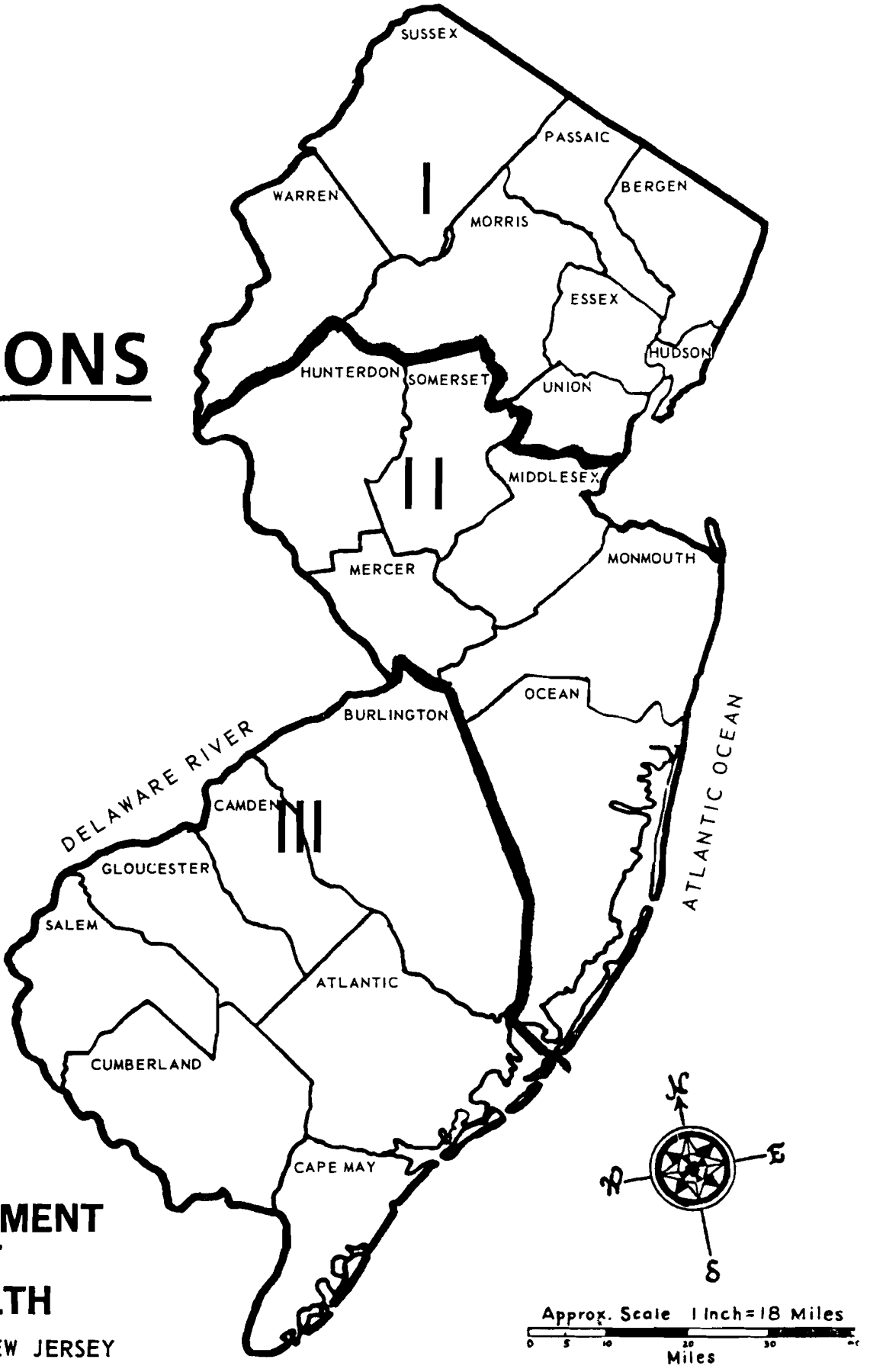
(a) Level I and Level II trauma centers shall establish working relationships with each other, as well as with basic and advanced life support and emergency transportation providers, community hospitals and other elements of the regional trauma network, with Level I centers taking the lead.

(b) Both Level I and Level II centers shall document active involvement in the local and regional emergency medical services (EMS) systems. This involvement can be demonstrated by:

1. Providing joint educational programs with other institutions, including instruction in the equipment, supplies, and drugs specific to the major trauma patient;
2. Providing on-line medical control; and
3. Assisting in the development of regional policies, procedures and protocols.

APPENDIX A

EMS REGIONS

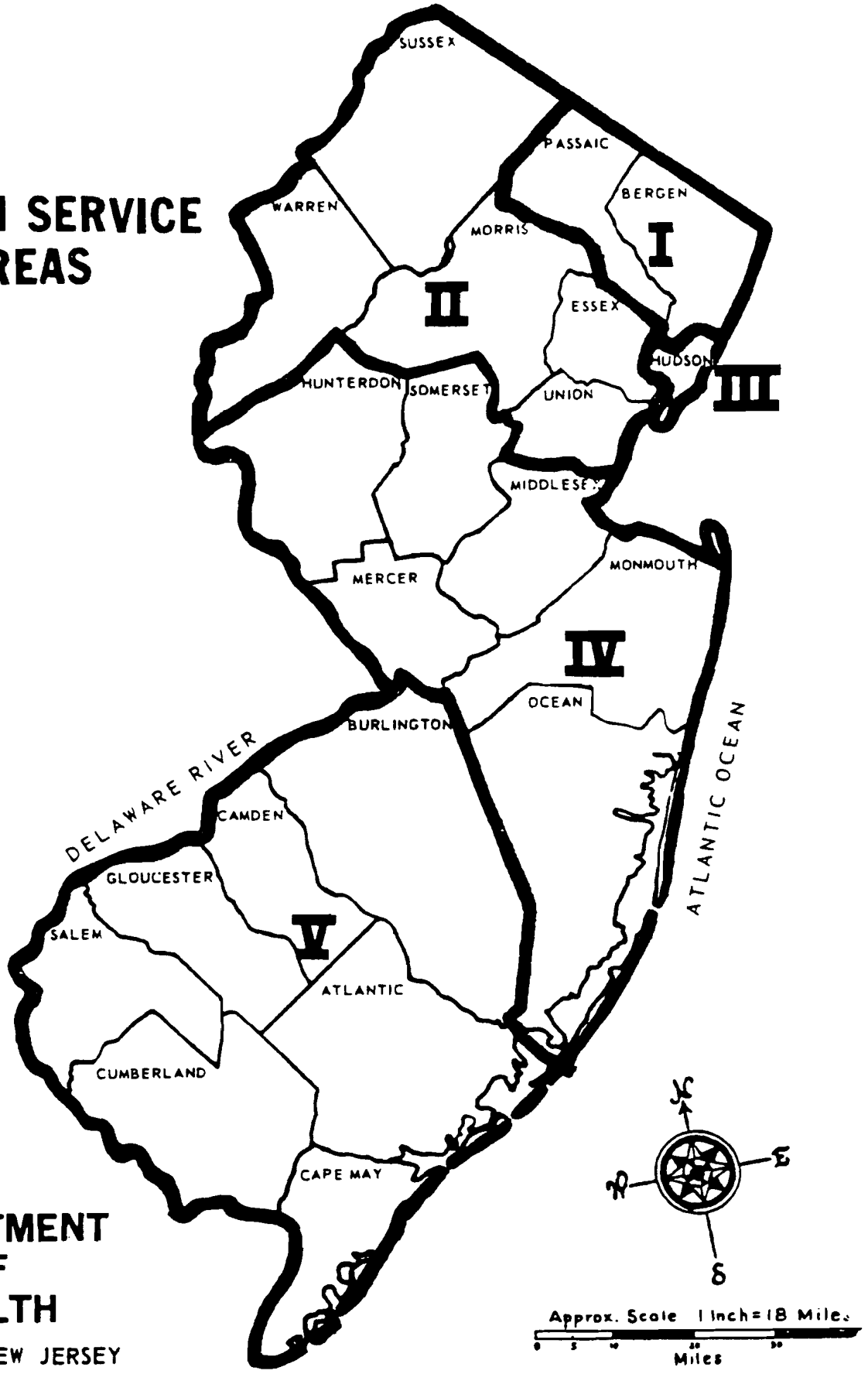


DEPARTMENT OF HEALTH

STATE OF NEW JERSEY

APPENDIX B

HEALTH SERVICE AREAS



DEPARTMENT OF HEALTH

STATE OF NEW JERSEY

(a)

REPORTABLE DISEASES

Reportable Communicable Diseases; Immunization Requirements

Proposed Readoption with Amendments: N.J.A.C. 8:57

Proposed Repeals: N.J.A.C. 8:57-1.13, 1.14, 2, 3 and 5

Authorized By: Public Health Council, Milton Prystowsky, M.D., Chairman.
Authority: N.J.S.A. 26:1A-7.
Proposal Number: PRN 1989-668.

A public hearing on the proposed readoption with amendments will be held on January 22, 1990 at 12:00 Noon at:

Health and Agriculture Building
Board Room, 1st Floor
John Fitch Plaza
Trenton, New Jersey

Submit written comments by January 22, 1990 to:

Kenneth C. Spitalny, M.D.
Director, Communicable Disease Control Services
Division of Epidemiology and Disease Control
New Jersey State Department of Health
CN 369
Trenton, New Jersey 08625-0369

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), N.J.A.C. 8:57 shall expire on June 18, 1990. The New Jersey State Department of Health has reviewed the rules proposed for readoption and determined that the rules in subchapters 1 and 4 are necessary, reasonable and proper for the purposes for which they were originally promulgated, with the exception of N.J.A.C. 8:57-1.13 and 1.14, which are proposed for repeal. The Department proposes that the existing subchapters be readopted with some technical and substantive changes.

Sections of this chapter include rules pertaining to disease entities falling under the jurisdiction of three separate divisions of the State Department of Health, and several different programs within these divisions. Due to this multiplicity of programs and the wide variety of public health issues involved, the revision of N.J.A.C. 8:57 is presented in four separate proposals, all in this issue of the New Jersey Register.

This proposal addresses the readoption of the chapter with proposed amendments to subchapter 1, pertaining to general reporting and control of communicable diseases, as well as proposed amendments to subchapter 4, pertaining to vaccine-preventable diseases. Elsewhere in this issue of the New Jersey Register are three other separate proposals addressing: (1) the proposed revisions to what is currently N.J.A.C. 8:57-1.14 (being proposed as new rules to be codified as a separate subchapter, N.J.A.C. 8:57-2), pertaining to AIDS and HIV infection; (2) revisions to the rules pertaining to reportable occupational and environmental diseases and poisons (currently N.J.A.C. 8:57-1.13) which are being proposed as new rules to be codified in a separate subchapter, N.J.A.C. 8:57-3.1 and 8:57-3.2; and (3) the proposed amendments N.J.A.C. 8:57-6, pertaining to the cancer registry, and its recodification into its own new chapter, N.J.A.C. 8:57A.

N.J.A.C. 8:57-1 Reportable Communicable Diseases

Proposed N.J.A.C. 8:57-1.1 to 1.13 concern the reporting of communicable diseases to the New Jersey State Department of Health. The Department's objectives in establishing rules for such reporting continue to be as follows:

Subchapter 1 delineates who is to report these disease conditions and to whom, how, and when they are to be reported. The responsibilities of physicians, institutions, schools and health officers are delineated. In addition to the rules pertaining to reporting, there are four provisions which give the local and State Health Departments specified powers to identify and control the spread of communicable diseases. Proposed N.J.A.C. 8:57-1.13 (currently N.J.A.C. 8:57-1.12) is not directly related to reporting or disease control activities but instead it is a rule prohibiting the inoculation of living microbiological agents which are not approved by the United States Food and Drug Administration, unless permission is granted by the State Department of Health.

Besides clarifying several points in the current rules, there are four major revisions to subchapter 1. They are:

(1) The proposed amendments outline the procedures which will be followed in those situations when persons required to report fail to fulfill their reporting obligation. The purpose of these amendments is to make explicit what was previously unstated. These proposed amendments underscore the importance of reporting as it relates to disease control, and establish a fair and orderly process in which individuals failing to comply with this requirement are handled.

(2) Nosocomial infections are probably the most frequent cause of preventable infectious diseases which result in severe morbidity and mortality. Because the present system as constituted cannot begin to address this significant problem in the way it should, the proposal to report nosocomial infections in a systematic fashion is included in the proposed amendments. In the past year, as the Department has become more involved in investigating hospital problems, it has become increasingly clear that many nosocomial disease problems requiring further investigation went unreported. In reviewing the reasons for this situation, it was found that there is too much latitude in describing outbreaks in a hospital setting, and there are too many disincentives to report these problems. Because of the deficiencies of the present reporting system, the dimension of the nosocomial problem is significantly underestimated, and important control issues and policy decisions are not appropriately addressed. The Program recognizes its own resource limitation and is interested in confining its work to three core issues: methicillin resistant *Staphylococcus aureus, Clostridium difficile,* and antibiotic resistant bacteremias. In discussion with the Centers for Disease Control, meetings with the Council of State and Territorial Epidemiologists, and conversations with hospital infection control practitioners, these issues demanded the most immediate attention, and should therefore form the foundation of any nosocomial infection control program.

(3) Requiring all laboratories to submit laboratory human isolates of *Legionella* species, *Neisseria meningitidis,* and *Salmonella* spp. to the State laboratory. In the 1980's, major technological innovations have occurred in identifying unique variations in bacteria. These innovations are being used as important investigatory tools to identify sources for disease transmission. They are used similar to how fingerprinting is used in crime detection. This ability to "fingerprint" bacteria has been instrumental in identifying *Salmonella* outbreaks, matching human *Legionella* isolates to environmental sources, and for identifying unusual clusters of *N. meningitidis* disease. As a result of these technological innovations, the Department is requiring laboratories to submit their human isolates of these species which will enhance the State's ability to detect outbreaks or discover the source for disease transmission.

(4) A fourth issue addressed in the proposed amendments has been to change the site to which the laboratory is required to report, from the State Department of Health to the local health departments. Among the major problems in the present reporting system are the inefficiencies created by duplication of efforts occurring at both the local and State Health Department levels. Some of the inefficiencies are created because of ambiguities in the description of roles played by either local or State staff. Others are a result of a mismatch between function and structure, asking the local health departments to be the primary processor of data, but not giving them the data to process. In order to streamline the direction and order of the flow of information, it is essential that one agency be given the primary role of receiving, collating, and processing data. In this, as in previous proposals, the local health department has been designated as that site. The proposed amendments not only recognize that fact, but give local health departments the tools so they can successfully accomplish what is required of them. They must and should receive and process laboratory data, as well as all clinical data.

N.J.A.C. 8:57-4 Immunization Requirements

N.J.A.C. 8:57-4 concerns the establishment of a set of uniform immunization requirements applicable to children attending all schools and preschool facilities in New Jersey and is mandated by N.J.S.A. 26:1A-7. The Department's objectives in establishing rules as a condition for children entering school continue to be as follows:

(1) To ensure that all children attending school have been immunized against specific vaccine-preventable diseases;

(2) To prevent the transmission of vaccine-preventable diseases by maintaining high immunization rates in school-aged and preschool-aged children; and

(3) To collect data on the immunization status of children attending schools and preschool facilities in order to identify areas of the State where immunization rates are not adequate so that intervention measures can be instituted.

Currently available vaccines have greatly reduced the number of cases of vaccine-preventable diseases as compared to the number reported in the pre-vaccine era. However, disease cases continue to occur among children, particularly measles, mumps, rubella, and pertussis. Most of the proposed amendments to N.J.A.C. 8:57-4, which is Chapter 14 of the State Sanitary Code, as originally promulgated in 1975, are clarifications of the provisions of the current rules. The specific vaccines and the number of vaccine doses required have remained the same. However, it may become necessary to consider future amendments within 12 to 24 months, due to possible changing immunization recommendations pertaining to the administration of measles, mumps, and rubella vaccine (MMR) and Haemophilus influenza type b vaccine.

A physician's medical exemption to immunization of a pupil shall continue to be granted, provided it is based upon valid medical reasons as cited by the American Academy of Pediatrics (AAP) or the Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service.

Religious exemptions to immunization for a pupil shall continue to be granted, provided the parent or guardian explains in writing how the immunization conflicts with the exercise of bona fide religious tenets or practices of the pupil.

Provisional admission shall continue to be granted, provided there is written documentation that at least one dose each of all the required vaccines has been administered. Children under age five shall have a maximum of 17 months to complete all requirements; children age five and older shall have a maximum of 12 months to complete the requirements. A child enrolling in a New Jersey school shall be granted provisional status only once.

All pupils with medical or religious exemptions or in provisional enrollment status may be excluded from the school or preschool in the event of a specific vaccine-preventable disease outbreak or threatened outbreak in the school.

Four doses of Diphtheria, Tetanus, and Pertussis (DTP) must be administered as before; however, one dose must now have been administered on or after the fourth birthday.

Three doses of oral poliovirus vaccine (OPV) are required as before; however, one dose must have been administered on or after the fourth birthday. The vaccine requirements of DTP and poliovirus vaccine shall now also apply to children under age one; these children shall be immunized as is medically appropriate for their age in order to ensure greater protection for them and others in day care settings.

A physician's diagnosis of past measles disease will no longer be acceptable. A physician's diagnosis of mumps disease will be acceptable proof of mumps immunity. A pupil may also now present laboratory evidence of mumps immunity. Mumps and rubella vaccines now must have been administered on or after the first birthday as recommended by recognized medical authorities and the biological manufacturers.

The specific vaccines and the number of doses required under these rules are intended to establish the minimum vaccine requirements for preschool or school entry and attendance in New Jersey. Additional vaccines or vaccine doses are recommended by the State Department of Health, in accordance with the guidelines of the American Academy of Pediatrics (AAP) and the Immunization Practices Advisory Committee (ACIP) for optimal immunization protection and may be administered, although they are not required for school attendance.

Social Impact

The implementation of this proposed readoption with amendments will have a beneficial social impact. Communicable diseases are a leading cause of preventable morbidity and mortality; communicable disease control activities continue to be among the most cost-efficacious ways of spending limited public health dollars.

The proposed changes to subchapter 1 have been made to optimize the utilization of public health resources. The revised rules include (1) adding the reporting of those diseases such as nosocomial infections which have the potential of being more effectively controlled; (2) deleting the reporting of those diseases for which Program activities have not had impacts in the past, nor would be expected to have impacts in the future; and (3) improving the procedures for reporting so that the surveillance system can be streamlined and the responsibilities of agencies and individuals can be clarified.

In the past, these reporting rules have been instrumental in the timely identification of outbreaks which resulted in effective disease controls interventions. Noteworthy have been disease control investigations involving *Salmonella, Legionella,* and nosocomial outbreaks. A second major impact by the Program as a result of the reporting regulations has been the timely prophylactive treatment of individuals exposed to and at risk for developing illness. Examples include partner notification of contacts with sexually transmitted diseases, contact identification and treatment of individuals exposed to *N. Meningitidis* and *H. Influenza* disease, and prophylactic treatment for individuals exposed to potentially rabid animals. A third consequence of the rules on program activities has been the planning and implementation of long term projects by identifying those diseases which can only be efficiently controlled with prolonged and extensive commitment of public health resources. Examples of such activities include plans and activities to respond or to control sexually transmitted diseases, Tuberculosis, Lyme disease, and *Salmonella enteritidis* in raw egg products. Thus, if the proposed changes are adapted and implemented, it is anticipated that scarce health resources will be more efficiently utilized and the Program will be able to respond to disease problems in a more effective and expeditious manner.

The proposed nosocomial infection surveillance system will be used as an example of a proposed change that is anticipated to have a major social benefit. Over the past decade, New Jersey, like most other states, has been confronted with a major epidemic of methicillin-resistant *Staphylococcus aureus* in hospitalized patients. The increased cost from treatment and the social cost from disease sequelae has resulted in a large cost to society. Until now, there has not been an agency charged with organizing the collective experience of the multiple hospitals encountering the problem and formulating strategies to assist hospitals in their control efforts. Furthermore, as the bacteria like *Staphyloccus aureus* develop antibiotic resistance faster than society can develop new antibiotics, the State will be left in a desperate situation regarding the control of diseases without the essential technological support (that is, antibiotics). The purpose of the proposed amendments is to establish a program that can systematically develop expertise in nosocomial infection control on antibiotic resistant bacteria.

The readoption of subchapter 4, with proposed amendments, will have continued positive social impact, since the rule applies uniformly to all pupils in New Jersey. Vaccine-preventable diseases remain a threat to school and preschool-aged children. There has been a resurgence of measles in New Jersey over the past several years. Mumps disease is increasingly being reported among school and college-age pupils. Pertussis remains a threat to unimmunized infants and young children. Prevention of such disease outbreaks requires high immunization levels among school and preschool-aged children. A continued high level of protection will prevent these disease outbreaks and their sequelae by curtailing the associated high social costs that affect the individual, family, and the community.

Economic Impact

Except for the revision in subchapter 1 requiring laboratories to report results to the local health departments, the expected cost impact of these proposed amendments would be minimal. In fact, many of the modifications were made to avoid costs resulting from inefficiencies. It is anticipated that costs incurred by hospitals reporting specified nosocomial infections will be minimal. Presently, most of the information which hospitals are being asked to report is already being collected as part of the hospitals' infection control programs. Since reporting is required only on a monthly basis, the transaction cost will be minimized.

Similarly, sending in *Salmonella, Legionella,* and *N. meningitidis* isolates to the State should entail little additional cost to laboratories. Many laboratories already send their isolates and other specimens to the State for analysis and typing. Because of the extensive inter-relationship between the State and clinical laboratories, it is expected that little additional expenditure will be incurred by the laboratory. By sending multiple specimens on a periodic basis, perhaps on a two-week interval, any additional cost can be further reduced. For each of the proposed amendments discussed, it can be anticipated that the benefits in disease control and efficiency would far outweigh any cost incurred.

The major concern over cost in the readoption with amendments would be as a result of the revision requiring laboratories to send reports of positive test results on reportable diseases to the local health departments. This requirement will have no effect on health care facility, physician provider, or small business laboratories. They will just be changing the site where they send their results from the State to the local health departments. On the other hand, the one group of laboratories that might

be significantly affected would be the independent clinical laboratories serving physicians or facilities from multiple health districts, especially those laboratories serving the entire State. The major cost incurred would be the transactional cost of sorting and sending required information to the appropriate local health departments. This cost could be relatively high for some laboratories.

In order to reduce these additional costs, the infection disease subcommittee of the Local Health Officers Association has proposed that the laboratories could send the results to a designated site at a county level, which then would be responsible for sending the information to the various local health departments. Other suggestions could be entertained, such as reducing the types of test results that would be required to be reported. Because of the concern about cost, the Department needs to entertain a flexible approach to finding a solution; however, it is essential that the reporting system not be unduly compromised. There must be a system in place where key laboratory data can be sent on a timely basis to the local health departments for processing, so accurate data can be analyzed, outbreaks identified, and investigation/control efforts initiated expeditiously to prevent disease spread.

The readoption of subchapter 4, with proposed amendments, will not significantly increase the economic cost to the parents or guardians of pupils entering school or preschool settings. The required vaccines have been medically recommended by health authorities for over 15 years and most children receive these required doses as part of routine well child care by private pediatricians or public health clinics. Despite increasing vaccine costs for disease prevention which are borne by the family and public and private health providers alike, the economic costs associated with outbreak of vaccine-preventable diseases are much greater. These may include hospitalization, lost classtime for ill pupils, parental loss of worktime, and disruption of routine school and health delivery activities.

Regulatory Flexibility Analysis

The proposed amendments impose some reporting, recordkeeping and compliance requirements on businesses, some of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses would include small health provider practices, clinical laboratories and day care centers.

Two revisions that might have an impact on small physicians' offices and laboratories would be the requirement to send the specified isolates of *Salmonella, Legionnella,* and *N. meningitidis* to the State laboratory, and sending laboratory results to local health departments. However, it is expected that these requirements would have a negligible adverse economic impact on small businesses. It can be anticipated that the number of the isolates recovered by a small laboratory which would be required to be sent to the State would be so few that the economic impact on anyone would be minimal. Furthermore, the requirement to report specified laboratory results to the local health department instead of State would simply change the site to which the report is sent. If any impact, this may actually reduce some reporting costs since some of the local health departments would be in the same proximity as the reporting laboratory.

The proposed amendments will be applicable to all health care providers, clinical laboratories, schools and child care centers without exception based on size or any other characteristic. The statutory provisions being implemented require universal reporting and application in the interests of preventing the spread of diseases and safeguarding public health.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:57.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:57-1.13, 1.14, 2, 3 and 5.

Full text of the proposed amendments to the readoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. REPORTABLE COMMUNICABLE DISEASES

[FOREWORD

The New Jersey State Sanitary Code is composed of regulations organized into appropriate Chapters. The Chapters have been promulgated by the Public Health Council of the State Department of Health after public hearing, pursuant to statute (New Jersey Statutes Annotated 26:1A-7).

The provisions of the State Sanitary Code have the force and effect of law. They are enforceable by the State Department of Health, local boards of health, local police authorities and other enforcement agencies.

New Jersey Statutes Annotated 26:1A-10 provide that each violation of any provision of the State Sanitary Code shall constitute a separate offense and each such violation shall be punishable by a penalty of not less than $25.00 nor more than $100.00.

The names of persons on the Public Health Council will be given to any person on request. Members of the Council receive no remuneration for their services.

Many persons have primary need for specific Chapters of the Code rather than the Code in its entirety. Separate Chapters of the Code have been printed to meet such request and to preclude the necessity of reprinting the entire Code when individual chapters are revised.]

8:57-1.1 Purpose and scope

The purpose of this subchapter is to expedite the reporting of certain diseases or outbreaks of disease so that appropriate action can be undertaken to protect the public health. The latest edition of the American Public Health Association's publication, "Control of Communicable Diseases in Man", should be used as **a reference providing** guidelines for the characteristics and control of communicable disease unless other guidelines are issued by the State Department of Health.

8:57-[1.1]**1.2** Definitions

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

"Health officer" means a licensed health officer or his **or her** designee.

["Reporting officer" means the health officer or other person designated to receive reports by the local board of health.]

"State Department of Health" means a duly authorized representative of the State Department of Health [, except, in N.J.A.C. 8:57-1.2(c) which must be the State Commissioner of Health or a person designated to act for the Commissioner].

8:57-[1.2]**1.3** Reportable diseases

(a) [The] **Any single case of the** following diseases [are] **is** declared to be reportable **in writing** [to the State Department of Health] for [purpoes] **purposes** of this [code] **subchapter.** All diseases listed herein are to be reported, **by physicians, institutional superintendents, principals, laboratory supervisors and health officers,** in the manner prescribed by N.J.A.C. 8:57-[1.3, 1.4, 1.5, 1.6 and 1.10] **1.4, 1.5, 1.6, 1.7 and 1.8, except for the manner of reporting specifically noted for AIDS and HIV infection, cancers, environmental diseases, occupational diseases and poisonings. For the reporting of AIDS and HIV infection, see N.J.A.C. 8:57-2.1.**

Amebiasis (**Entamoeba histolytica**)
Anthrax (**Bacillus anthracis**)
[Atypical Mycobacterioses]
[Babesiosis]
Botulism (**Clostridium botulinum**)
Brucellosis (**Brucella spp.**)
[*Campylobacter fetus*] **Campylobacter jejuni** Disease[s]
Cancer, see N.J.A.C. 8:57A
Cholera (Vibrio cholerae)
Creutzfeldt-Jakob Disease
[Dengue]
Diphtheria (**Corynebacterium diphtheriae**)
Encephalitis, [Infectious (Specify)] **Arboviral**
Environmental Diseases, see N.J.A.C. 8:57-3.1 and 3.2
[Food/Water-Borne Disease]
Foodborne Intoxications,
including (but not limited to) Ciguatera, Paralytic Shellfish Poisoning, Scombroid, Mushroom Poisoning
Giardiasis (**Giardia lamblia**)
[Guillain-Barre Syndrome]
Hansen's Disease (Leprosy, Mycobacterium leprae)
Haemophilus influenzae, Invasive Disease (e.g. Meningitis, Sepsis)

Hemorrhagic Colitis (Escherichia coli 0157:H7, other or unknown etiology)
Hemolytic Uremic Syndrome
Hepatitis, **Viral**:
Type A
Type B
Non-A, Non-B
[Unspecified]
[Hydatid Disease]
Kawasaki Disease (Mucocutaneous Lymph Node Syndrome)
[Legionellosis, including]
Legionella pneumophila Pneumonia (Legionnaire's Disease)
[Pontiac Fever, and diseases caused by atypical *Legionella-like* organisms]
[Leprosy]
Leptospirosis (**Leptospira interrogans**)
Listeriosis (Listeria monocytogenes, Invasive Disease, for example Meningitis, Sepsis)
Lyme Disease (**Borrelia burgdorferi**)
Malaria (**Plasmodium spp**)
Measles (**Rubeola**)
[Meningitis, Infectious (Specify)]
Meningococcal **Invasive** Disease (**Neisseria meningitidis, for example Meningitis, Sepsis**)
Mumps
Occupational Diseases, see N.J.A.C. 8:57-3.1 and 3.2
Pertussis (**Whooping Cough, Bordetella pertussis**)
Plague (**Yersinia pestis**)
[*Pneumocystis carinii* pneumonia]
Poisonings, see N.J.A.C. 8:57-3.1 and 8:57-3.2
Poliomyelitis
Psittacosis (**Chlamydia psittaci**)
Rabies, **Human Illness**
Rabies, Animal Bites Treated for Rabies
[Rat Bite Fever]
[Relapsing Fever, Louse-borne]
[Reye's Syndrome]
Rheumatic Fever, Acute
Rickettsial Diseases, including
Q Fever (**Coxiella burnetii**)
[Rickettsialpox]
Rocky Mountain Spotted Fever (**Rickettsia rickettsii**)
[Typhus Fever]
Rubella (German Measles), including Congenital Rubella Syndrome
Salmonellosis
Sexually Transmitted (Venereal) Diseases
Chancroid (Haemophilus ducreyi)
Chlamydia trachomatis, including (but not limited to)
Lymphogranuloma Venereum, and Infant Disease, for example Pneumonia, Conjunctivitis
Gonorrhea (Neisseria gonorrhoeae including Ophthalmia Neonatorum)
Granuloma Inguinale
Syphilis (Treponema pallidum), including Congenital
Shigellosis
Smallpox (**Variola**)
Streptococcus agalactiae, Group B, Perinatal Invasive Disease (for example Meningitis, Sepsis)
Tetanus (**Clostridium tetani**)
[Toxic Shock Syndrome]
[Trachoma]
Trichinosis (**Trichinella spiralis**)
Tuberculosis (**Mycobacterium tuberculosis, M. africanum, and M. bovis**)
Tularemia (**Francisella tularensis**)
Typhoid Fever (**Salmonella typhi**)
[Venereal Diseases
Chancroid
Gonorrhea
Granuloma Inguinale
Lymphogranuloma Venereum
Ophthalmia Neonatorum
Syphilis]
Viral Hemorrhagic Fevers,
including (but not limited to) Ebola, Lassa, Marburg
[Diseases caused by Vibrio species, including Cholera]
Yellow Fever
[Yersiniosis] **Yersinia enterocolitica Disease**
[Yellow Fever]

(b) **In addition to the aforementioned reporting responsibilities,** [The] **the** following diseases are declared to be reportable immediately by telephone **by physicians, institutional superintendents, principals, laboratory supervisors, and health officers** in the manner described in **N.J.A.C.** 8:57-[1.3, 1.4, 1.5, 1.6 and 1.10] **1.4, 1.5, 1.6, 1.7 and 1.8.**
1. Disease outbreaks, including:
Foodborne/Waterborne
Nosocomial
Other/Unknown
2. Single cases or suspected cases of:
Botulism (**Clostridium botulinum**)
[Cholera]
Creutzfeldt-Jakob Disease
Diphtheria (**Corynebacterium diphtheriae**)
Encephalitis, Arboviral
[Food/Waterborne Disease]
Haemophilus influenzae, Invasive Disease
Hepatitis A, Institutional Settings
Measles (**Rubeola**)
[Meningitis, Infectious, etiology: Haemophilus influenzae]
Meningococcal **Invasive** Disease (**Neisseria Meningitidis**)
Pertussis (Whooping Cough, Bordatella pertussis)
Plague (**Yersinia pestis**)
Poliomyelitis
Rabies (**Human Illness**)
Rubella
Smallpox (**Variola**)
[Syphilis, Infectious]
Viral Hemorrhagic Fevers,
including (but not limited to) Ebola, Lassa, Marburg

(c) **In addition to the aforementioned reporting responsibilities, any single case of the following disease is required to be reported by laboratory supervisors in the manner described in N.J.A.C. 8:57-1.7(b): Atypical Mycobacterioses.**

[(c)](**d**) For purposes of research, surveillance and in response to technological developments in disease control, the State Commissioner of Health, **or a person designated to act for the Commissioner,** is empowered to amend the list of diseases as set forth in this chapter for such periods of time as may be necessary to control disease.

(e) **In addition, any single case of the diseases identified in N.J.A.C. 8:57-2.1, AIDS infection with HIV, 8:57-3, Occupational and Environmental Diseases and Poisonings, and 8:57A, Cancer, shall be reported in the manner described in N.J.A.C. 8:57-2.1, 8:57-3 and 8:57A.**

8:57-[1.3]**1.4** Reporting of diseases by physicians

(a) Every physician attending any person ill with or infected with any of the diseases listed in N.J.A.C. 8:57-[1.2]**1.3(a)** shall, within [12] **24** hours after such disease has been diagnosed, report in writing such disease to the [reporting officer] **health officer** of the jurisdiction wherein the diagnosis is made, excepting cases of [venereal] **sexually transmitted (venereal)** diseases **and tuberculosis**, which are to be reported directly to the State Department of Health.

(b) The report shall include the name, **municipality and telephone number** of the reporting physician[,]; the name of the disease[,]; the name, age, [sex, exact,] **date of birth, gender, race, occupation, current** location, **home address and telephone number** of the person ill or infected with such disease[,]; [the home address and telephone number of this person,] the date of onset of illness, **pertinent medical history and diagnostic confirmation;** and such other information as may be requested by the State Department of Health.

(c) Physicians having knowledge of any outbreak of any disease shall immediately report the facts by telephone to the health officer specified in (a) above.

[(c)]**(d)** Diagnosed or suspected cases of the diseases listed in N.J.A.C. 8:57-1.2(b) shall be reported by telephone immediately by the attending physician to the [reporting source] **health officer** specified in (a) above. Such telephone report shall be followed by a written report as required in (a) above.

[(d) Physicians having knowledge of any outbreak of any disease shall immediately report the facts by telephone to the reporting officer in that jurisdiction where the outbreak exists.]

(e) The physician may delegate this reporting activity to a member of the staff, but this delegation does not relieve the physician of the ultimate reporting responsibility, even if the patient has been hospitalized or has had laboratory reports submitted.

(f) Physicians failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Physicians failing to meet these reporting requirements, despite warning, shall be subject to fine, as allowed by statute. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification of the Board of Medical Examiners of the State Department of Law and Public Safety, and appropriate hospital medical directors or administrators.

8:57-[1.4]**1.5** Reporting of diseases occurring in institutions

(a) The superintendent or other person having control or supervision over any **non-State** institution such as a hospital, sanitarium, nursing home, **emergency shelter for the homeless,** or penal institution in which any person is ill or infected with any of the diseases listed in N.J.A.C. 8:57-[1.2]**1.3(a)** shall, within 24 hours after such disease has been diagnosed, report **in writing** such disease to the [reporting officer] **health officer** having jurisdiction over the territory in which such institution is located, excepting cases of [venereal] **sexually transmitted (venereal)** disease **and tuberculosis**, which are to be reported directly to the State Department of Health. [Any disease listed in N.J.A.C. 8:57-1.2(b) or any outbreak of disease shall be immediately reported by telephone as well as by written report to the reporting officer.]

(b) The superintendent or other person having control or supervision over any State institution such as a hospital, sanitarium, nursing home, **emergency shelter for the homeless,** or penal institution in which any person is ill or infected with any of the communicable diseases listed in N.J.A.C. 8:57-[1.2]**1.3** shall, within 24 hours after such disease has been diagnosed, submit a report **in writing** of this fact to the State Department of Health. [Any disease listed in N.J.A.C. 8:57-1.2(b) or any outbreak of any disease shall be immediately reported by telephone.]

(c) The reports required by (a) and (b) above shall state the name of the disease[,]; the name, age, **date of birth,** [sex, exact] **gender, race, occupation, current** location, **home address and telephone number** of the person ill or infected with such disease; [, the home address of such person, or the address from which he was received into the institution] the date upon which he **or she** was received for care or treatment[,]; **the name, location and telephone number of the reporting institution;** the name, **municipality and telephone number** of the attending physician[,]; **the date of onset of illness, pertinent medical history and diagnostic confirmation;** and such other information as may be required by the State Department of Health. [The superintendent may delegate this reporting activity to a member of the staff, but this delegation does not relieve the superintendent of the ultimate reporting responsibility.]

(d) Any outbreak of disease, or any single case of a disease listed in N.J.A.C. 8:57-1.3(b), shall be immediately reported by telephone as well as by written report to the health officer, except in the case of disease occurring in State institutions, which shall be immediately reported by telephone as well as by written report to the State Department of Health.

(e) The superintendent of any acute care hospital shall, within 31 days of the end of each month, submit data regarding nosocomial infections in that month within that institution to the State Department of Health, as outlined in the Nosocomial Surveillance Form (available from the State Department of Health). Annual data shall also be submitted not more than 60 days after the end of the year.

(f) The superintendent may delegate these reporting activities to a member of the staff, but this delegation does not relieve the superintendent of the ultimate reporting responsibility.

(g) Superintendents failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Superintendents failing to meet these reporting requirements, despite warning, shall be subject to fine, as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification of the State Department of Health, Division of Health Facilities Evaluation, other appropriate licensing review organizations, and other appropriate agencies.

8:57-[1.5]**1.6** Reporting of diseases occurring in schools

(a) The principal, or other person in charge of any public, private, parochial, or other school, college, nursery school, or day care center shall report **in writing** the suspected presence of any diseases listed in N.J.A.C. 8:57-[1.1]**1.3**(a) within 24 hours to the local [reporting officer] **health officer, except in the case of sexually transmitted diseases and tuberculosis, which are to be reported directly to the State Department of Health.** Such report should contain the name of the suspected disease as well as the name, age, [sex] **date of birth, gender, race,** home address and telephone number of the [ill person] **person ill or infected with such disease; the name, municipality and telephone number of the attending physician; and such other information as may be required by the State Department of Health.** Any unusual absenteeism thought to be due to disease shall also be reported. [The principal may delegate this reporting activity to a member of the staff, but this delegation does not relieve the principal of the ultimate reporting responsibility.]

(b) Any **outbreak of any disease, or any single case of a** disease listed in N.J.A.C. 8:57-[1.1]**1.3**(b), [or any outbreak of any disease] shall be immediately reported by telephone as well as by written report to the [reporting officer] **health officer.**

(c) The principal may delegate this reporting activity to a member of the staff, but this delegation does not relieve the principal of the ultimate reporting responsibility.

(d) Principals failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Principals failing to meet these reporting requirements, despite warning, shall be subject to fine, as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification of the State Departments of Education, Higher Education, or Human Services (Division of Youth and Family Services), or other appropriate accreditation review organizations.

8:57-1.7 Reporting results of laboratory examinations and submission of specimens to the State Department of Health, Division of Public Health and Environmental Laboratories

(a) All laboratory supervisors shall report in writing results of laboratory examinations of specimens indicating or suggesting the existence of a reportable disease to the physician or veterinarian submitting the specimen, and to the health officer having jurisdiction over the territory in which this physician or veterinarian is located, except in the case of sexually transmitted (venereal) diseases and tuberculosis, which are to be reported directly to the State Department of Health. Reports to health officers shall be made not later than five working days after the close of business on the day on which the results were obtained. Reports of sexually transmitted (venereal) diseases and tuberculosis to the State Department of Health shall be made not later than 72 hours after the close of business on the day on which the results were obtained.

(b) Laboratory results indicating or suggesting any single case of the disease listed in N.J.A.C. 8:57-1.3(c) shall be reported directly to the State Department not later than 72 hours after the close of business on the day on which the results were obtained.

(c) The reports required by N.J.A.C. 8:57-1.7(a) and (b) shall contain at least the result of the laboratory examination, the type of specimen tested, the specific test used, the name and age of the patient, the name and address of the submitting physician, veterinarian, or institutional representative, and the date the examination was performed.

(d) Laboratory results indicating or suggesting the existence of an outbreak of disease, or of any single case of a disease listed in N.J.A.C. 8:57-1.3(b) shall be immediately reported to the aforementioned health officer by telephone. Such telephone report shall be followed by a written report as required in N.J.A.C. 8:57-1.7(a).

(e) All laboratories shall submit to the State Department of Health, Division of Public Health and Environmental Laboratories, for further testing, all microbiologic cultures of the following organisms, obtained from human or food specimens:

1. Legionella spp.;

2. Neisseria meningitidis; and

3. Salmonella spp.

(f) The laboratory supervisor may delegate reporting and specimen submission activities to a member of the staff, but this delegation does not relieve the laboratory supervisor of the ultimate reporting responsibility.

(g) Laboratory supervisors failing to fulfill the aforementioned reporting and specimen submission obligations may receive written notification of this failure. Supervisors failing to meet these requirements, despite warning, shall be subject to fine as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification to the State Clinical Laboratory Improvement Services.

8:57-[1.6] **1.8** Reporting of diseases by [reporting officers] **health officers**

(a) [Reporting] **Health** officers who receive **complete** reports of diseases required under N.J.A.C. 8:57-[1.3, 1.4, 1.5] **1.4, 1.5, 1.6 and 1.7 (submitted by physicians, institutions, schools or laboratories)** shall send a copy thereof to the [state] **State** Department of Health within 24 hours of receipt of the report. **If the initial report received is incomplete, the health officer shall seek complete information, and shall provide all available information to the State Department of Health within five working days of receiving the initial report, specifying that a complete report is pending.**

(b) [Reporting] **Health** officers who receive [telephone] reports of [the diseases] **any outbreak of disease, or of any single case of a disease** listed in N.J.A.C. 8:57-[1.2]**1.3**(b) [or any outbreak of disease] shall transmit the report immediately by telephone to the State Department of Health.

(c) The [reporting] **health** officer who receives a report of **any outbreak of disease, or of any single case of** a disease listed in N.J.A.C. 8:57-[1.2]**1.3** [or any outbreak of disease] shall immediately forward the facts contained therein together with such related information as he **or she** may have available to the [reporting] **health** officer of the local health agency where the disease was believed to have been contracted and the [reporting] **health** officer of the local health agency wherein the home address of the ill or infected person is situated. If either of the said health agencies is not located in New Jersey, the [reporting] **health** officer shall forward this information to the State Department of Health.

(d) The health officer may delegate reporting activities to a member of the staff, but this delegation does not relieve the health officer of the ultimate reporting responsibility.

(e) Health officers failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Health officers failing to meet these reporting requirements, despite warning, shall be subject to fine, as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification to the Public Health Licensing and Examination Board of the State Department of Health.

8:57-[1.7] **1.9** Health officer investigations

A health officer shall, upon receiving a report of **an outbreak of disease, or of** a case **or suspected case** of a reportable disease [or an outbreak of disease], cause an investigation to be made following such direction as may be given by the State Department of Health, for the [purpose] **purposes** of **determining whether an outbreak or a case of reportable disease exists;** ascertaining the source and spread of the infection; **and determining and implementing appropriate control measures. The health officer** [and] shall immediately relay [such] **all available** information **pertaining to the investigation** to the State Department of Health. [The health officer shall cause an investigation to be made of any suspected case of a reportable disease to ascertain the existence of such disease.] **The specific health officer or health officers participating in such investigations may include those having jurisdiction over locations of suspected transmission of disease, areas of residence or occupation of persons believed infected, sites of institutions where such persons may be located or receive care, and other jurisdictions determined appropriate by the State Department of Health.**

8:57-[1.8] **1.10** Isolation and restriction for communicable disease

(a) A health officer [of] **or** the State Department of Health, upon receiving a report of a communicable disease, shall by written order establish such isolation, or other restrictive measures required by law or regulation or as may be necessary to prevent or control disease. It it is necessary in the judgment of the health officer [of] **or** the State Department of Health in order to provide adequate isolation, a health officer or the State Department of Health shall promptly remove, or cause to be removed, a person ill with a communicable disease to a hospital. Such order shall remain in force until terminated by the health officer or the State Department of Health.

(b) (No change.)

(c) A health officer, if authorized by the State Department of Health or local board of health regulations, or the State Department of Health, may by written order restrict any person who has been exposed to a communicable disease, under conditions he **or she** may specify; providing such period of restriction shall not exceed the period of incubation of the disease.

(d) (No change.)

8:57-[1.9]**1.11**

(a) (No change in text.)

[8:57-1.10 Reporting results of laboratory examinations

All laboratories shall promptly report results of laboratory examinations of specimens indicating or suggesting the existence of a reportable disease or an outbreak of disease to the State Department of Health and to the physician or veterinarian submitting the specimen. Such reports shall be made not later than the next working day after the close of business on the day on which the results were obtained. The reports to the State Department of Health shall contain at least the result of the laboratory examination, the name of the patient, the name and address of the submitting physician, veterinarian, or institution, and the date the examination was performed. Laboratory results indicating or suggesting the existence of a disease listed in N.J.A.C. 8:57-1.2(b), excepting infectious syphilis, shall be immediately reported to the State Department of Health by telephone.]

Recodify existing 1.11 and 1.12 as **1.12 and 1.13** (No change in text.)

8:57-4.1 Applicability

These **uniform** regulations shall apply to all pupils attending any public or private school [in New Jersey], [including] child care center[s], nursery school[s], **preschool** and kindergarten[s except that the regulations shall not apply to pupils under one year of age] **in New Jersey.**

8:57-4.2 Proof of immunization

No principal, **director** or other person in charge of a school **or preschool facility** shall knowingly admit or retain any pupil who has not submitted acceptable evidence of immunization according to the [schedule specified below] **schedules specified in this subchapter,** except when there are exemptions as noted in this subchapter.

8:57-4.3 [Immunizations which are medically contraindicated] **Medical exemptions**

(a) A pupil shall not be required to have any specific immunization[s](s) which are medically contraindicated.

(b) A written statement **submitted to the school or preschool facility** from [any] **a** physician licensed to practice medicine or osteopathy in any jurisdiction of the United States **indicating** that an immunization is medically contraindicated for a specified period of time, and the reason[s](s) for the medical contraindication, **based upon valid medical reasons, as enumerated by the Immunization Practices Advisory Committee (ACIP)[1] of the United States Public Health Service or the American Academy of Pediatrics (AAP)[2] guidelines,** will exempt a pupil from the specific immunization [requirements of this [Subchapter] **subchapter** for the period of time specified in the physician's statement] **requirement for the stated period of time.**

(c) The physician's statement shall be maintained [by the school] as part of the immunization record of the pupil **and shall be reviewed annually by the school or preschool facility. When the pupil's medical condition permits immunization, this exemption shall thereupon terminate and the pupil shall be required to obtain the immunization(s) from which he or she has been exempted.**

(d) Those pupils with medical exemptions from receiving specific immunizations may be excluded from the school or preschool facility during a vaccine-preventable disease outbreak or threatened outbreak, as determined by the State Commissioner of Health or his or her designee.

(e) As provided by N.J.S.A. 26:4-6, "Anybody having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school of the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

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[1]Immunization Practices Advisory Committee, U.S. Public Health Service, Centers for Disease Control, Atlanta, GA 30333.

[2]American Academy of Pediatrics, Committee on Infectious Diseases, P.O. Box 927, Elk Grove Village, Illinois 60009-0927.

8:57-4.4 **Religious exemptions** [Exemptions; parent or guardian]

(a) A pupil shall be exempted from mandatory immunization if the parent or guardian [of the pupil] objects thereto in a written statement **submitted to the school or preschool facility** signed by the parent or guardian [upon the ground that the proposed immunization interferes with the free exercise of the pupil's religious rights] **explaining how the administration of immunizing agents conflicts with the pupil's exercise of bona fide religious tenets or practices. General philosophical or moral objection to immunization shall not be sufficient for an exemption on religious grounds.**

(b) This statement will be kept by the school **or preschool facility** as part of the pupil's immunization record.

(c) This exemption may be suspended by the State Commissioner of Health during the existence of an emergency as determined by the State Commissioner of Health.

(d) Those pupils with religious exemptions to receiving immunizing agents may be excluded from the school or preschool facility during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

(e) As provided by N.J.S.A. 26:4-6, "Anybody having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school on the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

8:57-4.5 Provisional admission

(a) A pupil may be admitted to a school **or preschool facility** on a provisional basis if a physician or health department [indicates that immunization of the pupil has already been initiated and that the pupil is in the process of complying with all immunization requirements] **can document that at least one dose of each of the required vaccine(s) or antigen(s) which are age appropriate has been administered and that the pupil is in the process of receiving the remaining immunization(s).**

(b) [Such provisional admission shall be for a reasonable length of time that is consistent with immunization schedule set forth in N.J.A.C. 8:57-4.10, 4.11, 4.12, 4.13 and 4.15, but shall not exceed one year for completion of all immunization requirements.] **Provisional admission for pupils under age five shall be granted in compliance with the requirements set forth in N.J.A.C. 8:57-4.10 through 4.14 for a period of time consistent with the current Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) immunization schedule, but shall not exceed 17 months for completion of all immunization requirements.**

(c) Provisional admission for pupils five years of age or older shall be granted in compliance with the requirements set forth in N.J.A.C. 8:57-4.10 through 4.14 for a period of time consistent with the current Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) immunization schedule, but shall not exceed one year for completion of all immunization requirements.

(d) Provisional status shall only be granted one time to pupils entering or transferring into schools or preschool facilities in New Jersey. Information on this status shall be sent by the original school or preschool facility to a new school or preschool facility if a pupil transfers.

(e) Those pupils transferring into a New Jersey school or preschool facility from out-of-State shall be allowed a 30-day grace period in order to obtain past immunization documentation before provisional status shall begin.

(f) The school or preschool facility shall ensure that the required vaccines/antigens are being received on schedule. If at the end of the provisional admission period, the pupil has not completed the required immunizations, the administrative head of the school or preschool facility shall exclude the pupil from continued school attendance intil appropriate documentation has been presented.

(g) Those students in provisional status may be temporarily excluded from the school or preschool facility during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

8:57-4.6 Documents accepted as evidence of immunization

(a) The following documents will be accepted as evidence of a pupil's immunization history provided that the [individual] **type of** immunization[s] and the date when each immunization was administered is listed:

1. An official school record from any school **or presonal facility** indicating compliance with the immunization requirements of this subchapter; **or**

2. A record from any public health department indicating compliance with the immunization requirements of this subchapter; **or**

3. A certificate signed by a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States indicating compliance with the immunization requirements of this subchapter[;].

[4. For pupils seven years of age or over, a written statement from a parent or guardian of a pupil indicating compliance with the immunization requirements of this subchapter will be acceptable only for the academic year 1975-1976. These statements, when entered into official school immunization records, shall be considered as adequate evidence of immunization throughout the remaining years of school attendance of such pupil.]

(b) All immunization records submitted by a parent or guardian in a language other than English shall be accompanied by a translation sufficient to determine compliance with the immunization requirements of this subchapter.

8:57-4.7 Records required

(a) Every school **or preschool facility** shall maintain [a record of immunization] **an official State of New Jersey School Immunization Record** for every pupil which shall include the date of each [individual] immunization **and that shall be kept separate and apart from the pupil's other medical records.**

[(b) A standard record of immunization shall hereafter be maintained by every school on forms supplied by the State Department of Health for all new school entrants under seven years of age and for pupils of all ages transferring from out-of-state schools.]

[(c)](**b**) If a pupil **withdraws, is promoted, or** transfers to another school **or preschool facility,** this **immunization** record, [or a copy thereof, shall be sent to the new school by the original school] **along with statements pertaining to religious or medical exemptions, or a certified copy thereof, shall be sent within 24 hours to the new school by the original school or be given to the parent or guardian upon request.**

(c) When a pupil graduates, this record or a certified copy thereof shall be sent to an institution of higher education or be given to the parent or guardian upon request.

(d) Each pupil's official New Jersey School Immunization Record or a copy thereof shall be retained by every school or preschool for a minimum of four years after the pupil has left the school.

(e) Any computer-generated document or list developed by a school or preschool shall be considered to be a supplement to, and not a replacement of, the official New Jersey School Immunization Record.

8:57-4.8 Reports to be sent to State Department of Health

(a) A report of the immunization status of the pupils in every school **or preschool facility** shall be sent each year to the State Department of Health by the principal, **director,** or other person in charge of the school **or preschool facility.**

(b) The form for the **annual immunization status** report shall be provided by the State Department of Health.

(c) This report shall [include all students and shall] be submitted by December 1 of the respective academic year **after a review of all appropriate immunization records.**

(d) A copy of this report shall be sent to the local board of health in whose jurisdiction the school **or preschool facility** is located.

(e) Those schools and preschool facilities not submitting the annual report by December 1 will be considered delinquent and referred to the New Jersey State Department of Education or the New Jersey State Department of Human Services, as appropriate. The local health department will also be notified of the delinquency.

8:57-4.9 Records available for inspection

The principal or other person in charge of a school **or preschool facility** shall make all immunization records available for inspection by authorized representatives of the State Department of Health or the local board of health in whose jurisdiction the school is located **within 24 hours of notification**.

8:57-4.10 Diphtheria and tetanus toxoids and pertussis vaccine

(**a**) Every pupil shall have received four doses of diphtheria and tetanus toxoids and pertussis vaccine (DTP), **one dose of which shall have been given on or after the fourth birthday.** [, and the last dose shall be administered not less than six months after the previous dose, except that pupils after the seventh birthday who have not completed these requirements shall have received tetanus and diphtheria toxoids, adult type (Td) instead of DTP. For pupils after the seventh birthday who have not completed these requirements, any combination of three doses of either DTP or Td, provided that the last dose was administered not less than six months after the preceding dose, shall be acceptable as adequate immunization with this vaccine series. Pupils who have not received any vaccines containing tetanus toxoid in ten years shall receive a booster dose of tetanus and diphtheria toxoids, adult type (Td).]

(b) Those pupils enrolled in preschool facilities who are too young to meet this requirement shall be considered to be in compliance with this rule if they are appropriately immunized for their age, as recommended by the Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service.

(c) Pediatric diphtheria-tetanus toxoid (DT) shall be accepted in lieu of DTP for pupils under age seven if a physician's written medical contraindication to further pertussis vaccine has been presented as specified in N.J.A.C. 8:57-4.3.

(d) Pupils seven years of age and older who have not completed this requirement shall receive tetanus and diphtheria toxoids (adult Td) instead of DTP. Any appropriately spaced combination of three doses of DTP or Td in a pupil over age seven shall be acceptable as adequate immunization for this vaccine series, provided that one dose was administered on or after the fourth birthday.

8:57-4.11 [Poliomyelitis]**Poliovirus** vaccine

(a) Every pupil shall have received at least three doses of [poliomyelitis] **live, trivalent, oral poliovirus** vaccine (**OPV**), **one dose of which shall have been given on or after the fourth birthday** [live, oral, trivalent and the last dose must have been administered not less than six months after the previous dose].

(b) [If a pupil has received poliomyelitis vaccine, live, oral, type one; poliomyelitis vaccine, live, oral, type two; and poliomyelitis, live, oral, type three; this will be accepted in lieu of the first two doses of poliomyelitis vaccine, live, oral trivalent.] **Those pupils enrolled in preschool facilities who are too young to meet this requirement shall be considered to be in compliance with this rule if they are appropriately immunized for their age as recommended by the Immunization Practices Advisory Committee (ACIP) of the United States Public Health Service.**

(c) If a pupil has received four doses of **conventional trivalent** inactivated [poliomyelitis] **poliovirus** vaccine (**IPV**) **or three doses of enhanced inactivated poliovirus vaccine (E-IPV), one dose of which shall have been given on or after the fourth birthday,** this will be accepted in lieu of **trivalent** oral [poliomyelitis] **poliovirus** vaccine[, provided that the last dose must have been administered not less than six months after the previous dose, and that all of the inactivated poliomyelitis vaccine was received in 1968 or thereafter].

(d) Any appropriately spaced combination of four doses of conventional IPV and OPV will satisfy the poliovirus vaccine requirement.

(e) Any appropriately spaced combination of three doses of enhanced IPV and OPV will satisfy the poliovirus vaccine requirement.

(f) Any appropriately spaced combination of four doses of conventional IPV and enhanced IPV will satisfy the poliovirus vaccine requirement.

8:57-4.12 Measles virus vaccine

(a) Every pupil shall have received one dose of measles virus vaccine, live, attenuated, or any vaccine combination containing measles virus vaccine, live, attenuated, administered **on or** after [one year of age] **the first birthday**.

(b) [Pupils receiving measles vaccine prior to one year of age shall be revaccinated.] **Those pupils younger than 15 months of age who are enrolled in a preschool facility shall be considered to be in compliance with this rule until reaching the age of 15 months, which is the medically recommended age for routine measles immunization.**

(c) Pupils [with a history of having had the disease measles (rubeola) as certified by a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States, or pupils] who present **documented** laboratory evidence of measles immunity shall not be required to receive measles vaccine.

[1. Effective September 1, 1982.]

8:57-4.13 Rubella vaccine

(a) Every pupil shall have received one dose of **live** rubella virus vaccine, [live ,] or any vaccine combination containing **live** rubella virus vaccine[,live] **administered on or after the first birthday**.

(b) Those pupils younger than 15 months of age who are enrolled in a preschool facility shall be considered to be in compliance with this rule until reaching the age of 15 months, which is the medically recommended age for routine rubella immunization.

[(b)](**c**) Rubella virus vaccine [live,] shall not be required of pupils who present **documented** laboratory evidence of rubella immunity.

