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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 12

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(Includes adopted rules filed through May 26, 1989)

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NEXT UPDATE: SUPPLEMENT MAY 15, 1989

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **July 19, 1989.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee

Proposed Readoption: N.J.A.C. 2:76

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Authority: N.J.S.A. 4:1C-5f and 16a.
Proposal Number: PRN 1989-318.

Submit comments by July 19, 1989 to:
Donald D. Applegate, Executive Director
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625
Telephone: (609) 984-2504

The agency proposal follows:

Summary

The readoption of N.J.A.C. 2:76 is proposed by the State Agriculture Development Committee. Under a separate notice of proposal, the State Agriculture Development Committee will propose rule amendments at N.J.A.C. 2:76-6.16, Criteria for evaluating development easement acquisitions. All the rules deal with implementing the Agriculture Retention and Development and the Right-to-Farm Acts, N.J.S.A. 4:1C-1 et seq., and administering the Farmland Preservation Bond Fund.

The chapter is divided into subchapters as follows:

Subchapter 1 delineates the procedures for the designation of Agriculture Development Areas.

Subchapter 2 deals with agricultural management practices and dispute resolution procedures.

Subchapter 3 deals with the creation of farmland preservation programs.

Subchapter 4 deals with the creation of municipally approved farmland preservation programs.

Subchapter 5 deals with soil and water conservation project cost sharing.

Subchapter 6 deals with the acquisition of development easements.

Subchapter 7 provides for the review of nonagricultural development projects in agricultural development areas.

Subchapter 8 deals with the acquisition of farmland in fee simple.

Subchapter 9 deals with the emergency acquisition of development easements on farmland.

The chapter expires on August 29, 1989 pursuant to Executive Order No. 66(1978). The adoption dates of the above rules run from 1984 to 1989. Almost all of the rules have been modified over the past several years to implement the goals of the programs.

Social Impact

The rules have a positive impact on New Jersey as they implement the purposes of the Agriculture Retention and Development and the Right-to-Farm Acts. The citizens of New Jersey benefit from the farmland preservation program through the preservation of farms and the enhancement of the agricultural industry in the state.

Economic Impact

The proposed readoption will have a positive impact on the citizens of New Jersey and on the State's agriculture in that it allows the continuation of agriculture and enhancement thereof in this the most densely populated State.

Regulatory Flexibility Statement

The majority of the land potentially subject to the programs of the State Agriculture Development Committee is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption do not impose reporting, recordkeeping or other requirements on such farmland owners. A farmland owner's participation in the easement purchase program, soil and water program and eight-year farmland preservation programs is voluntary.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:76 and at 21 N.J.R. 981(a) and (b).

BANKING

(b)

DIVISIONS OF BANKING, SAVINGS AND LOAN

Application Fees

Proposed New Rules: N.J.A.C. 3:1-2.25, 2.26 and 3:6-14.2

Proposed Amendments: N.J.A.C. 3:6-13.3, 13.5; 3:6-14.1; 3:11-5.1, and 11.9.

Authorized By: Mary Little Parell, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:9A-333, 334, 17:12B-226.
Proposal Number: PRN 1989-327.

Submit written comments by July 19, 1989 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend and supplement its rules regarding the charging of fees to conform with recently passed legislation in this area. P.L. 1988, c.73 set minimum and maximum fees which the Department may charge banks, savings banks and savings and loan associations. The Department in this proposed rulemaking has set forth a fee schedule. The fees are substantially below the maximum permitted amount, and many of the fees are set at the minimum amount chargeable.

Social Impact

These proposed new rules and amendments will set the fees charged banks, savings banks and savings and loan associations for various applications and services performed by the Department of Banking. To the extent that fees are increased, a beneficial social impact will result from the shift of financial responsibility for the regulation of State chartered financial institutions from the general taxpaying public to those who benefit financially from conducting these businesses in New Jersey.

Economic Impact

Pursuant to this proposed rulemaking, the fees charged banks and savings banks will be increased as follows: (1) the fee for a charter application will increase from $10,000 to $15,000; (2) the fee for a full branch application will increase from $1,000 to $1,500; (3) the fee for an interchange application will increase from $250.00 to $500.00; (4) the fee for a merger application will increase from $1,500 to $3,000; (5) the fee for an acquisition application will increase from $1,500 to $3,000; (6) the fee for filing a copy of a plan of reorganization will increase from $250.00 to $1,000; (7) the fee for filing a pension plan will increase from $250.00 to $500.00; (8) the fee for filing an amendment or alteration to a pension plan will increase from $100.00 to $200.00; (9) the fee for requesting shared access to an ATM will increase from $100.00 to $200.00; (10) the fee for substitution of securities, pursuant to N.J.S.A. 17:9A-320B, will increase from $25.00 to $50.00; and (11) the foreign bank biennial fee will increase from $800.00 to $1,000.00.

The fees charged savings and loan institutions will increase as follows: (1) the fee for a mutual association charter application will increase from $5,000 to $7,500; (2) the fee for a stock association charter application will increase from $10,000 to $15,000; (3) the fee for an application for a merger will increase from $1,500 to $3,000 per association for mergers of insured associations; (4) the fee for a full branch office application will increase from $1,000 to $1,500; (5) the fee for an interchange within the same municipality will increase from $250.00 to $500.00; (6) the fee for changing the location of a branch office beyond 1,500 feet but within

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the same municipality will increase from $250.00 to $500.00; and (7) the fee for the application to file plans of acquisition for stock savings and loan and existing holding companies will increase from $1,500 to $3,000.

All other fees will be set at the minimum amount prescribed by statute.

As an indication of the cost of these fees to the industry, the Department accepted the following applications in 1988 concerning banks and savings banks: charter applications—13; full branches—36; mini-branches—four; mergers—one; purchases—two. Assuming a similar number of applications in the future, the total cost of the industry for the increases in these application fees will be approximately $89,000. Similarly, the Department accepted the following applications in 1988 concerning savings and loan associations: full branches—24; mergers—three; purchases—four. Assuming a similar number of applications in the future, the cost for the increases in these application fees will be approximately $24,000.

Regulatory Flexibility Analysis

Many banks, savings banks and savings and loan associations are small businesses. However, in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed rulemaking will impose no new reporting, recording or compliance requirements on them.

The proposed new rules and amendments will have an economic impact on institutions which are small businesses. However, the Department deems these fees necessary to reimburse the State for the cost of reviewing each application filed. Since the cost for reviewing an application is dependent on the type of the application and not on the business size, the Department does not differentiate the fees based on whether the institution is a small business.

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

3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1. For filing an application for charter $15,000
2. For filing an application for approval of the establishment of a full branch office $1,500
3. For filing an application for approval of the establishment of a mini-branch office $1,000
4. For filing an application for approval of the establishment of a communication terminal branch office $500.00
5. For filing an application for approval of a change in location of principal office or full branch office $500.00
6. For filing an application for approval of the cost of the establishment of an auxiliary office $500.00
7. For filing an application for approval of an interchange between principal office and full branch office $500.00
8. For filing an agreement of merger, per bank $3,000
9. For filing plans of acquisition, per company, per bank or savings bank $3,000
10. For filing an application for conversion from a mutual to stock savings bank $3,500
11. For filing a copy of a plan of reorganization $1,000
12. For the issuance by the Commissioner of a certificate of authority $500.00
13. For filing a certificate of amendment of a certificate of incorporation, or an amended certificate of incorporation $200.00
14. For filing any other certificate $50.00
15. For filing a required report $100.00
16. For filing a required affidavit $50.00
17. For filing proof of publication, or other required proof .. $50.00
18. For the issuance of a certified copy of any certificate of incorporation or merger or plan of reorganization or any other certificate or affidavit filed in the Department, plus $2.00 per page $25.00
19. For filing a pension plan $500.00
20. For filing an amendment or alteration to a pension plan $200.00
21. For the issuance of any other approval by the Commissioner, plus per diem charges where applicable $100.00
22. For the issuance of any extension by the Commissioner, plus per diem charges where applicable $50.00

(b) In addition to the fees in (a), a per diem charge may be assessed when a special investigation of a filing is required.

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

1. Application to establish a mutual association $7,500
2. Application to establish a stock association $15,000
3. Application for a bulk sale, pursuant to N.J.S.A. 17:12B-204 ..... $500.00
4. Application for a conversion $3,500
5. Application for a merger:
i. Per insured association $3,000
ii. Per institution when one or more is an uninsured association $1,500
6. Application to establish a branch office, not pursuant to a merger or bulk purchase $1,500
7. Application to interchange a principal and branch office when such interchange involves two separate municipalities $500.00
8. Application to interchange a principal and branch office within the same municipality $500.00
9. Application to change location of a principal office to another municipality $500.00
10. Application to change location of branch office beyond 1,500 feet but within same municipality $500.00
11. Application to change location of branch office to another municipality $500.00
12. Application to share facilities $100.00
13. Application for approval of a savings and loan holding company where the resulting holding company will own 100 percent of the insured association as its only capital through an exchange of stock $2,000
14. Filing plans of acquisition, stock savings and loan and existing holding companies $3,000
15. Application for change of name $50.00
16. Certification by the Commissioner of papers or records on file with the Department, plus $2.00 per page for each certification $25.00
17. Annual report or certificate $50.00
18. Dissolution $250.00
19. Filing of any other certificate $50.00
20. Issuance of any other approval by the Commissioner, plus a per diem $100.00

(b) In addition to the fees in (a) above, a per diem charge may be assessed when a special investigation of a filing is required.

3:6-13.3 Off-site location

(a) (No change.)

(b) The following items must accompany each application:

1. A filing fee of [$250.00] **$500.00** plus an additional $50.00 if one or more other financial institutions will share access to the automated teller machine(s).

2. A certified copy of a resolution of the board of the applying bank authorizing the application.

(c) (No change.)

3:6-13.5 Additional access

(a) (No change.)

(b) A filing fee of [$25.00] **$50.00** shall accompany each such notice regardless of the number of institutions or networks added or eliminated.

(c) A fee of $200.00 shall accompany each request to the Commissioner to require an institution to share access to its communication terminal branch office.

3:6-14.1 Biennial fee

[The biennial fee for the insurance of a certificate of authority or a certificate of renewal of a certificate of authority for a foreign bank shall be $800.00.] The certificate **of authority or certificate of renewal of a certificate of authority for a foreign bank** shall run from the date of issuance to the end of the biennial period. When the initial certificate is issued in the second year of the biennial certificate period, the certificate fee shall be an amount equal to one half of the fee for the biennial certificate period. The first biennial period shall commence as of April 1, 1983. Certificates issued during the period April 1, 1982 to April 1, 1983 will bear a fee equal to one half of the $800 biennial fee. **For the biennial period commencing April 1, 1991, the biennial fee will be $1,000. Certificates issued during the period April 1, 1990 to April 1, 1991 will bear a fee equal to one half of the $1,000 biennial fee.**

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3:6-14.2 Miscellaneous fees

(a) A foreign bank shall pay to the Commissioner the following fees:

1. For filing a copy of its certificate of incorporation, or an amendment or change to the certificate $50.00

2. For filing a statement of its financial condition $50.00

3. For filing a power of attorney $25.00

4. For each substitution of securities, pursuant to N.J.S.A. 17:9A-320B $50.00

3:11-5.1 Operational subsidiaries

(a) With the prior approval of the Commissioner of Banking, a bank may engage in activities, which are a part of the business of banking or incidental thereto, by means of an operating subsidiary corporation. In order to qualify an an operating authority hereunder, at least 80 percent of the voting stock of the subsidiary must be owned by the bank. **An application to conduct business as an operating subsidiary shall be accompanied by a $100.00 application fee. In addition, the Department shall impose a per diem charge, as required.**

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

3:11-11.9 Approval procedures for other investments

(a) A bank which seeks to make an investment or engage in any activity requiring the specific approval of the Commissioner shall submit a written application, **accompanied by a $100.00 application fee. In addition, the Department shall impose a per diem charge, as required.** Within 30 days of the filing of such application, the Commissioner shall notify the applicant in writing either that all information required by this section has been filed or that additional specified information must be filed. The Commissioner shall, within 60 days of the date of written notice that all required information has been filed, endorse thereon his approval or disapproval.

(b) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Substance Abuse

Proposed Amendments: N.J.A.C. 6:29-9.2, 9.3, 9.5 and 9.6

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:40A-1, 18A:40A-2, 18A:40A-4, 18A:40A-10, 18A:40A-11, 18A:40A-12, 18A:40A-13, 18A:40A-14, 18A:40A-15 and 42 CFR 2.

Proposal Number: PRN 1989-296.

Submit written comments by July 19, 1989 to:
Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey State Department of Education is proposing amendments to N.J.A.C. 6:29-9, to conform to the provisions of N.J.S.A. 18A:40A-1 et seq. This law became effective January 13, 1988 and is 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.

The proposed amendments are summarized as follows:

The statutory reference to all laws repealed or amended by N.J.S.A. 18A:40A-1 et seq. has been changed to cite appropriate authorities under N.J.S.A. 18A:40A-1 et seq.

N.J.A.C. 6:29-9.2:

1. The definition of "evaluation" has been amended to specify that district policies and procedures for evaluation include a pupil's need for treatment.

2. "Treatment" has been more clearly defined.

N.J.A.C. 6:29-9.3(b) has been amended to require that district policies and procedures for the evaluation and treatment of pupils comply with the confidentiality requirements established by Federal regulations and found in 42 CFR Part II.

N.J.A.C. 6:29-9.3(c)4 has been deleted at that cite and reestablished as N.J.A.C. 6:29-9.3(c)6. This paragraph requires district cooperation with law enforcement drug operations and activities on or near school property in accordance with proposed new rules published in the April 3, 1989 issue of the *New Jersey Register.* These new rules, N.J.A.C. 6:3-6, are scheduled for adoption by the State Board at their June 7, 1989 meeting.

N.J.A.C. 6:29-9.3(c)5 has been renumbered N.J.A.C. 6:29-9.3(c)4 and amended to identify the services which are to be used in determining a pupil's need for an educational program or treatment which extends beyond the regular school program because of the pupil's use or the pupil's family use of alcohol or other drugs.

N.J.A.C. 6:29-9.3(c)5 has been added to require that individuals providing treatment pursuant to the provisions of N.J.S.A. 18A:40A-1 et seq. be appropriately certified by the New Jersey State Board of Examiners as substance awareness coordinators or appropriately certified by the New Jersey State Board of Examiners and trained in alcohol and drug abuse prevention.

N.J.A.C. 6:29-9.3(c)5 also identifies the types of programs and services district boards of education must provide to pupils because of their use or their family's use of alcohol or other drugs.

N.J.A.C. 6:29-9.5(a) has been eliminated and replaced with new language that provides one standard procedure for districts to follow when identifying a pupil who is suspected of using alcohol or other drugs on school property or at school functions. This subsection further requires that:

—a pupil be allowed to return to and remain in school until such time as a positive diagnosis of alcohol or other drug use is received, when the written report of the medical examination has not been submitted to the parent/guardian and principal and chief school administrator, within 24 hours; and

—Refusal or failure by a parent to have the pupil examined to determine if he or she is physically or mentally able to return to school shall be deemed a violation of the compulsory education and child neglect laws.

N.J.A.C. 6:29-9.6 has been reorganized and amended to provide clarity. The instructional requirement at the elementary level has been extended to include instruction in each grade in accordance with the provisions of N.J.S.A. 18A:40A-1 et seq.

Social Impact

The proposed amendments will have a favorable impact on the public in that the components of district board of education drug and alcohol policies and procedures will be clarified and strengthened. School administrators will have a single standard procedure to follow when identifying a student who is suspected of using alcohol or other drugs on school property or at school functions. Chemical health education is also strengthened at the elementary level, the time when attitudes are formed which affect later student use decisions. These amendments are necessary to bring the code in line with the requirements of N.J.S.A. 18A:40A.

Economic Impact

The amendments to N.J.A.C. 6:29-9.6 extend the drug and alcohol instructional requirement at the elementary level to include instruction in each grade in accordance with N.J.S.A. 18A:40A. The new requirement will mean that districts which have heretofore limited their implementation of a prevention curriculum in the elementary grades will be obligated to develop and adopt additional curriculum. Monies available from the Drug-Free Schools and Communities Act (DFSCA) program may be used to cover the costs associated with curriculum expansion, development and implementation. For the third year, all New Jersey public and nonpublic districts are eligible to receive DFSCA Federal funds on a per capita entitlement basis from the Department of Education. The Department requires that districts first meet the curriculum requirements of N.J.A.C. 6:29-9.6 before utilizing the DFSCA funds for other prevention/intervention services for students.

Regulatory Flexibility Statement

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

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

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SUBCHAPTER 9. [DRUGS AND ALCOHOL] **SUBSTANCE ABUSE**

6:29-9.2 Definitions

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

"Evaluation" **means those** [includes but is not limited to the following:]

[1. Procedures] **procedures** used to determine a pupil's need for an educational program **or treatment** which extends beyond the regular school program[;] **by virtue of the use of alcohol or other drugs by the pupil or the pupil's family.**

[2. Examination by a physician for the purpose of diagnosing whether the pupil is under the influence of alcohol and/or other drugs;

3. Evaluation by the child study team to determine a pupil's eligibility or need for a special education program and/or related services due to involvement or consumption of alcohol or other drugs.

4. Assessment by a teaching staff member or district board of education service provider appropriately certified by the New Jersey State Board of Examiners and trained in alcoholism or substance abuse, to determine the extent of the pupil's drug or alcohol use and dependency. Such assessment may be made through the use of trained service providers, certified alcoholism or substance abuse counselors who are acting as resource person(s) or in conjunction with a certified teacher or guidance counselor.]

"Treatment" [includes, but is not limited to, the following:] **means those programs and services offered to help a pupil because of the use of alcohol or other drugs by the pupil or the pupil's family.**

[1. Provisions for program instruction, counseling and related services provided by the board of education or its service providers while a pupil is receiving medical or therapeutic care for a diagnosed drug or alcohol dependency problem. Treatment shall be provided by individuals who are appropriately certified by the New Jersey State Board of Examiners and trained in alcohol and substance abuse or individuals acting as resource person(s) or in conjunction with a certified teacher or guidance counselor;

2. Referral to a community agency recommended by the County Alcoholism Authority or the State Department of Health;

3. Providing support services for pupils who are in care or returning from care for drug and alcohol dependency;

4. A special class or course designed to meet the needs of pupils with drug or alcohol use problems;]

6:29-9.3 Adoption of policies and procedures

(a) (No change.)

(b) In adopting and implementing policies and procedures for the evaluation and treatment of drug or alcohol affected pupils, district boards of education shall:

1. [consult] **Consult** with local agencies recommended by the State Department of Health[.] **; and**

2. Provide for compliance with the confidentiality requirements established in Federal regulations found at 42 CFR Part II.

(c) Drug and alcohol policies of district boards of education shall include, but not be limited to, the following components:

1.-2. (No change.)

3. Specific procedures to govern instances where emergency room services are required in treating alcohol [and/]or drug affected pupils;

[4. Provisions for the inclusion of law enforcement authorities when warranted;]

[5.]**4.** The provision of evaluation [and treatment] services for pupils who are affected by drug or alcohol use. **These services shall include any of the following:**

i. Examination by a physician for the purpose of diagnosing whether the pupil is under the influence of alcohol and/or other drugs;

ii. Evaluation by the child study team to determine a pupil's eligibility for special education and/or related services when the pupil has been identified as potentially educationally handicapped;

iii. Assessment by individuals who are certified by the New Jersey State Board of Examiners as substance awareness coordinators or by individuals who are appropriately certified by the New Jersey State Board of Examiners and trained in alcohol and drug abuse prevention; and/or

iv. Referral to a community agency approved by the County Local Advisory Council on Alcoholism and Drug Abuse or the State Department of Health.

5. The provision of treatment services for pupils who are affected by drug or alcohol use. Treatment shall be provided by individuals who are appropriately certified by the New Jersey State Board of Examiners and trained in alcohol or drug abuse prevention. These programs and services shall include any of the following:

i. Provisions for a program of instruction, counseling and related services provided by the district board of education while a pupil is receiving medical or therapeutic care for a diagnosed drug or alcohol dependency problem;

ii. Referral to a community agency approved by the County Local Advisory Council on Alcoholism and Drug Abuse or the State Department of Health;

iii. Providing support services for pupils who are in care or returning from care for drug and alcohol dependency; and/or

iv. A special class or course designed to meet the needs of pupils with drug or alcohol use problems;

6. Procedures for cooperating with law enforcement drug operations and activities on or near school property in accordance with the provisions established in N.J.A.C. 6:3-6; and

7. Provisions for the establishment of parent/guardian substance abuse educational programs offered at times and places convenient to the parents of the district on school premises or other facilities.

(d) (No change.)

6:29-9.5 Reporting, notification and examination procedures

[(a) In instances involving alcoholic beverages, the following shall apply:

1. Any professional staff member having reason to believe that a pupil is under the influence of alcoholic beverages on school property or at a school function shall report the matter as soon as possible to the school nurse or medical inspector and the principal.

i. In the absence of the principal, his or her designee shall be notified.

ii. In instances where the school nurse, medical inspector and the principal are not in attendance, the staff member responsible for the school function shall be immediately notified.

2. The pupil shall be removed to a protective environment for observation and care by the school nurse or medical inspector until his or her parent(s) or guardian(s) can be contacted to take the pupil home. The principal shall request the assistance of the school nurse or medical inspector in assessing the physical state of the pupil. This shall not be construed to limit or condition the right of a district board of education to seek emergency medical assistance for a pupil when acting in loco parentis, and as an agent of the parent(s) or guardian(s), and for the welfare of the pupil.

3. The pupil's parent(s) or guardian(s) and the chief school administrator shall be immediately notified of the incident and shall be provided a description of the situation and symptoms.

4. When the principal has completed his or her investigation, a conference shall be arranged with the pupil and his or her parent(s) or guardian(s).

5. A plan to address those specific needs which the pupil may have shall be developed following the parent conference.

6. The district's policy shall provide for the evaluation and treatment of pupils who are suspected of the use, possession or consumption of alcoholic beverages in school or at school functions.

7. In instances where there is any doubt regarding the nature of the substance(s) affecting a pupil, the provisions outlined in (b) below shall be followed.

8. In all instances involving the use of alcoholic beverages, a Violence, Vandalism and Substance Abuse Incident Report shall be completed.]

[(b)] **(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(a)[2 and 3], the following shall apply:

1. Any professional staff member to whom it appears that a pupil may be under the influence of [intoxicating] **alcoholic beverages or**

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drugs on school property or at a school function shall report the matter as soon as possible to the school nurse or medical inspector and the principal.

i.-ii. (No change.)

2.-5. (No change.)

6. If the written report of the medical examination is not submitted to the parent or guardian and principal and chief school administrator within 24 hours, the pupil shall be allowed to return to school until such time as a positive diagnosis of alcohol or other drug use is received.

[6.] **7.** If there is a positive diagnosis, from the medical examination, indicating that the pupil is under the influence of [intoxicating] **alcoholic beverages or** drugs, the pupil shall be returned to the care of a parent or guardian as soon as possible. Attendance at school shall not resume until a written report has been submitted to the parent or guardian of the pupil, the principal and chief school administrator from a physician who has examined the pupil to diagnose **alcohol or** drug use. The report shall certify that **substance abuse no longer interferes with** the pupil's [is] physical[ly] and mental[ly able] **ability** to [return] **perform in** school. In addition, the staff member shall complete the Violence, Vandalism and Substance Abuse Incident Report.

8. Refusal or failure by a parent to comply with the provisions of N.J.S.A. 18A:40A-12 shall be deemed a violation of the compulsory education (N.J.S.A. 18A:38-25 and 18A:38-31) and/or child neglect (N.J.S.A. 9:6-1 et seq.) laws.

[7.] **9.** While the pupil is at home because of the medical examination or after his or her return to school, the school may require additional evaluation for the purpose of determining the extent of the pupil's **alcohol or** drug use and its effect on his or her school performance.

[8.] **10.** The district's policy shall provide for the evaluation and treatment of pupils whose use of **alcohol and other** drugs has affected their school performance or who possess or consume alcohol or drugs in school or at school functions.

[9.] **11.** Any staff member who reports a pupil to the principal or his or her designee in compliance with the provisions of this subsection shall not be liable in civil damages as a result of making such a report as specified in N.J.S.A. [2A:62A-4 and as provided for under N.J.S.A. 18A:40-4.2] **18A:40A-13 and N.J.S.A. 18A:40A-14.**

6:29-9.6 Curriculum and instruction

[(a) Each school district having secondary school grades shall incorporate a drug and alcohol education unit into its health education curriculum in accordance with existing Department of Education guidelines. A minimum of 10 clock hours per school year of drug and alcohol education shall be provided pursuant to N.J.S.A. 18A:4-28.7.]

[(b)] **(a)** Each school district having [elementary school] **kindergarten through sixth** grades shall incorporate into its curriculum **at each grade level** drug and alcohol education appropriate for the pupil's age[,] **and** maturity, [and grade level] in accordance with [existing] Department of Education **Chemical Health G**[g]uidelines. **These guidelines are available through the New Jersey State Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.**

(b) Each school district having seventh through twelfth grades shall incorporate into its curriculum at each grade level a minimum of 10 clock hours per school year of drug and alcohol education in accordance with Department of Education Chemical Health Guidelines.

(a)

STATE BOARD OF EDUCATION

Statewide Assessment

Proposed Readoption with Amendments: N.J.A.C. 6:39-1

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

Authority: N.J.S.A. 18A:4-15, 18A:4-24, and 18A:7A-1 et seq.

Proposal Number: PRN 1989-295.

Submit written comments by July 19, 1989 to:

Irene Nigro, Rules Analyst
N.J. 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. 6:39, Statewide Assessment, expires on October 18, 1989. The Department has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Readoption of this chapter will permit the continued implementation of the Statewide Testing System, including establishing the process for the monitoring and assessment of core course proficiencies beginning in 1989-90. The readoption of this chapter will allow for the determination of the effectiveness of schools and districts in helping students learn the core proficiencies and will serve as a basis for assisting schools whose students are not performing well in the core proficiencies. They will further indicate to the public the competency of students Statewide in the core proficiencies for the mathematics, science, English, and social studies courses commonly taken by most students to meet the State Board of Education high school curriculum graduation requirements. This chapter regulates the Department's implementation of the Statewide Testing System, including the administration of the High School Proficiency Test, the establishment of criteria for school districts' testing programs, and the establishment of core course proficiencies.

The Department of Education proposes to readopt these rules, with the following amendments:

N.J.A.C. 6:39-1.1 has been amended to reflect a minor technical change.

N.J.A.C. 6:39-1.2 has been amended to make the process for establishing minimum levels of proficiency consistent with the process established in N.J.A.C. 6:8-4.3. The title of the section has been renamed for clarity.

N.J.A.C. 6:39-1.4 has been amended to reflect the fact that the High School Proficiency Test (HSPT) is the only State developed test of individualized pupil performance.

N.J.A.C. 6:39-1.7 has been deleted as it is redundant. N.J.A.C. 6:28 already provides for the exclusion of pupils from the test programs established in this chapter.

The following amendments were adopted by the New Jersey State Board of Education on April 5, 1989 and published on May 1, 1989 in the New Jersey Register. No changes are proposed to these sections at this time.

N.J.A.C. 6:39-1.3 was amended to include the monitoring of core course proficiencies and the assessment of these proficiencies in the Statewide process for monitoring of school districts.

N.J.A.C. 6:39-1.6 was added to encourage district boards of education to recognize students who achieve academic excellence in the course proficiencies.

Social Impact

The readoption of this chapter provides for continued consistency of student learning in New Jersey high schools. The readoption also provides for the continued implementation of the Statewide testing system and its monitoring and assessment. The proposed amendments will provide greater clarity and will have no additional social impact beyond enhancing the code's usability.

Economic Impact

The continued implementation of the Statewide Testing Program may result in increased costs to those local school districts that are in need of upgrading curriculum and assessment procedures. District boards of education are currently required to develop and assess course proficiencies. Increased costs to local school districts would vary and depend on the level of upgrading necessary.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this readoption with amendments does not impose reporting, recordkeeping, or other compliance requirements on small businesses. This chapter impacts solely upon New Jersey school districts and schools operated by the Department of Education.