[1. Effective September 1, 1982.]

8:57-4.14 Mumps vaccine

(a) Every pupil, born on or after January 1, 1973, shall have received one dose of live mumps virus vaccine, or any vaccine combination containing live mumps vaccine, administered on or after the first birthday.

(b) Those pupils younger than 15 months of age who are enrolled in a preschool facility, shall be considered to be in compliance with this rule reaching the age of 15 months, which is the medically recommended age for routine mumps immunization.

(c) Pupils who present written certification from the diagnosing physician that the pupil had mumps disease shall not be required to receive mumps vaccine.

(d) Pupils who present documented laboratory evidence of mumps immunity shall not be required to receive mumps vaccine.

8:57-[4.14]**4.15** Providing immunization

(a) A board of education and/or a local board of health may provide, at public expense, the necessary equipment, materials and services for immunizing pupils with the following immunizing agents, either singly or in combination:

1-5. (No change.)

6. [Poliomyelitis] **Poliovirus** vaccine;

7.-8. (No change.)

[8:57-4.15 Mumps vaccine

(a) Every pupil, born on or after January 1, 1973, shall have received mumps virus vaccine, live, or any vaccine combination containing mumps vaccine, live.

(b) Pupils with a history of having had the disease mumps shall not be required to receive mumps vaccine.]

8:57-4.16 Emergency powers of the State Commissioner of Health

(a) In the event **that** the State Commissioner of Health **or his or her designee** determines either that an outbreak or threatened outbreak of disease [exists] or other public health immunization emergency **exists**, the Commissioner **or his or her designee** may issue either additional immunization requirements to control the outbreak or threat of an outbreak or modify immunization requirements to meet the emergency.

(b) All pupils failing to meet these additional requirements shall be excluded from school **until the outbreak or threatened outbreak is over**.

(c) These requirements or amendments to the requirements shall remain in effect until such time **as** the State Commissioner of Health **or his or her designee** determines that an outbreak or a threatened outbreak no longer exists or the emergency is declared over, or for three months after the declaration of the emergency, whichever one comes first. The State Commissioner of Health **or his or her designee** may redeclare a state of emergency if the emergency has not ended.

(a)

REPORTABLE DISEASES

Reporting of Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome

Proposed New Rules: N.J.A.C. 8:57-2

Authorized By: Public Health Council, Milton Prystowsky, M.D., Chairman.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1989-672.

A public hearing on the proposed new rules will be held on January 22, 1990 at 12:00 noon at:

Health and Agriculture Building
Board Room, 1st Floor
John Fitch Plaza
Trenton, New Jersey

Submit written comments by January 22, 1990 to:

Ronald Altman, M.D.
Division of AIDS Prevention and Control
New Jersey Department of Health
CN 363
Trenton, New Jersey 08625

The agency proposal follows:

Summary

AIDS and AIDS Related Complex (ARC) cases have been reportable directly to the State Department of Health by diagnosing physicians and superintendents of institutions such as hospitals, sanitariums, nursing homes or penal institutions in which a person is ill with AIDS or ARC. The existing rule, N.J.A.C. 8:57-1.14, effective since 1986, accomplished the purpose of unifying data collection within the Department of Health and was also able to include the reporting of the few associated opportunistic infections which had not previously been reportable. The provisions included in this subchapter were adopted by the Public Health Council and became effective October 6, 1986. Pursuant to Executive Order No. 66(1978), the rule is due to expire June 18, 1990, as part of N.J.A.C. 8:57. N.J.A.C. 8:57 has been proposed for readoption elsewhere in this issue of the New Jersey Register, along with the repeal of N.J.A.C. 8:57-1.14.

The purpose of these proposed new rules is to continue to make the medically identified presense of Acquired Immunodeficiency Syndrome (AIDS) reportable in the same way that it has been a reportable condition to the State Department of Health since 1986. However, address and race are now being included as reportable in addition to an individual's name, gender, birth date and date of onset of illness. In addition, the proposed new rules will eliminate the reporting of AIDS Related Complex (ARC) because the revised definition of AIDS as specified by the Federal Centers for Disease Control now incorporates most of the symptomatology associated with ARC.

The proposed new rules will also require for the first time that every physician attending a person found to be infected with the human immunodeficiency virus must report to the State Department of Health in writing the name and address of the reporting physician, as well as the patient's municipality of residence, gender, race, and birth date, the date the specimen was obtained for HIV testing, and any other information that may be required by the State Department of Health. The person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, penal institution, clinic, or special facility testing for HIV, in which a person is determined to be infected, must also report in writing to the State Department of Health. The name, address or telephone number of the person infected with HIV is not to be included as part of the report to the State Department of Health.

The proposed new rules also require every clinical laboratory to report to the State Department of Health every three months the number of specimens tested for HIV, as well as the number of tests indicating infection. No physician or institution may direct that a person be tested unless the name and address of the person whose specimen is being tested is known and recorded by the physician or institution. The name and address, however, of the person being tested are not required to be reported to the State Department of Health. The State Commissioner of Health may designate anonymous testing sites, in addition to confidential sites.

Due to the significant reporting requirement changes which are being proposed in relation to the currently effective rule, the Department has chosen to repeal the existing rule and replace it with proposed new rules in a separate subchapter, N.J.A.C. 8:57, to facilitate understanding and processing.

The reporting requirements of the proposed new rules are proposed so that appropriate actions can be taken to protect the public health, to offer new and promising regimens of medications for prophylactic and therapeutic intervention, and to further plan for the continuing and significant impact these diseases will have on the health care system.

The Department will continue to require the reporting of AIDS in accordance with the clinical criteria specified by the Centers for Disease Control of the United States Public Health Service. In doing so, New Jersey will remain part of a national surveillance system which requires a standardized definition for comparison among the various States to determine the time trends in the progression of the disease. This surveillance system was established before the etiologic agent of AIDS was known and has value in the consistency of the information produced. Since June of 1981, 7,117 cumulative cases of AIDS in New Jersey have been reported to the Federal Centers for Disease Control. This information has enabled a better measure and perspective on the scope and impact of the disease problem, and has also allowed State and national studies on the natural history of this disease.

Regulations dealing with communicable diseases are primarily enacted for the purpose of controlling transmission. However, various communicable diseases are transmitted in widely differing manners, making some transmission control measurers appropriate for one disease but not necessary for another. Since AIDS is not airborne, or transmitted by casual contact or by inanimate objects, it is not necessary to restrict nursing home or school admissions or to require the disinfection of

ambulances after use by an individual with AIDS in order to prevent transmission of the virus.

Social Impact

The ground work for control of transmission of this virus has been established by the Department of Health. Since June of 1981, 7,117 cumulative cases of AIDS in New Jersey have been reported to the Federal Centers for Disease Control. This information has enabled a better measure and perspective on the scope and impact of the disease problem, and has also allowed State and national studies on the natural history of this disease.

The Department of Health has announced a plan to identify, trace and treat the estimated 50,000 to 70,000 residents infected with the virus which causes AIDS. This comprehensive testing and treatment program makes New Jersey the first state to implement guidelines issued in June 1989 by the Federal Centers for Disease Control which call for the identification of, and medical care for, all adults infected with the Human Immunodeficiency Virus (HIV). The new program will not only help prolong the lives of people with HIV, but it will also enable the Department to further contain the spread of the epidemic.

Current experience by the Department of Health with AIDS and ARC reporting does not reveal any difficulty with the protection of the confidentiality of those individuals identified by the reporting system. Any problems in relation to confidentiality which have surfaced have not been the result of reporting to the Department of Health. However, in an effort to further strengthen confidentiality protection, the Department is currently supporting legislation which, when enacted, would make it illegal for anyone even remotely connected to the health care system, an insurance company or other agency to divulge information regarding an individual's HIV status.

A negative impact could result from a perceived loss of confidentiality by these individuals identified by the reporting system, thereby having the effect of making individuals with symptoms reluctant to come forward for confirmatory testing and treatment. However, past experience by the Department with the existing AIDS Registry shows this to be a minimal concern. In regards to the proposed reporting of individuals infected with HIV, the personal identifiers of name, address or telephone number are not required to be reported to the State Department of Health.

The collection of clinical laboratory HIV reports without personal identifiers will give the Department of Health a generalized sense of the numbers of people infected, but will not reveal a profile of patient characteristics and demographics. Nor will the Department be able to screen for case duplication or be able to actively offer the regimen of medical and other therapeutic services which are currently being made available in New Jersey to HIV infected, but non-symptomatic individuals.

The HIV reporting information which will become available through these proposed rules will offer a more complete body of information on the profile of patient characteristics and demographics, even without the inclusion of personal identifiers. This information will be used to observe any possible changing nature of the epidemic, and to further plan the strategy for intervention.

Economic Impact

A system for the reporting of AIDS and ARC cases has already been put into place by the Department, hospitals and other reporting agencies since 1986. The proposed new rules would essentially utilize the existing system. Clinical laboratories will need to adjust to the increased volume and reporting of HIV cases; however, the reporting mechanisms are already in place and would not be newly created.

It is important to emphasize that, as data are collected, planning for additional health care services and facilities will be improved which will result in a reduction in costs to the health care system. Thus, the expected short term economic impact is expected to be minimal in relation to the long term impact and reduction in costs to the health care system. Early intervention with non-symptomatic HIV infected individuals has already been demonstrated to prevent, delay, or reduce the onset of pneumocystis carinii pneumonia, which in turn prevents a typical 14-day acute inpatient hospitalization costing upwards of $12,000 per patient.

Regulatory Flexibility Analysis

The proposed new reporting rules will be applicable primarily to the Department of Health, hospitals, sanitariums, nursing homes, penal institutions, and clinical laboratories. As such, the rules will affect organizations having well over 100 employees. However, the proposed new rules will also apply to physicians, small clinical laboratories and other small health provider practices, some of which can be considered to be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The requirements contained in the rules do require personnel to perform a number of activities in regards to the reporting function, but the Department believes them to be necessary in order to enhance the efforts taking place to halt the further spread of the epidemic. In proposing the rules, which include recordkeeping and data reporting, the Department has had to balance the economic impact of adding personnel costs with the need to positively impact the transmission of the disease by establishing an effective health care identification and treatment system. The Department has determined that to minimize the reporting requirements and resultant economic impact of the proposed rules would endanger public health and safety and, therefore, no exemption from coverage is provided.

Full text of the proposed new rules follows:

SUBCHAPTER 2. REPORTING OF ACQUIRED IMMUNODEFICIENCY SYNDROME AND INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS

8:57-2.1 Applicability; definition of AIDS and HIV infection

(a) The provisions of this subchapter are applicable to cases of Acquired Immunodeficiency Syndrome (AIDS) and infection with human immunodeficiency virus (HIV). The provisions of N.J.A.C. 8:57-1 shall not apply to any case of AIDS or infection with HIV.

(b) Laboratory results indicative of infection with HIV shall mean laboratory results showing the presence of HIV or components of HIV, or of laboratory results showing the presence of antibodies to HIV. The State Commissioner of Health shall determine the laboratory test results which indicate infection with HIV for the purpose of these rules.

(c) Acquired immunodeficiency syndrome (AIDS) means a condition affecting a person who has a reliably diagnosed disease that meets the criteria for AIDS specified by the Centers for Disease Control of the United States Public Health Service.

8:57-2.2 Reporting HIV infection

(a) Every physician attending a person found to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such a condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall include the name and address of the reporting physician, the municipality of residence, gender, race and birth date of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, and such other information, as may be required by the State Department of Health, except that the name, address or telephone number of the person infected with HIV shall not be required to be reported to the State Department of Health. A physician shall not report a person infected with HIV if the physician is aware that the person having control or supervision of an institution named in (b) below is reporting that person as being infected with HIV, or if the physician is aware that the person has previously been reported to the State Department of Health as being infected with HIV.

(b) The person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, penal institution, clinic, blood bank, or special facility testing for HIV, in which any person is determined to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such a condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall state the municipality of residence, gender, race, and birth date of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, the name of the attending physician, the name and address of the institution, and such other information as may be required by the State Department of Health, except that the name, address or telephone number of the person infected with HIV shall not be required to be reported to the State Department of Health. The person having control or supervision of the institution shall not report a person infected with HIV if it is known that a physician is reporting the person or that the person has previously been reported to the State Department of Health as being infected with HIV.

The person having control or supervision of the institution may delegate this reporting activity to a member of the staff, but this delegation does not relieve the controlling or supervising person of the ultimate report responsibility.

(c) Every clinical laboratory shall report every three months to the State Department of Health the number of specimens tested for HIV, components of HIV and antibodies to HIV that are sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey, as well as the number of such tests indicating infection with HIV, and such other information as may be required by the State Department of Health, except that the name, address or telephone number of the patient shall not be required to be reported to the State Department of Health. The manner of reporting shall be determined by the State Department of Health. The report shall be sent within thirty days of the close of each three-month reporting period.

8:57-2.3 Reporting AIDS

(a) Every physician attending any person ill with AIDS shall, within 24 hours of the time AIDS is diagnosed, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall include the name and address of the reporting physician, the name, address, gender, race, and birth date of the person ill with AIDS, the date of onset of the illness meeting the criteria for the diagnosis of AIDS, and such other information as may be required by the State Department of Health. Such report should be made whether or not the patient previously had been reported as having HIV infection. The report of AIDS will be deemed to also be a report of HIV infection.

(b) The person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, penal institution, or clinic, in which a person is ill with AIDS shall, within 24 hours of the time AIDS is diagnosed, report such condition in writing directly to the State Department of Health on forms provided by the State Department of Health. The report shall state the name, address, gender, race and birth date of the person ill with AIDS, the date of onset of the illness meeting the criteria for the diagnosis of AIDS, the name of the attending physician, the name and address of the institution, and such other information as may be required by the State Department of Health. Such report should be made whether or not the patient previously had been reported as having HIV infection. The report of AIDS will be deemed to also be a report of HIV infection. The person having control or supervision of the institution may delegate this reporting responsibility to a member of the staff, but this delegation does not relieve the controlling or supervising person of the ultimate reporting responsibility.

8:57-2.4 Testing procedures

No physician or institution may direct that a person be tested for HIV, a component of HIV, or antibodies to HIV, unless the name and address of the person whose specimen is being tested is known and recorded by the physician or institution, except that the State Commissioner of Health may designate facilities which are permitted to test for antibodies to HIV without obtaining the name and address of the person being tested. The name and address of the person being tested are not required to be reported to the State Department of Health.

8:57-2.5 Exceptions to communicable disease classification of AIDS and HIV

(a) AIDS or HIV infection shall not be considered a communicable disease for purposes of admission to, attendance in, or transportation in any of the following:

1. Nursing homes and other health care facilities;
2. Rooming and boarding homes, and shelters for the homeless;
3. Ambulances and other public conveyances; and
4. Educational facilities.

8:57-2.6 Access to information

As provided by N.J.S.A. 26:4-2, the information reported to the Department shall not be subject to public inspection, but is subject to access only by the State Department of Health for public health purposes.

8:57-2.7 Failure to comply with reporting requirements

(a) Physicians failing to fulfill the reporting requirements of this subchapter may receive written notification of this failure. Physicians failing to meet these reporting requirements, despite warning, shall be subject to fine, as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures shall be subject to other actions, including notification of the Board of Medical Examiners of the State Department of Law and Public Safety, and appropriate hospital medical directors or administrators.

(b) The person having control or supervision over any institution, who fails to fulfill the aforementioned reporting obligations, may receive written notification of this failure. Superintendents failing to meet these reporting requirements, despite warning, shall be subject to a fine, as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification of the State Department of Health, Division of Health Facilities Evaluation, other appropriate licensing review organizations, and other appropriate agencies.

(c) Laboratory supervisors failing to fulfill the aforementioned reporting and specimen submission obligations may receive written notification of this failure. Supervisors failing to meet these requirements, despite warning, shall be subject to fines as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification to the State Clinical Laboratory Improvement Services.

(a)

REPORTABLE DISEASES

Reportable Occupational and Environmental Diseases and Poisons

Proposed New Rules: N.J.A.C. 8:57-3.1 and 8:57-3.2

Authorized By: Public Health Council, Milton Prystowsky, M.D., Chairman.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1989-673.

A public hearing on the proposed new rules will be held on January 22, 1990 at 12:00 noon at:

Health and Agriculture Building
Board Room 1st Floor
John Fitch Plaza
Trenton, New Jersey

Submit written comments by January 22, 1990 to:

Allison Tepper, Ph.D.
Assistant Director
Occupational Health Service
New Jersey Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:57-1.13, which is the current rule requiring the reporting of occupational and environmental diseases and poisons, expires on June 18, 1990, as part of N.J.A.C. 8:57. The Department of Health has reviewed the rule and determined it to be necessary, reasonable, and proper for the purpose for which it was originally promulgated. However, the Department has determined that certain revisions are necessary. It is being revised and proposed as a new rule, to be recodified to N.J.A.C. 8:57-3.1, as part of a new subchapter 3 of N.J.A.C. 8:57. Together with an entirely new section, N.J.A.C. 8:57-3.2, the proposed new rules represent the product of experience since implementation of the rules in 1985. N.J.A.C. 8:57-1.13 is proposed for repeal as part of the chapter readoption published elsewhere in this issue of the Register.

In the Council's experience, hospital discharge data capture only a fraction of residents affected by occupational and environmental health hazards. It is evident that there is a need for a comprehensive surveillance system that will target different segments of the population in order to effectively address these problems in New Jersey. Such a system will integrate various data sources and reporting schemes in a timely manner. Proposed N.J.A.C. 8:57-3.1 will simplify the reporting process, update the list of reportable conditions and clarify the responsibilities of reporting parties. Proposed new rule N.J.A.C. 8:57-3.2 will make reporting of occupational and environmental diseases more complete than is possible with the current rule.

Proposed rule N.J.A.C. 8:57-3.1 pertains to the reporting of the following diagnoses by hospitals: coal worker's pneumoconiosis, asbestosis, silicosis, extrinsic allergic alveolitis, other specified occupational lung diseases and poisoning from various heavy metals and chemicals. Proposed rule N.J.A.C. 8:57-3.2 pertains to the reporting of the following diagnoses by physicians: asbestosis; silicosis; pneumoconiosis, other and unspecified; occupational asthma; extrinsic allergic alveolitis; and adult lead poisoning. All of the above illnesses are recognized occupational and environmental diseases which constitute significant threats to the public's health in New Jersey.

N.J.A.C. 8:57-3.1 is critical to the implementation of the occupational health core activities required under N.J.A.C. 8:52-3.5. The reporting of these diseases has enabled local and state health departments to investigate the causes of these diseases and to prevent further occurrences of such diseases. Proposed N.J.A.C. 8:57-3.2 is necessary to identify nonhospitalized individuals who are not identified under the current reporting rule. In the case of lead poisoning, the current reporting rule (N.J.A.C. 8:44-2.10) only captures those individuals who are screened by New Jersey laboratories; the patients of many physicians who send biological specimens to out-of-State laboratories for analysis will be captured by the proposed new rule.

Social Impact

Occupational and environmental diseases are continually occurring to persons exposed to hazardous substances in the workplace and the environment. Pain and suffering and medical costs are incurred by those who contract such diseases. Since the implementation of the hospital reporting rule in 1985, the State Department of Health has received 3,800 disease reports from 105 acute care hospitals. This information has allowed the Department to initiate (1) industrial hygiene investigations to evaluate existing controls and to provide recommendations for improving controls; (2) referrals to other governmental agencies such as local health departments, OSHA, OSHA Consultative Services in the New Jersey State Department of Labor or the New Jersey Department of Environmental Protection; (3) epidemiologic investigations of populations of workers exposed to toxic substances; and (4) education programs targeted at the worker and the medical provider. These rules are proposed to help safeguard the health of workers and residents of New Jersey.

The State Department of Health recently conducted a survey of New Jersey physicians and learned that physicians are seeing three to four times more patients with these reportable diseases as outpatients than as hospitalized patients. This means that approximately 75 percent of individuals with these occupational or environmental diseases have not been reported to the Department of Health under the current hospital reporting rule. The Department's services cannot be targeted to these individuals, their workplaces and their communities, unless physicians report the diagnoses for these nonhospitalized individuals. With broader physician reporting of these conditions, there will be more complete identification of the persons with these preventable diseases. All physicians in New Jersey are covered under this proposed rule.

The social conditions precipitating the proposal of these rules are based on the increased concern by the public about environmental hazards, many of which emanate from worksites. There is increased need to identify the specific locations of these hazards and to take actions to reduce occupational and environmental exposures to them. Reporting of individuals already sick from these exposures provides information that leads back to the sources of exposure and thus initiates appropriate public health actions.

Economic Impact

Although no evaluation data have been gathered on hospital reporting, the Department of Health maintains that the reporting of diagnoses by hospitals constitutes minimal economic impact to these institutions. The number of cases reported from the hospitals is small in comparison to the approximately one million hospital discharges per year. The 105 hospitals that were originally requested to comply have generated less than 1,000 reports per year. However, these cases serve as indices of broader health concerns and have allowed the Department to identify additional cases who were not covered by the original rule and to provide services to much larger groups of persons at risk for these preventable diseases. The difficulty with the current rule is that the limited scope of reporting requires the Department to expend considerable resources to identify comprehensively these broader risk groups.

The minimal economic costs to hospitals can also be viewed against the economic benefits from reducing occupational and environmental diseases among workers and the public. Such benefits are significant not only to those affected persons but to employers who must compensate injured persons. Costs from lost wages, workers' compensation, medical expenses, etc., will be reduced by a decrease in the incidence of occupational and environmental diseases.

Most physicians likely to be seeing patients with any of these diseases listed see no more than five to 10 patients with these diseases in a single year. Thus, the economic impact on physicians of the proposed new rules is minimal. As with hospital reporting, the very minimal costs to physicians can be viewed against the economic benefits from reducing occupational and environmental diseases in the State.

The economic effect on the Department of Health or other agencies also is minimal. The Department already has staff and programs experienced in the management and follow-up of these types of disease reports. Local health departments have been trained to work with the Department in follow-up.

Regulatory Flexibility Analysis

Proposed rule N.J.A.C. 8:57-3.1 does not apply to small businesses. Proposed new rule N.J.A.C. 8:57-3.2 applies to those physicians who are small businesses by virtue of being in solo practice or in group practices of less than 100 employees. Most physicians are in small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq.

The reporting requirement for N.J.A.C. 8:57-3.2 is simple and can be done by filling in a postcard. No other recordkeeping or compliance requirements are involved. There are no initial capital costs. The only cost to the business is a stamp for the postcard and minimal staff time to fill out the postcard, for an estimated maximum of 10 postcards per year, per physician.

Because uniform application of the new proposed rules is essential for public health purposes, these rules will be applicable to all health care providers without any exceptions.

Full text of the proposed new rules follows:

8:57-3.1 Reporting of occupational and environmental diseases and poisonings by hospitals

(a) The chief administrator or other persons having control or supervision over any hospital in which any person has been diagnosed with any of the diseases or poisonings listed in (b) and (c) below shall, within 30 days after discharge, report such disease or poisoning to the State Department of Health and to the health officer having jurisdiction over the territory in which such hospital is located. Health officers who receive reports of diseases or poisonings required under (b) and (c) below shall send a copy thereof to the health officer having jurisdiction over the territory in which such person resides within seven days of receipt of the report. The disease or poisoning shall be considered diagnosed if it is listed as a primary or secondary diagnosis on the discharge summary.

(b) The following diseases are declared to be reportable to the parties specified in (a) above for purposes of this section. All diseases listed herein coded according to the 9th ICD revision are to be reported in the manner prescribed by (d) below:

1. Extrinsic allergic alveolites, ICD code 495, 495.0, 495.1, 495.2, 495.3, 495.4, 495.5, 495.6, 495.7, 495.8, 495.9;
2. Coal workers pneumoconiosis, ICD code 500;
3. Asbestosis, ICD code 501;
4. Silicosis, ICD code 502;
5. Pneumoconiosis, other dust inorganic, ICD code 503;
6. Pneumonopathy due to organic dust, ICD code 504;
7. Pneumoconiosis, unspecified, ICD code 505;
8. Bronchitis, Pneumonitis, inflammation both acute and chronic and acute pulmonary edema due to fumes and vapors, ICD code 506.0, 506.1, 506.2, 506.3, 506.4 and 506.9; and

9. Respiratory conditions due to unspecified external agents, ICD codes 508.8 and 508.9.

(c) Poisoning due to the following and not the result of a suicidal attempt shall also be reported to the parties specified in (a) above in the manner prescribed by (d) below.

petroleum products	ICD 981
benzene	ICD 982.0
carbon tetrachloride	ICD 982.1
carbon disulfide	ICD 982.2
chlorinated hydrocarbons	ICD 982.3
nitroglycol	ICD 982.4
non-petroleum-based solvents	ICD 982.8
corrosive aromatics	ICD 983.0
acids	ICD 983.1
alkalies	ICD 983.2
caustic unspecified	ICD 983.9
inorganic lead	ICD 984.0
organic lead	ICD 984.1
mercury	ICD 985.0
arsenic	ICD 985.1
manganese	ICD 985.2
beryllium	ICD 985.3
antimony	ICD 985.4
cadmium	ICD 985.5
chromium	ICD 985.6
other specified metals	ICD 985.8
unspecified metals	ICD 985.9
petroleum gases	ICD 987.0
other hydrocarbon gas	ICD 987.1
nitrogen oxides	ICD 987.2
sulfur dioxide	ICD 987.3
freon	ICD 987.4
chlorine	ICD 987.6
hydrogen cyanide	ICD 987.7
other gases	ICD 987.8
unspecified gas, fume, vapor	ICD 987.9
hydrogen cyanide	ICD 989.0
pesticides	ICD 989.2, 989.3 and 989.4

(d) The report required by (a) above shall state on forms supplied by the State Department of Health the name and current ICD code of the disease or poisoning and shall indicate whether this condition was a primary or secondary diagnosis. The following information on the person diagnosed with such disease or poisoning shall also be furnished: name, home address, medical record number, year of birth, sex, race, name and address of employer. The report shall also include the name of the attending physician, the reporting hospital, the date of discharge and such other information as may be required by the State Department of Health.

8:57-3.2 Reporting of occupational and environmental diseases and poisonings by physicians

(a) The physician attending any person who is ill or diagnosed with any of the diseases or poisonings listed in (b) below shall, within 30 days after such disease or poisoning has been diagnosed or treated, report such disease or poisoning to the State Department of Health.

(b) The following diseases and poisonings are declared to be reportable to the State Department of Health for purposes of this section. All diseases listed herein are to be reported in the manner prescribed by (c) below:

1. Asbestosis;
2. Silicosis;
3. Pneumoconiosis, other and unspecified;
4. Occupational asthma;
5. Extrinsic Allergic Alveolitis; and
6. Lead poisoning, adult (blood lead $\geq$ 25 milligrams per deciliter; urine lead $\geq$ 80 milligrams per liter).

(c) The report required by (a) above shall state the name of the disease or poisoning and the name of the reporting physician. The following information on the person ill or diagnosed with such disease or poisoning shall also be furnished: name, year of birth, sex, home address, telephone number, name and address of employer at the time of exposure, and the date of onset of illness.

(a)

CHRONIC DISEASE EPIDEMIOLOGY AND DISEASE CONTROL

Cancer Registry

Proposed Recodification with Amendments: N.J.A.C. 8:57-6 to N.J.A.C. 8:57A

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (in consultation with the Public Health Council).

Authority: N.J.S.A. 26:2-104 et seq.

Proposal Number: PRN 1989-684.

Submit written comments by January 17, 1990 to:

Lawrence A. Meinert, M.D.
Director
Chronic Disease Services
Division of Epidemiology and Disease Control
New Jersey State Department of Health
CN 369
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 8:57-6 concerns the reporting of cancer and other tumorous and precancerous conditions to the New Jersey State Department of Health and is mandated by N.J.S.A. 26:2-104 through 109. The Department's objectives in establishing rules for such reporting are as follows:

(1) To maintain a population-based cancer reporting system for the State of New Jersey. This data base includes all New Jersey residents diagnosed with cancer or other reportable conditions since October 1, 1978;

(2) To provide annual New Jersey cancer incidence data by age, race, sex, and geographic area for use in planning and establishing cancer prevention and control activities, and for evaluation of progress made in reducing the cancer problem;

(3) To provide data and promote studies related to the identification of high risk groups and occupational patterns of cancer occurrence;

(4) To promote the establishment of expansion of cancer registry programs in New Jersey health care facilities; and

(5) To provide educational information to the medical profession and useful feedback information to physicians and hospitals.

The Department is proposing the recodification of N.J.A.C. 8:57-6 to a separate new chapter, N.J.A.C. 8:57A. A proposal for readoption of N.J.A.C. 8:57 appears elsewhere in this issue of the New Jersey Register.

The proposed chapter, entitled Cancer Registry, defines the disease conditions to be reported to the State Department of Health. Fourteen conditions have been added to the reportable list. These relatively rare tumors are indicated on the reportable list (N.J.A.C. 8:57-6.2). Squamous cell carcinomas of the skin which are in-situ or localized at diagnosis are no longer reportable. There are a sizeable number of these cases each year. The proposed rules further delineate that the administrative officers of every health care facility, physicians and dentists, and directors of every independent clinical laboratory shall report to the Cancer Registry. The current subchapter N.J.A.C. 8:57-6 now specifies that patients treated, but not admitted, are reportable to the Cancer Registry. These cases have always been reportable; however, this addition clarifies the responsibility of reporting outpatient cases. These rules as proposed also delineate that health insurers and other third party payors may report to the Cancer Registry when information on patients ia requested by the State Department of Health.

Reports shall be made on forms supplied by the State Department of Health. The forms must be completed entirely, or supplemental information must be supplied from copies of the history and physical section of the medical record and the discharge summary. If the hospital tumor registry abstract contains all specified information, then these forms may be submitted in lieu of State Department of Health forms. A change has been made to allow hospitals to submit machine readable data, provided that criteria and standards specified by the Department of Health are met. This change will facilitate reporting from computerized registries.

The current rules require the submission of a copy of the pathology tissue report and/or hematology report, and a copy of the operative report for surgically treated cases. Reporting of cancer cases must be

within six months of the date of diagnosis or within three months of the date of discharge. Neither of these requirements are changed.

The rules also specify that every health care facility and independent clinical laboratory shall allow State Department of Health representatives to obtain all required information from medical, pathological and other records and logs, and that the representatives shall have access to or be provided with information on specified cancer patients and other patients for purposes of State Department of Health research studies related to cancer prevention and control.

Social Impact

The amended rules will have a beneficial social impact. Cancer remains a leading cause of morbidity and mortality in this State and the nation. The rules expedite the mechanism for reporting cancer and precancerous conditions to the New Jersey State Department of Health. Registry data are used in a variety of research programs aimed at controlling and preventing cancer as well as special investigations of cancer etiology. The New Jersey State Cancer Registry is one of the largest population-based cancer registries in the free world. It is a fundamental part of the National Cancer Institute's Surveillance Epidemiology and End Results Program, which is the primary source of cancer incidence and survival data for the United States. Reliable data from the New Jersey State Cancer Registry therefore impacts on the health of all Americans.

Economic Impact

The amended rules do not significantly increase the economic burden on health care facilities, independent clinical laboratories, physicians and dentists complying with current rule. The cost to the reporting sources involves personnel time and cost of photocopying of the information on the fourteen newly reportable conditions. However, these conditions are relatively rare and the cost will be more than offset by the elimination of reporting the in situ and localized squamous cell carcinomas of skin.

The acceptance of machine readable data will save computerized hospital registries and the Cancer Registry money in the areas of personnel time, paper, and postage. These savings could be substantial, depending on the size of the reporting facility.

There may be small costs incurred by the Cancer Registry in obtaining data from health insurers and other third party payors. This expense will be more than offset by costs savings within the Cancer Registry, hospital registries and other reporting sources as information provided by health insurers supplants that which provided by the health care providers.

In the long term, the reporting of cancer case information provides a beneficial impact to the public by facilitating the planning of cancer prevention and control activities and the more effective allocation of scarce health resources.

Regulatory Flexibility Analysis

The proposed recodification with amendments will have a minor impact on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq, such as physician offices and small laboratories. However, these businesses are required to report cancer only when the case is not seen in a New Jersey hospital. The majority of New Jersey cancer cases are hospitalized, and therefore the reporting burden to small businesses is negligible. It is difficult to estimate how many physicians or laboratories see non-hospitalized cancer patients. No special considerations will be made for small business, because the rules apply to the reporting of a disease of public health interest. Complete and accurate data are essential for public health policy and planning for cancer control and prevention. Exclusion of data from small businesses would bias the Cancer Registry data.

Full text of the proposed recodification can be found in New Jersey Administrative Code at N.J.A.C. 8:57-6.

Full text of the proposed amendments to the recodification follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 57A
CANCER REGISTRY

SUBCHAPTER [6.]1. CANCER REGISTRY

[8:57-6.1]**8:57A-1.1** Reporting of cancer

(a) (No change.)

(b) The administrative officer of every health care facility shall be responsible for reporting to the State Department of Health every case of cancer or other specified tumorous and precancerous disease when it is initially diagnosed or first admitted [to] **or treated for any reason in** that facility. A report shall also be given for each subsequent primary cancer diagnosed in an individual.

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

(e) Health care insurors and other third party health care payors may report to the State Department of Health cases of cancer, based upon selection criteria in a request from the Cancer Registry.

[(e)]**(f)** The information to be reported shall be provided upon forms supplied by the State Department of Health. The forms [must] **shall** be completed entirely, or supplemental information [must] **shall** be supplied by submitting copies of the history and physical section of the medical records and the discharge summary. A hospital tumor registry abstract form may be used, provided that information required by the State Commissioner of Health is recorded therein according to standardized definitions utilized by the State Department of Health. **Machine readable data may also be submitted, provided the data meet criteria and standards set by the Department of Health.**

Recodify existing (f)-(k) as **(g)**-**(l)** (No change in text.)

[8:57-6.2]**8:57A-1.2** Reportable list

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

(d) All conditions which are listed on the **following** reportable list [must] **shall** be reported by each New Jersey facility[.]:

...
BREAST
...
Glycogen rich carcinoma
...
GASTRO-INTESTINAL TRACT (esophagus, stomach, intestine, appendix, colon, anus)
...
Immunoproliferative small intestinal disease
...
HEMATOPOIETIC/LYMPHOID (including blood, bone marrow, lymph nodes, spleen, and tumors of hematopoietic or lymphoid histogenesis found in other sites.)
...
Gamma heavy chain disease (Franklin's Disease)
...
Immunoproliferative Disease, NOS
...
LUNG AND BRONCHUS
...
Pulmonary blastoma
...
OVARY
...
Mucinous cystadenoma, borderline malignancy (pseudomucinous cystadenoma, borderline malignancy)
...
Papillary cystadenoma, borderline malignancy
Papillary mucinous cystadenoma, borderline malignancy
Papillary mucinous tumor of low malignant potential
Papillary serous cystadenoma, borderline malignancy (papillary serous tumor of low malignant potential)
...
PANCREAS
...
Pancreatoblastoma
Papillary cystic tumor(+)
...
SKIN
...
Squamous cell carcinoma-**Regional or Distant only**
...
SOFT TISSUE (Including retroperitoneum, peripheral nerve)
...
Angiomyxoma (+)
...
Myofibromatosis (congenital generalized fibromatosis)
...

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services
Coverage, Admission and Billing Procedures, Teleprocessing Procedures

Proposed Readoption with Amendment: N.J.A.C. 10:52

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-6a(1)(2); 30:4D-7,7a, b, and c; 30:4D-12.
Agency Control Number: 89-P-24.
Proposal Number: PRN 1989-682.

Submit comments by January 17, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:52 expires on February 19, 1990. The Division of Medical Assistance and Health Services has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable, and responsive to the purpose for which they were originally promulgated. The readoption of three subchapters is necessary because they describe the scope of services, and billing procedures, whether by hard copy claim or by teleprocessing. The readoption of the existing rules becomes effective upon filing with the Office of Administrative Law of a notice of readoption, if such filing occurs before the expiration date. The proposed amendment to N.J.A.C. 10:52-1.6 becomes effective upon publication in the Register of a notice of adoption.

This readoption is focused upon acute care general hospitals, and concerns both inpatient and outpatient services.

Subchapter 1 contains such topics as covered and non-covered services, reimbursement for out-of-State inpatient and outpatient services, approved private psychiatric hospitals, Medical Day Care Centers that are hospital affiliated, Ambulatory Surgical Centers, and Narcotic and Drug Abuse Treatment Centers.

Subchapter 2 describes the billing procedures that a hospital must follow in order to be reimbursed by the New Jersey Medicaid program. Procedures are set forth for both inpatient and outpatient billing. In addition, there is a section for billing dental services when they are rendered in a hospital outpatient department. There is also a section on assessment of interest on overpayments.

Subchapter 3 describes the procedures that a hospital must follow if they wish to submit claims via teleprocessing.

The chapter has been amended several times since the last readoption. Some amendments concerning specialized types of services that can be provided by a hospital. N.J.A.C. 10:52-1.19, concerning Medical Day Care Centers that are hospital affiliated, was amended to allow this type of coverage for Medically Needy patients, but only for those categories identified as pregnant women, and the aged, the blind and the disabled (see 18 N.J.R. 803(a), 18 N.J.R. 1287(a)). A new rule pertaining to Ambulatory Surgical Centers (ASC) was adopted and codified as N.J.A.C. 10:52-1.20. The purpose of an ASC is to provide surgical services to Medicaid patients not requiring hospitalization (see 16 N.J.R. 315(a), 17 N.J.R. 2894(b)).

Amendments were made to N.J.A.C. 10:52-1.17, which describes the reimbursement methodology for out-of-State inpatient hospital services provided by an out-of-State hospital to a New Jersey Medicaid recipient (see 17 N.J.R. 2225(a), 18 N.J.R. 560(a)). The reference to timely claim submittal was deleted from the billing subchapter and consolidated in the Administration Manual. A new rule was adopted at N.J.A.C. 10:52-2.2 which contained a cross reference to N.J.A.C. 10:49-1.12 (see 19 N.J.R. 1155(a), 19 N.J.R. 1800(a)).

There is one change being made upon readoption. The change is being made to the section on outpatient reimbursement, N.J.A.C. 10:52-1.6. Much of the current text is being deleted and replaced with the proposed text set forth below. The current text describes a system whereby outpatient departments were reimbursed based on controlled charges as submitted to and approved by the Hospital Rate Setting Commission. The proposed amendment indicates that reimbursement will be based upon Medicare principles pursuant to Federal Regulations (42 CFR 447.321). Hospitals submit bills for outpatient services based upon their usual and customary charges, but Medicaid reimburses on a ratio obtained from the hospitals' finalized cost report. This is called a cost-to-charge ratio. There is an adjustment process to reach a finalized rate. This change in reimbursement methodology was the result of the expiration of the Federal Medicare waiver from the United States Department of Health and Human Services Health Care Financing Administration (HCFA).

There is one exception to the cost-to-charge ratio. Certain outpatient laboratory services are paid on a fee-for-service basis. The laboratory tests are listed in the text of the proposed amendment below.

End Stage Renal Dialysis is excluded from this methodology. Payment for this service is based upon 100 percent of the Medicare composite rate, plus any add-on to that rate approved by Medicare.

Social Impact

The rules impact potentially on all Medicaid recipients, since they may require treatment and services in a hospital setting, whether inpatient or outpatient. The rules would impact specifically on those Medicaid patients who actually require treatment in an outpatient hospital setting. The additional rules indicate covered and non-covered services. There is no addition or deletion of services connected to the amendments. The amendments cover reimbursement procedures only.

The rules impact on all acute care general hospitals that participate in the New Jersey Medicaid program. The rules describe the billing procedures and requirements for timely claim submittal. The rules also impact on Medical Day Care Centers that are hospital affiliated, Ambulatory Surgical Centers that are hospital based, and Narcotic and Drug Abuse Treatment Centers.

The rules also impact upon out-of-State hospitals, since they describe the basis of reimbursement. The time frames for claim submittal as specified in N.J.A.C. 10:52-2.2 apply equally to out-of-State hospitals.

Economic Impact

There is no cost to the Medicaid patient for hospital services.

Hospitals will be reimbursed in accordance with Medicaid policies and procedures for claims timely and accurately submitted.

The Division of Medical Assistance and Health Services spent 495 million dollars for inpatient hospital services in State Fiscal Year 1989 (Federal-State share combined). The Division spent 90 million dollars for outpatient hospital services in State Fiscal Year 1989 (Federal-State share combined). It is anticipated that the amendment will neither increase nor decrease the economic impact of this chapter.

Regulatory Flexibility Analysis

In general, hospitals would not be considered a small business because they employ more than 100 full time employees (see N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act). However, in the event that a hospital, or portion thereof, would be considered a small business because they employ less than 100 full-time employees, this analysis is being made.

Hospitals are required to keep sufficient records to document the name of the recipient to whom the service was rendered, the date of service, nature and extent of the service, and any additional information that is required by regulation (see N.J.S.A 30:4D-12(d)). The rules apply equally to all hospitals. There is no differentiation based on size. The requirements are necessary for the health, safety, and welfare of the Medicaid patients and to insure compliance with the State law cited above. In addition, hospitals are required to submit claims for reimbursement which are separate for inpatient and outpatient services. There is no differentiation based upon size. The rules are designed to minimize any adverse impact on a small business by requiring only one claim form for each type of service rendered to an individual patient. In addition, providers do have the opportunity to submit claims electronically.

It is anticipated that claims that are submitted timely and accurately will be reimbursed promptly.

There are no capital costs associated with the rules proposed for readoption.

There are no changes in the existing reporting, recordkeeping, or other compliance requirements associated with this readoption.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:52.

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

10:52-1.6 Outpatient hospital service—basis of payment

(a) Outpatient hospital services are those preventive, diagnostic, therapeutic, rehabilitative or palliative items or services furnished to an outpatient by or under the direction of a physician or dentist licensed pursuant to the laws of the State of New Jersey [(see (b) below) in an approved hospital outpatient department].

[(b) Reimbursement for covered services furnished by unlicensed physicians employed directly or indirectly by a hospital shall not be made unless said unlicensed physician is lawfully practicing medicine and/or surgery pursuant to a specific statutory exemption under the laws of the State of New Jersey and, reimbursement in such instances is limited to reasonable costs. All other reimbursement for services rendered by unlicensed physicians is specifically prohibited.]

[(c) Reimbursement for covered services in the outpatient department of a hospital shall be determined based on controlled charges as submitted to and approved by the Hospital Rate Setting Commission, except for dental services, which will be reimbursed according to the Medicaid program's dental fee schedule.]

(b) The New Jersey Medicaid Program shall reimburse providers for covered services in a hospital outpatient department consistent with the following conditions and reimbursement methodology:

1. Establishment of a final rate of reimbursement: The final rate of reimbursement shall be based on the lower of cost or charges as defined by Medicare principles of reimbursement, at 42 CFR 447.321;

2. Establishment of an interim rate of reimbursement: The charge for an outpatient service shall be subject to a reduction based on the application of a cost-to-charge ratio determined for each individual hospital by the New Jersey Medicaid Program, in accordance with Medicare principles of reimbursement at 42 CFR 447.321. This cost-to-charge ratio shall be used to assure that reimbursement for outpatient services does not exceed the lower of cost or charges.

(c) Certain outpatient services, that is, most laboratory services, renal dialysis services, dental services, HealthStart services and the Medicare deductible and coinsurance amounts, shall be excluded from a reduction based on the cost-to-charge ratio reimbursement methodology and shall have their own reimbursement methodology as follows:

1. Outpatient laboratory services shall be reimbursed on the basis of a fee-for-service using the HCPCS (Health Care Financing Administration Common Procedure Coding System) procedure codes and fee schedule contained in the Medicare A File (Medicare Laboratory HCPCS Procedure Code File) (see 42 U.S.C. §1395l). If the hospital charge is less than the fee allowance, reimbursement shall be based upon the actual billed charge. In addition, there are situations which have unique billing arrangements, as follows:

i. Specimen collection, that is, a venipuncture (HCPCS Procedure Code 36415) or a catheterization (HCPCS Procedure Code P9615) shall be reimbursed at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per encounter, regardless of the number of encounters per day;

ii. Automated, Multi-Channel Laboratory Tests shall be grouped. Multi-channel grouping may start with two tests. Hospitals shall group the individual test codes into one multichannel group and bill the group code only. Multi-channel group codes acceptable for Medicaid reimbursement purposes range from 80002 through 80019. A laboratory test that cannot be grouped into a multi-channel group code shall be billed using the HCPCS code assigned for that laboratory test. Laboratory test codes that are billed separately but should be billed as a multi-channel group code, will be combined into the appropriate multi-channel group code during claims processing and shall be reimbursed accordingly.

2. Outpatient laboratory services generally are not subject to cost-to-charge ratio but there are some laboratory HCPCS procedure codes which are subject to the cost-to-charge ratio. These include procedure codes such as:

i. Those valid for Medicaid reimbursement but not listed on the Medicare Laboratory HCPCS Procedure Code File (see 42 U.S.C. §1395l);

ii. Those HCPCS codes submitted for payment on the same claim with charges for blood products (if no blood product is provided and/or billed for on the same claim, the codes are reimbursed according to the fee allowance schedule); and

iii. Some codes associated with other laboratory services, such as for organ or disease oriented panels; clinical pathology consultations; unlisted chemistry or toxicology procedures; certain bone marrow testing; certain specific or unlisted hematology procedures; certain immunology testing; unlisted microbiology procedures; and certain procedures under anatomic pathology.

3. Renal dialysis services for end-stage renal disease (ESRD) as follows:

i. Reimbursement shall be made at 100 percent of the Medicare composite rate and shall include any add-on charge to the composite rate approved by Medicare.

(1) Renal dialysis services provided on an emergency basis in a hospital center not approved to provide renal dialysis services for ESRD shall be reimbursed actual billed charges, subject to the cost-to-charge ratio.

4. Dental services shall be reimbursed in accordance with the New Jersey Medicaid Program Dental Fee Schedule. This fee-for-service schedule shall be consistent with New Jersey Medicaid Program fees paid to the private practitioners and independent dental clinics. (For policies and procedures for dental services, see the Manual for Dental Services, N.J.A.C. 10:56.)

5. HealthStart Maternity Health Support Services (W9040 through W9043) and HealthStart Pediatric Continuity of Care (W9070) shall be reimbursed on a fee-for-service basic in the hospital outpatient department.

i. All other HealthStart Maternity Medical Care Services and all other HealthStart Pediatric Care Services shall be reimbursed based on the cost-to-charge ratio. (For policies and procedures for HealthStart Services, see Administration, N.J.A.C. 10:49-3).

6. The deductible and coinsurance amounts for Medicare/Medicaid crossover claims shall not be subject to the cost-to-charge ratio.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Proposed Amendment: N.J.A.C. 10:123-3.2

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-87.

Proposal Number: PRN 1989-666.

Submit comments by January 17, 1990 to:

Mary Ann Earhart
Boarding Home Coordinator
Division of Youth and Family Services
1 South Montgomery Street
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment makes one change in the existing text of N.J.A.C. 10:123-3.2. The amount of the personal needs allowance to be reserved by owners and operators of residential health care facilities and boarding homes, for the use of Supplemental Security Income or General Public Assistance recipient residents, is being increased by two dollars from $57.00 to $59.00. This increase is based on a proportionate share of the total 1990 Federal cost of living increase in the Supplemental Security Income rate.

Social Impact

The personal needs allowance increase will have a beneficial impact on residents in that it will allow residents who rely on Supplemental Security Income or General Public Assistance to maintain their spending power in equilibrium with the cost of living. The personal needs allowance will continue to be used at the residents' discretion to purchase clothing and incidentals which the residential health care facilities and boarding homes do not provide.

Economic Impact

Recipients of the increased personal needs allowance will benefit by having their spending power keep pace with the cost of living. There will be no negative impact on facility owners, since they also will benefit from the Federal cost of living increase in the Supplemental Security Income rate.

Regulatory Flexibility Statement

The proposed amendment will not result in any increase in the amount or type of reporting, recordkeeping or compliance requirements relating to personal needs allowances. Fewer than 500 facilities Statewide serve Supplemental Security Income or General Assistance residents. The proposed amendment is not expected to have any adverse economic impact on these facilities or on any small businesses, as the term is defined in 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]):

10:123-3.2 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least [$57.00] **$59.00** per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephone

Inspection of Outgoing Correspondence

Proposed Amendment: N.J.A.C. 10A:18-2.7

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

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

Proposal Number: PRN 1989-651.

Submit comments by January 17, 1990 to:

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

The agency proposal follows:

Summary

In order to comply with a *Matter of Inmate Mail to Attorneys,* 232 *N.J. Super.* 478 (Super. Ct. App. 1989), the proposed amendment modifies N.J.A.C. 10A:18-2.7 to specify that the outgoing mail of inmates addressed to public officials, governmental agency officials and news media representatives shall not be opened, read or censored, and that such outgoing mail may be held within a correctional facility long enough to verify that the addressee is a legitimate public official, governmental agency official or news media representative.

Social Impact

The proposed amendment will permit public officials, governmental agency officials and news media representatives to receive correspondence from inmates which has not been opened, read or censored. Uncensored correspondence to public officials, governmental agency officials and news media representatives provides inmates the opportunity to communicate their concerns and/or grievances to persons who have the ability to highlight or address these concerns or grievances.

Economic Impact

The proposed amendment will have no significant economic impact because additional financial resources of the Department are not necessary to implement or maintain these amendments, and no impact on other parties is foreseen.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendment impacts on inmates, the New Jersey Department of Corrections, public officials, governmental agency officials and news media representatives, and these amendments have no significant effect on small businesses.

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

10A:18-2.7 Inspection of outgoing correspondence

(a) (No change.)

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

[1. The President of the United States;
2. The Vice-President of the United States;
3. Members of Congress;
4. Members of the Federal Parole Board;
5. The Director of the Federal Bureau of Prisons;
6. The Governor;
7. Members of the State Legislature;
8. Members of the State Parole Board; or
9. The Commissioner.]

1. Public officials such as:
i. The President of the United States;
ii. The Vice-President of the United States;
iii. Members of Congress;
iv. The Governor;
v. Members of the State Legislature;
vi. Members of the County Board of Freeholders; or
vii. The Mayor;
2. Governmental agency officials, such as:
i. The Director of the Federal Bureau of Prisons;
ii. Commissioner, New Jersey Department of Corrections;
iii. Members of the Federal Parole Board; or
iv. Members of the State Parole Board; or
3. News media representatives.

(c) Outgoing mail from inmates to public officials, governmental agency officials and news media representatives may be held long enough to verify that the addressee is a legitimate public official, governmental agency official or news media representative.

Recodify existing (c) through (e) as **(d) through (f)**. (No change in text.)

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Return of Transmitted Cases
Adopted Amendment: N.J.A.C. 1:1-3.3

Proposed: October 16, 1989 at 21 N.J.R. 3207(a).
Adopted: November 16, 1989 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: November 16, 1989 as R.1989 d.605, **without change.**

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

Effective Date: December 18, 1989.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

1:1-3.3 Return of transmitted cases

A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

COMMUNITY AFFAIRS

(b)

THE COMMISSIONER

Notice of Administrative Correction
Organization of the Department
Office of the Commissioner; Divisions
N.J.A.C. 5:2-1.1

Take notice that the Office of Administrative Law has discovered a codification error in the text of N.J.A.C. 5:2-1.1. Two subsections of that rule are codified as subsection (b). The second of these subsections and those following should be recodified. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

5:2-1.1 Office of the Commissioner; Divisions

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

[(b)](c) The Division of Housing and Development consists of the Director's Office and the following elements: Construction Code, Fire Safety, Housing Programs, and Inspection and Licensing.

1.-4. (No change.)

Recodify (c) through (f) as (**d**) **through** (**g**) (No change in text.)

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Liability Requirements; Corporate Guarantee
Adopted Amendments: N.J.A.C. 7:26-9.10, 9.13 and Appendix A

Proposed: April 3, 1989 at 21 N.J.R. 823(a).
Adopted: November 21, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: November 22, 1989 as R.1989 d.609, **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. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 013-89-03.
Effective Date: December 18, 1989.
Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

These amendments were proposed on April 3, 1989 at 21 N.J.R. 823(a). The comment period closed on June 2, 1989.

No comments were received.

Agency Initiated Changes:

The change to the introductory language of N.J.A.C. 7:26-9.13(f) is being made to conform to the language proposed and adopted as "Financial Assurance for Closure and Post Closure" (see 20 N.J.R. 2650(a) and 21 N.J.R. 991(a)).

The changes to N.J.A.C. 7:26-9.13(f)1 are being made to clarify that the portion of the financial test referring to closure, post-closure, UIC plugging and abandonment costs, and liability coverage is including only these obligations which are not guaranteed by trust funds, surety bonds, letter of credit, or insurance. Therefore, the amount required for these provisions is the total of these obligations which are guaranteed, in whole or in part, by a financial test, corporate guarantee or, in the case of liability coverage, a guarantee.

The addition at N.J.A.C. 7:26-9.13(g)1 specifies the corporate guarantee Appendix document.

The addition of the word "both" at N.J.A.C. 7:26-9.13(g)2 clarifies that the legal certification required by this paragraph applies to both the corporate parent guarantor and its subsidiary.

The changes at N.J.A.C. 7:26-9 Appendix A(f) are being made to conform to the language proposed and adopted as "Financial Assurance for Closure and Post-Closure" (see 20 N.J.R. 2650(a) and 21 N.J.R. 991(a)). Also, Step 2 in Alternative I and Alternative II is being changed to clarify the amount to be entered on this line is the total of closure, post-closure, UIC plugging and abandonment costs, and liability coverage obligations which are not guaranteed by trust funds, surety bonds, letter of credit or insurance.

The changes to proposed N.J.A.C. 7:26-9 Appendix A(g) are as follows:

1. Subsection (g) is adopted as subsection (i) in order to account for provisions added by "Financial Assurance for Closure and Post-Closure" (see 20 N.J.R. 2650(a) and 21 N.J.R. 991(a)).

2. The word "insert" is added to the first paragraph to clarify the instruction.

3. In Recital 3, the word "facilities" has been changed to reflect both singular and plural forms of the word.

4. In the certification following Recital 12, the reference to subsection (g) is changed to (i) to ensure uniformity with other changes made by this adoption.

5. In Recital 13, the agency is clarifying the requirement of signature of a Notary Public.

AGENCY NOTE: Subsection (h) was "Reserved" on proposal; however, a new subsection (h) was added by "Financial Assurance for Closure and Post-Closure" (see 20 N.J.R. 2650(a) and 21 N.J.R. 991(a)).

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

7:26-9.10 Financial requirements for facility closure

(a) (No change.)

(b) When used in this subchapter, the following terms have the meanings given below:

1.-6. (No change.)

(c)-(f) (No change.)

7:26-9.13 Liability requirements

(a) Coverage for sudden accidental occurrences shall meet the following requirements:

1. An owner or operator of a hazardous waste treatment, storage or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of five ways, as specified in (a)1i, ii, iii, iv and v below:

i.-iii. (No change.)

iv. An owner or operator may meet the liability requirements of this section by using the corporate guarantee for liability coverage, as specified in (g) below.

v. An owner or operator may demonstrate the required liability coverage through the use of both the corporate guarantee and insurance as these mechanisms are specified in this section. The amounts of coverage demonstrated shall total at least the minimum amounts required by (a)1 above.

(b) Coverage for nonsudden accidental occurrences shall meet the following requirements:

1. An owner or operator of a surface impoundment, landfill or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury or property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of five ways as specified in (b)1i, ii, iii, iv, and v below:

i.-iii. (No change.)

iv. An owner or operator may meet the requirements of this section by using the corporate guarantee for liability coverage as specified in (g) below.

v. An owner or operator may demonstrate the required liability coverage through the use of both corporate guarantee and insurance as these mechanisms are specified in this section. The amounts of coverage demonstrated shall total at least the minimum amounts required by (b)1 above.

vi.-vii. (No change in text.)

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

(f) Requirements for the use of the financial test for liability coverage are as follows:

1. An owner or operator may satisfy the requirements of this section by demonstrating that *[they pass]* ***he or she passes*** a financial test, as specified in this subsection. To pass this test the owner or operator shall meet the criteria of either (f)1i or ii below:

i. The owner or operator shall have:

(1) Net working capital and tangible net worth each at least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage *,* not guaranteed by *[another financial mechanism such as]* insurance, surety bonds, *[or]* trust funds***, or letters of credit***; and

(2) Tangible net worth of at least $10 million; and

(3) Assets in the United States amounting to either:

(A) At least 90 percent of the owner's or operator's total assets; or

(B) At least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage ***, not guaranteed by insurance, surety bonds, trust funds, or letters of credit***; or

ii. The owner or operator shall have:

(1) A current rating for the owner's or operator's most recent bond issuance of AAA, AA, A or BBB, as issued by Standard and Poor's, or Aaa, Aa, A or Baa, as issued by Moody's; and

(2) Tangible net worth of at least $10 million; and

(3) Tangible net worth at least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage ***, not guaranteed by insurance, surety bonds, trust funds, or letters of credit***; and

(4) Assets in the United States amounting to either:

(A) At least 90 percent of the owner's or operator's total assets; or

(B) At least six times the total amount of obligations in the United States consisting of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage ***, not guaranteed by insurance, surety bonds, trust funds, or letters of credit***.

2.-7. (No change.)

(g) Requirements for the use of the corporate guarantee for liability coverage shall be as follows:

1. Subject to (g)2 below, an owner or operator may meet the liability coverage requirements by submitting for Department approval a written guarantee, hereinafter referred to as a "corporate guarantee," obtained from a guarantor. The guarantor shall be the parent corporation of the owner or operator, and the guarantor shall meet the requirements for an owner or operator in (f)1 through 7 above. The wording of the corporate guarantee shall be identical to the wording in N.J.A.C. 7:26-9 Appendix A ***(i)***. A certified copy of the corporate guarantee shall accompany the items sent to the Department as specified in (f)3 above. The terms of the corporate guarantee shall provide that:

i. If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of the facility(ies) covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to have arisen from such injury or damage, the guarantor shall pay the amount up to the limits of coverage.

ii. The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. This guarantee shall not be terminated unless and until the owner or operator obtains and the Department approves alternate liability coverage complying with (a) and/or (b) above.