Full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:39-1.

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

6:39-1.1 Authority of the Commissioner
(a) (No change.)
(b) All such means, tests, if determined to be appropriate by the Commissioner, and examinations to be administered pursuant to this section shall be conducted by [and in] all operating school districts in New Jersey and shall meet the State criteria.
(c)-(d) (No change.)

6:39-1.2 [Basic skills proficiency in reading, writing and mathematics (HSPT)] **Levels of pupil proficiency**
(a) The State Board of Education, after consultation with the Commissioner, shall establish uniform Statewide levels of pupil proficiency in reading, writing and mathematics skills on the Statewide assessment instruments pursuant to N.J.S.A. 18A:17A-6 **and for assessments in those grades required for district certification.**
(b) [In the event that certain grades] **For other grades that** are not administered the Statewide assessment instruments **and are not considered for district certification**, the Department of Education shall establish [,for those grades,] equivalent standards of pupil proficiency on tests which **meet State criteria and** measure performance in reading, writing and mathematics skills [and meet State criteria].
(c) All pupils performing below the established levels of pupil proficiency in reading, writing and mathematics skills, as determined by (a) and (b) above, shall be provided appropriate instructional services according to the district's basic skills improvement plan, pursuant to N.J.S.A. 18A:7A-6.
1. A waiver of this requirement may be granted if the program of needs assessment conducted pursuant to N.J.A.C. 6:8-7.1(b)**1 and** 4 clearly demonstrates such enrollment is unnecessary **as certified by the chief school administrator** [or if enrollment of a pupil above the levels of pupil proficiency as established in (a) and (b) above is necessary].

6:39-1.4 Dissemination of information
(a) Dissemination of information procedures relative to basic skills proficiency in reading, writing, and mathematics as measured by the High School Proficiency Test (HSPT) shall be as follows:
1. (No change.)
2. The Department of Education shall produce and distribute to chief school administrators [as] uninterpreted reports [for tests developed by the Department], **such as** rosters of pupil performance and other reports as deemed appropriate by the Commissioner.
3.-9. (No change.)
(b) (No change.)

[6:39-1.7 Exclusion of pupils
An educationally handicapped pupil shall be exempted from the High School Proficiency Test and core course proficiencies tests pursuant to the provisions established under N.J.A.C. 6:28].

HEALTH

(a)

HOSPITAL REIMBURSEMENT
Procedural and Methodological Regulations
Commission Fees
Proposed Amendment: N.J.A.C. 8:31B-3.66

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-5b and 26:2H-18d.
Proposal Number: PRN 1989-300.

Submit comments by July 19, 1989 to:
Pamela S. Dickson, Assistant Commissioner
Div. of Health Planning and Resources Development
New Jersey State Department of Health, Room 603
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The current rule allows the Department of Health to recommend to the Hospital Rate Setting Commission a fee per adjusted admission, up to $2.00 per adjusted admission. The Department proposes to change the ceiling to $5.00. The actual fee would be proposed to the Commission and would be based on the projected expenses associated with the hospital rate setting system.

Social Impact

This proposed amendment will allow the Commission to continue assessing appropriate fees on a per adjusted admission basis for the ongoing operation of the Chapter 83 system.

Economic Impact

There is no direct economic impact to providers, since Commission fees are passed through to payers. Payers may realize a small increase in cost per patient; however, the revenue generated will insure the continued operation of the Chapter 83 reimbursement system, which has been effective in controlling hospital cost increases. It is estimated that Commission fees will have to raise approximately $4.4 million in revenue to cover operating expenses during Fiscal Year 1990.

Regulatory Flexibility Statement

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore does not fall into the category of small business as defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act.

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

8:31B-3.66 Commission fees
(a) A charge of up to [$2.00] **$5.00** per adjusted admission, as defined by the American Hospital Association, for each adjusted admission in the year of the current cost base, shall be assessed each institution for which the Commission determines a preliminary cost base.
(b) (No change.)

(b)

HOSPITAL REIMBURSEMENT
Procedural and Methodological Regulations
Reconciliation: Hospitals
Proposed Amendments: N.J.A.C. 8:31B-3.73

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-5b and 26:2H-18d.
Proposal Number: PRN 1989-301.

Submit comments by July 19, 1989 to:
Pamela S. Dickson, Assistant Commissioner
Health Planning and Resource Development
New Jersey State Department of Health, Rm. 601
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

To support the maintenance of an all-payer system and allow hospitals to receive rate-year approved revenue, the proposed amendment will allow the Department to adjust rates for participating payers to account for differences between Medicare's reimbursement levels and Chapter 83 reimbursement levels. This amendment also would permit the Hospital

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Rate Setting Commission to approve final reconciliations, which would adjust for Gramm-Rudman-Hollings reductions for the affected rate years.

Social Impact

This proposed amendment will not alter the delivery of health care in the State of New Jersey and will have no impact on individual patients or hospitals. The amendment will allow for adjustments to rates to maintain the all-payor system and preclude any social impact which might be caused by the discontinuance of the all-payor system.

Economic Impact

It is expected that Medicare reimbursement will be different than Chapter 83 reimbursement would be for the same patients. This amendment allows hospitals a regulatory foundation for the full collection of rate-year revenues approved by the Hospital Rate Setting Commission. To the extent that Medicare reimbursement is different from Chapter 83 reimbursement, this amendment will allow a hospital to collect from participating payers the full financial requirements of an efficient and effective hospital.

Reductions due to Gramm-Rudman-Hollings legislation are estimated to be $24 million in 1986 through 1988.

Regulatory Flexibility Statement

The proposed amendments apply only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore does not fall into the category of small business as defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act.

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

8:31B-3.73 Reconciliation: Hospitals

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

1.-4. (No change.)

5. Nonparticipating payers: For discharges after January 1, 1989, to the extent that payments made by or on behalf of Medicare patients are different than Commission-approved revenues for a rate year, the Hospital Rate Setting Commission will adjust rates to assure that New Jersey hospitals will continue to receive their approved revenues.

i. For purposes of final reconciliation, Medicare revenue will be defined as revenue accrued during the rate year including deductibles, coinsurance, and all pass-through reimbursement such as direct teaching and capital, as adjusted by the Notice of Program Reimbursement (NPR) issued by the fiscal intermediary at final settlement.

ii. The Department of Health may limit rate adjustments if a hospital has not demonstrated a good faith effort to obtain from Medicare the appropriate level of reimbursement.

6. To the extent that Medicare payments for the 1986, 1987 and 1988 rate years are different than Commission-approved revenues, due to Gramm-Rudman-Hollings mandated reductions, the Hospital Rate Setting Commission will adjust rates to assure that New Jersey hospitals will receive their approved revenues for those rate years. For purposes of final reconciliation, rate year Medicare revenue will be defined as in N.J.A.C. 8:31B-3.73(a)5i above.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Long Term Care Licensing Standards
Pharmacy Control Policies
Proposed Amendment: N.J.A.C. 8:39-29.4

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 1989-302.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department proposes to amend N.J.A.C. 8:39-29.4(j) to permit nursing homes to order non-prescription medications from pharmacy suppliers located outside New Jersey.

Currently, the rules, in pertinent part, require each licensed nursing home to: ". . implement written methods and procedures for obtaining prescribed medications and biologicals from a pharmacy licensed by the New Jersey State Board of Pharmacy." The proposed amendment would limit this requirement to the obtaining of "prescribed prescription medications." Thus a nursing home would be permitted to obtain non-prescription items, that nonetheless were ordered for a patient by a physician, from out-of-State suppliers.

Such non-prescription items might include acetaminophens, mild skin lotions, vitamins, and milk of magnesia. The purpose of the proposed amendment is to provide nursing homes and nursing home consumers with an opportunity for cost reduction in the purchase of standard over-the-counter products for which quality is not likely to be compromised through interstate sales.

Social Impact

No substantial social impact is foreseen. Health professionals serving the patient in the facility would remain responsible for monitoring patients' responses to treatment and thus should be able to detect any significant problems related to the performance of over-the-counter products. In addition, although the existing requirement precludes nursing homes from ordering such products directly from out-of-State suppliers, there is no current rule prohibiting the nursing home's in-State pharmacy from purchasing the products from an out-of-State supplier.

Economic Impact

The projected savings cannot be estimated with precision, because it is unclear how many facilities would purchase products directly from out-of-State and to what extent. Moreover, prices vary from time to time, supplier to supplier, and product to product.

On balance, information available to the Department tends to show a projected reduction of approximately 25 percent in the purchase of pharmacy products from out-of-State. For example, the Department learned of price differentials on Tylenol, the common acetaminophens, of 30 percent in packages of 325 milligrams (mgs.) and 22 percent in packages of 500 milligrams. For vitamins, price differentials may range from seven percent on chewable products to 107 percent on a common commercial one-a-day product.

Regulatory Flexibility Statement

Approximately half of New Jersey's nursing homes may be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is not required because the amendment does not impose reporting, recordkeeping or other requirements on small businesses. The amendment allows nursing homes to obtain non-prescription items which have been prescribed by a physician, such as acetaminophens, certain skin lotions, vitamins and milk of magnesia, from out-of-State pharmacies. The nursing homes will be required to obtain prescription items from pharmacies licensed by the New Jersey State Board of Pharmacy.

Full text of the proposal follows (addition indicated in boldface **thus**):

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8:39-29.4 Mandatory pharmacy control policies and procedures

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

(j) The facility shall implement written methods and procedures for obtaining prescribed **prescription** medications and biologicals from a pharmacy licensed by the New Jersey State Board of Pharmacy. The telephone number of the pharmacy and procedures for obtaining drugs shall be posted at each nursing unit.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Compliance with Mandatory Rules and Advisory Standards

Proposed New Rule: N.J.A.C. 8:43G-3

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., sepcifically 26:2H-5.

Proposal Number: PRN 1989-304.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

As part of its program of licensure reform for hospitals, the Department is proposing a framework for the implementation of advisory standards, as a complement to the mandatory rules that every hospital is required to meet. Mandatory rules are minimum and essential requirements of care. Advisory standards are benchmarks of excellence or superior attainment in providing care of high quality. Hospitals are encouraged to use advisory standards in striving to provide the highest quality of care possible.

Proposed N.J.A.C. 8:43G-3.3 describes different ways in which advisory standards may, and may not, be applied. Hospitals will choose whether or not to be surveyed for advisory standards. Under this section, the Department may not use advisory standards to select recipients of certificates of need, or to issue public reports identifying individual hospitals' compliance with advisory standards.

The use of advisory standards is a novel component of hospital licensure, not previously used in New Jersey or other jurisdictions. The precedent is the use of advisory standards in nursing home licensure, contained in N.J.A.C. 8:39, effective June 20, 1988, also developed by the Department's Licensure Reform Project.

Besides the uses stated in the proposed rules, advisory standards serve to recognize health professionals, services or departments, and facilities for exceeding minimal standards. They serve to promote high quality care. In addition, advisory standards provide a means of including in licensure rules some important factors that, because they may not be feasible for all licensed facilities, the Department prefers not to establish as mandatory requirements.

In the future, the Department intends to explore the development of additional advisory standards for hospital licensure, such as standards of outcomes of care and standards specifying the annual volume of particular clinical procedures that a hospital should perform if it offers the procedure on a regular basis.

There is no expectation that any hospital will or could meet all advisory standards. The more limited expectation is that hospitals and their staffs will try to meet those advisory standards they are most likely of attaining, especially in areas where the hospital perceives its strengths.

Economic Impact

Advisory standards will have no economic impact on hospitals. Compliance with advisory standards is not part of the hospital reimbursement program nor are advisory standards included in ratesetting formulas or policies. Hospitals will neither be directly penalized nor directly rewarded for complying with advisory standards. However, many advisory standards do involve costs.

Social Impact

Advisory standards should lead to higher quality of care, as professionals and facilities strive to meet them. By positively reinforcing the efforts of professionals who meet the higher standards, advisory standards should lead to greater work satisfaction, which in turn should help to attract and retain health professionals during the current shortage of health professionals in certain categories.

Regulatory Flexibility Statement

Advisory standards will have no impact on small businesses as they are defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since all hospitals employ more than 100 people.

Full text of the proposal follows:

SUBCHAPTER 3. COMPLIANCE WITH MANDATORY RULES AND ADVISORY STANDARDS

8:43G-3.1 Mandatory rules

(a) Mandatory rules contain minimum and essential requirements of care provided by a hospital.

(b) Failure to comply with any mandatory rules specified in this chapter shall constitute a deficiency for which the New Jersey State Department of Health may take any or all of the following measures or any other lawful remedy:

1. Action to impose a fine;
2. Cessation of all admissions;
3. Removal of all patients from the hospital when there is an imminent danger to any person's health and safety; and
4. Revocation of the license held by the hospital operator.

8:43G-3.2 Advisory standards

(a) Advisory standards contain benchmarks of excellence or superior attainment in providing care of high quality.

(b) Hospitals are strongly encouraged to use advisory standards in striving to provide the highest quality of care possible.

(c) Failure to comply with any or all advisory standards shall not constitute a deficiency or result directly or indirectly in any fine, cessation of admissions, removal of patients, or revocation of a license, imposed pursuant to action by the New Jersey State Department of Health.

(d) Compliance with advisory standards shall not be used as an indication of whether the hospital is in compliance with mandatory rules or whether a hospital should be made subject to a penalty or other action to protect patients.

8:43G-3.3 Application of advisory standards

(a) A hospital may elect to be surveyed for advisory standards as part of its annual licensure survey and so inform the Department of Health before or at the beginning of the survey.

(b) The Commissioner of Health may elect to defer certain sections of advisory standards until a future date, or implement all sections of advisory standards at the same time.

(c) The Commissioner of Health may, from time to time, issue reports on hospital quality of care that contain or summarize aggregated data on compliance with advisory standards, provided that such reports do not identify specific hospitals.

(d) No hospital shall be deemed to comply with advisory standards in a subchapter of N.J.A.C. 8:43G if the Department finds that the hospital is not in general compliance with the mandatory rules contained in that subchapter.

(e) The Department shall develop a means to report and shall report compliance with advisory standards to the individual hospital that is surveyed as an acknowledgment of hospital staff efforts to exceed minimum standards.

(f) The Department shall not use compliance with advisory standards in any of the following ways:

1. Determining whether a hospital should be awarded a certificate of need;
2. Issuing numerical scores for hospitals, or a ranking of hospitals, or a protocol for rating hospitals; or
3. Publicly reporting, or making publicly accessible, the results of findings of compliance with advisory standards in a format that identifies individual hospitals' performance;

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(g) The Department may survey a hospital for compliance with advisory standards by determining compliance with a sample of advisory standards that the hospital has claimed to meet. The Department may require hospitals to submit, either before the licensure survey or at a specified time during the survey, a listing of those advisory standards that the hospital claims to meet, along with supporting documentation. This submission requirement is intended only to facilitate surveyor scheduling and conserve survey time.

8:43G-3.4 Review of mandatory rules and advisory standards

(a) The Department shall continually, and at least annually, review the performance in licensure surveys of all mandatory rules and advisory standards in order to identify those items that should be deleted, revised, or restructured.

(b) Use of advisory standards is not intended as a test of future mandatory rules. On occasion, however, advisory standards may become mandatory rules in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., based on a determination that they are minimum and essential requirements of care.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Central Supply
Proposed New Rules: N.J.A.C. 8:43G-8

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 1989-305.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to central supply services in hospitals. Proposed new N.J.A.C. 8:43G-8 was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including central supply. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-8.1 requires written policies and procedures for the central supply service which are approved by the infection control committee and include at least decontamination and sterile activities. These provisions require the hospital consistently to follow written guidelines approved by the infection control committee as effective for cleaning, disinfecting, and sterilizing equipment and supplies.

N.J.A.C. 8:43G-8.2(b) requires that the director or supervisor of central supply receive a certificate for completing a recognized central service training course. This provision would assure a high level of training and technical knowledge on the part of directors of central supply, who therefore would be qualified to supervise areas related to safety and cleanliness.

N.J.A.C. 8:43G-8.4(d) requires that all patient care equipment is cleaned, disinfected, or sterilized according to the use of the item. This provision would assure that all equipment used for patient care is cleaned or sterilized in such a way as to minimize or eliminate the possibility of infection.

N.J.A.C. 8:43G-8.11(f) requires that methods for sterilizing reusable medical devices conform with industry standards as published by the Centers for Disease Control and the Association for the Advancement of Medical Instrumentation. This provision would assure that currently recognized practices are followed in the sterilization procedures of reusable medical instruments or devices.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include certification of all personnel in central supply services, the centralization of all decontamination, cleaning, and sterilization in one area, the omission of rinsing or cleaning of instruments and equipment before sending to central supply service, and sterilization procedures for specified instruments. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

One of the basic tenets of safe hospital practice is the cleaning, decontamination, and/or sterilization of all equipment, supplies, and instruments used in patient care. Such practices deter the spread of disease and contribute to the safety and well-being of patients and staff.

The primary social impact of the proposed rules is to ensure that every hospital follow established procedures to clean, decontaminate, and sterilize equipment and supplies to promote quality of care for patients as well as the safety of both patients and staff.

Economic Impact

Since hospitals already have central supply services that meet the major provisions of the proposed rules, substantial additional expenditures are not expected to be required.

Regulatory Flexibility Statement

The proposed rules would not affect samll businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 8. CENTRAL SUPPLY

8:43G-8.1 Central supply policies and procedures; mandatory

(a) The hospital's central supply service shall have written policies and procedures that are reviewed annually, revised as needed, implemented, and followed. These policies and procedures shall be approved by the hospital's infection control committee.

(b) Policies and procedures for central supply shall include at least decontamination and sterile activities, including receiving, decontamination, storage, cleaning, packaging, disinfection, sterilization, and distribution of reusable items.

(c) All equipment and instruments in the hospital shall be processed according to central supply cleaning and sterilization policies and procedures.

(d) Manufacturers' recommendations for equipment use, testing, and cleaning shall be readily available in central supply services and in the department where the equipment is used.

8:43G-8.2 Central supply staff qualifications; mandatory

(a) There shall be a full-time director or supervisor of central supply services.

(b) By January 1, 1991, the director or supervisor of central supply shall have received a certificate for completing a central service training course recognized by the Department of Health.

8:43G-8.3 Central supply staff qualifications; advisory

All personnel in central supply services should have a certificate for completing a central service training course which is recognized by the Department of Health.

8:43G-8.4 Central supply patient services; mandatory

(a) Entrance to the central supply processing and decontamination area shall be restricted to persons attired in hospital-laundered or protective attire, in relation to the purpose and scope of their duties.

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(b) All reusable patient care items shall be reprocessed according to manufacturers' recommendations.

(c) There shall be a preventive maintenance program for all patient care equipment processed by central supply that includes performance verification records. Preventive maintenance shall be documented.

(d) All patient care equipment shall be cleaned, disinfected, or sterilized, according to the use of the item.

(e) Sterile supplies shall bear expiration dates as follows:

1. Double-wrapped muslin/paper wrappers not to exceed one month;

2. Heat-sealed paper/plastic wrappers or plastic dust-cover wrappers not to exceed one year;

3. Self-sealed packaging not to exceed manufacturers' recommendations for expiration dates; and

4. Rigid sterilization containers not to exceed manufacturers' recommendations for expiration dates.

(f) Single-use items shall be reused or reprocessed only if the manufacturer recommends reuse or reprocessing, or if the hospital has scientific validation of the safety of reprocessing and reuse of the item. Procedures for reprocessing and reuse shall conform with these recommendations or validation studies.

8:43G-8.5 Central supply patient services; advisory

(a) All decontamination, cleaning, and packaging for sterilization of reusable equipment should be performed in the central supply processing and decontamination area.

(b) Paper/plastic wrappers and dust-cover packaging should be heat-sealed only.

(c) Instruments and equipment should not be rinsed or cleaned before being sent to the central supply service.

8:43G-8.6 Central supply space and environment; mandatory

(a) Sterile supplies shall be processed, packaged, rotated, distributed, stored, and dated in such a way as to ensure the integrity and sterility of the sterile item.

(b) Exterior shipment cartons shall not be brought into sterile supply storage or processing areas.

(c) Soiled or contaminated supplies shall be physically separated from those that are clean or sterile.

(d) All work surfaces in central supply shall be cleaned with germicidal disinfectant at the end of each work shift.

(e) An area shall be designated for central supply employees to change their clothing and store personal items.

8:43G-8.7 Central supply supplies and equipment; mandatory

(a) An illuminated worktable shall be provided to examine linen used for wrapping sterile supplies for tears, pinholes, and other defects.

(b) Laparoscopes, arthroscopes, and other scopes that enter normally sterile areas of the body, and their accessories, shall be sterilized or given high-level disinfection after each use according to manufacturers' recommendations or according to policy established by the hospital's infection control committee.

8:43G-8.8 Central supply supplies and equipment; advisory

Laparoscopes, arthroscopes, and other scopes that enter normal sterile areas of the body, and their accessories, should be sterilized after each use according to manufacturers' recommendations.

8:43G-8.9 Central supply staff education and training; mandatory

(a) All new central supply service employees shall receive on-the-job training on practices and equipment unique to the hospital.

(b) All central supply service employees shall participate in training sessions or educational programs that are held at least every three months and are relevant to central supply. Staff participation shall be documented.

8:43G-8.10 Central supply quality assurance methods; mandatory

(a) There shall be a program of quality assurance for central supply that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The efficacy of chemicals used for high-level disinfection shall be verified by the use of a test method specific to the chemical if a valid and reliable test method is available and feasible for use in a hospital setting.

(c) There shall be a system for monitoring the processing of all equipment and instruments in the hospital for adherence to central supply policies and procedures.

8:43G-8.11 Sterilizer patient services; manatory

(a) All hinged instruments shall be sterilizer processed in an open position.

(b) Before they are sterilizer processed, all instruments and equipment shall be visually inspected for cracks, pitting, rust, or any condition that would impede cleaning.

(c) Sterilizers in use shall be kept clean.

(d) Sterilizer drains shall be flushed at least weekly, unless otherwise specified by the manufacturer.

(e) Sterilizer door gaskets shall provide effective sealing.

(f) Methods for sterilizer processing reusable medical devices shall conform with both the following:

1. The current edition of the Centers for Disease Control "Methods for Assuring Adequate Processing and Safe Use of Medical Devices"; and

2. The Association for the Advancement of Medical Instrumentation, (AAMI) requirements, "Good Hospital Practice: Steam Sterilization Using the Unwrapped Method (Flash Sterilization)."

Note: AAMI requirements can be obtained from:
The Association for the Advancement of Medical Instrumentation
Suite 602
1901 North Fort Myer Drive
Arlington, VA 22209

(g) Instruments and medical devices sterilized by ethylene oxide shall be aerated in a mechanical aerator at 140 degrees Fahrenheit for a minimum iof eight hours or at 122 degrees Fahrenheit for a minimum of 12 hours, unless otherwise recommended by the manufacturer.

8:43G-8.12 Sterilizer space and environment; mandatory

Each sterilizer processing area shall have exhaust ventilation to remove heat, moisture, and odors without recirculating the exhaust to other areas of the hospital.

8:43G-8.13 Sterilizer supplies and equipment; mandatory

(a) All sterilizers shall be operated and maintained in accordance with the manufacturers' instructions.

(b) An indicating thermometer, accurate to three degrees Fahrenheit, shall be located in all ethylene oxide aeration equipment.

8:43G-8.14 Sterilizer quality assurance methods; mandatory

(a) At the completion of each sterilization load, the time, temperature, and pressure readings shall be checked and verified.

(b) An internal and external medical indicator shall be used to monitor every package sterilized.

(c) The following equipment tests and monitoring shall be performed as specified and records, including load number, contents of the load, and expiration date, shall be maintained for at least one full year:

1. A prevacuum air removal test shall be performed daily on each prevacuum sterilizer and following repair or breakdown of the prevacuum sterilizer;

2. Biological monitoring with live spores shall be performed at least daily on each ethylene oxide sterilizer and following repair or breakdown of the ethylene oxide sterilizer; and

3. For steam sterilizers used to sterilize instruments, biological monitoring with live spores shall be performed daily for each steam autoclave and following repair or breakdown of the steam sterilizer. If a sterilizer is not in use daily, daily testing shall be required only on the days it is in operation.

(d) In the event of positive biological test results on a sterilizer, effective corrective action shall be taken, including retesting and recall if indicated.

(e) There shall be an established recall system in effect.

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(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Dietary Standard

Proposed New Rules: N.J.A.C. 8:43G-10

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 1989-306.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to dietary services in hospitals. The proposed new subchapter of the Hospital Licensing Standards, N.J.A.C. 8:43G-10, was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including Dietary. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-10.3(a) and (b) specify the qualifications for the food service director and the registered dietitian who has the full-time responsibility for the clinical aspect of the dietary service. This provision requires that both the food service manager and clinical components of the dietary department contribute to the health and well-being of patients.

N.J.A.C. 8:43G-10.6(c) requires that patients be screened for nutritional assessments based on specific criteria and that nutritional assessments for patients determined to be at clinical risk be completed within 72 hours of admission. This provision assures that the nutritional needs of patients are recognized and met.

N.J.A.C. 8:43G-10.6(j) requires that the dietary service regularly participate in meetings of multidisciplinary health care teams. This provision recognizes the role of diet and nutrition in the overall health and well-being of patients and involves dietary services with other disciplines in patient care planning.

N.J.A.C. 8:43G-10(l) would require a mechanism to evaluate whether patients on each nursing unit are being adequately nourished. Suggested mechanisms include rounds, review of charts, plate waste measurement, or multidisciplinary team conferences. This provision assures that the dietary service department has a method by which to assess hospital-wide meal consumption and is able to identify any large scale issues related to food preparation.

N.J.A.C. 8:43G-10(n) requires that a mechanism is in place to enable patients and their families to communicate directly with the dietary service. This provision serves as a means to monitor patient satisfaction and assure that the dietary service is informed of any patient and/or family concerns or suggestions.

The Department also supports other measures that hospitals can take to strengthen the clinical role of dietary service departments and to enhance the nutritional quality and appeal of meals served. These measures are proposed as advisory standards for dietary services and include the establishment of a multidisciplinary nutrition committee, development of weekly cycle or restaurant-type menus, and development of policies to address patients' personal or religious dietary preferences. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Increasing attention has been given to the importance of individual dietary and nutritional needs. This long overdue recognition has increased the visibility and role of dietary service departments within hospitals.

The dietary service department has an obligation to serve nutritionally well balanced meals and to meet the specialized therapeutic needs of individual patients. The involvement of a registered dietitian in hospital food service departments is essential to ensure that patients' nutritional needs are recognized and adequately met.

The primary social impact of these standards is to ensure that patients receiving care in New Jersey hospitals are provided with meals that adequately meet their dietary and nutritional needs.

Economic Impact

There are no substantial additional expenditures expected to result from the proposed new rules. Hospital dietary departments are currently meeting the major requirements of the proposed new rules.

Regulatory Flexibility Statement

The proposed rules affect all hospitals in New Jersey which are regulated by N.J.A.C. 8:43G. Each of these hospitals employs more than 100 full-time employees and therefore are not considered in the small business category as 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 proposal follows:

SUBCHAPTER 10. DIETARY

8:43G-10.1 Dietary policies and procedures; mandatory

(a) The dietary service shall have written policies and procedures for all dietary services that are reviewed annually, revised as needed, and implemented.

(b) There shall be a policy that clearly assigns responsibility for assuring that patients requiring assistance during feeding are identified and that assistance is provided.

(c) A diet manual detailing nutritional and therapeutic standards for meals and snacks, including nutrient analysis of menus, shall be annually reviewed. An up-to-date manual shall be available at each nurses station, the dietary department, administration, and the medical library, if the hospital maintains one.

8:43G-10.2 Dietary policies and procedures; advisory

(a) Written policies and procedures for dietary services should include policies on serving patients food that addresses personal or religious dietary preferences.

(b) There should be a multidisciplinary nutrition committee that guides the development and review of nutritional care requirements, policies and procedures and shall include, at least, representatives of nursing, medicine and dietary.