2. Every corporate guarantee submitted to the Department shall include a separate legal certification by outside counsel that the corporation has the power and authority to issue and abide by the corporate guarantee and that the guarantee does not conflict with any common law, statutes, rules, regulations, codes, certificates of incorporation, charters, bylaws or other legal or equitable requirements or prohibitions applicable to ***both*** the corporate parent guarantor and its subsidiary which is the subject of the corporate guarantee.

i. In the case of corporations incorporated in the United States, but not in New Jersey, a corporate guarantee may be used to satisfy the requirements of this section only if the Attorney General(s) or Insurance Commissioner(s) of both the state in which the guarantor is incorporated and each state in which a facility is covered by any guarantee of the guarantor is located have submitted to the United States Environmental Protection Agency a written statement that a corporate guarantee executed as described in 40 C.F.R. §§264.147(g) and 264.151(h)(2) is a legally valid and enforceable obligation in the state(s). A copy of such statement(s) shall be furnished to the Department by the guarantor.

ii. In the case of corporations incorporated outside of the United States, a corporate guarantee may be used to satisfy the requirements of this section only if:

(1) The non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by any guarantee is located, including New Jersey, and in the state in which it has its principal place of business; and

(2) The Attorney General or Insurance Commissioner of each state in which a facility covered by any guarantee is located and the state in which the guarantor corporation has its principal place of business has submitted to the United States Environmental Protection Agency a written statement that a corporate guarantee executed as described in 40 C.F.R. §§264.147(g) and 264.151(h)2 is a legally valid and enforceable obligation in that state. A copy of such statement shall be furnished to the Department by the guarantor.

7:26-9 Appendix A

Appendix A. Wording of the Instruments

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

(f) A letter from the chief financial officer, as specified in N.J.A.C. 7:26-9.13(f) and (g) shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Letter from Chief Financial Officer to demonstrate liability coverage.

(Address to the New Jersey Department of Environmental Protection.)

I am the chief financial officer of (*[corporation's]* ***firm's*** name and address). This letter is in support of *[the]* ***(firm's name)*** use of the financial test (include "for the guarantee" if applicable) to demonstrate financial responsibility for liability coverage, as specified in N.J.A.C. 7:26-9.13(f) and (g).

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name and address).

(Include one of the two immediately following paragraphs. The first paragraph is for the financial test alone. The second paragraph is for the corporate guarantee.)

The firm identified above is the owner or operator of the following facilities in New Jersey for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in N.J.A.C. 7:26-9.13 (List each facility by EPA Identification Number, name, and address.)

This firm is the owner or operator of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under N.J.A.C. 7:14A-5.10(a)7. The current closure cost estimates as required by N.J.A.C. 7:14A-5.12(e) are shown for each facility:

The corporation identified above guarantees, through the corporate guarantee specified in N.J.A.C. 7:26-9.13(g), liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities in New Jersey owned or operated by the following subsidiaries of the corporation: (List each facility by EPA Identification Number, name, and address.)

In states where New Jersey is not administering the financial requirements for the closure or post-closure care, UIC plugging and abandonment costs, and liability coverage, this firm is demonstrating financial assurance responsbility for the following facilities through the use of a test equivalent to or substantially equivalent to the financial test specified in N.J.A.C. 7:26-9.13 or any *[corporate]* guarantee(s) used in any state. The current closure or post-closure estimates, UIC plugging and abandonment costs and liability coverage covered by such a test are shown for each facility: (List each facility by EPA Identification Number, name, address, type of obligation, amount of obligation, mechanism used to meet the obligation, and *[the holder of the obligation]* ***citation of authority for the mechanism****.)

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

Alternative I

1. (No change.)

2. Amount of closure, post-closure, UIC plugging and abandonment costs ***, and liability coverage, in the United States not guaranteed by insurance, surety bonds, trust funds or letter of credit (excluding the liability coverage of Line 1)****

3.-12. (No change.)

Alternative II

1. (No change.)

2. Amount of closure, post-closure, UIC plugging and abandonment costs ***, and liability coverage, in the United States not guaranteed by insurance, surety bonds, trust funds or letters of credit (excluding the liability coverage of Line 1)****

3.-11. (No change.)

I hereby certify that the wording of this letter is identical to the wording specified in N.J.A.C. 7:26-9(f), as such regulations were constituted on the date shown immediately below:

(Signature)

(Name)

(Title)

(Date)

[(g)] *(i)* A corporate guarantee, as specified in N.J.A.C. 7:26-9.13, shall be worded as follows, except the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Liability Coverage

Guarantee is made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States ***insert*** "the State of _____" and insert name of state, if incorporated outside the United States, insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the corporation's registered agent in the state of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of our subsidiary (owner or operator) of (business address), to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria in N.J.A.C. 7:26-9.13(f) and agrees to comply with the reporting requirements for guarantors as specified in N.J.A.C. 7:26-9.13(g).

2. (Owner or operator) owns or operates the following hazardous waste management facility(ies) covered by this guarantee: (List for each facility: EPA Identification Number, name, and address, and if guarantor is incorporated outside the United States, list the name and address of the guarantor's registered agent in each state where a facility covered by this guarantee is located.). This corporate guarantee satisifies the New Jersey Solid Waste Management Act third-party liability requirements for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.

3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by (sudden and/or nonsudden) accidental occurrences, arising from the operation of the above-named *[facilities]* ***facility(ies)****, or fails to pay an amount agreed to in settlement of a claim arising from

or alleged to arise from such injury or damage, the guarantor shall satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the NJDEP Commissioner and to (owner or operator) that the guarantor intends to provide alternate liability coverage as specified in N.J.A.C. 7:26-9.13, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.

5. The guarantor agrees to notify the NJDEP Commissoner by certified mail of a bankruptcy proceeding, voluntary or involuntary, under 11 U.S.C. §101 et seq., naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees that within 30 days after being notified by the NJDEP Commissioner of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in N.J.A.C. 7:26-9.13 in the name of (owner or operator), unless (owner or operator) has done so.

7. Guarantor reserves the right to modify this agreement only to address amendment or modification of, so as to remain in compliance with, the liability requirements set by the State of New Jersey for hazardous waste facilities as specified in N.J.A.C. 7:26-9.13. Any such modification of this agreement shall only become effective if and when it is approved by the Commissioner.

8. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall be subject to the applicable requirements of N.J.A.C. 7:26-9.13 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the NJDEP Commissioner and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the NJDEP Commissioner approves alternative liability coverage complying with N.J.A.C. 7:26-9.13.

10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

11. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

12. Exclusions

This corporate guarantee does not apply to:

i. Bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the owner or operator would be obligated to pay in the absence of the contract or agreement.

ii. Any obligation of the owner or operator under a worker's compensation, disabiilty benefits, or unemployment compensation law or any similar law.

iii. Bodily injury to:

(A) An employee of the owner or operator arising from, and in the course of, employment by the owner or operator; or

(B) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of, employment by the owner or operator above.

This exclusion applies:

(1) Whether the owner or operator may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (A) and (B) above.

iv. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

v. Property damage to:

(A) Any property owned, rented, or occupied by the owner or operator;

(B) Premises that are sold, given away or abandoned by the owner or operator if the property damage arises out of any part of those premises;

(C) Property loaned to the owner or operator;

(D) Personal property in the care, custody or control of the owner or operator;

(E) That particular part of real property on which the owner or operator or any contractors or subcontractors working directly or indirectly on behalf of the owner or operator are performing operations, if the property damage arises out of these operations.

I hereby certify that the wording of this guarantee is identical to the wording specified in N.J.A.C. 7:26-9 Appendix A*[(g)]* *(i)* and agree to be bound by the terms herein.

Effective date:

(Name of guarantor)

(Authorized signature of guarantor)

(Name of person signing)

(Title of person signing)

[Signature of witness or notary:]

13. ***Signature of Notary Public.*** (* The following is an example of the certification of acknowledgement which must accompany the corporate guarantee as specified in this subchapter*)*.

State of

County of

On this (date), before me personally came (name of officer representing the guarantor) known to me, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(*[Signature]* ***Signature*** of Notary Public)

*[(h) (Reserved)

(i)-(j) (No change.)]*

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Interim Status Standards for Closure and Post-Closure Care of Hazardous Waste Treatment, Storage and Disposal Facilities

Adopted Amendments: N.J.A.C. 7:26-10.6 and 11.3

Proposed: May 1, 1989 at 21 N.J.R. 1054(a).

Adopted: November 21, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: November 22, 1989 as R.1989 d.608, **without change.**

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 020-89-04.

Effective Date: December 18, 1989.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

These amendments were proposed on May 1, 1989. The comment period closed June 30, 1989. **No comments were received.**

Full text of the adoption follows:

7:26-10.6 Surface impoundments

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

(h) An owner or operator of a surface impoundments shall comply with the following closure requirements:

1. Unless (h)2 below applies, at closure the owner or operator shall remove from the impoundment or decontaminate the following, except that existing surface impoundments closing in accordance with this paragraph shall also comply with (h)4 below:

i.-ii. (No change.)

iii. Any contaminated containment system components including, among other things, the liner;

iv. Underlying and surrounding contaminated soil, contaminated subsoil, and contaminated groundwater; and

v. Structures and equipment contaminated with hazardous waste and leachate.

2. For existing surface impoundments, which do not comply with (b)1 above and which have not received acute hazardous waste (H) listed in N.J.A.C. 7:26-8.15(a)5 or toxic waste (T) listed in N.J.A.C. 7:26-8.15(a)6, the removal of the materials specified in (h)iii and iiii above may be deferred pending the approval by the Department of a containment plan for a total, permanent entombment of referenced materials in such a fashion that no release of contaminants into the environment shall occur during the post-closure period. In order to obtain such approval, the owner or operator shall:

i-ii. (No change.)

iii. Eliminate free liquids by solidifying or removing liquid hazardous wastes and stabilize remaining hazardous waste and hazardous waste residues to a bearing capacity sufficient to support final cover;

iv.-vi. (No change.)

vii. Design the final cover so as to promote drainage and prevent run-on and run-off from eroding or otherwise damaging the final cover; and

viii. (No change.)

3. For existing surface impoundments that will be closed in accordance with (h)2 above, the owner or operator shall place final cover over the surface impoundment which will provide long-term minimization of migration of liquids into the closed impoundment. The final cover shall have a permeability less than or equal to the permeability of any bottom liner system present, natural or artificial, and function with minimum maintenance and consist of the following:

i.-iii. (No change.)

4. For existing surface impoundments that will be closed in accordance with (h)1 above, the following requirements shall also be complied with:

i. (No change.)

ii. Owner or operator shall prepare a contingent post-closure plan under N.J.A.C. 7:26-9.9 for complying with this section in case not all underlying and surrounding contaminated soil, contaminated subsoils, contaminated groundwater and hazardous waste residue can be practicably removed at closure.

iii. (No change.)

5.-6. (No change.)

7:26-11.3 Surface impoundments

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

(e) At closure, the owner or operator shall comply with the requirements of N.J.A.C. 7:26-10.6(h)1 through 6.

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual

Readoption: N.J.A.C. 10:63

Proposed: September 5, 1989 at 21 N.J.R. 2752(a).
Adopted: October 30, 1989 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: November 28, 1989 as R.1989 d.622, **without change.**

Authority: N.J.S.A. 30:4D-6a(4)(a), b(14), 7, 7a, b and c; 30:4D-12.

Effective Date: November 28, 1989.
Expiration Date: November 28, 1994.

Summary of Public Comments and Agency Responses:

There were two comments submitted on the proposed readoption. The commenter was the Public Advocate of New Jersey and the Administrator of the Homestead, the Sussex County Nursing Facility.

COMMENT: The Public Advocate requested amendments to N.J.A.C. 10:63-1.9, captioned "Patients rights." The commenter requested the deletion of a provision in the current text of the rule which allows the attending physician to give medical information to the next of kin if it was "medically inadvisable" to give such information to the patient. The commenter's concern was that the attending physician was being asked to determine the competency of the patient. Competency is a legal determination based on medical evidence. The commenter requested deletion of a provision that requires physician authorization for the patient to leave a long term care facility during the day. The commenter stated this provision created "a kind of involuntary commitment or protective detention" of persons who are not under court order. The commenter requested inclusion of handicap discrimination in the list of prohibited forms of discrimination. The commenter also requested amendments to the provisions governing the use of restraints so that they would be used for the patient's safety "only as a last resort under very limited circumstances." The Division was also requested to delay the adoption until amendments (to the existing rules) could be made.

RESPONSE: The agency's response is that the readoption must proceed as scheduled to retain the existing rules which are necessary to administer an important component of the New Jersey Medicaid Program. In addition, these issues need to be reviewed and researched by the medical, legal, and administrative staff of the agency. If amendments are needed, they will be proposed in accordance with the New Jersey Administrative Procedure Act.

COMMENT: The second commenter (the Administrator of the Homestead) was concerned about the reimbursement for nursing services in the long term care reimbursement methodology. This commenter indicated the 115 percent nursing screen was not adequate and asked for recognition of nursing agency pool costs and inclusion of the Director of Nursing's salary in the computation of the rates. The commenter requested the readoption be deferred until the issues could be addressed.

RESPONSE: The agency's response is that it is necessary to proceed with the readoption to preserve the existing reimbursement methodology in N.J.A.C. 10:63-3. In addition, Federal regulations (42 CFR 447.250) virtually require that any change in reimbursement methodology affecting long term care facilities be formally proposed in the New Jersey Register.

The Division is not making any changes in the text of the existing rules upon adoption for the reasons indicated above.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:63.

(b)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program

Increased Income Deductions, Maximum Coupons Allotments and Maximum Income Eligibility Limits

Adopted Concurrent Amendments: N.J.A.C. 10:87-12.1, 12.2, 12.3, 12.4, and 12.7

Proposed: October 16, 1989 at 21 N.J.R. 3316(a).
Adopted: November 21, 1989 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: November 21, 1989 as R.1989 d.606, **without change.**

Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et seq.); 7 CFR 273.9(a) and 273.9(d)(6), (7) and (8); and 7 CFR 273.10(e)(4).

Effective Date: November 21, 1989.
Expiration Date: January 27, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:87-12.1 Income deduction table

TABLE I
Income Deductions

Standard Deduction	$112.00
Shelter Deduction	$177.00
Dependent Care Deduction	$160.00
Uniform Telephone Allowance	$ 15.00
Standard Utility Allowance	$112.00
Heating Utility Allowance	$182.00

10:87-12.2 Maximum coupon allotment table

TABLE II
Maximum Coupon Allotment (MCA)

Household Size	MCA
1	$ 99
2	182
3	260
4	331
5	393
6	472
7	521
8	596
9	671
10	746
Each Additional Member	+75

10:87-12.3 Maximum allowable net income standards

TABLE III
Maximum Allowable Net Income

Household Size	Maximum Allowable Income
1	$ 499
2	669
3	839
4	1009
5	1179
6	1349
7	1519
8	1689
9	1859
10	2029
Each Additional Member	+170

10:87-12.4 Maximum allowable gross income standards

TABLE IV
Maximum Allowable Gross Income

Household Size	Maximum Allowable Income
1	$ 648
2	869
3	1090
4	1311
5	1532
6	1753
7	1974
8	2195
9	2416
10	2637
Each Additional Member	+221

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

TABLE VII
165 Percent of Poverty Level

Household Size	Maximum Allowable Income
1	$ 823
2	1103
3	1384
4	1664
5	1945
6	2225
7	2506
8	2786
9	3067
10	3348
Each Additional Member	+281

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Notice of Administrative Correction
Cancellation and Nonrenewal of Commercial Insurance Policies
Nonrenewal and Cancellation Notice Requirements
N.J.A.C. 11:1-20.2

Take notice that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 11:1-20.2(i)2. The second use of the word "insured" in that paragraph is incorrect. The correct word is "insurer," as reflected in the proposal and adoption documents filed with the Office of Administrative Law by the Department of Insurance (see PRN 1986-40 and R.1986 d.272) and in the published text of the proposed rule (see 18 N.J.R. 457(b)). The word error occurred in publication of the adoption (see 18 N.J.R. 1388(a)). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

11:1-20.2 Nonrenewal and cancellation notice requirements

(a)-(h) (No change.)

(i) No nonrenewal or cancellation shall be valid unless notice thereof is sent:

1. By certified mail; or

2. By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the [insured] **insurer** has retained a duplicate copy of the mailed notice.

(j)-(l) (No change.)

(b)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Annual Audited Financial Reports
Adopted New Rules: N.J.A.C. 11:2-26

Proposed: October 2, 1989 at 21 N.J.R. 3054(a).

Adopted: November 27, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: November 27, 1989 as R.1989 d.612, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:23-1 et seq. and 17B:21-1 et seq.

Effective Date: December 18, 1989.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Respones:

COMMENT: One commenter suggested that the phrase "changes in financial position" in proposed N.J.A.C. 11:2-26.5(a) and 11:2-26.5(b)4 be changed to read "changes in cash flow" as this would reflect current terminology and would be consistent with page 5 of the Annual Statement.

RESPONSE: The Department agrees. The rule will be changed upon adoption to reflect the commenter's suggestion.

COMMENT: One commenter requested clarification regarding whether the definition of "insurer," which includes risk retention groups as defined in 15 U.S.C. 3901, includes risk retention groups not domiciled in New Jersey. The commenter suggested that the definition of insurer should include all risk retention groups doing business in New Jersey.

RESPONSE: The definition of "insurer" includes all risk retention groups doing business in New Jersey. The rules will be changed upon adoption to reflect this clarification.

COMMENT: One commenter suggested that proposed N.J.A.C. 11:2-26.8 be clarified to provide that if an insurer obtains approval from the insurance department of its domiciliary state to file consolidated or combined financial statements, it need not seek further approval from the New Jersey Insurance Department to file such consolidated or combined financial statements in New Jersey.

RESPONSE: The Department disagrees. Insurers filing audited financial reports in another state pursuant to such other state's requirements may be exempt from complying with the proposed new rules, if such reports are found by the Commissioner to be substantially similar to the reports required by these new rules, pursuant to N.J.A.C. 11:2-26.13(b). However, the fact that an insurer's domiciliary state permits the filing of consolidated or combined reports does not necessarily ensure that such reports would be found by the Commissioner to be substantially similar to the reports required by these rules. Therefore, it is the Department's position that an insurer must seek approval to file consolidated or combined financial reports pursuant to N.J.A.C. 11:2-26.8 notwithstanding the fact that such insurer's domiciliary state permits the filing of consolidated or combined reports in such state. Such an insurer may, however, seek an exemption pursuant to N.J.A.C. 11:2-26.13(b).

Agency Initiated Changes:

1. In N.J.A.C. 11:2-26.3, the word "her" is added in the definition of "workpapers" to correct a printing error, and "or her" is appropriately added for consistency.
2. The actual subchapter effective date (December 18, 1989) is added to references thereto in N.J.A.C. 11:2-26.14(a) and (b).
3. N.J.A.C. 11:2-26.14(b)1 is changed to clarify that this compliance date requirement relates to the financial report due June 30, 1990 reflecting an insurer's financial condition for the year ending December 31, 1989.

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

SUBCHAPTER 26. ANNUAL AUDITED FINANCIAL REPORTS

11:2-26.1 Purpose

The purpose of this subchapter is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

11:2-26.2 Scope

This subchapter shall apply to all insurers transacting business in the State of New Jersey except as provided at N.J.A.C. 11:2-26.13.

11:2-26.3 Definitions

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

"Alien insurer" means an insurer formed under the laws of any country other than the United States of America, its states, districts, territories, commonwealths or possessions.

"Audited financial report" means and includes those items specified in N.J.A.C. 11:2-26.5.

"Accountant" and "independent 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 practice; for alien insurers, it means a chartered or similarly certified accountant.

"Commissioner" means the Commissioner of the Department of Insurance.

"Department" means the Department of Insurance.

"Insurer" means any person, association, partnership or corporation licensed, authorized or eligible to transact the business of insurance in this State pursuant to Subtitle 3 of Title 17 or Subtitle 3 of Title 17B of the Revised Statutes of the State of New Jersey including, but not limited to, eligible surplus lines insurers, interinsurance exchanges and ***all*** risk retention groups as defined in 15 U.S.C. section 3901 ***doing business in New Jersey***. Insurer does not include any statutory mechanism for providing insurance coverage in this State, including, but not limited to, the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq. and municipal joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq.

"Workpapers" means the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her examination of the financial statements of an insurer. Workpapers may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or ***her*** examination of the financial statements of an insurer and which support his ***or her*** opinion thereof.

11:2-26.4 Filing of annual audited financial reports; extensions

(a) All insurers (unless exempted pursuant to N.J.A.C. 11:2-26.13) shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 30 for the year ended December 31 immediately preceding.

(b) Extensions of the June 30 filing date may be granted by the Commissioner for 30 day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for an extension must be submitted in writing not less than 10 days prior to the due date of the financial report in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

11:2-26.5 Contents of annual audited financial report

(a) The annual audited financial report shall reflect the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, changes in *[financial position]* ***cash flow*** and changes in capital and surplus for such calendar year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.

(b) The annual audited financial report shall include:

1. A report of an independent certified public accountant;
2. A balance sheet reporting admitted assets, liabilities, capital and surplus;
3. A statement of gain or loss from operations;
4. A statement of changes in *[financial position]* ***cash flow***;
5. A statement of changes in capital and surplus; and
6. Notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

i. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-1 with a written description of the nature of these differences; and

ii. A narrative explanation of all significant intercompany transactions and balances.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement filed with the Commissioner:

1. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted);

2. Amounts may be rounded to the nearest thousand dollars; and

3. Insignificant amounts may be combined.

11:2-26.6 Qualifications of independent certified public accountant

(a) The Commissioner shall not recognize any person or firm as an independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for alien insurers, that is not a chartered or similarly certified accountant.

(b) Except as otherwise provided herein, a certified public accountant shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations, Code of Ethics and Rules of Professional Conduct of the New Jersey Board of Public Accountancy or similar code.

11:2-26.7 Certification by independent certified public accountant

(a) Each insurer required by this subchapter to file an annual audited financial report shall file with each such report a letter obtained from the accountant retained to conduct the annual audit set forth in this subchapter. The letter shall contain the name and address of such accountant and shall contain a certification by such accountant that he or she is aware of the provisions of the Insurance Code and the rules and regulations of this State that relate to accounting and financial matters. The accountant shall also certify that he or she will express his or her opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department and specify such exceptions as he or she may believe appropriate.

(b) In addition to the requirements in (a) above, if an accountant who was not the accountant for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the letter shall clearly state that the accountant currently retained to conduct the annual audit set forth in this subchapter is not the same accountant retained to conduct the immediately preceding annual audit.

11:2-26.8 Consolidated or combined audits

(a) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements. In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

1. Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

2. Amounts for each insurer subject to this section shall be stated separately;

3. Noninsurance operations may be shown on the worksheet on a combined or individual basis;

4. Explanations of consolidating and eliminating entries shall be included; and

5. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

11:2-26.9 Scope of examination and report

Financial statements furnished pursuant to N.J.A.C. 11:2-26.5 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

11:2-26.10 Notification of adverse financial condition

(a) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to immediately notify in writing an executive officer and all directors of the insurer of the final determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements as of that date. The insurer shall furnish such notification to the Commissioner within five days of receipt thereof.

(b) If the accountant, subsequent to the date of the audited financial report filed pursuant to this subchapter, becomes aware of facts which might have affected his or her report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, incorporated herein by reference.

11:2-26.11 Evaluation of accounting procedures and system of internal control

(a) In addition to the annual audited financial report, each insurer shall file with the Commissioner a report of evaluation performed by the accountant, in connection with his or her examination, of the accounting procedures of the insurer and its system of internal control.

(b) A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the Commissioner within 60 days after the filing of the annual audited financial report.

(c) This report shall generally follow the form for reports on internal control based on audits described in Volume 1, Section AU 640 of the Professional Standards of the American Institute of Certified Public Accountants, incorporated herein by reference.

11:2-26.12 Availability and maintenance of workpapers

(a) Every insurer required to file an audited financial report pursuant to this subchapter shall require the accountant (through the insurer) to make available for review by the Commissioner, the workpapers prepared in the conduct of his or her examination. The insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported thereon.

(b) In the conduct of the periodic review by the Commissioner, photocopies of pertinent audit workpapers may be made and retained by the Commissioner. Such reviews by the Commissioner shall be considered investigations and all working papers obtained during the course of such investigations shall be confidential and not public documents pursuant to the Public Records Acts, N.J.S.A. 47:1A-1 et seq.

11:2-26.13 Exemptions

(a) This subchapter shall apply to all insurers except that foreign or alien insurers having direct premiums written in this State of less than $250,000 in any year and having less than 500 policyholders in this State at the end of any year are exempt from compliance with this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities).

(b) Insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which have been found by the Commissioner to be substantially similar to the requirements herein, are exempt from compliance with this subchapter if:

1. A copy of the audited financial report and the evaluation of accounting procedures and systems of internal control report which are filed with such other state are filed with the Commissioner in accordance with the filing dates specified in N.J.A.C. 11:2-26.4 and 11, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and

2. A copy of any notification of adverse financial condition report filed with such other state is filed with the Commissioner within the time specified in N.J.A.C. 11:2-26.10.

(c) In addition to the exemption in (a) above, upon written application of any insurer, the Commissioner may grant an exemption from compliance with this subchapter if the Commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods.

(d) Upon written application of any insurer, the Commissioner may, for a specified period or periods, permit an insurer to file annual audited financial reports on some basis other than a calendar year basis.

11:2-26.14 Compliance dates

(a) Domestic insurers retaining a certified public accountant on the effective date of this subchapter ***(December 18, 1989)*** who qualifies as independent shall comply with this subchapter for the year ending December 31, 1989 and each year thereafter unless the Commissioner permits otherwise.

(b) Domestic insurers not retaining a certified public accountant on the effective date of this subchapter ***(December 18, 1989)*** who qualifies as independent shall meet the following schedule for compliance unless the Commissioner permits otherwise:

1. ***[As of]****For the year ending** December 31, 1989, file with the Commissioner:

i. A report of an independent certified public accountant;

ii. An audited balance sheet; and

iii. Notes to the audited balance sheet;

2. For the year ending December 31, 1990 and each year thereafter, such insurers shall file with the Commissioner all reports required by this subchapter.

(c) Foreign and alien insurers shall comply with this subchapter for the year ending December 31, 1989 and each year thereafter, unless the Commissioner permits otherwise.

11:2-26.15 Reports prepared in accordance with generally accepted accounting principles

With the Commissioner's approval, an insurer may file the required reports prepared in accordance with generally accepted accounting principles, provided that the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-2 and comparable totals on the audited financial statements, with a written description of the nature of these differences.

11:2-26.16 Alien insurers

(a) In the case of alien insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered or similarly certified accountant.

(b) For such insurers, the letter required in N.J.A.C. 11:2-26.6 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to N.J.A.C. 11:2-26.4 and shall affirm that the opinion expressed is in conformity with such requirements.

11:2-26.17 Confidentiality of documents

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents as defined in the Public Records Act, N.J.S.A. 47:1A-1 et seq.

11:2-26.18 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

11:2-26.19 Severability

If any section of this subchapter is held to be invalid, the remaining parts of this subchapter are not to be affected.

(a)

OFFICE OF THE COMMISSIONER

Automobile Insurance Coverage Selection Form

Adopted Amendments: N.J.A.C. 11:3-15.3, 15.5 and 15.7

Adopted Repeal: N.J.A.C. 11:3-15.8

Adopted New Rule: N.J.A.C. 11:3-15.9

Adopted Recodification: N.J.A.C. 11:3-15.9 and 15.10

Proposed: October 16, 1989 at 21 N.J.R. 3244(a).

Adopted: November 29, 1989, by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: November 29, 1989 as R.1989 d.624, **with substantive and technical** changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Effective Date: December 18, 1989.

Operative Date: January 1, 1990.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: The Insurance Brokers Association of New Jersey comments that proposed N.J.A.C. 11:3-15.9(b)1 should be amended to insure uniformity in the NJAFIUA (JUA) and to clarify that individual servicing carriers do not have latitude respecting when a Coverage Selection Form must be used to effect coverage changes.

RESPONSE: The Department agrees with this comment and has made the requisite change upon adoption. However, as a practical matter, the rules of the JUA and its contractual arrangements with its servicing carriers will require uniformity on this issue. Since the JUA and not its servicing carriers is the insurer, it is the JUA which should and will decide when the Coverage Selection Form is used to effect coverage changes in cases where it is not otherwise required to be used by law. This change is technical and clarificatory only since this would have been the practical effect of the rule if it was adopted as proposed.

COMMENT: Allstate Insurance Company comments that proposed N.J.A.C. 11:3-15.7(f) helps clarify that a new Coverage Selection Form must be printed when rates change. However, they state that as presently worded, the rule is unclear. They suggest a clarificatory change as follows:

> When the range of premium rate differential on the Coverage Selection Form changes . . .

RESPONSE: The Department does not believe that the rule as proposed is unclear. Additionally, the suggested language fails to take into account or clarify the fact that a new form will be required in cases where changes occur in numbers other than rates (for example, deductibles).

COMMENT: Allstate comments that N.J.A.C. 11:3-15.9(b), requiring insurers to require the receipt of a signed Coverage Selection Form before affecting certain coverage changes, exceeds the statutory mandate in N.J.S.A. 39:6A-23 and unduly limits the ability of policyholders to make coverage changes. They recommend that N.J.A.C. 11:3-15.9(b)1 be amended to allow insurance companies, in their discretion, to require the receipt of a signed Coverage Selection Form for any coverage change, but not to require it in the cases identified in proposed N.J.A.C. 11:3-15.9(b)1i through iv.

RESPONSE: The Department believes that the law mandates the use of the Coverage Selection Form for all new policies (see N.J.S.A. 39:6A-23). Additionally, the law mandates the use of the Coverage Selection Form for renewal and mid-term changes concerning the tort options (see N.J.S.A. 39:6A-8.1). Further, the law requires the use of a form, which the Department has, in its discretion, determined to be the Coverage Selection Form, for renewal and mid-term changes concerning comprehensive and collision deductibles (see N.J.S.A. 17:29A-39). The Department believes that the law also requires that, for new policies, a Coverage Selection Form must be completed before a policy is effective. However, as amended upon adoption, and in response to comments, for renewal and mid-term changes which require the use of the Coverage Selection Form, coverage will be affected either upon receipt of the Form, or, if the Form is received within seven calendar days of execution by the policyholder, on the date of said execution.

COMMENT: The Travelers comments that they would like to see an option concerning the "Lawsuit Threshold" for those companies which write six and 12-month policies. They suggest that the following language be used in the relevant portion of N.J.A.C. 11:3-15.7(h)2:

> Per vehicle, my bodily injury premium will be $_____ to $_____ higher on each annual (50 percent or 1/2 of that is semiannual) renewal or continuation of my policy if I select the no threshold option.

RESPONSE: The Department believes that Travelers' suggested language is confusing. Thus, if a company only or primarily writes six-month policies, then the suggested language is inappropriate. The Department believes that all insureds will be more and most properly informed where the insurer inserts the words "annual" or "semi-annual", as appropriate in each case, and as required by the "Note" in the proposed rule.

COMMENT: Travelers also comments that the rule as proposed did not reproduce those parts of N.J.A.C. 11:3-15.7(h)6 and 7 which indicates higher and lower deductible options. They question whether it was the Department's intent to delete these options.

RESPONSE: The rule as published did not capture the rule as it was proposed and filed with the Office of Administrative Law. Those sections of the rule which list the higher and lower deductible options for collision and comprehensive coverage should *not* be deleted and will continue to appear in the rule as presently published in the New Jersey Administrative Code. Their continued existence in the rule was represented in the Department's rule filing by an ellipsis which inadvertently did not appear in the New Jersey Register.

COMMENT: The Professional Insurance Agents of New Jersey (PIANJ) generally supports the proposed amendment, including the clarification for calculating premium differentials between the threshold options and the change that would delete the requirement to use a signed Coverage Selection Form for all coverage changes. However, concerning N.J.A.C. 11:3-15.9(a), they state that it is not necessary for the Department to require that JUA servicing carriers receive a copy of the Coverage Selection Form and that it suffices if the JUA insurance producer with binding authority has received a copy. This would prevent the cumbersome procedure of photocopying and sending Coverage Selection Forms to servicing carriers and the costly duplication of Coverage Selection Form storage by both the insurance producer and the servicing carrier.

RESPONSE: The Department agrees with this comment and N.J.A.C. 11:3-15.9(a) should be so interpreted (and appears to be so written) as to allow a JUA insurance producer to receive a signed Coverage Selection Form without the servicing carrier being required to receive it. The Department believes that the language of the rule is clear and does not require modification.

COMMENT: In keeping with its other comment, PIA suggests that N.J.A.C. 11:3-15.9(b) be amended to more clearly indicate that receipt of the Coverage Selection Form by the insurance producer with binding authority is equivalent to receipt by the insurance company or JUA servicing carrier. The rule does not clearly indicate which person or entity must receive the signed Coverage Selection Form.

RESPONSE: The Department agrees with this comment. Since all JUA insurance producers have binding authority with respect to JUA coverage, a signed Coverage Selection Form for renewals, in cases where it is required to be used pursuant to N.J.A.C. 11:3-15.9(b), can be properly received by the insurance company, the JUA servicing carrier or the JUA insurance producer (with binding authority). Similarly, an insurance producer with binding authority for an insurance company other than the JUA can also receive the signed Coverage Selection Form. The rule is amended upon adoption to reflect the issue raised in this comment. This change is essentially clarificatory in nature and merely states what was intended by the rule as proposed and what is permitted by law.

COMMENT: The Ohio Casualty Group requests a change in the next to last paragraph of the Coverage Selection Form to clarify that a new Coverage Selection Form is not required with each renewal of the policy, consistent with the changes in N.J.A.C. 11:3-15.9(b) adopted herein. It is commented that since the Coverage Selection Form is required with each renewal, the current text of this paragraph implies that option selection must be made with each renewal and sent to the company to keep a $0 tort threshold or deductible of other than $500.00. Ohio Casualty provides amendatory language. The deletion of the last paragraph of the form is also suggested as part of the requested amendment.

RESPONSE: The Department agrees with this comment, but not with the specific requested language changes. The changes made to the Coverage Selection Form as adopted herein will indeed require concomitant changes to other portions of the Coverage Selection Form. Accordingly, for purposes of consistency and clarity, the Department is making these additional changes upon adoption even though those particular portions of the Coverage Selection Form were not proposed for change. These changes appear in the next-to-last and third-to-last paragraphs of the Coverage Selection Form as it presently appears in the New Jersey Administrative Code.

COMMENT: Colonial Penn Insurance Company notes that the opening paragraph of the existing text of the Coverage Selection Form has not been modified by the proposed amendments. The first sentence states that the insurers must choose one option for each item on the form. Since a Coverage Selection Form is, by the instant adopted rules, no longer required to be completed at renewal unless the insured is effecting a certain type of coverage change, this statement needs to be revised so that the insured does not feel obligated to complete the form at each renewal.

RESPONSE: This comment is correct and this sentence will be amended upon adoption for purposes of consistency and clarity.

COMMENT: Colonial Penn notes that the first paragraph (except for the first sentence) of the current Coverage Selection Form includes references to "current options" and options that are "now available." Since all New Jersey insureds would have the new options by December 31, 1989, this language should be deleted.

RESPONSE: The Department agrees and this language is deleted upon adoption.

COMMENT: Colonial Penn states that the wording of the "Lawsuit Threshold" question assumes that the insured has the "Lawsuit Threshold." If the insured has "No Threshold," the premium increases presented would not apply. Colonial Penn proposes that a sentence be included to clarify that the premium increase only applies if the insured currently has the Lawsuit Threshold.

RESPONSE: The Department agrees that clarification of this point may be necessary and has made the appropriate change upon adoption.

COMMENT: Colonial Penn comments that the proposed amendment to the "Lawsuit Threshold" question also has language added which states that the bodily injury liability premium will be specific dollar amounts higher on each annual or semi-annual renewal. Colonial Penn disagrees with this additional language because it implies that the dollar range is a constant and will continue for each renewal. As indicated in N.J.A.C. 11:3-15.7(f), these figures could change when rate revisions are implemented.

RESPONSE: The Department agrees with this comment and has added the phrase "at current rates" in the appropriate place.

COMMENT: Colonial Penn comments that N.J.A.C. 11:3-14.4(d) states that an insured cannot have additional PIP coverage if they choose PIP Medical Expenses Only Coverage. In order to clarify this on the Coverage Selection Form, Colonial Penn has added the following sentence to Question 3, "Personal Injury Protection (PIP)", on its Coverage Selection Form: "You must select Basic PIP Coverage if you choose Additional PIP Coverage." To avoid misunderstanding on the part of the consumer, Colonial Penn would like to see this or similar language added to the requirements.

RESPONSE: The Department agrees that this statement is both legally correct and sufficiently informational to require its inclusion on the Form. Accordingly, this change is made upon adoption.

COMMENT: Colonial Penn comments that proposed new N.J.A.C. 11:3-15.9(a) states that coverage for a new policy cannot become effective until a signed Coverage Selection Form is received from the insured. This appears to be in direct conflict with the New Jersey Insurance Laws and existing regulations. N.J.S.A. 39:6A-8.1(b) states that if the named insured fails to select a tort option, he will be deemed to select the Lawsuit Threshold. N.J.S.A. 17:29A-39(a) requires all policies to have $500.00 deductibles for comprehensive and collision coverages, unless the insured selects a lower deductible. If the insured fails to select a PIP deductible the basic $250.00 deductible will apply as required by N.J.A.C. 11:3-14.3(f). If he fails to select the PIP Medical Expenses Only Coverage, full PIP will be deemed to have been selected (N.J.A.C. 11:3-14.4(h)).

RESPONSE: As previously noted in a prior response to a comment, the Department believes that the law requires that, for new policies, signed Coverage Selection Forms must be received before coverage is effected. Where, for new policies, a Form is not fully completed, then, only upon receipt of the Form, the law will presume certain choices. No such choices will be presumed, of course, until a Form is received.

COMMENT: Colonial Penn comments that the existing laws and regulations clearly prescribe the coverages that insurers must provide in the event an insured does not return a Coverage Selection Form. Since such a mechanism is provided, a Coverage Selection Form is not needed to effect coverages. Requiring a Coverage Selection Form for a new policy will result in unnecessary delays and inconvenience for the insured. In addition, the closing paragraphs of the Coverage Selection Form imply that the insured does not need to complete choices if he wants the coverage required by law.

RESPONSE: As noted in the immediately preceding response, although it is true that the law prescribes certain coverages, for new policies, such coverages can only be effective upon receipt of the Form by an insurer or its producer with binding authority. The closing paragraphs of the Form have been changed upon adoption to conform to the changes in the Form proposed and herein adopted.

COMMENT: The last sentence of the Coverage Selection Form states that the coverages will take effect on policy renewal, or, if the choices are delivered after policy renewal, they will take effect upon receipt by the company or the insurance producer. It does not explain when coverages for a new policy will take effect. If the term "policy renewal" were changed to "policy effective date", this sentence would pertain to both new policies as well as renewal policies.

RESPONSE: In keeping with a prior response, the last paragraph of the Form, including the last sentence, is amended upon adoption for consistency with the changes proposed and adopted.

COMMENT: Liberty Mutual comments as follows: The percentage change calculation in N.J.A.C. 11:3-15.7(j) is intended to show the minimum and the maximum percentage additional cost of the "No Threshold" option relative to the "Lawsuit Threshold" option. The Department proposal does not achieve this true objective. The low end of the percentage range should be based on the highest rated territory, the $250,000/$500,000 split limit or $500,000 single limit, and an adult classification (either age 30-64 as suggested or a driver whose age is 65 or greater). Liberty Mutual would specify "pleasure use" rather than "personal use" for this driver, since "personal use" could include commuting, which would result in a higher class factor. The high end of the percentage range should be based on the highest rated territory, the basic limit, and a youthful, unmarried male principal operator classification. Based on the Insurance Department methodology, the range of values is 66 percent to 79 percent. The proposed alternative would result in a range of 62 percent to 94 percent.

RESPONSE: The Department agrees that its proposal does not achieve its objective to most appropriately show minimum/maximum percentage additional costs. The Department believes, however, that Liberty Mutual's proposal, while an improvement over the Department's proposal, also does not achieve the desired objective. Accordingly, the Department has modified Liberty Mutual's proposal to produce an even broader range (51 percent to 96 percent) than they and the Department (initially) proposed. Such a range will better fulfill the desired objective of showing the minimum/maximum percentage additional cost of the "No Threshold" option relative to the "Lawsuit Threshold" option.

COMMENT: Liberty Mutual also comments that the instructions in paragraph (j)3 state that "the percentage range and dollar range calculations that are described above shall be based upon the applicable bodily injury liability rate." This is reasonable for the percentage range calculations, but is unnecessary and a source of estimation error for the dollar range. Since the property damage and/or PIP components of a rate for a particular territory/limit/class combination do not vary depending on the bodily injury threshold, the dollar difference must be entirely due to the difference in the rates for the bodily injury component. Estimation of the portion of the rate that is attributable to bodily injury prior to taking the difference is clearly no more accurate.

RESPONSE: The Department agrees with this comment for the reasons stated and has amended the rule upon adoption.

COMMENT: MCA Insurance Companies comments that proposed N.J.A.C. 11:3-15.9(c) be deleted and N.J.A.C. 11:3-15.6(n) concerning the Buyer's Guide, be amended. The deletion is requested because this requirement, which obligates an insurance company to provide an insured with a clear and simple notice explaining the use of the Coverage Selection Form consistent with this rule, is considered to be confusing to insureds and unnecessary. Also, insurers will incur costs associated with preparing and using the new notice. MCA recommends that this notice be made part of the Buyer's Guide.

RESPONSE: The comment will be taken under advisement. For the present time, however, the relevant provision will be adopted as proposed since it is mutually agreed that notice of the use of the Coverage Selection Form is necessary and an amendment to the Buyer's Guide is beyond the scope of the rule as proposed. Accordingly, such an amendment would require separate publication. If an amendment is subsequently made to the Buyer's Guide, N.J.A.C. 11:3-15.9(c) may be unnecessary and may be repealed.

COMMENT: USAA commented that the proposed amendment to N.J.A.C. 11:3-15.7(j) requires companies to calculate the percentage and dollar change in premium arising from the selection of the No Threshold option. In so calculating, the premium is to include any expense fee but is not to include any policy constant or RMEC. Elimination of the policy constant and RMEC from the premium determination calculation will misrepresent the amount of savings or charges an insured will actually receive, resulting in complaints by applicants and insureds to the companies and the Department that will be extremely difficult to explain. Since insureds are currently required to pay the policy constant and RMEC as part of their automobile insurance premiums, these items should also be included in the premium determination calculation.

RESPONSE: Since the amounts for the RMEC and policy constants do not depend on the threshold option chosen, it is entirely inappropriate and misleading to include them in the calculations for percentage (or dollar) change.

COMMENT: USAA also comments that N.J.A.C. 11:3-15.9(a) goes beyond the statutory mandate (N.J.S.A. 39:6A-23) by requiring that the insurer receive a signed Coverage Selection Form prior to effecting coverage for an insured. Rather, the statute merely requires that the Coverage Selection Form accompany the application, and that the applicant sign and return the form to the insurer. If the Legislature had intended that the form be received by the insurer prior to the effective date of coverage, it would have stated so in direct language. In addition, New Jersey law provides that an insured is deemed to have selected the Lawsuit Threshold and $500.00 deductibles for Comprehensive and Collision coverages unless the insured makes a different selection. Companies should be permitted to write policies with these coverages, changing them as necessary upon receipt of the Coverage Selection Form.

Further, the proposed amendment would unfairly penalize those New Jersey residents who apply for insurance through a "direct writer" insurance company, such as USAA or USAA-CIC, which operates through toll-free telephone lines and by mail, rather than through local agents. These residents would not be able to obtain insurance from the company of their choice on the same day that they apply. This delay may expose these individuals to the risk of being technically without insurance, even though they have reached a meeting of the minds with the insurance company on the limits of coverage and premium. USAA mails an application, a buyer's guide and a Coverage Selection Form to a new insured upon accepting the application over the telephone. The insured signs the application and Coverage Selection Form and returns them to the company. USAA believes that this provides the same information and protection to the insured as the method proposed in this rule.

RESPONSE: As previously noted, the Department believes that the law requires the receipt of a signed Coverage Selection Form before a new policy becomes effective and before certain changes made in midterm or upon renewal can be effected.

Summary of Agency Initiated Changes:

1. The Department has amended N.J.A.C. 11:3-15.9(b) upon adoption to clarify that this subsection is also applicable to mid-term changes. Without this amendment, the rule would not provide the information and guidance necessary to fully implement the statutory law (see N.J.S.A. 17:29A-39 and 39:6A-8.1). This change is consistent with the requirements of these provisions and P.L. 1988, c.119.

2. In N.J.A.C. 11:3-15.9(a), the words "unless otherwise authorized by law" are added to address N.J.S.A. 17:30E-9F, under which authority the JUA allows a policy to become effective without receipt of a Coverage Selection Form in cases of insurance producer impropriety.

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

11:3-15.3 Definition

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

. . .

"Insurance company" means any person, corporation, association, partnership, company and any other legal entity issuing a contract

of insurance, including the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA).

11:3-15.5 Content of written notice

(a) (No change.)

(b) The written notice shall include the Coverage Selection Form as it appears in this subchapter.

11:3-15.7 Minimum standards for Coverage Selection Form

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

(f) The Coverage Selection Form shall include the range of premium rate differences as indicated by this subchapter. Each insurance company or NJAFIUA servicing carrier shall determine the numbers for use in these sections. When the numbers on the Coverage Selection Form change for any reason, including, but not limited to, rate changes, a new Coverage Selection Form with the current numbers shall be printed.

(g) (No change.)

(h) The text of the Coverage Selection Form follows:

. . .

COVERAGE SELECTION FORM

Name:_____

For new policies, *[You]***you*** must choose one option for each item below. *[The premium reductions or increases that are mentioned in this form compare the cost of one of the current options to the cost of another option now available. However, you should not use your old premium to determine the dollar amount of your premium increase or savings, because your new premium could include rate changes and surcharges that you were not paying previously.]* ***For renewals and mid-term policy changes, you must use this Form when you (1) elect the "No Threshold" option; (2) change from the "No Threshold" option to the "Lawsuit Threshold" option; (3) desire collision or comprehensive deductibles other than $500.00; or (4) desire to change to the $500.00 deductible for collision or comprehensive coverage.****

. . .

2. Lawsuit Threshold

Do you accept the basic limit on the right to sue if injured in an auto accident?

☐ Yes. I want the Lawsuit Threshold.

☐ No. I want No Threshold. My bodily injury liability premium will be ____% to ____% higher if I select the No Threshold option ***instead of the Lawsuit Threshold****, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium ***at current rates**** will be $_____ to $_____ higher on each _____ renewal of my policy if I select the No Threshold option ***instead of the Lawsuit Threshold****. I understand that I can contact my company or my insurance producer for specific details.

(Note: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual".)

Note: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

☐ Basic PIP Coverage.

☐ PIP Medical Expenses Only coverage, for a ____% to ____% savings in the _____ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.)

☐ Additional PIP coverage, at an extra cost. Contact company or insurance producer for details. (NOTE: Company's name may be used here or a chart listing options may be enclosed.) ***You must select Basic PIP Coverage if you choose Additional PIP Coverage.****

. . .

6. Do you choose "collision" coverage?

☐ No. I do not wish to be covered for collision damage.

☐ Yes, with the basic $500 deductible.

7. Do you choose "comprehensive" coverage? (Note: If appropriate, use the term "other than collision" coverage throughout this section.)

☐ No. I do not wish to be covered for comprehensive damage.

☐ Yes, with the basic $500 deductible.

I have read the Buyer's Guide outlining the coverage options available to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company to its insurance producer with the company's bonding authority receives my *[written]* request that a change be made.

. . .

I understand that these choices *[do not]* take effect *[immediately. They will take effect upon policy renewal, or if the choices are delivered after policy renewal, they will take effect upon receipt by the company or by an insurance producer with the company's binding authority.]* ***in the following manner: (1) for new policies, the choices on this Form are effective upon receipt of this Form by the insurance company or by an insurance producer with the company's binding authority; (2) for renewals and mid-term policy changes, the choices required to be made on this Form are effective upon receipt of this Form by the insurance company or an insurance producer with the company's binding authority, except that the changes required to be made on this Form will become effective upon the date that I complete and sign this Form (see below) if this Form is received by the insurance company or an insurance producer with the company's binding authority within seven calendar days of the date of completion.****

. . .

(i) (No change.)

(j) Insurance companies and NJAFIUA servicing carriers shall be required to calculate the percentage and dollar change in premium (or rate) arising from the selection of the No Threshold option as indicated in (j)1 through 4 below. In these calculations, premium (or rate) shall include any expense fee, but shall not include any policy constant or RMEC.

1. The Percentage Change Calculation: The percentage increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by calculating the No Threshold rate as a percentage increase relative to the comparable Lawsuit Threshold rate. The low end of the percentage range shall be produced by calculating the percentage increase in the bodily injury liability premium of a policy with a $250,000/$500,000 split limit or a $500,000 single limit when the motorist goes from the Lawsuit Threshold option to the No Threshold option. This calculation shall be made for the territory with the *[highest]* ***lowest**** basic limit Lawsuit Threshold rate, and shall assume *[business]* ***pleasure**** usage by *[a youthful, unmarried]* ***an age 30-64, married**** male principal operator. The high end of the percentage range shall be produced by making the same type of calculation using a policy with basic limits for the territory with the *[lowest]* ***highest**** basic limit Lawsuit Threshold rate, and shall assume *[personal]* ***business**** usage by *[an age 30-64, married]* ***a youthful, unmarried**** male principal operator.

2. The Dollar Change Calculation: The dollar increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by subtracting the Lawsuit Threshold rate from the comparable No Threshold rate. The low end of the dollar range shall be produced by calculating the dollar change using a policy with basic limits for the territory with the lowest basic limit Lawsuit Threshold rate, and shall assume personal usage by an age 30-64, married male principal operator. The high end of the dollar range shall be calculated using a $250,000/$500,000 split limit or a $500,000 single limit policy for the territory with the highest basic limit (verbal) Lawsuit Threshold rate, and shall assume business usage by a youthful, unmarried male principal operator. Because the range of the possible additional dollar cost will depend upon territory, bodily injury liability loss limits, and other factors, insurers shall be permitted to use round numbers to represent the approximate range of the cost increase. For example, if the smallest dollar rate increase was $56.00 and the largest $305.00, the insurer may use the range $50.00 to $310.00 on its Coverage Selection Form.

3. Premium Basis for Single Limit Liability Coverage:

i.* For single limit liability coverage, the percentage range *[and dollar range]* calculation*[s]* that *[are]* ***is**** described ***in (j)1****

above shall be based upon the applicable bodily injury liability rate. *[These]* ***This*** calculation*[s]* shall not be made on the basis of a combined rate containing a charge for bodily injury liability, personal injury protection (PIP), and property damage liability.

ii. For single limit liability coverage, the dollar range calculation that is described in (j)2 above shall be based upon the applicable liability rate. In contrast to the procedure in (j)3i above, the dollar change calculation shall be made on the basis of a complete rate containing a charge for bodily injury liability, personal injury protection (PIP), and property damage liability.*

4. Insurance companies and NJAFIUA servicing carriers shall submit to the Division of Public Affairs, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625, within seven days of its first use, a copy of the Coverage Selection Form prepared pursuant to this subsection together with:

i. An example showing the calculation of the high and low values for the percentage and dollar change ranges;

ii. Data about the insurance company's territorial rates to confirm that the highest and lowest basic limit Lawsuit Threshold rates have been used in the example. The filing of a rating page showing a list of basic limit rates by territory shall be sufficient;

iii. Data about the insurance company's increased limits liability rating, vehicle usage, and type of driver factors to confirm that the proper relativities have been used in the example. The filing of the appropriate rating pages shall be sufficient; and

iv. For those insurance companies offering only single limit liability coverage, an explanation of the procedure used to develop the bodily injury liability rate from which the percentage and dollar change amounts have been determined. This explanation shall include an example of the calculation methodology.

(k) (No change.)

11:3-15.8 (Reserved)

11:3-15.9 Use of Coverage Selection Form

(a) For all new policies, an NJAFIUA servicing carrier, an insurance company or an insurance producer with the company's binding authority shall receive a signed Coverage Selection Form indicating the prospective insured's coverage choices. Coverage shall not become effective until the signed Coverage Selection Form is received from the insured***, unless otherwise authorized by law****.

(b) For all policy renewals ***and mid-term changes****, the insurance company or NJAFIUA servicing carrier shall provide its Coverage Selection Form to the insured with the notice of renewal ***or upon request for a mid-term change****. Coverage may be renewed ***or amended,**** with or without the signed Coverage Selection Form from the insured***,*** in accordance with the requirements of (b)1i through iv below.

1. An insurance company *[or NJAFIUA servicing carrier]* may require the receipt ***by it or an insurance producer with the company's binding authority**** of a signed Coverage Selection Form for any coverage change; provided, however, that an insurance company *[or NJAFIUA servicing carrier]* shall require the receipt ***by it or an insurance producer with the company's binding authority**** of a signed Coverage Selection Form *[before effecting]* ***for**** any of the *[following]* coverage changes*[:]* ***in (b)1i to iv below. The coverage changes in (b)1i to iv below shall become effective upon receipt of the Coverage Selection Form, or, if said Form is received by the insurer or insurance producer with binding authority within seven calendar days of execution by the policyholder, then the changes shall be effective upon the date of said execution.****

i. The election of the "No Threshold" option;

ii. Changing from the "No Threshold" option to the "Lawsuit Threshold" option;

iii. Where the insured desires collision or comprehensive deductibles other than $500.00; or

iv. Where the insured desires to change to the $500.00 deductible for collision or comprehensive coverage.

(c) With every notice of renewal, an insurance company or NJAFIUA servicing carrier shall provide to an insured a clear and simple notice explaining the use of the Coverage Selection Form consistent with the requirements of this section.

Recodify N.J.A.C. 11:3-15.9 and 15.10 as 15.10 and 15.11 (No change in text.)

(a)

DIVISION OF PROPERTY/CASUALTY

Commercial Lines Insurance: General Provisions

Adopted Amendments: N.J.A.C. 11:13-1.2 and 1.3

Proposed: June 19, 1989 at 21 N.J.R. 1641(b).

Adopted: November 27, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: November 27, 1989 as R.1989 d.621, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29AA-1.

Effective Date: December 18, 1989.

Expiration Date: November 12, 1992.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Insurance ("Department") is adopting amendments to N.J.A.C. 11:13-1.2 and 1.3 to reclassify farmowners insurance as a personal lines coverage rather than a commercial lines coverage. N.J.S.A. 17:29AA-3a(9) authorizes the Commissioner of Insurance ("Commissioner") to determine what kinds of insurance are issued for personal, family or household purposes and thus excepted from the definition of "commercial lines insurance". The primary impact of this reclassification is to improve oversight of this line of insurance by the Department by requiring prior approval of insurance rates and forms, pursuant to N.J.S.A. 17:29A-1 et seq. Commercial lines insurance forms and rates need not be approved prior to use, pursuant to provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-5 and 17:29AA-6.

Three public comments were received.

COMMENT: A commenter suggested that rather than use the verbal definition of "farmowners insurance" as set forth in the proposed amendment, that the definition simply refer to the statutory Annual Statement line "Farmowners Multi Peril". It further suggested that if a verbal definition is used, then the coverages enumerated should identify "farmers comprehensive personal liability".

RESPONSE: The Department believes that a verbal definition is necessary, but has adopted the suggestions of the commenter to clarify the definition to include farmers comprehensive personal liability, and to refer to the "Farmowners Multi Peril" line as set forth on the statutory Annual Statement. This change is for clarification purposes, in that it sets forth the Department's intent more clearly.

COMMENT: A farm trade organization inquired in detail about the effect of the proposed amendments on its membership. It noted that commercial agriculture is a major industry in New Jersey and inquired about the Department's intent in making the reclassification. It inquired about what options were available other than reclassifying farmowners insurance as a personal line. It inquired about what data the Department used to determine the necessity for the change. It inquired whether there was any disadvantage for commercial agriculture into being included as a personal line. If there was such a disadvantage, it inquired about whether small family farms and "hobby" farms should be classified as personal lines, while commercial agriculture would continue to be classified as a commercial line. It inquired whether it would be more reasonable to classify farmowners insurance as a personal line or commercial line based upon the relative coverage, as is done in other states. It expressed a concern about the possible fragmentation of package policies, and the potential impact on large commercial farm enterprises to obtain appropriate coverage.

RESPONSE: The impetus for reclassifying farmowners insurance as a personal line comes from a review of farmowner's insurance rates, which were found to be excessive. In October, the Commissioner ordered companies writing farmowners insurance to lower their rates between 11 and 20 percent on average. By reclassifying farmowners insurance as a personal line from a commercial line, the Commissioner is authorized to review and approve rates prior to being implemented. Commercial lines rates are reviewed after they are implemented, and require the Department to initiate specific proceedings to lower them if found to be excessive.

The reclassification of farmowners insurance should have little impact on the farmowners themselves, regardless of the size of the farming operation. Costs associated with proceedings to obtain the prior approval of rates are relatively minor expenses compared to the rates themselves, and the Department believes that any added expense will be more than offset by lower rates to the purchasers that will result from the prior approval of the rates.

It would be exceedingly difficult to classify a line of insurance as "personal" or "commercial" based upon the size of the farm, the farm revenue or the farmowners insurance premium. The Department notes that most insurers writing farmowners insurance consider it a personal line and administer it through their personal lines personnel. The Department believes that, to the extent commercial farm coverages may be "fragmented" (that is, separate coverages purchased separately from different insurers) that it may result in farmowners being able to purchase coverages more inexpensively by selecting a combination of coverages from more than one insurer that provide the coverage desired at the lowest cost.