8:43G-10.3 Dietary staff qualifications; mandatory

(a) There shall be a food service director who has a baccalaureate degree from an accredited college or university in food, nutrition, or food services management or has at least four years of experience in hospital food services management and successful completion of Food Management Certification (FMC) and Dietetic Assistant programs of their equivalents.

(b) A registered dietitian shall have full-time responsibility for the clinical aspect of the dietary service.

8:43G-10.4 Dietary staff time and availability; mandatory

(a) A dietitian shall be on duty in the hospital for a specified period, as determined by the hospital, during every 48-hour weekend or holiday period.

(b) Trained dietary service staff members shall be responsible for checking menus, supervising food production, and performing clerical tasks.

8:43G-10.5 Dietary staff time and availability; advisory

There should be a system to ensure that a dietitian is on duty or can be reached at all times for emergencies.

8:43G-10.6 Dietary patient services; mandatory

(a) All new admissions shall be listed with the dietary service upon admission. Each patient's diet shall be documented on the medical record.

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(b) A physician shall write a specific dietary order for each patient.

(c) Patients shall be screened for nutritional assessments based on specific criteria. Nutritional assessements for patients determined to be at nutritional risk shall be completed within 72 hours of admission.

(d) The dietary service shall set guidelines for subsequent nutritional assessments of patients determined to be at nutritional risk.

(e) Patients' nutritional needs for food and food supplements shall be met, in accordance with physician orders.

(f) All diets shall conform to the hospital's diet manual.

(g) At least three meals shall be served daily, and no more than 15 hours shall elapse between dinner and breakfast.

(h) Nourishment shall be available between meals and at night.

(i) Food production shall be sufficient in quantity to meet nutritional needs and shall be coordinated with dietary orders.

(j) Physician orders and changes in physician orders for diets shall be effected by the next mealtime, if they are received by the dietary services by the pre-meal deadline specified in the dietary service's policies and procedures.

(k) The dietary service shall regularly participate in meetings of multidisciplinary health care teams to assess patients.

(l) The dietary service shall follow the policies and procedures developed by the pharmacy and therapeutics committee to identify possible food/drug interactions.

(m) There shall be a mechanism for evaluating patients on each nursing unit to ensure they are being adequately nourished. This may involve rounds, review of charts, plate waste measurement, or multidisciplinary team conferences.

(n) If the patient does not receive the diet that has been ordered, or is unable to consume the diet, the nursing staff shall inform the dietary service.

(o) There shall be a mechanism for patients and their families to interact with the dietary service, such as a written comment sheet, patient rounds, or distribution of the dietary service's phone number.

(p) Patients with special dietary needs, based on criteria established by the hospital, shall receive dietary instruction from dietary services during hospitalization.

(q) The dietary service shall comply with the requirements of Chapter XII of the New Jersey State Sanitary Code, "Sanitation in Retail Food Establishments and Food and Beverage Vending Machines" (N.J.A.C. 8:24).

8:43G-10.7 Dietary patient services; advisory

(a) Nutritional assessments for patients determined to be at risk should be completed within 48 hours of admission.

(b) Food should be attractively presented and contain spices and flavorings that are appropriate to the diet.

(c) Food should be ordered and prepared so as to provide high quality, plentiful quantity, and seasonal freshness.

(d) Menus should be constructed to provide variety and choice, for example, with weekly cycles or restaurant-type menus.

(e) There should be a guest meal program.

8:43G-10.8 Dietary staff education and training; mandatory

All dietary personnel shall attend at least 10 training or educational programs, within or outside the facility, per year.

8:43G-10.9 Dietary staff education and training; advisory

All dietary personnel should attend at least 12 training or educational programs, within or outside the facility, per year.

8:43G-10.10 Dietary quality assurance methods; mandatory

(a) There shall be a program of quality assurance for dietary services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective action based on these data.

(b) Patient satisfication shall be monitored on an ongoing basis, and a survey mechanism shall be in place that produces quarterly summaries.

(c) Quality assurance activities for the dietary service shall address the following areas:

1. Quality, appropriateness, timeliness, and completeness of dietitian notes and assessments entered in the medical record;
2. Patient and/or family understanding of the diet;
3. Prescribed nourishments delivered to the patient;
4. Meeting special needs of high-risk patients;
5. Availability of between-meal provisions;
6. Accuracy and timeliness of the tray delivery process; and
7. Timeliness of registration of new admissions with the dietary service.

(d) As part of its quality assurance activities, the dietary service shall maintain a log detailing problem identification, action, and follow-up.

(e) There shall be a system in place to ensure the accuracy of dietary orders that are transmitted to the dietary service. This system shall be monitored as part of the quality assurance program.

(f) There shall be a mechanism to monitor the administration of and the appropriateness of enteral and parenteral feeding.

(g) The hospital shall have meal production standards in place to ensure efficiency.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Discharge Planning
Proposed New Rules: N.J.A.C. 8:43G-11

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 1989-307.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure quality of care, related to discharge planning in hospitals. Proposed new N.J.A.C. 8:43G-11 was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including discharge planning. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-11.1(a) requires each hospital to have a formal discharge planning program to ensure that every patient is screened for post-discharge needs. This provision assures that every patient would be assessed regarding the need for continuity of care.

N.J.A.C. 8:43G-11.4(a) requires each hospital to have a multidisciplinary team including at least a social worker and a registered professional nurse to guide discharge planning. The team would receive input and communicate with other health professionals involved in the patient's care. This provision assures that health care professionals with varied expertise actively participate in the development of discharge plans for patients.

N.J.A.C. 8:43G-11.5(b) requires each hospital to discharge any patient still in need of care only to a setting which can provide needed care, or to demonstrate that a diligent effort has been made to find appropriate placement. This provision assures that careful, multiple attempts have been made to discharge a patient in need of further care to an appropriate setting.

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The Department also supports other measures that hospitals can take to improve quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include additional representation by administration and medical staff on discharge planning teams and patient care conferences or rounds. Advisory standards identify areas of strength and indicate excellence.

Results of the written opinion survey produced 58 sets of comments. The proposed provision that drew the highest number of comments was N.J.A.C. 8:43G-11.5(b), which precludes the hospital from discharging any patient still in need of care unless it assures that the patient is transferred to an appropriate setting for care. Of 27 comments on this standard, about half noted that patients or families might refuse placement, and it was noted that the standard could not apply to all instances, for example, placement of homeless people. The standard was subsequently changed to specify that a patient still in need of care shall be transferred to an appropriate setting for care, but that the hospital will meet the standard if it makes a diligent attempt to find an appropriate placement.

Social Impact

In recent years, the length of stay in acute care settings has decreased. In addition, the average patient is older and has more health care problems which may require continued services after hospitalization. Discharge planning is the mechanism that ensures that patients have access to the most appropriate type and setting for post-hospital or rehabilitative care.

Discharge planning has been found to be most effective if an assessment is made of the patient's medical, psychosocial, environmental, and economic needs, and if post-hospital care is based on these needs. Planning also involves the patient's family, when possible, and takes into consideration community resources. This complex task requires the contributions of a number of disciplines, such as social work, nursing, medicine, and administration. These disciplines are part of the discharge planning team which coordinates planning for each patient who requires it.

The primary social impact of the proposed rules is to ensure that each patient is screened for post-discharge needs, that the patient's needs are addressed in a multidisciplinary plan, and that every attempt is made to secure adequate and appropriate post-discharge care.

Economic Impact

Since hospitals already are providing discharge planning services that meet the major provisions of the proposed rules, substantial additional expenditures are not expected to be required.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 11. DISCHARGE PLANNING

8:43G-11.1 Discharge planning structural organization; mandatory

(a) Each hospital shall have a discharge planning program with formal mechanisms in place to ensure that every patient is screened for post-discharge needs.

(b) The hospital shall maintain an organizational chart or alternative documentation that clearly delineates the responsibilities, authority, and accountability of the discharge planning program staff.

8:43G-11.2 Discharge planning structural organization; advisory

(a) There should be a multidisciplinary committee for the management of the discharge planning program that includes at least representatives of the hospital's administration, medical, social work, and nursing staffs.

(b) There should be documentation in patients' medical records to indicate that multidisciplinary discharge planning patient care conferences or discharge planning rounds have been held to discuss individual cases.

8:43G-11.3 Discharge planning policies and procedures; mandatory

(a) Hospital staff working in the discharge planning program shall have open access to relevant patient records.

(b) Members of the discharge planning program shall participate in the development and review of transfer agreements with other health care facilities and agencies.

8:43G-11.4 Discharge planning staff qualifications; mandatory

(a) A team that includes at least a social worker and a registered professional nurse shall have responsibility for and guide multidisciplinary discharge planning for patients who, upon screening, are determined to require coordinated discharge planning. This team shall receive input from, and communicate with, the patient's attending physician, staff nurse or nurses, and other health professionals.

(b) The social worker and registered nurse who are members of the discharge planning team shall have received education or training in hospital discharge planning.

8:43G-11.5 Discharge planning patient services; mandatory

(a) Patients who require post-discharge continuity of care shall be linked to needed resources, such as:

1. Placement in a nursing home;
2. Enrollment with a home care program;
3. Transfer to another health care facility; or
4. Referral to community resources.

(b) The hospital shall make every attempt to find and effect an appropriate placement for any patient ready for discharge but requiring further care.

(c) Patient care conferences or discharge planning rounds shall be held to discuss specific patients' needs for continuity of care.

(d) The patient shall participate in the development of the discharge plan, where possible. The family or significant other shall participate in the development of the plan, where possible, and when the patient is able to agree, and does agree, to their involvement.

(e) If a patient's needs for post-discharge care change after a discharge plan is developed, the plan shall be modified to meet the patient's needs.

(f) The hospital shall have a mechanism to ensure that each patient receives, upon discharge, written instructions about home care and medications, if relevant, and the telephone number of a contact person to call in case he or she has questions after discharge.

(g) For all patients who receive discharge planning, a summary or summaries of the patient's discharge plan prepared by a member of the discharge planning team shall be included in the medical record during the hospital stay or within 30 days of discharge.

8:43G-11.6 Discharge planning quality assurance methods; mandatory

(a) There shall be a program of quality assurance for discharge planning that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. The program shall monitor at least:

1. That communication occurs among members of the multidisciplinary team, and the patient and family;
2. Appropriateness of referrals; and
3. Implementation of the discharge plan.

(b) There shall be a mechanism in place for evaluating the effectiveness of the discharge plan after discharge.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Emergency Department
Proposed New Rules: N.J.A.C. 8:43G-12

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 1989-308.

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Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of emergency department services in hospitals. The proposed new subchapter of the Hospital Licensing Standards, N.J.A.C. 8:43G-12, was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including emergency department services. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-12.1 requires that each hospital provide emergency department services, unless it is a psychiatric or rehabilitation facility. Conversely, hospitals which are exempted from offering emergency medical services would be prohibited from offering nonscheduled medical services outside the hospital's specialty field. This provision would assure that the general public have access to emergency medical services at an optimum number of hospitals. At the same time, since psychiatric or rehabilitative hospitals are prohibited from offering emergency services, the general public would be assured that any hospital that does offer emergency services is equipped and staffed to handle nonscheduled medical services.

N.J.A.C. 8:43G-12.4(a) requires that, by July 1992, each physician practicing in the emergency department would either be board-certified by the American Board of Emergency Medicine (or meet current qualifications to be examined by the Board), or have completed a nationally approved residency program, or have the equivalent of three years of full-time clinical experience in emergency medicine. This provision would assure a high level of knowledge and clinical skill on the part of emergency room physicians. Moonlighting residents would no longer be staffing hospital emergency departments.

N.J.A.C. 8:43G-12.8(a) requires each emergency department to assign clinical priority for treatment to each patient upon arrival. N.J.A.C. 8:43G-12.8(b) requires that emergency department staff initiate treatment immediately in life-threatening emergencies. These provisions would assure that each patient is assessed upon arrival and that those determined as critical are treated immediately.

N.J.A.C. 8:43G-12.8(c) requires that each patient be evaluated by an attending or emergency department physician before being discharged. This provision would assure that no patient leaves the emergency department without receiving the attention of a qualified physician.

N.J.A.C. 8:43G-12.8(d) requires that no patient wait more than four hours between arrival in the emergency department and evaluation by the attending or emergency physician. This provision would help assure that patients receive medical attention within a reasonable amount of time after arriving at the hospital.

N.J.A.C. 8:43G-12.8(f) requires that no patient shall be retained in the emergency department more than 12 hours after treatment, unless being clinically observed or awaiting test results or transportation. This provision would assure that each patient's stay in the emergency department is short term and that longer term care, if required, is provided elsewhere.

Proposed N.J.A.C. 8:43G-12.8(j) requires that each patient receive written instructions and an oral explanation of the instructions upon discharge from the emergency department to home. This provision would help assure that effective instructions for follow-up care are communicated to the patient.

Proposed N.J.A.C. 8:43G-12.8(l) requires that a patient be transferred to another hospital only for a valid medical reason or by the patient's choice. This would assure that the emergency department to which the patient presents him or herself treats the patient, unless there is a valid medical reason for transfer to another facility.

The Department also supports other measures that hospitals can take to improve quality of care. These measures, which are proposed as advisory standards for emergency departments, include board certification in emergency medicine of all physicians, certification in emergency nursing, trauma, and advanced cardiac life support for nurses, and a limit to 12 hours on duty for physicians and other health professionals. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Access to medical services is a major health care issue both nationally and in New Jersey. For numerous social, cultural, and economic reasons, emergency departments are a primary point of access to medical care for many people. Because the need for emergency medical treatment fluctuates from hour to hour, emergency departments must be prepared to handle wide variations in the volume of patients. Also, because patients using emergency services either are in life-threatening situations or perceive that their problems need urgent action, emergency departments must be staffed and equipped to care for patients with varying acuities of illness.

In order to meet each patient's needs in a timely and effective manner, the hospital must provide a full range of emergency services at all times and be staffed by professionals with specialty training in emergency care.

The primary social impact of the proposed rules is to assure that each patient who comes to the emergency department for treatment receives immediate clinical assessment, an evaluation by a physician, and treatment or other disposition within specified time frames. This will ensure that all emergency department patients are given equal access to quality care.

Economic Impact

Since the proposed new rules under N.J.A.C. 8:43G-12.4 specify a change in staff qualifications and staffing requirements, it is possible that additional costs will be incurred. The requirement that each physician practicing in the emergency department must be board-certified or meet experience requirements will in effect eliminate the practice known as "moonlighting" by residents. The precise economic impact is not known at this time, since hospitals throughout the State have different staffing practices. However, since implementation is not required until July 1, 1992, hospitals will have three years in which to determine and plan for additional costs, if any. Under current rate-setting rules, hospitals would be reimbursed to accommodate substantial increases in expenditures necessitated by new licensure rules.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G-12 all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 12. EMERGENCY DEPARTMENT

8:43G-12.1 Emergency department structural organization; mandatory

The hospital shall provide emergency services on a 24 hour basis, unless it is a psychiatric facility or is designated by the Commissioner of Health as primarily rehabilitative in mission. Psychiatric and rehabilitative hospitals shall have a written plan and a system to meet medical emergencies based on the types of patients and cases that are typically treated in the hospital. Those hospitals exempted from offering emergency medical services shall not offer nonscheduled medical services to the general public.

8:43G-12.2 Emergency department policies and procedures; mandatory

(a) The emergency department shall have written policies and procedures that are reviewed annually, revised as needed, and implemented.

(b) There shall be a transfer protocol that governs interhospital transfers of patients in need of specialized care not provided in the hospital.

(c) The emergency department shall have a written protocol that governs the management of psychiatric patients who require special

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services not available in the hospital. This protocol addresses the roles and involvement of hospital health professionals, social work services, law enforcement officials, and mental health services, when indicated.

(d) The emergency department shall have a written protocol that governs provision for family members and significant others to remain with patients during treatment, with special attention to patients unable to communicate.

(e) The emergency department shall have a written protocol that governs referrals if a clinical speciality service is not available.

8:43G-12.4 Emergency department staff qualifications; mandatory

(a) Effective July 1, 1992, each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall meet at least one of the following qualifications:

1. A diplomate of the American Board of Emergency Medicine or meets current requirements to be examined;

2. Successful completion of an approved residency program in family medicine, general internal medicine, general surgery, or general pediatrics; or

3. Within the past five years has the equivalent of at least three years of full-time clinical experience in emergency medicine.

(b) At all times at least one licensed physician who meets at least one of the qualifications in (a) above shall be present in the emergency department to attend to all emergencies.

(c) Each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall be certified in Advanced Cardiac Life Support. Physicians who are currently diplomates of the American Board of Emergency Medicine shall be exempt from this requirement.

(d) Each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall be certified in Advanced Trauma Life Support. Physicians who are currently diplomates of the American Board of Emergency Medicine shall be exempt from this requirement.

(e) The emergency department shall be staffed at all times by at least one professional registered nurse who is certified in Advanced Cardiac Life Support.

8:43G-12.5 Emergency department staff qualifications; advisory

(a) All physicians practicing in the emergency department, except residents, consulting, and attending physicians, should be diplomates of the American Board of Emergency Medicine or meet current requirements to be examined.

(b) Registered professional nurses staffing the emergency department shall have certification in emergency nursing (CEN) and in a basic trauma nursing course approved by the National Emergency Nurses Association.

(c) All nurses staffing the emergency department shall be certified in Advanced Cardiac Life Support.

8:43G-12.6 Emergency department staff time and availability; mandatory

(a) A radiologist who has completed a residency training program in radiology shall be able to arrive and shall arrive at the hospital within 60 minutes of being summoned, under normal transportation conditions.

(b) There shall be a physician specialist on call to the emergency department for each major clinical service provided by the hospital. On-call physicians, except radiologists, shall be able to arrive and shall arrive within 30 minutes after being summoned for a critical case, under normal transportation conditions.

(c) The emergency department shall be staffed at all times by a minimum of one registered professional nurse. The hospital shall have in place a protocol to increase nurse staffing based on volume and acuity.

8:43G-12.7 Emergency department staff time and availability; advisory

Physicians and other health professionals practicing in the emergency department should work on shifts that last no more than 12 hours, with at least eight hours between shifts, at all times.

8:43G-12.8 Emergency department patient services; mandatory

(a) All patients shall initially be assigned clinical priority for treatment by a licensed nurse or physician upon arrival in the emergency department.

(b) Treatment for life-threatening emergencies shall be initiated immediately.

(c) No patient, after being admitted to the emergency department, shall be discharged to home or another facility without being seen by an attending or emergency department physician.

(d) There shall be no more than a four hour wait between a patient's arrival in the emergency department and the time when the patient is initially evaluated by the emergency or attending physician.

(e) The emergency department shall have a written protocol for the care and disposition of patients who stay in the department for protracted periods of time, for example, in awaiting inpatient beds. This protocol shall address areas such as patient monitoring, patient privacy, provision for family members or significant others, and the active seeking of inpatient beds by emergency department staff.

(f) A patient shall not be retained in the emergency department more than 12 hours after the patient is initially treated on an emergency basis or is stabilized, except when test results are pending and will be used to determine discharge action, or when the patient is under clinical observation or is waiting after transport has been summoned.

(g) When a specified volume of patients in the emergency department is reached, or patient waiting time before initial evaluation by a physician exceeds two hours, the hospital shall implement a protocol for meeting the needs of patients in a timely manner, such as augmenting staff and notifying or diverting ambulances.

(h) No admitted patient shall be held under clinical observation in the emergency department for more than eight hours if a bed is available in an inpatient unit that has the correct monitoring equipment or can meet the needs of the patient.

(i) A registry of emergency department admissions shall be maintained that includes the patient name and at least:

1. Medical record number;
2. Date and time arrived;
3. Time discharged;
4. Name of treating physician;
5. Medical diagnosis; and
6. Disposition of the patient.

(j) Upon discharge home from the emergency department, the patient or his or her representative shall be given written instructions and an oral explanation of those instructions. The name of the physician who ordered the instructions, the name of the person who gave the oral explanation, and the name of the person receiving the instructions shall be entered legibly in the medical record.

(k) Patients requiring post-discharge care shall be referred to needed health care or health-related resources.

(l) A patient shall be transferred to another hospital only for a valid medical reason or by patient choice. The sending emergency department shall receive approval from a physician and the receiving hospital before transferring the patient. Documentation for the transfer shall be sent with the patient, with a copy or summary maintained by the transferring hospital. This documentation shall include at least:

1. Informed consent of the patient or responsible individual, if possible;
2. Reason for transfer;
3. Signature of the physician who ordered the transfer;
4. Condition of the patient upon transfer;
5. Patient information collected by the sending emergency department, including x-ray films or written interpretation by a radiologist; and
6. Name of the contact person at the receiving hospital.

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(m) Documentation of a patient's transfer sent by the transferring hospital shall be a permanent part of the patient's medical record at the receiving hospital.

(n) A medical record shall be established and maintained for each patient treated in the emergency department and include at least:

1. Mode, date and time of arrival;
2. Allergies;
3. Medications used before admission to the emergency department;
4. Immunizations when relevant;
5. Timed vital signs;
6. Chief complaint;
7. Physician assessment;
8. Nursing assessment;
9. Treatment rendered, signed by the person who rendered the treatment;
10. Medications prescribed and administered while in the emergency department signed by the person who prescribed and the person who administered the medications;
11. Discharge instructions; and
12. Last menstrual period, if relevant.

(o) Deceased patients shall be removed from rooms occupied by other patients, when possible, or shall be curtained off. The deceased shall be transported in the hospital and removed from the hospital in a dignified manner.

(p) The emergency department staff shall conform with hospital protocols for complying with applicable statutes to report child, sexual, and elder abuse, specified communicable diseases, rabies, poisonings, and unattended or suspicious deaths.

(q) The emergency department shall be prepared to communicate and shall communicate with emergency medical services regarding patients about to arrive by emergency vehicles. The department shall be prepared to receive such patients when they arrive.

(r) The phone number of the designated regional or Statewide New Jersey Poison Information and Education System (1-800-962-1253) shall be posted in the emergency department.

(s) Radiology services for emergency needs shall be available to the emergency department 24 hours a day.

(t) Clinical laboratory services for emergency needs shall be available to the emergency department 24 hours a day.

(u) The emergency department shall have access to and utilize a record of hospital employees, medical staff members, and volunteers who can speak languages other than English or know sign language for the hearing impaired and can provide interpretive services to patients. This record shall include the work shifts of hospital employees.

(v) Security personnel shall be available to the emergency department when needed.

(w) The hospital shall provide assistance in referring to other settings of care those patients whom the emergency department identifies as requiring such assistance after physician evaluation.

8:43G-12.9 Emergency department patient services; advisory

(a) A family member or significant other should be allowed to remain with the patient during treatment unless it is clinically inappropriate.

(b) If the patient's follow-up or primary-care physician is a member of the hospital staff, a copy of the emergency record should be sent to him or her.

8:43G-12.6 Emergency department space and environment; mandatory

(a) The emergency department shall meet criteria established by the Federal Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1987 Edition, section 7.9, or later edition, if in effect, which are hereby incorporated by reference.

(b) The emergency department shall have the necessary equipment to meet the medical needs of patients of all ages.

(c) The emergency department shall be equipped to stabilize all patients.

(d) The emergency department shall be equipped with, at least, patient monitoring equipment and resuscitation equipment.

(e) The emergency department shall have a functional two-way communications system for communicating with ambulance services about arriving patients.

8:43G-12.11 Emergency department staff education and training; mandatory

(a) The hospital shall provide, and regularly assigned emergency department staff shall attend, at least annual training or educational programs that relate specifically to emergency care.

(b) Regularly assigned emergency department staff shall attend at least annual training or educational programs which relate to the following areas:

1. Child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.;
2. Abuse of the elderly; and
3. Rape.

8:43G-12.12 Emergency department quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the emergency department that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance program shall include periodic collection of emergency department data in at least the following areas:

1. Waiting time;
2. Appropriateness of transfers;
3. Provision of written instructions;
4. Timeliness of diagnostic studies;
5. Appropriateness of treatment rendered;
6. Mortality; and
7. Care of patients who are retained in the emergency department for long periods of time.

(c) Quality assurance shall include review of selected medical charts.

(d) The quality assurance program shall assess whether physicians, including residents, are on duty for periods of time that have an adverse effect on patient care.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Housekeeping and Laundry
Proposed New Rules: N.J.A.C. 8:43G-13

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 1989-309.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of housekeeping and laundry services in hospitals. Proposed new N.J.A.C. 8:43G-13 was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the state. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including housekeeping and laundry. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care

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and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-13.2(a) requires that each hospital have a housekeeping or environmental service with a full time director. Proposed N.J.A.C. 8:43G-13.1(a) requires that the housekeeping service have written policies and procedures which include scheduling and responsibility for cleaning and maintaining cleanliness for all equipment, structures, areas and systems. These provisions would assure that the hospital have a formal housekeeping or environmental service which cleans and maintains the hospital environment.

N.J.A.C. 8:43G-13.4 and 13.5 require that equipment and environmental surfaces throughout the hospital are kept clean to sight and touch and in good repair. These provisions would assure that the hospital environment is clean and safe for patients, staff, and others.

N.J.A.C. 8:43G-13.10(a) requires that each hospital have a laundry service with a full time director or supervisor. Proposed N.J.A.C. 8:43G-13.9(a) requires that the housekeeping service have written policies and procedures approved by the infection control committee and which include the handling of clean and soiled laundry. These provisions would require the hospital to consistently follow written guidelines approved by the infection control committee as effective for the handling of clean and soiled laundry.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include specialized assignment of housekeeping staff and maintenance of a cart-washing area. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

It is well established that high standards of cleanliness and maintenance in a hospital environment contribute to the safety of patients, staff, and others. This is accomplished by deterring the spread of disease and eliminating hazards and nuisances which might adversely affect safety and quality of care to patients.

The primary social impact of the proposed rules is to ensure that every hospital meet high standards of cleanliness and maintenance of equipment, structures, systems, and environments to promote quality of care for patients, as well as the safety and well-being for all who are present in the hospital environment.

Economic Impact

Since hospitals already have housekeeping, environmental, and laundry services that meet the major provisions of the proposed rules, substantial additional expenditures are not expected to be required.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as they are defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 13. HOUSEKEEPING AND LAUNDRY

8:43G-13.1 Housekeeping policies and procedures; mandatory

(a) The housekeeping and laundry services shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They include, at least, assignment by designated unit, and responsibility for all cleaning tasks.

(b) The hospital shall have a written schedule that determines the frequency of cleaning and maintaining cleanliness for all equipment, structures, areas, and systems.

(c) There shall be a list available at all times of all cleaning and disinfecting agents used in the hospital together with a list of their antidotes.

(d) Records of all pesticides and herbicides used at the hospital shall be maintained on-site, together with a description of their antidotes.

(e) All cleaning and disinfecting agents shall be correctly labeled with the name of the product and its use, including agents that have been repackaged from a bulk source.

8:43G-13.2 Housekeeping staff qualifications; mandatory

There shall be a housekeeping or environmental service with a full-time director who has at least two years of management experience in housekeeping or environmental services.

8:43G-13.3 Housekeeping staff time and availability; advisory

Housekeeping staff should routinely be assigned exclusively to the specialty areas for which they have been trained.

8:43G-13.4 Housekeeping patient services; mandatory

(a) All areas, including areas with limited access such as cabinets, drawers, locked medication rooms, and storage areas, shall be kept clean to sight and touch.

(b) All toilets and bathrooms shall be kept clean to sight and touch, in good repair, and free of odors that reflect poor housekeeping practices.

(c) Reusable hand-cleanser dispensers shall be clean inside and out. Such dispensers shall not be refilled until they are completely empty and shall not be "topped off". Disposable dispensers shall be discarded.

(d) Floors shall be kept clean.

(e) Hard surfaced floors shall be coated with a slip-resistant floor finish.

(f) Carpeting shall be kept clean and shall not be frayed, worn, torn, or buckled.

(g) Window and partitioning curtains and drapes shall be kept clean to sight and touch and odor-free.

(h) Walls, ceilings, and vents shall be kept clean to sight and touch and odor-free.

(i) Windows and screens shall be kept clean to sight and touch, and in good repair.

(j) Mattresses, mattress pads and coverings, pillows, bedsprings, and other furnishings shall be properly maintained and kept clean. They shall be thoroughly cleaned and disinfected upon discharge of each patient.

(k) All equipment and environmental surfaces shall be kept clean to sight and touch.

(l) When areas of the hospital are undergoing renovation or new construction, protective measures shall be taken to contain dust and redirect traffic in patient care areas.

(m) Housekeeping and cleaning supplies shall be selected, measured, and used correctly and according to manufacturers' instructions.

(n) Effective and safe controls shall be used to minimize or eliminate the presence of rodents, flies, roaches, and other vermin in the hospital. The premises shall be kept in such condition as to prevent the breeding, harboring, or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects.

(o) Fly strips shall not be located over food preparation and service areas.

(p) Buildings and grounds shall be maintained in a clean and safe condition.

8:43G-13.5 Housekeeping supplies and equipment; mandatory

(a) Toilet tissue and proper waste receptacles shall be provided in all toilet areas.

(b) Hand cleanser, sanitary towels, and waste receptacles or hand-drying machines shall be provided at each handwashing unit. Hand cleanser and hand-drying machines shall be approved by the infection control committee.

(c) All portable equipment, such as carts, stretchers, intravenous poles, and wheelchairs, shall be kept clean and maintained in good repair.

(d) When not in use, cleaning and disinfecting agents shall be stored separate from other supplies and in enclosed areas.

(e) Cleaning agents used in the hospital shall be approved by the housekeeping service and the infection control committee.

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8:43G-13.6 Housekeeping supplies and equipment; advisory

The hospital should maintain a cart-washing area for mechanized routine cleaning of large portable equipment such as stretchers and intravenous poles.

8:43G-13.7 Housekeeping staff education and training; mandatory

(a) Orientation for new housekeeping employees shall include training in cleaning and infection control techniques.

(b) Housekeeping staff shall attend at least four training or educational programs per year.

(c) For specialty units, including at least the newborn nursery, surgical suite, emergency department, pediatrics, critical care, renal dialysis, post mortem, and central services sterile preparation, housekeeping staff shall be specifically trained jointly by housekeeping and the unit staff to clean the unit to which they are assigned.

8:43G-13.8 Housekeeping quality assurance methods; mandatory

(a) There shall be a program of quality assurance for housekeeping that is coordinated with the hospital quality assurance program and includes regularly collecting and analyzing data to help identify problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Quality assurance activities for the housekeeping service shall include scheduled inspections or housekeeping rounds.

(c) Quality assurance activities shall include monitoring of compliance with the schedule for cleaning and maintenance tasks.

(d) Hospitals that contract with a commercial housekeeping service shall use quality assurance measures to ensure that the same standards are met as apply to an in-house housekeeping service.

(e) Quality assurance activities for housekeeping services shall include monitoring the effectiveness of cleaning agents, for instance, through ensuring that agents are used according to instructions.

8:43G-13.9 Laundry policies and procedures; mandatory

(a) The laundry service shall have written policies and procedures, which are reviewed annually, revised as needed, implemented, and followed, and which include at least a policy that identifies special handling practices for soiled laundry.

(b) Contaminated laundry shall be specially handled according to the hospital's written protocol, which is approved by the infection control committee and the director of the laundry service.

8:43G-13.10 Laundry staff qualifications; mandatory

There shall be a full-time director or supervisor of laundry with specialized training or education in laundry service and at least two years of experience in institutional laundry service management.

8:43G-13.11 Laundry patient services; mandatory

(a) All soiled laundry from patient rooms and other service areas shall be transported in such a way that no leakage occurs.

(b) Laundry carts shall be in good repair, kept clean, and identified for use with either clean linen or soiled laundry.

(c) Clean linen shall be transported in covered carts and stored in a covered or enclosed area.

(d) Bedding (sheets, pillowcases, drawsheets, and blankets) and clothing provided to staff and patients shall be clean.

8:43G-13.12 Laundry space and environment; mandatory

(a) Soiled laundry shall be stored in a ventilated, vermin-proof and vermin-free area, separate from other supplies, and shall be stored, sorted, rinsed, and laundered only in areas specifically designated for those purposes.

(b) If a laundry chute is used, it shall be kept locked.

(c) If a laundry chute is used, it shall be maintained in good repair and cleaned, and there shall be no build-up of visible soil.

(d) Laundry chutes shall empty into an enclosed room.

(e) If the hospital has an in-house laundry for the bulk of the hospital's linens, it shall provide a receiving, holding, and sorting area with hand washing facilities. The walls, floor, and ceiling of the area shall be kept clean and in good repair.

(f) If the hospital has a limited-use, home-style laundry (for example, for the use of the psychiatric unit or for laundering items such as cubicle curtains), the walls, floor, and ceiling of the area shall be kept clean and in good repair.

(g) If the hospital contracts with a commercial laundry service, the hospital shall have areas for sorting and receiving laundry. These areas shall be kept clean and in good repair.

(h) There shall be a written schedule for removing lint from laundry areas on a routine basis. This schedule shall be followed.

(i) If the hospital has an in-house laundry, the flow of ventilating air shall be from clean to soiled areas, and ventilation shall be adequate to prevent odor build-up. Soiled laundry and clean linen shall be kept separate.

8:43G-13.13 Laundry supplies and equipment; mandatory

(a) The hospital shall have a supply of sheets, pillowcases, drawsheets, blankets, towels, and washcloths that is at least three times the number of occupied beds.

(b) If the hospital has an in-house laundry, an established protocol shall be followed to reduce the number of bacteria in the fabrics. Equipment and surfaces that come into contact with soiled laundry and clean linen shall be sanitized.

8:43G-13.14 Laundry staff education and training; mandatory

(a) Orientation for new laundry employees shall include protocols for handling and receiving soiled laundry and clean linen.

(b) All laundry staff shall attend at least four educational or training programs annually, which include handling and receiving protocols for soiled laundry and clean linen.

8:43G-13.15 Laundry quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the laundry service that is coordinated with the hospital quality assurance program and includes regularly collecting and analyzing data to help identify problems and their extent, recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Hospitals that contract with a commercial laundry service shall use quality assurance measures to ensure that the standards of N.J.A.C. 8:43G-13.9 through this section are met.

(c) The quality assurance program shall assess at least the following:

1. pH and bacterial monitoring;
2. Unsafe objects found;
3. Linen supply; and
4. Stained linens.

(d) A random sample of all laundry batches from all sources shall be sour tested to ensure neutralization of alkaline residues from built detergents. Sour testing is a test performed to indicate the degree of acidity or alkalinity of linens. Built detergents is a mixture of one or more alkaline detergents that contains not less than 50 percent anhydrous soap (pure soap, free from water). Fabric pH shall be maintained at 7.0 below after souring when built detergents are used.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Infection Control and Sanitation
Proposed New Rules: N.J.A.C. 8:43G-14

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 1989-310.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the infection control program in hospitals. Proposed new N.J.A.C. 8:43G-14 was developed through the

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regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to every hospital as comprehensive draft hospital licensure standards in 31 areas, including infection control. The standards were formatted as a survey, so that respondents could evaluate each proposed standards on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for the control of infections and related hazards, and contain the following major provisions:

N.J.A.C. 8:43G-14.1(a) requires each hospital to have a formal infection control committee including representation from, at a minimum, infection control, medical staff, nursing, administration, clinical laboratory, surgery, and employee health. This provision would assure that major departments of the hospital would contribute to the development of the hospital's infection control program.

N.J.A.C. 8:43G-14.1(b) requires that the infection control committee direct and assure compliance with the infection control program, including Universal Precautions and other programs as specified by the Centers for Disease Control, applicable State and Federal regulations, and hospital policies. This provision would assure that the hospital is in compliance with infection control programs that have been developed by Federal, State, and local entities.

N.J.A.C. 8:43G-14.5(b) requires a ratio of one full-time infection control practitioner to every 250 licensed beds per hospital. This provision would assure that the infection control program is staffed adequately in relation to the number of licensed beds. This ratio conforms with guidelines of the Federal Centers for Disease Control.

N.J.A.C. 8:43G-14.9 requires that the hospital operate and maintain a water system in conformance with the New Jersey Safe Drinking Water Act. This provision would assure that each hospital have a safe and sanitary water supply.

N.J.A.C. 8:43G-14.12 requires that the infection control committee develop and implement written policies and procedures for collection, storage, handling, and disposal of regulated medical waste and would require compliance with applicable Federal and State laws and regulations. This provision would assure that the hospital take necessary measures to safeguard the public from the hazards of medical waste.

N.J.A.C. 8:43G-14.13 through 14.16 require that the infection control committee develop and implement written policies and procedures for collection, storage, handling, and disposal of solid waste. These provisions would assure that the hospital take necessary measures to safeguard the public and the environment from the nuisance of solid waste.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include certification of at least one infection control practitioner by the Certification Board of Infection Control and direct reporting by the infection control officer to the hospital's chief executive officer or chief operating officer. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Much attention has been focused recently on two major public health issues: the spread of Human Immunodeficiency Virus (HIV), or AIDS, and the disposal of medical waste generated by hospitals, laboratories, and other facilities. These are especially critical issues in the State of New Jersey, where the AIDS epidemic is virulent and where the presence of medical waste in our ocean environment has had such an adverse impact.

These public health issues have the potential to affect the lives of all the citizens of New Jersey. They have special relevance to hospitals, which treat AIDS victims and also generate contaminated medical waste. The hospitals are in a unique position to take measures to protect their patients, their staff, and the general public from the spread of disease.

The primary social impact of the proposed rules is to ensure that each hospital complies with infection control and medical waste disposal procedures which meet Federal, State, and local guidelines and regulations. This compliance will be a major component in public health initiatives to offer protection to those in the hospital environment and to all citizens of New Jersey.

Economic Impact

Since most hospitals have infection control programs that meet the major provisions of the proposed rules, substantial additional expenditures are not expected to be required.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 14. INFECTION CONTROL AND SANITATION

8:43G-14.1 Infection control structural organization; mandatory

(a) There shall be a hospital infection control committee that includes representatives from at least: infection control, medical staff, nursing service, administration, clinical laboratory, surgery, and the employee health service. The committee shall receive formal advice from all other services upon its request, including pathology, central supply, and respiratory therapy.

(b) The infection control committee shall direct and assure compliance with the infection control program, including at least the following:

1. Formulating a system for identifying and monitoring nosocomial infections that is at least equivalent to the Centers for Disease Control "Outline for Surveillance and Control of Nosocomial Infections;"

2. Developing and implementing a system of infection control and isolation procedures, including Universal Precautions, using at least criteria which meet or exceed the criteria established by the Centers for Disease Control and Occupational Safety and Health Administration publication, "Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HVB) and Human Immunodeficiency Virus (HIV)", OSHA Instruction CPL 2-2.44A, August 15, 1988;

3. Reviewing and approving written policies and procedures for decontamination, disinfection, sterilization, and handling of regulated medical waste and all other solid waste;

4. Instituting control measures or studies when an infection control problem is identified;

5. Reviewing, on at least an annual basis, the hospital's policies and procedures related to isolation, aseptic technique, employee health, staff training, antibiotic susceptibility and trends, the prevention of infection, and general improvement of patient care; and

6. Identifying and reporting communicable diseases throughout the hospital, with the cooperation of the clinical laboratory, medical records, and the medical staff, as specified in N.J.A.C. 8:57-1 of "Communicable Diseases", also known as Chapter II of the State Sanitary Code.

NOTE: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161

or:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

(c) The infection control committee shall share information, including problems, data, and relevant recommendations, with at least the quality assurance program, nursing service, administration, and the medical staff, and shall ensure that corrective actions are taken.

(d) The infection control committee shall meet at least once every two months.

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(e) The infection control practitioner shall participate in the development of all hospital policies and procedures related to infection control.

8:43G-14.2 Infection control structural organization; advisory

The infection control practitioner should report directly to the chief executive officer or on-site administrator of the hospital.

8:43G-14.3 Infection control staff qualifications; mandatory

The infection control practitioner shall have education or training in surveillance, prevention, and control of nosocomial infections, and at least two years of clinical hospital experience.

8:43G-14.4 Infection control staff qualifications; advisory

At least one infection control practitioner on the staff should be certified in infection control by the Certification Board of Infection Control of the Association for Practitioners in Infection Control, P.O. Box 775, Mundelein, Illinois 60060.

8:43G-14.5 Infection control staff time and availability; mandatory

(a) There shall be an infection control practitioner who is responsible for coordination of the infection control program.

(b) There shall be a ratio of the equivalent of at least one full-time infection control practitioner to every 250 licensed beds, as recommended by the Centers for Disease Control, "The Efficacy of Infection Surveillance and Control Programs in Preventing Nosocomial Infection in U.S. Hospitals."

8:43G-14.6 Infection control patient services; mandatory

(a) The hospital shall comply with all Category 1 measures of the following Centers for Disease Control current publications, incorporated herein by reference, unless the infection control committee makes a documented exception for a specific guideline:

1. Guidelines for Prevention of Catheter-Associated Urinary Tract Infections;
2. Guidelines for Prevention of Intravascular Infections;
3. Guidelines for Prevention of Surgical Wound Infections;
4. Guidelines for Prevention and Control of Nosocomial Pneumonia; and
5. Guidelines for Handwashing and Hospital Environmental Control.

8:43G-14.7 Infection control staff education and training; mandatory

(a) The infection control practitioner shall coordinate educational programs to address specific problems, as recommended by the Centers for Disease Control, or at least annually for staff in all patient care areas and services.

(b) Orientation for all new employees shall include infection control practices for the employee's specific area of service and the rationale for the practices.

8:43G-14.8 Infection control quality assurance methods; mandatory

The infection control practitioner shall develop and implement a program of quality assurance that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help determine the effectiveness of infection control practices. When corrective actions need to be taken based on data collected, the infection control committee shall recommend, implement, and monitor those actions. The infection control committee shall supervise these quality assurance activities.

8:43G-14.9 Sanitation patient services; mandatory

(a) The water supply shall be adequate in quantity, of a safe sanitary quality, and from a water system that is constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and N.J.A.C. 7:10 and other applicable laws, ordinances, and regulations.

NOTE: The Safe Drinking Water Act and rules can be obtained from:

The Department of Environmental Protection
Bureau of Potable Water
CN 209
Trenton, NJ 08625

(b) Hot running water (between 90 and 110 degrees Fahrenheit) and cold running water shall be provided.

8:43G-14.10 Sanitation space and environment; mandatory

(a) Water piping carrying non-potable water shall be clearly labeled as such.

(b) The sewage disposal system shall be maintained in good repair and operated in compliance with State and local laws, ordinances, and regulations.

(c) There shall be no direct physical connections between city and well water supplies. Any physical connection between a public community water supply and an unapproved water supply, such as a well used by a hospital for emergency purposes, must be approved by the Department of Environmental Protection and the owner of the public community water supply and must conform with N.J.A.C. 7:10-10.

(d) There shall be no back siphonage conditions present.

(e) Equipment requiring water drainage, such as ice machines, shall be properly drained to a sanitary connection.

8:43G-14.11 Sanitation quality assurance methods; mandatory

The hospital shall adhere to the water sampling schedule and the chemical and biological monitoring requirements of the water supply system set by the Department of Environmental Protection. Records of the sampling and monitoring shall be maintained.

8:43G-14.12 Regulated medical waste policies and procedures; mandatory

(a) The infection control committee shall develop and implement written policies and procedures for collection, storage, handling, and disposal of medical waste, in conformance with applicable Federal and State laws and regulations.

(b) The hospital shall comply with the provisions of 42 U.S.C. 6903, the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48 et seq., the Comprehensive Regulated Medical Waste Management Act and all rules and regulations promulgated pursuant to the aforementioned Acts.

8:43G-14.13 Solid waste policies and procedures; mandatory

The infection control committee shall develop and implement written policies and procedures for collection, storage, handling, and disposal of all solid waste that is not regulated medical waste.

8:43G-14.14 Solid waste patient services; mandatory

All solid waste that is not regulated medical waste shall be disposed of in a manner approved by the Department of Environmental Protection. Disposal shall be as frequent as necessary to avoid creating a nuisance.

8:43G-14.15 Solid waste space and environment; mandatory

(a) Solid waste shall be stored within the containers provided for it in an area that is kept clean. Waste shall be collected from the storage area regularly to prevent nuisances such as odors, flies, other vermin, or rodents, and so that waste does not overflow or accumulate beyond the capacity of the storage containers.

(b) Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be kept clean and shall be connected to the sanitary sewage disposal system.

8:43G-14.16 Solid waste supplies and equipment; mandatory

(a) Plastic bags shall be used for solid waste removal from patient care units and supporting departments. Bags shall be of sufficient strength to safely contain waste from point of origin to point of disposal and shall be effectively closed prior to disposal.

(b) Outside storage containers for solid waste shall be kept covered, except those used for corrugated cardboard or construction materials.

(c) Indoor storage containers for solid waste shall be kept covered when necessary to control odors or other nuisances.

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(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Medical Staff Standard
Proposed New Rules: N.J.A.C. 8:43G-16

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 1989-311.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of medical staff services in hospitals. The proposed new subchapter of the Hospital Licensing Standards, N.J.A.C. 8:43G-16, was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including medical staff. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for the implementation of medical staffing in hospitals and contain the following major provisions:

Medical Staff Privileges

Proposed N.J.A.C. 8:43G-16.1(b) through (e) require that each hospital have a committee (normally, this is the medical staff executive committee) to review membership, privileges or initial appointments to the medical staff. Examination of applications includes, at a minimum, verification of the applicant's credentials, periodic review of privileges, and obtaining information about any disciplinary actions taken by the New Jersey Board of Medical Examiners against the applicant. These provisions would help assure the competence of practitioners with medical staff privileges. Additionally, they would require that appointments to the medical staff be based on training, experience, and demonstrations of clinical competence.

Impaired Physicians

Proposed N.J.A.C. 8:43G-16.1(f) requires each hospital's medical staff to have a formal mechanism for identifying and referring impaired physicians to a program established to assure treatment of impaired physicians, such as the Physicians Health Program of the Medical Society of New Jersey. This provision assures that action will be taken by the hospital to assist impaired physicians to seek treatment. It is also an additional mechanism to promote the safety of patients under the care of physicians in the hospital.

Notification of Reduced Privileges

Proposed N.J.A.C. 8:43G-16.1(l) through (o) require each hospital to notify the New Jersey State Board of Medical Examiners, or a medical practitioner panel created by legislation, and the Department of Health, of voluntary or involuntary changes in the status of physicians employed by, contracted to, or having privileges at the hospital. These standards include requirements presently specified in Senate Bill 2936, and incorporate revisions suggested by the Office of the Attorney General and the Medical Society of New Jersey. This provision would provide a mechanism to monitor medical staff members and prevent physicians with limitations of privileges at other facilities from practicing in their hospital.

Consent to Treatment

Proposed N.J.A.C. 8:43G-16.2(c) requires the medical staff of each hospital to develop a means to assess each patient's competence to consent to treatment. To determine patient's competency, skills such as their ability to understand their medical condition and the consequences of procedures and treatments, and to communicate a choice, would be measured. This provision would assure that each patient completely understands the implications of his or her treatment and is able to make an informed decision concerning the medical recommendations.

Availability of Life Support Services

N.J.A.C. 8:43G-16.5(a) requires a physician certified in basic cardiac life support to be in the hospital at all times. This physician cannot be assigned to the emergency room at the same time. This provision would assure access to basic life support services for patients in all patient care units.

Complete History and Physical

Proposed N.J.A.C. 8:43G-16.6(b) requires the attending physician to complete a history and physical examination for each patient admitted to the hospital within seven days prior to admission or within 24 hours after admission. The history and physical must be included in the medical record. This provision assures that the physician has vital health information about the patient which can be used to develop a treatment plan.

Organ Transplants

Proposed N.J.A.C. 8:43G-16.6(e) through (g) require hospitals to establish criteria for health professionals performing organ transplants. Additionally, these provisions require that all transplantation patients receive multidisciplinary follow-up care and consultation. The hospital shall provide counseling for families of patients suitable for organ donation. This provision would assure that only health professionals with sufficient clinical experience in organ transplants perform these procedures. Both receipients of transplants and families of potential donors would receive counseling.

Access to Care

Proposed N.J.A.C. 8:43G-16.6(h) requires every hospital to provide medical care to all patients, regardless of their ability to pay. This provision would protect the right of patients to receive needed medical care.

The Department also supports other measures that hospitals can take to improve quality of care. These measures, which are proposed as advisory standards for medical staff, include requiring that at least half of the members of each major clinical department, including medicine, obstetrics and gynecology, pediatrics, surgery, anesthesiology, psychiatry, radiology, and family medicine be board certified. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

The medical staff of a hospital is integral to the operation of a hospital and provision of quality care to patients. Its organization and policies form the professional and ethical foundation for the delivery of medical services.

Since more and more patients entering hospitals today are acutely ill, more demands are placed on the medical staff for specialized training and skills. Stress and pressure affect physicians, too. Provisions must be made to safeguard patients from physicians, who for various reasons, do not meet the professional standards their position requires.

The primary social impact of these provisions is to ensure medical services are provided by qualified health care professionals in a manner consistent with the highest standards of practice.

Economic Impact

There are no substantial additional expenditures expected to be incurred by hospitals since hospitals already have medical staff programs in place that meet the major requirements of these proposed new rules.

Regulatory Flexibility Statement

The proposed rules affect all hospitals in New Jersey regulated by N.J.A.C. 8:43G. Each of these hospitals employs more than 100 full-time employees and therefore are not considered in the small business category as defined in N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

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SUBCHAPTER 16. MEDICAL STAFF

8:43G-16.1 Medical staff structural organization; mandatory

(a) There shall be an organized medical staff that is responsible to the governing body of the hospital. Bylaws governing all medical staff members shall be implemented.

(b) Applications for membership, privileges, or initial appointment to the medical staff shall be processed under a system that includes, at least, the verification of applicants' credentials, periodic review of privileges, and obtaining information about any disciplinary action against the applicant by the New Jersey Board of Medical Examiners or the Federal Clearinghouse established pursuant to the Health Care Quality Improvement Act, P.L. 99-660; 100 STAT 3743.

(c) Applications for medical staff membership, privileges, or initial appointment submitted by health professionals who are not physicians, shall be reviewed according to the same established criteria and procedures that govern physicians' applications, including obtaining information about any disciplinary action by New Jersey professional licensing boards.

(d) A committee shall be designated to be responsible for examining applications for appointment and reappointment to all categories of the medical staff. This committee shall recommend the conferring or withholding of all staff positions. It shall assure that all credentials are documented and verified.

(e) Medical staff privileges shall be specifically delineated and based on the physician's training, experience and demonstrations of clinical competence.

(f) When identified, impaired physicians shall be closely monitored and/or limited in their privileges. The hospital and medical staff shall have a formal mechanism for identifying and referring impaired physicians to a program established to treat impaired physicians such as the Physicians Health Program of the Medical Society of New Jersey. Such reporting does not relieve a hospital of any obligations under (l), (m), (n), or (o) below.

(g) The clinical privileges of all individuals shall be fully reviewed periodically. Actions which result in reduction or restriction of staff privileges shall be reported to the New Jersey Board of Medical Examiners in accordance with N.J.S.A. 26:2H-12.2.

(h) The medical staff shall be divided into clinical departments. Each department shall be directed by a director, physician director, chairman or chief who is responsible for its administration and for taking or recommending action in those instances in which staff members fail to meet the department's standards of quality of care.

(i) Each clinical department shall conduct meetings at least 10 times a year to discuss patient care.

(j) There shall be an executive committee for the medical staff which performs supervisory functions, including reviewing patient care policies and procedures and serving as a forum for discussing patient care issues identified by the clinical departments.

(k) A medical staff meeting shall be held at least annually for all staff members.

(l) The hospital shall notify the New Jersey State Board of Medical Examiners, or a medical practitioner review panel created by legislation and subordinate to the Board, if a physician who is employed by, under contract to render professional services to, or has privileges at the hospital:

1. Voluntarily resigns from the staff while the facility is reviewing the physician's conduct or patient care or has through any member of the medical or administrative staff expressed an intention to do so;

2. Voluntarily relinquishes any partial privileges to perform a specific procedure while the hospital is reviewing the physician's conduct or patient care or has, through any member of the medical or administrative staff, expressed an intention to do so;

3. Has full or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the physician's incompetency misconduct, or impairment;

4. Agrees to the placement of conditions or limitations on the exercise of clinical privileges or practice within the health care facility including, but not limited to: second opinion requirements, nonroutine concurrent or retrospective review of admissions or care, nonroutine supervision by one or more members of the staff, or the completion of remedial education or training;

5. Is granted a leave of absence pursuant to which he or she may not exercise clinical privileges or practice within the hospital if the reasons provided in support of the leave relate to any physical, mental, or emotional condition or drug or alcohol use, which might impair the physician's ability to practice with reasonable skill and safety;

6. Is a party to a medical malpractice liability suit in which the hospital is also a party, in which there is a settlement, judgement, or arbitration award; or

7. In any other way, voluntarily or involuntarily has a temporary or permanent reduction or suspension of privileges, resigns, is terminated, or takes a leave of absence from the medical staff, or through other means has a reduction in professional responsibilities related to issues of misconduct, impairment, or incompetence; or becomes the subject of a complaint or disciplinary proceeding or action based on information which reasonably indicates that the physician engaged in any conduct, used any drugs or alcohol, or suffered from any mental or physical condition which may have improperly jeopardized or risked the health, safety, or life of a patient. This paragraph does not require a facility to notify any board, panel, or department of any leave of absence or reduction in professional responsibilities which is wholly unrelated to issues of misconduct, impairment, or incompetence of the physician.

(m) Notifications required by (l) above shall be provided within 30 days of the reported event and shall be submitted on forms provided by the Department of Health for that purpose.

(n) The hospital shall provide to the State Board of Medical Examiners, or to a practitioner review panel created by legislation and reporting to the board, such additional information on individual instances of loss or change of physician privileges, possible impairments, and medical malpractice liability as the board or panel requests in accordance with law.

(o) The hospital shall provide to the following:

Office of the Assistant Commissioner
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625-0367

copies of all reports regarding physician hospital privileges sent to the New Jersey State Board of Medical Examiners, or to the practitioner review panel created by legislation and reporting to the board. All records regarding such copies shall be made available to the Department of Health personnel for official purposes and, for each report, to the specific facility mentioned in the report.

8:43G-16.2 Medical staff policies and procedures; mandatory

(a) The medical staff shall have written policies, procedures, and by-laws that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. A list of those procedures and treatments that require a patient's written informed consent;

2. Requirements for the completeness and timing of the history and physical examination, including the minimum contents to be included in the medical record;

3. The minimum content of physician orders; and

4. Specifications for verbal orders, including who may give verbal orders, who may recieve them, and how soon they must be verified or countersigned in writing.

(b) All physician orders for medication, treatment, and restraints shall be in writing.

(c) The medical staff shall have a means to assess individual patient's competence to consent to treatment. Measurement of patient competence may include such skills as ability to understand their medical condition and the consequences of procedures and treatments, and to communicate a choice.

(d) The hospital shall have a policy that identifies the diagnostic procedures that use micromethodology techniques of analyzing blood

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in order to reduce the quantities of blood drawn from patients, especially young children.

(e) Each time the attending physician visits the patient, the physician shall enter a note into the medical record describing the findings about the patient's condition. If issues have been raised in the record by other disciplines, this note shall respond to them.

(f) The hospital shall comply with the New Jersey State Board of Medical Examiners rule concerning the registration and permit requirements for graduate medical education programs and practice, N.J.A.C. 13:35-1.5.

(g) The hospital shall require that all prescriptions and orders issued by registered first-year residents in the inpatient setting be countersigned by a licensed physician or permit holder (a person authorized in the State of New Jersey to engage in the practice of medicine in the second year of a graduate medical education program or beyond).

8:43G-16.3 Medical staff qualifications; mandatory

All physicians with privileges shall be licensed or authorized to practice medicine by the New Jersey Board of Medical Examiners. All non-physicians with privileges shall be licensed or authorized to practice in the State of New Jersey, as required by law.