COMMENT: A writer of farmowners insurance commented that reclassifying all farmowners insurance to personal lines business may result in the break-up of existing business-oriented package of insurance products for large commercial agribusinesses. It stated that insurers will fragment their current package policies to escape the prior approval provisions of the regulation, which will result in higher insurance costs to large farming enterprises.

RESPONSE: The Department views the commenter's concerns that package policies for larger farming enterprises will be fragmented as speculative. The proposed amendment would not necessarily inhibit package policies tailored to commercial farmers' needs, as currently exists in market. These may be offered at competitive prices based on expense savings resulting from the package policies. Even if there was a fragmentation of farm property and liability coverages, which the Department believes is highly questionable, it would represent more choice for the purchasers and more price competition among insurers. Both results benefit those farm enterprise owners that purchase these coverages.

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

11:13-1.2 Scope

(a) This chapter applies to all policies or contracts of insurance issued by a licensed insurer pursuant to Title 17 of the Revised Statutes except:

1. (No change.)

2. Insurance issued for personal, family or household purposes:

i. Examples of policies of insurance issued for personal, family or household purposes are:

(1) (No change.)

(2) Policies principally used to provide primary insurance on private passenger automobiles which are individually owned and used for personal or family needs;

(3) Policies of personal inland marine, personal theft, residence glass, personal liability insurance and personal excess; and

(4) Policies of farmowners insurance.

ii. Insurance issued for personal, family or household purposes does not include insurance used to cover business, professional or other commercial risks, such as businessowners and commercial multi-peril policies.

11:13-1.3 Definitions

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

. . .

"Farmowners insurance" means a policy of insurance issued to the owner(s) of property used for agricultural purposes, which may include property coverages on dwellings, farm buildings and personal property including household property, farm equipment, livestock, farm produce and supplies; and ***farmers comprehensive personal liability*** coverages against liabilities as the owner of the farm property and operator of the farming enterprise. ***As defined herein, farmowners insurance is reported on the statutory Annual Statement as "Farmowners Multi Peril".***

. . .

(a)

DIVISION OF ADMINISTRATION

New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge

Adopted New Rules: N.J.A.C. 11:18

Proposed: September 5, 1989 at 21 N.J.R. 2698(a).

Adopted: November 27, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: November 27, 1989 as R.1989 d.613, **with substantive 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 and 17:30D-1 et seq.

Effective Date: December 18, 1989.

Expiration Date: December 18, 1994.

Summary of Public Comments and Agency Respones:

COMMENT: (Princeton Public Affairs Group, Inc.) The reproposed new rules should not apply to HMOs that did not participate in the program.

If applied however, the average cost cited in the reproposal does not adequately reflect the impact the surcharge will have on individual HMOs, and the reproposed new rules create an unfair surcharge differential between hospitals and HMOs that were insured or reinsured by the association between 1976 and 1982.

RESPONSE: The Department disagrees. All health care practitioners received direct or indirect benefits from the activation of the Association. Specifically, those health maintenance organizations who were never insured by the Association received indirect benefits resulting from the Association's positive impact on the medical malpractice insurance market in New Jersey. This impact was reflected in the creation of a stabilized marketplace and the voluntary, competitive market which developed during the period in which the Association was active. And, if the need exists in the future, the Association will be available to aid in correcting market dislocations in medical malpractice insurance coverage as a result of the unavailability and unaffordability of such coverage.

The average dollar cost of the surcharge cited in the reproposal was a mean average taking into account all HMOs in New Jersey, and was not mentioned as reflecting the dollar cost to an individual HMO. The Department recognizes that some HMOs will be assessed more than others on an absolute basis, but not on a percentage-of-premium basis.

The recommended surcharges for health care providers that were insured or reinsured by the Association were based upon actuarial calculations which took into account various factors which were weighted on an equitable basis. The surcharge percentage differential between hospitals and HMOs results from those calculations.

COMMENT: (Alvin A. Florin, M.D., P.A.) The reproposed new rules should not apply to physicians who were never insured by the New Jersey Medical Malpractice Reinsurance Association.

RESPONSE: The Department disagrees for the reasons cited in the response to Princeton Public Affairs Group, Inc.

The following changes, for the reasons stated, have been made by the Department:

Agency Initiated Changes

1. N.J.A.C. 11:18-1.3 is amended by clarifying the definition of premium to mean the annual premium paid by health care providers.

2. N.J.A.C. 11:18-1.5(b) is amended to clarify that insurers must remit collective surcharges no later than 10 days from the end of the calendar month in which the surcharge was collected.

Full text of the adoption follows (additions to reproposal indicated in **boldface** with asterisks ***thus***; deletions from reproposal indicated in brackets with asterisks *[thus]*):

CHAPTER 18
NEW JERSEY MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND

SUBCHAPTER 1. FUND SURCHARGE

11:18-1.1 Purpose

Pursuant to N.J.S.A. 17:30D-9, the New Jersey Medical Malpractice Reinsurance Recovery Fund was created to reimburse the New

Jersey Medical Malpractice Reinsurance Association, created pursuant to N.J.S.A. 17:30D-4, for any deficit sustained in the operation of the Association. Pursuant to N.J.S.A. 17:30D-10, the Commissioner is authorized to establish reasonable provisions through additional premium charges for medical malpractice liability insurance policies for the purpose of providing monies necessary to establish the Fund in an amount sufficient to meet the requirements of the Medical Malpractice Liability Insurance Act, N.J.S.A. 17:30D-1 et seq. This subchapter establishes such provisions.

11:18-1.2 Scope

This subchapter applies to all health care providers as defined in this subchapter and to all insurers authorized to write medical malpractice liability insurance in this State.

11:18-1.3 Definitions

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

"Association" means the New Jersey Medical Malpractice Reinsurance Association created pursuant to N.J.S.A. 17:30D-4.

"Commissioner" means the Commissioner of Insurance of the State of New Jersey.

"Fund" means the New Jersey Medical Malpractice Reinsurance Recovery Fund created pursuant to N.J.S.A. 17:30D-9.

"Health care provider" means hospitals, health maintenance organizations, physicians and doctors licensed in this State.

"Medical malpractice liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any physician, doctor, hospital or health maintenance organization, or a claim arising out of ownership, operation or maintenance of the physician's, doctor's, hospital's or health maintenance organization's business premises, including primary and excess coverage.

"Physician" or "doctor" means a doctor of medicine (M.D.), a surgeon, a doctor of osteopathic medicine (D.O.), and a doctor of podiatric medicine (D.P.M.).

"Premium" means the ***annual*** medical malpractice liability insurance premium paid by a health care provider and, in the case of physicians or doctors, includes the portion of the medical malpractice liability insurance premium paid for partnership/association coverage.

"Treasurer" means the Treasurer of the State of New Jersey.

11:18-1.4 Imposition of surcharge

(a) A surcharge of five percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians and doctors presently licensed in New Jersey who were insured (primary or excess) or reinsured by the Association from 1976 to 1982, whether currently practicing individually or as a professional association or employee thereof, or in affiliation or employment with any hospital or health maintenance organization, and those covering health maintenance organizations which were insured (primary or excess) or reinsured by the Association from 1976 to 1982.

(b) A surcharge of three and seventy-five hundredths-percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering hospitals that were insured (primary or excess) or reinsured by the Association from 1976 to 1982.

(c) A surcharge of two and one-half percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians, doctors, hospitals and health maintenance organizations presently licensed in New Jersey who were not insured (primary or excess) or reinsured by the Association from 1976 to 1982.

(d) The applicable surcharge shall apply to all new and renewal policies effective on or after the effective date of this subchapter and to the additional premiums on all endorsements effective on or after the effective date of this subchapter.

(e) The applicable surcharge shall be a separate, up-front charge to the insured in addition to the total premium to be paid, except that in the case of policy premiums paid pursuant to a payment plan or installment plan the applicable surcharge shall be a proportionate charge based upon the payment schedule or amount of payment received. The surcharge shall be shown separately in dollars and cents on each document stating the policy premium. The surcharge shall be identified to the insured as the "Medical Malpractice Reinsurance Recovery Fund Surcharge."

(f) Commissions and premium taxes shall not be payable on the applicable surcharge and the insurer shall be prohibited from absorbing such surcharge as an inducement for insurance or for any other reason.

(g) Failure of the insured to pay the applicable surcharge shall be deemed failure to pay the premium and result in cancellation for nonpayment of premium.

(h) Return of the applicable surcharge collected is permitted on policy activity such as endorsements decreasing premium and cancellations effective on the date this subchapter becomes effective and thereafter. The return surcharge shall be calculated on the same pro rata basis as the return premium. Upon reasonable notice and the provision of adequate documentation from the insurer, the Association shall refund to the policyholder any return of surcharge due that policyholder.

11:18-1.5 Collection and remittance of surcharge

(a) The applicable surcharge billed to the policyholder shall be collected by each insurer at the time of payment of premium.

(b) The insurer shall remit each collected surcharge to the Treasurer for the account of the Fund not later than 10 days from the *[collection of the surcharge]* ***end of the calendar month in which the surcharge was collected***.

(c) Not later than April 1 and October 1 of each year, the Treasurer shall remit the total amount of monies received by the Fund, plus all accrued interest thereon, to the Association pursuant to N.J.S.A. 17:30D-11.

(d) Not later than March 1 and September 1 of each year, each insurer shall file with the Department of Insurance the following:

1. A listing of each Fund surcharge collected during the preceding reporting period and to which class of health care provider the surcharge applies;

2. A listing of each Fund surcharge remitted to the Treasurer during the preceding reporting period and to which class of health care provider the surcharge applies;

3. The total amount of Fund surcharges collected during the preceding reporting period;

4. The total amount of Fund surcharges remitted to the Treasurer during the preceding reporting period; and

5. A statement from an officer of the company certifying that the information submitted is accurate and complete to the best of his or her knowledge.

(e) The information required in (d) above shall be submitted to:

Statistical Service
Property Liability Division
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625
Attention: MMRRF Surcharge

(f) Failure by an insurer to submit the information required in (d) above in a timely manner may result in the imposition of penalties and/or sanctions pursuant to N.J.S.A. 17:33-2 and/or other provisions of law.

(g) The applicable surcharge shall be billed to the policyholder, collected by the insurer, and remitted to the Treasurer until such time as the Commissioner determines that the monies in the fund are sufficient to meet the requirements of N.J.S.A. 17:30D-1 et seq.

(h) The insurer's obligation to collect the applicable surcharge and remit it to the Treasurer in a timely manner shall be a condition of maintaining its certificate of authority.

11:18-1.6 Adjustment of surcharge

The amount of surcharge imposed by this subchapter may be adjusted by the Commissioner upon his or her consideration of revenues received and Fund expenses. Adjustments shall be made for all classes subject to the surcharge on a proportional basis. Adjust-

ments, if any, shall be made in accordance with the rulemaking procedures of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

LAW AND PUBLIC SAFETY

(a)

VIOLENT CRIMES COMPENSATION BOARD
Eligibility of Claims
Adopted Amendment: N.J.A.C. 13:75-1.6

Proposed: September 18, 1989 at 21 N.J.R. 2910(a).
Adopted: November 6, 1989 by the Violent Crimes Compensation Board, Kenneth W. Welch, Chairman.
Filed: November 14, 1989 as R.1989 d.599, **without change.**

Authority: N.J.S.A. 52:4B-9.

Effective Date: December 18, 1989.
Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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.

TRANSPORTATION

(b)

POLICY AND PLANNING
DIVISION OF TRANSPORTATION ASSISTANCE
BUREAU OF FREIGHT SERVICES
Railroad Transportation; Public Hearings
Federal Grant Programs to Provide Transportation to Elderly and/or Handicapped People
Adopted Repeals: N.J.A.C. 16:50 and 16:52

Proposed: October 16, 1989 at 21 N.J.R. 3258(b).
Adopted: November 20, 1984 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: November 21, 1989 as R.1989 d.607, **without change.**

Authority: N.J.S.A. 27:1A-17, 18, and 24 and 52:14B-4.

Effective Date: December 18, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the chapters adopted for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:50 and 52.

TREASURY-GENERAL

(c)

DIVISION OF BUILDING AND CONSTRUCTION
Classification of Bidders
Adopted Amendments: N.J.A.C. 17:19-1.1 through 2.6
Adopted Repeals: N.J.A.C. 17:19-2.8 through 2.14
Adopted Repeal and New Rule: N.J.A.C. 17:19-2.7

Proposed: October 16, 1989 at 21 N.J.R. 3265(a).
Adopted: November 27, 1989 by Thomas H. Bush, Director, Division of Building and Construction.
Filed: November 27, 1989 as R.1989 d.616, **without change.**

Authority: N.J.S.A. 52:35-1 et seq., specifically 52:35-11.

Effective Date: December 18, 1989.
Expiration Date: March 18, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 1. GENERAL PROVISIONS

17:19-1.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.
"Classification" means the process and product of assigning specific construction categories or trades and the maximum aggregate workload level(s) which define the eligibility of prospective bidders as determined by the Division.
"Director" means the Director of the Division of Building and Construction (hereinafter referred to as DBC) in the Department of the Treasury.
"Person" means any individual, copartnership, association, corporation or joint stock company, their lessees, trustees, assignees or receivers appointed by any court whatsoever.
"Public work" means any public building or other public betterment, work or improvements constructed, repaired or improved wholly or in part at the expense of the public.
"Questionnaire" means the Contractor's Financial Statement and Experience Questionnaire, GSA 27.

SUBCHAPTER 2. RULES

17:19-2.1 Statements required from prospective bidders; contents
Any person proposing to submit bids on public work shall submit to the Director a statement under oath on a form designated as GSA-27 (Contractor's Financial Statement and Experience Questionnaire). The GSA-27 shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership and prior experience of the prospective bidder and shall be used by the Division of Building and Construction (DBC) in classifying prospective bidders pursuant to N.J.S.A. 52:35-1. et seq.

17:19-2.2 Joint Ventures
(a) Where multiple contractors, each with a valid classification, propose to form a Joint Venture for the purpose of bidding on one or more project(s), the venturers shall jointly submit a Statement of Joint Venture (DBC Form 606) and a statement from an authorized surety denoting the bonding capacity of the Joint Venture (see N.J.A.C. 17:19-2.3). These statements shall be received by the Division no less than five calendar days prior to the bid opening date set for the project on which the Joint Venture proposes to bid. Failure to provide the statements in the prescribed form and time may be cause for rejection of the bid as nonresponsive.

17:19-2.3 Statements from an authorized surety
(a) Any bidder failing to submit a statement of bonding capacity with the completed Questionnaire shall not be eligible to bid on any

projects for which a bond is necessary but may be eligible to bid on any project for which a bond is not required.

(b) If a bidder obtains the required bonding statement subsequent to being classified and rated under (a) above, the bidder may apply for an amended classification. Such a classification shall be a prerequisite to the submission of a competitive bid on a project requiring bid, performance or payment bonds.

17:19-2.4 Responsibility determination

(a) For bidders proposing to submit bids on public work, a determination as to responsibility shall be accomplished by the DBC.

(b) A "responsible" bidder is one which can perform the contracted work as agreed to by the contract parties. A determination of "responsibility" refers to the apparent ability of the bidder to successfully carry out the requirements of a contract. Factors affecting a bidder's responsibility include:

1. Financial resource;
2. Technical qualifications;
3. Experience;
4. Organization and facilities to carry out the work;
5. Resources needed to meet completion schedules;
6. Satisfactory performance record for completion of contracts;
7. Accounting and auditing procedures adequate to control property, funds and other assets;
8. Civil rights compliance; and
9. Satisfactory record of integrity.

(c) Any applicant which has no prior public works experience with the State of New Jersey shall be evaluated on the applicant's financial resources, technical qualifications, organization and facilities, accounting and auditing procedures, integrity, references and experience on previous contracts.

(d) Upon rendering an affirmative finding of responsibility, the DBC shall classify a bidder. Prospective bidders deemed responsible and classified shall be sent a notice of classification by registered mail within a period of eight calendar days following receipt of a satisfactorily completed Questionnaire.

(e) If a contractor objects to its assigned classification or a bidder objects to the classification of any other bidder, a hearing may be requested pursuant to N.J.S.A. 52:35-4. In the case of a contractor objecting to its own classification, the request must be made in writing to the Director within 15 calendar days after the date of the classification notice. In the case of a bidder objecting to the classification of another bidder, the request must be submitted to the Director in accordance with N.J.S.A. 52:35-4 and within three calendar days after the bid opening or at least three calendar days prior to the proposed date of contract award, whichever date is earlier. If a contractor or bidder remains dissatisfied, an appeal may be made pursuant to N.J.S.A. 52:35-6. The appeal hearing shall be conducted as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq.

17:19-2.5 Scheduled re-classification

(a) Bidders shall re-classify every seven months in order to remain eligible to bid on public work. However, prior to the expiration of the classification, a bidder may apply, in writing, for a single seven month extension of classification without filing a new Questionnaire.

1. In applying for an extension, the bidder shall submit a signed affidavit stating that the applicant's financial and bonding status has not so substantially changed since its last submission of a Questionnaire that a change of classification would be warranted. The Division of Building and Construction may verify this statement and request additional documentation before an extension is granted;

2. The Division shall grant or deny the extension no later than 10 calendar days following receipt of the written extension request;

3. No more than one extension may be granted per classification period. Thereafter, a bidder shall submit an updated Questionnaire in order to continue its classification;

4. The extension of a classification shall be effective for a period of seven months from the expiration date of the preceding rating period which was based upon the submission of a GSA-27.

(b) Where a bidder has not been granted an extension or where an extension period is expiring, the bidder shall file an updated Questionnaire with the DBC. Based on this Questionnaire, the DBC shall reclassify the bidder, as appropriate.

(c) Where, in the course of a seven month classification period, the financial, corporate or bonding status of a bidder changes so substantially as to warrant a change of classification, the bidder shall forthwith notify the DBC in writing and include a submission of a revised Questionnaire.

1. With this notice, the bidder may also request a change of classification.

2. The DBC shall review the request for revision and issue a decision no later than eight calendar days from the date of the receipt of the request.

3. Any change of classification shall be effective only for the remainder of the original seven month period.

17:19-2.6 Classification

(a) The DBC will assign an aggregate classification to each prospective bidder based on the information provided in the completed Questionnaire and the factors delineated in N.J.A.C. 17:19-2.4.

(b) Any request from an approved applicant to adjust its classification amount for a specific project must be supported by a bonding certification for the requested (or greater) amount and be received by the DBC at least 20 calendar days prior to the date scheduled for bid opening.

17:19-2.7 Special classification requirements

(a) The Director may establish appropriate and special classification requirements for a given project as may be dictated by the unique or specialized nature of the work to be performed on that project.

(b) The Director may establish appropriate and special requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformance with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously classified bidders and will be appropriately published.

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Debarment, Suspension and Disqualification of Person(s)

Adopted Amendment: N.J.A.C. 17:19-3.2

Proposed: October 16, 1989 at 21 N.J.R. 3272(a).
Adopted: November 27, 1989 by Thomas H. Bush, Director, Division of Building and Construction.
Filed: November 27, 1989 as R.1989 d.617, **without change.**

Authority: N.J.S.A. 52:27-1 et seq.

Effective Date: December 18, 1989.
Expiration Date: March 18, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:19-3.2 Causes for debarment of a person(s)

(a) In the public interest, the Division of Building and Construction shall debar a person for any of the following causes:

1.-13. (No change.)

14. Making any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or

employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to report in writing forthwith, or failure to obtain a waiver from the Executive Commission on Ethical Standards, for the undertaking of, directly or indirectly, any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or the selling of any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g;

17. Influencing or attempting to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Report Form A-3

Adopted Amendment: N.J.A.C. 19:25-10.8

Proposed: October 16, 1989 at 21 N.J.R. 3273(a).
Adopted: November 28, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Filed: November 29, 1989 as R.1989 d.623, **without change.**

Authority: N.J.S.A. 19:44A-6.

Effective Date: December 18, 1989.
Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:25-10.8 Report Form A-3

(a) A continuing political committee may satisfy its quarterly reporting obligation for a calendar year if it files with the Commission no later than January 15 of that calendar year a certified statement (Form A-3) to the effect that the total amount to be expended in that calendar year shall not exceed $2,500.

(b) In the event a continuing political committee files with the Commission a certified statement (Form A-3) pursuant to (a) above, and total expenditures in fact exceed $2,500 during the calendar year for which the statement was filed, the continuing political committee must:

1. File a quarterly report (Form R-3) on the date relevant to the quarter in which $2,500 of expenditures was exceeded as set forth in N.J.A.C. 19:25-10.3, and that quarterly report must include all contributions received and all expenditures made from the beginning of the calendar year; and

2. File on the dates provided in N.J.A.C. 19:25-10.3 quarterly reports for the remainder of the calendar year.

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

(b)

CASINO CONTROL COMMISSION

Complimentary Services or Items Transportation Expense Reimbursement

Adopted Amendments: N.J.A.C. 19:45-1.1, 1.9, 1.15
Adopted New Rule: N.J.A.C. 19:45-1.9A

Proposed: September 18, 1989 at 21 N.J.R. 2953(a).
Adopted: November 22, 1989 by the Casino Control Commission, Walter N. Read, Chair.
Filed: November 22, 1989 as R.1989 d.611, **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 and 5:12-102(m).

Effective Date: December 18, 1989.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Respones:

Comments on the proposed new rules and amendments were submitted by the Sands Hotel and Casino (the Sands), Caesar's Atlantic City (Caesar's), and Trump Plaza Hotel and Casino (Trump Plaza).

COMMENT: The Sands and Caesar's comment that proposed N.J.A.C. 19:45-1.9A(b) should provide for storage of Travel Disbursement Vouchers (Vouchers) under the control of the casino accounting department, and restrict access to Vouchers prior to use to the accounting department or to casino cage personnel.

RESPONSE: As proposed, N.J.A.C. 19:45-1.9A(b) does not refer to the long-term "storage" of quantities of unused Vouchers, and was not intended to supercede N.J.A.C. 19:45-1.11(c)8, which makes the casino controller and casino accounting department responsible for "the supply of unused forms" required by the Commission's internal control regulations. Rather, the new rules focus on the daily maintenance of Vouchers prior to authorization of a disbursement. Since only the "authorizer" initiates the reimbursement transaction, and provides the general cashier with the approved Voucher, access to Vouchers prior to use is appropriately limited to authorizers. Further, unlike other prenumbered documents which are issued in known locations, the location of the Vouchers, which location must be approved by the Commission, will depend in large part on which casino personnel a particular casino licensee chooses to be responsible for such transaction. While an individual casino licensee may choose to locate the Vouchers in the cage, other casinos retain the flexibility to specify other locations.

COMMENT: The commenters assert that reimbursable transportation costs are not always "paid by the requesting patron to the transportation provider," as specified at N.J.A.C. 19:45-1.9A(b)1.

RESPONSE: The new rule provides that receipts may be in the name of a person accompanying the patron, if an explanation is noted on the Voucher (see N.J.A.C. 19:45-1.9A(b)3). The Commission also recognizes that properly reimbursable transportation costs may include payments to other than a "transportation provider," for example, fuel costs paid to a service station or airport. N.J.A.C. 19:45-1.9A(b)1 was intended to ensure that the travel receipts presented indicate the actual cost incurred. In response to the comment, the proposed rule is modified to require that the ticket, invoice or receipt "contain the actual cost of transportation for which reimbursement is sought."

COMMENT: The commenters note that where travel receipts indicate a destination other than Atlantic City, or no destination is indicated, the casino licensee may be in a better position than the patron to provide other evidence of the patron's presence in Atlantic City during the trip in which the expenses were incurred. Caesar's also suggests a requirement that the date of the ticket, invoice or receipt coincide with the date of a player rating for that patron, and that airline tickets state a destination of Atlantic City or "another airport which is a gateway to Atlantic City."

RESPONSE: The Commission has modified proposed N.J.A.C. 19:45-1.9A(b)4 to provide that if a location other than Atlantic City, or no location, is indicated on the ticket, invoice, or receipt, then the casino as well as the patron can provide other documentation evidencing the patron's presence in Atlantic City during the trip in which the expenses were incurred. Acceptable documentation may include, among other things, a player rating for the pertinent dates. The Commission finds no valid reason to hold air travel to a different standard than other transportation expenses.

COMMENT: Both the Sands and Caesars comment that it is duplicative to require that the casino licensee attach a copy of the ticket, invoice or receipt to the Voucher, and also to record on the Voucher the number, date of issuance, and the issuer of the ticket, invoice or receipt.

RESPONSE: The data provided on the Voucher must include a record of the corresponding documentation so that audit trails may be established should the Voucher and documents be separated.

COMMENT: The commenters suggest that completion of the Voucher is more appropriate to the general cashier than to the authorizer, whose role should be limited to examining the tickets, invoices or receipts, and presenting these to the general cashier with the signed Voucher.

RESPONSE: The Commission believes that it is properly the individual who is authorizing the reimbursement who must identify, on the Voucher, the patron and type and amount of transportation expense approved, and the documentation accepted as evidence of that expense, and who signs that Voucher attesting to the accuracy of the information provided therein.

COMMENT: Caesar's objects to the 30-day limit between issuance of a travel receipt and the date of reimbursement, which extends to 90 days where an explanation is noted on the Voucher. The comment notes that tickets may often be issued well in advance of the actual date of travel.

RESPONSE: To ensure that cash disbursements are supported by legitimate transportation expenses, some time limit must be placed on the validity of travel receipts presented by the patron. In response to the comment, the Commission has modified proposed N.J.A.C. 19:45-1.9A(b)2 to permit reimbursement within 30 days, extended to 180 days if an explanation is included on the Voucher.

COMMENT: Caesar's comments that a two-part Voucher is unnecessary.

RESPONSE: The duplicate copy of the Voucher is used by casino accounting personnel for matching and agreement, on a daily basis, with the original Voucher.

COMMENT: Caesar's comments that the general cashier should be permitted to verify the patron's identity by comparing the patron's signature on the Voucher with his signature on file in the casino cage.

RESPONSE: The Commission has modified proposed N.J.A.C. 19:45-1.9A(d)8 in response to this comment. The general cashier may verify the patron's identity by examining the patron's credentials, obtaining the authorizer's personal attestation to the patron's identity, or by comparing the patron's signature on the Voucher with the signature in his or her credit file.

COMMENT: Caesar's comments that the rules should provide for transportation expense reimbursement transactions by mail.

RESPONSE: The adopted rules require the patron's presence during the reimbursement transaction. The commenter may choose to file a petition for rulemaking with the Commission, pursuant to N.J.A.C. 19:40-3.6, suggesting the promulgation of appropriate mail-in procedures.

COMMENT: Trump Plaza comments that N.J.A.C. 19:45-1.9A(b)4, which requires evidence of the patron's presence in Atlantic City during the trip in which the expenses were incurred, would preclude reimbursement for transportation expenses not related to trips to the casino hotel premises.

RESPONSE: The adopted rules were designed to establish documentation procedures for reimbursement of the costs of transportation to or from the Atlantic City casino hotel premises. The Commission intends to separately promulgate comparable rules to address the documentation of reimbursement for transportation expenses not associated with a trip to a casino hotel.

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

SUBCHAPTER 1. 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]* ***for which reimbursement is sought***;

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]* ***180*** 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, ***or if no destination is indicated,*** the requesting patron ***or the casino licensee*** 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***, or the general cashier's verification that the signature of the patron on the Voucher appears to agree with the signature in the patron's credit file***;

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;

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.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Approved Public Elementary and Secondary School Summer Sessions

Adopted New Rules: N.J.A.C. 6:8-9
Adopted Repeals: N.J.A.C. 6:26 and 6:27

Proposed: August 21, 1989 at 21 N.J.R. 2441(c).

Adopted: November 8, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: November 16, 1989 as R.1989, d.601, **without change.**

Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:4-23 through 18A:4-25, 18A:6-38, 18A:38-4 and 18A:45-1.

Effective Date: December 18, 1989.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Response:

COMMENT: The Department has received only one comment. The commenter wrote to request that the Department retain kindergarten as part of the elementary education code (N.J.A.C. 6:26-2) rather than rely on N.J.A.C. 6:20-1.3(b) and (c)1, 2, and 3 (Business Services) which contains identical rules. The commenter observed that "It would be too easy for future changes in kindergarten to be slipped in under 'Business Services' revisions if this proposal were allowed to go through."

RESPONSE: The Department rationale for the code change is limited to eliminating redundancy in Code. If any rules are determined necessary regarding aspects of kindergarten education other than those related to business services, such rules would be appropriately placed in other sections of Title 6. Additionally, any change or addition has to go through a formal, rigorous and detailed rulemaking process in accordance with the Administrative Procedures Act.

Full text of the new rules follows:

SUBCHAPTER 9. APPROVED PUBLIC ELEMENTARY AND SECONDARY SCHOOL SUMMER SESSIONS

6:8-9.1 Operation

(a) The rules for the approval of full-time public schools shall apply to all elementary and secondary summer sessions. No school summer session may be operated or approved unless it is operated by a district board of education without charge to pupils domiciled within the district.

(b) Remedial, advancement and enrichment courses may be offered to meet pupil needs. As used in this subchapter, the words below shall have the following meanings:

1. A "remedial course" is any course or subject which is a review of a course or subject previously taken for which credits or placement may be awarded upon successful completion of the course.

2. An "advanced course" is any course or subject not previously taken in an approved school program for which additional credits or advanced placement may be awarded upon successful completion of the course.

3. An "enrichment course" is any course or subject of avocational nature for which no credits are to be awarded.

(c) Reasonable tuition may be charged for enrichment courses which carry no credit and are determined by the county superintendent of schools to be unrelated to the curriculum of the regular school program.

(d) The operation of a summer session requires annual approval by the county superintendent of schools.

6:8-9.2 Staffing

(a) In each public school, a member of the administrative, supervisory or teaching staff who is certified as an administrator shall be assigned the responsibilities of administration and supervision of the summer session.

(b) Teachers in summer sessions conducted by district boards of education shall possess valid certificates for subjects taught. Curriculum enrichment may involve resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor or teacher.

6:8-9.3 Admission of pupils

(a) The assignment of pupils in summer session for remedial courses shall be based upon the recommendation of the principal of the school which the pupil regularly attends in accordance with policies established by the district board of education. The principal's recommendation must state in writing the name of the subject(s) which the pupil may take and the purpose for which each subject is taken.

6:8-9.4 Credit and grade placement

(a) An evaluation and a description of work completed shall be included in the pupil's cumulative record and the principal of the sending school will determine the grade placement of the pupil.

(b) To receive advanced credit for a subject not previously taken, the pupil shall receive class instruction in summer session under standards equal to those during the regular term.

(c) Full-year subjects which are given for review or for other purposes not including advanced credit must be conducted for 3,600 minutes of instruction under standards equal to those during the regular term.

(d) Credit for work taken in an approved elementary or secondary school summer session shall be transferable in the same manner as work taken in any approved elementary or secondary school.

(e) The amount of the time which a pupil has spent in receiving class instruction shall become part of his or her permanent record and shall be included whenever the record is transferred to another school.

(a)

STATE BOARD OF EDUCATION

Provisional Certification of First-Year Teachers

Adopted Repeals and New Rules: N.J.A.C. 6:11-5.1 and 5.2

Adopted Repeal: N.J.A.C. 6:11-5.3

Adopted Recodifications with Amendments: N.J.A.C. 6:11-5.4, 5.5, 5.6 and 5.7

Adopted Amendment: N.J.A.C. 6:11-7.2

Proposed: September 5, 1989 at 21 N.J.R. 2717(a).

Adopted: November 8, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: November 27, 1989 as R.1989, d.614, **with a technical change** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38, 18A:7-38 and 18A:26-10.

Effective Date: December 18, 1989.

Expiration Date: December 12, 1990.

Summary of Public Comments and Agency Responses:

Four individuals spoke at the September 20 public testimony session by the State Board of Education and four letters with comments were received.

COMMENT: Two persons commented that college teacher education students should be issued provisional certificates, rather than eligibility certificates, at the time they graduate and independent of their being offered employment.

RESPONSE: By law and regulation, the Provisional Certificate has since the 1940s been a credential which: (a) is issued to authorize the employment of persons who have been offered jobs; and (b) expires automatically at the end of one-year. These features provide administrative controls that are important to the proposed system and incompatible with the approach recommended above.

Under the proposed system, as well as in the current "alternate route," districts may offer employment to holders of the Eligibility Certificate but they may not place them in a classroom until the Department issues a Provisional Certificate. This control requires the district to notify the State whenever it hires a beginning teacher who possesses only an eligibility certificate. This enables the Department to: (a) identify all instances of such employment; (b) require the district to sign a training and support contract as a condition for issuance of a provisional certificate; (c) monitor the local support program; and (d) direct the evaluation process that will lead to permanent certification.

The automatic expiration of the Provisional Certificate at the end of one-year is important to the proposed system as well because it eliminates the need for the State to take legal action to revoke the licenses of those provisional teachers who are unsuccessful. Instead, the action that must be taken is that of issuing permanent certification to successful candidates.

If college program students were issued provisional certificates at the point of graduation, then districts would legally be able to place them in classrooms without notifying the State. In addition, the provisional certificates of those college program graduates who could not find jobs would expire in one year, and they would be left with no valid credential to indicate their eligibility. They would have to pay the necessary fees to renew their provisional certificate, and many would not do so. Thus, the pool of persons possessing legal eligibility documents would be decreased in size.

The proposed system is one that is used in other states as well as in New Jersey's Provisional Teacher and Principal Certification Programs. In addition, the Certificate of Eligibility with Advanced Standing will be issued to college program graduates will clearly distinguish them, symbolically and substantively, from alternate route applicants.

COMMENT: Two persons commented that the Master's Degree or substantial graduate study should be repaired for permanent certification.

RESPONSE: Local policies and incentives encourage teachers to pursue graduate study in concert with local needs. State-mandated graduate education would necessitate the expenditure of a considerable amount of public funds for support of colleges as well as tuition reimbursement and salary increments for teachers. Such a mandate would be difficult to justify as an employment minimum, and there is no reasonable expectation at this time that required graduate study would produce gains in teacher competence significant enough to justify expenditures.

COMMENT: Three persons commented that the participation of college faculty on district support teams should be mandated. Another commenter recommended the participation of college faculty on district support teams be eliminated.

RESPONSE: The State advisory committee which originally designed the provisional support program, and which included representatives of all educational groups, recommended that representation of college faculty on district support teams be encouraged but not required. Proposed N.J.A.C. 6:11-5.3(h) includes such a provision.

The Committee believed that local support programs would be obstructed by a requirement of college participation because the fiscal and other policies of colleges discourage their faculties from participating in off-campus, non-credit activities that do not involve formal instruction or research. Thus, districts would find it difficult to arrange college participation and might be unable to meet the legal requirements for support team membership. Indeed, relatively few colleges responded affirmatively to the Department's general invitation to become involved in the Provisional Teacher Program. Of those that did, most limited their participation to providing formal coursework.

Yet, some of the relationships that have evolved have shown promise of college-district collaboration in training and supporting new teachers through innovative arrangements. Therefore, the Department has funded several consortia to propose ways in which such joint efforts might be formalized within the policies and other constraints of the involved institutions. If these proposals suggest ways in which college involvement might be formalized, then a requirement of college participation could be considered. Until that time, college membership on district support teams should be encouraged but must remain optional.

COMMENT: Six persons commented that the mentor teachers should be provided training in the mentoring process and principals should be trained to evaluate provisional teachers for permanent certification.

RESPONSE: Principals are trained and licensed to evaluate teachers, and they are oriented to the special requirements of the certification program when they employ provisional teachers. Certified teachers may be assigned to coach and mentor colleagues and student teachers at the

discretion of districts. Currently the Academy for the Advancement of Teaching and Management and the Division of Teacher Preparation and Certification are developing a program to enhance the mentoring skills of experienced teachers and principals. This program will be offered on a pilot basis in Spring 1990 and, if it is successful, it will be expanded.

COMMENT: One person commented that the basic skills assessments that colleges are required to conduct (see N.J.A.C. 6:11-7.2(a)2) should be standardized throughout the State, particularly since the Educational Testing Service is in the process of revising the tests which New Jersey currently uses for Certification, which will include a basic skills exam.

RESPONSE: The requirement was established originally in rules of the State Board of Higher Education in order to assure that each New Jersey college maintains some local means of screening students for admission to their teacher education programs. The requirement was subsequently reasserted in certification rules of the State Board of Education. The Department's college monitoring teams assess the adequacy of individual colleges' screening procedures.

Standardization of these college admission assessments has not previously been considered, and the idea will be reviewed in conjunction with the development of an overall screening program to replace the current certification testing program which is being phased out by Educational Testing Service.

COMMENT: One commenter suggested that first-year attrition rates of alternate route teachers may be artifically low. Many alternate route teachers may stay on for one-year in order to earn their certificates and then leave teaching. The Department should report the proportions of alternate route teachers who are still teaching during their second year. These data might show substantially higher drop-out rates.

RESPONSE: The Department is gathering data on second-year "alternate" and "traditional" teachers for inclusion in its next annual report. The preliminary indications do not support the hypothesis that attrition rates of first-year provisional teachers are artificially low.

However, the provisional support program is intended as a means of supporting beginning teachers during their first-year of employment. This is often a critical and difficult period in which many drop out simply because they could not adjust to a new and demanding job. The program provides the assistance which helps beginning teachers from failing for that reason. However, the provisional support program is not a panacea for all of the problems that affect the job retention of career teachers. When a teacher leaves the classroom after five or 10 years of successful service, that decision is less likely to be a reflection of the success or failure of the support they received as first-year teachers. There are different problems involved and different solutions are needed.

COMMENT: One person asked how will the new policy affect the job competition between "alternate" and "traditional" candidates?

RESPONSE: "Traditional" candidates will still have an advantage because they will have completed required courses and practice teaching in college. Therefore, when hired, they will be able immediately to assume full responsibility for a class, and they will not have to complete the one-month induction program that is required of alternate teachers. They also will not have to take the evening coursework that alternate teachers must take—this coursework involves the equivalent of four evenings per week during the first month and two evenings per week for the duration of their first year.

COMMENT: Three persons commented that the details of the proposed system for developing and assessing beginning teacher competencies must be spelled out. What specific competencies? How are they to be developed? How many district professionals will be involved with the evaluation and what will their criteria be in assessing teaching performance? How will the assignments between district professionals and beginning teachers be made?

RESPONSE: The proposed support program is neither new nor untried. Since 1984, it has been a central component of New Jersey's Provisional Teacher Program or "alternate route" to certification. The provisional support program has been operated during the past five years in more than 250 public school districts in every county of the State as well as in numerous private and parochial schools.

The current proposal, then, would only extend a successful aspect of an established program to a broader range of new teachers. The basic content of the support program for new teachers was determined by the State Board of Education in 1984 based upon the recommendation of two state advisory committees. The first, chaired by Ernest Boyer, was comprised of nationally recognized educational researchers and policy leaders, and that panel recommended performance criteria that all beginning teachers ought to be able to meet. The second committee was comprised of New Jersey educators, including representatives of school and college organizations. That panel designed guidelines for the operation of the district support programs. These details of operation have been specified in rules at N.J.A.C. 6:11-5.4 through 5.7 and refined in practice during the past five years.

Summary of Change upon Adoption:

A spelling error is being corrected at N.J.A.C. 6:11-5.3(f).

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 5. REQUIREMENTS FOR INSTRUCTIONAL CERTIFICATION

6:11-5.1 Requirements for the provisional certificate

(a) To be eligible for the provisional certificate in instructional fields, the candidate shall:

1. Hold a bachelor's degree form an accredited college or university;

2. Complete at least 30 credits in a coherent major appropriate to the instructional field;

3. Pass a State test of subject matter knowledge for fields of teaching specialization or a test of general knowledge for the elementary endorsement; and

4. Obtain and accept an offer of employment in a position that requires instructional certification.

(b) Candidates who complete the requirements in (a)1 through 4 above shall be issued Certificates of Eligibility which will permit them to seek provisional employment in positions requiring instructional certification.

(c) Certificates of Eligibility with Advanced Standing shall be issued to all persons who meet the test requirement pursuant to (a)3 above and who have completed one of the following programs of teacher preparation:

1. A New Jersey college program, graduate or undergraduate, approved by the State Department of Education for the preparation of teachers pursuant to N.J.A.C. 6:11-7;

2. A college preparation program included in the interstate certification reciprocity system of the National Association of State Directors of Teacher Education and Certification (NASDTEC);

3. An out-of-State teacher education program approved by the National Council for the Accreditation of Teacher Education (NCATE);

4. A teacher education program approved for certification by the state department of education in one of the states party to the Interstate Agreement on Qualifications of Educational Personnel, provided the program was completed on or after January 1, 1964 and the state in which the program is located would issue the candidate a comparable certificate;

5. An out-of-State teacher education program not approved by NASDTEC or NCATE but approved by the state department of education in which the program is located and approved by the Secretary of the New Jersey State Board of Examiners as meeting the standards outlined in N.J.A.C. 6:11-7; or

6. At least 27 months of appropriate teaching experience in a state party to the Agreement within seven years prior to applying for a certificate in another state in the Agreement, and a comparable and valid standard or advanced certificate, still in force, issued by one of the states in the Agreement.

6:11-5.2 Requirements for the standard certificate

(a) To be eligible for the standard certificate in instructional fields, the candidate shall:

1. Possess a provisional certificate pursuant to N.J.A.C. 6:11-5.1; and

2. Complete a State-approved district or nonpublic school training program pursuant to N.J.A.C. 6:11-5.3 through 5.5 while employed provisionally in a position requiring the relevant endorsement to the instructional certificate.

(b) Candidates who hold standard New Jersey instructional certificates shall be issued additional standard endorsements in areas

where they meet provisional certification requirements without having to meet the requirements in (a)1 and 2 above.

6:11-5.3 Requirements for State-approved district training programs

(a) Each district, school or consortium seeking to hire a provisional teacher must submit a plan to the Department of Education and receive approval in accordance with the same procedures used for initial approval of collegiate preparation programs.

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

(e) The State Department of Education shall issue a standard training program plan which districts may agree to implement in lieu of developing an original plan pursuant to (a) above.

(f) Each State-*[apparoved]* ***approved*** district training program shall provide essential knowledge and skills to provisional teachers through the following phases of training:

1. A full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom. This seminar/practicum shall provide formal instruction in the essential areas for professional study listed in N.J.A.C. 6:11-8.2. It should introduce basic teaching skills through supervised teaching experiences with students. The seminar and practicum components of the experience shall be integrated and shall include an orientation to the policies, organization and curriculum of the employing district. This requirement shall not apply to provisional teachers who are holders of Certificates of Eligibility with Advanced Standing pursuant to N.J.A.C. 6:11-5.1(c).

2. A period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least 10 weeks. During this time, the provisional teacher shall be visited and critiqued no less than one time every two weeks by members of a Professional Support Team (see (h) below and shall be observed and formally evaluated at the end of five weeks and at the end of 10 weeks by the appropriately certified members of the team. At the end of the 10-week period, the povisional teacher shall receive a formal written progress report from the chairperson of the Support Team.

3. An additional period of continued supervision and evaluation of no less than 20 weeks duration. During this period, the provisional teacher shall be visited and critiqued at least four times and shall be observed formally and evaluated at least twice. No more than two months shall pass without a formal observation. Opportunities shall be provided for the provisional teacher to observe the teaching of experienced colleagues.

(g) Approximately 200 hours of formal instruction in the following topics shall be provided in all three phases of the program combined. This requirement shall not apply to provisional teachers who are holders of Certificates of Eligibility with Advanced Standing pursuant to N.J.A.C. 6:11-5.1(c).

i. Curriculum: Studies designed to foster an understanding of the curriculum taught and the assessment of teaching, including topics such as the following: the organization and presentation of subject matter, the development and use of tests and other forms of assessment, the evaluation and selection of instructional materials and the appropriate use of textbooks and teachers' guides, the use and interpretation of standardized tests and teacher-developed instruments, the reading process and other language art skill development appropriate to the field of specialization and grade level, and a knowledge of techniques and materials for fostering the development of reading and language arts skills.

ii. Student development and learning at all levels: Studies designed to foster an understanding of students, their characteristics as individuals, and the ways in which they learn, including topics such as: student interests, motivation, preventing classroom disruption, creating a healthy learning climate, individual and group learning, language development, individual differences, and the role of technology in early learning.

iii. The classroom and the school: Studies designed to foster an understanding of the school as a social unit and classroom management, including such topics as: the bureaucratic/social structure of public education, the making of teaching decisions, allocation of instructional time, setting of priorities, pacing of instruction, setting of goals, questioning techniques, student practice and independent work.

(h) Training and supervision of provisional teachers in State approved alternative programs shall be provided by a Professional Support Team comprised of a shcool principal, an experienced mentor teacher, a college faculty member, and a curriculum supervisor. Districts or schools which do not employ curriculum supervisors or have been unable to establish a relationship with a college should provide for comparable expertise on the team. The school principal shall serve as chairperson of the team.

(i) The State Department of Education shall coordinate the training efforts of districts and shall establish regional programs for provisional teachers. The Department shall provide orientation programs for Support Team Members.

6:11-5.4 Requirements for the evaluation of provisional teachers

(a) Provisional teachers shall be observed and evaluated by appropriately certified Support Team Members as described in N.J.A.C. 6:11-5.3.

(b) (No change.)

(c) The State Department of Education shall devise standardized criteria and forms for a final comprehensive evaluation of each provisional teacher, conducted at the end of the provisional period by appropriately certified Support Team Members.

(d) Mentor teachers shall not participate in any way in decisions which might have a bearing on the employment or certification of provisional teachers. They shall not assess or evaluate the performance of provisional teachers unless they are appropriately certified administrators. Interactions between provisional teachers and experienced mentor teachers are formative in nature and considered a matter of professional privilege. Mentor teachers shall not be compelled to offer testimony on the performance of provisional teachers.

6:11-5.5 Recommendation for certification of provisional teachers

(a) At the conclusion of the State-approved district training program, the chairperson of the Support Team shall prepare a comprehensive evaluation report on the provisional teacher's performance. This report shall be submitted by the Chairperson directly to the Bureau of Teacher Preparation and Certification and shall contain a recommendation as to whether or not a standard certificate should be issued to the provisional teacher.

(b) (No change.)

(c) The final report on each provisional teacher shall include one of the following recommendations:

1. (No change.)

2. Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to seek entry on one more occasion in the future into a State-approved district training program; or

3. Disapproved: Recommends that a standard certificate not be issued and that the candidate not be allowed to enter into a State-approved district training program.

(d) (No change.)

(e) If the provisional teacher disagrees with the chairperson's recommendation, the provisional teacher may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the chairperson written materials documenting the reasons why the provisional teacher believes standard certification should be awarded or a recommendation of insufficient granted. The chairperson shall forward all such documentation to the Bureau of Teacher Preparation and Certification along with the evaluation report and recommendation concerning certification. The provisional teacher may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-3.25.

(f) Candidates who receive a recommendation of "disapproved" or two or more recommendations of "insufficient" may petition the State Board of Examiners for approval of additional opportunities to seek provisional employment in districts other than those in which

they received unfavorable recommendations. The candidate shall be responsible for demonstrating why he or she would be likely to succeed if granted the requested opportunity. Disapproval of any candidate's request by the State Board of Examiners may be appealed to the Commissioner of Education.

6:11-7.2 Admission, retention, and graduation of students

(a) Teacher preparation programs are those curricula which lead to a recommendation for a New Jersey Certificate of Eligibility with Advanced Standing in instructional fields pursuant to N.J.A.C. 6:11-5.1, irrespective of the organizational unit of the college by which the curriculum is offered. Formal admission to teacher preparation programs shall be reviewed at the beginning of the junior year and shall be granted only to those students who have:

1.-3. (No change.)

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

(g) Students completing an approved program must be recommended for a Certificate of Eligibility with Advanced Standing by their college or university and must pass a State test pursuant to N.J.A.C. 6:11-5.1(a)3 before one will be issued by the State Board of Examiners.

(a)

STATE BOARD OF EDUCATION

Certification of Bilingual and ESL Teachers

Adopted Amendments: N.J.A.C. 6:11-4.3 and 6:11-8.2

Adopted Repeals and New Rules: N.J.A.C. 6:11-8.4 and 8.5

Proposed: September 5, 1989 at 21 N.J.R. 2721(a).

Adopted: November 8, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: November 27, 1989 as R.1989 d.615, **with a substantive change** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.

Effective Date: December 18, 1989.

Expiration Date: December 12, 1990.

Summary of Public Comments and Agency Responses:

Three individuals spoke at the September 20 public testimony session provided by the State Board of Education, three individuals provided written comment and form letters from 18 people were received.

COMMENT: Twenty-four persons (included are 18 who commented by form letter) offering comment, have questioned the absence of a foreign language proficiency requirement in the proposed rules for certifying teachers of bilingual students. One individual's testimony indicates that the teaching of subjects in LEP students' native languages is one fundamental aspect of bilingual programs as defined by the Bilingual Education Act (N.J.S.A. 18A:35-15 et seq.) and that the proposed certification rules neither provide for State regulation of the foreign language proficiency or bilingual teachers nor do they clearly assign the responsibility to local districts. This individual concludes that "DOE should either reinstate the certification requirement that bilingual teacher candidates demonstrate proficiency in a second language, or provide a reasoned explanation for eliminating this requirement."

RESPONSE: The requirement that LEP students be provided academic instruction in their native languages is a programmatic requirement that applies to local boards of education. Although the Bilingual Education Act does not require it to do so, the State has assumed the burden of determining compliance with this requirement by attempting to certify the foreign language proficiency of all teaching candidates whom districts might employ. This attempt has proven not to be feasible and, in the final analysis, the State has been forced to rely on local judgment to determine local compliance. Therefore, the proposed rules would make local districts directly responsible and accountable for assuring that bilingual students are taught academic subjects in their native languages.

There is considerable variation in the languages and dialects of New Jersey LEP students (Spanish, Chinese, Gujarati, Vietnamese, Tagalog, etc.) and in the levels of teacher language proficiency that are needed to accommodate students' needs. The problems that are generally inherent in assessing prospective teachers' language proficiency are compounded when there is such wide variation, when the languages are foreign and when they are, in some cases, uncommon.

It has not been feasible for the Department to develop and maintain standardized written tests in all of the languages that might conceivably have to be assessed. Therefore, in the past, the State has mandated a cumbersome system of oral interviews. Colleges are required to conduct a foreign langage interview for each prospective bilingual teacher. The interview must be conducted by someone fluent in the particular language and proficient in interviewing techniques. In order to provide standardization in assessment, these interviews have been tape-recorded and sent to a central location where they must be evaluated separately by two persons who are fluent in the foreign language and proficient in interview assessment. If the two ratings are discrepant, as they often are, a third is conducted. At various times, Educational Testing Service, the State Department of Education and Kean College of New Jersey has each tried to administer the centralized testing program.

This system has been a dismal failure. Some colleges have understandably refused to arrange interviews for any certification candidates who are not their own students. Therefore, some applicants have been unable to qualify because no institution would arrange an interview. Certification candidates pay exorbitant assessment fees in order to fund the program, yet the process produces inconsistent results, unreliable results or no results at all.

In many languages, it is simply not feasible to find persons who are skilled in interviewing and assessment techniques as well as language proficient. However, the main difficulty in reliably determining the foreign language proficiency of certification applicants is that the responsible institutions are no more able to assure the foreign language proficiency of those who conduct the interviews and ratings than they are certification candidates. Unless colleges or the Department employ staff who are fluent in each language category, those institutions must depend on external recommendations and referrals to determine the competence of persons who judge others' proficiency in a particular language. Often, such referrals are provided by the local districts which are seeking to hire teachers of LEP students. The district recommends someone whom it believes is competent to conduct the foreign language interview/rating, and that person is oriented and assigned to assess the language proficiency of a prospective teacher whom the district wishes to hire. The college arranging the assessment then tells the State that the candidate is proficient, and the State certifies the candidate as such. Thus, the local district is "assured" of the candidate's proficiency, and the district is determined to have complied with the requirement of the Bilingual Education Act that it provides LEP students with native language instruction. The new teacher might later be called upon to conduct language interviews or ratings for other candidates.

A year ago, the system fell of its own weight. Kean College, which last had the responsibility for the centralized rating aspect, notified the Department that the system was inoperative due to a lack of qualified raters and a lack of confidence in the system. The College informed the Department that the program would be closed down unless extraordinary funding was provided to solve its problems. Funding was allocated for one year but, at the end of the year, problems were not resolved and Kean chose not to accept the allocated funds. The College then closed its center and referred all candidates to the Department. For several months, applicants could neither be certified nor employed because the State had no way of determining their foreign language proficiency, reliably or otherwise.

The Department believes that LEP students have not been served well by the State's attempt to assume local districts' responsibility for providing those students with native language instruction. That attempt has only removed the local accountability prescribed by the Bilingual Education Act without otherwise establishing meaningful, reliable assurances. In some cases, the administrative unworkability of the attempt has actually obstructed districts from fulfilling their responsibility.

Through the certification rules the State would assure that new bilingual teachers: (a) possess academic degrees that meet established requirements; (b) are educated in the subjects they will teach and screened for basic subject competence; (c) are professionally prepared; and (d) receive basic training in bilingual education. The rules charge local districts with responsibility for fulfilling that aspect of the Bilingual Educa-

tion Act which requires that LEP students receive academic instruction in their native languages. That districts would be so charged is made clear by N.J.A.C. 6:3-1.24, which requires districts to set those essential job qualifications that are not determined through State certification. It is made clear as well by the Bilingual Education Act which directly assigns to local districts responsibility for teaching academic subjects to LEP students in those students' native language.

The proposed rules will, therefore, focus districts' attention on an important responsibility that they have previously been encouraged to assume falsely is being fulfilled by the State.

COMMENT: Four persons questioned the number of credits being reduced.

RESPONSE: Bilingual teachers are required under the new rules to complete up to 36 credits of professional preparation which includes: (a) study of student learning and development; (b) classroom management and instruction; (c) curriculum; and (d) specialized study of the field of bilingual teaching. The previous requirement of 30 credits devoted entirely to specialized study of bilingual teaching included courses that duplicated other certification requirements as well as ones that lacked credibility because they did not help bilingual teachers to be effective. Thus college students did not enroll in these courses and teacher shortages were widespread. At the same time, because the courses were required, they served as artificial barriers that obstructed many talented persons from becoming bilingual teachers. The new rules require only those course topics which are most essential, thereby opening the door to a wider range of high quality applicants and providing them the training that is needed to protect the public interest.

COMMENT: Two persons commented that any bilingual teacher can be simultaneously qualified for ESL Certification and vice versa.

RESPONSE: Certification applicants will not qualify simultaneously for both the ESL and bilingual certificates. Each has its own specialized training requirements and these requirements are not identical.

Summary of change upon adoption:

At N.J.A.C. 6:11-8.5(e), an internal cite was corrected.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*).

6:11-4.3 Emergency certificate

(a) An emergency certificate is a substandard one-year certificate issued only in the field of educational services, teacher of the handicapped, teacher of the blind and partially sighted, teacher of the deaf and hard of hearing and certain technical fields (see N.J.A.C. 6:11-8.3).

(b) (No change.)

6:11-8.2 Common requirements; all college teacher education programs and State-approved alternative programs

(a) Approved college programs and State-approved alternative programs shall include study in the following areas of professional education:

1.-3. (No change.)

4. Bilingual/Bicultural Education: programs leading to the bilingual/bicultural endorsement shall provide approximately six credit hours of study in the following specialized topics: the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of bilingual education, and techniques of teaching bilingual students.

5. English as a Second Language (ESL): programs leading to the English as a Second Language endorsement shall provide approximately 12 credit hours of study in the following specialized topics: the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of ESL education, and techniques of teaching English as a second language.

6:11-8.4 Teacher of Bilingual/bicultural education

(a) Each candidate for the provisional certificate in the field of bilingual/bicultural education shall:

1. Possess or be eligible for a standard or provisional New Jersey instructional certificate appropriate to the subject or grade level to be taught;

2. Pass a State test of English communication skills; and

3. Obtain an offer of employment in a position that requires the endorsement, teacher of bilingual/bicultural education.

(b) 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 employment in positions requiring certification as a teacher of bilingual/bicultural education.

(c) No person shall be employed under provisional certification for more than two years in a position requiring certification as a teacher of bilingual/bicultural education.

(d) Certificates of Eligibility with Advanced Standing shall be issued to all persons who have completed formal study and test requirements for bilingual certification pursuant to (e)2 and 3 below but who have never previously served a provisional year or completed a State-approved district training program for any certificate endorsement pursuant to N.J.A.C. 6:11-5.

(e) Each candidate for the standard certificate in the field of bilingual/bicultural education shall:

1. Possess a standard New Jersey instructional certificate appropriate to the subject or grade level to be taught;

2. Pass a State test of English communication skills; and

3. Complete at least six credit hours of college coursework or 90 clock hours of district-based formal training in the following topics: the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of bilingual education, and techniques of teaching bilingual students. Those candidates who complete this requirement while serving as a provisionally certified bilingual education teacher shall be supervised by a support team pursuant to N.J.A.C. 6:11-5.

6:11-8.5 Teacher of English as a second language

(a) Each candidate for the provisional certificate in the field of teaching English as a second language shall:

1. Hold a bachelor's degree from an accredited college or university;

2. Pass a State test of English communication skills; and

3. Obtain an offer of employment in a position that requires the endorsement, teacher of English as a second language.

(b) 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 employment in positions requiring certification as a teacher of English as a second language.

(c) Certificates of Eligibility with Advanced Standing shall be issued to all persons who meet the test requirement pursuant to (a)2 above and who have completed a college program approved by the New Jersey Department of Education for the preparation of teachers of English as a second language.