8:43G-16.4 Medical staff qualifications; advisory

The director and at least half of the members of each major clinical department, including medicine, obstetrics and gynecology, pediatrics, surgery, anesthesiology, psychiatry, radiology, and family medicine, should be board certified.

8:43G-16.5 Medical staff time and availability; mandatory

(a) A physician who is certified in basic cardiac life support shall be in the hospital at all times. This physician shall not be assigned to the emergency room at the same time.

(b) The hospital shall establish policies and procedures for response times for emergencies.

(c) There shall be an on-call list of medical and surgical specialists that is available to personnel in all patient care units.

8:43G-16.6 Medical staff patient services; mandatory

(a) Each patient shall have an attending physician who has overall responsibility for the patient's care in the hospital.

(b) Each patient admitted to the hospital shall have a complete medical history and physical examination that includes a provisional diagnosis performed by a physician within seven days prior to admission or within 24 hours after admission. If the history and physical were performed within seven days prior to admission, the patient's history and physical examination record completed by the attending physician shall be included in the medical record, with any subsequent changes recorded at the time of admission.

(c) When there is a clinical consultant, he or she shall issue a report that states at least the assessment mechanisms used, findings, and opinion. This report shall be included in the medical record.

(d) The reason or reasons for requesting a clinical consultation shall be specified in the patient's medical record by the attending physician. The consultant shall provide consultation in accordance with the privileges accorded him or her by the hospital medical staff.

(e) If the hospital performs organ transplants, the director of the medical staff shall ensure that all health professionals serving the patient have sufficient clinical experience in transplantation care, based on predetermined criteria established in hospital policies and procedures or set by the American Society of Transplant Surgeons.

(f) If the hospital performs organ transplants, the director of the medical staff shall ensure that satisfactory follow-up care and consultation are provided to all transplantation patients, including multidisciplinary conferences held at periodic intervals.

(g) The hospital shall provide counseling regarding anatomical gifts for families of those patients suitable for organ donation in which death appears to be imminent.

(h) Medical care shall be provided to all patients, regardless of their ability to pay.

(i) Every acute care patient shall receive a physician visit every day.

8:43G-16.7 Medical staff education; mandatory

All medical staff members shall participate in organized education sessions relevant to their practice, as specified by the medical staff.

8:43G-16.8 Medical staff quality assurance methods; mandatory

There shall be a medical staff mechanism by which the quality of medical care is monitored, problems identified, solutions recommended and implemented, and follow-up conducted. Summary reports of these activities and problems in the quality of care shall be reviewed by the medical executive committee, or its equivalent.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Nurse Staffing
Proposed New Rules: N.J.A.C. 8:43G-17

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 1989-312.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to nurse staffing in hospitals. The proposed new subchapter of the Hospital Licensing Standards, N.J.A.C. 8:43G-17, was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to every hospital as comprehensive draft hospital licensure standards in 31 areas, including nurse staffing. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for nurse staffing and contain the following major provisions:

N.J.A.C. 8:43G-17.1(a), (c)1, (c)2, and (c)4 require each hospital to determine nurse staffing assignments based on the daily acuity level of the patient census. The acuity level would be determined through a patient classification system established by each hospital. The system would be used to classify each patient into a nursing care group based on the severity of the patient's illness and the amount of nursing care required. Each hospital would be free to choose its own system. This provision would assure that the hospital supplies a minimum amount of nursing resources and allocates these resources equitably among patient care units.

N.J.A.C. 8:43G-17.1(c)5 requires that actual hours of direct patient care worked by nurses each day as a hospital-wide average, are at least 65 percent of the hours indicated by the acuity system. This provision would assure that nurses are providing a minimum number of the hours of direct patient care determined by the hospital's own acuity system.

N.J.A.C. 8:43G-17.1(d) requires that a registered professional nurse be in charge and assigned exclusively to each patient care unit on each work shift. The hospital also would be required to assign additional staff to the unit, based on the acuity levels. This provision would assure RN coverage of each patient at all times. The provision also would assure sufficient distribution of nurses throughout the hospital.

N.J.A.C. 8:43G-17.1(f) requires the hospital to have a contingency plan to take effect when the number of nurses in the hospital falls to a level that the hospital believes is inadequate. This provision would assure that

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sufficient nurses are always on duty to meet the needs of patients. The contingency plan might include such elements as diverting ambulances to other hospitals, summoning additional nurses, and delaying admissions for elective surgery. The plan also would specify the point where inpatient beds would be closed.

Nurse staffing standards will be reviewed annually and revised as needed by the New Jersey State Department of Health.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which are proposed as advisory standards, include providing the nursing staff on each patient care unit with support services, including clerical, transport and in-house delivery services, a computerized system for determining staffing levels based on acuity, and a policy addressing issues related to nurse staffing overtime hours. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Nurses provide vital services in the health care delivery network. The increase in the number of acutely ill patients and number of elderly people with chronic health problems continue to place heavy demands on nursing services. These and other factors have created a shortage in the number of qualified nursing professionals

Several efforts have been made to adapt to the current nursing shortage. One is the scheduling of staff based on acuity of patient's illness, as determined through a patient classification system. Another is increasing the salaries of nurses to encourage more people to enter the field of nursing. These are only partial solutions to the problem of nursing shortages faced by New Jersey hospitals.

The primary impact of the proposed rules is to ensure the efficient use of the currently available nurses in meeting the increasing demands of health care consumers. This is done by requiring that hospitals use a system to classify patients, assess nursing needs, and provide the staff to meet those needs. Each hospital will determine and implement the system that best serves its individual situation. Additionally, for the protection of patients, these new rules require the hospital to have a policy outlining procedures that must be followed if staffing levels fall below what the hospital has predetermined as sufficient for patient care.

Licensure standards alone cannot solve the shortage of qualified nurses to provide health care in New Jersey hospitals. These standards, rather, acknowledge that a problem does exist and can be addressed through innovative measures and the cooperation of the health care industry and government.

Economic Impact

In recent years, New Jersey hospitals, sensitive to the changing market for nursing services, have increased nursing salaries and fringe benefits. These labor costs involve issues that are best addressed in the forum of hospital rate-setting.

Most hospitals already have in effect at least a partial system for classifying patients and determining acuity levels. Hospitals also have at least one RN on duty in each patient care unit at all times.

Even more can be done to address patient nursing needs. The Department of Health is separately proposing a grant program to assist hospital nursing departments in setting up new programs.

These diverse factors should alleviate the economic impact of the current nursing shortage. The proposed new rules themselves are not expected to generate significant expenditures.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed follows:

SUBCHAPTER 17. NURSE STAFFING

8:43G-17.1 Nurse staffing; mandatory

(a) Nurse staffing assignments shall be based on patient acuity levels, determined through patient classification systems which address the needs of the nursing unit.

(b) There shall be a nurse manager for each patient care unit and for surgery, emergency department, and other units, as specified in the hospital organizational plan or policies and procedures.

(c) The hospital shall have in place an acuity system that has at least the following characteristics:

1. Patients are classified through an objective factor system, based on clinical assessments of the comprehensive nursing needs of each patient;

2. Acuity assessments are made on a daily basis for patients in each care unit;

3. Acuity assessments are made by registered professional nurses; however, licensed practical nurses may participate in a patient classification system within their scope of practice;

4. The hospital makes staffing decisions based on the daily acuity data, as well as the qualifications of personnel needed to meet the nursing care needs;

5. Actual hours of direct patient care worked by nurses are at least 65 percent of the hours indicated by the acuity system on each day as a hospital-wide average; and

6. The hospital conducts regular monitoring and review studies of its own acuity system, including indicators of reliability.

(d) There shall be at least one registered professional nurse in charge and assigned exclusively to each patient care unit on each shift. Additional staff shall be assigned by the hospital as required by the acuity levels.

(e) Patient care assignments shall be made on an individual basis by a registered professional nurse and reflect staff competence, skill, and aptitude and patient needs.

(f) The hospital shall have in effect a contingency plan for assuring adequate nurse staffing at all times. The plan shall detail policies and procedures to regulate closure of available beds, if actual staffing levels fall below specified levels.

8:43G-17.2 Nurse staffing; advisory

(a) The system used for determining staffing levels based on acuity should be computerized.

(b) The hospital should implement a patient classification system that is definitive of skill levels of the nursing staff.

(c) The hospital should make staffing decisions based on the daily acuity data. Actual hours of direct patient care worked by nurses should be at least 85 percent of the hours indicated by the acuity system on each day as a hospital wide average.

(d) Nursing staff on each patient care unit should be provided with support services, including clerical, transport, and in-house delivery services.

(e) The hospital should have a policy that identifies and addresses issues related to nursing staff overtime hours.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Nursing Care
Proposed Amendment: N.J.A.C. 8:43G-18

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 1989-313.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the nursing care program in hospitals. The proposed new subchapter of the Hospital Licensing Standards, N.J.A.C. 8:43G-18, was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State.

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This survey was distributed to every hospital as comprehensive draft hospital licensure standards in 31 areas, including nursing care. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standards should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for nursing care, and contain the following major provisions:

N.J.A.C. 8:43G-18.3(a) requires that the chief nursing executive has at least a baccalaureate degree from an accredited college or university and five years clinical and management experience. In addition, effective January 1, 1995, the director of nursing services would be required to have a baccalaureate degree in nursing science. This is a positive step up from the current requirements that mandate the nursing department be under the direction of a professional nurse currently registered in New Jersey and qualified by experience and education to carry out the responsibilities of the position. This provision would assure a high level of education, training and experience on the part of the chief nursing executive who is responsible for the efficient functioning of the nursing staff and who is included in various levels of governance within the hospital.

N.J.A.C. 8:43G-18.3(e) requires that the hospital have a system for evaluating all supplemental nursing staff, including both agency and hospital registry nurses. This would assure that there is a system in place that would allow the hospital to evaluate and monitor any supplemental staff the hospital must employ to meet their staffing requirements. This would also assure that there is a means to monitor non-employee nurses and to exclude from working those nurses who do not perform to the hospital's expectations.

This standard acknowledges that, while many hospitals must supplement their nursing staff to meet staff requirements, all nursing professionals are expected to consistently provide a high level of care.

N.J.A.C. 8:43G-18.3(f) requires that the hospital have a system for defining and evaluating the practices of private duty nursing personnel who provide nursing care to the patient. This would assure that the scope of the duties of the private duty nurse are clearly delineated, and would contribute to more efficient functioning of the staff nurses, who would know exactly what private duty nurses will be doing. In addition, higher quality patient care can be expected to result from monitoring and evaluating the performance of private duty nursing personnel.

N.J.A.C. 8:43G-18.5(d) requires that the registered professional nurse be responsible for performing the initial assessment of the patient to identify patient health needs. This assessment to address patient problems and identify nursing diagnoses must be completed within 24 hours of admission. This practice would assure that each patient would receive an individualized assessment that is formulated by a professional registered nurse, completed and implemented in a timely manner.

N.J.A.C. 8:43G-18.5(f) requires that the educational needs of the patient or patient's family be met throughout the hospital stay. This would assure that the patient and family are helped to feel secure in the hospital environment, that their fears are alleviated to whatever degree possible and that they are provided with information about the patient's condition so that they may make informed decisions about patient care.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which are proposed as advisory standards, include integrating nursing documentation with the clinical/progress notes of other health professionals in the patient's medical record and implementing a program of education for nursing staff which includes personnel who are specifically dedicated to the education program. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

New Jersey, like the rest of the nation, is experiencing an acute shortage of nurses. Changes in employment patterns of nurses, changes in work demands, increased responsibility without a concurrent increase in authority, limited financial rewards and lack of upward mobility and recognition are conditions that have contributed to this shortage.

The proliferation of agencies providing temporary nursing personnel to acute care facilities can be viewed as a response to the nursing shortage we are currently experiencing. Also, an increase in the severity of health care problems of the New Jersey consumer, coupled with the nursing shortage, has prompted the need for increased use of private duty nurses.

The primary social impact of the proposed rules is to ensure that a high level of nursing care is provided to each patient. This can best be accomplished where the hospital is able to monitor and evaluate temporary nursing personnel provided by a private nursing registry, and where patient teaching and education are actively encouraged.

Economic Impact

Since hospitals already have in effect procedures for evaluating their nursing staff and patient assessments and education programs are being conducted, the proposed new rules are not expected to generate significant expenditures.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 18. NURSING CARE

8:43G-18.1 Nursing care structural organization; mandatory

(a) A written organizational chart and written plan that delineates lines of authority, accountability, and communication shall be available to all nursing personnel in the hospital at all times.

(b) The chief nursing executive shall report directly to the hospital's chief executive officer (CEO) or, if the CEO is not responsible for day-to-day operations, to the hospital's chief operating officer.

(c) At all times a registered professional nurse with supervisory responsibility shall be designated and authorized to act in the absence of the chief nursing executive.

(d) Diverse multidisciplinary committees at a hospital-wide and unit level shall include registered professional nurses from different supervisory and non-supervisory levels.

(e) The chief nursing executive or designee shall routinely represent nursing on the committee with overall responsibility for medical affairs.

(f) Nursing shall be represented by the chief nursing executive at meetings of the governing board.

8:43G-18.2 Nursing care polices and procedures; mandatory

(a) The hospital shall have written policies and procedures for the nursing care service that guide nursing practices in the hospital. These policies shall be reviewed annually, revised as needed, and implemented. These policies and procedures shall conform with the Nurse Practice Act, N.J.S.A. 45:11-23.

(b) The hospital's current clinical and administrative nursing policies and procedures shall be available to all nursing personnel on each patient care unit at all times.

8:43G-18.3 Nursing care staff qualifications; mandatory

(a) The nursing care service shall be directed on a full-time basis by a chief nursing executive who has at least the following qualifications:

1. Is a registered professional nurse with a baccalaureate degree from an accredited college or university; and

2. Five years combined clinical and progressive management experience in nursing.

(b) Effective January 1, 1995, the nursing care service shall be directed on a full-time basis by a chief nursing executive who has at least the following qualifications:

1. Is a registered professional nurse with a baccalaureate degree in nursing science from an accredited college or university; and

2. Five years combined clinical and progressive management experience in nursing.

(c) Before newly hired nurses provide patient care services, the hospital shall verify nursing licenses or work permits.

(d) Before newly hired nurses provide patient care services, they shall receive orientation that takes into account each individual's competency and skills and includes at least:

1. The policies and procedures of the nursing service;

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2. How to find a written copy of the policies and procedures of the service to which he or she will be assigned;
3. Available resources; and
4. Channels of communication, emergency and otherwise.

(e) The hospital shall develop and implement a criteria-based system for evaluating at least annually the performance of each nursing service employee.

(f) The hospital shall have a system for evaluating all supplemental nursing staff, including agency and hospital registry nurses, and excluding from use those who do not receive favorable evaluations.

(g) There shall be a system for defining and evaluating the practices of private duty nursing personnel.

8:43G-18.4 Nursing care staff qualifications; advisory

The chief nursing executive should have a master's degree in nursing, administration, public health, management, or a related field from an accredited college or university.

8:43G-18.5 Nursing care patient services; mandatory

(a) Registered professional nurses and licensed practical nurses shall provide patient care commensurate with their scope of practice, as delineated in the Nurse Practice Act.

(b) All patients shall be under the supervised care of a registered professional nurse at all times.

(c) The nursing plan of care shall be consistent with the medical plan of care and implemented in accordance with the Nurse Practice Act.

(d) A registered professional nurse shall perform an initial assessment of the patient and identify patient problems for each patient upon admission. A completed assessment note, which addresses patient problems or identifies nursing diagnoses, shall be prepared by a registered professional nurse within 24 hours of admission.

(e) Each patient shall receive nursing care that is organized around ongoing, patient-specific care planning and is consistent with medical care planning. The planning shall include setting measurable goals with the patient and family to the extent possible. This planning, nursing interventions, and patient responses shall be documented in the medical record as defined by hospital policy.

(f) The patient's or family's educational needs shall be met throughout the hospital stay, unless they are not capable of receiving education, and shall include at least:
1. Orientation to the patient's environment;
2. How and when to communicate with the staff;
3. Additional orientation as the patient's status changes;
4. Information about the patient's medications and their administration;
5. The patient's activity limitations and professional expectations of his or her activity level;
6. The patient diet; and
7. Self care during the stay and after discharge.

(g) There shall be a system for receiving, evaluating, and addressing patient and family concerns related to nursing care.

(h) All nursing staff shall wear easily readable name tags that include their name and status, such as RN, LPN, unit clerk, or nurse assistant. The hospital shall have a policy to identify nursing unit exceptions to this procedure where necessary.

(i) The hospital shall have in place policies and procedures regarding management of patients under physical restraint. These policies shall include at least documentation of patient checks.

(j) Patient discharge instructions shall be documented in the patient's medical record at the time of discharge.

(k) Allergies shall be listed on the front cover of the patient's chart or, in a complicated system, highlighted on the screen.

(l) Patients who require assistance in feeding shall be identified, and there shall be a mechanism in place to assure that assistance is provided.

8:43G-18.6 Nursing care patient services; advisory

(a) Relevant nursing documentation should be integrated with the clinical/progress notes of other health professionals in the patient's medical record.

(b) There should be a computerized or automated system for updating the patient's medical record that supports nursing functions.

(c) There should be a system for updating the patient's medical record at the bedside that meets the patient's need for confidentiality.

(d) There should be a written or visual system on each patient care unit for keeping track of a patient's location when he or she leaves the unit.

8:43G-18.7 Nursing care supplies and equipment; mandatory

All life-sustaining equipment shall be plugged into outlets connected to the emergency power supply.

8:43G-18.8 Nursing care staff education and training; mandatory

(a) The nursing service shall have a planned system of education for nursing staff that is identified by the hospital and includes at least:
1. Educational programs on new equipment and procedures;
2. Staff development or continuing education programs based on broad issues and hospital-specific needs, as determined by quality assurance and the goals and objectives of the hospital and the department of nursing; and
3. Management development programs.

8:43G-18.9 Nursing care staff education and training; advisory

(a) There should be a program of education for nursing staff which includes:
1. Personnel who are specifically dedicated to the education program and may be hospital employees or part of a consultant program;
2. Resource materials; and
3. Office and meeting space within the hospital.

(b) The ongoing program of education for nursing personnel should include the opportunity to participate in educational sessions outside the hospital.

8:43G-18.10 Nursing care quality assurance methods; mandatory

There shall be a program of quality assurance for nursing care that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. Issues shall be identified through, at least, incident reports, infection control activities, and patient and staff comments.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Pharmacy
Proposed New Rules: N.J.A.C. 8:43G-23

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 1989-314.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to pharmacy services in hospitals. Proposed new N.J.A.C. 8:43G-23 was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including pharmacy. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

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Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules simplify and reduce by 77 percent the number of standards in pharmacy services. Many detailed policy and procedure requirements that either restate existing professional practices or prevent professional autonomy have been deleted. For example, the excessively detailed standard relating to the labeling of intravenous infusion solutions now simply states that a licensed pharmacist shall prepare, sterilize, and label such solutions.

The proposed new rules also introduce a degree of flexibility not previously present. For example, the standards relating to the unit dose distribution system have been relaxed to apply to 85 percent rather than 100 percent of licensed occupied beds. This reflects the reality that many hospital critical care areas must keep stock medications on hand to effectively meet immediate patient needs.

However, it is important to note that, although the rules at N.J.A.C. 8:43B are being simplified and made more flexible, no adverse effect on the quality of patient care is expected. In fact, the emphasis on quality assurance, in which the hospital itself monitors, identifies, and addresses its own problems, should lead to improvements in the quality of care.

The new rules contain the following major provisions:

N.J.A.C. 8:43G-23.1(b) and 23.2(a) require each hospital to have a formal multidisciplinary pharmacy and therapeutics committee which will implement policies and procedures relating to areas such as outpatient pharmacy services, drug administration, storage and distribution of drugs, and food/drug interactions. This provision would assure that related disciplines in the hospital would contribute their varied expertise and knowledge to the development and implementation of the hospital's pharmaceutical program.

N.J.A.C. 8:43G-23.3(a) and 23.4(b) require that each hospital's pharmacy services be directed by a licensed registered pharmacist, and that a pharmacist be on duty or on call at all times. These provisions would assure that patients always have available the services of a qualified pharmacist.

N.J.A.C. 8:43G-23.6(b) requires each hospital to have in effect a unit dose drug distribution system which would cover at least 85 percent of occupied licensed inpatient beds. This provision would minimize accidental and wrong doses and contribute to patient safety by requiring that, when feasible, drugs are administered in premeasured doses that are individually packaged and identified by patient.

N.J.A.C. 8:43G-23.6(e) requires each hospital to have in effect a pharmacy-based intravenous infusion admixture program including services related to hyperalimentation and chemotherapy. This provision, which relates to quality control, would assure that a pharmacist, or a designee acting under pharmacy supervision, would be responsible for properly preparing parenteral solutions.

N.J.A.C. 8:43G-23.8(b) requires each hospital to keep all drugs, including controlled substances and legend drugs, needles, and syringes, in locked storage areas. This provision would minimize mishandling of drugs, accidents, and drug abuse, and contribute to the safety of patients and the public by requiring that all drugs be secured and accessible only to authorized personnel.

N.J.A.C. 8:43G-23.10(b) requires each hospital to have in effect a patient profile system. This provision would assure that drugs administered are recorded in the patient profile and that inappropriate prescribing practices are identified and corrected.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include 24 hour on-premises coverage by a licensed pharmacist, and 100 percent coverage of all licensed occupied inpatient beds for the unit dose drug distribution system and the intravenous infusion admixture program. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Pharmacy services hold the strong potential both to heal and to harm. Controlled, medically supervised use of drugs can anesthetize, ease pain, and ameliorate or cure disease. Uncontrolled use of drugs can have a devastating effect on the individual drug abuser and on society as a whole. Hospitals have an important dual role in the management and control of drugs: to handle and dispense drugs safely and responsibly and to restrict access so as to eliminate unauthorized or unsafe use.

The primary social impact of the proposed rules is to ensure that each hospital complies with pharmaceutical policies and procedures that meet Federal, State, and local guidelines and regulations. This compliance will ensure that each hospital promotes quality of care for patients as well as safety for those within and outside of the hospital environment.

Economic Impact

Since the number and complexity of rules in the pharmacy subchapter has been substantially reduced, it is expected that there may be cost saving factors involved in the implementation of the new rules. For example, current rules require 100 percent coverage of inpatient beds with the unit dose distribution system and the intravenous admixture program, whereas the proposed rules allow 85 percent coverage, thereby permitting greater flexibility and possible cost saving to the hospital. The proposed rules emphasize those items which are clinically and therapeutically important to patients, without compromising safety and quality of care.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 23. PHARMACY

8:43G-23.1 Pharmacy structural organization; mandatory

(a) A hospital shall have a pharmacy that is licensed by the New Jersey State Board of Pharmacy, with a current Drug Enforcement Administration registration and a controlled dangerous substance registration from the State Department of Health.

(b) A multidisciplinary pharmacy and therapeutics committee, or an equivalent multidisciplinary body shall meet at least four times a year, and document its activities, findings, and recommendations.

8:43G-23.2 Pharmacy policies and procedures; mandatory

(a) The pharmacy and therapeutics committee, or its equivalent, shall review, approve, and implement policies and procedures addressing at least the following areas:

1. Outpatient pharmacy services;
2. Administration of drugs;
3. Use of patients' previously acquired drugs, including requirement for physician orders and pharmacy identification of the drugs before use;
4. Admixture of intravenous solutions, including quality control and safety procedures for laminar airflow hoods and labeling;
5. Storage and distribution of drugs, including at least dispensing devices (if used in the hospital), emergency drugs and kits, and control and accountability of controlled substances in accordance with applicable laws and regulations;
6. Stop orders and discontinue orders, including the length of time all orders stay in effect, stoppage of drugs on the day a patient undergoes surgery in conformance with the prescriber's specifications, and notification of the prescriber of the expiration of a drug order;
7. Identification, reporting, reviewing, and monitoring of adverse drug reactions and medication errors;
8. Identification of food/drug interactions and responsibility of pharmacy, nursing, and dietary services;
9. Reference materials kept at drug distribution stations and in the pharmacy, and made available to medical and nursing staff;
10. Control and limitation of use of drug samples;
11. Approval and maintenance of a formulary; and
12. Pharmacists' clarifications of physician orders.

8:43G-23.3 Pharmacy staff qualifications; mandatory

(a) Pharmaceutical services shall be directed by a registered pharmacist licensed to practice pharmacy in New Jersey.

(b) A pharmacist licensed to practice pharmacy in New Jersy shall be responsible for compounding, preparing, labeling, transferring between containers, and dispensing drugs.

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8:43G-23.4 Pharmacy staff time and availability; mandatory

(a) A pharmacist licensed to practice pharmacy in New Jersey shall be on duty or on call at all times. Whenever a nurse removes a drug from the pharmacy or night cabinet, this action shall be recorded by the nurse and checked by a pharmacist on a daily basis.

(b) If the hospital operates a decentralized pharmaceutical service, there shall be a pharmacist licensed to practice pharmacy in New Jersey assigned to each satellite pharmacy during the satellite pharmacy's hours of operation.

8:43G-23.5 Pharmacy staff time and availability; advisory

There should be a pharmacist registered to practice pharmacy in New Jersey, on the premises 24 hours a day.

8:43G-23.6 Pharmacy patient services; mandatory

(a) Pharmaceutical services shall be available to patients at all times, including during disasters and major disruptions to the physical plant.

(b) The hospital shall have in effect a unit dose drug distribution system with individual cassettes or containers which bear the patient's identification. The system shall cover at least 85 percent of occupied licensed inpatient beds and include scheduled cart exchanges at least every 24 hours, including weekends and holidays. An alternative method of distributing drugs approved by the Department of Health may be substituted for the unit dose drug distribution system if the method has been demonstrated to the Department to have at least equivalent clinical effectiveness.

(c) The dispensing of fractional and multiple dosages shall be at the discretion of the pharmacy and therapeutics committee, provided cautionary instructions and ancillary information about these dosages are communicated to the personnel responsible for administering them.

(d) The pharmacy service shall develop and implement a system of control for legend drug doses. The system includes the checking by a pharmacist of each cassette or container of drugs prepared by someone other than a licensed phramacist before it is delivered to a patient care unit.

(e) The hospital shall have a pharmacy-based intravenous infusion admixture program, which includes services related to hyperalimentation, chemotherapy, and large and small, continuous or intermittent volumes for infusion. A pharmacist licensed to practice pharmacy in New Jersey, or a designee acting under pharmacy guidelines, shall prepare, sterilize if necessary, and label parenteral medications and solutions, except in those areas or situations that have been excluded by the pharmacy and therapeutics committee or its equivalent.

(f) Cautionary instructions and ancillary information about medications shall be communicated to the personnel responsible for administering medications.

(g) All medication orders shall specify the name of the drug, dose, frequency, and route of administration, and shall be dated and signed (or approved by authorization code if ordered through computer entry) by the prescriber.

(h) Allergies shall be documented in the patient's pharmacy profile.

(i) Drugs in opened containers, in containers with broken seals, in containers missing drug source and exact identification (such as lot number), and outdated medications shall be returned to the pharmacy for disposal.

(j) Initials or identifying codes shall be used by pharmacy personnel, and a list of these initials or codes and the corresponding printed or typed names and signatures shall be kept for at least five years after termination of pharmacy service employment.

(k) Current antidote information shall be provided in the pharmacy. The telephone number of the designated Statewide or regional New Jersey Poison Information and Education System (1-800-962-1253) shall be provided in the pharmacy and at each drug distribution site.

(l) Current Federal and State drug law information shall be available to the pharmacy service.

(m) Drug product defects shall be reported in accordance with the Drug Product Problem Reporting System of the American Society of Hospital Pharmacists, the United States Pharmacopoeia, and the Food and Drug Administration.

8:43G-23.7 Pharmacy patient services; advisory

(a) The pharmacy service should conduct a clinical pharmacy program that provides patient-oriented clinical services.

(b) The unit dose drug distribution system should cover all licensed occupied inpatient beds.

(c) The intravenous infusion admixture program should cover all licensed occupied inpatient beds.

(d) Fractional and multiple dosages should be dispensed as part of the unit dose system or alternative method of at least equivalent clinical effectiveness.

8:43G-23.8 Pharmacy space and environment; mandatory

(a) The pharmacy shall maintain drugs under proper conditions, as indicated in the United States Pharmacopoeia, product labeling, and/or package inserts.

(b) All drugs, needles, and syringes, shall be kept in locked storage areas except those drugs exempted by the pharmacy and therapeutics committee under specified conditions.

8:43G-23.9 Pharmacy staff education and training; mandatory

Pharmacy staff shall attend training or educational programs on drug-related topics.

8:43G-23.10 Pharmacy quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the pharmacy service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The hospital shall have in effect a patient profile system for monitoring drug therapy. This system shall be used to identify inappropriate prescribing practices.

(c) The pharmacy service shall inspect at least once every two months all patient care areas in the hospital, and at least once every three months all other areas of the hospital where drugs intended for administration to patients are dispensed, administered, or stored. The pharmacy service shall maintain a record of the inspections. Identified problems shall be addressed.

(d) A quality assurance program shall be in place that monitors the use of drugs, including errors, and reports aggregate findings to the pharmacy and therapeutics committee or another multidisciplinary committee that includes a pharmacy representative. When serious or consistent medication errors are found, the hospital, through its quality assurance program, shall develop, implement, and monitor recommendations for change.

(e) The hospital shall monitor use of antibiotic drugs, and other drugs specified by the hospital, and shall keep physicians informed about inappropriate drug utilization.

8:43G-23.11 Pharmacy quality assurance methods; advisory

The pharmacy service should inspect, on at least a monthly basis, all patient care areas in the hospital and maintain a record of the inspections.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Post Mortem Standard

Proposed New Rules: N.J.A.C. 8:43G-25

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 1989-315.

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Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of post mortem services in hospitals. Proposed new N.J.A.C. 8:43G-25 was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including post mortem. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

Securing Autopsies:

Proposed N.J.A.C. 8:43G-25.3(b) requires that the medical staff attempt to secure autopsies, particularly in cases of unusual deaths and those of medicolegal and educational interest, unless otherwise provided for by law. The completion of autopsies would provide more accurate mortality statistics. Additionally, it would provide families with information concerning familial health histories that could be extremely important when determining their own health care needs.

Patient Care Policies:

Proposed N.J.A.C. 8:43G-25.1(a)2 and 3 require safe and proper handling of deceased patients and their personal effects. These provisions ensure that deceased patients' bodies will be treated in a dignified and safe manner and that all personal effects of the deceased patient would be safeguarded until they are released to the appropriate individual.

Staff Qualifications:

Proposed N.J.A.C. 8:43G-25.2(a) requires all physicians that routinely perform or supervise the performance of autopsies to be Diplomates of the American Board of Anatomic Pathology. Such Board certification would help assure accurate assessment and evaluation of the cause of death.

Consent for Autopsy:

Proposed N.J.A.C. 8:43G-25.3(c) requires consent of the patient's family or guardian before the performance of an autopsy. Consent would not be required for cases that must, by law, be referred to the county medical examiner. This provision safeguards family and patient choice in handling of the body.

Procedures for High Risk Cases:

Proposed N.J.A.C. 8:43G-25.1(a)7 requires that procedures be developed delineating the responsibilities of the medical staff, nursing, and morgue staff when handling high risk or potentially high risk cases, such as AIDS or Hepatitis B. This provision safeguards the staff and prevents the spread of infectious diseases.

Social Impact

Technological advances in medical care, especially in the areas of diagnosis and treatment, give health care providers the unique opportunity to identify persons at risk for specific illness or disease processes. Identification of those at risk is crucial in order to implement preventive interventions that can delay or modify risks for diseases.

Autopsies provide valuable information about disease processes that are linked to familial history. This information can be used by consumers and health care providers when planning for health care needs. For example, heart disease is one of the leading causes of death in our society. Information obtained from autopsies could be used to alert families about risk factors they were previously unaware of, thereby decreasing the morbidity and mortality related to heart disease.

The primary social impact of these standards is to ensure that autopsies conducted in New Jersey hospitals are performed by qualified physicians in a manner that safeguards both patients and their personal effects and provides valuable information, particularly in cases of medicolegal and educational interest. The standards also assure that proper consent has been obtained, prior to the conducting of an autopsy.

Economic Impact

There are no substantial additional expenditures expected to be incurred by hospitals, since most hospitals already have post mortem programs in place that meet the major requirements of these proposed new rules.

Regulatory Flexibility Statement

The proposed rules affect all hospitals in New Jersey regulated by N.J.A.C. 8:43G. Each of these hospitals employ more than 100 full-time employees and therefore are not considered in the small business category as defined in N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 26. POST MORTEM

8:43G-25.1 Policies and procedures; mandatory

(a) The morgue shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies shall delineate the responsibilities of the medical staff, nursing, and morgue staff, and shall include procedures for at least the following functions:

1. Identifying the body;
2. Safe and proper handling to prevent injury to the body;
3. Safeguarding personal effects of the deceased and release of personal effects to the appropriate individual;
4. Handling of toxic chemicals by morgue and housekeeping staff;
5. Infection control policies, including disinfection of equipment;
6. Practices for handling infectious bodies, in accordance with Centers for Disease Control guidelines;
7. Criteria for high-risk or potentially high-risk cases, such as AIDS or hepatitis B;
8. Release of the body to the county morgue or funeral director;
9. Autopsy requests;
10. Availability of microscopic autopsy reports within specified time frames; and
11. Completion of autopsy, including microscopic and other procedures, within specified time frames.

8:43G-25.2 Post mortem staff qualifications; mandatory

The physician who routinely performs or supervises the performance of autopsies shall be a Diplomate of the American Board of Anatomic Pathology.

8:43G-25.3 Post mortem patient services; mandatory

(a) Bodies and body parts in the morgue shall be kept refrigerated.

(b) The medical staff shall attempt to secure autopsies, particularly in cases of unusual deaths and cases of medicolegal and educational interest, unless otherwise provided for by law.

(c) Autopsies shall be performed only with the consent of the patient's family or guardian. Consent shall not be required for medical examiner cases.

(d) The hospital shall notify the county medical examiner within two hours of a patient's death when the circumstances of the death fall within the criteria specified in N.J.S.A. 52:17B-86 of the State Medical Examiners Act, N.J.S.A. 52:17B-78 et seq.

8:43G-25.4 Post mortem space and environment; mandatory

The morgue shall be equipped with refrigerated space to store at least two bodies. Hospitals with more than 100 beds shall provide additional space using a ratio of one space to every additional 100 beds.

8:43G-25.5 Post mortem supplies and equipment; mandatory

Refrigerated spaces in the morgue shall be maintained at temperatures between 32 and 45 degrees Fahrenheit (0 and 7.2 degrees Celsius) and shall have an automatic alarm system that monitors the temperature.

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(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Quality Assurance Standard
Proposed New Rules: N.J.A.C. 8:43G-27

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 1989-316.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to quality assurance programs in hospitals. The proposed new subchapter of the Hospital Licensing Standards, N.J.A.C. 8:43G-27, was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including quality assurance. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for the implementation of quality assurance programs in hospitals and contain the following major provisions:

Quality Assurance Committee

Proposed N.J.A.C. 8:43G-27.1(d) requires each hospital to have a multidisciplinary committee with representation from at least the medical staff, nursing, and administration. This committee would be responsible for direction of the quality assurance program. This provision would assure that the major components of the hospital would participate in the development and implementation of the hospital quality assurance program.

Quality Assurance Plan

Proposed N.J.A.C. 8:43G-27.2(a) through (c) require each hospital to develop a quality assurance plan that would delineate lines of communication with the medical staff, chief executive officer or administrator, and the governing authority. The plan would establish a mechanism to develop, coordinate, and evaluate quality reviews throughout the hospital. The plan would be reviewed at least annually with revisions as necessary. These provisions would assure that a comprehensive quality assurance plan is developed, implemented, and updated, so each hospital systematically monitors and evaluates the quality of the services it provides.

Patient Services

Proposed N.J.A.C. 8:43G-27.5(a) through (d) require that each hospital monitor and evaluate patient care regularly. The rule also requires identification and establishment of indicators of quality care in at least the following areas: surgical case review, drug usage, medical record review, blood usage, pharmacy and therapeutics function, and specific diagnostic and therapeutic procedures selected by the quality assurance program. These provisions would assure that the quality of patient care is monitored and evaluated, specific to services provided by each hospital, on a continuing basis, to ensure that the highest quality of care is provided to each patient.

Competence of Clinical Practitioners

Proposed N.J.A.C. 8:43G-26.5(e) and (f) require each hospital to evaluate the clinical competence of all clinical practitioners on an ongoing basis. Assessment of clinical competence often includes a determination that a practitioner, whose hospital privileges include a specific procedure, performs the procedure frequently enough to retain familiarity with all aspects of it. This provision would ensure that all clinical practitioners perform their duties in a manner consistent with the highest standards of their profession.

The Department also supports other measures that hospitals can take to improve quality of care. These measures, which are proposed as advisory standards for quality assurance, include the use of a computerized system of data collection and analysis for the quality assurance program. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Every consumer entering a New Jersey hospital has the right to receive quality care. The proposed new standards should promote excellence in the provision of care which would, in turn, have a positive effect on the quality of services consumers receive in New Jersey hospitals.

Quality assurance consists of a system of methods to monitor the quality of patient care in the hospital by identifying problems, estimating the magnitude of those problems, developing recommendations to address those problems, and evaluating whether followup actions are needed. A quality assurance program that covers each area of health care services is required under the proposed standards.

Quality assurance programs aid in the early identification and prevention of problems facing hospitals and patients. As a result of the quality assurance plan implemented in each hospital, higher quality services should be provided to patients, thereby increasing their level of confidence in, and satisfaction with, the care provided.

The primary social impact of these standards is to ensure that care received by patients in New Jersey hospitals is of the highest caliber possible so that all consumers of hospital services receive safe, effective, quality care.

Economic Impact

There are no substantial additional expenditures expected to be incurred by hospitals, since hospitals already have quality assurance programs in place that meet most of the major requirements of these proposed new rules. However, since these proposed new rules may require some changes in the structure and functioning of the existing quality assurance programs, some minimal expenditures may be incurred by hospitals in order to conform with the standards being proposed.

Regulatory Flexibility Statement

The proposed rules affect all hospitals in New Jersey regulated by N.J.A.C. 8:43G. Each of these hospitals employ more than 100 full-time employees and therefore are not considered in the small business category as defined in N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 27. QUALITY ASSURANCE

8:43G-27.1 Quality assurance structural organization; mandatory

(a) The governing authority of the hospital (such as the board of trustees) shall have ultimate responsibility for the quality assurance program.

(b) The hospital shall have a hospital-wide quality assurance program based on a written quality assurance plan that is implemented and that monitors the quality of patient care.

(c) Each clinical department shall have quality assurance activities that are part of the overall hospital-wide plan, a multi-department plan, or an internally generated plan.

(d) There shall be a multidisiplinary committee responsible for the direction of the quality assurance program. The committee shall include at least representation from the medical staff, nursing, and administration, and shall be chaired by a physician. The committee shall establish a mechanism to include participation of all disciplines in identifying areas of review that affect patient care throughout the hospital.

(e) The hospital shall perform risk management functions which are reported to the multidisiplinary committee responsible for coordinating the quality assurance program.

8:43G-27.2 Quality assurance policies and procedures; mandatory

(a) The quality assurance plan shall be reviewed at least annually and revised as necessary. Responsibility for reviewing and revising the plan shall be designated in the plan itself.

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(b) The quality assurance plan shall delineate lines of communication between the quality assurance program and the medical staff, chief executive officer or administrator, and governing authority.

(c) The hospital-wide quality assurance plan shall specify procedures for the development, implementation, and coordination of quality reviews. The plan shall also establish a mechanism for the evaluation of the quality assurance program.

(d) The program shall disseminate its findings and the results of quality assurance activities, as defined in the quality assurance plan.

8:43G-27.3 Quality assurance staff qualifications; mandatory

There shall be an individual responsible for coordinating all aspects of the quality assurance program.

8:43G-27.4 Quality assurance staff qualifications; advisory

The quality assurance program should be directed or coordinated by an individual with relevant credentialing, such as certification by the American Board of Utilization Review Physicians, the American College of Quality Assurance Professionals, or the National Association of Quality Assurance Professionals.

8:43G-27.5 Quality assurance patient services; mandatory

(a) There shall be an ongoing process of monitoring patient care. Evaluation of patient care throughout the hospital is criteria-based, so that certain review actions are taken or triggered when specific quantified, predetermined levels of outcomes or potential problems are identified.

(b) The quality assurance coordinator shall be available to provide consultation to each department and shall coordinate the development of specific indicators used to evaluate service outcomes in each department.

(c) The program shall follow up on its findings to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes, educational activities, and follow-up on recommendations, or that additional actions are no longer indicated or needed.

(d) The quality assurance program shall identify and establish indicators of quality care specific to the hospital that are monitored and evaluated and encompass at least:

1. Surgical case review;
2. Drug usage;
3. Medical record review;
4. Blood usage;
5. Pharmacy and therapeutics function; and
6. Appropriateness of specific diagnostic and therapeutic procedures, as selected by the quality assurance program.

(e) The quality assurance program shall ensure that the clinical competence of all clinical practitioners is evaluated.

(f) The quality assurance program shall participate in the ongoing assessment of competence of all clinical practitioners.

8:43G-27.6 Quality assurance supplies and equipment; advisory

The quality assurance program should use a computerized system for data collection and analysis.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Social Work
Proposed New Rules: N.J.A.C. 8:43G-33

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 1989-317.

Submit comments by July 19, 1989 to:
Director, Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of social services in hospitals. Proposed new N.J.A.C. 8:43G-33 was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including social work. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-33.1(a) requires each hospital to have an organized department of social work, directed by a trained social worker. This provision would assure that social work services are provided by every hospital.

N.J.A.C. 8:43G-33.2(a) requires that each hospital provide at least the following social work services: counseling, discharge planning, assessment, consultation and referral, patient advocacy, community liaison, and education. This provision would assure that each hospital provide a full range of social work services.

N.J.A.C. 8:43G-33.2(b) requires each hospital to have a protocol to ensure that all patients receive social work services if they need or request them. This provision would assure access to service by all patients.

N.J.A.C. 8:43G-33.4(a) requires that the director of social work hold a master's degree in social work from a college or university program accredited by the Council on Social Work Education. This provision would assure a high level of knowledge and professional skills on the part of the director of social work.

N.J.A.C. 8:43G-33.7(f) requires that the hospital social work department report and coordinate services for victims of child abuse and other abuse. This provision would assure that any victim of abuse treated in a hospital would be referred to appropriate agencies for protective services and follow-up care.

N.J.A.C. 8:43G-33.7(i) requires that social work staff be included in multi-disciplinary patient case conferences or rounds. This provision would assure that social service staff is involved in assessing patients for social work intervention.

The Department also supports other measures that hospitals can take to improve quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include social work participation in the development and review of transfer agreements with long term care facilities, consultation with community agencies, and provision of support services to patients, families, and hospital staff. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Many hospitalized patients are elderly and have multiple health care problems that require social supports. Many others have combined social and health problems. In order to assess each patient and develop an effective care plan, both in-hospital and post-hospital, a full range of services must be available. Social work is the discipline which most appropriately provides this range of services, which includes at least counseling, discharge planning, assessment, consultation and referral, patient advocacy, community liaison, and education.

The primary social impact of the proposed rules is to ensure that each patient is screened for social work needs and has access to a full range of services, any or all of which may be integrated into a treatment plan. This plan takes into account the patient's psychosocial, environmental, and continuity of care needs.

Economic Impact

Since hospitals already have functioning social work departments that meet the major provisions of the proposed rules, substantial additional expenditures are not expected to be required.

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Regulatory Flexibility Statement

The proposed rules would not affect small businesses as they are defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G-33 all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

8:43G-33.1 Social work structural organization; mandatory

Each hospital shall have an organized department of social work services that is directed by a social worker.

8:43G-33.2 Social work policies and procedures; mandatory

(a) The social work department shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. The policies and procedures concerning the scope of social work services shall address the following areas: counseling, discharge management and planning, social work assessment, consultation and referral, patient advocacy, community liaison, and education.

(b) The social work department shall have a protocol to ensure that all patients receive social work services if they need or request it.

(c) The social work department shall have criteria for identifying high-risk patients in need of psychosocial intervention and/or discharge planning.

8:43G-33.3 Social work policies and procedures; advisory

The social work department should participate in the development and review of the hospital's transfer agreements with extended and long-term care facilities and psychosocial agencies.

8:43G-33.4 Social work staff qualifications; mandatory

The director of the social work department shall hold a master's degree in social work from a college or university program accredited by the Council on Social Work Education.

8:43G-33.5 Social work staff qualifications; advisory

(a) The director of the social work department should be a social worker who is certified by the Academy of Certified Social Workers.

(b) The equivalent of at least two-thirds of the full-time professional social work staff shall have an undergraduate or graduate degree from an accredited college or university with a major concentration in social work.

8:43G-33.6 Social work staff time and availability; advisory

There should be a system to ensure that a social worker is on duty or can be reached at all times for emergencies.

8:43G-33.7 Social work patient services; mandatory

(a) There shall be a system for all disciplines to refer patients directly to the social work department.

(b) The social worker shall consult with members of other disciplines in providing patient care services.

(c) Each patient who has received social work intervention shall be informed that he or she may call the social work department with questions after discharge.

(d) Families shall be included in services provided by the social work department, where indicated.

(e) The social work department shall assist patients directly or indirectly in identifying the need for, implementing, and verifying guardianship as part of discharge planning.

(f) The social work department shall coordinate child-abuse reporting and follow-up services with appropriate follow-up agencies. The department shall participate in reporting and follow-up services for other victims of abuse.

(g) When a patient is transferred to another health care facility or linked to another health care agency after discharge, the social work department shall assure that relevant social work services documentation or information is provided to that agency or facility in order to assure continuity of care.

(h) When social work intervention is provided, the social work department shall enter into the medical record:

1. The reason for intervention;

2. The name or names of social workers involved and dates of intervention;

3. A social work assessment;

4. A treatment plan and referrals; and

5. Notes reflecting interventions before discharge.

(i) Social work staff shall be included in multidisciplinary patient care conferences or rounds.

8:43G-33.8 Social work patient services; advisory

(a) Members of the social work department should participate in or consult with community agencies and government forums.

(b) The social work department should conduct support groups of patients and/or families, based on patient need.

(c) Social work support services should be available to staff members who give specialized patient care, as well as to all hospital staff members.

8:43G-33.9 Social work space and environment; mandatory

(a) There shall be space provided for private patient and family interviews and confidential phone calls by social workers.

(b) Social work department files on patients shall be kept physically secure and confidential.

8:43G-33.10 Social work staff education and training; mandatory

(a) The social work department shall provide staff with opportunities for education or training.

(b) Orientation of social work staff shall include introduction to the hospital and its services and to resources outside the hospital.

8:43G-33.11 Social work quality assurance methods; mandatory

There shall be a program of quality assurance for social work that is integrated into the hospital quality assurance program and pertains to the scope of social work services provided. This program shall include regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Licensing and Degree Approval Standards Proprietary Institutions of Higher Education

Proposed Amendments: N.J.A.C. 9:1-5.1, 5.2, 5.4, 5.5 and 5.8

Proposed New Rule: N.J.A.C. 9:1-5.10

Authorized By: Board of Higher Education,
T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-14m and n.

Proposal Number: PRN 1989-320.

Submit comments by July 19, 1989 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Higher Education is statutorily authorized to set standards for the awarding of collegiate degrees in the State of New Jersey. Previous to this proposed rulemaking, proprietary institutions of higher education which were licensed to award a collegiate degree by the Board were only allowed to grant the Associate in Applied Science Degree. This proposed rulemaking seeks to allow such institutions to award any collegiate degree; however, it clarifies that to be licensed to award any particular collegiate degree, the proprietary institution will be held to the same standards as a college which desires to offer the degree would be required to meet. The proposed amendments and new rule also impose

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the Board's Basic Skills policies upon those proprietary schools offering collegiate degrees. Under the board's Basic Skills policies, the schools will be required to give the New Jersey College Basic Skills Placement Test and provide remedial programs for those students requiring remediation. Lastly, the certain wording in the various rules is clarified.

Social Impact

The proposed amendments and new rule will allow those proprietary schools who wish to expand their programs to offer a greater array of degree programs to students attending their institution. Further, students who desire to attend such institutions shall have a broader selection of programs to choose from in pursuing their education. Also, students attending such proprietary institutions shall be tested for basic skills and receive assistance for deficiencies in such skills if necessary. Inclusion of remedial program requirements will assist certain students in successfully completing their programs of study.

Economic Impact

The proposed amendments and new rule do not impose any financial burden upon the proprietary institutions with regard to the expansion of the types of degree programs such an institution may offer. While the offering of the various degree programs may require funding support in order to meet the standards for the program which one set forth in the rules, the determination to offer such programs is a voluntary one by the institution.

The Basic Skills Test requirements will have an economic impact upon the institutions. While the test is provided to the institutions without cost, any remedial courses which the institution would have to offer to students would have to be provided from institutional resources. The degree of the impact would depend upon the number of students requiring remediation and the amount of remediation each student requires. Again, this impact would only affect those institutions which voluntarily determine to offer collegiate degrees.

Regulatory Flexibility Analysis

For those proprietary institutions of higher education which meet the definition of a small business and which determine to award collegiate degrees under these proposed amendments and new rule, there will be some reporting requirements imposed with regard to the provisions of N.J.A.C. 9:1-5.10. Public colleges and proprietary colleges are required to provide two reports per year to the New Jersey Basic Skills Council. The first (due in spring) is a response to a questionnaire on the extent of testing of all students, the placement algorithms used, and the timely enrollment in remedial courses of those students identified for such assistance. The second report, due August 31, consists of both a narrative program description and statistical data, in tabular form, on a two-year follow-up of the outcomes of students enrolled in remedial courses, compared to the college's non-remedial students.

The cost of compliance with these reporting requirements will vary from institution to institution depending upon the number of students tested, the number of students placed in remedial programs, the administrative services of the institution and the extent to which the institution's administrative system is computerized. Compliance should be attainable with existing personnel and systems.

The amendments and new rule have not been specifically designed to minimize any adverse economic impact on small businesses. The Basic Skills Test and corresponding remedial education requirements are established to encourage and allow for educationally disadvantaged students to enroll in collegiate programs which they are not necessarily educationally prepared to successfully complete. The programs identify those students in need of remediation and provide education in order to allow those students to successfully complete their collegiate education. The Department's data shows that the overwhelming majority of students who are in need of remediation but do not receive it do not complete their educational programs. An exemption from these requirements would be detrimental to the general welfare of students attending such institutions. Further, this requirement is only imposed upon such proprietary institutions which determine that they wish to award collegiate degrees.

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

9:1-5.1 General provisions

(a) Proprietary [Institutions of Higher Education] **institutions of higher education** in New Jersey may be licensed to operate and approve to award [the] **academic** degrees [of associate in applied science] subject to [conformation] **conformance** with the regulations and standards for such licensure and approval as contained in N.J.A.C. 9:1-1.

(b) (No change.)

9:1-5.2 [Authorized degree] **Degree standards**

(a) [The degree authorized for proprietary institutions shall be the Associate in Applied Science degree as defined] **Proprietary institutions may petition to award the Associate in Arts, the Associate in Science, and the Associate in Applied Science degrees pursuant to the standards set forth** in Standards Governing Community Colleges, specifically N.J.A.C. 9:4-1.6.

(b) Certificate and diploma programs at proprietary institutions shall be eligible for Board of Higher Education approval only in those instances where all of the courses comprising the certificate or diploma program are currently being offered by the institution in a Board approved [Associate in Applied Science] degree program. [Certificate and diploma programs shall be designed in accordance with N.J.A.C. 9:4-1.6.]

(c) Pre-associate degree certificate and diploma programs shall be designed in accordance with N.J.A.C. 9:4-1.6.

(d) Proprietary institutions may petition to award baccalaureate degrees pursuant to the standards set forth in the State College regulations regarding Baccalaureate Degree Standards, specifically N.J.A.C. 9:6-2.

(e) Proprietary institutions may petition to award graduate degrees pursuant to the standards set forth in N.J.A.C. 9:1-4.1.

9:1-5.4 Duration of license

(a) Any license to operate and grant a degree shall be for a [definite] **specific** period, not to exceed five years, as determined by the Board of Higher Education.

(b) (No change.)

9:1-5.5 Minimum library requirements

(a) A proprietary institution offering a degree shall have a [minimum] library collection of sufficient size **and composition** to [support adequately the program offered] **meet program objectives, to support high quality instruction and, where appropriate, research**.

(b) [This] **The library collection** shall [normally consist of at least 5,000 titles of general and specific materials for every single purpose curriculum for each enrollment unit of 500 students] **be kept up-to-date**.

[(c) Proportionate increases shall be made to accommodate additional students or curricula.]

9:1-5.8 Faculty teaching loads

(a) [Faculty] **Undergraduate faculty** should normally have teaching loads not to exceed the equivalent of 15 semester credit hours; **graduate faculty should normally have teaching loads not to exceed the equivalent of nine semester credit hours**.

(b) (No change.)

9:1-5.10 Basic skills testing and enrollment in remedial courses

(a) Proprietary institutions shall be subject to all of the Board of Higher Education's policies regarding basic skills testing and remedial instruction as implemented by the New Jersey College Basic Skills Council.

(b) Proprietary institutions shall administer the New Jersey College Basic Skills Placement Test (NJCBSPT) to all full and part-time freshmen seeking a degree, to any student who does not initially seek a degree but who registers for a program that would result in the accumulation of 12 or more credits, and to any transfer student who has not transferred to the institution college credits in English composition and mathematics.

(c) Appropriate remedial instruction shall be provided by proprietary institutions in the basic skills of reading, writing, computation and elementary algebra to all of the skills deficient students they have admitted.

(d) Proprietary institutions shall not enroll a student in any college-level course without first being certain that the student is proficient in the basic skills required for that course.

(e) No graduation credit shall be awarded for any remedial course.

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(f) Proprietary institutions shall comply with the reporting guidelines of the Basic Skills Council regarding the submission of student outcomes data and the retesting of students who exit the institution's remedial program(s).

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services; Manual for Special Hospital Services; Long Term Care Services Manual

Bed Reserve

Proposed Amendments: N.J.A.C. 10:52-1.2, 10:53-1.2, 10:63-1.13 and 1.16

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14), 6.7, 6.8, 6.9, 7a, b, c; 30:4D-12; 42 CFR 447.250, Subpart C.

Proposal Number: PRN 1989-292.

Submit comments by July 19, 1989 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

These proposed amendments pertain to bed reserve in long term care facilities (LTCFs). Amendments to the New Jersey Medical Assistance and Health Services Act requires LTCFs to maintain a bed for an eligible Medicaid patient for up to 10 days if the patient is admitted to a general or psychiatric hospital (see P.L. 1984, c.139, effective September 5, 1984, codified as N.J.S.A. 30:4D-6.7, 6.8, 6.9). The Division of Medical Assistance and Health Services (the Division) must reimburse LTCFs for reserving beds provided they comply with the criteria set forth in the amended rules.

The term "hospital" shall refer to either a general or psychiatric hospital.

It is not uncommon for Medicaid patients who are residents of LTCFs to require hospitalization. However, once the patient is treated for the acute phase of his or her illness, the patient can be discharged from the hospital. The goal of this rule, which is in furtherance of the statutory requirements, is to enable the patient to return to the same bed in the same room in the same LTCF from which the patient was admitted to the hospital.

Therefore, it is the responsibility of the LTCF to reserve and hold the bed for a period not to exceed 10 days, and to determine the patient's status during the 10 day bed reserve period. If the patient is not readmitted to the same room or same bed in the LTCF, the LTCF shall provide an explanation on the patient's chart which is subject to Division review.