(d) Each candidate for the standard certificate in the field of teaching English as a second language shall:

1. Possess a provisional certificate pursuant to (a)1-3 above;

2. Pass a State test of basic communication skills;

3. Complete a State-approved district training program pursuant to N.J.A.C. 6:11-5; and

4. Complete twelve credits or 180 clock hours of formal instruction in the following topics: the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of ESL education, and techniques of teaching English as a second language. This requirement shall not apply to candidates who are holders of Certificates of Eligibility with Advanced Standing pursuant to (c) above.

(e) Requirements (d)1 and *[2]* ***3*** above shall not apply to persons who hold New Jersey instructional certificates in other teaching fields. However, such already-certified teachers may meet requirement (d)3 above working under provisional ESL certification under the supervision of a support team pursuant to N.J.A.C. 6:11-5.

(a)

STATE BOARD OF EDUCATION

Pupil Transportation

Readoption with Amendments: N.J.A.C. 6:21

Proposed: September 5, 1989 at 21 N.J.R. 2724(a).
Adopted: November 8, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Filed: November 8, 1989 as R. 1989, d.610, **with substantive and technical** changes not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 4-15 and 39-21.

Effective Date: November 22, 1989, readoption; December 18, 1989, amendments, repeals and new rules.
Expiration Date: November 22, 1994.

Summary of Public Comments and Agency Responses:

Five individuals spoke at the September public testimony session; six letters with comments and a petition were received.

COMMENT: A commenter suggested that cellular phones and two way radios in school buses will encourage other agencies to support legislation that would enable them to use these vehicles for purposes other than transportation of students.

RESPONSE: The Department supports the use of cellular phones and two way radios as an additional measure to ensure the safety of students while riding on a school vehicle.

COMMENT: The same commenter suggested that advertisement, bid and specification forms not be deleted from the Code.

RESPONSE: These forms, previously included in N.J.A.C. 6:21, were meant to serve as suggested formats and not to be restrictive. Samples of these forms will appear in the Policies and Procedures Manual for Pupil Transportation.

COMMENT: Two commenters suggested that the Department mandate safety education in the primary grades and for school bus drivers.

RESPONSE: The Department agrees that safety is a must for everyone and consistently supports legislation to provide resources for training programs. The Department promotes safety education. A Kindergarten-Third grade curriculum guide is currently being developed. Training films and materials are also available at the Bureau of Pupil Transportation.

COMMENT: One of the commenters above also suggested that the Department of Education allow contractors to commingle students.

RESPONSE: The Department disagrees. Commingling is the unauthorized transportation of students assigned to separate routes by district boards of education who are subsequently combined by the vendor on a single vehicle. Authorized procedures have been established for combining students on a single bus route through joint agreements with one district serving as the "host" district. Issues such as the classification of students riding the vehicle, location of pick-up and number of students assigned to the route must be monitored to ensure the safety of the students being transported. Consequently, districts must have complete control of students assigned to vehicles.

COMMENT: The same commenter requested an opportunity to address the Pupil Transportation Committee.

RESPONSE:The former President of the State Board established an ad hoc committee of the State Board to work with Department staff in order to develop revised pupil transportation Code for the full Board's consideration. Since the intent of this committee was fulfilled, it is no longer in existence. The State Board as a whole considers comments from the public.

COMMENT: The same commenter suggested that in spite of existing statutes and rules which clearly provide for multi-year contracts and renewal of contracts without rebidding, the Department regulations encourage rebidding contracts.

RESPONSE: The Department disagrees. Multi-year contracts and renewal of contracts are district options. There is no Department effort to encourage districts to unnecessarily rebid contracts.

COMMENT: Two commenters suggested that the major impediment in renewing contracts is the stipulation that the route description is part of the contract and if the route changes the contract must be rebid. It is suggested that route changes be permitted within a 30 percent increase in the original contract price.

RESPONSE: The first year increase/decrease mileage clause exists to allow flexibility to districts in establishing a route. However, this flexibility should not be interpreted to mean that the established route is not firm.

COMMENT: One commenter suggested that this proposal was not properly advertised in the New Jersey Register, proper notice of public testimony was not given to the public and the version published was not the same as the one adopted by the State Board on July 6, 1989.

RESPONSE: The Department disagrees. This proposal was published according to the Administrative Procedures Act standards and with proper notification to the public. The State Board approved revisions to the code which were presented at proposal level on July 6, 1989. These revisions were contained on the matrix presented to the Board and were incorporated into the code before publication in the Register. All actions were in accordance with State Board procedures.

COMMENT: The same commenter and a petition for an additonal public hearing on this proposal bearing 300 signatures, suggested that this proposal would require local school boards to provide aid in lieu of transportation when bus bids exceed the maximum cost per pupil expenditure. N.J.S.A. 18A:39-1 et seq. was enacted to provide for the transportation of nonpublic students, and to limit the financial impact of this statutory right on the State Treasury not to limit district spending. This section may result in disparate treatment of nonpublic school students. Petitioners requested a special hearing to address this issue.

RESPONSE: The Department disagrees. N.J.S.A. 18A:39-1 clearly states that districts may provide transportation for eligible nonpublic students provided the per pupil cost of the lowest bid received does not exceed the current maximum cost ($601.45 for the 89-90 school year) and if the bid does exceed this cost then the parent or guardian shall be eligible to receive said amount toward the cost of this transportation. The statute cited is not a state aid statute and does not address the State's financial responsibility. A special hearing is unnecessary since ample opportunity for public comment has been given in accordance with the Administrative Procedures Act.

COMMENT: Another commenter suggested that there is a large discrepancy between the number of school bus accidents reported by the Department of Education and the number reported by the Department of Transportation.

RESPONSE: In regard to accident reporting, N.J.A.C. 6:21-1 identifies the jurisdiction of the Department of Education as being restricted solely to vehicles "while in use" transporting public school pupils to and from school and school related activities including the transportation of nonpublic school pupils by a district board of education. The discrepancy in the number of accidents reported by the Department when compared to the Department of Transportation's number is due to the Department of Education's limited jurisdiction.

COMMENT: Another commenter suggested putting an earlier unpublished Department draft revision to N.J.A.C. 6:21-2.2(f) in the Code which stated: "Pupils will be eligible for transportation or aid in lieu of transportation upon the date of receipt of the application."

RESPONSE: The earlier unpublished draft revision was misleading and suggested that the date of receipt of the application is the only requirement for eligibility for transportation. The Department revised the language in this proposal to clarify the intent of this section.

COMMENT: The same commenter suggests that the current language at N.J.A.C. 6:21-2.2 would permit districts to use arbitrary dates after May 15 to offer late registrants only the less desirable option of aid in lieu of transportation.

RESPONSE: The Department disagrees. N.J.A.C. 6:21-2.2(f) actually specifies, "A late application shall be any application received by the district after May 15." This language in no way permits districts to establish arbitrary dates.

COMMENT: Another commenter suggested that district administrators be allowed to design and advertise routes without formal board authorization.

RESPONSE: The Department disagrees. Since transportation is the responsibility of the board, no action should be taken without board approval.

COMMENT: The same commenter recommends the insertion of the word "routes" after the word "regular" for clarification in N.J.A.C. 6:21-15.2(b).

RESPONSE: The Department agrees and has added the word "routes" for clarity.

COMMENT: The same commenter posed the following question regarding N.J.A.C. 6:21-15.2(b): Does the board of education have the

discretion to specify an adjustment figure on a per mile, per pupil or per vehicle basis or should they be required to request adjustment figures for all methods?

RESPONSE: N.J.S.A. 18A:39-2.1 does permit boards of education to solicit contract adjustment bids by any or all of these methods, whichever is least costly to the board.

COMMENT: The same commenter suggested that the following sentence be deleted from N.J.A.C. 6:21-15.2(g): "The board shall unseal the bids in the presence of the parties bidding and publicly announce the contents." The commenter does not recommend the practice of opening bids at a board meeting and feels language is inconsistent with N.J.A.C. 6:21-15.6(a).

RESPONSE: The Department disagrees with the deletion. However it was not the Department's intention to restrict the opening of bids to board meetings. In order to clarify this issue and make language consistent with N.J.A.C. 6:21-15.6(a) the term "or designated official" was inserted after the word "board."

COMMENT: The same commenter suggested that N.J.A.C. 6:21-15.2(g) more appropriately belongs in N.J.A.C. 6:21-13.1.

RESPONSE: The Department disagrees. This subsection is appropriately placed in subchapter 15 which regulates bidding.

COMMENT: The same commenter suggested that as a "paperwork saving step," a certification by the board's secretary that the contract was adopted at _____meeting of the board of education on _____, 19__ be included on one of the Department's forms.

RESPONSE: The Department disagrees. Since this information is already contained in the board minutes, this method would create an additional and unnecessary document. No form presently exists which could incorporate this information. Additionally, this method would not identify the specifics of the contracts adopted by the board.

COMMENT: The same commenter suggested adding the definition of "original contract base amount" and define it as follows: The original contract base amount shall be the amount of the original bid award, plus or minus any increases or decreases duly made by addenda during the original contract year, provided that such increases shall be determined on an annualized basis for purposes of determining the original contract base amount under this paragraph.

RESPONSE: The Department agrees that a definition would clarify the use of this term and has added the following sentence at the end of N.J.A.C. 6:21-16.8(a)3: "The original contract base amount is the original contract amount plus any adjustments in accordance with the terms of the contract made by addenda during the original year."

COMMENT: One commenter suggested eliminating forms and procedural language from the Code will make it difficult for the public to have access to this material.

RESPONSE: The Department disagrees. Samples of the forms were never part of the Code. The identifying form numbers which previously appeared in the Code have been deleted. Procedural language which will be included on the required forms and will be found in the Policies and Procedures Manual for Pupil Transportation. The forms and the Manual are available from local boards of education, the county superinendent's office, the Bureau of Pupil Transportation and through the State Library network.

COMMENT: The same commenter suggested since N.J.S.A. 18A:39-1 established that a late registration is one received after September 1, the new amendments change the intent of the statute.

RESPONSE: The Department disagrees. N.J.S.A. 18A:39-1 does not establish a late application date. The statute states that if the registration of any pupil is not completed by September 1, the board of education shall not be required to provide tranportation by establishing a new route but parents shall be eligible to receive aid in lieu of transportation. The May 15th late application date was established to ensure that boards of education would receive application in sufficient time to properly advertise for transportation for nonpublic school students.

COMMENT: The same commenter also suggested that proposed subchapter 15 will change the bidding process. If a board has the choice of whether and when to offer a "percentage deduction" on particular points on contracts, it will be possible to manipulate the bid price and steer contracts to favored bidders.

RESPONSE: The process which appears in the Code has not changed and is based upon current bidding practices. All vendors are given the opportunity to submit a percentage deduction as part of their bid. Percentage deductions cannot be negotiated after the award of a contract. The flexibility to allow bulk bidding will provide cost savings to local districts.

COMMENT: The same commenter suggested that although the Summary states that "bulk/combination" bids are defined, no definitions appear in the Code.

RESPONSE: the practice of bulk/combination bidding is defined in N.J.A.C. 6:21-15.5 and not in a specific definition section.

COMMENT: Another commenter suggested that late activity routes be eligible for State transportation aid.

RESPONSE: State transportation aid is established in accordance with N.J.S.A. 18A:58-7. However, transportation expenditures for educational purposes will be included in the equalization aid formula.

COMMENT: The same commenter suggested that additional language regarding Individualized Education Programs (IEPs) be added to N.J.A.C. 6:21-7.2(d) 4 shuttle trips.

RESPONSE: This is a bracketed portion of Code which is being deleted as part of the readoption. Shuttle trips required by a child's Individualized Education Program (IEP) would not be effected by this deletion.

COMMENT: The same commenter calls to the Department's attention the need to grandfather assistant supervisor's position approval when there is a temporary decline in enrollment below 5,000 pupils.

RESPONSE: It is a department policy to grandfather an approved position for a period of five years.

COMMENT: The same commenter does not feel that rules on bidding are totally clear regarding negotiating costs after a bid has been awarded.

RESPONSE: N.J.A.C. 6:21-15.6(b) clearly states that a "district board of education cannot impose new conditions and bidders cannot be allowed to change bids or make oral bids after they are opened."

COMMENT: Another commenter recommends that elementary level buses could be loaded "on paper" to a maximum of 58 students since many elementary students are driven to school by their parents thus leaving seats vacant on the bus. At the high school level, waivers should be granted to students who wish to use their own means of transportation.

RESPONSE: At the elementary level, loading "on paper" beyond the 54 maximum capacity is a district option provided that at no time buses are physically overloaded. At the 11th and 12th grade level, the Department agrees that parental waivers for transportation services may be reasonable. This issue is being studied.

COMMENT: Another commenter recommended including out-of-district vocational school pupils in N.J.A.C. 6:21-13.2(e).

RESPONSE: The Department agrees that it is difficult for local boards of education to develop route descriptions for out-of-district vocational students as well as all other out-of-district students. This issue will be studied and considered for revision at a later date.

COMMENT: The same commenter recommended deleting portions of N.J.A.C. 6:21-15.2(d) since there is no need to describe the cost of insurance at the time of bidding and the statement of noncollusion is unnecessary and offers a false sense of protection to the district.

RESPONSE: In N.J.A.C. 6:21-15.2(d), a separate description of insurance cost is not required but the cost should be included in the bid and a statement of noncollusion is in the public interest.

COMMENT: The same commenter recommended revising language in N.J.A.C. 6:21-15.2(g) which will delete the route/contract number from the bid envelope. The commenter feels it is particularly harmful to the bid process.

RESPONSE: The Department disagrees. This practice does not compromise the bidding process since the bid has already been determined.

COMMENT: Another commenter states that using school buses to transport students involved in extended day programs from one school to another should be legalized. School districts should be able to run such programs and charge parents a modest fee for such a service.

RESPONSE: The use of school buses to transport students from school to school is not an illegal use. This type of transportation is considered a shuttle trip and is a local expenditure. However, charging for transportation from school to school is not permitted.

Summary of Changes Upon Adoption:

At N.J.A.C. 6:21-2.1(c), the agency replaced paragraph (c) in order to clarify the need for district boards of education to advertise for bids for the transportation of non-public students prior to making the determination to pay aid in lieu of transportation.

At N.J.A.C. 6:21-4.1(a)1, the specific effective date of December 18, 1989 was added.

At N.J.A.C. 6:21-7.2, due to the fact that these rules were not adopted in sufficient time for districts to prepare documents needed to report the expenditures effected by the rules, an effective date of implementation for equalization aid of July 1, 1991 was added.

At N.J.A.C. 6:21-7.5(a)3, the agency is correcting an error in the number of students which a district must transport for eligibility for a full-time secretarial position, from 5,000 pupils to 1,000 pupils. This change conforms the secretary requirement to that of supervisor, which had been the intention.

At N.J.A.C. 6:21-10, the agency corrected the misspelling of SUBCHAPTER.

At N.J.A.C. 6:21-15.2(b)1, the agency added the word "routes" after the word "regular" for clarity.

At N.J.A.C. 6:21-15.2(g), the agency corrected typographical errors and added "designated official" as one who may unseal bids.

At N.J.A.C. 6:21-15.6, the spelling of "district" was corrected.

At N.J.A.C. 6:21-16.1(b)6, the agency deleted the article before "affirmative action".

At N.J.A.C. 6:21-16.5(c), the agency inserted the word "other" in front of "school district" as it had inadvertently been omitted.

At N.J.A.C. 6:21-16.5(e) and (g), the agency corrected punctuation.

At N.J.A.C. 6:21-16.8(a)3, the agency corrected a printing error by changing the word "and" to "does" and added a definition of "original contract base amount" to clarify the term.

At N.J.A.C. 6:21-16.9(c)1, the agency changed the term "addendum(s)" to "addenda".

At N.J.A.C. 6:21-19.2(b), the agency added language clarifying that the district board's auditor shall submit an audit questionnaire form as part of the annual evaluation process.

Full text of the readoption and repeals may be found in the New Jersey Administrative Code at N.J.A.C. 6:21.

Full text of the amendments and new rules follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

6:21-1.1 General requirements

(a) Under the provisions of the New Jersey Statutes, the State Board of Education shall adopt and enforce rules consistent with law to cover the design and operation of all school buses used in the transportation of public school pupils to and from school and school related activities including the transportation of nonpublic school pupils by a district board of education.

(b) Transportation of pupils attending public or nonpublic schools shall be provided pursuant to N.J.S.A. 18A:39-1 et seq.

(c) All forms prescribed by the Commissioner of Education referred to in this chapter are available in the office of the county superintendent of schools, and at the Bureau of Pupil Transportation, Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

(d) It is recommended that district boards of education and school bus contractors acquaint themselves with the procedures described in the Department of Education Policies and Procedures Manual for Pupil Transportation to ensure efficiency in the implementation of a pupil transportation program. This manual is available for review at the transportation office of the district board of education, the office of the county superintendent and the Bureau of Pupil Transportation.

6:21-1.2 Accident reporting

(a) Every school bus driver shall immediately inform the principal of the receiving school following an accident which involves an injury, death or property damage. The driver shall also complete and file the Preliminary School Bus Accident Report prescribed by the Commissioner of Education.

(b) The driver of a school bus involved in an accident resulting in injury or death of any person, or damage to property of any one person in excess of $500.00 shall within 10 days after such accident complete and file a Motor Vehicle Accident Report in accordance with N.J.S.A. 39:4-130.

(c) Each district board of education shall establish policies and procedures to be followed by the school bus driver in the event of an emergency.

6:21-1.3 Remote defined

(a) The words "remote from the schoolhouse" shall mean beyond 2½ miles for high school pupils (grades 9 through 12) and beyond two miles for elementary pupils (grades kindergarten through eight), except for educationally handicapped pupils.

(b) For the purpose of determining remoteness in connection with pupil transportation, measurement shall be made by the shortest route along public roadways or public walkways from the entrance of the pupil's residence nearest such public roadway or public walkway to the nearest public entrance of the assigned school.

6:21-1.4 Retirement of school buses

(a) School buses manufactured prior to April 1, 1977, other than those of the transit type whose gross vehicle weight (G.V.W.) exceeds 25,000 pounds, shall not be used for pupil transportation.

(b) School buses, Type I and Type II, as defined by N.J.S.A. 39:1-1, which are registered and inspected in this State, manufactured on or after April 1, 1977, other than those of the transit type whose gross vehicle weight (G.V.W.) exceeds 25,000 pounds, shall not be utilized for pupil transportation purposes beyond the end of the twelfth year from the year of manufacture, as noted on the vehicle registration, or at the end of the school year in which that year falls, whichever is later. Such buses, when used beyond the tenth year, shall have an annual in-depth inspection by the Division of Motor Vehicles prior to the ensuing school year.

(c) School buses of transit type whose gross vehicle weight (G.V.W.) exceeds 25,000 pounds shall not be used for pupil transportation purposes beyond the end of the twentieth year from the year of manufacture, as noted on the vehicle registration, or at the end of the school year in which that year falls, whichever is later.

SUBCHAPTER 2. REQUIREMENTS FOR NONPUBLIC SCHOOL TRANSPORTATION

6:21-2.1 General requirements

(a) Transportation or aid in lieu of transportation shall be provided in accordance with N.J.S.A. 18A:39-1 et seq.

(b) District boards of education shall adopt policies and procedures governing the transportation of pupils to and from school.

[(c) Aid in lieu of transportation shall be provided once a district board of education has publicly advertised for bid and has made the determination that the cost per pupil will exceed the maximum allowable rate as established by N.J.S.A. 18A:39-1.] ***Districts shall advertise for bids before determination is made to provide transportation or aid in lieu of transportation pursuant to N.J.S.A. 18A:39-1.***

6:21-2.2 Registration procedure

(a) The private school shall obtain the Application for Private School Transportation, as prescribed by the Commissioner of Education, from the public schools.

(b) It shall be obligation of the parent or guardian of private school pupils to annually obtain the Application For Private School Transportation, as prescribed by the Commissioner of Education, from the administrative office of the private school in which the pupil is enrolled.

(c) Upon completion by the parent or guardian, the application shall be returned to the private school on or before May 1 preceding the school year in which transportation is being requested.

(d) The private school shall annually collect from the parent or guardian the applications and submit them to the public school from which transportation is being requested for registration and implementation prior to May 15.

(e) The public school shall notify the parent or guardian and private school as to the determination of each application by August 1.

(f) A late application shall be any application received by the district after May 15. Eligible pupils will receive transportation or aid in lieu of transportation based upon the date of receipt of the application by the public school.

(g) Prior to August 1, the public schools shall prepare the Private School Transportation Summary form as prescribed by the Commissioner of Education.

6:21-2.4 Grade level

Students eligible for transportation or aid in lieu of transportation shall be enrolled in grades kindergarten through grade 12. The determination of entrance age for pupils shall be in accordance with N.J.S.A. 18A:38-5 and 18A:44-2.

6:21-2.5 School closings

Suspension of the operation of the pupil transportation system, due to inclement weather or other conditions shall be the responsibility of the public school authorities providing the transportation.

6:21-2.6 Early withdrawal

The public school shall be immediately notified by the administrative agent of the private school when a pupil eligible for transportation or aid in lieu of transportation withdraws from the private school.

6:21-2.7 Certification of attendance

(a) Between January 1 and January 10 of each year, the private school administrator shall certify on forms prescribed by the Commissioner of Education, that the named pupils were enrolled for the first half of the academic year (September to January) and return the forms to the public school prior to January 15.

(b) The public school shall evaluate the January certification report and, if approved, shall pay aid in lieu of transportation to the parent or guardian of the eligible pupils after receiving a signed Request For Payment of Transportation Aid voucher as prescribed by the Commissioner of Education.

(c) Between May 1 and May 10 of each year, the private school administrator shall certify on forms prescribed by the Commissioner of Education that the named pupils were enrolled for the second half of the academic year, (January to June) and return the forms to the public school prior to May 15.

(d) The public school shall evaluate the May certification, and if approved, shall pay aid in lieu of transportation to the parent or guardian of the eligible pupils after receiving a signed Request For Payment of Transportation Aid voucher as prescribed by the Commissioner of Education.

(e) The district board of education shall send to the county superintendent of schools the Private School Transportation Summary form no later than August 1, following the close of the school year.

SUBCHAPTER 3. REQUIREMENTS FOR PUBLIC SCHOOL TRANSPORTATION

6:21-3.1 Statutory basis

(a) Transportation of pupils attending public schools shall be furnished pursuant to N.J.S.A. 18A:39-1 et seq.

(b) District boards of education shall adopt policies and procedures governing the transportation of pupils to and from school and school related activities.

SUBCHAPTER 4. SCHOOL BUS CAPACITY

6:21-4.1 Capacity

(a) The number of pupils assigned to a seat may not exceed the gross seating length in inches divided by 15. Application of the foregoing formula shall not result in the approval of a school vehicle with a seating capacity in excess of 54.

1. Vehicles manufactured as 58 passenger elementary school vehicles owned by a district board of education or contractor prior to ***December 18, 1989,*** the effective date of this rule***,*** may be utilized until retirement.

(b) There shall be no standees.

(c) This section shall not apply to a bus while being used as a common carrier on a preset franchised route and schedule.

6:21-4.2 Passengers

A district board of education shall insure that only enrolled eligible public school pupils, eligible private school pupils, adults serving as chaperons or authorized school personnel shall be transported.

SUBCHAPTER 7. STATE AID

6:21-7.2 State aid

(a) Each district board of education shall be paid State aid for costs directly related to the transportation of pupils to and from school when the necessity, cost, and method have been approved by the county superintendent of schools pursuant to N.J.S.A. 18A:58-7.

(b) All other transportation costs for educational purposes, excluding less than remote transportation, shall be eligible for equalization aid and shall be included in the net current expense budget. ***This provision shall become effective on July 1, 1991.***

6:21-7.3 State aid approval—route/contract

(a) State aid for approved transportation routes shall be 90 percent of the approved cost of the route.

(b) For the purpose of State aid reimbursement, the words "remote from the school house" shall mean beyond 2½ miles for high school pupils (grades nine through 12) and, beyond two miles for elementary pupils (grades kindergarten through eight), except for educationally handicapped pupils. The "miles from home to school" shall be the shortest distance in miles and tenths from the entrance of the pupil's home to the nearest public entrance of the assigned school by a public roadway or public walkway.

(c) State aid for transportation shall be limited to an approved regularly scheduled trip to school and a trip from school immediately following regularly scheduled sessions.

(d) State aid shall be approved for transporting handicapped children from a public school to an approved school or a center for special services or instruction.

(e) State aid shall be approved for transporting vocational students from a public school to a county vocational school for vocational instruction provided the students spend at least one-half of the school day at the vocational center.

6:21-7.4 State aid approval—vehicles

(a) State aid shall be approved for the purchase, lease and rental of vehicles used for the transportation of pupils to and from school. The district board of education shall request the prior approval of the county superintendent for the sale and/or purchase of vehicles on the form prescribed by the Commissioner of Education.

(b) School vehicles shall be sold pursuant to N.J.S.A. 18A:18A-45. Any amount realized by a school district from the sale of a district owned vehicle for which State funds have been or shall hereafter be apportioned for such vehicle, shall be deducted on a prorated basis as established by the initial purchase. Such amount shall be deducted from the next ensuing application for State aid.

6:21-7.5 State aid approval—salaries

(a) Salaries of the following district transportation personnel shall be approved for State aid when the following criteria are met.

1. Supervisor—The position of supervisor requires the prior approval of the county superintendent of schools. It shall be a full-time position with a minimum of 35 working hours per week, 12 months a year in districts providing transportation to and from school for a minimum of 1,000 pupils.

2. Assistant Supervisor—The position of assistant supervisor requires the prior approval of the county superintendent of schools. It shall be a full-time position with a minimum of 35 working hours per week, 12 months a year in districts which have an approved full-time supervisor and transport a minimum of 5,000 pupils to and from school.

3. Secretary—The position of secretary shall be a full-time position with a minimum of 35 hours per week, 12 months a year in districts which have an approved full-time supervisor and transport a minimum of *[5,000]* ***1,000*** pupils to and from school.

4. Clerk Typist—The position of clerk typist shall be a full-time position with a minimum of 35 hours per week, 12 months a year in districts which have an approved full-time supervisor and transport a minimum of 5,000 pupils to and from school.

5. First Mechanic—The position of first mechanic shall be a full-time position with a minimum of 35 hours per week, 12 months a year in districts owning a minimum of 10 vehicles used for the transportation of pupils.

6. Second Mechanic—The position of second mechanic requires that a district own a minimum of 25 vehicles used for the transportation of pupils.

7. Helper—The position of helper requires that a district own a minimum of 15 vehicles used for the transportation of pupils.

8. Additional personnel for the maintenance of pupil transportation vehicles require the approval of the county superintendent of schools and the Bureau of Pupil Transportation.

9. A school bus/vehicle driver must meet all the requirements of this chapter.

10. Attendant/Aide—An attendant/aide is assigned to a school vehicle by the district board of education for the health, safety and welfare of handicapped students. This position requires the prior approval of the county superintendent of schools.

6:21-7.6 State aid approval—other eligible items

(a) In order to be eligible for State transportation aid, the following items shall be directly related to the transportation of pupils to and from school and are subject to documented justifications:

1. Fuel, oil, lubricants, repair parts, tires, and tubes;

2. Rent/lease and utilities (if metered/billed separately and used exclusively for pupil transportation operation) of a transportation garage. District must own a minimum of 10 vehicles used for the transportation of pupils;

3. School bus/vehicle insurance;

4. Only original purchase of approved pupil transportation routing, scheduling and vehicle maintenance computer software programs and the maintenance of these approved computer software progams;

5. Printing and mailing costs related to pupil transportation;

6. School bus/vehicle driver's physical examination;

7. School bus/vehicle driver's fingerprints;

8. District map for routing and scheduling;

9. Advertising related to transportation;

10. First aid supplies and emergency equipment mandated on transportation vehicles;

11. Tolls paid for to and from school transportation;

12. Two-way radios and cellular phones. Purchases require the prior approval of the county superintendent of schools;

13. Cost related to emergency exit drills;

14. Safety equipment: top arms, roof hatches, crossing gates;

15. Special education travel expense in conjunction with out-of-district placements for educational reasons pursuant to N.J.A.C. 6:28-3.8(a)5; and

16. Seat belts/child restraint systems as mandated for special needs students.

SUBCHAPTER 9. SMALL VEHICLE AND EQUIPMENT SPECIFICATIONS

6:21-9.2 Capacity

(a) The number of pupils allowed in each vehicle shall be determined by the seat measurement. Fifteen inches of seat length shall be allowed for each pupil.

(b) There shall be no standees.

6:21-9.3 Chains or snow tires

Chains or snow tires shall be provided and must be used for safe operation in areas of snow and/or ice.

6:21-9.5 First aid kit

(a) A first aid kit which is a dust proof metal unit without a lock, with the words FIRST AID printed on the cover must be provided with the contents maintained as follows:

1.-8. (No change.)

[SUBCHAPER] *SUBCHAPTER* 10. SMALL VEHICLE REGULATIONS

6:21-10.1 Motor Vehicle Registration

(a) The owner of a private small vehicle wishing to enter into a contract with a district board of education for the purpose of transporting pupils, to and from school and to and from related school activities, shall register the vehicle with the Division of Motor Vehicles. The Division of Motor Vehicles will recall the present passenger plates of the owner and issue school vehicle type 2 license plates at the prescribed registration fee. Owners of private small vehicles shall renew the vehicle registration on an annual basis.

(b) A district board of education wishing to transport pupils in a district-owned vehicle to and from school and to and from related school activities shall register the vehicle with the Division of Motor Vehicles. The Division of Motor Vehicles will provide the district board of education with school vehicle type 2 license plates at no registration fee. All no fee registration transactions with district boards of education will be valid for 36 months.

(c) (No change.)

6:21-10.3 Parent transporting his or her own child or children

(a) A parent transporting only his or her own child or children under contract with a district board of education will not be required to possess a bus driver's license or to comply with the health examination prescribed for employees of the district board of education.

(b) Parents under contract with the district board of education utilizing a vehicle which has a capacity of greater than six shall be required to possess a bus driver's license in accordance with the Division of Motor Vehicles statute N.J.S.A. 39:3-10.1.

SUBCHAPTER 11. DRIVERS

6:21-11.1 Requirements for drivers of school buses

(a) Drivers of school buses/vehicles shall meet all requirements of N.J.S.A. 18A:39-17, 18, 19 and 20 and of the New Jersey Division of Motor Vehicles as per N.J.S.A. 39:1-1 et seq.

(b) Drivers of school vehicles equipped with lap belts shall be required to wear them whenever the vehicle is in motion.

6:21-11.2 Driver procedure

The driver shall complete daily a driver's school bus condition report as prescribed by the Commissioner of Education.

6:21-11.3 Emergency exit drills from school buses

(a) Schools shall organize and conduct emergency exit drills at least twice within the school year for all pupils who ride school buses.

(b) The school bus driver shall participate.

(c) Drills shall be conducted on school property and be supervised by the principal or person assigned to act in a supervisory capacity.

SUBCHAPTER 12. (Reserved)

SUBCHAPTER 13. BID SPECIFICATIONS

6:21-13.1. General requirements

(a) The district board of education shall designate a committee, official or employee to prepare the specifications for each route or contract for which proposals are sought. A copy of the specifications shall be submitted to the county superintendent prior to advertisement for bids. The specifications and advertisement for bids shall be approved and authorized by formal action of the board.

(b) Any specification drawn for purposes of competitive bidding shall be drafted in a manner designed to encourage free, open and competitive bidding. Specifications shall not knowingly exclude prospective bidders by reason of the impossibility of performance or bidding by any one bidder. Any contract drawn which fails to meet the requirements of this subchapter shall be set aside by the district board of education.

(c) Potential or successful bidders shall not draft specifications or route descriptions.

(d) Specifications shall not discriminate on the basis of race, religion, sex or national origin. Bidders shall have an approved affirmative action plan as required by P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.).

6:21-13.2 Prescribed transportation specifications

(a) Transportation specifications shall be prepared to include, but not be limited to, the requirements of this chapter.

(b) A separate route description shall be prepared for each individual route.

(c) A route is a selected or an established course of travel by a vehicle with definite stops for the purpose of loading and unloading

students. Transportation routes should be arranged so that the buses will transverse the highways which serve the largest number of pupils within a reasonable time limit and at a minimum cost. Subject to exceptions, such as educationally handicapped pupils, buses are not required to leave the main route to pick up elementary pupils residing within 1½ miles of the route and high school pupils residing within two miles of the route. The board of education shall reserve the right, with the approval of the county superintendent, to change the route. If any change of route results, adjustment in the contract price shall be made in accordance with the bid. The basis for any adjustment will be the separate and distinct per mile, per vehicle or per pupil increase/decrease cost included in the bid.

(d) A route for the transportation of regular public and nonpublic school pupils shall be described from the first bus stop to the destination listing each street traveled. The schedule for arriving and departing and the vehicle capacity shall also be included.

(e) A route for the transportation of special education pupils shall be described listing each bus stop, the schedule for arriving and departing and the vehicle capacity. The statement "the direction of the vehicle from the last stop shall be along the safest most direct route to the destination" shall be included.

(f) The need for specialized equipment, restrictions due to student classification or the need for an attendant shall be described.

(g) The specifications shall include a copy of the school calendar, provisions for emergency closings and conditions for cancellation of contracts.

(h) All equipment shall meet the current specifications for transportation as set forth in the rules of the State Board of Education and any additional specifications of the district board of education.

(i) All contractors shall comply with current applicable New Jersey statutes, regulations and with the policies and procedures of the district board of education governing pupil transportation.

(j) Specifications shall include the limits of liability insurance and the type(s) of bonding required by the district board of education.

(k) The bid specifications shall include a statement which clearly prohibits the commingling of students unless authorized to do so by the district board of education through the joint transportation agreement process.

SUBCHAPTER 14. BOND

6:21-14.1 Bidder guarantee

(a) A bidder shall be required to submit a guarantee payable to the district board of education that if a contract is awarded, the successful bidder will enter into a contract and will furnish a performance bond. Cash or negotiable securities are not authorized.

(b) The district board of education, at its discretion, shall specify the type guarantee required: certified check, cashier's check or bid bond.

(c) The district board of education shall require every bidder to complete a questionnaire form as prescribed by the Commissioner of Education.

(d) The amount to be deposited shall be five percent of the bid, but in no case may the certified check, cashier's check or bid bond exceed $20,000.

(e) The bid bond, cashier's or certified check shall be forfeited upon refusal of the successful bidder to execute a contract; otherwise, guarantee shall be returned when the contract is executed and a surety bond filed.

(f) An unsuccessful bidder guarantee shall be returned within 10 days after the opening of the bids (Saturdays, Sundays and holidays excepted).

6:21-14.2 Surety bonds

(a) A surety bond shall be provided for the faithful performance of all provisions of the specifications and for all matters which may be contained in the notice to bidders relating to the performance of the contract.

(b) The district board of education, at its discretion, may require one type of surety bond or allow for either a corporate surety bond or personal surety bond.

(c) The questionnaire form prescribed by the Commissioner of Education shall be made part of the bidding documents furnished to potential bidders.

6:21-14.3 Corporate surety bond

(a) The district board of education may, at its discretion, require a surety bond furnished by a corporate surety company recognized by the State Department of Insurance as being authorized to do business in the State of New Jersey.

(b) Contracts and renewals shall be accompanied by a corporate surety bond for the total annual amount of the contracts. Bonding for multi-year contracts may be for such amount in excess of the proportionate annual amount as the district board of education shall determine. Contracts awarded on a per diem basis shall be bonded in the per annum amount based on 180 days.

(c) If it shall be necessary to substitute a corporate surety, the contractor shall furnish promptly the same information for the new corporate surety as required for the original corporate surety on the prescribed questionnaire form accompanying the bid.

6:21-14.4 Personal surety bond

(a) The district board of education, at its discretion, may permit a personal surety bond.

(b) Contracts and renewals shall be accompanied by a personal surety bond for the total annual amount of the contracts. Bonding for multi-year contracts may be for such amount in excess of the proportionate annual amount as the district board of education shall determine. Contracts awarded on a per diem basis shall be bonded in the per annum amount based on 180 days.

(c) Personal bonds shall be signed by at least two responsible sureties, who are residents of New Jersey, neither of whom shall be a member of the district board of education.

(d) If it shall be necessary to substitute a bondsman, the contractor shall promptly furnish the same information for the new bondsman as required for the original bondsman on the prescribed questionnaire form accompanying the bid.

(e) The district board of education shall have the right to reject an individual surety offer, and may find it beneficial to request a certification that the individual's net worth is sufficient to cover the bond.

(f) Personal surety bonds shall be submitted on the Personal Surety Bond for Pupil Transportation Contract form as prescribed by the Commissioner.

SUBCHAPTER 15. BIDDING

6:21-15.1 Responsibility of district board of education

(a) District boards of education shall have the option of annually bidding all transportation contracts or awarding annual extensions of an original contract. However, no contract for the transportation of pupils to and from school shall be made, when the amount to be paid during the school year for such transportation shall exceed the bid threshold limit and have the approval of the county superintendent of schools, unless the district board of education making such contract shall have first publicly advertised for bids. Such advertisement shall be published once in a newspaper circulating in the district at least 10 days prior to the date fixed for receiving proposals for such transportation. All bids shall be advertised with the time and place fixed to each advertisement for submission of proposals to the district board of education. No proposal shall be opened previous to the hour designated in the advertisement and none shall be received thereafter.

(b) The district board of education shall reserve the right to reject any or all bids.

(c) All district boards of education local regulations regarding pupil transportation shall be included in the specifications. Each prospective bidder should be given a copy of the contract which the successful bidder will be required to execute. It is recommended that the district boards of education keep a list of the names of all persons who take copies of the specifications.

(d) All bidding shall be designed to prevent fraud, favoritism and extravagance, to safeguard the taxpayers and protect the lowest responsible bidder.

(e) The specifications must be definite, precise and impose common standards.

(f) These specifications and any revisions to these specifications shall be furnished to all prospective bidders and shall not restrict competitive bidding.

(g) Variations from the specifications prescribed by the State Board must be reasonable and are subject to review by the Commissioner and the State Board.

(h) When specifications are purposely formed to deter rather than to invite genuine competition, an award to the intentionally favored bidder will be set aside.

6:21-15.2 Bidding requirements

(a) District boards of education shall request bids on a per route basis for regular, nonpublic and in-district handicapped pupils or on a per route, per vehicle, per pupil, per mileage basis for the transportation of out-of-district handicapped pupils.

(b) The bids shall include a separate provision for adjusting the contract as follows:

1. On a per mile basis for public and nonpublic regular ***routes*** and in-district special education routes; and

2. On a per mile, per pupil, per vehicle basis for out-of-district special education routes.

(c) If applicable, the bids shall include a separate provision for an attendant/aid on a per diem basis.

(d) The bid shall also include the following:

1. The cost of liability insurance;

2. An affirmative action statement and questionnaire;

3. A stockholder's disclosure statement;

4. The questionnaire form as prescribed by the Commissioner of Education; and

5. A statement of noncollusion.

(e) A bid bond, cashier's or certified check for five percent of the annual cost of the transportation contract shall accompany the bid.

(f) A surety (performance) bond shall be required equal at least to the amount of one year of the contract. In the case of contracts for more than one year, the bond may be for such amount in excess of the proportionate annual amount as the board shall determine. District boards of education may specify one type of surety bond or allow for either a corporate surety bond or personal surety bond.

(g) Bids are to be placed in a sealed envelope and plainly marked "TRANSPORTATION BID FOR ROUTE OR CONTRACT NO._____ SCHOOL DISTRICT OF _____" and presented to the board in session, authorized committee, designated official or employee of the board. The *[broad]* ***board or designated official*** shall unseal the bids in the presence of the parties bidding and publicly announce ***the*** contents.

6:21-15.3 Questionnaire

The questionnaire form as prescribed by the Commissioner of Education shall be made part of the bid.

6:21-15.4 (Reserved)

6:21-15.5 Bulk/combination bids

(a) District boards of education may receive bulk or combination bids.

(b) Bulk or combination bids shall include individual route/contract costs.

(c) If a percentage deduction is stipulated in the bid, it shall be applied to each route/contract bid when all routes/contracts are awarded.

(d) Bulk bidding shall not be used to intentionally eliminate competitive bidding.

6:21-15.6 Receiving and opening bids

(a) Unless the proposals are to be received in a meeting of the *[distict]* ***district*** board of education, a committee, officer, or employee of the board must be designated to receive the proposals at a time and place designated by the board of education and included in the advertisment for bids. At the time and place so designated and advertised, the board or any committee, officer, or employee designated by the board to do so, shall receive the proposals and proceed to unseal them and publicly announce their contents in the presence of the bidders or their agents. No proposals shall be opened previous to the hour designated in the advertisement and none shall be received thereafter.

(b) A district board of education cannot impose new conditions and bidders cannot be allowed to change bids or make oral bids after they are opened. Specifications may not be modified after bids have been received and the contract awarded to one of the bidders upon revised specifications.

(c) Bulletins issued to explain minor details of specifications and to make minor changes will not invalidate the award of a contract to the successful bidder when it appears that all such bulletins were received in advance of the submission of bids by all prospective and actual bidders. The officer of the board responsible for distributing specifications to prospective bidders shall keep a list of their names and addresses so that bulletins can be issued to them, if necessary. If, in good faith, a board finds it has made a mistake in its specifications which cannot be corrected, it may reject all bids and readvertise.

SUBCHAPTER 16. CONTRACTS

6:21-16.1 Rules

(a) All contracts for transportation or renewals thereof shall be made in triplicate and shall be submitted to the county superintendent of schools for approval on or before September 1 in each year. Contracts awarded after September 1 of each year shall be submitted to the county superintendent of schools for approval within 30 days after the award of the contract.

(b) Each contract or renewal submitted to the county superintendent shall be accompanied by:

1. A bid specification with original contracts;

2. A certified copy of the minutes of the district board of education authorizing the contract;

3. A certificate of insurance;

4. A bid newspaper advertisement with original contracts;

5. A surety (performance) bond;

6. *[An affirmative]* ***Affirmative*** action documentation; and

7. A stockholders' disclosure statement with original contracts.

(c) Non-bid contracts between a district board of education and a parent or guardian, transporting only his or her own child or children shall be accompanied by:

1. A certified copy of the minutes of the district board of education authorizing the contract; and

2. A certificate of Insurance;

(d) Notwithstanding the county superintendent's approval, as noted in N.J.A.C. 6:21-7.1, State aid shall be subject to modifications by the Commissioner of Education for good cause shown.

(e) If the county superintendent of schools approves the contract or renewal, one copy shall be filed with the county superintendent, one with the district board of education, and one with the contractor.

(f) (No change.)

6:21-16.3 Rules constitute part of contract

(a) (No change.)

(b) If any person operating a school bus under contract with a district board of education shall fail to comply with any of the rules governing pupil transportation, the board of education shall immediately notify such person in writing of his or her failure to comply.

(c) If the violation is repeated, the district board of education may require the violator to show cause at a hearing why his or her failure to comply should not be deemed a breach of contract.

(d) If, after due notice and hearing, the district board of education shall determine that a breach of contract exists, it may call upon the bondsman or surety company, as the case may be, to perform the contract or to reimburse the board for any financial loss resulting from the breach of the contract, and may annul the contract.

(e) Any person operating a bus under contract may appeal from the action of the district board of education in the manner provided by N.J.S.A. 18A:6-24, 25, 27, 28 and 29.

6:21-16.4 Term of contract

(a) The district board of education shall indicate the term of the contract not exceeding four years.

(b) Any contract for transportation is without force or effect until approved by the county superintendent of schools.

6:21-16.5 Awarding contracts

(a) Prior to the opening of school and in sufficient time to publicly advertise for bid, district boards of education shall assess their pupil transportation needs. If the assessment indicates that pupil transportation services in the aggregate will exceed the statutory bid limit, except for contracts qualifying for renewal, all transportation services shall be bid in accordance with N.J.S.A. 18A:39-3.

(b) The contract shall be awarded to the lowest responsible bidder by formal action of the district board of education in a public meeting. The board is not authorized to delegate its power to enter into a transportation contract.

(c) Contracts for the transportation of handicapped children to and from any ***other*** school district shall be awarded by formal action of the district board of education in a public meeting to the lowest responsible bidder and whose bid the board has determined is the least costly method. Documentation shall be on file to support the district board of education's determination for the least costly method. The board is not authorized to delegate its power to enter into a transportation contract.

(d) Any award of a contract made by a district board of education after advertisement must be according to the terms advertised to prospective bidders. Each bidder shall be compelled to conform to every substantial condition imposed upon other bidders.

(e) After a contract has been awarded, a bidder cannot be relieved from conforming to the conditions imposed upon him or her in the specifications*[,]* and cannot substitute something which does not conform to the specifications.

(f) A district board of education cannot reject a bid of the lowest bidder upon the ground that he or she is not responsible without giving him or her a hearing upon the facts. To determine that a bidder is not responsible, the district board of education must find as a fact, after notice and a public hearing, that the bidder is so lacking in experience, financial ability, equipment and facilities to justify that he or she would be unable to carry out the contract, if awarded.

(g) The lack of ability upon the part of a contractor to work in harmony or the district board of education's inability to enforce the terms of a previous contract cannot be controlling factors in determining the bidder's responsibility*.* Disputes involving controverted questions of fact with reference to the performance of a previous contract do not constitute grounds for declaring a bidder irresponsible, if such disputed matters can be taken care of under a contract properly safeguarding the public interest with a contractor who is financially responsible.

6:21-16.6 High, collusive or no bids

If on two occasions no bids were received, or on two occasions bids were rejected by the district board of education because they were too high, contracts shall be awarded pursuant to N.J.S.A. 18A:18A-5(c) and (d).

6:21-16.7 Quoted contracts

(a) Quotations may be sought after the opening of school for unanticipated to and from school transportation services. The process of soliciting quotations cannot be used by district boards of education to intentionally split transportation routes into smaller parts so as to avoid reaching the amount determined by the Governor as the formal competitive bidding requirement.

(b) Quoted contracts may be issued for unanticipated to and from school transportation services provided the following requirements are met.

1. At least three quotations shall be sought;
2. Quotations shall be solicited on a per diem basis;
3. Quoted contracts under the bid threshold may be in effect for the balance of the school year but must be included in the aggregate cost of transportation services for the ensuing school year;
4. Quoted contracts over the bid threshold may be issued for a period not to exceed 90 calendar days. The competitive bid process must then be completed and awarded contracts implemented for the balance of the school year; and
5. Quoted contracts shall not be renewed.

6:21-16.8 Renewing contract

(a) Annual extensions of an original contract, approved by the county superintendent of schools, are permitted provided:

1. The contract was entered into through competitive bidding;
2. The terms of contract remain the same; and
3. There is no increase in the annual amount of the contract to the district board of education or the increase in the original contractual base amount as a result of such extension *[and]* ***does*** not result in an "effective increase" of more than 30 percent, except in cases where a student rider is newly assigned to a route during the school year and extra mileage is necessary. Any such arrangement shall be approved by the county superintendent of schools and shall be bid for the next school year. ***The original contract base amount is the original contract amount plus any adjustments in accordance with the terms of the contract made by addenda during the original year.***

6:21-16.9 Addendum

(a) An addendum shall be required to adjust an existing contract or contract renewal.

1. An addendum to contract/contract renewal for regular pupils and in-district handicapped pupils shall be calculated based on the increase/decrease mileage adjustment stated in the original bid.
2. An addendum to contract/contract renewal for out-of-district handicapped pupils bid on a per route, per pupil, per mileage or per vehicle basis, shall be calculated based on the increase/decrease adjustment stated in the original bid.
3. An addendum to contract/contract renewal for the purpose of adding an attendant/aide may be a negotiated cost, provided the cost does not exceed the bid threshold.

(b) An addendum to contract/contract renewal shall be submitted on the prescribed Contract Addendum form to the county superintendent of schools for approval within 30 days of the adjustment.

(c) Increased bonding is required when an addendum is added to an existing contract increasing the cost.

1. When an addendum is added to the contract, increasing the cost, additional bonding coverage will not be required if the pro-rated cost of the original contract plus the additional cost of the *[addendum(s)]* ***addenda*** does not exceed the amount of the original bond.

(d) A certified copy of the minutes of the district board of education authorizing the adjustment shall accompany the Contract Addendum form.

6:21-16.10 Transferring contracts and contract renewals

(a) Whenever a contractor has entered into or intends to enter into an agreement to sell or assign to a purchaser all of the contractor's rights and liabilities with respect to the transportation contract between the district board of education and the contractor, such assignment requires the approval of the district board of education and the county superintendent of schools.

(b) The transfer shall impose no additional cost to the district board of education.

(c) All terms of the original contract shall remain in effect.

(d) The assignment between the district board of education and the purchaser shall not become effective until the purchaser provides:

1. A certificate of insurance;
2. A surety (performance) bond;
3. A stockholders' disclosure statement; and
4. Affirmative action documentation.

(e) The prescribed "Pupil Transportation Contract Transfer Agreement" shall be completed for each contract.

(f) Certified board minutes approving the transfer of the contract must accompany the "Pupil Transportation Contract Transfer Agreement."

6:21-16.11 Joint transportation agreements

(a) Two or more district boards of education may provide jointly for the transportation of pupils to and from any school(s), within or outside the district or counties.

(b) Whenever in the judgment of the county superintendent of schools transportation of pupils could be more economically accomplished by joint transportation, he or she may order such joint transportation, assign the administration to one district board of education as host and prorate the cost on a per pupil mileage basis to the joining district boards of education.

(c) The district board of education providing the transportation, either by district-owned vehicle or contracted vehicle, will be referred to as the "host".

(d) The "host" district board of education will be responsible for initiating the joint agreement.

(e) Four copies of the joint transportation agreement form prescribed by the Commissioner shall be submitted to the county superintendent of schools for approval. Joint agreements between district boards of education located in more than one county shall be submitted to both county superintendents of schools for approval.

(f) Certified copies of board minutes for each district board of education involved in the joint agreement shall accompany the joint transportation agreement submitted to the county superintendent of schools.

SUBCHAPTER 17. INSURANCE

6:21-17.1 General provisions

(a) Each contractor and district board of education shall furnish liability insurance for bodily injury and property damage in the amount of $1,000,000 combined single limit per occurrence for all vehicles which are used for pupil transportation to and from school and school related activities.

(b) Insurance shall be obtained through a company authorized to insure in New Jersey.

(c) Self-insured transportation contractors and district boards of education as provided in N.J.S.A. 48:4-12 and 13 shall file a certificate of self-insurance with the county superintendent of schools.

(d) Policies or certificates of insurance shall accompany all contracts or renewals when transportation contracts or renewals are submitted to the county superintendent of schools for approval.

(e) Policies or certificates of insurance shall be submitted to the county superintendent of schools for approval whenever policies are amended, revised or renewed.

(f) Transportation contractors and district boards of education shall comply with these regulations as of September 1, 1990.

SUBCHAPTER 18. INSPECTION

6:21-18.1 Applicability

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

(b) (No change.)

6:21-18.2 Division of Motor Vehicles inspection

(a) No school vehicle registered with the Division of Motor Vehicles which is owned by or under contract with a district board of education shall be used for transportation of pupils to and from school and/or to and from school related activities, as defined in N.J.S.A. 18A:39-1, unless such school vehicle is issued a school bus inspection sticker by the Division of Motor Vehicles. School vehicles shall be inspected or reinspected at Motor Vehicle Inspection Stations.

(b) (No change.)

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

6:21-18.3 Department of Transportation inspection

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

(b) An autobus under the jurisdiction of the Department of Transportation is exempt from authorization for school use on the certificate of inspection issued by the Department of Transportation when being used on a preset franchised route and schedule or chartered for school related activities.

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

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

(e) A bus authorized for school use by the Department of Transportation may be inspected by a county superintendent for compliance with the requirements of this chapter.

6:21-18.4 Responsibility for reports and records

(a) (No change.)

(b) Inspection records shall include:

1.-4. (No change.)

SUBCHAPTER 19 PUPIL TRANSPORTATION GOVERNANCE AND ADMINISTRATION

6:21-19.1 General Requirements

(a) The Commissioner shall provide for a thorough review of district boards of education transportation contracts and reports for form and accuracy and to determine compliance with this chapter and N.J.S.A. 18A:39.1 et seq.

(b) The Commissioner shall provide for an evaluation of district boards of education pupil transportation operations and fiscal procedures to determine compliance with the provisions of this chapter.

(c) The Commissioner may withhold transportation aid for any district board of education who is noncompliant with the provisions set forth in this chapter.

6:21-19.2 Evaluation Procedures

(a) District boards of education shall annually submit pupil transportation reports to the county superintendent of schools as required by law and regulation for reviews as to form and accuracy including recommendations for approval of state transportation aid.

(b) *[District boards of education must submit, by November 1st of each year, the district audit check list for pupil transportation form as prescribed by the Commissioner to the county superintendent of schools for review.]* ***The district board of education auditor shall submit, by November 1st of each year, the district audit questionnaire form as prescribed by the Commissioner for pupil transportation to the county superintendent of schools for review.****

(c) The county superintendent of schools shall conduct a review of district boards of education transportation costs every five years in accordance with N.J.A.C. 6:8-4.3(a)10vi.

6:21-19.3 Regulatory review

(a) The Bureau of Pupil Transportation field representative shall conduct quarterly reviews of the county superintendent's administration of pupil transportation. This review shall include a sampling of records that have been submitted to the county superintendent of schools by district boards of education to determine compliance with the provisions of this chapter.

(b) The Bureau of Pupil Transportation shall conduct on site annual reviews of district boards of education pupil transportation procedures, operations and fiscal records as directed by the Commissioner.

6:21-19.4 Corrective plan

Any district board of education found to be deficient as a result of the Bureau of Pupil Transportation review shall submit a corrective action plan addressing the specific recommendations to the county superintendent of schools.

6:21-19.5 Compliance investigation

(a) The Division of Compliance shall conduct a complete inspection of pupil transportation procedures, operations, and costs for any district board of education identified as deficient in the administration of pupil transportation as a result of the Bureau of Pupil Transportation review or State Department of Education monitoring process.

(b) The compliance investigation will be conducted under the supervision of the Director of the Division of Compliance under any one of the following circumstances:

1. The Bureau of Pupil Transportation review indicates that conditions exist within the district that may prevent the successful implementation of a corrective action plan.

2. A district board of education fails to implement and adhere to the corrective action plan that has been approved by the county superintendent of schools; or

3. A district fails to achieve certification based upon deficiencies noted in pupil transportation and does not demonstrate reasonable progress pursuant to N.J.A.C. 6:8-5.2(c).

(a)

STATE BOARD OF EDUCATION

Bilingual Education

Readoption with Amendments: N.J.A.C. 6:31

Proposed: August 21, 1989 at 21 N.J.R. 2443(a).

Adopted: November 8, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: November 16, 1989 as R.1989 d.600, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:20-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:35-15 to 35-26, 18A:7A-1 et seq. and specifically 18A:7A-4 and 5.

Effective Date: November 16, 1989, Readoption; December 18, 1989, Amendments.

Expiration Date: November 16, 1994.

Summary of Public Comments and Agency Responses:

The following summarizes the contents of two letters that were received regarding N.J.A.C. 6:31, Bilingual Education, and the Department's responses.

COMMENT: One commenter suggested that the identification procedures retain reference to guidelines published by the Department.

RESPONSE: The Department disagrees with the suggestion, since all references to guidelines have been eliminated from this revision to the Code. The identification procedures specify that English language proficiency be determined by performance on an English language proficiency test. That is how students are identified as eligible for bilingual and ESL programs.

COMMENT: The same commenter recommended that the special review assessment in the native language be eliminated, since all requirements for a high school diploma should be in English.

RESPONSE: The Department disagrees with this recommendation. The special review assessment in the native language was part of a special graduation requirements policy adopted by the State Board in 1984. Assessment in the native language and/or English is allowed because limited English proficient students who enter high school in the ninth grade or later may not have had an opportunity to acquire the language skills necessary to pass the graduation test in English. In addition, the students must pass a test of English fluency in listening, speaking, reading and writing.

COMMENT: A second commenter wrote that the Department had failed to provide an explanation as to why the use of an initial screening process in making entry decisions had been eliminated from the identification process.

RESPONSE: The Department considers the proposed language appropriate. The English language proficiency test score is the final determinant of whether or not a student is limited English proficient. This, however, does not preclude the use of an initial screening process to determine whether students on the census who possess some English language skills need to be administered a language proficiency test. The Department's current guidelines for bilingual and ESL programs include a description of the screening process to identify limited English proficient students.

COMMENT: The same commenter indicated that the proposed change allowing "alternative programs" is a substantial departure from the prior regulations and appears to conflict with the full-time program requirements of the Bilingual Education Act.

RESPONSE: The Department considers the inclusion of alternative programs to be appropriate. Since the passage of the Bilingual Education Act in 1975, districts have encountered difficulty in implementing the full-time program requirement of the law. When small numbers of students from the same language group are scattered across various grade levels and schools, the Department has allowed the use of alternative program designs from the beginning of the implementation of the law. A description of these alternatives has been included in the Department's guidelines for bilingual and ESL programs since 1981 or in the Department's paper "Rationale for Alternative Bilingual Education Program Models" available through the Division of Compensatory/Bilingual Education.

COMMENT: The same commenter wrote that the amended rules continue the use of a single exit criterion to determine when students exit from bilingual and ESL programs. The Department has provided no explanation that the single exit criterion would better meet the needs of students.

RESPONSE: The Department has provided a description of the background and rationale for the exit criterion in the paper "Defining an Appropriate Policy for Exit from Bilingual and ESL Programs" available through the Division of Compensatory/Bilingual Education. In February 1989, the Superior Court, Appellate Division, in *Fuentes v. Cooperman,* Dkt. Nos. A-2565-87T1 and A-2567-87T1F (App. Div., January 18, 1989), upheld the single exit criterion and found the statements in support of the State Board's regulations "demonstrating a rational evidential basis for the single exit criterion."

Summary of Changes Upon Adoption:

At N.J.A.C. 6:31-1.7(b), "should" was changed to "may" in order to better clarify that the employment of bilingual personnel to provide supportive services is permitted but is not required.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:31.

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

6:31-1.1 Definitions

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

"Act" means, P.L. 1974, c. 197 (N.J.S.A. 18A:35-15 to 26).

"Bilingual education program" means a full-time program of instruction in all those courses or subjects which a child is required by law or rule to receive, given in the native language of the children of limited English proficiency enrolled in the program and also in English; in the aural comprehension, speaking, reading, and writing of the native language of the children of limited English proficiency enrolled in the program and in the aural comprehension, speaking, reading and writing of English; and in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English proficiency enrolled in the program and in the history and culture of the United States. All pupils in bilingual education programs receive English as a second language instruction.

"Bilingual education program alternative" means a part-time program of instruction that may be established by a district board of education in consultation with and approval of the Department of Education. All pupils in a bilingual education program alternative receive English as a second language.

"Bilingual part-time component" means a bilingual education program alternative in which pupils are assigned to monolingual English program classes, but are scheduled daily for their developmental reading and mathematics instruction with a certified bilingual teacher.

"Bilingual resource program" means a bilingual education program alternative in which pupils receive daily instruction from a certified bilingual teacher in identified subjects and with specific assignments on an individual pupil basis.

"Bilingual tutorial program" means a bilingual education program alternative in which pupils are provided one period of instruction in a content area required for graduation and a second period of tutoring in other required content areas. These two periods of instruction are provided by a certified bilingual teacher.

"Children of limited English proficiency" means pupils whose native language is other than English and who have sufficient difficulty speaking, reading, writing or understanding the English language as measured by an English language proficiency test so as to be denied the opportunity to learn successfully in the classrooms where the language of instruction is English. This term means the same as limited English speaking ability, the term used in N.J.S.A. 18A:35-15 to 26.

"Educational needs" means the particular educational requirements of pupils of limited English proficiency, the fulfillment of which will provide them with equal educational opportunities.

"English as a second language (ESL) program" means a daily developmental second language program which teaches aural comprehension, speaking, reading and writing in English using second language teaching techniques and incorporates the cultural aspects of the pupils' experience in their ESL instruction.

. . .

"English language proficiency test" means a test which measures English language skills in the areas of aural comprehension, speaking, reading and writing.

"English language services" means services designed to improve the English language skills of pupils of limited English proficiency. These services, provided in districts with less than 10 pupils of limited English proficiency, are in addition to the regular school program and have as their goal the development of aural comprehension, speaking, reading and writing skills in English.

"Exit criterion" means the criterion which must be applied before a pupil may be exited from a bilingual or ESL education program. The criterion is the State established cutoff score on an English language proficiency test.

"High intensity ESL programs" means a bilingual education program alternative in which pupils receive two or more class periods a day of ESL instruction. One period is the standard ESL class and the other period is a tutorial or ESL reading class.

. . .

6:31-1.2 Identification of eligible participants

(a) (No change.)

(b) The district shall determine the English language proficiency of all pupils whose native language is other than English by means of the administration of an English language proficiency test. Those pupils who score below the State established cutoff score on an English language proficiency test are pupils of limited English proficiency.

(c) The district shall report annually the number of pupils identified whose native language is other than English and of that group, the number of pupils of limited English proficiency on the Report of Limited English Proficient Students on Roll which is part of the Fall Report.

(d) The district shall administer the Maculaitis Assessment Program (Alemany Press) to all limited English proficient pupils who enter New Jersey schools after grade eight at the time of enrollment to determine their level of English language fluency. These pupils shall be administered the Maculaitis Assessment Program annually thereafter until they achieve a score of 133 raw score points, the passing level of fluency, on the Maculaitis Assessment Program or they pass the High School Proficiency Test.

6:31-1.3 Graduation requirements for pupils of limited English proficiency

(a) All pupils of limited English proficiency must satisfy requirements for high school graduation in accordance with provisions of N.J.A.C. 6:8-7.1 except:

1. Pupils of limited English proficiency who enter New Jersey schools in grade nine or later may demonstrate that they have attained State minimum levels of proficiency through the Special Review Assessment in their native language; and

2. Pupils of limited English proficiency who enter New Jersey schools in grade nine or later and who demonstrate that they have attained State minimum levels of proficiency through the Special Review Assessment in their native language must take the Maculaitis Assessment Program and attain the passing level of fluency of 133 raw score points to be eligible for a State-endorsed high school diploma.

OAL NOTE: Current N.J.A.C. 6:31-1.3 is proposed for recodification as N.J.A.C. 6:31-1.5, with amendments.

6:31-1.4 Required programs for limited English proficient pupils

(a) Whenever there are one or more, but fewer than 10, pupils of limited English proficiency enrolled within the schools of the district, the district board of education shall provide services designed to improve the English language proficiency of those pupils pursuant to N.J.S.A. 18A:7A-4 and 5.

1. English language services shall be in addition to the regular school program.

2. At the secondary level, sufficient courses and relevant opportunities shall be offered to enable the pupils to fulfill all credits and other requirements for graduation.

(b) Whenever there are 10 or more pupils of limited English proficiency enrolled within the schools of the district, the district board of education shall establish an ESL program.

1. An ESL curriculum shall be adopted by the district board of education to address the instructional needs of pupils of limited English proficiency.

2. Programs and services designed to meet the special needs of pupils of limited English proficiency shall include, but not be limited to, compensatory education, special education and vocational training and be provided in accordance with N.J.S.A. 18A:7A-4 and 5.

(c) In addition to the above listed requirements, whenever there are 20 or more pupils of limited English proficiency in any one language classification, the district board of education shall establish for each such classification a program in bilingual education as detailed in N.J.A.C. 6:31-1.5.

6:31-1.5 Bilingual education program

(a) When, at the beginning of any school year, there are within the schools of the district, 20 or more pupils of limited English proficiency in any one language classification, the district board of education shall establish for each such classification a program in bilingual education for all pupils therein, providing also that a district board of education may establish a program in bilingual education for any language classification with less than 20 pupils. All pupils in bilingual education programs must receive ESL instruction.

(b) A district may establish a bilingual education alternative program with the approval of the Department of Education when there are 20 or more pupils eligible for the bilingual education program in grades kindergarten through 12 and the district is able to demonstrate that due to the age range, grade span and/or geographic location of eligible pupils it would be impractical to provide a full-time bilingual program.

1. Bilingual education program alternatives shall be developed in consultation with and approved annually by the Department of Education after review of pupil enrollment and achievement data.

2. The bilingual program alternatives that may be established are the bilingual part-time component, the bilingual resource program, the bilingual tutorial program and the high intensity ESL program.

3. Districts implementing alternative programs must annually submit student enrollment and achievement data that demonstrate the continued need for these programs.

4. As the number of pupils increase to the point where it would be feasible to form a self-contained or subject area class, the district shall establish a full-time bilingual education program.

(c) A program of bilingual education may make provisions for the voluntary enrollment on a regular basis of pupils whose primary language is English in order that they may acquire an understanding

of the language and the cultural heritage of the pupils of limited English proficiency for whom the particular program of bilingual education is designed, provided that no bilingual class contains a majority of pupils whose native language is English.

(d) The district shall assess all pupils enrolled in the bilingual program to determine the language which shall be used initially as the primary language of instruction.

(e) The bilingual program curriculum shall be adopted by the district board of education.

1. It shall include the full range of required courses and activities offered on the same basis and under the same rules that apply to all pupils within the school district.

2. In subjects and activities in which verbalization is not essential to understanding, including, but not limited to, art, music and physical education, pupils of limited English proficiency shall participate fully with English speaking pupils in the monolingual English class or activities provided.

3. The bilingual program curriculum shall address the use of two languages within the curriculum.

(f) In grades nine through 12, sufficient courses and other relevant opportunities shall be offered to enable the pupil to fulfill all credits and other requirements for graduation. When sufficient numbers of pupils are not available to form a bilingual class in a subject area, plans must be developed in consultation with the Department of Education to meet the needs of the pupils.

(g) Bilingual programs and services designed to meet the special needs of pupils of limited English proficiency shall include, but not be limited to, compensatory education, special education and vocational education services and be provided by districts in accordance with N.J.S.A. 18A:7A-4 and 5.

6:31-1.6 Approval procedures

(a) Each school district providing a bilingual program, ESL program or English language services shall submit an annual plan to the Department of Education for approval.

(b) Plans submitted by districts for approval shall include information on the following:

1. Identification of pupils;
2. Program description;
3. School information; and
4. Evaluation design.

(c) Districts shall submit annually evaluation data in reading, writing, mathematics, and ESL achievement and the exit data for the pupils of limited English proficiency enrolled in the district.

(d) Districts shall also submit annually their budget for the bilingual and ESL program or English language services as part of the Annual Improvement Program Budget.

6:31-1.7 Supportive services

(a) Pupils enrolled in bilingual and ESL education programs shall have full access to educational services available to other pupils in the school district.

(b) School districts *[should]* ***may*** use full or part-time bilingual personnel to provide supportive services, such as counseling, to pupils of limited English proficiency.

6:31-1.9 Certification

(a) All teachers of bilingual classes shall hold a valid New Jersey instructional certificate with an endorsement for the appropriate grade level and/or content area as well as an endorsement in bilingual education pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.S.A. 18A:35-15 to 26.

(b) All teachers of ESL classes shall hold a valid New Jersey instructional certificate with an endorsement in English as a second language pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.S.A. 18A:35-15 to 26.

(c) All teachers providing English language services as defined in N.J.A.C. 6:31-1.4 shall hold a valid New Jersey instructional certificate.

6:31-1.10 Bilingual and ESL program participation

(a) All school age pupils of limited English proficiency shall be enrolled in the bilingual or ESL education program established by the school district, as prescribed in N.J.A.C. 6:31-1.4(b) and 6:31-1.5(a).

(b) Pupils enrolled in the bilingual or ESL education program shall be placed in a monolingual English program when they have met the exit criterion of the State established cutoff score on an English language proficiency test.

(c) Pupils enrolled in the bilingual or ESL education program shall be assessed annually for exit with an English language proficiency test. Pupils may be referred for testing at any time if a program teacher judges that the pupil may be ready for program exit.

(d) Newly exited pupils who are not progressing in the monolingual English program may be considered for reentry to bilingual and ESL programs as follows:

1. After a minimum of one full semester and within two years of exit, the monolingual English classroom teacher, with the approval of the principal, may recommend retesting. A waiver of the minimum time limitation may be approved by the county superintendent upon request of the chief school administrator if the pupil is experiencing extreme difficulty in adjusting to the mainstream program.

2. The recommendation for retesting would be based on the teacher's judgment that the pupil is experiencing difficulties due to problems in using English as evidenced by the pupil's inability to:

i. Communicate effectively with peers and adults;

ii. Understand directions given by the teacher;

iii. Comprehend basic verbal and written materials.

3. The pupil shall be tested using a different form of the test or a different language proficiency test than the one used to exit the pupil.

4. If the pupil scores below the cutoff score on the language proficiency test, the pupil shall be reentered into the bilingual or ESL program.

6:31-1.11 Location

All bilingual and ESL programs shall be conducted within classrooms approved by the county superintendent of schools within the regular school buildings of the district.

6:31-1.12 Notification

(a) No later than 10 working days after the enrollment of any pupil in a bilingual or ESL education program, the district shall notify, by mail, the parent(s) or legal guardian that the pupil has been enrolled in a bilingual or ESL educational program. The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the pupil is enrolled. The notice shall also inform the parent(s) of their right to review and discuss with district administrators the procedures and pertinent data used to identify their child as having limited English proficiency. The notice shall also advise the parent(s) of the appeal process to be followed pursuant to N.J.S.A. 18A:6-9, if they wish to challenge the identification of their child. During the pendency of any such appeal before the Commissioner, the child shall remain enrolled in the program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

(b) School districts shall send progress reports to parent(s) of pupils enrolled in bilingual or ESL education programs in the same manner and frequency as progress reports are sent to parent(s) of other pupils enrolled in the school district.

(c) Progress reports shall be written in English and in the native language of the parent(s) of pupils enrolled in the bilingual program. The progress reports for pupils enrolled in an ESL program shall be written in English and in the native language of the parent(s) unless it can be demonstrated that this requirement would place an unreasonable burden on the local school district.

(d) Districts shall notify the parent(s) when pupils meet the exit criterion and are placed in a monolingual English program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

6:31-1.14 Parental involvement

(a) Each district shall provide for the maximum practicable involvement of parent(s) of pupils of limited English proficiency in the development and review of program objectives and dissemination of

information to and from the local school districts and communities served by the bilingual or ESL education program.

(b) Each school district implementing a bilingual education program shall establish a parent advisory committee on bilingual education on which the majority will be parent(s) of pupils of limited English proficiency.

(c) The parent advisory committee shall be convened a minimum of four times per school year.

6:31-1.15 Office of Bilingual Education

(a) (No change.)

(b) The Office of Bilingual Education shall be charged with the following:

1.-2. (No change.)

3. Coordination and monitoring in conjunction with the county offices of education of local, State, and Federal programs designed to meet the educational needs of pupils of limited English proficiency.

6:31-1.16 State advisory committee on bilingual education

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

(c) The committee shall be composed of at least 15, but not more than 25 members, one of whom shall be elected chairperson. The membership shall include the following representation:

1. A minimum of two, but not more than four, parents of pupils of limited English proficiency;

2.-6. (No change.)

HEALTH

(a)

HEALTH FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE) Manual

Economic Factor

Adopted Amendment: N.J.A.C. 8:31A-9.1

Proposed: September 18, 1989 at 21 N.J.R. 2922(a).

Adopted: November 15, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: November 16, 1989 as R.1989 d.603, **without change.**

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

Effective Date: December 18, 1989.

Expiration Date: March 18, 1990.

Summary of Public Comments and Agency Responses:

COMMENTERS: The New Jersey Hospital Association, the Division of Medical Assistance and Health Services of the Department of Human Services, and Besler and Company, Inc.

COMMENTER: The New Jersey Hospital Association

COMMENT: The New Jersey Hospital Association (NJHA) supports the proposed amendment to the labor proxy for N.J.A.C. 8:31A-9.1 but requests that the amendment reflect a January 1, 1989 effective date.

RESPONSE: The Department concurs with the NJHA. It is the intent of the Department that the effect of the change will be for the entire 1989 rate year.

COMMENTER: The Division of Medical Assistance and Health Services

COMMENT: The Division of Medical Assistance and Health Services supported the amendment conceptually but cannot support the amendment because of a lack of funding.

RESPONSE: The Department believes the financial impact to the Medicaid budget is insignificant since it represents less than one-hundredth of one percent of the Medicaid budget and the dollar value of the adjustment is only $174,000.

COMMENTER: Besler and Company, Inc.

COMMENT: A consulting firm submitted comments which acknowledged the amendment will increase the SHARE rates slightly. The firm expressed concern that adjustments for several other rate issues were not addressed.

RESPONSE: The comments for the other rate issues are beyond the scope of the initial publication for the proxy change and thus are not appropriate for comment.

Full text of the adoption follows.

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 (NORTHEAST REGION).

iv. Source: Bureau of Labor Statistics (BLS), Average Hourly Earnings—Hospital Workers (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 (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 (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 (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 (NORTHEAST REGION).

vii.-viii. (No change.)

ix. Category 7: Pensions:

(1) Proxy: BLS, Average Hourly Earnings—Hospital Workers (NORTHEAST REGION).

(2) Source: BLS, Average Hourly Earnings—Hospital Workers (NORTHEAST REGION).

x. Category 8: Other policy fringe benefits:

(1) Proxy: BLS, Average Hourly Earnings—Hospital Workers (NORTHEAST REGION).

(2) Source: BLS, Average Hourly Earnings—Hospital Workers (NORTHEAST REGION).

4.-19. (No change.)

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Health Care for the Uninsured Program

Adopted Amendments: N.J.A.C. 8:31B-4.37 and 7.3

Proposed: August 21, 1989 at N.J.R. 2448(a).

Adopted: November 20, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval from the Health Care Administration Board).

Filed: November 27, 1989 as R.1989 d.619, **without change**.

Authority: N.J.S.A. 26:2H-18.4 et seq., N.J.S.A. 26:2H-5 et seq., and P.L. 1978, c.83 (N.J.S.A. 26:2H-4.1).

Effective Date: December 18, 1989.
Operative Date: January 1, 1990.
Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Respones:

The Department of Health received comments from three entities: University Hospital; Community Medical Center; and the Health Insurance Association of America.

N.J.A.C. 8:31B-4.37(g) Special eligibility for charity care under the Department's Reinsurance Program.

General Comments

COMMENTER: University Hospital

COMMENT: The Hospital requests further information on the Reinsurance Program including a definition of the Program: who is covered and what policies and procedures must be followed to qualify patients for the Program.

RESPONSE: The Department of Health will be giving hospitals more detailed information prior to implementation of the Program. Hospitals do not have responsibility for qualifying patients for the insurance; the patient will already be insured upon admission and hospitals will be notified which patients are insured by a reinsured plan.

COMMENT: It is unclear as to the responsibility of the hospital.

RESPONSE: The hospital's responsibility is merely to, upon notification from the insurer/HMO and the Department, write-off the specified portion of "reinsured" bills as charity care.

COMMENTER: Health Insurance Association of America

COMMENT: We support the amendment. However we do have some concerns. We strongly urge that the Department set the threshold higher than the estimated $6,000.

RESPONSE: The determination of the threshold level does not fall within the scope of issues addressed in the regulations. However, the Department will consider this comment when that decision is ultimately made, pursuant to negotiations with insurance companies.

COMMENT: We recommend that only employers which have not provided group health benefits for one year and perhaps even 18 months be eligible for reinsured products.

COMMENTER: Health Insurance Association of America.

RESPONSE: The determination of the "employer eligibility" criteria for reinsured policies does not fall within the scope of issues addressed in the regulations. However, the Department will consider this comment in the context of that decision-making process.

COMMENTER: Community Medical Center

COMMENT: How does the Department of Health plan to handle this additional work load?

RESPONSE: Some of the additional work associated with the Reinsurance Program will be performed by insurance companies. Department staff can accommodate its share of the additional work.

Specific Comments

Paragraph 2

COMMENTER: Community Medical Center

COMMENT: Commercial Insurance Companies and HMO's take approximately four to eight weeks to pay a claim. If additional information is required such as medical records or discharge summaries, it will take longer. Other delays include problems with pre-certifications, referrals, and requests for audit. Reviewing the procedures set up for the Reinsurance Program, it is stated that after an insurance company or health maintenance organization receives a hospital bill for one of its clients who is covered under the Department's Reinsurance Program for an amount which exceeds the predetermined amount, it will transmit payment to the hospital for the portion for which it is responsible along with an explanatory letter. What is the time period set up for this transaction to be completed? Is there a payment time period that insurance and HMO companies must adhere too? How long will it take the insurance and HMO companies to notify the Department of Health? How long will it take the Department of Health to complete the continued processing and notify hospitals with the written authorization?

RESPONSE: The timeframes are yet to be specified and are dependent, in part, on subsequent negotiations with insurance companies/HMOs. Timeframes will be conveyed in the Department's future communication with hospitals. Expediency, to the extent feasible, will be encouraged and delays in the payment process are not anticipated.

COMMENT: With thousands of bills to process, each hospital needs to identify patients who are enrolled in the Reinsurance Program upfront. A unique I.D. card presented upon registration or admission would provide immediate identification and alert hospital personnel that this patient is enrolled in the Reinsurance Program. It would also serve to inform hospital personnel to complete the charity care application (if that will be part of the process) and not pursue the Uncompensated Care Trust Fund Act collection procedures implemented on April 11 of this year.

RESPONSE: The Department has discussed with Marge Ridolfi, President of the New Jersey Patient Account Management Association, the issue of when hospital staff need to be notified that a patient has reinsured coverage. Ms. Ridolfi believes, from an operational point of view, that the Program as outlined in the regulations is doable and adds that the key operational issue for the billing office is that a notice be given by or at the time partial payment is remitted to the hospital. Hospitals will not be required to complete charity care application for patients reinsured through this Program; patients will have already purchased coverage.

Paragraph 3

COMMENTER: University Hospital

COMMENT: The Department or its agent will verify that the client/patient is covered through the Reinsurance Program and send written authorization to the hospital to write off the balance of the bill as 100 percent charity care. The hospital shall keep this authorization in the patient's file for review by auditors. The hospital is concerned with the timeliness of the written authorization; please specify the time element involved.

RESPONSE: The timeframes are yet to be specified and are dependent, in part, on subsequent negotiations with insurance companies/HMOs. Timeframes will be conveyed in the Department's future communication with hospitals. Expediency, to the extent feasible, will be encouraged.

COMMENT: Please clarify who the Department's agent might be. A definition of agent and a listing of parties involved is requested.

RESPONSE: In the event the Department opts to subcontract with an agent, adequate notification would be given to hospitals. A subcontracting arrangement is not envisioned at this point in time.

COMMENTER: Community Medical Center

COMMENT: Why should the predetermined reinsurance figure be different than DRG rate? Why special consideration for these Insurance Companies and HMO's to pay other than the DRG rate?

RESPONSE: This Program was developed explicitly to make available a more affordable insurance product which is accomplished by the reinsurance provision. The goal of this Program is to increase the number of insured persons and thereby to decrease or contain the State's uncompensated care amount.

Paragraph 5

COMMENTER: University Hospital

COMMENT: The Department or its agent shall keep a record of all patient bills which are insured under the Department's Reinsurance Program and will monitor the program's impact on uncompensated care in the State. The hospital requests a clarification as to who is the responsible party or parties regarding recordkeeping. A list of the Department's agents will be sufficient.

RESPONSE: The hospital will be responsible for keeping documentation it receives from the Department of Health in patient file that patient's hospital bill is reinsured under an approved arrangement. The Department will be responsible for monitoring and evaluating the Program.

N.J.A.C. 8:31B-7.3 Determination of Uniform Statewide Uncompensated Care Add-on

COMMENTER: Health Insurance Association of America

COMMENT: This amendment allows the Department to use the amount of any interest payments credited to the Trust Fund to directly or indirectly reduce the amount of the uniform Statewide add-on. This may be accomplished through special projects as determined by the Commissioner. Such projects may include expansion of health insurance coverage in the State. HIAA is not opposed to the use of Trust Fund interest to finance demonstration projects such as the Department Insurance Coverage Expansion Program.

RESPONSE: No comment necessary.

COMMENT: Before endorsing a demonstration project funded by Trust Fund interest, we would want to see some of the technical details of the project worked out, such as how the money would be transacted.

RESPONSE: The determination of the technical details of projects to further decrease insurance coverage does not fall within the scope of issues addressed in the regulations. However, the Department will consider this comment in the context of that decision-making process.

COMMENT: The Department should investigate targeting market areas other than counties in developing its insurance demonstration project.

RESPONSE: The determination of target market areas for projects to further increase insurance coverage does not fall within the scope of issues addressed in the regulations. However, the Department will consider this comment in the context of that decision-making process.

Full text of the adoption follows.

8:31B-4.37 Charity care and reduced charge charity care for indigent patients

(a)-(f) (No change.)

(g) Special eligibility for charity care under the Department's Reinsurance Program shall be as follows:

1. Patients who are insured under the Department's Reinsurance Program, which has negotiated terms of reinsurance with one or more insurance company or health maintenance organization in the State, are eligible for 100 percent charity care for that portion of their hospital bill which exceeds the predetermined amount as specified by the Commissioner. Deductibles and copayments are not affected by this provision.

2. Hospitals shall bill insurance companies and health maintenance organizations as usual. When an insurance company or health maintenance organization receives a hospital bill for one of its clients who is covered under the Department's Reinsurance Program for an amount which exceeds the predetermined amount, it shall transmit payment to the hospital for the portion for which it is responsible, along with an explanatory letter. The insurance company or health maintenance organization shall then forward a copy of the bill to the Department or its agent for continued processing.

3. The Department or its agent will verify that the client/patient is covered through the Reinsurance Program and send written authorization to the hospital to write off the balance of the bill as 100 percent charity care. The hospital shall keep this authorization in the patient's file for review by auditors.

4. The hospital shall not pursue payment for the amount of the bill which exceeds the predetermined reinsurance figure from the patient. However, the hospital shall pursue payment for any deductibles or copayments as is standard practice.

5. The Department or its agent shall keep a record of all patient bills which are insured under the Department's Reinsurance Program and will monitor the Program's impact on uncompensated care in the State.

8:31B-7.3 Determination of uniform Statewide uncompensated care add-on

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

(d) The amount of any interest payments credited to the benefit of the Trust Fund shall be used to directly reduce the amount of the uniform Statewide uncompensated care add-on or to indirectly reduce the amount of the uniform Statewide add-on through special projects as determined by the Commissioner. These special projects may include expansion of health insurance coverage in the State. This applies to interest payments earned on or after January 1, 1987.

(e) (No change.)

(a)

HOSPITAL REIMBURSEMENT

Uncompensated Care

Adopted Amendments: N.J.A.C. 8:31B-4.38 through 4.40

Proposed: August 21, 1989 at 21 N.J.R. 2449(a).

Adopted: November 20, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: November 27, 1989 as R.1989 d.620, **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. 26:2H-18.4 et seq. (P.L. 1989, c.1) and N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18(d).

Effective Date: December 18, 1989.

Operative Date: January 1, 1990.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

NOTE: A number of the comments are directly quoted, or closely paraphrased, from the commenters' submissions.

General Comments

COMMENTER: Bergen Pines County Hospital

COMMENT: It would be in the best interest of all involved parties if the comment period could be extended. This would permit both the industry and the Department of Health adequate time to perform a more detailed analysis of the true impact of these changes.

RESPONSE: The Department has provided the required comment period. Because of the need to have the rules in place and because the rules, for the most part, merely echo the language in the Uncompensated Care Trust Fund law, the Department sees no reason to extend the comment period.

COMMENTER: Southern Jersey Hospital System (SJHS)

COMMENT: Our hospital's policy has always been an open-door one. We have a large community of indigent people and have always respected the Department's regulations up to now. We feel that implementing these harsh collection regulations will only increase the burdens of the Hospital and put more restrictions on the sick to obtain medical help.

RESPONSE: Indigent persons who prove they are indigent will not be subject to these collection regulations as they are eligible for charity care pursuant to N.J.A.C. 8:31B-4.37. Persons who do not demonstrate indigent status should be collected from vigorously.

COMMENTER: Overlook Hospital

COMMENT: Overlook Hospital would like to stress the public relations impact of the proposed regulations. Requiring hospitals to defer services, implement a lengthy interview process, question the immediate medical appropriateness of a physician's order, and threatening to attach one's tax refund and/or Homestead rebate, will create major public relations problems for hospitals.

RESPONSE: While these requirements may create a public relations problem for the hospitals, most are mandated by law. Moreover, all New Jersey hospitals will face the same requirements so that no hospitals may benefit from doing less stringent screening. The section requiring deferral of care has been eliminated due to industry comment.

COMMENTER: New Jersey Patient Account Management Association (NJPAMA)

COMMENT: Another issue of major concern is the cost of the implementation of the new regulations. Costs for additional social workers, registration staff and collectors, as well as additional computer programming and mailing were not planned in the 1989 hospital budgets, nor is there any consideration given to these costs prospectively.

RESPONSE: Hospitals will be permitted to appeal for the bona fide new costs associated with these rules as legal changes. Much of the new provisions mirror previous provisions and no additional reimbursement would be appropriate.

COMMENTER: Overlook Hospital

COMMENT: We doubt that additional costs will be offset by corresponding reductions in uncompensated care write-offs. While we support the intention of the regulations, we wish to express our concern that

implementation of the regulations in their current form will only serve to increase the overall cost of the Chapter 83 system.

RESPONSE: The Department has no evidence beyond the hospitals' assertions that the cost will exceed the benefit of these rules. Regardless of the cost, the legislature has mandated the bulk of any changes due to these rules.

COMMENTER: Health Insurance Association of America (HIAA)

COMMENT: HIAA supports the proposed regulations on hospital audit and collection practices. They capture the spirit of the Legislature's intention to assure that such practices are applied by hospitals since incentives for same are currently lacking in the system. As the cost of uncompensated care rapidly approaches $600 million in the State, the need for strenthening audit and collection practices becomes more critical. The proposed regulations adequately satisfy this need and also constitute a reasonable protocol for assuring payment for services rendered.

RESPONSE: No response necessary.

COMMENTERS: Healthcare Financial Management Association (HFMA); Elizabeth General Medical Center

COMMENT: HFMA believes that the Department of Health should reimburse hospitals for all costs incurred in attaining compliance with the new law since the law represents a significant departure from current practice and should be the basis for cost reimbursement as a legal change. Moreover, this should be a generic appeal issue, not a hospital-specific one.

RESPONSE: The reasonable costs associated with compliance with the new provisions in the rules will be treated as a legal change and thus appealable under any option. The rules represent only minimal change from previous rules. To the extent that hospitals were not in compliance with the previous rules, additional reimbursement for unchanged sections of the rules would not be appropriate.

COMMENTER: Overlook Hospital

COMMENT: The regulations do not differentiate between inpatient and outpatient services. We would recommend that a dollar threshold be placed on requiring the full interview process and that it only be performed on those patients with no insurance coverage. Surely the Department appreciates that it is not cost effective to expend the same amount of resources on an inpatient as an outpatient, and it would therefore appear reasonable to establish more defined dollar thresholds and corresponding preadmission and post-discharge procedures.

RESPONSE: A dollar threshold has been placed on post discharge collection activities regardless of whether the account is inpatient or outpatient. Since outpatient costs can be quite high, the dollar amount is more important than an arbitrary setting distinction. Outpatient costs, while less in specific cases, comprise a significant portion of total uncompensated care. Therefore, it is appropriate to require hospitals to collect the information necessary to collect the account prior to providing non-emergency services.

COMMENTER: Bergen Pines County Hospital

COMMENT: These regulations impose a disproportionate burden on those hospitals that are discharging the public policy objective of delivering health care to the poor, without making any allowances for those additional burdens. That is, all hospitals are held to the same standard whether their total uncompensated care is one percent or 40 percent. This is contrary to common sense and public policy.

RESPONSE: These rules do not adversely impact those hospitals who serve the poor. The medically indigent are treated as charity care and therefore are not affected by these rules.

COMMENTER: Overlook Hospital

COMMENT: We believe that the Department should specifically state that Medicare patients are excluded from this regulation, as it is our understanding that this is the case given the loss of the waiver in 1989.

RESPONSE: N.J.A.C. 8:31B-4.38 indicates that these requirements apply only to Chapter 83 services. Since Medicare patients/services are not subject to Chapter 83, they are not eligible for Chapter 83 reimbursement of uncompensated care and are not subject to these regulations.

COMMENTER: Hayt, Hayt and Landau

COMMENT: The Department must promulgate further regulations so as to insure that the interview, in-house billing and collection, and outside collection activities are conducted by separate contractors or collection firms not under the same, or substantially similar, ownership, management or control. Single contractor involvement in all of these functions would constitute a serious conflict of interest which could not be avoided.

Contractors which conduct in-house billing and collection activities for providers at much lower rates than they charge for outside collection activities on the same accounts would have little incentive to seek account resolution during the earlier stages of the process. Instead, they would be encouraged to actually avoid account resolution until the outside collection activity phase, when the fees would be much higher. This conflict stands in stark contrast to the statutory theme of promoting more efficient and cost-effective provider reimbursement systems.

RESPONSE: The Department will review this comment with the appropriate bodies to determine whether additional regulations are needed.

COMMENTER: Newark Beth Israel

COMMENT: The practice in the hospital industry has been to turn bad debts over to collection agencies with instructions to try to collect them first without using legal action. Accounts which prove to be totally uncollectable using this approach are then to be turned over by the collection agency to their legal department for legal action. The regulation should indicate that such a procedure is acceptable. Otherwise, it may be forcing hospitals to turn accounts over first to the collection agency and then take them back from the agency and refer them to an outside attorney which would create unnecessary paper work.

RESPONSE: The rules are currently silent on the issue of whether it is appropriate for a collection agency to refer accounts to its own legal section for collection; therefore, this is permitted. The Department will review this issue to determine whether additional regulation is necessary.

COMMENTER: NJHA

COMMENT: This problem is acutely evident when considering the application of the proposed procedures and informational requirements (17 steps in addition to obtaining the patient's basic demographic information) for interviewing 9.3 million hospital outpatient, clinic, and ER patients Statewide.

RESPONSE: These rules would not be applicable to Medicare patients (approximately 40 percent of total revenue) or for patients who have complete coverage or who pay their bill at the time of service.

COMMENTER: Jersey Shore

COMMENT: The Department has stated that while it recognizes that hospitals will incur additional cost to implement the provisions of the Act that these costs are minimal and should be handled as legal changes under Chapter 83. It is our feeling that the additional costs are high and must be added to the hospitals' rates in 1989. Some of the added cost we identified are: staffing, training, data processing systems development, space for interviewers, telephone and other equipment. We are also considering using an outside vendor to escort Medicaid applicants to the welfare office. This cost should also be added to the 1989 Rates.

RESPONSE: Hospitals will be permitted to appeal for the bona fide new costs mandated by these rules as legal changes. Since escorting Medicaid applicants to the welfare office is not required under the law, these costs could not be appealed as legal changes.

COMMENTER: HFMA

COMMENT: HFMA believes that the implementation date of the law should be postponed until the implementing regulations have been promulgated and public discussion held thereon. We believe strongly that it would be very difficult for hospitals to comply with the law absent clear regulatory guidance.

RESPONSE: The Trust Fund law was quite specific both as to what must be done and the effective date of the law. During 1989 the hospitals will be held only to the provisions of the law and any current regulations not in conflict with the law.

COMMENTER: Bergen Pines County Hospital

COMMENT: The Department should permit hospitals with a high portion of uncompensated care or with special patient populations to get approval of protocols that are tailored to their specific circumstances. The number of hospitals that would fit such criteria are few in number and certainly the administrative burden to the Department of reviewing such protocols would be far less than the administrative burden to the hospitals in implementing regulations that may be inappropriate to the patients they treat.

RESPONSE: The Department has proposed rules elsewhere in the issue of the New Jersey Register which will allow hospitals to propose "demonstrations" for alternative collection efforts. These demonstrations, however, would have to conform to the provisions of the Trust Fund law.

COMMENTERS: NJPAMA; NJHA

COMMENT: We recognize the need to be prudent with the allocation of uncompensated health care dollars. However, prudence must be balanced against reality. By eliminating the distinction between inpatient and outpatient accounts in the regulations, the Department of Health has ignored the realities that exist in New Jersey's hospitals.

RESPONSE: A more appropriate distinction is made in these rules: low balance accounts versus high balance accounts. The required collection process has been reduced for accounts under $200.00.

COMMENTER: Overlook Hospital

COMMENT: In support of our above comments relative to the cost-effectiveness of the regulation, we can also cite from experience since the April 10, 1989 effective date of Senate No. 2981. Specific to Outpatients, approximately 85 percent of our telephone calls are on balances under $275.00, and there has been no appreciable improvement in either cash collection or bad debt experienced. We believe that these facts, coupled with the Statewide NJHA implementation cost projections, warrant modification of the current regulation to address the significant and practical differences in the Outpatient sector.

RESPONSE: A more appropriate distinction than inpatient/outpatient is the amount of the bill. The required steps have been reduced for balances under $200.00.

COMMENTER: Community Memorial

COMMENT: A hospital's diligent effort to secure payment from insurance carriers is the grey area that exists when insurance carriers use every effort to delay payment for services that are covered under the patient's contract. Regulations, as they now stand, leave all responsibility to collect with hospitals, none with the responsibility of the payers.

RESPONSE: Under the Chapter 83 and the Trust Fund Act, the Department has no authority to regulate payers and their schedule of payment of claims. Authority to regulate insurers rests with the Department of Insurance.

COMMENTER: UMDNJ

COMMENT: It should be noted that the Hospital makes every effort to collect as much cash as possible. To require a cash down-payment for every clinic and ER case would be inconceivable and would cause many problems for the Hospital's staff. The staff is dealing with a very difficult type of patient and insisting on a cash outlay might subject them to bodily harm. Also, to secure the monies collected would require heavy security measures.

RESPONSE: Deposits or payments need not be requested from charity care patients. Pursuant to the rules, all other patients must be asked to pay. The hospital must document the reasons for any failure to request or obtain payment.

COMMENTER: Beth Israel Hospital

COMMENT: The economic and social impact to implement every aspect of these amendments will be significant, not minimal. Additional staff along with space allocations will be necessary. Hospital expense will increase as we rely on outside companies. The only organizations to profit will be service types (billing, collection, law firms). The shortage of qualified employees will become even more acute as service firms, with higher rates of pay, increase their staffs to accommodate their new business. Time spent to register a patient prior to treatment will triple at the very least. Enforcement will not render the desired results envisioned by the Department but will impede the ill from receiving care. The magnitude and consequences are overwhelming resulting in the public becoming even more dissatisfied with the health system.

RESPONSE: These rules do not differ materially from previous regulation in most credit and collection areas. The purpose of those changes made is to ensure that billing can be done swiftly and effectively by getting the necessary information up front.

COMMENTER: NJHA

COMMENT: The proposed regulations define all steps in the collection process from the initial contact with patients requesting care, the interviewing process of gathering pertinent financial information to assess the patient's ability to pay, the billing and collection cycle, and ultimately, the enforcement of collection through legal action against debtor patients with the ability to pay. The Department proposes to eliminate the distinction which currently exists in regulation, for interviewing and collection procedures applied to inpatient services and those applied to outpatient services. NJHA believes that this action fails to recognize many important differences in the provision of these services and with the resulting accounts receivable accounts which make such a distinction is important since it currently limits the registration information required for outpatient, clinic, and emergency room (ER) patients in recognition of the tremendous volume of these types of patients a hospital services and the usual low average balance of each outpatient, clinic, and ER account, compared with the provision of inpatient services. An NJHA analysis of hospital uncompensated care paid from the Trust Fund indicates the average balance for outpatient, clinic, and ER accounts to be $166, while the average balance of an inpatient account is $2,668. Should a hospital be expected and required to expend the same amount of time and limited resources to process the registration of outpatient, clinic, and ER patients as is required for inpatient services? The Association supports the distinction which limits the registration for outpatient accounts. The proposed change will create significant additional cost to the Chapter 83 system (currently being measured by the Association) as hospitals comply with these burdensome new requirements.

RESPONSE: The Department and the Association both estimate the uncompensated care split at 30 to 33 percent outpatient. In 1989 this means that nearly $200 million was paid in outpatient uncompensated care. Although outpatient bills are generally lower than inpatient bills, taken together they constitute a sizeable portion of uncompensated care. The Legislature has taken the position that hospitals must collect sufficient information to make a viable collection effort on each patient. Hospitals are not required to conduct the full interview for patients who have Medicare, full insurance coverage or who pay for services at the time of the visit.

COMMENTER: Elizabeth General Medical Center

COMMENT: If other than 100 percent compliance to the detailed collection procedures is required on every patient seen in the Medical Center, provide the industry with exact guidelines. For example: If every patient seen is not required to undergo every collection procedure to its highest level of degree then it would be appropriate for the Department of Health to develop a matrix of collection procedures with the collection procedures as the row and patient types as the column with extra columns provided for remarks when less than 100 percent effort is required.

RESPONSE: The Legislature has mandated that the Commissioner certify that the accounts paid for under the law are in conformance with that law. Therefore, it is unlikely that such exceptions will be made. Any exception would be made by the Hospital Rate Setting Commission.

COMMENTER: Community Memorial

COMMENT: When looking at facilities and their efforts to collect from the patient's insurance carrier, the reality of the situation is to look at the insurance industry and the unreasonable delays created regarding their payment of an account where strong evidence exists that the bill can be collected.

Delays of 120 days, 150 days, and 180 days or more are unreasonable and reduce cash flow for hospitals who strive under increasing demands to develop techniques and strategies to operate their facilities in compliance with regulations.

Insurance companies experience system problems, system changes, staffing problems, backlog processing, and internal difficulties and request for audits. These delays adversely affect the subscribers and the hospital's efforts to collect. Sure, there is likelihood of recovery in the future. Reverting the responsibility back to the patient does not solve the problems. It simply penalizes the patient. A clear denial or a payment should be expected within a reasonable time period.

RESPONSE: The Department of Health does not have the authority under this Act to regulate the payment schedule of insurers. If a hospital is aware that a claim is still pending and is likely to be paid, the hospital should retain the account.

COMMENTER: Elizabeth General Medical Center

COMMENT: The Medical Center provides services to a large number of inpatients and outpatients of which 25-30 percent represent patients with little or no insurance coverage. The task of complying with the collection procedures delineated in 8:31B-4.40 as it relates to all of Elizabeth General Medical Center's patients will be extremely expensive. It will require the addition of 10-15 new employees, modification of our existing organization chart and its related functions, and changes and additions to our computer system. It is especially a major undertaking in our Emergency Room Department where we provide services to approximately 45,000 patients during all hours of the day and all days of the week.

RESPONSE: These rules are only a marginal change from previous requirements. For example, previous provisions required patients to be screened or interviewed; these rules only specify the information that must be obtained in the interview. Bona fide expenses associated with the changes in the rules may be appealed as legal changes.

COMMENTER: Newark Beth Israel

COMMENT: The main problem in the implementation of these regulations relate to the lack of distinction between inpatients and outpatients. The emphasis should be on the collection of inpatient accounts.

Because of the nature of hospital outpatient services, the strict collection procedures applicable to inpatients should not be the same for outpatients. Unless a substantial differentiation is made in the regulations

between the two billing and collection procedures, its implementation is going to be unwieldy and costly.

RESPONSE: The rules provide for a distinction in collection procedures for small balance accounts. Since outpatient services can be costly, this is a more appropriate distinction.

N.J.A.C. 8:31B-4.38 Uncompensated care

N.J.A.C. 8:31B-4.38(a)1

COMMENTER: NJHA

COMMENT: In this section "bad debts for Chapter 83 services" are described as a component of uncompensated care "provided appropriate collection procedures as defined in N.J.A.C. 8:31B-4.40 are followed and the account is at least 120 days old." NJHA believes that any reference to the age of the account in this section contradicts provisions of section 4.40 which provides the appropriate definitions regarding collection procedures, including the account aging. We recommend that the reference to 120 days be deleted in this section of the regulations.

RESPONSE: This section will be retained although recognition will be given that on occasion, an account will be appropriately written off in less than 120 days. Typically the steps required in N.J.A.C. 8:31B-4.40 will take at least 120 days.

COMMENTER: Elizabeth General Medical Center

COMMENT: Sections 1, 2, 3 and 4 of sub-paragraph (a) define the types of cost that can be classified as uncompensated care. Missing from this definition is the cost associated with demonstration projects which are encouraged by either the Department of Health or the Division of Mental Health and Services. These demonstration projects seek to provide services to patients who under normal conditions would not seek this service because of limited funds, or because these projects represent services furnished by state institutions who no longer will be providing these services or the service is being transferred from the public sector to the private sector. Consequently whereas these projects benefit both the Department of Health, or the Division of Mental Health and Services and the patient, it would appear that it would behoove the Department of Health to provide for the provision of Uncompensated Care on a demonstration basis to those patients who are not covered by third party payors.

RESPONSE: Patients in demonstration projects who do not meet uncompensated care criteria would not be eligible for payment for uncompensated care unless specifically allowed by the Department of Health at the outset of the demonstration project.

N.J.A.C. 8:31B-4.38(a)2

COMMENTER: Bergen Pines County Hospital

COMMENT: The term "Chapter 83 Services" has no meaning. The term "Chapter 83 Hospitals" has been used in the past but never "Chapter 83 Services." Therefore, this term should be explained.

RESPONSE: Chapter 83 Services are those services eligible for payment under Chapter 83. Services provided by Chapter 83 hospitals that have been excluded from Chapter 83 reimbursement either specifically by CN or generally through the Chapter 83 regulations would not be eligible for payment.

N.J.A.C. 8:31B-4.38(a)3

COMMENTER: UMDNJ-University Hospital

COMMENT: The Hospital requests clarification here as UMDNJ-University Hospital's ALS services are excluded. Reimbursement for UMDNJ-University Hospital MICU will not be included in the Uncompensated Care Trust Fund.

RESPONSE: Under the provisions of the Uncompensated Care Trust Fund law, ALS services for UMDNJ will not be included in the Trust Fund calculation.

COMMENTER: Overlook Hospital

COMMENT: A definition of the reimbursement rate schedule for MICU should be provided, particularly relative to its reimbursement methodology.

RESPONSE: The reimbursement methodology for MICU is to be provided by the Commission. The Department does not have the authority to provide the reimbursement methodology for MICU.

COMMENTER: Clara Maass Medical Center

COMMENT: Are hospitals going to be reimbursed based on actual write-offs? Why will provision for bad debts no longer be used in the final reconciliation process? Why is the estimate no longer acceptable?

RESPONSE: N.J.A.C. 8:31B-4.39 has been changed to indicate that hospitals will be reconciled to a reasonable provision amount. Provisions will be judged for reasonableness pursuant to N.J.A.C. 8:31B-4.41.

N.J.A.C. 8:31B-4.38(a)4

COMMENTER: UMDNJ-University Hospital

COMMENT: The Hospital requests clarification on the procedure regarding outpatient renal dialysis charity care and bad debt reimbursement. It should be noted that the Division of Public Welfare (DPW) does not pay outpatient renal dialysis and Medicare will not cover outpatient renal dialysis service for the first year.

RESPONSE: The provisions governing the payment of outpatient dialysis services are found at N.J.A.C. 8:31B-4.38(a)4. Patients who are not yet eligible for Medicare will be covered although Medicare deductibles and coinsurance will not be covered.

N.J.A.C. 8:31B-4.38(b)3

COMMENTER: Bergen Pines County Hospital

COMMENT: This subsection provides that uncompensated care excludes discounts provided to HMOs or other payers. This appears to directly contradict proposed amendments to N.J.A.C. 8:31B-4.37 concerning the Department's Reinsurance Program.

RESPONSE: The Reinsurance Program does not request or require hospitals to offer discounts. After a certain level of hospital bills are paid, the Trust Fund assumes financial responsibility for those accounts. Therefore, there is no contradiction.

N.J.A.C. 8:31B-4.38(b)4

COMMENTER: Bergen Pines County Hospital

COMMENT: The proposal to exclude "Patient Convenience Items" is irrational because it would force the Hospital to absorb a cost that it could not have avoided incurring. The Hospital does not know until after discharge that the patient's bill will become a bad debt. Therefore, there is nothing the Hospital can do—short of denying Patient Convenience Items to all patients—that will save it from having to avoid the cost of such items for patients whose bills develop into bad debts. Furthermore, this provision would discriminate against charity care patients by prohibiting them from having the same Patient Convenience Items as non-charity patients.

RESPONSE: The Trust Fund has always only included payments for medically necessary services for patient care. Moreover, patient convenience items are excluded services pursuant to N.J.A.C. 8:31B-4.62. Hospitals are permitted to deny such items to patients for financial reasons. These costs must be removed from patient bills before being reported to the Trust Fund. The charity care provisions at N.J.A.C. 8:31B-4.37 already limit reimbursement for charity care to medically necessary services.

N.J.A.C. 8:31B-4.38(b)5, 6 and 8

COMMENTER: Bergen Pines County Hospital

COMMENT: If a patient comes into the hospital for treatment, and passes the screens required by these proposed rules, then the hospital should be entitled to receive reimbursement for uncompensated care should that patient's bills develop into a bad debt so long as the treatment was appropriate.

RESPONSE: The Trust Fund law limits payment to those services that are medically necessary and appropriate. Therefore, it would be inappropriate for the Fund to pay for services that are excluded from the Chapter 83 system by regulation (and therefore not regulated by cost), cosmetic surgery and non-health services provided by a hospital.

N.J.A.C. 8:31B-4.39 Determination of uncompensated care payments

N.J.A.C. 8:31B-4.39(a)1

COMMENTER: Elizabeth General Medical Center

COMMENT: Subparagraph (a)1 states that the statewide uncompensated care add on shall be determined pursuant to N.J.A.C. 8:31B-7.3 subparagraph (a)1. The Department of Health has not published the entire regulations on subchapter 7, Uncompensated Care Trust Fund. Consequently, subparagraph 7.3(a)1 cannot be referenced without the Department of Health publishing and forwarding the entire subchapter 7.

RESPONSE: The Department adopted N.J.A.C. 8:31B-7 effective July 20, 1987 (see 19 N.J.R. 1297(a)).

N.J.A.C. 8:31B-4.39(a)2

COMMENTER: Overlook Hospital

COMMENT: The proposed regulations state that a hospital's uncompensated care amount shall include the sum of a hospital's actual reasonable charity care and a reasonable provision for bad debt. The regulations should be more specific as to the definition of "reasonable."

RESPONSE: Reasonableness shall, as always, be determined by the Hospital Rate Setting Commission. The Department does not consider

it appropriate to specify the definition further within the rules, at this time.

COMMENTER: UMDNJ-University Hospital

COMMENT: The Hospital requests a definition of "historical" as used in the expression "historical charity care eligibility determination policies and practices." The Hospital also requests clarification on documentation requirements for historical charity care eligibility determination policies and practices and bad debt collection policies and practices.

RESPONSE: Historical means in the past. Such practices are assessed at the time of audit and thus are viewed in retrospect. The auditors review the hospital's policy manuals and other documents to determine policy, and individual accounts to assess the hospital's practices.

COMMENTER: Bergen Pines County Hospital

COMMENT: The provision concerning a hospital's inability to document historical charity care eligibility determination policies and practices is unclear and unnecessary. First, the uncompensated care audit already uncovers documentation problems and penalizes hospitals severely for them. Second, it is unclear how far back this documentation may be required.

RESPONSE: This section authorizes the audit penalties referenced in the comment. In addition, problems with such policies may be discovered that are not within the scope of the audit. This section authorizes the Commission to assess penalties for having inadequate policies and practices.

N.J.A.C. 8:31B-4.39(a)3

COMMENTER: Bergen Pines County Hospital

COMMENT: The insertion of the term "or payments" is extremely troubling, especially for Bergen Pines. Historically, the Department has offset grants from county governments, municipal governments or others on behalf of the medically indigent. However, it is not clear what is meant by a payment from county government. This term should be clarified.

RESPONSE: The phrase "or payments" is meant to broadly include all types of financial exchanges, including contributions from foundations and individuals, which may not be defined as a "grant" but which are indigent care. Payments which are posted to the account of a particular patient would not be included because those amounts would not become uncompensated care.

N.J.A.C. 8:31B-4.39(a)4

COMMENTER: HFMA

COMMENT: Using a mix of actual charity care and the provision for bad debt is not logical, adds needless complexity to the calculation and will not provide any savings to the Uncompensated Care Trust Fund. HFMA recommends that the hospital's provision for Charity Care be used to calculate the uncompensated care amount and that actual be used as final reconciliation.

RESPONSE: N.J.A.C. 8:31B-4.39(a)4 has been revised to indicate that the provision for bad debt will be used for the purpose of final reconciliation. Hospitals have always reported actual charity care; charity care is a determination that is made usually at the time of service. Therefore, this provision will be retained.

COMMENTER: Elizabeth General Medical Center

COMMENT: The Medical Center strongly objects to the use of actual bad debts in lieu of the provision of bad debts. The substitution of actual bad debts in place of the provision for bad debts could lead to severe cash-flow problems as well as complicate the presentation of a hospital's financial statement through the introduction of interperiod allocation of revenue brought about by bad debt timing differences. The Department's recommended change to actual bad debt fails to recognize the numerous uncontrollable factors which determine the timely write-off of bad debt accounts, such as:

—Loss of key personnel due to sickness or resignation;

—The difficulty experienced in recruiting qualified personnel due to a tight labor market;

—Delays in third-party payment which delay payment of self-pay balances;

—Lack of appropriate working space which limits our ability to hire additional help;

—Computer systems which must be modified;

—Additional computer hardware which must be purchased;

—Changes in payor-mix or third party coverage which results in greater amounts of self-pay balances;

—State and local economic conditions; and

—Untimely medicaid and welfare eligibility process.

The recommended change to actual bad debt serves no discernible purpose nor does it appear to be required under the Uncompensated Care Trust Fund Legislation. We, therefore, recommend that there be no change in the use of the provision of bad debts at final reconciliation.

RESPONSE: This section will be revised to indicate that the provision for bad debt will be used for the purpose of final reconciliation.

N.J.A.C. 8:31B-4.39(a)5

COMMENTER: Overlook Hospital; Elizabeth General

COMMENT: This section states that hospitals will have their uncompensated care amounts reduced if appropriate collection efforts are not followed. A reference should be made either to the section in the regulations that describes how the reduction is to be calculated or include the calculation and its relative parameters within this section.

RESPONSE: The Hospital Rate Setting Commission will determine the appropriate amount of any reduction. The Commission has the authority to establish methodologies, based on the law and the rules. The Commission also has the authority to determine reductions.

COMMENTER: Bergen Pines County Hospital

COMMENT: This section is indefinite in that it fails to state the criteria that will be used to reduce uncompensated care amounts. More important, the limitation should remain; and reductions for hospitals that fail to follow appropriate collection procedures should be limited to the aggregate amount of improper billings. At the very least, the degree of the reduction above the improper billings should be specified.

RESPONSE: The Commission will determine the appropriate amount of any reduction. The Department does not consider it appropriate, at this time, to specify the degree of the reduction in the rules.

N.J.A.C. 8:31B-4.39(a)6

COMMENTER: Bergen Pines County Hospital

COMMENT: Section 8:31B-4.37 should be reevaluated in light of these proposed amendments. All public notices should be reworded so that the public has a clear understanding of the constraints that these regulations place upon the hospital.

RESPONSE: The Department does not see the need to reevaluate the charity care regulations. This section does not change the constraints under which hospitals provide charity care.

COMMENTER: Elizabeth General Medical Center

COMMENT: Subparagraph (a)6 states that hospitals that fail to meet their Hill-Burton obligation or community service obligation shall receive appropriate reductions in their uncompensated care amounts. This provision by the Department of Health would appear to be penalizing a hospital twice. The first penalty is that imposed by the Federal Government. The second would be the loss of Uncompensated Care. Of equal importance is: what is an appropriate reduction in the uncompensated care amount? How is this amount to be calculated? What is the method, the policies and procedures that are going to be used?

RESPONSE: The Federal penalty merely extends the time period for the Hill Burton obligation. Only the State payment system would exact a monetary payment. An appropriate reduction would be determined by the Commission.

COMMENTER: Elizabeth General Medical Center

COMMENT: Subparagraph (a)6 goes on to further state that hospitals that fail to meet charity care requirements as defined in N.J.A.C. 8:31B-4.37 shall receive appropriate reductions in their uncompensated care amounts pursuant to N.J.A.C. 8:31B-4.39. Again, the Medical Center questions the method by which the reduction will be calculated and the policies and procedures used to calculate that amount. We also desire to know what process is available to the Medical Center to dispute the amount of reduction or the method and methodology used in the calculation of that reduction.

RESPONSE: The Commission will determine the appropriate amount of any reduction. As always, the hospital is permitted to dispute the amount of the reduction or the calculation of the reduction in a Commission hearing.

N.J.A.C. 8:31B-4.39(a)8

COMMENTER: UMDNJ

COMMENT: The Hospital requests verification that conservative, reasonable estimates will be accepted from authorized Hospital personnel.

RESPONSE: This amendment eliminates the Department's acceptance of estimates except for the provision for bad debt. All other figures reported to the Department must be actual verifiable amounts.

N.J.A.C. 8:31B-4.40 Appropriate collection procedures

COMMENTER: UMDNJ

COMMENT: The Hospital does not understand why screening is necessary prior to acceptance in the renal dialysis program. This service is life-threatening and the patient does not have a choice in entering or not entering the program. The Hospital feels that acceptance of this service is not necessary and suggests revision to this section. Also, it should be noted that Medicare will not cover this service until the patient has been receiving Renal Dialysis for one year.

RESPONSE: This comment is on a portion of the rule which was being deleted. Charity Care for Renal dialysis services will be paid pursuant to N.J.A.C. 8:31B-4.37; bad debt for renal dialysis patients will be paid, provided appropriate collection procedures are followed as defined in this section.

COMMENTER: Bergen Pines County Hospital

COMMENT: There is great inconsistency throughout the proposed rule as to what constitutes an exception from the requirements for gathering financial data. In this paragraph the term "emergency medical condition" is used. In paragraph 8:31B-4.40(b)3, the hospital is instructed to provide "necessary and appropriate treatment" even if the patient is unable to meet the financial requirements. In 8:31B-4.40(b)4ii, the term is "unless the patient's condition requires immediate medical attention." A single term should be used so that hospital employees will know with some assurance what test is to be applied in all situations.

RESPONSE: The terminology has been standardized to "emergency care", to mean instances where care may be rendered prior to gathering data.

N.J.A.C. 8:31B-4.40(a)

COMMENTER: Beth Israel

COMMENT: The phrase "assets necessary for daily living" needs a uniform definition. What might be necessary for one person may not be necessary for another.

RESPONSE: Assets necessary for daily living must be determined on a case-by-case basis. Therefore, a uniform definition would not be appropriate.

COMMENTER: HFMA

COMMENT: This section requires that the provider's collection effort "shall be documented by copies of bills, follow-up letters, reports of phone calls, personal contact and additional supporting stored in files or on computer." Several hospitals have paperless outpatient billing and collection systems in place and notes are entered to the system to document activities. However, hard copy documents are not retained. Other sections of the regulations appear to require that hard copy documentation must be retained until audits are completed (e.g., copies of insurance cards and patient identification, returned mail). Will computer notes suffice or must hospitals incur the significant added expense of establishing and maintaining hard copy outpatient files?

RESPONSE: While much of the documentation can be, and is now being, maintained on computer, some things cannot be so maintained. These include, but are not limited to, copies of identification cards and supporting documentation for charity care applications. Hospitals would be required to retain these until the hospital's audit is resolved.

COMMENTER: St. Peter's Medical Center

COMMENT: Data mailers generated for delinquent accounts were designed and tailored to meet the internal control needs as well as to maintain an urgency to the debtors in order to meet their financial obligation to the hospital. The "collection letters", as opposed to our current "collection data mailers", is a reversal of thought and efficiency. A data generated report indicating all necessary information for audits and reviews seems more orderly and systematic. We maintain in storage the fact sheets of our present data collection mailers. Our computer can be tested at any time regarding the number of letter messages mailed to our patients. I do not understand the logic of backup letters. An individual review of each physical account gives you an actual history of what was sent to the debtor, not a bunch of separate, incomplete pieces of paper. Keeping these letters seems unproductive and wasteful.