If the re-admission to the LTCF does not occur until after the 10 day bed reserve period, the next available bed shall be given to the Medicaid patient. The Division requires the patient's name to be placed on a chronological listing of persons waiting re-admission to the LTCF.

The bed reserve policy applies to any person in the LTCF eligible to receive Medicaid benefits. An example is a patient who has both Medicare and Medicaid coverage and who might be re-admitted to the LTCF from the hospital under Medicare benefits. The bed reserve policy would operate in the same manner, regardless of whether Medicare or Medicaid paid the LTCF following a hospital admission.

The procedures that LTCFs are required to follow are set forth at proposed N.J.A.C. 10:63-1.16(j)1v. LTCFs have been and are required to notify the MDO (Medicaid District Office) whenever a patient is transferred to a hospital or re-admitted to an LTCF. LTCFs are required to use the MCNH-33 form. The Division modified the form to indicate the patient's room number and bed number. These items on the MCNH-33 must be completed when the patient is admitted to the hospital and returned to the LTCF if the LTCF wants to be reimbursed for the bed reserve days.

If the patient does return to the LTCF, then the LTCF must prepare an MCNH-13 form using the proper admission code.

The Division also amended the Manual for Hospital Services and the Manual for Special Hospital Services to explain the hospital's role in the bed reserve policy and to facilitate discharge planning. Hospitals are required to inform the LTCF of the patient's progress and give the LTCF as much notice as possible to enable the patient to return to the LTCF.

Social Impact

The proposed amendments impact potentially on all Medicaid patients who are residents in LTCFs. The amendments specifically impact on patients who reside in an LTCF, are admitted to a hospital, and return to the same LTCF. The amendments facilitate the patient's return to the same room and same bed that he or she occupied prior to their hospitalization. The amendments impact on LTCFs that participate in the New Jersey Medicaid Program. LTCFs can be reimbursed for reserving a bed for up to 10 days, but the LTCF must follow the procedures for documenting and claiming the 10 day bed reserve. LTCFs are responsible for following the patient's progress while the patient is hospitalized.

Economic Impact

The cost of nursing home bed reserve during calendar year 1988 was approximately 7.5 million dollars (Federal-State share combined). These costs are included in the Division's budget. The amendments do not reflect any new additional costs to the Division. The Division will use existing administrative mechanisms to make reimbursement to LTCFs for bed reserve days.

LTCFs who are entitled to reimbursement for bed reserve days will be reimbursed at the per diem rate commensurate with the patient's level of care which was in effect at the time of their admission to the hospital.

Medicaid patients are already required to contribute from their available income towards the cost of long term care. Bed reserve days are subject to the same policy, which means that the patient's available monthly income is applied against the per diem cost of care in the usual manner.

Regulatory Flexibility Analysis

The proposed amendments impact on LTCFs, which generally employ more than 100 people and would not be considered small businesses under the terms of the Act. However, for those LTCFs that employ less than 100 people, the Division does not believe that differential treatment is necessary. The proposed amendment imposes one minor recordkeeping and reporting requirement, which is the necessity to enter the patient's room and bed number on the MCNH-33. The Division believes this requirement helps fulfill the statutory provisions of "bed reserve", since it identifies the bed to which the patient should return following their hospitalization. The Division also believes this requirement is necessary to identify those "reserved beds" for which an LTCF is claiming reimbursement.

The Division is also relying on N.J.S.A. 30:4D-12, which requires providers to keep records to fully disclose the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service, and any additional information as may be required by regulation.

There are no capital costs associated with these amendments.

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

10:52-1.2 Covered inpatient hospital services

(a) Subject to the general limitations and exclusions and those hereinafter specified, hospital and services shall include:

1.-18. (No change.)

19. Inpatient hospital services rendered after the day it is medically necessary only under the following conditions:

i.-ii. (No change.)

iii. For patients awaiting placement in a long-term care facility (Skilled Nursing Facility, Intermediate Care Facility A or B) if the hosital can demonstrate that:

(1) All possible third party liability, including Medicare benefits, have been utilized.

(2) The care and services provided are medically necessary, [i.e.], **that is** the patient requires skilled nursing or intermediate levels A

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or B care in a long-term care facility: [the inpatient hospital form (MC-1) was submitted to the appropriate Medicaid District Office upon admission;]

(3)-(5) (No change.)

[(6) Notification that the patient requires placement in a long-term care facility is to be made to the appropriate county welfare agency (CWA). Verbal notifcations must take place within two working days of the time that acute inpatient care is no longer medically necessary, to be followed by a written notification within 72 hours.].

iv. Upon satisfaction of all the conditions set forth in **(a)19**iii(1) through [(6)] **(5) above**, payment will be made at the rate of the appropriate level of care of Medicaid participating long-term care facilities as determined on January 1, of each year. Payment will be made at the [statewide] **Statewide** weighted average skilled or intermediate care rate determined by the patient's level of care as assessed by the division of Medical Assistance and Health Services or its authorized agents.

v. When the patient is admitted to the hospital under the LTCF bed reserve policy, which requires the facility to reserve the same room and the same bed of the LTCF resident (see N.J.A.C. 10:63-1.13), the hospital will:

(1) Involve the long-term care facility in the preparation of the hospital's discharge planning;

(2) Advise the facility of an anticipated dishcarge date;

(3) Keep the long-term care facility informed of the patient's progress, particularly if something unexpected happens which causes a revision to the discharge plan; and

(4) Give the long-term care facility as much advance notice as possible to prepare for the return of the patient.

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

10:53-1.2 Covered inpatient hospital services

(a) Subject to the general limitations and exclusions and those hereinafter specified, hospital care and services shall include:

1.-18. (No change.)

19. Inpatient hospital services rendered after the day it is medically necessary only under the following conditions:

i. (No change.)

ii. For patients awaiting placement in a long-term care facility (Skilled Nursing Facility, Intermediate Care Facility A or B) if the hospital can demonstrate that:

(1) All possible third party liability, including Medicare benefits, have been utilized;

(2) The care and services provided are medically necessary, [i.e.] **that is**, the patient requires skilled nursing or intermediate levels A or B care in a long-term care facility: [the Inpatient Hospital Form (MC-1) was submitted to the appropriate Medicaid District Office upon admission;]

(3)-(5) (No change.)

[(6) Notification that the patient requires placement in a long-term care facility is to be made to the Medicaid District Office in the hospital area. Verbal notifications must take place within two working days of the time that acute inpatient care is no longer medically necessary, to be followed by a written notification within 72 hours.]

iii. Upon satisfaction of all the conditions set forth in **(a)19**ii(1) through [(6)] **(5) above,** payment will be made at the rate of the appropriate level of care of Medicaid participating long-term care facilities as determined on January 1, of each year. Payment will be made at the [statewide] **Statewide** weighted average skilled or intermediate care rate determined by the patient's level of care as assessed by the Division of Medical Assistance and Health Services or its authorized agents.

iv. When the patient is admitted to the hospital under the LTCF bed reserve policy which requires the facility to reserve the same room and the same bed of the LTCF resident (see N.J.A.C. 10:63-1.13), the hospital will:

(1) Involve the long-term care facility in the preparation of the hospital's discharge planning;

(2) Advise the facility of an anticipated discharge date;

(3) Keep the long-term care facility informed of the patient's progress, particulary if something unexpected happens which causes a revision to the discharge plan; and

(4) Give the long-term care facility as much advance notice as possible to prepare for the return of the patient.

(b) (No change.)

10:63-1.13 Absence from facility [(bed hold)]

[(a) Rules concerning absence due to admission to a hospital are:

1. No payment will be made to LTCFs for holding a bed for a Medicaid patient who has been discharged from the LTCF and admitted to a hospital (see section 1.6e.)]

(a) Bed reserve policy for hospital admission is as follows:

1. The LTCF shall reserve and hold the same room and the same bed of the Medicaid-eligible patient transferred to a general or psychiatric hospital for a period not to exceed 10 days. It is the LTCF's responsibility to determine the patient's status or whereabouts during or after the 10 day bed reserve period.

i. If the patient is not readmitted to the same room or the same bed or the same LTCF, the LTCF requesting bed reserve reimbursement shall record on the patient's chart and make available for Division review, a justification for the action taken.

2. Reimbursement, not to exceed 10 days, shall be at the rate the LTCF received for the same level of care authorized for the patient prior to the transfer to the hospital.

i. The patient's available monthly income shall be applied against the per diem cost of care pursuant to N.J.A.C. 10:63-1.11(d)2i.

3. If readmission to the LTCF does not occur until after the 10 day bed reserve period, the next available bed shall be given to the Medicaid patient. This means the patient's name shall be placed on a chronological listing of persons waiting readmission to the LTCF. The discharged patient shall have priority for the next available bed in the facility.

4. The bed reserve policy applies to any person in the LTCF eligible to receive Medicaid benefits; for example, a Medicare/Medicaid recipient who, at the time of transfer to the hospital, might be eligible for long-term care services under Medicare benefits.

[2.]**5.** Admission procedures (see N.J.A.C. 10:63-1.16) [must] **shall** be followed when the Medicaid recipient has been readmitted following a period of hospitalization.

(b) (No change.)

10:63-1.16 Admission policies

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

(j) In the event that a LTCF admits a Medicaid eligible recipient from other than a general acute hospital or Special Class A Hospital, or N.J. Title XIX Certified Psychiatric Hospital without prior authorization from the MDO, the effective "beginning" date of the initial authorization period will be the date of assessment by the Medicaid nurse. Facilities admitting such recipients without prior authorization will not be reimbursed by the New Jersey Medicaid Program for any care rendered before the assessment.

1. Admission from an acute general hospital, class "A" special hospital, and N.J. Title XIX certified psychiatric hospital:

i.-iii. (No change.)

iv. The LTCF [must] **shall** submit [a notification of the admission of the Medicaid eligible recipient,] **an** MCNH-33 form, [(Exhibit No. 7)] **Notification From Long-Term Care Facility of Admission or Termination of a Medicaid Patient,** along with a copy of the hospital transfer form [(Exhibit No. 30)] or its equivalent PA-4 Form [(Exhibit No. 28)] to the MDO serving the county where the LTCF is located, within two working days of admission.

v. When a patient is transferred to a hospital, there is no change in the policy for readmission to the LTCF or the termination from the LTCF (see N.J.A.C. 10:63-1.13(a)). The MCNH-33 form, Notification From Long-Term Care Facility of Admission or Termination of a Medicaid Patient, shall be completed, dated and signed for each readmission and termination of a Medicaid patient. The MCNH-33 form shall reflect the room number and bed number to which the Medicaid patient has been readmitted. For the termination of a Medicaid patient, an MCNH-13 form, (Termination) shall be submitted to the Bureau of Claims and Accounts, reflecting the proper termination code.

2.-6. (No change.)

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(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program
Miscellaneous Program Requirements
Proposed Amendments: N.J.A.C. 10:87-2.13, 2.30, 2.33, 2.36, 2.37, 4.8, 5.9, and 6.2
Proposed Repeal and New Rule: N.J.A.C. 10:87-9.7

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4B-2, 54 FR 6990, the Hunger Prevention Act of 1988 (P.L. 100-435), the Wartime Relocation of Civilians Act (P.L. 100-383), and the Anti-Drug Abuse Act of 1986 (P.L. 99-570).

Proposal Number: PRN 1989-275.

Submit comments by July 19, 1989 to:
Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of the proposed repeal, new rule, and amendments is to facilitate and incorporate changes to the New Jersey Food Stamp Program, in response to the passage of Federal legislation, and the issuance of Federal food stamp regulations.

The February 15, 1989 edition of the Federal Register (54 FR 6990) issued final rulemaking which implemented a reorganization of 7 CFR Part 274 concerning food stamp issuance and issuance liability rules. The proposed repeal and new rule at N.J.A.C. 10:87-9.7 replaces the present rule with a new rule based upon regulations promulgated in 54 FR 6990 (7 CFR Part 274.6) concerning the replacement of food stamp benefits. The new rule condenses and modifies the policies applicable to the replacement of food stamp authorization to participate (ATP) documents, Federal food stamp coupons, and food purchased with food stamp benefits that is subsequently destroyed in a disaster. The amendment establishes new categories concerning replacement restrictions, allows a household to be placed on an alternate issuance system after its first mail loss, and specifies exact information which must be included in the case record concerning replaced benefits.

N.J.A.C. 10:87-2.13, 2.30, 2.33, 2.36, 2.37, and 6.2 are being amended to specify, in accordance with the Anti-Drug Abuse Act of 1986 (P.L. 99-570), that the food stamp date of application for a resident of an institution who jointly applies for food stamp and Supplemental Security Income (SSI) benefits prior to his or her release from the institution (also referred to as a "prerelease applicant") shall be the date of his or her actual release from the institution, rather than the date the application is filed with the county welfare agency.

N.J.A.C. 10:87-4.8 and 5.9 are being amended, in accordance with the Wartime Relocation of Civilians Act (P.L. 100-383), to specify that payments received under that Act are to be excluded from countable resources and income for food stamp purposes.

The amendment proposed at N.J.A.C. 10:87-5.9 excludes earned income tax credits made in the form of advanced payments after January 1, 1989 from countable food stamp income. That amendment is consistent with the Hunger Prevention Act of 1988 (P.L. 100-435).

The proposed amendment at N.J.A.C. 10:87-2.30 requires that any ATP issued after the 19th of the month be valid until the last day of the following month. Presently, the extended validity period is assigned to ATPs issued after the 24th of the month; all other ATPs are valid only until the end of the month of issuance. Federal regulations at 7 CFR 274.3(e)(1) permit state agencies the option of allowing this expanded period of validity. The amendment also specifies that the provision of an identification card to a certified household is an essential component in ensuring that the household is afforded an opportunity to participate in the Food Stamp Program. The amendment is in conformity with the requirement of Federal regulations at 7 CFR 274.2 and 10 published in the February 15, 1989 edition of the Federal Register at 54 FR 6990.

Social Impact

The proposed repeal, new rule, and amendments will have a positive impact upon county welfare agency administrative procedures, because an accurate delineation of Federal food stamp requirements is fundamental to effective program administration. Additionally, some recipients will realize a slight increase in their food stamp benefits, because earned income tax credits will no longer be considered income, while others will retain their eligibility because payments made under the Wartime Relocation of Civilians Act will be exempt from resource and income considerations. There will be no appreciable negative effect on the public.

Economic Impact

Significant economic impact is not anticipated as a result of the proposed amendments and new rule. Food stamp benefits are funded entirely by the Federal government, so any increase in benefits will not impose fiscal difficulty on the State or counties. Enactment of the amendments will ensure that the New Jersey Food Stamp Program is consistent with Federal statutes and regulations, thus avoiding the possibility of Federally-imposed fiscal sanctions due to noncompliance.

Regulatory Flexibility Statement

The proposed amendments and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments, and repeal and new rule impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for Food Stamp Program benefits to a low-income population by a governmental agency, rather than a private business establishment.

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

10:87-2.13 Filing an application

(a) Households must file a food stamp application by submitting the appropriate form to the food stamp office in person, through an authorized representative, or by mail. The amount of time for the CWA to deliver benefits is calculated from the date the application is filed in the food stamp office designated to accept the household's application (see N.J.A.C. 10:87-2.30 and 2.31). Households subject to SSI joint processing (see N.J.A.C. 10:87-2.12(a)3) must file a food stamp application by submitting the appropriate form to the SSA/DO in person, through an authorized representative, or by mail. The amount of time for the CWA to deliver benefits is calculated from the date the application is filed in the SSA/DO designated to accept the household's application (see N.J.A.C. 10:87-2.30). **Residents of public institutions who jointly apply for food stamps and SSI under SSA's Prerelease Program for the Institutionalized shall have their date of release from the institution considered as the date of application for food stamp purposes.**

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

10:87-2.30 Normal processing standard

(a) The CWA shall provide eligible households that submit a complete application an opportunity to participate as soon as possible, but not later than 30 calendar days after the application was filed. An application is considered filed the day the appropriate food stamp office receives the application containing the applicant's name and address and signed by either a responsible member of the household or the household's authorized representative. For SSI jointly processed households, the application shall be considered filed for normal processing purposes when the signed application is received by the [Social Security Administration] SSA district office. **For residents of public institutions who jointly apply for food stamps and SSI under SSA's Prerelease Program for the Institutionalized, the application shall be considered filed for normal processing purposes when the resident is released from the institution.** Households entitled to expedited processing are specified in N.J.A.C. 10:87-2.32[,] et seq.

(b) Opportunity to participate: An opportunity to participate consists of providing households with an ATP and having an issuance facility open and available for the household to obtain its allotment. If the ATP is mailed, two days shall be allowed for delivery before determining if the household has been provided an opportunity to participate. A household has not been provided an opportunity to participate within 30 days of application if the ATP is mailed on the 29th or 30th day. Neither has an opportunity to participate been provided if the ATP is mailed on the 28th day but no issuance facility is open on the 30th day where the household can obtain coupons.

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The CWA must mail the ATP at least two days in advance of the 30th day and assure that the ATP can be transacted after it is received but before the 30th day expires. **The CWA shall ensure that each certified household is provided an ID card concurrent with the initial issuance of food stamp benefits to the household.**

1. [ATP issued after the 24th day of the month:] Any ATP issued after the [24th] **19th** day of the month shall not expire until the end of the following month.

2. A household shall be entitled to replaced benefits, lost as a result of being unable to obtain a particular allotment, if the validity period of the ATP expires between the time the household requested a replacement ID card and the delivery of that card to the household.

(c) (No change.)

10:87-2.33 Expedited service processing standards

(a) For households entitled to expedited service, the CWA shall make available to the recipient an ATP card not later than the fifth calendar day following the date an application was filed in the appropriate food stamp office. **For residents of public institutions who apply for SSI under SSA's Prerelease Program for the Institutionalized, expedited benefits shall be made available within five calendar days following the date of the resident's release from the institution.** The CWA shall ensure that a reasonable opportunity for ATP redemption exists on the day of issuance within the time limits specified in this section.

(b)-(e) (No change.)

10:87-2.36 Categorically eligible AFDC/SSI households

(a)-(n) (No change.)

(o) Any household determined AFDC/SSI eligible which is categorically eligible within the 30-day food stamp processing time shall be provided benefits [back to the date of the food stamp application] **in accordance with N.J.A.C. 10:87-2.30**. Benefits shall be prorated in accordance with current procedures.

(p)-(r) (No change.)

10:87-2.37 Procedures for SSI jointly processed households

(a) (No change.)

(b) Initial application at the Social Security District Office (SSA/DO): The SSA/DO will inform households eligible for SSI joint processing (see N.J.A.C. 10:87-2.12(a)3) of their right to apply for food stamps at the SSA/DO without going to the food stamp office and will refer all other households to the appropriate food stamp office. The SSA/DO will accept and complete FSP-901A forms received from households eligible for SSI joint processing and forward them within one working day to the appropriate CWA. Along with the FSP-901A, the SSA/DO will forward a Social Security Administration Transmittal for Food Stamp Applications (Form SSA-4233) which documents all verification obtained by the SSA employee.

1.-2. (No change.)

3. Residents of public institutions who apply for SSI under SSA's Prerelease Program for the Institutionalized may complete a joint application for SSI/FS prior to release from the institutions, and are subject to the same provisions applicable to all other jointly processed SSI households, with the following exceptions:

i. The 30-day processing standard described in N.J.A.C. 10:87-2.30 to deliver benefits to a prerelease applicant shall be based upon the date the individual is released from the institution, rather than the date the application is filed at the CWA.

ii. A prerelease applicant who is entitled to expedited service shall be provided food stamp benefits no later than the fifth calendar day following the date of release from the institution.

iii. A prerelease applicant's benefit level for the initial month of certification shall be based on the day of the month the resident is released from the institution.

(c)-(h) (No change.)

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of resources excluded by Federal statute:

i.-xiii. (No change.)

xiv. Payments received under the Wartime Relocation of Civilians Act (P.L. 100-383).

18.-19. (No change.)

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; [and] no other income shall be excluded.

1.-14. (No change.)

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision.

i.-vi. (No change.)

vii. Earned income tax credits:

(1) Earned income tax credits received as a result of Public Law 95-600, the Revenue Act of 1978, which are received before January 1, 1980[.]; **and**

(2) Earned income tax credits made as advance payments which are received on or after January 1, 1989.

viii.-xiv. (No change.)

xv. Payments received under the Wartime Relocation of Civilians Act (P.L. 100-383).

10:87-6.2 Month of application

(a) The month of application for all households is the calendar month in which the household filed its application. **For those prerelease applicants described at N.J.A.C. 10:87-2.37(b)3, the month of application shall be the date of release from the institution.** This includes households submitting an application following any period of time during which the household was not certified for participation in the program. In most cases, the month of application will be the initial month of the household's certification period (see definition of initial month in (b) below). The CWA shall determine a household's eligibility during the month of application based on the household's circumstances for the entire calendar month in which the household filed its application, even if the household filed its application on the last day of that calendar month.

(b) (No change.)

(c) Determining benefit level for initial month: A household's benefit level for the initial month will be based on the day of the month it applies for benefits. **For those prerelease applicants described in N.J.A.C. 10:87-2.37(b)3, the initial benefit shall be based on the date of each individual's release from the institution.** Using a 30-day calendar month, households shall receive benefits prorated from the day of application to the end of the month. A household applying on the 31st of the month will be treated as though it applied on the 30th of the month. The $10.00 minimum benefit for one[-] and two[-]person households shall be prorated. To determine the amount of the prorated allotment for the month of application the CWA shall use the Allotment Proration Table found in N.J.A.C. 10:87-12.5. If the allotment for the initial month is less than $10,000 the CWA shall not issue benefits to that household.

[10:87-9.7 Replacement of lost, stolen, nondelivered or destroyed ATPs or food stamp coupons]

[(a) ATPs/food coupons lost or misplaced after receipt: The CWA shall not issue a replacement ATP or coupons to a household which reports its ATP or coupons lost or misplaced after receipt.

(b) Food coupons stolen after receipt: The CWA shall not replace coupons which are reported stolen after receipt.

(c) Food coupons mutilated after receipt: The CWA shall replace coupons which are mutilated after receipt, i.e., shredded by a pet, gone through the laundry, etc. The amount of coupons to be replaced shall be equal to the value of the mutilated coupons and shall be replaced in accordance with N.J.A.C. 10:87-Appendix A Section A(3).

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1. Unable to determine value: If the CWA is unable to determine the value of a mutilated coupon after exhausting all available means of determining the value, the CWA shall send the mutilated coupon to DPW which will make a determination of value or ask the Food and Nutrition Service to make a determination and advise the CWA accordingly.

2. Less than three-fifths of a coupon: The CWA shall not replace coupons which are mutilated to such a degree that less than three-fifths of the coupon is present for replacement.

(d) Food coupons destroyed after receipt: The CWA shall replace that portion of coupons, not to exceed one month's food stamp allotment, which were received and subsequently destroyed in a disaster such as fire or flood.

1. To qualify for such replacement, the household must report the destruction to the food stamp office within 10 days of the incident or within the period of intended use, whichever is earlier. The household shall sign a statement (may be mailed to the CWA if the participant is unable to come into the office because of age, handicap, or distance and cannot appoint an authorized representative) which shall be retained in the case record:

i. Attesting to the destruction of the household's food stamps;

ii. Stating that the original coupons will be returned to the CWA if recovered by the household; and

iii. Stating that the household is aware of the penalties for intentional misrepresentation of the facts.

2. Upon receipt of a request for replacement of coupons destroyed in an individual household disaster, the CWA shall:

i. Verify the disaster through either a collateral contact, documentation from a community agency, such as but not limited to, the fire department, the Red Cross, or a home visit.

ii. Examine the case record for notation of previous requests for replacement of coupons or ATPs reported destroyed subsequent to receipt. Replacement of coupons reported destroyed subsequent to receipt shall be made only once in a six month period. If, in the previous five months, replacement for either coupons or an ATP reported destroyed subsequent to receipt has been made, then replacement shall be denied;

iii. Issue replacement coupons, if warranted, within 10 days of receipt of request for replacement; and

iv. Indicate in the case record that a replacement has been provided.

(e) ATPs stolen or destroyed after receipt: The CWA shall issue a replacement of ATPs stolen or destroyed in a household disaster such as fire or flood.

1. To qualify for such a replacement, the household must report the theft or destruction to the food stamp office within 10 days of the incident or within the ATP's period of intended use, whichever is earlier. The household shall sign a statement which may be mailed to the CWA and be retained in the case record;

i. Attesting to the theft or destruction of the household's ATPs;

ii. Stating that the original ATP will be returned to the CWA if recovered by the household; and

iii. Stating that the household is aware of the penalties for intentional misrepresentation of the facts.

2. The CWA shall also adhere to the following procedures:

i. Verify the disaster through either a collateral contact, documentation from a community agency, such as but not limited to, the fire department, the Red Cross, or a home visit;

ii. Determine, to the maximum extent practicable, the legitimacy of the request for replacement of a destroyed or stolen ATP (through such means as determining whether the original ATP has been transacted, and, if so, whether the signature on the original ATP matches that on the request for a replacement);

iii. Determine if the ATP was valid when issued and if it has been reported destroyed or stolen in the period of its intended use (for ATPs issued after the 24th of the month, the period of intended use is the last day of the month following the issuance month);

iv. Examine the case record for notation of previous request for replacement of coupons reported destroyed or an ATP reported stolen or destroyed subsequent to receipt:

(1) Replacement of an ATP reported as stolen subsequent to receipt shall be limited to once in a six month period;

(2) Replacement of an ATP or coupons reported as destroyed subsequent to receipt shall also be subject to a separate limit of once in a six month period;

(3) If, in the previous five months, a household has been issued a replacement for an ATP reported stolen subsequent to receipt, then the request for a replacement of another stolen ATP shall be denied; and

(4) If, in the previous five months, a household has been issued a replacement ATP or coupons reported destroyed subsequent to receipt, then the request for a replacement of another destroyed ATP or coupons shall be denied.

v. Issue an ATP replacement if warranted, within 10 days of receipt of request for replacement;

vi. Indicate in the case record that a replacement has been provided; and

vii. In cases in which an ATP replacement is requested and evidence exists indicating that the request for replacement is fraudulent, replacement of the ATP shall be denied or delayed. The household shall be informed of its right to a fair hearing to contest the denial or delay in issuance of the ATP. Such denial or delay shall remain in effect pending the hearing decision. The CWA may combine the fair hearing with a fraud hearing. To deny or delay a replacement, the CWA must have evidence which indicates fraud, such as a match between the signature on the original ATP that has been transacted and the signature on the replacement request or where the issuing agent has noted the recipient's correct food stamp identification number (unless the ID has been reported stolen) on an original ATP that has been transacted.

(f) Replacement of replacement ATPs: Replacement of replacement ATPs shall be treated as replacement of normal issuances and thus subject to the same limitations in accordance with the provisions of this section.

(g) Emergency food stamp benefits: Where the Food and Nutrition Service has issued a disaster declaration and the household is eligible for emergency food stamp benefits, the household shall not receive both the disaster allotment and a replacement allotment under these procedures.

(h) Replacement of food destroyed in a disaster:

1. In cases in which food purchased with food stamps is destroyed in a disaster affecting a participating household, that household may be eligible for replacement of the actual value of the loss, not to exceed one month's food stamp allotment, if the loss is reported within 10 days and the household disaster is verified. The CWA shall verify the disaster through a collateral contract, a community organization such as the fire department or Red Cross, or home visit.

2. The CWA shall provide an allotment replacement within 10 days of the reported loss.

3. This provision shall apply in cases of an individual household disaster, such as fire, as well as in natural disasters affecting more than one household.

4. In cases where the Food and Nutrition Service has issued a disaster declaration and the household is otherwise eligible for emergency food stamp benefits, the household shall not receive both the disaster allotment and a replacement allotment.

(i) Replacement of an ATP lost or stolen in the mail prior to receipt:

1. The CWA shall mail the ATP to the household in a first class, non-forwarding envelope. The CWA may also use certified mail for ATP delivery and shall use an alternate method of ATP delivery for households which report two losses of ATPs through the mail within a six month period.