RESPONSE: Data mailers, particularly if they look like previous mailings, are not believed to be as effective as collection letters. Moreover, data mailers are generally not able to convey all the information required under the Trust Fund law and these rules. If the hospital can demonstrate on audit that collection letters were sent to individual accounts, there is no need to retain backup copies of collection letters.

COMMENTER: Overlook Hospital

COMMENT: How does this section of the regulations correlate to the Charity Care guidelines? It appears very possible that a patient could not qualify for Charity Care (i.e., high income/assets), but also not have the ability to pay due to higher liability/expense obligations.

RESPONSE: Patients who do not demonstrate charity care eligibility are deemed to have ability to pay. However, liabilities and expenses are relevant in determining an appropriate payment plan.

COMMENTER: Overlook Hospital

COMMENT: What does the State define as "eligible" liabilities, and where does the hospital bill fall in relative priority to the patient's current financial position?

RESPONSE: The Department does not define eligible liabilities in terms of determining ability to pay. A hospital bill has at least the same priority as the patients other obligations except for those imposed by law.

COMMENTERS: Overlook Hospital; Elizabeth General Medical Center

COMMENT: Please define extenuating circumstances as referenced in this section.

RESPONSE: Extenuating circumstances mean those situations/events that preclude a patient from providing complete financial information.

COMMENTERS: Newark Beth Israel; Elizabeth General Medical Center

COMMENT: Please define independent verification.

RESPONSE: Independent verification means documentation that is reliable because it is provided by a third party which is used to support a patient's report on his or her financial status.

COMMENTER: Elizabeth General Medical Center

COMMENT: Please define "totally unobtainable". What are examples and how much does a hospital spend before information is considered totally unobtainable?

RESPONSE: Totally unobtainable means that documentation does not exist or would be beyond the patient's ability to obtain or the hospital's ability to obtain from the patient. Individual circumstances vary and, therefore, a specific amount cannot be established to cover all situations.

N.J.A.C. 8:31B-4.40(b)

COMMENTER: NJHA

COMMENT: NJHA's analysis of hospital patient volumes for 1987 disclose a ratio of 9.3 million hospital outpatient visits to 1.1 million hospital inpatient admissions. NJHA's research also indicates that the distribution of uncompensated care between inpatient and outpatient services is approximately 70 percent inpatient, 30 percent outpatient. These statistics warrant and support greater investment of resources and collection effort be directed toward the larger balance inpatient accounts flowing into the Trust Fund. Since the number of inpatient accounts is a much smaller and more administratively manageable entity than outpatient accounts, the Association supports the proposed requirements for inpatient credit and collection follow-up procedures. The application of such stringent patient interviewing requirements on outpatient service areas, however, will add more administrative costs than the amount of potential realizable savings.

NJHA recommends, therefore, that Section 4.40(b) be revised to establish outpatient interviewing procedures which more appropriately reflect the above concerns. Specifically, our recommendation includes the following segregation of outpatient services and related interviewing procedures:

Emergency Room

1. Obtain proper identification of the patient pursuant to section 4.40(b)2.1
2. Determine existing third party benefits
3. Obtain documentation of insurance coverage pursuant to section 4.40(b)2ii.

Private Referred

1. Obtain proper identification of the patient pursuant to section 4.40(b)2ii
2. Determine existing third party benefits
3. Obtain documentation of insurance coverage pursuant to section 4.40(b)2ii **or**
4. Request payment in the form of cash or credit card **or**
5. Obtain financial disclosure as follows:

Patient or responsible party's place of employment, income, real property, and durable personal property and liquid assets owned by the patient or responsible party and bank accounts processed by the patient or responsible party.

RESPONSE: The Trust Fund law did not establish a distinction between inpatient and outpatient accounts. Although outpatient accounts are 30 to 33 percent of total uncompensated care, this amounts to $2 million annually. Moreover, outpatient accounts are at higher risk to be self-pay, and thus uncompensated care, because of less widespread cov-

erage for these services. Therefore, it is prudent to require hospitals to collect the information necessary to mount a viable collection effort prior to providing non-emergency services.

COMMENTER: Overlook Hospital

COMMENT: It is not practical to expect a determination of medical assistance eligibility at the time of admission. These sections as stated lead one to believe that if these steps are not followed, all non-emergent admissions must be deferred. As opposed to pre-admission procedures, the Department should consider requiring these steps to be performed within 5 days of admission or prior to discharge.

RESPONSE: The hospital is required to make a preliminary determination of whether the patient must be referred to Medicaid. The Department will consider future revisions requiring these steps to be done during, rather than prior to, admission. N.J.A.C. 8:31B-4.40(b)4v requiring deferral of care for failure to provide information has been deleted.

COMMENTER: Overlook Hospital

COMMENT: This section delineates the pre-admission steps which must be taken before an account can be transferred to bad debt. The requirements of this section are such that it would be impossible for all steps to be performed while a patient is waiting to be admitted. Insurance verification alone is normally not available immediately and usually requires contact with the carrier. This section, as it is currently proposed, will seriously impact the flow of patients through the admitting area.

RESPONSE: The rule does not require insurance verification prior to admission. It does require the hospital to request documentation of insurance coverage prior to the admission. However, this does not necessarily include contact with the insurance carrier.

COMMENTERS: HFMA; Wayne General Hospital; Bergen Pines County Hospital

COMMENT: There is a wide discrepancy in hospital interviewing and financial discovery, and accordingly, it is our recommendation that a uniform interviewing and asset information sheet be developed by the Department of Health for various environments (inpatient, emergency room, clinic, etc.) that would allow us to incorporate and gather information in a uniform manner.

RESPONSE: The Department will work with interested parties to develop a recommended form. Until such a form is developed, hospitals are responsible for establishing an interviewing process to collect the required information.

COMMENTER: Overlook Hospital

COMMENT: This section does not address prior admission/registration information. The Department should consider establishing a reasonable time limit on prior registration information. For instance, if a patient has been in the hospital within the last year, is the hospital responsible for repeating the entire interview process or can the hospital merely verify the existing information? Adoption of this concept would alleviate some of the concerns regarding the volume of recurring outpatient registrations.

RESPONSE: Hospitals will be permitted to base a bad debt claim on documentation that was received by the hospital within one year of the date of service. However, the information must be updated or verified at each admission/service and the original documentation must be made available to the auditors.

COMMENTER: Beth Israel

COMMENT: It is impossible to always predetermine the full extent of health insurance coverage especially in the outpatient area.

RESPONSE: If the hospital knows, or should know, that coverage is not complete, the hospital must collect the required information.

COMMENTER: Elizabeth General Medical Center

COMMENT: Again we emphasize the large amount of resources required and the inherent difficulty that is present in interviewing all Emergency Room patients. More specific guidelines are recommended in this area.

RESPONSE: The Trust Fund law indicates that all patients must be interviewed in order to obtain necessary credit and collection information. Patients in true emergency situations should be treated first and interviewed subsequently.

N.J.A.C. 8:31B-4.40(b)2

COMMENTER: Bergen Pines County Hospital

COMMENT: This paragraph requires the hospital employee to screen the patient for eligibility for medical assistance and then "refer the patient to that source and follow up." It may be difficult for hospital employees to screen the patients for eligibility for medical assistance. Moreover, it is entirely unclear what is meant by "follow up."

RESPONSE: The requirement to screen patients for eligibility for medical assistance is contained in the Trust Fund law. Follow-up means to contact the medical assistance office to expedite the application/claim.

COMMENTER: St. Peter's Medical Center

COMMENT: The proposed screening of the responsible party for medical assistance for any source is reasonable, but to expect the provider to follow-up is not. At what point does the patient become responsible for their actions? With whom is the provider to follow-up, the patient or the office of assistance? I believe this function needs to be clarified and better defined. The responsibility should be definitely upon the patient.

RESPONSE: The hospital must follow-up with the assistance office. If possible, follow-up with the patient is encouraged.

COMMENTER: HFMA

COMMENT: The requirement that hospitals "refer the patient to that source and follow-up" is unclear. Hospitals cannot force patients to apply for medical assistance. Once the referral has been made, if approval of eligibility is not received within 90 days, hospitals should be permitted to treat the patient account as self-pay and complete the collection cycle. Clarification is needed.

RESPONSE: The rules do not preclude the hospital from beginning collection efforts if the hospital believes payment will not be forthcoming from a potential payer. There is no requirement to suspend billing during the assistance application process although there is likewise no requirement to begin billing if it seems payment will be made.

COMMENTERS: Bergen Pines County Hospital; Clara Maass Medical Center; Wayne General Hospital; NJPAMA

COMMENT: These sections deal with the hospital's responsibility to assess the patient's potential eligibility for public assistance benefits. The criteria for public assistance benefits are complex, ever changing and dependent upon a multitude of factors. Consequently it is felt that the hospitals should not have the burden of determining ". . . the patient's eligibility . . .", but rather that this should be the function of the local public assistance office. This is particularly true in the outpatient environment where in depth interviews are almost impossible to conduct.

RESPONSE: The hospital is responsible for making a preliminary determination, based on the patient's assertions or documents on his or her financial status, whether the patient may be eligible for and should be referred to a public assistance program. This requirement has been in effect since January 1, 1989 for charity care patients and therefore should not require additional training on public assistance eligibility criteria.

N.J.A.C. 8:31B-4.40(b)3

COMMENTER: Overlook Hospital

COMMENT: The definition of an appropriate deposit needs to be addressed. The DRG amount is not known until after discharge, which makes the determination of an appropriate deposit impractical.

RESPONSE: The deposit must be based on ability to pay. Therefore, the exact DRG amount, while relevant, is not vital to a determination.

COMMENTER: Bergen Pines County Hospital

COMMENT: It is unreasonable to require an "appropriate deposit" from certain prospective patients. The suggestion that a reasonable payment plan be negotiated may be impractical and may simply delay the inevitable—namely, the patient's bill becoming a bad debt—and result in a cash flow problem for the hospital. The term "necessary and appropriate treatment" is inconsistent with other terminology used throughout the proposed rule. Since the reference to subsection "(a)" is omitted, it is not clear what the term "financial requirements" means.

RESPONSE: In those instances where a payment plan and deposit are not negotiated, the hospital must document the reasons for this failure and the efforts made to obtain. The term necessary and appropriate is not inconsistent; it refers to care that cannot be denied for failure to pay. Financial requirements means payment of the bill.

COMMENTER: Elizabeth General Medical Center

COMMENT: An appropriate deposit and a reasonable payment plan is required before admission. Besides the criterion of a patient's ability to pay, and his need for medical services, there should be a further criterion that references the patient's mental ability to deal with these requirements. The addition of this criteria would satisfy the concern we have for the large number of psychiatric and substance abuse patients we serve.

RESPONSE: A hospital may document in each specific case why a deposit and payment plan were not established. A blanket exception for psychiatric and substance abuse patients would not be appropriate, however.

COMMENTERS: Wayne General Hospital; HFMA

COMMENT: It should also be noted that the earlier sections of the proposed regulations permit the patient to make payment arrangements in excess of one year. This should be eliminated. Contract payments should be reasonable and concluded within the shortest time frame in the event that this provision remains. Clarification is needed, because the regulations do not indicate at what point collection efforts should begin after the patient defaults on a payment arrangement nor whether the entire collection process (e.g., statements, letters, phone attempts) must be restarted.

RESPONSE: If a payment plan is to be based on ability to pay, the length of time for a bill to be paid must be expansive. The regulation indicates that the collection process must begin again if the patient defaults on the payment plan.

N.J.A.C. 8:31B-4.40(b)4

COMMENTERS: Bergen Pines County Hospital; Beth Israel Hospital; Elizabeth General Medical Center; St. Peter's Medical Center

COMMENT: This paragraph is ambiguous, internally inconsistent and contradicts itself. If the hospital documents why complete information was not obtained and it is completely unobtainable, how can the hospital be still held responsible for obtaining complete information? Elaboration is needed.

RESPONSE: The second sentence will be deleted. The purpose of that provision was to ensure that the presence of an exception for obtaining required information did not lead hospitals to believe that they were not responsible to set up a system to obtain this information in all cases other than those documented as unobtainable.

COMMENTER: Overlook Hospital

COMMENT: How much further does the hospital have to go beyond documentation of the reasons why the patient could not comply? It is our opinion that the ensuing collection process will ensure the hospitals' diligent efforts in this regard.

RESPONSE: This paragraph is revised on adoption. Hospitals will either have to obtain the required information or document the reasons why the information was not obtained and the efforts the hospital made in attempting to obtain it.

N.J.A.C. 8:31B-4.40(b)4i

COMMENTER: Bergen Pines County Hospital

COMMENT: The required forms of documentation are unlikely to be available from the following category of patients: involuntary commitments, intoxicated patients, drug abusers, violent patients, etc. This regulation should make specific allowances for dealing with such patients. Similarly, "proper identification" as required in this paragraph will also be difficult to obtain for many of the types of patients that hospitals such as Bergen Pines regularly treat.

RESPONSE: N.J.A.C. 8:31B-4.40(b)4 indicates that if complete information is not provided by the patient the hospital must document the efforts made to obtain the information and the reasons why it was not provided.

COMMENTER: Beth Israel Hospital

COMMENT: Someone who would personally recognize the patient (e.g., hospital employee, police officer) would not necessarily be able to supply all the components required for proper identification. These people would not be privy to a patient's social security number, bank account number, etc.

RESPONSE: N.J.A.C. 8:31B-4.40(b)4 specifies that if complete information is not provided by the patient, the hospital must document the efforts made to obtain such information and the reasons why it was not provided. This paragraph was revised to define personal recognition as documentation of identification, not identification itself.

COMMENTER: Newark Beth Israel

COMMENT: According to the regulation, the designated hospital employee shall obtain documentation of proper identification of the patient. Does documentation mean specifically a copy of whatever is presented or is the documentation to be at the individual hospital's discretion?

RESPONSE: The types of documentation that may be accepted are stated in N.J.A.C. 8:31B-4.40(b)4i.

N.J.A.C. 8:31-4.40(b)4ii

COMMENTER: Bergen Pines County Hospital

COMMENT: It is fruitless to inquire whether the patient has complied with prior authorization requirements of the patient's insurance; indeed, the average consumer will often be unaware of this. As noted above, the term "immediate medical attention" used in this paragraph is inconsistent with other similar terminology.

RESPONSE: The hospital's inquiry as to the prior authorization status of the patient's insurance plan will heighten awareness of such provisions and prevent claims from being needlessly denied, thus putting a burden on both the patient and the Uncompensated Care Trust Fund.

COMMENTER: Community Memorial

COMMENT: Is the DOH suggesting that Registrar and Admitting Clerks make a determination of deferring care unless the patient is in need of immediate medical attention?

RESPONSE: Hospitals need not defer care. However, uncompensated care payments will not be available for services denied due to failure to obtain prior authorization. The patient may be referred to a nearby telephone to obtain the required authorization.

COMMENTER: Community Memorial

COMMENT: Pre-certification requirements should not become the responsibility of the hospitals. These restrictions placed on beneficiaries' hospitalization contracts are the patient's responsibility. Companies implementing these restricted contracts are responsible to educate their employees and implement procedures for compliance.

RESPONSE: The responsibility to obtain prior authorization remains with the patient. Hospitals are required under this rule to inquire as to whether any prior authorization requirement has been met and, if not, to obtain prior authorization or risk nonpayment of the claim. It would not be prudent for the Trust Fund to pay for uncompensated care if there is another appropriate and available payer. This subparagraph was revised to indicate that uncompensated care will not be paid if a patient has not complied with any prior authorization agreements with his or her health insurer.

N.J.A.C. 8:31B-4.40(b)4iii

COMMENTER: Jersey Shore

COMMENT: Hospitals should not be required to act in the capacity of the county welfare offices regarding the determination of eligibility for public assistance. To do so would require a massive training effort by hospitals since the eligibility criteria for municipal, county and state programs are so expansive. Then to have the patient undergo the same eligibility screening at the governmental agency would represent an inefficient and costly duplication of effort. This would be an improvement in the system if hospital employees, perhaps Social Workers, were authorized to approve Medicaid applications as is done in some other states.

RESPONSE: The hospital does not have to do the same screenings as the Medicaid office. The hospital's inquiry must be sufficient however to determine whether there is a possibility that the patient is eligible for an assistance program.

Any request to authorize hospital employees to approve Medicaid applications should be directed to the Department of Human Services.

COMMENTER: Newark Beth Israel

COMMENT: The regulations read "The employee or the Social Services office of the hospital shall also advise the Public Assistance office of the patient's possibile eligibility, including possible retroactive or presumptive eligibility, for the program." The regulation should indicate whether such a referral to the Public Assistance office should be made in writing or not. It is not clear whether the hospital is responsible for follow-up.

RESPONSE: The notification may be made in writing or orally. The hospital must be able to document that oral notification was given to the public assistance office. N.J.A.C. 8:31B-4.4(c)2 requires follow-up for medical assistance.

COMMENTER: UMDNJ

COMMENT: It appears that providing clients with resources sheets informing them what programs are available is adequate. No assistance can be rendered until an application is filled out; the patients must want help themselves.

RESPONSE: The rules require the hospital to refer the patient to appropriate sources of funding and to provide the necessary information to enable the patient to apply. The hospital must also notify the assistance office that such a referral has been made. If the patient does not fill out the application or follow-up on the referral, the hospital may not screen the patient for charity care.

COMMENTER: UMDNJ

COMMENT: It should be noted that O/P services would not be covered prior to the date of application for general assistance.

RESPONSE: This should be conveyed to persons who are referred to general assistance. N.J.A.C. 8:31B-4.37 indicates that charity care is not

available if the patient seems to be eligible but does not apply for Medicaid.

COMMENTER: Overlook Hospital

COMMENT: Does full coverage include deductibles? We recommend that the procedures be followed for only those patients with less than 100% coverage, excluding any consideration of deductible obligations. It is virtually impossible that upon admission the hospital would know whether or not the patient has met his/her deductible. Additionally, if the patient does have a deductible responsibility, often times they are covered by secondary insurance.

RESPONSE: Since research indicates that deductibles and copayment make up a significant part of uncompensated care, such an exclusion would not be prudent. However, if the hospital believes that the patient's bills will be fully covered by the primary or primary/secondary coverage, further credit inquiry (see N.J.A.C. 8:31B-4.40(b) 4iv) would not be necessary.

COMMENTER: UMDNJ

COMMENT: The Hospital would like to comment on the advisement of notifying the public assistance offices of a patient's possible eligibility. At UMDNJ-University Hospital, such a list could be generated daily with 150-200 names. This would be an arduous task for the Hospital and it would cause an oversaturation of paperwork in the Division of Public Welfare in Newark. The Division of Public Welfare has indicated in response to this policy that the feasibility of referrals on outpatient services would have a negative impact on the Agency.

RESPONSE: The requirement to notify the assistance agency was mandated in the Uncompensated Care Trust Fund Act.

COMMENTER: UMDNJ

COMMENT: Regarding Medicaid assistance, the Department requires an application; a list does not mean a thing.

RESPONSE: The medical assistance referral list is mandated by the Trust Fund law. The Department recognizes that the filing of a Medicaid application is necessary before benefits would be provided.

N.J.A.C. 8:31B-4.40(b)4iv

COMMENTERS: Beth Israel Hospital; St. Peter's Medical Center

COMMENT: The information required in section four is so confidential in nature, asking for it prior to treatment will reflect poorly upon the hospital. We will be portrayed as cold, uncaring, money hungry monsters. This section goes beyond what is reasonable to ascertain the likelihood of payment.

RESPONSE: The information requested in this section is standard in any transaction where credit is being extended. The information items included in the rule are mandated by the Uncompensated Care Trust Fund Act.

COMMENTER: Bergen Pines County Hospital

COMMENT: Again, the requirements here are totally unrealistic. Hospitals are not equipped to determine in advance the patient's or responsible party's real property, durable personal property, liquid assets and bank accounts possessed by the patient or responsible party. Even in the context of litigation this type of information is often difficult to obtain. Even through the efforts of a knowledgeable attorney with the assistance of court authorized discovery, hospital employees simply will not be able to obtain this information. Thus, hospitals are virtually certain to flunk this requirement. The reference to "responsible party" is unclear. The Department should define the criteria for this term.

RESPONSE: Hospitals are required by the Uncompensated Care Trust Fund Act to request this information. Hospitals that do not obtain the required information may document the reasons for this failure and the efforts made to obtain the information. Responsible party means any person legally responsible for the debts of the patient.

COMMENTER: Beth Israel Hospital

COMMENT: These sections call for the patient to be screened for medical assistance, charity care, the ability to pay, then a reasonable payment plan is negotiated. The patient must provide personal information, to include bank accounts with numbers. Most potential patients do not go to a hospital with the same information required for a loan. They go because they are sick and are seeking help.

RESPONSE: The Legislature has mandated that hospitals collect the information needed to mount an effective collection effort. If patients do not have the information available at the time of service they must be requested to provide it after service has been rendered. The hospital must document the efforts made to collect the required information.

COMMENTER: NJPAMA

COMMENT: The regulations state that if the patient does not qualify for full insurance coverage, the hospital must request specific asset information from the patient, including place of employment, income, real property, durable personal property, liquid assets, along with account numbers and the name and location of the patient's bank. This requirement is inappropriate in an outpatient emergency room environment. There are simply too many patients, too few employees and too little appropriate space to conduct such asset interviews. The environment is not conducive to a private financial discussion.

RESPONSE: The data elements cited above are required to be requested by the Uncompensated Care Trust Fund Act.

N.J.A.C. 8:31B-4.40(b)4v

COMMENTER: Elizabeth General Medical Center

COMMENT: The regulations require the deferment of service or admission unless immediate medical attention is required until the required information is provided to the hospital. The Medical Center requires clarification as to the degree of information requested. If the patient provides all or part of his demographics and part of his financial, is his services or admission deferred? In other words is the service or admission deferred unless he provides all and only all of the information requested.

RESPONSE: This provision has been revised to eliminate the language relating to deferral of care.

COMMENTER: Community Memorial

COMMENT: Will DOH provide signage (similar to the free care signs) to be placed in the emergency room lobby to notify the general public of their responsibility to meet these requirements or have their care deferred?

RESPONSE: The provision requiring deferral of care for failure to provide information has been deleted.

COMMENTER: Community Memorial

COMMENT: Who will be responsible if an incorrect determination is made, and treatment is deferred?

RESPONSE: The provision requiring deferral of treatment for failure to provide information has been eliminated.

COMMENTER: Community Memorial

COMMENT: Is DOH aware that it would be inappropriate for a lay person to make this medical determination?

RESPONSE: The provision requiring deferral of non-emergent care for failure to provide information has been deleted.

COMMENTER: Jersey Shore

COMMENT: The Act states that "Access to quality health care shall not be denied to residents of the State because of their inability to pay for the care". In addition, the Act requires the "designated hospital employee shall request from the patient . . . the patient's . . . place of employment, income, real property and durable personal property owned by the patient. . .". The hospitals require guidance regarding the rendering of care to patients who refuse such requests for personal financial disclosures. Service denials could carry extreme legal and financial consequences to the hospitals in the event that a patient's condition is adversely affected by the denial. We suggest that services not be denied in any setting other than elective admission whereby the patient and/or doctor has adequate time to assess the consequences of the denial.

RESPONSE: The provision requiring deferral of non-emergent care for failure to provide information has been deleted.

COMMENTER: Overlook Hospital

COMMENT: What is the Department's definition of a medical professional? If the Department is referring to physicians, has it considered the problems that admitting personnel will face when they cannot get in contact with the physician because he/she is in surgery? The regulations should stipulate that attempts should be made within a reasonable time frame, the patient is to be admitted and the attempt to notify the physician will be documented in the chart. It is our opinion that you will find very few physicians who will agree to defer their patient for numerous reasons, such as scheduling conflicts in the Operating Room and malpractice concerns. This leads to another concern: does the deferral of an admission constitute an order? If so, does this now mean that the admitting office will need to be staffed with RN's?

RESPONSE: The provision dealing with deferral of non-emergency care for failure to provide information has been eliminated.

COMMENTER: Overlook Hospital

COMMENT: The proposed regulations may affect a hospital's volume by deferring treatment. If the patient does not return to the hospital and goes elsewhere, will the Department entertain volume appeals due to a legal change under the accept option?

RESPONSE: The provision requiring deferral of care for failure to provide information has been eliminated.

COMMENTER: Overlook Hospital

COMMENT: This section also makes no reference to the type of service being provided. Are we now going to be asked to defer a $15.00 outpatient lab test because certain information was not provided at the time of registration and a medical professional has determined that the lab test is not immediately medically necessary? Additionally, it would appear that this section, like most, is impractical to the outpatient population.

RESPONSE: The provision requiring deferral of care for failure to provide information has been eliminated.

COMMENTER: Clara Maass Medical Center

COMMENT: Deferring patient care (in non-emergent cases) where financial information is incomplete or deliberately refused, does not address the cost incurred by hospitals during the "assessment" stage.

RESPONSE: The provision requiring deferral of non-emergency care for failure to provide information has been eliminated.

COMMENTER: Community Memorial

COMMENT: Could this proposal leave hospitals at risk for law suits?

RESPONSE: The provision requiring deferral of non-emergency care for failure to provide information has been eliminated.

COMMENTER: Elizabeth General Medical Center

COMMENT: A further area of contention is the ambiguity associated with the term "Written Certification by a Medical Professional or notation in the file by the designated hospital employee that verbal certification was given by a medical professional." What does this term encompass that isn't provided in the Hospital's Registration Sheet. We further request the Department to recognize that a patient's mental condition should also qualify for the immediate provision of service or admission.

RESPONSE: The provision requiring deferral of non-emergency care for failure to provide information has been deleted.

COMMENTER: South Jersey Hospital System (SJHS)

COMMENT: To implement the proposed regulations in our Outpatient and Emergency Room area will require major staffing changes in our registration personnel. To "defer" medical treatment will put the physicians in a position to order "STAT" tests, to get around the regulations.

RESPONSE: The Legislature has mandated that more stringent preadmission service rules be put in place. The provision requiring deferral of care for failure to provide certain information has been eliminated.

COMMENTER: Overlook Hospital

COMMENT: How does the Department define appropriate treatment? Is an elective admission not an appropriate treatment? It is clear that judgements of this nature are extremely difficult and also impractical.

RESPONSE: The rule references "necessary and appropriate" treatment. Elective admissions if necessary and appropriate, as determined by medical judgement and reviewed by utilization review organizations, may be treated as uncompensated care. Non-health care services, cosmetic surgery and medical denials are examples of care that is not necessary and appropriate.

COMMENTER: Community Memorial

COMMENT: How can these determinations be made unless the patient is seen by the medical staff?

RESPONSE: The provision requiring deferral of non-emergency care for failure to provide certain identification has been deleted. The provision requiring patients to obtain prior authorization if required by their health insurer has been retained. Hospitals currently triage non-emergency versus emergency patient in ER waiting rooms.

COMMENTER: Community Memorial

COMMENT: This amended rule would be extremely difficult to comply with in an emergency room setting without a liability risk involvement.

RESPONSE: The provision requiring deferral of non-emergency care for failure to provide required information has been deleted.

COMMENTER: Beth Israel Hospital

COMMENT: To defer outpatient services is significantly more complicated than inpatient. The logistics between hospital registration staff and physicians will be a never ending problem. Excluding routine physicals, all diagnostic or therapeutic ancillary services are necessary and appropriate. One does not really expect a physician to state otherwise. Consequently, going through this procedure will not result in less uncompensated care.

RESPONSE: The provision requiring deferral of non-emergency care for failure to provide information has been deleted.

COMMENTER: NJHA

COMMENT: NJHA's review of the Act has not yielded any language within Section 9 mandating the denial of care as proposed by the Department. Moreover, we do not find any such language within the entire body of the Act. Furthermore, we feel that such a deferral requirement stands in direct contradiction with the spirit of the Act as well as the specific language of the Act. The paragraph contained within Section 4.40(b)4iv requiring deferral of care should be deleted from the regulation.

RESPONSE: The provision requiring deferral of non-emergent care for failure to provide information has been eliminated.

COMMENTERS: HFMA; Wayne General Hospital

COMMENT: The provision of Section 8:31B-4.40(b)4iv of the proposed regulations dealing with the issue of "deferral of care" is untenable. The regulations mandate that hospitals defer care on non-emergent patients who do not have or refuse to provide financial information. And yet, contradictorily, the section concludes by saying "this section does not authorize hospitals to defer necessary and appropriate treatment for failure to meet financial requirements". The best approach to this issue is spelled out in the Statute wherein it is stated that "Emergent medical attention cannot be denied because of an inability to pay", and that the inherent contradiction in the proposed regulation should be eliminated.

RESPONSE: The provision requiring deferral of non-emergent care for failure to provide information has been eliminated.

COMMENTERS: NJPAMA; Newark Beth Israel

COMMENT: The regulations state that unless the patient's condition requires immediate medical attention, the hospital must defer the admission or service until the information required is received. The regulation goes on to state that this requirement can be bypassed if a medical certification is furnished. The NJPAMA believes that the medical certification as indicated in the proposed regulations is not a practical matter. The NJPAMA further believes that the issue of deferral of care poses many medical and legal problems and should be eliminated.

RESPONSE: The provision requiring deferral of non-emergent care for failure to provide information has been eliminated.

COMMENTER: Bergen Pines County Hospital

COMMENT: Within this single paragraph, the terms "immediate medical attention" and "necessary and appropriate treatment" are used interchangeably even though they are obviously different terms with different implications. This inconsistency, noted above, should be eliminated. Furthermore, to the extent that a determination of this kind must be made, the rule should state that the nation of this kind must be made, the rule should state that the hospital's determined will be presumed to be accurate.

RESPONSE: This provision has been eliminated; however, the terms referenced in the comments refer to two different types of treatment. In emergency situations, patients may be treated prior to attempting to obtain required information. Necessary and appropriate treatment may not be denied for failure to pay.

COMMENTER: St. Peter's Medical Center

COMMENT: Who will define the need for medical attention? If N.J. hospitals defer assistance can the televised incidents of N.Y. hospitals, with patients dying at the door step, be far behind? Is this the type of future we wish for our "glowing" state. I can imagine the administrative headaches when the slew of legal action result from this poorly thought out idea. Patients do not come to our hospital just for the sake of coming. Doctors definitely do send them.

RESPONSE: The provision requiring deferral of treatment for failure to provide information has been eliminated.

COMMENTER: Beth Israel Hospital

COMMENT: The following terms need to be uniformally defined: 1) medical professional and 2) necessary and appropriate treatment. There should also be clearly defined criteria for determining necessary and appropriate treatment.

RESPONSE: The provision referencing "medical professional" has been deleted. Necessary and appropriate treatment are health services covered by Chapter 83 which are determined to be medically necessary and appropriate by medical judgement and, if appropriate, by the responsible utilization review organizations.

N.J.A.C. 8:31B-4.40(c)1

COMMENTER: Bergen Pines County Hospital

COMMENT: Note use of the term "emergency basis" which is inconsistent with other terminology.

RESPONSE: The terminology has been revised throughout the chapter to consistently indicate the emergency status for such exceptions.

COMMENTER: Elizabeth General Medical Center

COMMENT: Regulations require that patients admitted on an emergency basis shall have an interview conducted within five working days

of the patients admission into the hospital or prior to discharge whichever is sooner. A more specific explanation of what constitutes five working days should be provided. Is five working days exclusive of weekends; if so, it should be so stated.

RESPONSE: Working days are calendar days excluding weekends and holidays.

COMMENTER: HFMA

COMMENT: The proposed regulations also require that "With respect to patients admitted on an emergency basis, the interview required in (b) 1 above shall be conducted as soon as possible but within five days of the patient's admission into the hospital or prior to discharge, whichever is sooner." Since many hospitals do not have financial counselors scheduled to work weekends, this requirement cannot be complied with in the instance of a patient admitted Friday evening and discharged Sunday. An exception should be permitted in such circumstances.

RESPONSE: The interview process is essential to gain the necessary credit and collection information. Hospitals have asserted that it is very difficult to get such information once the patient has been discharged. Therefore, it would be inappropriate to make such an exception.

COMMENTER: St. Peter's Medical Center

COMMENT: The requirement of following-up emergency admissions within five working days is another example of committee discussions and practical applications. An AVERAGE five working day period is workable, given normal working schedules. This proposal does not allow for any margin of extenuating circumstances. In most cases this could be accomplished by the time the bill is produced.

RESPONSE: If the hospital cannot meet the required time frame for an individual patient, this must be documented in the financial record with the reasons why the interview was unobtainable and the efforts made to obtain the interview.

COMMENTER: Newark Beth Israel

COMMENT: Hospitals should have at least the same 14 days allowed to send out the first statement instead of seven days to secure the deposit agreement required. Seven days is not enough time. I would like to recommend that such a deposit agreement should be requested from the patient while he/she is still in-house. Experience shows us that obtaining guarantee of payment or deposits, etc., after the patient is discharged and gone home is practically impossible in most cases. I would recommend that the regulation request that all efforts are made to secure the deposit, to obtain guarantee of payment, etc., while the patient is in-house, instead of waiting until he/she goes home.

RESPONSE: The rule does not preclude the hospital from requesting a deposit and setting up a payment plan while the patient is still in the hospital. The Department agrees that in many cases this is an effective collection technique.

The seven day requirement is contained in the current rule and does not constitute a change subject to comment.

COMMENTER: Elizabeth General Medical Center

COMMENT: The regulations require that on or no longer than seven days following discharge or verification of eligibility the hospital must obtain follow-up on eligibility for medical assistance, or secure the deposit agreement, or seek payment from the appropriate carrier. The requirement to obtain payment from the appropriate carrier or to follow-up medical assistance eligibility or to secure the deposit agreement within the seven day period after discharge is unrealistic. We do not expect to obtain payment from the carrier within seven days after discharge. It would also be rather difficult to obtain a deposit agreement from the patient after discharge if the patient is not willing to return to the hospital to negotiate that payment agreement. Consequently, any reference to the number of days after discharge should be omitted.

RESPONSE: The hospital is required to seek (that is, file a claim) payment, not obtain payment, within seven days after discharge. The hospital is not precluded from seeking to make deposit and payment arrangements prior to discharge.

COMMENTER: Elizabeth General Medical Center

COMMENT: Once we have screened a patient for eligibility for Medical Assistance from any source and have referred that patient to that service, we are required to follow-up. The problem is the source to which we have referred the patient. Determination of Medicaid or Welfare eligibility is a lengthy process over which the Hospitals have no control. Therefore, follow-up can be a lengthy and expensive process if not clearly defined. A further point of contention is that the determination of non-eligibility may occur anywhere from six months to two years after the service was rendered. What are we expected to do with that account at that point?

RESPONSE: At that point, unless the determination was based on the patient's failure to provide documentation or otherwise cooperate with the medical assistance process, the hospital may accept a charity care application. The relevant time period for the application and the supporting documentation is the time of service, not the time of the application. Otherwise, the account should be treated as bad debt.

COMMENTER: Beth Israel Hospital

COMMENT: The time frame alloted in this section for seeking payment or following up in required circumstances makes it extremely difficult to comply with. It would be more manageable to fulfill these requirements 30 days subsequent to billing. In either instance, additional staff would certainly be needed to handle the workload.

RESPONSE: These timeframes have been in place since 1982. It would not be appropriate to extend them in view of the legislative intent that credit and collection steps be handled expeditiously.

N.J.A.C. 8:31B-4.40(c)2

COMMENTER: St. Peter's Medical Center

COMMENT: This proposal relates to 8:31B-4.40(b)4. At what point does the responsibility of obtaining medical assistance transfer over to the patient? How can providers force a patient to obtain assistance? This is unreasonable as to the extent we can take control over someone's life.

RESPONSE: The hospital is not required to force a patient to obtain assistance. The hospital is required to screen the patient; to refer to any appropriate assistance programs; to inform the assistance program of the patient that is referred; and to follow-up on any assistance applications filed.

N.J.A.C. 8:31B-4.40(d)

COMMENTER: Overlook Hospital

COMMENT: How does the Department define periodically? Is the Department's definition consistent with the audit teams who will be reviewing the accounts?

RESPONSE: The Department has not defined periodically. That definition will be left to the hospitals. The definition would be subject to a review for reasonableness and the hospital's adherence to its own follow-up schedule.

The auditors, as the Department's agents, follow the Department's procedures, guidelines and definitions.

COMMENTER: Elizabeth General Medical Center

COMMENT: Throughout the regulations involving post discharge follow-up/in-house efforts there has been specific reference made to time limits. Procedures must be accomplished within specific time limits. The requirement to fulfill these procedures within a specific time limit should be a goal, not a specific requirement. In order to make it a specific requirement hospitals may have to undergo major modifications of their administrative staffs and also their computer systems. Therefore it would seem more reasonable to require that these time limits be set as goals and that failure to accomplish them should not result in any penalties.

RESPONSE: Most of these time frames were mandated by the Uncompensated Care Trust Fund Act. Others have been proposed by the Department in those areas where there have been difficulties with timing in the past. If a hospital cannot meet a timeframe on a specific patient, the hospital may document the reasons for the problem and the efforts made by the hospital to address the problem.

N.J.A.C. 8:31B-4.40(d)1

COMMENTER: NJHA

COMMENT: This section establishes the requirements for the number and timing of routine billing statements. Within this section the Department has also provided guidelines for the timing of cycle billed outpatients (outpatients for whom charges are accumulated and billed monthly). This computation is cumbersome and difficult for the hospitals to monitor. Moreover, the restrictive timing does not recognize the monthly billing of frequent and recurring outpatient services as an efficient and cost effective business practice. NJHA recommends, therefore, that the regulation simply be revised to permit monthly billing of outpatients for whom services are rendered on a routine or recurring basis.

RESPONSE: This revision has been made.

COMMENTER: Jersey Shore

COMMENT: Section 10 of the Act requires the hospital to send a billing statement within two weeks of discharge or date of service. This requirement ignores the complexities involved with Medical Records coding and abstracting to enable assignment of a DRG plus the requirements of physicians' attestation. Additionally, there are outside agencies

that have input into the billing for non-Medicare patients. The PRO is not subject to the time requirement of the hospital and we have found through experience that on the accounts they select that their certification can hold up a bill for several months.

RESPONSE: In those instances where the hospital is not able to send out the bill within the prescribed period because of internal problems or delays by outside agencies, the hospital must document its inability and the reasons for the delay.

COMMENTER: Bergen Pines County Hospital

COMMENT: The requirement that a billing statement be sent "within an average of 14 days" is impractical. Here, as throughout the regulation, the responsibilities imposed on hospitals with high levels of uncompensated care are disproportionately great. Hospitals with high levels of uncompensated care should have the opportunity to explain to the Department if this responsibility is impractical and the Department should make allowances for such hospitals.

RESPONSE: This requirement does not adversely affect those hospitals with high uncompensated care because it requires that all patients be treated the same way. At this point it would not be known whether a patient would be uncompensated care. Morever, hospitals with high amounts of charity care would be benefited because charity care patients are not billed.

COMMENTER: HFMA

COMMENT: The proposed regulations require that either 2 or 3 billing statements be sent to the patient depending upon whether the account is under or over $150.00. HFMA seeks clarification in the regulations that the term billing statement is synonymous with the term data mailer. Many hospitals generate data mailers as billing statements and HFMA seeks assurance that these data mailers comply with the regulations.

RESPONSE: The data mailer format is not inconsistent with the term "billing statement". The Department cannot provide further assurances without reviewing the content of the data mailer. Data mailers cannot be used as collection letters.

COMMENTERS: Overlook Hospital; Bergen Pines County Hospital; HFMA

COMMENT: The requirement that in-house collection efforts not be suspended until "mail has twice been returned to the hospital, and hospital personnel, despite reasonable efforts, are unable to determine a new mailing address of the patient or responsible party" adds cost without benefit. Delete twice.

RESPONSE: The legislation has required that mail be returned twice before collection efforts are ended. The rationale for this is that a change of address form may be filed after the first return. A second return would reveal the new address.

COMMENTER: St. Peter's Medical Center

COMMENT: The cycle concerning the 2nd and 3rd billing is not economically reasonable. Our successful experience of a billing cycle for the 2nd and 3rd statements on a 15 day cycle allows for better control. Sound business sense and success with our program prevents us from seeing the wisdom of changing our time schedule to comply with this proposal.

RESPONSE: Failure to adhere to the required time frames may result in audit penalties. The rationale behind this section is to ensure that bills are not sent so frequently that the entire collection process is over before the patient or his insurer can pay. This may lead to accounts sent to collection prior to 120 days.

COMMENTER: Bergen Pines County Hospital

COMMENT: It is not clear why the prescribed intervals (for example, "no less than three weeks and no more than monthly") are so narrow.

RESPONSE: The intent of this section is to prevent hospitals from billing so infrequently that patients do not get a sense of urgency about the bill or so frequently that patients do not have time to pay before the entire collection process is finished and the account is sent to an outside agent.

COMMENTER: SJHA

COMMENT: The collection policy on outpatient accounts should require the hospitals to send billing statements only. The cost associated with further efforts surely exceeds our reimbursement.

RESPONSE: Hospitals have been required since 1982 to send collection follow-up letters and telegram/telephone calls on outpatient accounts. Therefore, these costs have been included in the last two base year calculations.

COMMENTER: Clara Maass Medical Center

COMMENT: The proposed statement schedule fails to recognize the normal lag time experienced by hospitals between D/C date and bill drop date. The proposal should be changed to specify bill date as the beginning of the collection cycle.

RESPONSE: The lag time is recognized by the 14 days included in the rule. The stringent time frame is mandated by the Uncompensated Care Trust Fund Act.

COMMENTER: Elizabeth General Medical Center

COMMENT: Regulations require a patient to be contacted and payment requested on any portion of the bill declined by third-party carriers. With respect to these patients, self-pay patients, and legally responsible individuals collection procedures must include, but are not limited to a first billing statement which must be sent within an average of 14 days from the date of discharge for inpatients or date of service for outpatients. This requirement is contradictory to the facts as they occur with regard to self-pay balances on patient accounts. In order to bill fourteen days after discharge it is necessary to know what is the patient responsibility. The problem with determining the patient's responsibility is that all insurance information may not be at hand or the patient's insurance carrier may deny some or all of the amount owed in which case the amount owed by the patient is not determined until this fact has been so determined. The regulations as written do not recognize the complexity associated with self-pay balance billing. Not all Hospitals have the organizational structure or the proper computer systems which allow for multiple proration and billing. We also must comment on the requirement that a hospital must document all cases where this schedule cannot be followed. This requirement is ambiguous as it does not define what type of documentation is required. Is it to be part of the file or is it a separate schedule that documents all accounts which have not been billed within the fourteen day period? If this requirement to document all accounts which have not been billed in a fourteen day period is a separate schedule it would result in placing additional burdens on the already burdened patient accounts department.

RESPONSE: The Trust Fund law requires billing within 14 days of discharge. The law does not specify that such bills must only reflect the patient pay portion.

Any documentation of accounts that are not billed within the required time frame must be available to the Department's auditors. At this point, the format will be left to the hospitals.

N.J.A.C. 8:31B-4.40(d)2

COMMENTER: SJHS

COMMENT: Sending two collection follow-up letters and telephone/telegram contact after three billing statements have been sent is not realistic, based on our staffing and our community. The impact both from a cost standpoint and public relation one is negative.

RESPONSE: Hospitals are expected to collect vigorously under these rules. The Trust Fund cannot finance the hospital's public relations. Collection follow-up letters and telephone/telegraph contact have been required in all cases since 1982.

N.J.A.C. 8:31B-4.40(d)2iii

COMMENTER: Overlook Hospital

COMMENT: Please define too small to warrant legal action.

RESPONSE: This determination may be made by the hospital's outside attorneys, but may only be based on financial criteria (that is, the amount of the bill versus assets and income).

COMMENTER: Beth Israel Hospital

COMMENT: The first two sections state that collection and urgent notification letters must indicate the unpaid accounts will be reported to the Department of Treasury for that Department to apply or cause to be applied the income tax refund or homestead rebate.

The third section states that this step does not apply to accounts in excess of $150.00.

RESPONSE: The Department cannot identify the sections indicated and, therefore, cannot respond to this comment. Accounts over $25.00 must be reported to the Department for withholding of State tax refunds or homestead rebates.

COMMENTER: St. Peter's Medical Center

COMMENT: It is a legal issue that you cannot state an action if you do not have the means to follow through. As no details as to the where and how these unpaid bills are to be paid by attachment, this seems to be an idle threat. In addition, this seems to be a scare tactic, reminiscent of a burly bill collector knocking on your door in the middle of the night. This needs better definition.

RESPONSE: The Departments of Health and Treasury have set up a system to withhold hospital debtors' State refunds and rebates. The process has been proposed at 21 N.J.R. 2923(a).

N.J.A.C. 8:31B-4.40(d)2iv

COMMENTERS: Wayne General Hospital; HFMA; Bergen Pines County Hospital

COMMENT: Section 4:4.40(d)(2) delineates the required elements of the collection letter. One of the elements requires that the letter request a partial payment from the patient. This requirement is contrary to proper collection procedures. From a collection standpoint, it is inappropriate to offer to accept a partial payment while dunning for full payment. This element should be eliminated.

RESPONSE: The requirement to request a partial payment is included in the Uncompensated Care Trust Fund Act. Patients may be more likely to make payments on a payment plan based on ability to pay thus preventing collectible accounts from being sent to collection.

N.J.A.C. 8:31B-4.40(d)3

COMMENTER: St. Peter's Medical Center

COMMENT: If in-house calls are to be made via in-house efforts, how can a hospital's "agent" make an attempt to contact the patient? This is confusing and needs better definition.

RESPONSE: This provision will be revised to indicate that a hospital agent may make such calls. The cost associated with outside handling of required in-house efforts may not be reported as outside collection costs.

COMMENTERS: Jersey Shore; Hayt, Hayt and Landau

COMMENT: The regulation is ambiguous as to whether providers may rely upon outside contractors in order to conduct the required in-house patient interview and collection activity. We suggest that the Department specifically list those activities for which a provider may enlist the assistance of an outside contractor.

RESPONSE: A hospital must use its own staff for pre-admission/discharge steps required under Section 9 of the Trust Fund Act. Hospitals may use outside agents/contractors for the post discharge steps required under Section 10 of the Trust Fund Act. Hospitals must report the cost of these outside contractors under screened A & G/Fiscal cost center, not as outside collection costs. The hospital must also ensure that the contract complies with Chapter 83 law and regulations and must be able to provide the Department with adequate documentation on audit of any steps taken by the outside contractor.

This distinction is based on the Act's use of "designated hospital employee" in Section 9 and its use of employee in section 10. "Designated hospital employee" is specifically defined to include only those persons employed by the hospital.

COMMENTER: Beth Israel Hospital

COMMENT: The first section, (d)3, states the hospital or its agent must make three telephone attempts to reach the patient or responsible party. The second section, (d)3i, states that telephone contact means a person-to-person discussion about the bill between a hospital employee and the patient or responsible party. If the hospital or its agent may make the telephone attempts, is it not quite probable the agent may also make the telephone contact? If so, could not the agent have the ability to discuss payment?

RESPONSE: This provision will be amended to include a discussion with the hospital's agent as a telephone contact.

COMMENTERS: NJHA; HFMA; Wayne General Hospital

COMMENT: This section mandates a sequence of telephone attempts after the hospital sends the patient statements and follow-up letters. The sequence of the phone calls should not be mandated, but rather that the hospital should be permitted to begin telephone attempts after the first statement is sent. This will lead to a more efficient utilization of personnel and equipment.

RESPONSE: The intent of this section is to standardize industry practice and to insure that more expensive, labor intensive telephone collection techniques are used after the failure of less expensive billing processes.

N.J.A.C. 8:31B-4.40(d)4

COMMENTER: Elizabeth General Medical Center

COMMENT: The regulations state that documentation in each patient's file should reflect a bona fide collection effort or adequate reasons related to the case which support the Hospital's decision to terminate the collection efforts if such efforts are terminated prior to completing the steps listed above. These steps above involve three billing statements, two collection letters, three telephone calls and a collection telegram. Does a patient's history of prior and continued Bad Debt support adequate reason to terminate the collection effort prior to the completion of all these steps listed?

RESPONSE: Yes, provided that during the pre-admission information-gathering process there was no indication that the patient's situation had changed thus increasing the likelihood that the account would be collected.

N.J.A.C. 8:31B-4.40(e)

COMMENTER: Jersey Shore

COMMENT: Section 10(a) of the Act states that "A hospital shall comply with the collection procedure on all outstanding accounts until the point is reached where the cost of collection exceeds the patient's outstanding balance." Presently, no definitive guidelines exist which would permit hospitals to justify a small balance write-off. We suggest that this be handled by the Hospital's performance of a cost/benefit analysis. The hospital specific calculation for the small balance write-off would be subject to approval by the Department's uncompensated care audit division.

RESPONSE: Small balances may, under the language quoted above, be written off when the cost of doing the next required collection step would cause the hospital's collection effort to exceed the cost of the bill. Hospitals must determine the marginal cost of post discharge collection efforts to determine at what point small balance accounts may be written off. These determinations will be subject to DOH review.

COMMENTER: Beth Israel Hospital

COMMENT: All remaining unpaid balances must be reviewed not less than 90 days and not more than 120 days following discharge. Sheer volume of accounts would necessitate additional staff to attempt to ensure all unpaid balances were reviewed within this time frame. It would be more efficient to review unpaid balances at the time they are scheduled to transfer to bad debt.

RESPONSE: Since 1982, the rules have required this review not less than 90 days following discharge. Therefore, the Department does not agree that there would be additional costs associated with this section.

The purpose of this provision is to review unpaid balances at the time a decision is to be made whether the account is collectible or not. Under the timing in this rule, that point should usually occur between 90 and 120 days after discharge. If the review indicates that the account is collectible, the hospital must hold the account.

COMMENTER: Newark Beth Israel

COMMENT: The patient portions owed after payment is received from third parties cannot be reviewed within 90-120 days after discharge because it sometimes takes longer than that for the third party to pay their portion. For example, on a patient having commercial insurance, the account is submitted to the carrier and sometimes paid three, four, or five months later. At that time, we receive only 80% of the balance due and then we start doing collection work on the remaining 20%. The regulation should be specific in this area.

RESPONSE: Hospitals should review these accounts for collectibility. If the insured has not paid or has just paid the account must be deemed collectible. This review process is as important to determine ways to enhance collectibility as it is to determine whether a write off is appropriate.

N.J.A.C. 8:31B-4.40(e)1

COMMENTER: Community Memorial

COMMENT: The regulations stating: Evidence clearly shows that there is likelihood of recovery at any time in the future does not clearly define a reasonable time limit of recovery. Nor does it define recovery from who—the patient or an insurance company.

RESPONSE: The rule clearly defines the relevant time frame "at any time in the future". It also means recovery from any party.

N.J.A.C. 8:31B-4.40(e)2

COMMENTER: Clara Maass Medical Center

COMMENT: Under the proposed language hospitals are to pursue collection and expend resources up to the value of the account. We feel that hospitals must be permitted to exercise judgement in this regard and pursue collection on viable accounts only.

RESPONSE: Hospitals may cease collection efforts on certain accounts as specified in the regulation but must document adequate reasons related to the individual case which support the provider's decision to terminate the collection efforts.

COMMENTER: Bergen Pines County Hospital

COMMENT: Under the earlier language, the hospital was authorized to use sound business judgement to estimate in advance whether the cost

of collection "is likely to exceed" the "estimated recovery." This would allow the hospital to avoid any expense if that expense is likely to be pointless. Under the proposed language, the hospital would have to invest the funds even if recovery is unlikely and thus lose not only the cost of the underlying bill but futile recovery costs as well. Under the original language, in the case of a $2,000 bill, the hospital could decide in advance, in the exercise of sound business judgement, that the bill could not be collected and thus be required to expend $2,000 anyway. Moreover, it is far more reasonable for the hospital to assess the "estimated recovery" instead of the "amount of the bill."

RESPONSE: The amount of the bill is an objective figure; the estimated recovery is subjective and therefore less easy to determine.

A hospital is not required to spend $2,000 to collect a $2,000 bill. A hospital must complete the required in-house collection steps until the cost of those steps exceeds the amount of the bill. This is only relevant to those small balance accounts where the cost of the steps (bills, letters, telephone calls) exceed the amount of the bill.

N.J.A.C. 8:31B-4.40(e)2i

COMMENTER: Bergen Pines County Hospital

COMMENT: This paragraph prescribes reduced collection procedures for accounts of $150.00 or less. The concept makes sense but the breakoff point, of $150.00 seems unreasonably low.

RESPONSE: Low balance accounts, although each small, make up a significant portion of uncompensated care. Therefore any further reduction in the required collection steps would be inappropriate.

The $150.00 figure was proposed after consultation with the industry and other affected parties. After presentation to and discussion with the Health Care Advisory Board, the amount was raised to $200.00.

COMMENTERS: Wayne General Hospital; HFMA; NJHA

COMMENT: Section 8:31B-4.40(e)(2) attempts to foster a distinction between inpatient and outpatient accounts on the basis of a low balance threshold of $150.00 as it relates to Section 10 of the Statute. This distinction is appropriate and should be incorporated into the final regulations. However, it is felt that the collection steps enumerated in the proposed regulations are too exhaustive and expensive for low balance accounts. The requirement for one follow-up letter should be eliminated and only one telephone attempt should be mandated.

RESPONSE: Low balance accounts, although each is small, make up a significant portion of uncompensated care. Therefore, any further reduction in the required collection steps would be inappropriate.

COMMENTER: Newark Beth Israel

COMMENT: This section refers to sending only two billing statements, one follow-up letter, two attempts at the telephone contact, and one priority mail message on inpatient balances under $150.00. All inpatient accounts should be submitted to the same collection procedures regardless of the amount of the balance. It would be cumbersome and difficult to determine the kind of collection procedure to be followed based on the balance of the accounts especially when using an automated collection system. This part of the regulation on the $150.00 limit should be eliminated. I would like to request that the regulation authorizes hospitals to automatically write-off balances under certain minimums, like $10.00 for inpatients and $5.00 for outpatients, without submitting them to any collection procedures.

RESPONSE: The hospital is not precluded from using the full collection process on all accounts, including those under $200.00.

Hospitals may cease collection steps on small balance accounts at the point where an additional step would make the cost of collection exceed the amount of the bill. Small balances may be written off as courtesy adjustments but may not then be reported as uncompensated care.

N.J.A.C. 8:31B-4.40(e)2i(3)

COMMENTER: St. Peter's Medical Center

COMMENT: This procedure is an idea that seems to be unworkable economically. The average monthly numeric volume of over 7,800 active in-patient and out-patient accounts in our collection department, with balances ranging from $7.00 to over $100,000.00 does not humanly allow for two phone attempts on all balances under $150.00. Automatic means is not an answer as it violates the privacy act (verifying that the number called is the right number, and verifying the correct person is reached). This proposal is unreasonable and cost prohibitive. Our past experience in this matter enables us to speak confidently and with convictions. Collection agencies don't attempt calls on balances under $75.00 for the same reason.

RESPONSE: The Uncompensated Care Trust Fund law requires that phone contact be attempted on all accounts. The Department, while not advocating the use of automated telephone systems, disagrees that such systems inherently violate privacy provisions. Calls need not be made if the cost of all previous required collection steps and the cost of attempting contact would exceed the amount of the bill.

N.J.A.C. 8:31B-4.40(e)2ii

COMMENTER: Elizabeth General Medical Center

COMMENT: The regulations require that accounts not collected after following the steps described in 8:31B-4.40 must be referred to the Department of Health who shall request the Department of Treasury to apply the income tax refund or the Homestead Rebate against the Bad Debt account. What is unclear about this regulation is: is the process to be followed after an outside collection agency has declared the account as uncollectible or is it to be followed after the account is transferred to an outside collection agency? If the procedure is to request the Department of Health to request the Department of Treasury to apply or cause to apply the Income Tax Refund or Homestead Rebate after the account has gone to an outside collection agency, does it imply that the outside collection agency will receive its fee for amounts collected by the Department of Treasury? In other words when accounts are sent to outside Collection Agencies, they are entitled to a percentage of collections. If the collection is made by the hospital or by some other source such as the Department of Treasury, will the outside Collection Agency be entitled to their percentage of collections?

RESPONSE: Accounts should be reported after they are written off. This usually occurs when the accounts are sent to a collection agency. Collection agencies would not be entitled to a percentage of any collections made through the SOIL System.

COMMENTERS: NJHA; Wayne General Hospital; St. Peter's Medical Center; UMDNJ; Community Memorial; Bergen Pines County Hospital

COMMENT: These sections contain language requiring hospitals to report certain past due accounts to the Department of Health for purposes of applying the debtors' income tax refunds and homestead rebates directly to the past due account balance. The proposed language, however, is silent on the details of how this will be accomplished. Language should be added to these sections specifying the content of the information needed to accomplish this goal and the frequency and format of reporting being required of hospitals.

RESPONSE: Rules implementing the Trust Fund's use of the SOIL system were proposed at 21 N.J.R. 2923(a).

COMMENTER: Overlook Hospital

COMMENT: Is it the collection agency's responsibility to notify the Department of uncollectible accounts and if so, how often is the Department to be notified? Has any system been proposed at the Department to handle these bad debt accounts? Once the account is referred to the Department, is the Department's intention to refer all future patient inquiries to the Department? If the Department does intend to handle those inquiries, it might be appropriate to have the final collection notice provide a telephone number and contact person at the Department.

RESPONSE: The responsibility to notify the Department of uncollectible accounts for the purpose of accessing the SOIL system remains with the hospital. Regulations pertaining to this process have been proposed at 21 N.J.R. 2923(a). The hospital and its agents would still be responsible to collect the accounts. This system only pertains to income tax refunds and homestead rebates. A contact person at Department of Health will be identified to the patient when the patient is informed that the refund or rebate is being withheld.

N.J.A.C. 8:31B-4.40(g)

COMMENTER: Jersey Shore

COMMENT: Hospitals should not be responsible for action pertaining to the withholding of tax refunds or homestead rebates. We feel that this should be taken by and at the discretion of the Department. If such action is required by the Hospital we will need specific instructions on how and when to file for the amount due.

RESPONSE: Hospitals are not responsible for withholding tax refunds and homestead rebates. Hospitals are responsible for notifying patients that bad debt accounts are subject to this withholding via the collection letter series. Hospitals are also responsible for submitting lists of bad debt accounts for withholding. Regulations containing specific instructions have been proposed for initial publication at 21 N.J.R. 2923(a).

COMMENTERS: Bergin Pines County Hospital; St. Peter's Medical Center, Hayt, Hayt and Landau; Jersey Shore

This paragraph requires hospitals to bring legal action in all cases but then states that the hospitals shall not execute judgement on a patient's

principal residence or on personal property or assets "needed for daily living." If legal action is to be required, then the obvious asset of a principal resident should not be excluded; otherwise, law firms will have a significant disincentive to proceed. Furthermore, it may not be clear until the end of the lawsuit whether there are other assets available for collection. Tying an attorney's hands in this manner will increase the cost of legal fees to the hospitals in that attorneys may refuse to handle the matter on a contingency fee basis. The term "assets needed for daily living" should be defined.

RESPONSE: The rule authorizes the hospital to place a lien on the principal residence but not to execute that lien. The lien would be in place so that when the property is transferred or sold the hospital would be able to enforce its judgement. This is comparable to the process established by Medicaid to cover nursing home costs.

The section exempting "assets necessary for daily living" will be deleted.

COMMENTER: Hayt, Hayt and Landau

COMMENT: For accounts exceeding $150.00, the regulation suggests that a provider must refer the delinquent account to a collection agency prior to the commencement of litigation. The controlling statute directs only that further legal action to taken, in appropriate circumstances, as does N.J.A.C. 8:31B-4.40(g); yet N.J.A.C. 8:31B-4.40(e) states that appropriate accounts may be "sent to an outside collection agency or pursued through appropriate legal action". Moreover, N.J.A.C. 8:31B-4.40(e)(1)iii states that "for accounts in excess of $150.00, the hospital shall complete all steps through utilization of collection agencies and legal action".

The Legislature mandated that providers engage the services of attorneys in order to "maximize their credit and collection efforts". The Legislature did not mandate utilization of outside collection agencies, as opposed to law firms, nor are the services of collection agencies an alternative to required legal action under the statute. At best, collection agency activity must be viewed in a supplementary capacity to other measures required by statute and regulation. This point, however, requires the Department's clarification.

RESPONSE: The Legislature authorized the Commissioner to set up more stringent collection steps than those contained in the law. Therefore, it is appropriate to require hospitals to send accounts to collection agencies when appropriate.

COMMENTER: Hayt, Hayt and Landau

COMMENT: N.J.A.C. 8:31B-4.40(g)(1), as proposed, is unlawful. The Department is apparently attempting to regulate post-judgement enforcement activities which are already the subject of controlling statutes. N.J.S.A. 2A:17-1 et seq. already sets out the permissible scope of post-judgement execution proceedings. It also includes restrictions. For example, N.J.S.A. 2A:17-19 statutorily creates a $1,000.00 per person exemption to which all personal property levies are subject. N.J.S.A. 2A:17-56 directs that in general only 10% of a debtor's gross pay may be levied upon. N.J.S.A. 2A:17-57 creates the identical 10% limit for levies upon any rights and credits due the debtor. The Legislature was well aware of the potential for creditor overreaching and enacted these statutes to prevent against possible debtor destitution. An efficient system for hearing and deciding debtor challenges to levies is already in place. The broad prohibition proposed by the Department, however, would purport to further restrict post-judgement remedies well beyond the standards permitted by statute. Accordingly, this proposal, if enacted, would be invalid as well as ill-advised.

We therefore suggest that the Department modify N.J.A.C. 8:31B-4.40(g)(1) so as to effectively protect the patient and simultaneously enable the provider, through its counsel, to more effectively collect accounts which may otherwise be categorized as uncompensated care within the well-established legal framework.

RESPONSE: This provision is not unlawful in that it is not in conflict with the statutes cited. It does ensure additional consideration for medical debts.

COMMENTER: Overlook Hospital

COMMENT: An area given emphasis in this Section is the requirement to pursue legal action against many patients. Collection agencies, as private companies who are not compensated unless they collect, do at present sue all patients on whom such action is appropriate. If it is the Department's intention to have the Hospital pursue legal action on its own, we don't believe there is any appreciable value to be gained by having the hospital expend resources to manage this cumbersome activity (which requires extensive follow-up during the legal process).

RESPONSE: There is no requirement, but no preclusion, that hospitals use in-house counsel to collect overdue accounts.

COMMENTERS: NJHA; Wayne General Hospital

COMMENT: The proposed regulatory language defining legal action is confusing and inappropriately restricts the hospitals ability to recover bad debts. Determinations on whether to proceed with lawsuits and whether to act upon judgements obtained must be made on a case-by-case basis and on the advice of the hospital's legal counsel. Publishing restrictions in formal regulations on the hospital's ability to execute judgements may mitigate their ability to use the leverage of the legal challenge as a tool to collect past due accounts. This section should be rewritten as follows:

(g) Legal action shall be required in all cases unless (1) it is not appropriate based on the patient's income and assets, or (2) the patient's bill is less than the prospective costs of legal action.

Legal action shall not be taken for Medicaid recipients for medically necessary and appropriate services.

1. Legal action shall be defined as the filing of a lawsuit or a lien and all subsequent steps in the litigation process, including entering a judgement and issuing execution on the judgement where appropriate.

RESPONSE: The paragraph will be modified in accordance with this comment except that the protection for the primary residence will be retained.

N.J.A.C. 8:31B-4.40(h)

COMMENTER: Hayt, Hayt and Landau

COMMENT: There are no limits specified on the length of time an agency may seek recovery, nor are there standards set on the permissible type, or duration of payment arrangements. Furthermore, the effect of required legal action under the statute is diluted, because the proposed regulation does not define when continued collection agency activity should be viewed as ineffective and the account forwarded for legal action. This apparent "open-ended" policy toward collection agency activity removes much of the sense of urgency necessary to effectively recover an account. Agency delay and inactivity may also allow the Statute of Limitations to lapse or otherwise prejudice the providers' ability to recover as a result of bankruptcies, job departures and other changed financial circumstances. We therefore suggest that time limits, at a minimum, be imposed on collection agency activity so that accounts are timely referred for required legal action where the accounts have not initially been forwarded to law firms by the provider.

RESPONSE: The Department is not prepared to offer regulations on this point. The Department will monitor this area to determine whether additional regulation would be appropriate.

Summary of Changes Between Proposal and Adoption:

There are several changes being made upon adoption. The following changes are explained in the Summary of Comments:

N.J.A.C. 8:31B-4.38(a)1 is being amended to indicate that under certain circumstances accounts may be written off prior to 120 days.

N.J.A.C. 8:31B-4.39(a)4 has been amended to indicate consistently that a hospital's bad debt provision may be used at final reconciliation.

N.J.A.C. 8:31B-4.40(b)4 was amended to indicate that hospitals may document why required information is unobtainable.

N.J.A.C. 8:31B-4.40(b)4i was amended to define personal recognition of a patient as a way of documenting identification; previously this was defined as being identification.

N.J.A.C. 8:31B-4.40(b)4ii was amended to indicate that uncompensated care will not be paid if a patient has not complied with any prior authorization agreements with his or her health insurer.

N.J.A.C. 8:31B-4.40(b)4v was deleted. This section required hospitals to defer non-emergency treatment if the patient could, but did not, provide the required information.

N.J.A.C. 8:31B-4.40(d)1 was revised from requiring a 14 day median date for monthly outpatient bills to allowing a 31 day billing cycle.

N.J.A.C. 8:31B-4.40(d)3i was amended to clarify that hospital agents, as well as employees, may contact patient by telephone.

N.J.A.C. 8:31B-4.40(g)1 changes those assets upon which a judgement may be executed. It deletes the exception for "assets necessary for daily living" because this is already covered by New Jersey creditor statutes. It also clarifies that a judgement may be executed on a primary residence when the property is sold or otherwise transferred. Currently, there is no limit on a hospital's ability to execute judgment on a patient's assets including his or her primary residence.

The following changes were made on the Department's initiative:

N.J.A.C. 8:31B-4.40(d)3ii(1) was revised to eliminate the requirement for a two color envelope for urgent notification letters, in accordance with consultation with the Health Care Advisory Board.

N.J.A.C. 8:31B-4.40(e)2i was revised to specify limited collection procedures for accounts under $200.00, in accordance with the determination of the Health Care Advisory Board.

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

8:31B-4.38 Uncompensated care

(a) Uncompensated care includes only the reasonable cost of the following:

1. Bad debts *[For]* ***for*** Chapter 83 Services, provided appropriate collection procedures as defined in N.J.A.C. 8:31B-4.40 are followed and the account is at least 120 days old ***except as provided in N.J.A.C. 8:31B-4.40(e)***;

2. Charity care for Chapter 83 Services, provided the patient is qualified as eligible pursuant to N.J.A.C. 8:31B-4.37;

3. Advanced life support (ALS) services provided pursuant to P.L. 1984, c.146 (N.J.S.A. 26:2K-7 et seq.) provided the patient is qualified as eligible for charity care pursuant to N.J.A.C. 8:31B-4.37. The Commission shall establish a schedule of reimbursement rates for advanced life support services. Reimbursement shall exclude bad debts, the difference in a contractual allowance, and any medical denials for advanced life support services. This shall apply to reimbursement for ALS services as of November 1, 1987;

4. Charity care, as defined by following N.J.A.C. 8:31B-4.37 and bad debts, provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.0, for outpatient dialysis services provided after September 1, 1987 to patients ineligible for Medicare coverage. Reasonable costs shall be limited to the lower of the hospital's charges or the prospectively determined composite rate as established by Medicare. The amount reported by the hospital as uncompensated care shall not include Medicare co-insurance amounts since Medicare will reimburse providers for that amount provided reasonable collection efforts are pursued, or if the patient is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37.

(b) Uncompensated care excludes the cost of the following:

1. Medical denials, which are services that are denied for lack of medical necessity by a utilization review organization (URO) or peer review organization, unless the denial is for days within the trim points;

2. Courtesy adjustments as defined in N.J.A.C. 8:31B-4.15(a)4;

3. Discounts provided to health maintenance organizations or other payers;

4. Patient Convenience Items as defined in N.J.A.C. 8:31B-4.65;

5. Excluded Health Services as defined in N.J.A.C. 8:31B-4.62;

6. Cosmetic surgery except where medically necessary;

7. Cost associated with procuring organs sent to foreign countries;

8. Non-health services provided by a hospital; and

9. Services not paid pursuant to Chapter 83 except as provided in (a)3 and 4 above.

(c) Uncompensated care shall be determined prospectively as the cost associated with eligible services provided to persons determined to be eligible for charity care pursuant to N.J.A.C. 8:31B-4.37, net of grants and other funds available for the medically indigent, and for a hospital's Bad Debt Provision provided appropriate collection procedures have been followed.

8:31B-4.39 Determination of uncompensated care payments

(a) In order to include prospectively a factor for uncompensated care, such care shall be measured for the Current Cost Base pursuant to N.J.A.C. 8:31B-4.131 as follows:

1. The Statewide uncompensated care add-on shall be determined pursuant to N.J.A.C. 8:31B-7.3(a)1.

2. A hospital's uncompensated care amount shall include the sum of a hospital's actual, reasonable charity care and a reasonable provision for bad debt. A hospital's uncompensated care amount may be adjusted by the Commission for inability to document historical charity care eligibility determination policies and practices and bad debt collection policies and practices which meet or surpass in effectiveness the appropriate collection procedures defined in N.J.A.C. 8:31B-4.37 and 8:31B-4.40, respectively.

3. In setting the Schedule of Rates for each hospital the uncompensated care factor shall be applied to the Preliminary Cost Base (determined in accordance with the Methodological and Procedural Regulations). From the Schedule of Rates will be subtracted the Current Cost Base year amount of grants or payments from county governments, municipal governments or others on behalf of the medically indigent.

4. At final reconciliation the uncompensated care revenue will be adjusted to the actual amount of charity care and bad *[debts]* ***debt provision***.

5. Hospitals shall implement appropriate collection procedures as defined in N.J.A.C. 8:31B-4.40. Hospitals that fail to follow the appropriate collection procedures shall receive reductions in their uncompensated care amounts.

6. Hospitals that fail to meet their Hill-Burton obligation for community services (see PHS 42 CFR Part 124) shall receive appropriate reductions in their uncompensated care amounts. Hospitals that fail to meet charity care requirements as defined in N.J.A.C. 8:31B-4.37 shall receive appropriate reductions in their uncompensated care amounts pursuant to N.J.A.C. 8:31B-4.39.

7. The hospital shall not pursue payment according to specified billing procedures for those patients who meet the criteria described in N.J.A.C. 8:31B-4.37.

8. Total Deductions from Gross Operating Revenue for the Current Cost Base year must agree with the hospital's financial statement for the same reporting period.

9.-10. (No change.)

8:31B-4.40 Appropriate collection procedures

(a) In determining ability to pay, the provider shall take into account a patient's total resources including, but not limited to, an analysis of assets (except those which may be necessary for the patient's daily living), liabilities, income and expenses. Although extenuating circumstances may be considered, independent verification of both the patient's financial condition and the circumstances shall be required unless totally unobtainable. Moreover, the provider shall make a continuing, diligent effort to secure payment from the patient, any legally responsible individual, or any other potential source. The provider's collection effort shall be documented by copies of bills, follow-up letters, reports of phone calls, personal contact, and additional supporting documentation stored in files or on computer. Such documentation must be maintained until the Commission has approved the final audit covering the time of service. Minimum appropriate collection procedures are defined as those set forth in this section.

(b) Pre-Admission/Service Procedures: Except where an emergency medical condition dictates otherwise, prior to or upon admission or service, a patient or the patient's family member, responsible party or guardian, as appropriate, shall be interviewed by a hospital employee(s) who has been trained in the collection of patient financial data, identification of third party coverage and in assessing a patient's eligibility for public assistance. This interview shall include the following activities:

1. Determine all existing third-party benefits.

2. Screen the patient for eligibility for medical assistance from any source; refer the patient to that source and follow up. At such time, for any patient found to be non-eligible for existing medical assistance programs, a determination shall be made with respect to the patient's full or partial qualification for charity care pursuant to N.J.A.C. 8:31B-4.37.

3. If the patient does not qualify or qualify fully under (b)1 and 2 above, an appropriate deposit shall be required and a reasonable payment plan negotiated prior to admission, based on the patient's ability to pay and the type of services to be rendered. A reasonable payment plan may, if necessary based on the patient's ability to pay, extend beyond a term of one year from the date of admission or service. The hospital may write-off to bad debt any amounts remaining after one year, providing all appropriate collection steps up to that point have been taken. These accounts shall not be sent to a

collection agency unless the patient defaults on his or her payment plan and unless the hospital first follows the required in-house collection steps to reinstate the payment plan. The monies collected by the hospital after the account has been written off shall be considered recoveries of bad debts. Necessary and appropriate treatment cannot be denied when the patient is unable to meet the financial requirements. However, upon adequate documentation and independent verification of the patient's qualifications for charity care, the hospital should not pursue the collection procedures set forth herein.

4. If complete information is not provided by the patient, the hospital shall document the efforts made to obtain such information and the reasons why it was *[not provided. However, merely stating the reason why information was not provided does not relieve the hospital of its responsibility to obtain required information]* ***unobtainable***.

i. The designated hospital employee shall obtain documentation of proper identification of the patient. This shall include all of the data elements listed below as "proper identification", along with one or more of the following forms of documentation of proper identification. Documentation of proper identification may include, but shall not be limited to, a driver's license, a voter registration card, an alien registry card, a birth certificate, an employee identification card, a union membership card, an insurance or welfare plan identification card or a Social Security card. Proper identification of the patient may also be *[provided]* ***documented*** by personal recognition by a person not associated with the patient. For the purposes of this section, "proper identification" means the patient's name; mailing address; residence telephone number; date of birth; Social Security number; place and type of employment, employment address and employment telephone number, as applicable.

ii. The designated hospital employee shall inquire of the patient, family member, responsible party or guardian, as appropriate, whether the patient is covered by health insurance, and if so, shall request documentation of the evidence of health insurance coverage. Documentation may include, but shall not be limited to, a government-sponsored health plan card or number, a group sponsored or direct subscription health plan card or number, a commercial insurance identification card or claim form or a union welfare plan identification card or claim form. The hospital shall also inquire as to whether the patient had complied with any prior authorization requirements of the patient's insurance policy. If the patient has not done so, the hospital *[shall defer the service until]* ***will not be paid for uncompensated care for these services unless*** prior authorization is obtained*,* unless the patient's condition requires immediate medical attention.

iii. If evidence of health insurance coverage for the patient is not documented, or if evidence of health insurance coverage is documented but the patient's health insurance coverage is unlikely to provide payment in full for the patient's account at the hospital, the designated hospital employee shall make an initial determination of whether the patient is eligible for participation in a public assistance program. If the employee concludes that the patient may be eligible for a public assistance program, the employee shall so advise the patient, family member, responsible party or guardian, as appropriate. The employee, either directly or through the hospital's social services office shall give the patient, family member, responsible party or guardian, as appropriate, the name, address and phone number of the public assistance office that can assist in enrolling the patient in the program. The employee, or the social services office of the hospital, shall also advise the public assistance office of the patient's possible eligibility, including possible retroactive or presumptive eligibility, for the program.

iv. If evidence of health insurance coverage for the patient is not documented or if evidence of health insurance coverage is documented but the patient's health insurance coverage is unlikely to provide payment in full for the patient's account, and the patient does not appear to be eligible for public assistance, the designated hospital employee shall determine if the patient is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37. If the patient does not qualify for charity care, the designated hospital employee shall request from the patient, family member, responsible party or guardian or other independent source, as appropriate, the patient's or responsible party's place of employment, income, real property and durable personal property and liquid assets owned by the patient or responsible party and bank accounts possessed by the patient or responsible party, along with account numbers and the name and location of the bank.

[v. Unless the patient's condition requires immediate medical attention, the hospital shall defer the admission or service until the information required in (b)4i through iv above is provided to the hospital if the required information is available to the patient or responsible party and if the patient or responsible party fails or refuses to provide the information to the hospital. Written certification by a medical professional, or notation in the file by the designated hospital employee that verbal certification was given by a medical professional, of the patient's need for immediate medical attention shall be acceptable evidence of the same. This section does not authorize hospials to defer necessary and appropriate treatment for failure to meet financial requirements.]

(c) Pre-discharge procedures are as follows:

1. With respect to patients admitted on an emergency basis, the interview required in (b) above shall be conducted as soon thereafter as possible but within five working days of the patient's admission into the hospital or prior to discharge, whichever is sooner. If, due to the nature of the illness, the patient cannot be interviewed, the procedure required above shall be conducted by other means including, but not limited to, direct contact by the provider with relatives, and legally responsible individuals or third parties, if any.

2. Once the information required in (b) above is obtained, the provider shall seek payment from the appropriate carrier, or follow up to obtain the medical assistance or secure the deposit agreement required in (b) above from the patient or legally responsible individual, as appropriate, on or no longer than seven days following discharge or verification of eligibility. The provider must document all cases when compliance with the aforementioned collection procedures cannot be accomplished.

(d) Post-Discharge Follow-up/In-House Efforts: The hospital shall follow up periodically with the proper carrier until the amount owing has been paid in full. Except for denials due to lack of medical necessity, the patient shall be contacted and payment requested concerning any portion of the bill declined by third party carriers. With respect to these patients, self-pay patients and legally responsible individuals, collection procedures shall include, but are not limited to:

1. Sending a minimum of three billing statements. The first billing statement shall be sent within an average of 14 days from the date of discharge for inpatients or the date of service for outpatients. If outpatient charges are accumulated and billed monthly, the hospital may continue to do so, provided that the *[median date of the]* billing cycle for all outpatient billing *[is not more than 14 days from the billing date]* ***does not exceed 31 days from the date of service***. The hospital shall document all cases where this schedule cannot be followed. The second and third billing statements shall be sent to the patient's or responsible party's mailing address at intervals of no less than three weeks and no more than monthly. A hospital is not required to comply with the requirements of sending a third billing statement or two collection follow-up letters, if mail has twice been returned to the hospital, and hospital personnel, despite reasonable efforts, are unable to determine a new mailing address of the patient or responsible party.

2. Sending a minimum of two collection follow-up letters following the three billing statements. These letters shall be sent to the patient's or responsible party's mailing address at an interval of no less than two weeks and no more than three weeks. Each collection letter shall include the following elements:

i. The amount due and a demand for payment;

ii. The date of service;

iii. The hospital's intention to proceed with legal action if the outstanding balance is not paid in full, or if the patient or responsible party fails to enter into payment arrangements; except that if the bill is too small to warrant legal action, such letter shall indicate the hospital's intent to proceed with outside collection efforts. In either

case, the letter shall indicate that any unpaid accounts will be reported to the Department of Health and any State income tax refunds or homestead rebates up to the amount of the unpaid bill will be withheld by the Department of Treasury;

iv. A request for a partial payment and an offer to establish a payment schedule based on the patient or responsible party's ability to pay; and

v. The name of a person and a telephone number for the patient or responsible party to call in order to arrange for such a payment schedule or to discuss any aspect of the bill.

3. Making telephone contact or sending telegrams after the follow-up letters. The hospital or its agent shall make three attempts to reach the patient or responsible party by telephone, if the hospital has the home or business telephone number of the person. If hospital personnel or their agent are not able to make telephone contact with the patient or responsible party or if the hospital does not have and cannot determine a home or business telephone number for the patient or responsible party, the hospital shall send a collection telegram or comparable urgent notification letter.

i. Telephone contact means a person-to-person discussion about the bill between a hospital employee ***or agent*** and the patient or responsible parties via the telephone. This excludes any instance where a mechanical device is involved on either side. Such mechanical efforts may, however, be reported as an attempt to make contact.

ii. A comparable urgent notification letter must meet the following criteria:

(1) The outside envelope shall *[display at least two colors and]* include some indication that the contents are urgent;

(2) The outside envelope shall not resemble previous correspondence from the hospital;

(3) The letter shall be sent in a standard envelope, not a data mailer;

(4) Postage should be metered or use a permit number; and

(5) The letter shall convey a sense of urgency, both on the inside and the outside.

4. Documentation in each patient's file shall indicate bona fide collection efforts or adequate reasons related to the case which support the provider's decision to terminate the collection effort if such efforts are terminated prior to completing the steps listed above.

(e) Post-Discharge/Out-of-House Collection Efforts: Not less than 90 days or more than 120 days following discharge, all remaining unpaid balances due and owing, unless subject to a payment plan pursuant to (b)3 above, shall be reviewed and a determination made with respect to whether or not an account should be held in-house for an additional period of time if it is likely that the bill can be collected; sent to an outside collection agency; or pursued through appropriate legal action. Appropriate internal collection procedures shall be fully pursued unless and until:

1. Evidence clearly shows that there is no likelihood of recovery at any time in the future.

2. The cost of collection exceeds the amount of the bill.

i. For accounts of *[$150]* ***$200.00*** or less, an exception shall be made and the following steps shall be adhered to:

(1) Two billing statements must be mailed;

(2) One collection follow-up letter must be mailed;

(3) Two attempts at telephone contact must be made; and

(4) One collection telegram or urgent notification letter must be sent;

ii. In addition, for all accounts, the hospital may use the services of outside collection agencies and shall *[refer]* ***report*** accounts not collected after following these steps, to the Department of Health which shall request the Department of Treasury to apply or cause to be applied the income tax refund or homestead rebate, or so much of either or both as is necessary to recover the amount due and owing on the patient's account, pursuant to section 1 of P.L. 1981, c.239 (N.J.S.A. 54A:9-8.1 et seq.), for which purpose the patient's outstanding balance shall be considered a debt to the fund and the fund shall be considered an agency of State government.

iii. For accounts in excess of *[$150.00]* ***$200.00***, the hospital shall complete all steps through the point of using outside collection agencies and legal action.

3. Existing evidence ***shows*** that further in-house collection efforts would be futile after adhering to the appropriate procedures in (d) above.

(f) While the hospital may write off accounts, or portions thereof, 120 days after discharge, this does not relieve the hospital of the obligation to continue to make reasonable efforts to obtain payment.

(g) Legal action shall be required in all cases unless legal action is not appropriate, based on the patient's income and assets, or unless the bill is less than the likely costs of legal action. *[If the litigation process (as distinct from the initial filing of a lawsuit) is undertaken by a law firm hired on a contingency basis, it shall be at the discretion of that law firm whether to undertake and whether to continue such litigation.]* Legal action shall not be taken for Medicaid recipients for medically necessary and appropriate services.

1. Legal action shall be defined as the filing of a lawsuit ***or a lien*** and shall include all subsequent steps in the litigation process up to and including the garnishment of wages***, entering a judgment*** and *[the]* execution of a judgment upon the assets of the debtor ***where appropriate***. Hospitals shall not execute judgment on a patient's principal residence *[or on personal property or assets needed for daily living]* ***until the property is sold or otherwise transferred***.

(h) Nothing in this section shall prevent a hospital from taking intermediate steps after the post-discharge steps in (d) and (e) above, but before taking legal action. This includes, but is not limited to, sending an account to a collection agency.

(a)

HOSPITAL REIMBURSEMENT

Financial Elements and Reporting
Excluded Health Care Services
Adopted Amendment: N.J.A.C. 8:31B-4.62

Proposed: August 21, 1989 at 21 N.J.R. 2453(a).

Adopted: November 15, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: November 16, 1989 as R.1989 d.604, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: December 18, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

8:31B-4.62 Excluded Health Care Services

(a)-*[(f)]****(h)*** (No change.)

*[(g)]****(i)*** Mobile Intensive Care Unit (MICU) Services provided after November 1, 1987: The cost and revenue related to these services are to be treated as Case C, revenues and expenses are netted, and neither gains nor losses are added to the Preliminary Cost Base. Sufficient accounting records should be maintained to account for the costs of such operations (that is, Medicare cost report HCFA-2552) and such direct and indirect cost shall be excluded from Costs Related to Patient Care.

1. Pursuant to P.L. 1989, c.1, section 19, charity care related to MICU services will be reimbursed through the New Jersey Uncompensated Care Trust Fund for all hospitals providing MICU services except University of Medicine and Dentistry of New Jersey University Hospital. Charity care for University Hospital shall be paid through its own hospital's reimbursement rates as established by the Hospital Rate Setting Commission.

(a)

UNCOMPENSATED CARE TRUST FUND

Set-Off of Individual Liability with Tax Refunds/ Rebates

Adopted New Rule: N.J.A.C. 8:31B-7.10

Proposed: September 18, 1989 at 21 N.J.R. 2923(a).

Adopted: November 20, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: November 27, 1989 as R.1989 d.618, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-18.4 et seq., specifically 26:2H-18.13(e) and N.J.S.A. 26:2H-1 et seq.

Effective Date: December 18, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENTER: Jersey City Medical Center

COMMENT: The requirement that hospitals shall submit data for accounts with a minimum bad debt write-off balance of $25 should be changed to a higher balance that would more accurately reflect the true business costs of handling such accounts. It must be remembered that, inevitably, as off-sets are taken by the State patients will contact hospitals regarding their accounts that were written off. Time-consuming hospital investigations would result due to the need to properly respond to inquiries. Reporting of accounts with balances of $75 or over would be more considerate of these concerns.

RESPONSE: The SOIL system can handle accounts of $25. Since the Uncompensated Care Trust Fund Act mandates the use of the SOIL system, it would not be appropriate to increase the amount reported to SOIL.

COMMENTERS: Jersey City Medical Center; Kennedy Memorial

COMMENT: How will hospitals notify the Department of Health of activity on records that have already been transmitted but prior to off-sets. Example: payments were received which will reduce the balance that is outstanding; or, the name of the responsible party that was originally submitted should be changed.

RESPONSE: Prior to set-off the hospital will be notified of the impending set-off. Any adjustments may be made at that time.

COMMENTER: Jersey City Medical Center

COMMENT: If a settlement is offered which appears to make "good business sense", who should be contacted to authorize acceptance, the Department of Health? It should be kept in mind that in cases of questionable liability if settlements are not accepted, the result may be that no money at all will be recovered.

RESPONSE: Hospitals are not permitted to write off settlements as uncompensated care. Therefore, these settlement amounts would not become bad debts and the subject to SOIL.

COMMENTER: Kennedy Memorial

COMMENT: Most hospital data processing systems do not have the capability to merge patient receivable data using a specific identification source. This requirement may necessitate the use of outside contractors at a significant increased cost.

RESPONSE: The Uncompensated Care Trust Fund Act required the use of the SOIL system. Bona fide new costs related to these requirements may be appealed as legal changes.

COMMENTER: Beth Israel Hospital

COMMENT: There needs to be a specific framework for deletions.

RESPONSE: Hospitals will receive instructions as to the mechanical process for handling deletions.

COMMENTER: Beth Israel Hospital

COMMENT: It would be more manageable to report two amounts—one for inpatient and one for outpatient.

RESPONSE: The SOIL system does not have the capacity to deal with multiple accounts for a single debtor from a single creditor. Therefore, hospitals will be required to submit one list of accounts which includes both outpatient and inpatient accounts.

COMMENTER: Beth Israel Hospital

COMMENT: If an account has been reported and has been turned over to an agency/attorney, there exists the possibility of overpayments.

RESPONSE: The patient will be notified shortly before the off-set that such action is pending. At that time, the patient will have the opportunity to demonstrate that the account has been paid.

COMMENTER: Beth Israel Hospital

COMMENT: It may be almost impossible to report a truly accurate total dollar indebtedness in cases where an adult and minor children are involved; especially when different last names exist.

RESPONSE: If the list is being sorted according to the responsible party's social security number, this should not be a problem.

COMMENTER: Bergen Pines County Hospital

COMMENT: Assuming that the hospital gears up this type of information gathering, how timely would be the State's response to a request that tax rebates and refunds be withheld? Without a timely response from the State, the cost of storage and maintaining the patient's account also add to the burden of the hospital.

RESPONSE: There will be approximately six months between the required reporting date and the set-off.

COMMENTER: St. Joseph's

COMMENT: Since we maintain separate inpatient and outpatient billing systems, than we would need to request our two vendors to provide this data; the cost of which needs to be addressed. We feel that the costs of compliance could be significant considering the programming costs as well as the ongoing supply and maintenance costs of the data base. In addition, we would anticipate that the date submitted to the Department would generate inquiries and require adjustments that may require additional personnel at the Medical Center.

RESPONSE: The Department of Treasury has informed the Department that one integrated list is necessary to access the data system. Bona fide new costs attributable to this program are appealable as a legal change.

COMMENTER: St. Joseph's

COMMENT: Our principal comment to this proposed regulation relates to the practicality of compliance. It is our understanding that the Department would require that each hospital submit a data tape of all written off bad debt in excess of $25, twice a year. The enormity of that information for St. Joseph's would approximate 25,000 accounts.

RESPONSE: The information is required to be submitted pursuant to the Uncompensated Care Trust Fund Act.

COMMENTER: Bergen Pines County Hospital

COMMENT: I have serious reservations as to whether or not the proposed new rule's economic impact in regard to cost savings is offset by the additional cost of capturing, consolidating, reporting and monitoring the results of the SOIL Program. The hospital will need additional staff to monitor the submission requirements imposed by your regulations.

RESPONSE: The use of the SOIL system is mandated by the Uncompensated Care Trust Fund Act. Bona fide new costs associated with this law are appealable as a legal change.

COMMENTERS: Bergen Pines County Hospital; Beth Israel Hospital

COMMENT: Inasmuch as hospitals will now be required to correlate all individual's bills and their guarantors on bi-annual basis for submission to the State, additional costs will be incurred in the areas of computer equipment and related programming.

RESPONSE: Bona fide new costs attributed to this program are appealable as a legal change.

COMMENTERS: Beth Israel Hospital; Jersey City Medical Center

COMMENT: If the social security number is not available for an individual, does this mean his/her total dollar indebtedness does not have to be reported? Needs clarification.

RESPONSE: The SOIL system can only be accessed via the social security number. If the social security number is unavailable the account should not be reported. Therefore, it is important that the hospitals obtain a social security number in all possible cases.

COMMENTER: Beth Israel Hospital

COMMENT: Minimum balance of $25.00 per individual

Large volume in outpatient area; makes record keeping difficult and costly.

Additional personnel would be required to handle accounts and data submitted to the Department of Health.

RESPONSE: Bona fide new costs attributable to this program are appealable as a legal change.

COMMENTER: Beth Israel Hospital

COMMENT: Inpatients and outpatient are two separate applications that do not communicate with each other in our computer system. It

would be difficult and would necessitate software revisions to provide a total dollar indebtedness for an individual with bad debt accounts in both areas.

RESPONSE: The SOIL System at the Department of Treasury is not set up to deal with multiple accounts for a single debtor from a single creditor. Therefore, the accounts must be aggregated before being reported.

COMMENTER: Beth Israel Hospital

COMMENT: A debt satisfied via normal methods is sufficient. A duplicate effort by the state is counterproductive. S-2981 (3R) does not specifically state when an account must be reported to the state; yet N.J.A.C. 8:31B-7.10 states that the patient's/responsible party's total dollar indebtedness must be reported at the time of bad debt write-off. Once all efforts (by the hospital and collection agency/law firm) are exhausted and an account is classified as uncollectable; this is the correct time to commence collection via the new rule.

RESPONSE: By the time it is determined that an account is uncollectible by a collection agency/law firm, several opportunities to use the SOIL system may have passed. Therefore, it would be more appropriate to report the accounts at time of write-off.

COMMENTER: Beth Israel Hospital

COMMENT: Adherence while collection agencies/law firms continue efforts to obtain payments would be cumbersome, inappropriate, costly and unproductive. What sense is there to initiate legal action if the debt is satisfied by redeeming a tax refund or rebate? The sheer magnitude of logistics and coordination necessary would be horrendous.

RESPONSE: Most refunds and rebates are for modest amounts of money which would not necessarily satisfy an account large enough to justify legal action.

COMMENTER: Beth Israel Hospital

COMMENT: Furthermore, the rule is not precise. (A)2 refers to accounts with minimum balances of $25.00 per individual, while 4iii states the amount to be a sum of **all** accounts written off.

RESPONSE: This paragraph will be amended to clarify that anyone with at least $25.00 in total indebtedness should be reported to SOIL system.

COMMENTER: Beth Israel Hospital

COMMENT: Is the total an accumulative one, or does this pertain to the four or eight months immediately preceding the submission of data?

RESPONSE: The total is an accumulative one.

COMMENTER: Beth Israel Hospital

COMMENT: Does this mean all accounts greater than $25.00 or all accounts regardless of balance?

RESPONSE: This means all persons with at least $25.00 in total indebtedness to the hospital.

COMMENTER: Beth Israel Hospital

COMMENT: Software to accommodate the new rule does not exist. Creating it will not be an easy task. The cost of storage and matching to supply just one record per individual will be immense.

RESPONSE: The use of the SOIL system is mandated by the Uncompensated Care Trust Fund Act. Bona fide new costs associated with this law are appealable as a legal change.

COMMENTER: Beth Israel Hospital

COMMENT: Dates for submission—January 1st and September 1st. Why would there need to be two dates for submission? The rationale for the time frame involved (first time on January 1st and second time on September 1st—eight months later) is unclear. This seems especially confusing when the schedule is again repeated on January 1st of the following year (four months later).

RESPONSE: The two time frames reflected that homestead rebates and State income tax refunds are issued at different points during the year. The September report is for the State income tax refunds while the January report is for the homestead rebate.

COMMENTER: Wayne General Hospital

COMMENT: Our data processing vendor cannot process any tape with the data elements required in 8:31B-7.10(a) 4i-iv.

RESPONSE: The use of the SOIL system is mandated by the Uncompensated Care Trust Fund Act. Bona fide new costs associated with this law are appealable as a legal change.

COMMENTER: St. Joseph's

COMMENT: At the point that the Department receives the Medical Center's information, consider that the same information is being pursued for collection. As such, it is unclear how to treat the situation whereby the patient would pay some portion of the write off to a Collection Bureau and the write off has **also** been set-off of the patients tax refund/rebate. At what level would the patient be entitled to a refund, considering that the Collection Bureau would charge the Medical Center for its services.

RESPONSE: The patient would be entitled to a refund without regards to collection costs.

COMMENTER: Bergen Pines County Hospital

COMMENT: The regulations are somewhat ambiguous as to whether or not once a balance has been encumbered whether or not the hospitals would be obligated to post that encumbrance to the existing patient's account. If that is the case, the account would have to be reactivated and the encumbrance offset to the account. Again, all this required additional staff and time.

RESPONSE: The word "encumbrance" is unclear. Any SOIL offsets would have to be reflected in the patient's account.

COMMENTER: Bergen Pines County Hospital

COMMENT: I strongly recommend that the State perform a more detailed analysis of the cost effectiveness and reasonableness of enforcing this regulation.

RESPONSE: The Department will, of course, be interested in monitoring the cost effectiveness of this system. However, the Uncompensated Care Trust Fund Act requires that this system be put in place.

COMMENTER: Hackensack Medical Center

COMMENT: The first data submission proposed is January 1st. Hackensack Medical Center feels that this first submission date does not afford a computer vendor sufficient time to make program changes to capture the required data elements. As such, Hackensack Medical Center feels that the first data submission should be April 1st.

RESPONSE: The Uncompensated Care Trust Fund Act mandates that refunds and rebates be held at this time. The hospitals' submission must relate to the Department of Treasury's time frames.

COMMENTER: Beth Isreal Hospital

COMMENT: What would happen when an individual has an indebtedness to more than one hospital? Need clarification.

RESPONSE: If an individual has an indebtedness to more than one hospital, the first hospital's records run against the list would be paid up to the level of the rebate/refund. If money is still available, the second hospital would be paid. The hospitals will not have to take any concerted action.

Full text of the adoption follows (addtions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

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 ***patients and responsible parties with*** 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.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Renal Disease Services

Standards and General Criteria for the Planning and Certification of Need for the Regional End-Stage Renal Disease Services

Readoption: N.J.A.C. 8:33F

Proposed: September 18, 1989 at 21 N.J.R. 2923(b).
Adopted: November 15, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: November 16, 1989 as R.1989 d.602, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.
Effective Date: November 16, 1989.
Expiration Date: November 16, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33F.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on August 24, 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 Atlantic County Water Quality Management Plan was adopted by the Department. This amendment is to increase the wastewater flow for the previously approved Lower Great Egg Harbor River Region Coastal Alternative Interceptor to 5.29 million gallons per day. This flow increase is a result of increased population projections.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on September 6, 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 Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment allows for the transfer of the Somerset Raritan Valley Regional Sewerage Authority's (SRVSA) sewer service area from properties owned by the County of Somerset and the Elizabethtown Properties Inc. located in Bridgewater Township to adjacent parcels of lesser acreage which are more appropriate for development. Seventy-nine acres will be added to the SRVSA service area, whereas 129.7 acres will be removed from the sewer service area. The transfer of the sewer service area to an adjacent smaller tract will aid in the effort to preserve the integrity of the Washington Valley Reservoir.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan has been proposed. A Wastewater Management Plan (WMP) has been submitted for Plainsboro Township. The WMP identifies the existing and proposed sewer service areas of the Stony Brook Regional Sewerage Authority, Middlesex County Utilities Authority, Princeton Meadows Utilities Company, and Firmenich Sewage Treatment Plant (STP). The existing South Brunswick Pumping Station No. 6 will be decommissioned and flows conveyed by gravity sewer to the existing South Brunswick system along Ridge Road. The Firmenich STP is to be expanded by approximately 10,000 gallons per day.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Middlesex County will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Thursday, January 18, 1990, at 8:00 P.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. **Interested persons** may submit written comments on the amendment to William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. All comments must be submitted by the date of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Middlesex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for South Brunswick Township. The WMP delineates the boundary between the Stony Brook Regional Sewerage Authority and Middlesex County Utilities Authority sewer service areas. Two areas of the Township are designated for individual subsurface sewage disposal systems. The areas of Franklin, Monroe and North Brunswick Townships which South Brunswick services are also delineated.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Middlesex County will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Thursday, January 18, 1990, at 8:00 P.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. **Interested persons** may submit written comments on the amendment to William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. All comments must be submitted by the date of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Middlesex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

LAW AND PUBLIC SAFETY

(e)

BOARD OF MEDICAL EXAMINERS

Petition for Rulemaking and Action Thereon

N.J.A.C. 13:35

Petitioner: New Jersey Optometric Association
Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:9-2.

Take notice that on October 10, 1989 (see 21 N.J.R. 3676(b)), petitioner filed a petition with the Board of Medical Examiners requesting that it determine and declare the following:

Invasive surgical care is tertiary care and is the responsibility of the operating surgeon. The management of post-operative care is primary care and can be managed effectively by the patient's primary health care provider. The judgment on delivery of post-operative care shall be made in consultation with the patient, the operating surgeon, and the patient's primary health care provider. The post-operative care and patient co-management shall be rendered by the operating surgeon and the patient's primary health care provider.

The Board discussed the petition at its regular meeting on November 8, 1989 and determined that it is not prepared to initiate rulemaking on this issue at this time. Further study and discussion by a Board committee will be necessary given the importance of the issues raised by the petitioner and the Board's July 12, 1989 policy statement that management of post-surgical care is the practice of medicine and the responsibility of the operating ophthalmologist.

The Board committee will report its findings to the Board within 90 days, after which the Board shall address this issue pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(a)

DIVISION OF MOTOR VEHICLES

Notice of Common Carrier Applicant

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)
McAllister Construction Co., Inc.
P.O. Box 222
Yardley, PA 19067

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (January 7, 1990) following the publication of an application.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Public Notice
Sanitary Landfill Taxes
1990 Tax Rate Changes

Take notice that the owners and operators of all sanitary landfill facilities in New Jersey that accept solid waste for disposal are required to file Consolidated Sanitary Landfill Tax Returns (Form SLT-5) on a monthly basis. The five sanitary landfill taxes—the Solid Waste Recycling Tax, the Landfill Closure and Contingency Tax, the Solid Waste Services Tax, the Resource Recovery Investment Tax, and the Solid Waste Importation Tax—are reportable on this consolidated return.

This notice is to advise sanitary landfill taxpayers of the tax rate changes provided for by law effective January 1, 1990 for the sanitary landfill taxes.

Please take notice that effective January 1, 1990:

1. The Solid Waste Services Tax increases from $.70 per ton or $.21 per cubic yard to $.75 per ton or $.225 per cubic yard;
2. The Solid Waste Importation Tax increases from $6.00 per ton or $1.80 per cubic yard to $8.00 per ton or $2.40 per cubic yard;
3. The Landfill Closure and Contingency Tax remains unchanged at $.50 per ton or $.15 per cubic yard;
4. The Solid Waste Recycling Tax remains unchanged at $1.50 per ton or $.45 per cubic yard; and
5. The Resource Recovery Investment Tax remains unchanged at $4.00 per ton or $1.20 per cubic yard.

The tax rates for all solid waste in liquid form, reportable in gallons, remain the same for all sanitary landfill taxes. Any taxpayer who fails to comply with the new rates will be assessed tax, penalty and interest on any calculated balance of tax due.

Return packages containing the 1990 Consolidated Sanitary Landfill Tax Returns (Form SLT-5) with accompanying schedules and Instructions (Form SLT-5A) will be mailed to all taxpayers prior to January 1, 1990. Any inquiries regarding the Sanitary Landfill Taxes may be directed to: Special Audit Section, Division of Taxation, 50 Barrack Street, Trenton, NJ 08646, Telephone (609) 292-5300.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 6, 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 OCTOBER 16, 1989

NEXT UPDATE: SUPPLEMENT NOVEMBER 20, 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. 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	21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 811 and 954	April 3, 1989	21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
21 N.J.R. 1475 and 1598	June 5, 1989	21 N.J.R. 3813 and 3986	December 18, 1989
21 N.J.R. 1599 and 1762	June 19, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of transmitted cases	21 N.J.R. 3207(a)	R.1989 d.605	21 N.J.R. 3914(a)
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)		
1:1-14.11	Transcripts of OAL hearings	21 N.J.R. 3587(a)		
1:1-19.2	Withdrawal of request for hearing or defense raised	21 N.J.R. 3589(a)		
1:6A	Special education hearings	21 N.J.R. 2693(a)		
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
Most recent update to Title 1: TRANSMITTAL 1989-5 (supplement August 21, 1989)				
AGRICULTURE—TITLE 2				
2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)		
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)		
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)	Expired	
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)		
Most recent update to Title 2: TRANSMITTAL 1989-8 (supplement October 16, 1989)				
BANKING—TITLE 3				
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:24-1.2	Check cashing business standards: administrative correction concerning corporate applications	———	———	21 N.J.R. 3448(a)
3:28	Bookkeeping and accounting by savings and loan associations	21 N.J.R. 3336(a)		
3:42-2.2, 7	Pinelands Development Credit Bank: resale of bank-owned credits	21 N.J.R. 3691(a)		
Most recent update to Title 3: TRANSMITTAL 1989-6 (supplement October 16, 1989)				
CIVIL SERVICE—TITLE 4				
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
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)	21 N.J.R. 3340(a)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4:3-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)		
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)	R.1989 d.569	21 N.J.R. 3448(b)
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
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)	R.1989 d.570	21 N.J.R. 3451(a)
4A:3-38	Intermittent employees in State service: leave entitlements	21 N.J.R. 3337(a)		
4A:4-1.11	Vacancy Review Board: State service	21 N.J.R. 3337(a)		
4A:4-2.1, 2.15, 3.4, 5.5	Promotional examinations; eligible lists	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)	R.1989 d.569	21 N.J.R. 3448(b)
4A:6-1.2, 1.3, 1.9, 2.4	Intermittent employees in State service: leaves and holiday pay	21 N.J.R. 3337(a)		
4A:6-1.5	Sick leave: State service	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:8	Layoffs	21 N.J.R. 3340(a)		
4A:10-1.1	Information requested of appointing authority	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
	Most recent update to Title 4A: TRANSMITTAL 1989-3 (supplement October 16, 1989)			
COMMUNITY AFFAIRS—TITLE 5				
5:1-1.1, 2.1, 6, 7.4	Standards of conduct	21 N.J.R. 3693(a)		
5:2-1.1	Department organization	Exempt	R.1989 d.578	21 N.J.R. 3658(a)
5:2-1.1	Department organization	Exempt	R.1989 d.589	21 N.J.R. 3740(a)
5:2-1.1	Department organization: administrative correction	_____	_____	21 N.J.R. 3914(b)
5:11-1.2, 6.2	Relocation assistance: definitions; relocation plans	21 N.J.R. 3694(a)		
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)		
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)	R.1989 d.588	21 N.J.R. 3740(b)
5:14-4.1	Neighborhood Preservation Balanced Housing Program: administration of affordability controls	21 N.J.R. 3695(a)		
5:18	Uniform Fire Code	21 N.J.R. 3344(a)		
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)	R.1989 d.556	21 N.J.R. 3453(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-3.2	Uniform Fire Code: casino hotel fire safety plan	21 N.J.R. 2845(b)	R.1989 d.593	21 N.J.R. 3746(a)
5:18A	Fire Code Enforcement	21 N.J.R. 3344(a)		
5:18A-3.3	Duties of fire officials	21 N.J.R. 2431(a)	R.1989 d.556	21 N.J.R. 3453(a)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18B	High Level Alarms	21 N.J.R. 3344(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:22	Exemptions from local property taxation	21 N.J.R. 3345(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Mitigation Subcode	21 N.J.R. 3696(a)		
5:23-1.4	Uniform Construction Code: underground storage tank compliance	21 N.J.R. 3345(b)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)	R.1989 d.550	21 N.J.R. 3458(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)	R.1989 d.555	21 N.J.R. 3460(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.15	UCC: plumbing subcode	21 N.J.R. 3346(a)		
5:23-4.3	UCC: assumption of local enforcement powers	21 N.J.R. 2436(a)	R.1989 d.551	21 N.J.R. 3460(b)
5:23-4.5, 4.19, 4.20	UCC enforcing agencies: standardized forms; remittance of training fees	21 N.J.R. 3346(b)		
5:23-4.17	Dedication of fee revenue for UCC enforcement	21 N.J.R. 3348(a)		
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2–7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55–7.57, 7.61, 7.67, 7.68, 7.71–7.73, 7.75, 7.76, 7.80–7.82, 7.87, 7.94–7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-8.8	Asbestos hazard abatement subcode: administrative correction	_____	_____	21 N.J.R. 3747(a)
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:29-1, 2.2	Landlord registration form for one and two-unit rental dwellings	21 N.J.R. 3349(a)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:31	Local authorities	21 N.J.R. 3046(a)		
5:33	Urbanaid program	21 N.J.R. 3046(b)		
5:35	State aid for planning local effectiveness program	21 N.J.R. 3046(b)		
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)		
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(a)	R.1989 d.591	21 N.J.R. 3748(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

Most recent update to Title 5: TRANSMITTAL 1989-9 (supplement October 16, 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

6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)		
6:7	Evaluation of building principals in State-operated districts	21 N.J.R. 3352(a)		
6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)	R.1989 d.615	21 N.J.R. 3937(a)
6:11-5.1–5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)	R.1989 d.614	21 N.J.R. 3934(a)
6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)		
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)		
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)		
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)		
6:21	Pupil transportation	21 N.J.R. 2724(a)	R.1989 d.610	21 N.J.R. 3939(a)
6:22-1.1, 1.3, 1.4, 1.7, 1.8, 2.5	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)	R.1989 d.553	21 N.J.R. 3461(a)
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)	R.1989 d.601	21 N.J.R. 3933(a)
6:31	Bilingual education	21 N.J.R. 2443(a)	R.1989 d.600	21 N.J.R. 3948(a)
6:46-1.1, 4.6, 4.10, 4.12	Private vocational schools: instructional hours	21 N.J.R. 3700(a)		
6:70	Library network services	21 N.J.R. 1940(a)	R.1989 d.572	21 N.J.R. 3462(a)

Most recent update to Title 6: TRANSMITTAL 1989-8 (supplement September 18, 1989)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)	R.1989 d.544	21 N.J.R. 3478(a)
7:1G-3.2	Worker and Community Right to Know: administrative correction concerning environmental survey	———	———	21 N.J.R. 3482(a)
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)	R.1989 d.566	21 N.J.R. 3482(b)
7:2-11.12	Designation of West Pine Plains to Natural Areas System: extension of comment period	21 N.J.R. 2240(b)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)		
7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)		
7:7A-2.7(d)1, 2	Preliminary municipal approvals exemption: notice of rule invalidation	———	———	21 N.J.R. 3482(c)
7:7A-2.7(f)	Transition area exemption: notice of rule invalidation	———	———	21 N.J.R. 3482(d)
7:7A-8.2	Freshwater wetlands protection: administrative correction	———	———	21 N.J.R. 3748(b)
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-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)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19	Water supply allocation permits	21 N.J.R. 3594(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	21 N.J.R. 2849(a)		
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)	R.1989 d.567	21 N.J.R. 3483(a)
7:25-12	Surf clam management	21 N.J.R. 3214(a)		
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)		
7:26-1.13, 8.15	Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals	21 N.J.R. 3219(a)		
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)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)	R.1989 d.609	21 N.J.R. 3914(c)
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)	R.1989 d.608	21 N.J.R. 3917(a)
7:26-16.5, 16.13	Solid and hazardous waste operations: licensing of individuals	21 N.J.R. 2275(a)	R.1989 d.586	21 N.J.R. 3658(b)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)	R.1989 d.595	21 N.J.R. 3748(c)
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)	R.1989 d.568	21 N.J.R. 3488(a)
7:27-23.2–23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)	R.1989 d.596	21 N.J.R. 3751(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1–11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)		

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8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)	R.1989 d.557	21 N.J.R. 3501(a)
8:19-2	Newborn biochemical screening	21 N.J.R. 3633(a)		
8:19-2	Newborn biochemical screening: public hearing	21 N.J.R. 3708(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)		
8:23	Veterinary public health	21 N.J.R. 3274(a)		
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-1)	21 N.J.R. 2447(a)		
8:31A-9.1	SHARE hospital reimbursement: labor proxies	21 N.J.R. 2922(a)	R.1989 d.603	21 N.J.R. 3951(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.22	Hospital reimbursement: standard costs per case	21 N.J.R. 3275(a)		
8:31B-3.23	Hospital reimbursement: emergency room patients	21 N.J.R. 3275(b)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-3.27	Hospital reimbursement: capital facilities formula allowance	21 N.J.R. 3278(a)		
8:31B-3.51	Hospital reimbursement: Schedule of Rates notification appeal and review	21 N.J.R. 3278(b)		
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on	21 N.J.R. 2448(a)	R.1989 d.619	21 N.J.R. 3951(a)
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on: extension of comment period	21 N.J.R. 3279(a)		
8:31B-4.38–4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)	R.1989 d.620	21 N.J.R. 3953(a)
8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)	R.1989 d.604	21 N.J.R. 3970(a)
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3279(b)		
8:31B-7.10	Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off	21 N.J.R. 2923(a)	R.1989 d.618	21 N.J.R. 3971(a)

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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)	R.1989 d.558	21 N.J.R. 3505(a)
8:33F	End-Stage Renal Disease (ESRD) services: certification of need	21 N.J.R. 2923(b)	R.1989 d.602	21 N.J.R. 3973(a)
8:33I-1.2, 1.3, 1.5	Megavoltage radiation oncology units: need review	21 N.J.R. 3640(a)		
8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7	Home health agency services	21 N.J.R. 2455(a)	R.1989 d.559	21 N.J.R. 3506(a)
8:39-7.4, 17.4, 25.2, 39.3	Long-term care facilities: enforcement of staffing requirements	————	————	21 N.J.R. 3663(a)
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:39-44	Respite care services	21 N.J.R. 2924(a)		
8:43B-1–17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)		
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)		
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)	R.1989 d.560	21 N.J.R. 3509(a)
8:43E-4.5	Child and adolescent acute psychiatric beds: need formula	21 N.J.R. 2459(a)	R.1989 d.561	21 N.J.R. 3514(a)
8:43F	Adult day health care facilities: standards for licensure	21 N.J.R. 3385(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)		
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-6	Anesthesia	21 N.J.R. 2925(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-19.35–19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)		
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-30.13–30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:45	Clinical laboratory services: licensure and charges	21 N.J.R. 3708(b)		
8:52-4.6	Local boards of health: basic educational program concerning HIV infection	21 N.J.R. 2696(a)	R.1989 d.574	21 N.J.R. 3663(b)
8:52-6.3, 6.4	Local boards of health: cardiovascular disease services; health services for older adults	21 N.J.R. 3282(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)	R.1989 d.543	21 N.J.R. 3516(a)
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:66	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a))	21 N.J.R. 1790(a)	R.1989 d.573	21 N.J.R. 3664(a)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)		
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9:2-14	Student immunization requirements	21 N.J.R. 3605(a)		
9:4-1.3, 1.9, 1.10, 2.1–2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		

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9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:7-4.2	Garden State Scholarships: academic requirements	21 N.J.R. 3408(a)		
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)		

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10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:52-1.2	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)	R.1989 d.622	21 N.J.R. 3918(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)		
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10:85-4.6	Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill	Emergency (expires 1-12-90)	R.1989 d.598	21 N.J.R. 3790(a)
10:87-12.1, 12.2, 12.3, 12.4, and 12.7	Food Stamp Program: Tables I, II, III, IV, and VII	21 N.J.R. 3316(a)	R.1989 d.606	21 N.J.R. 3918(b)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
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10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
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10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		

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10A:5-3.1, 3.2	Administrative segregation	21 N.J.R. 3409(a)		
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
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10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-6.4	Employee visits with incarcerated relatives	21 N.J.R. 3410(a)		
10A:22-2.6	Release of confidential inmate or parolee records	21 N.J.R. 3411(a)		
10A:22-4	Expungement or sealing of inmate records	21 N.J.R. 2852(a)	R.1989 d.582	21 N.J.R. 3665(a)
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)		
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:71	Parole Board rules	21 N.J.R. 3411(c)		
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11:2-3.1, 3.12	Credit life and credit accident and health insurance premium rates	21 N.J.R. 3052(a)		
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11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
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11:3-1	Commercial Automobile Insurance Plan	21 N.J.R. 3613(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-15.3, 15.5, 15.7–15.10	Automobile insurance: Coverage Selection Form	21 N.J.R. 3244(a)	R.1989 d.624	21 N.J.R. 3922(a)
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)		
11:3-16A	Automobile coverage: flex rate percentage calculations	21 N.J.R. 3719(a)		
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11:3-19	Multi-tier and good driver rating plans	21 N.J.R. 3721(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)		
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11:3-31	Private passenger automobile insurers: examination of financial experience	21 N.J.R. 3726(a)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, App.; 23, App.	Sixty five-and-older health insurance coverage	21 N.J.R. 2877(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-34	Long-term care insurance	21 N.J.R. 1964(a)	R.1989 d.571	21 N.J.R. 3465(a)
11:4-34.6	Long-term care insurance: administrative correction	———	———	21 N.J.R. 3777(c)
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)	R.1989 d.621	21 N.J.R. 3926(a)
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
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11:13-7	Commerical lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)	R.1989 d.585	21 N.J.R. 3668(a)
11:16-2	Reports to National Automobile Theft Bureau	21 N.J.R. 2901(a)	R.1989 d.583	21 N.J.R. 3668(b)
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12:45-3	Vocational rehabilitation services: vehicle modification requirements	21 N.J.R. 2213(b)	R.1989 d.564	21 N.J.R. 3535(b)
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12:90	Boilers, pressure vessels and refrigeration	21 N.J.R. 3247(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)		
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12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
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