2. The CWA shall issue a replacement for an ATP stolen or lost in the mail prior to receipt only if the ATP is reported stolen or lost in the mail in the period of its intended use and if the household requesting replacement has not already been issued two such replacements in the previous five months. The period of intended use of an ATP is the month for which it was issued, except that where an ATP is issued after the 24th of the month, the period of intended use shall be the last day of the month following the issuance month.

3. When a household reports the nondelivery of an ATP the CWA shall:

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i. Determine if the ATP was valid when issued, actually mailed, and if sufficient time has elapsed for delivery;

ii. Determine, to the maximum extent practicable, the legitimacy of the request for replacement of the lost or stolen ATP (through such means as determining whether the original ATP was transacted, and, if so, whether the signature on the original ATP matches that on the replacement request);

iii. Prepare and have the participant sign a statement that the original ATP will be returned to the CWA if recovered by the household and that the household is aware of the penalties for intentional misrepresentation of the facts. The statement may be mailed to the CWA if the participant is unable to come into the office because of age, handicap, or distance, and cannot appoint an authorized representative. This statement shall be retained in the case record;

iv. Provide a replacement no more than 10 days after the report of nondelivery has been received;

v. Deny or delay replacement of the ATP in cases which documentation indicates that the request for replacement is fraudulent. The household shall be informed of its right to a fair hearing to contest the delay or denial of the ATP issuance. The denial or delay of the replacement ATP shall remain in effect pending a hearing decision. The CWA must have valid documentation indicating the likelihood of fraud to deny or delay a replacement ATP. Unless the household reports that its identification card (ID) was stolen, the signature match on the original and replacement transacted ATPs or, notation by the issuing agent of the recipient's correct food stamp ID number, will be considered sufficient evidence for delaying or denying further ATP issuance.

vi. The CWA shall report all ATPs reported as stolen or lost in the mail to the appropriate office of the Postal Inspection Service on at least a monthly basis. The CWA shall assist the Postal Service during subsequent investigation and shall, upon request provide the Postal Service with facsimiles of the original ATP, if transacted, replacement ATP, and a copy of the nonreceipt statement.

vii. Comply with existing procedures found in N.J.A.C. 10:87-Appendix A including the reporting of all lost or stolen ATPs to the appropriate office of the Postal Inspection Service. In cases where the signatures do appear to match, referral to the Fraud Investigation Unit is to be made for referral to the county prosecutor or for administrative fraud hearing, as appropriate;

viii. After two requests for replacement of ATPs reported as nondelivered in a six month period, the CWA shall issue benefits to that household under an alternate issuance system, i.e., certified mail, picking up the ATP at the CWA office (the two requests may be for an original or a replacement ATP);

ix. CWAs shall keep such households on the alternative system as long as the CWA determines necessary. CWAs may return households to the regular issuance system if the CWA finds that the circumstances leading to the loss have changed and the risk of loss has lessened;

x. Placement of a household on an alternate issuance system and length of time on this system is not subject to the fair hearing process; and

xi. In cases where an indication of fraud exists, the procedure is (e)3vii above shall be followed.

(j) Coupons lost in the mail prior to receipt (direct mail issuance only):

1. Coupons are "in the mail" when deposited with the Postal Service. When a household reports the nondelivery of an allotment of coupons issued through the mail, the CWA shall determine if the coupons were validly issued, actually mailed, and if sufficient time has elapsed for delivery. If delivery of a partial allotment is reported, the CWA shall determine:

i. The value of the coupons not delivered; and

ii. That the report of receipt of a partial allotment is corroborated by evidence that the coupon loss was due to damage in the mail before delivery or a discrepancy in the coupon issuer's inventory. If receipt of a partial allotment is due to an error by the coupon issuer, the remainder of the allotment shall be issued regardless of the number of times the household has received replacements in the past five months.

2. Review the mail issuance log for return of undelivered coupons. Record the date of the reported nondelivery of mailed coupons in the issuance log.

3. Issue a replacement of food coupons lost in the mail prior to receipt only if the coupons are reported lost in the mail in the period of their intended use and if the household requesting replacement has not already been issued two such replacements in the previous five months. The period of intended use of coupons is the month for which coupons are issued, except that where coupons are issued after the 24th of the month, the period of intended use shall be the last day of the month following the issuance month.

4. Provide replacement in no more than 10 days after the report of nondelivery has been received.

5. When a household reports the nondelivery of coupons, the CWA shall follow the procedures for ATPs lost or stolen prior to receipt, in accordance with (i) above.

6. Replacement coupons which are stolen after receipt shall not be replaced.

7. Replacement coupons which are destroyed after receipt shall be treated in accordance with (d) above, the procedures for food coupons destroyed after receipt.

(k) Improperly manufactured coupons: The CWA shall provide a replacement for coupons that were received by a household but were subsequently found to be improperly manufactured. The amount to be replaced shall be equal to the value of improperly manufactured coupons and shall be replaced in accordance with Appendix A Section A.]

10:87-9.7 Replacement of benefits

(a) Rules on providing replacement issues are as follows:

1. Subject to the restrictions in (b) below, CWAs shall provide replacement issuances to a household when the household reports that:

i. The ATP was not received or was stolen from the mail, was stolen after receipt, was destroyed in a household misfortune, or was improperly manufactured or mutilated;

ii. The coupons were not received in the mail, were stolen from the mail, were destroyed in a household misfortune, or were improperly manufactured or mutilated;

iii. Food purchased with food stamps was destroyed in a household misfortune; or

iv. The household received a partial coupon allotment in the mail.

2. CWAs shall not provide replacement issuances to households when coupons are lost, stolen or misplaced after receipt, when ATPs are lost or misplaced after receipt, when ATPs or coupons are totally destroyed after receipt in other than a disaster or misfortune, or when coupons sent by registered or certified mail are signed for by anyone residing with or visiting the household. In addition, replacement issuances shall not be made if the household or its authorized representative has not signed and returned the household statement required in (c) below where applicable.

3. Where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits, the household shall not receive both the disaster allotment and a replacement allotment for a misfortune.

4. In order for a replacement to be considered non-countable, the replacement must not result in a loss to the program.

(b) Rules on replacement restrictions are as follows:

1. Replacement issuances shall be provided only if a household timely reports a loss orally or in writing, and provides a statement of nonreceipt if the original ATP or allotment has not been returned to the CWA at the time of request for replacement. The report shall be considered timely if it is made to the CWA within 10 days of the date an ATP is stolen from the household, or an ATP, coupons, or food purchased with food stamps is destroyed in a household misfortune. For a claim of nondelivery by the mail, the report must be made within the period of intended use. (If the issuance was made after the 19th of the month, the period of intended use is the last day of the next month.)

2. The number of replacement issuances which a household may receive shall be limited as follows:

i. CWAs shall limit replacement issuances to a total of two countable replacements in six months for ATPs or coupons not received in, or stolen from, the mail, ATPs stolen after receipt, and partial coupon

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allotments. Separate limits shall not apply for each of the above types of loss.

ii. CWAs shall limit replacement issuances per household to two countable replacements in six months for ATPs or coupons reported as destroyed in a household misfortune. This limit is distinct from the limit in (b)2i above.

iii. No limit on the number of replacements shall be placed on the replacement of ATPs or coupons which were improperly manufactured or mutilated or food purchased with food stamp benefits which was destroyed in a household misfortune.

iv. The replacement issuance shall not be considered a countable replacement if:

(1) The original or replacement issuance is returned or otherwise recovered by the CWA;

(2) The original ATP is not transacted;

(3) The replacement ATP is not transacted; or

(4) The replacement is being issued due to an issuance error.

3. Replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

(c) Rules on the household statement of nonreceipt are as follows:

1. Prior to issuing a replacement, the CWA shall obtain from a member of the household a signed statement attesting to the household's loss. This statement shall not be required if the reason for the replacement is that the original ATP or coupons were improperly manufactured or mutilated, or if the original issuance has already been returned. The required statement may be mailed to the CWA if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

2. If the signed statement or affidavit is not received by the CWA within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the CWA shall consider the statement timely received.

3. The statement shall be retained in the case record. It shall attest to the nonreceipt, theft, loss or destruction of the original issuance and specify the reason for the replacement. It shall also state that the original or replacement issuance will be returned to the State agency if the original issuance is recovered by the household and that the household is aware of the penalties for intentional misrepresentation of the facts including, but not limited to, a charge of perjury for a false claim. In addition, the statement shall advise the household that:

i. The household may request to be placed on an alternate issuance system after one report of nonreceipt;

ii. After two reports in a six-month period of loss or theft prior to receipt, the household shall be placed on an alternate delivery system;

iii. After two reports in a six-month period of loss or theft prior to receipt and/or theft of an ATP after receipt, the CWA may delay or deny further replacements for such causes; and

iv. If the statement of nonreceipt is not signed and returned within 10 days of the date the loss was reported, the CWA shall not replace the coupons or ATP.

(d) Provisions concerning the time limits for making replacements are as follows:

1. Replacement issuances shall be provided to households within 10 days after report of nondelivery or loss (15 days if issuance was by certified or registered mail) or within two working days of receiving the signed household statement required in (c) above, whichever date is later.

i. Replacement of mutilated coupons shall be delayed until a determination of the value of the coupons can be made in accordance with f(3) below.

ii. If the household has already been issued the maximum allowable number of countable replacements, subsequent replacements shall be delayed until the agency has verified that the original ATP was not transacted. In a system using ATPs, it may not be known at the time of the replacement request whether prior replacements are countable replacements and, therefore, whether the household has reached its limit. In such cases, the allotment shall be restored when the CWA verifies that the limit on countable replacements has not been reached.

iii. The CWA shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

2. The household shall be informed of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

(e) CWAs shall comply with the following procedures in replacing issuances reported lost in the mail or stolen prior to receipt by the household:

1. Determine if the ATPs or benefits were validly issued, if they were actually mailed, and if sufficient time has elapsed for delivery or if they were returned in the mail. If a delivery of a partial allotment is reported, the CWA shall determine the value of the coupons not delivered and determine whether the report of receipt of a partial allotment is corroborated by evidence that the coupon loss was due to damage in the mail before delivery or by a discrepancy in the issuance unit's inventory;

2. Determine, to the extent possible, the validity of the request for a replacement. This includes determining whether the original issuance has been returned to the CWA, whether the original ATP has been transacted and, if so, whether the recipient's signature on the ATP matches the signature on the ID card. In a photo ID area, the CWA shall determine if the ID serial number annotated on the ATP matches the serial number on the recipient's ID card;

3. Issue a replacement in accordance with (b) through (d) above if the household is eligible;

4. Place the household on an alternate delivery system, if warranted, in accordance with (g) below; and

5. Take other action, such as correcting the address on the FAMIS file, warranted by the reported nondelivery.

(f) Upon receiving a request for replacement of an issuance reported as stolen or destroyed after receipt by the household, the CWA shall determine if the issuance was validly issued. The CWA shall also comply with all applicable provisions in (b) through (d) above, as well as the following procedures for each type of replacement:

1. Prior to replacing an ATP which was reported stolen after receipt by the household, the CWA shall determine, to the extent possible, the validity of the request for replacement. For example, the CWA may determine whether the original ATP has been transacted and, if so, whether the signature on the original ATP matches that on the household statement. Where the use of a photo ID is mandated, the CWA shall determine if the ID serial number annotated on the ATP matches the serial number on the recipient's ID card. Any replacement which results in duplicate participation shall be considered a household error, and the replacement countable, when the ID serial number shown on the ATP matches the serial number on the recipient's card, unless the ID card was reported lost or stolen prior to the replacement. The CWA may require households, on a case-by-case basis, to report the theft to a law enforcement agency and to provide verification of such report.

2. Prior to replacing destroyed ATPs, coupons, or food purchased with food stamp benefits, the CWA shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit. The CWA shall provide replacements of coupons, ATPs and/or food in the actual amount of the loss, but not exceeding one month's allotment, unless the exception in (b)3 above applies.

3. Households cannot receive a replacement for coupons lost or stolen after receipt.

4. The CWA shall provide replacements for improperly manufactured or mutilated coupons or ATPs as follows:

i. Coupons received by a household, and subsequently mutilated or found to be improperly manufactured, shall be replaced in the amount of the loss to the household, but not to exceed one month's allotment. CWAs shall replace mutilated coupons when at least three-fifths of a coupon is presented by the household. The CWA shall replace improperly manufactured or mutilated coupons in accordance with N.J.A.C. 10:87—Appendix A, Section A(3).

ii. ATPs received by a household and subsequently mutilated or found to be improperly manufactured shall be replaced only if they are identifiable. "Identifiable" means that the CWA is able to determine the amount of the issuance and that the ATP was valid when the

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household reported that the ATP was mutilated or mismanufactured. For example, if the ATP serial number is legible, the CWA can determine from the record-for-issuance or manual authorization document log to which household the ATP was issued, the date of issuance, and the amount. Similarly, if the case number and validity period are legible, the CWA may be able to determine to whom the ATP was issued and the amount. If more than one ATP was issued to the household and the CWA cannot determine which ATP was mutilated, the replacement shall be issued in the lesser amount. Improperly manufactured or mutilated ATPs shall be surrendered to the CWA.

(g) The CWA shall offer to place a household in an alternate issuance system after the first report of nonreceipt, or when circumstances exist that indicate that the household may not receive its benefits through the normal issuance system, such as when a household has a history of reported nonreceipt of ATPs. After two requests for replacement of original or replacement ATPs reported as nondelivered in a six-month period, the CWA shall issue benefits to that household under an alternate issuance system. The two requests may be for either an original or a replacement ATP. The CWA shall keep the household on the alternate issuance system for the length of time the CWA determines to be necessary. The CWA may return the household to the regular issuance system if the CWA finds that the circumstances leading to the loss have changed and the risk of loss has lessened. The placement of a household on an alternate issuance system and the length of time the household is on this system is not subject to the fair hearing process.

(h) Provisions concerning the documentation and reconciliation of replacement issuances are as follows:

1. The CWA shall document in the household's case file each request for replacement, the date, the reason, and whether or not the replacement was provided. This information may be recorded exclusively on the household statement required in (c) above.

2. The CWA shall maintain, in readily-identifiable form, a record of the replacements granted to the household, the reason, the month, and whether the replacement was countable as defined in (b)2iv above. The record may be a case action sheet maintained in the case file, notations on the master issuance file, if readily accessible, or a document maintained solely for this purpose. At a minimum, the system shall be able to identify and differentiate among:

i. ATPs or coupons not received in, or stolen from, the mail, and ATPs stolen after receipt; and

ii. Replacement issuances which are not subject to a replacement limit.

3. Upon completion of reconciliation in a system utilizing ATPs, the CWA shall update the record required in (h)2 above to indicate whether both the original and replacement ATPs were transacted. If both were not transacted, the record shall clearly indicate that the replacement ATP was not a countable replacement.

4. When a request for replacement is made late in an issuance month, the replacement will be issued in a month subsequent to the month in which the original ATP was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement and may be posted to the month of issuance of the original ATP, so that all duplicate transactions may be identified.

(i) The CWA shall take the following further actions on replacement issuances:

1. On at least a monthly basis, the CWA shall report to the appropriate office of the Postal Inspection Service all ATPs reported as stolen or lost in the mail. The CWA shall assist the Postal Service during any investigation thereof and shall, upon request, supply the Postal Service with facsimiles of the original ATP, if transacted, and the replacement ATP and a copy of the nonreceipt statement. The CWA shall advise the Postal Service if the original ATP is not transacted.

2. When a duplicate replacement ATP is transacted, the CWA shall, at a minimum:

i. Compare the handwriting on the ATPs to documents contained in the household's case file, including the nonreceipt statement;

ii. Establish a claim in accordance with N.J.A.C. 10:87-11 where it appears that the household has transacted or caused both ATPs to be transacted; and

iii. Refer the matter to the CWA's investigation unit, where indicated.

INSURANCE

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Pre-Proposal
N.J.A.C. 11:5-1.28
Approved Schools

Authorized By: The New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Authority: N.J.S.A. 45:15-6 and N.J.S.A. 52:14B-4(e).

Pre-Proposal Number: PPR 1989-4.

Take notice that the New Jersey Real Estate Commission, pursuant to its authority to promulgate rules in accordance with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1, et seq., will receive preliminary comments with respect to the rulemaking proceeding which has been initiated as a result of the filing of a petition to amend N.J.A.C. 11:5-1.28 (see 21 N.J.R. 1580(b)). The petitioner has requested that the Commission amend the aforementioned rule so as to:

1. Prohibit broker-owned real estate prelicensure schools entirely; or
2. Prevent schools from being established for recruitment purposes; and
3. Require that all schools only charge a tuition amount that bears a reasonable relationship to the quality and quantity of instructional services rendered;
4. Prohibit schools from advertising or publicly representing themselves as being owned or in any manner affiliated with any real estate broker or real estate franchise;
5. Prohibit any school advertisement from being included or contained within any advertisement of a real estate broker;
6. Prohibit any advertisement in the help wanted classified section of any newspaper or periodical for the purpose of recruiting sales associates through the school;
7. Prohibit any school from using the same or a similar name of any real estate broker or franchise when the use of such name associates the school with any unrelated nonschool activity;
8. Prohibit any classes from being held at the office of a broker; and
9. Prohibit any direct or indirect solicitation of listings from students while enrolled in any course, including any offers of compensation to such students for participation in any referral program.

The Commission has determined to solicit comments from the public prior to taking any further action.

Interested persons may submit written comments on the issues raised by this petition.

Submit comments by July 19, 1989 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1, et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(b)

DIVISION OF PROPERTY/CASUALTY

Commercial Lines Insurance: General Provisions
Proposed Amendments: N.J.A.C. 11:13-1.2 and 1.3

Authorized By: Kenneth D. Merin, Commissioner, New Jersey Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29AA-1.

Proposal Number: PRN 1989-325.

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Submit comments by July 19, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

These proposed amendments would reclassify farmowners insurance from a commercial line to a personal line. Upon adoption, farmowners insurance would no longer be subject to the provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq., but to the laws governing personal lines insurance, particularly requirements of N.J.S.A. 17:29A-1 et seq. concerning prior approval of forms and rates.

Farmowners insurance contains coverages generally found in personal lines, such as homeowners and personal liability coverages, and in commercial lines, such as business property and liability coverages. When the Commercial Insurance Deregulation Act was implemented, farmowners insurance was originally allocated to commercial lines. Experience since then has demonstrated that the personal lines aspects predominate, and that it should be reclassified as personal lines insurance.

Most companies writing farmowners insurance in New Jersey underwrite and administer it by their personal lines division personnel. The personal line aspects are always present; the commercial lines aspects are present in a lesser or greater degree depending on the nature of the farming operation. In New Jersey, farming enterprises vary in degree of commercialization from "hobby farms" and relatively small family farms to larger business organizations. Other personal lines often have commercial type coverages included, such as workers compensation coverages included in homeowners insurance and general liability coverages in personal liability policies. Other states that regulate personal and commercial lines differently allocate a line to either commercial or personal based on the relative coverage provided; that is, if relatively more of the coverage is personal lines, the line is considered a personal line. Classifying all farmowners insurance as personal lines clarifies the manner of form and rate review and assures consistent application of standards.

These proposed amendments add farmowners insurance to the list of personal lines insurance in N.J.A.C. 11:13-1.2, and delete it from the examples of commercial lines. A definition of farmowners insurance is added to N.J.A.C. 11:13-1.3

Social Impact

These proposed amendments will impact purchasers of farmowners insurance, insurance companies that offer farmowners insurance, and the Department. Reclassifying farmowners insurance as a personal line will have a positive impact on purchasers, in that prior approval of rates and forms will assure the rates are justified and the forms provide coverage comparable at least to standard homeowners coverage.

Economic Impact

Prior approval of farmowners insurance rates will assure that rates are justified by actuarial experience. These amendments will require the Department to review farmowners insurance rates and forms and approve them prior to use. This will be accomplished without any additional staff, as there are very few companies that offer these coverages in New Jersey.

Insurers that transact farmowners insurance business will experience some minor economic impact as their rates and forms will be subject to approval prior to implementing any changes.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these amendments do not impose recordkeeping or other compliance requirements on "small businesses," as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No insurance companies writing farmowners insurance qualify as "small businesses" as that term is defined.

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

11:3-1.2 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; [and]

(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 [farmowners,] 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 coverages against liabilities as the owner of the farm property and operator of the farming enterprise.

. . .

(a)

DIVISION OF ADMINISTRATION

New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge

Reproposed New Rules: N.J.A.C. 11:18

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, N.J.S.A. 17:1C-6(e) and N.J.S.A. 17:30D-1 et seq.

Proposal Number: PRN 1989-329.

Submit comments by July 19, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 17:30D-1 et seq., the Medical Malpractice Liability Insurance Act ("Act"), was enacted to ensure that medical malpractice liability insurance is readily available to licensed medical practitioners and health care facilities. The Act established the New Jersey Medical Malpractice Reinsurance Association ("Association") which is required to reinsure certain medical malpractice liability insurance policies. The Association is also permitted to write such policies on a direct basis in the absence of a qualified provider willing to issue the needed class of coverage. The Act also established the New Jersey Medical Malpractice Reinsurance Recovery Fund ("Fund") which reimburses the Association for any deficit sustained in its operation. The Fund is financed in part by payments made to it by insurers licensed to write medical malpractice liability insurance in this State.

The Association, although deactivated by 1982, remains obliged on claims presented under the coverage it reinsured or wrote directly during its years of operation. Actuarial studies conducted on behalf of the Association for year end 1982 indicated that the Association would experience substantial deficits and an eventual inability to pay claims on which it was still responsible. The year end actuarial report for 1983 confirmed the existence of a deficit, and the Association has continued to report a deficit to the Department of Insurance ("Department") each year to the present.

In view of the need to fund the Association's deficit, the Department proposed new rules in the August 15, 1988 New Jersey Register (20 N.J.R.

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2010(a)) which impose a surcharge upon certain classes of physicians and doctors in this State.

Many comments were received concerning the proposed new rules. Most commenters objected to the surcharge because of its broad application, that is, upon those physicians who did and did not obtain coverage through the Association. The commenters stressed that those physicians who did not obtain coverage through the Association, but instead obtained coverage in the private market, did not benefit from the creation and operation of the Association and, therefore, should not be surcharged.

The Department disagrees with this assertion. The Association expanded the capacity for medical malpractice insurance, thereby placing downward pressure on the rates charged by insurers in the private market. This dual consequences of the Association's creation (relaxation of capacity and lower private market rates) benefited the total physician population. The same can be said for other categories and subcategories of health care providers for whom the Association was created.

Another commenter asked whether an insurer who was licensed to write medical malpractice insurance, but has not written and does not intend to write such insurance, should nevertheless file annual informational reports pursuant to the proposed new rules. The Department, for reporting purposes, requires all insurers who are licensed to write medical malpractice insurance to submit the reports.

Another commenter objected to the proposed new rules because that commenter believed the proposed new rules were inconsistent with the legislative intent of the Act, and that the proposed new rules are simply unfair.

N.J.S.A. 17:30D-10 states that "For the purpose of providing monies necessary to establish the recovery fund in an amount sufficient to meet the requirements of this act, the Commissioner shall establish reasonable provisions through additional premium charges for policies of the various categories and subcategories of medical malpractice liability insurance." What is clear is that the legislature left the Commissioner with discretion to assess various policies so that the provisions of the Act may be carried out. The "various" policies the legislature speaks of are medical malpractice liability insurance policies, leaving the Commissioner the responsibility to determine which of the "various" policies to assess. In light of the present financial condition of the Association, the Commissioner has decided that in all fairness those health care providers who were able to take advantage of the capacity which the Association brought on must bear a portion of the burden to finance its operation. In order to exhaust the payment of claims insured or reinsured by the Association, it is necessary that all potential and actual beneficiaries contribute to this endeavor.

A public hearing regarding the proposal was held on October 24, 1988 pursuant to N.J.S.A. 52:14B-4(a)3. Based upon the testimony presented at the hearing, the written materials placed on the record within the required time period, and information from the Department, a hearing officer's report ("report") was submitted to the Commissioner of Insurance ("Commissioner") containing several recommendations.

One of the recommendations in the report suggested hospitals and health maintenance organizations (HMO's) be added to the class of health care providers to which a surcharge should apply because the Association was activated for hospitals and HMO's and a number of such institutions directly benefited by obtaining coverage through the Association.

Another recommendation in the report suggested that the amount of surcharge should apply to the various classes of health care providers based upon whether that class was insured or reinsured by the Association from 1976 to 1982 and, if so, based upon the level of participation in the Association's market.

The Commissioner adopted these recommendations. In accordance with the adopted recommendations, the Department repropoed these new rules at N.J.A.C. 11:18.

N.J.A.C. 11:18-1.1 sets forth the purpose of the reproposed new rules.

N.J.A.C. 11:18-1.2 sets forth the scope of the reproposed new rules.

N.J.A.C. 11:18-1.3 contains definitions of terms used throughout the reproposed new rules.

N.J.A.C. 11:18-1.4 imposes a five percent surcharge on the premiums for all policies of medical malpractice liability insurance covering physicians, doctors and health maintenance organizations who were insured or reinsured by the Association from 1976 to 1982, a three and thirty-five hundredths percent surcharge on the premiums for polices covering hospitals who were insured or reinsured by the Association from 1976 to 1982, and a two and one-half percent surcharge on physicians, doctors, hospitals and health maintenance organizations presently licensed in New Jersey who were not insured or reinsured by the Association from 1976 to 1982.

N.J.A.C. 11:18-1.5 sets forth collection, remittance and reporting requirements and provides for the imposition of penalties for non-compliance with such requirements.

Social Impact

The reproposed new rules will allow the Association to remain a viable and stabilizing market influence and to continue to service and pay the claims on which it remains liable. The applicable surcharges affect an estimated 13,800 of the allopathic physician, osteopathic physician, surgeon and podiatrist population in the State, raising the average malpractice premium for $1 million/$3 million coverage approximately $680.00 to $14,280 for those who were insured or reinsured by the Association from 1976 to 1982 and $340.00 to $12,940 for those were not insured or reinsured by the Association from 1976 to 1982.

The applicable surcharges affect an estimated 96 of the hospitals in the State, raising the average malpractice premium for $1 million/$3 million coverage approximately $11,974 to $332,000 for those who were insured or reinsured by the Association from 1976 to 1982 and approximately $8,000 to $328,000 for those who were not insured or reinsured by the Association from 1976 to 1982.

The applicable surcharges affect an estimated 20 of the health maintenance organizations in the State, raising the average malpractice premium approximately $3,770 for those who were insured or reinsured by the Association from 1976 to 1982 and $1,885 for those who were not insured or reinsured by the Association from 1976 to 1982.

Economic Impact

The reproposed new rules will not result in any significant adverse economic impact upon insurers. Insurers may experience a minimal increase in costs by having to remit the collected surcharges to the State Treasurer and to file certain specified information biannually with the Department.

The insureds which fall within the scope of the reproposed new rules will experience an adverse economic impact in that the imposition of the applicable surcharge will result in each insured being responsible for a percent-of-premium charge in excess of the insured's total premium.

There is the possibility that any increase in medical malpractice premiums ultimately will be passed on to the consumers of health care in the State, raising medical costs and continuing the inflationary spiral indicative of the health care environment.

The Department does not expect to incur any additional expenses as a result of the proposed new rules.

Regulatory Flexibility Analysis

Some insurers affected by the reproposed new rules may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirements imposed upon insurers, including small businesses, are that they collect a surcharge along with the policy premium, remit such to the State Treasurer within 10 days from collection and biannually file with the Department specified information regarding the collected and remitted surcharges. None of the above requirements is expected to have any significant adverse economic impact on insurer small businesses. To provide for uniform and consistent applicability of these rules, and to avoid granting any advantage to insurers which are small businesses, no differential treatment is accorded to small business insurers by these reproposed new rules.

Full text of the reproposal follows:

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 of the Department of Insurance 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

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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 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.

"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" shall mean a doctor of medicine (M.D.), a surgeon, a doctor of osteopathic medicine (D.O.), and a doctor of podiatric medicine (D.P.M.).

"Total premium" includes the premium paid by physicians and doctors 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 who were insured 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 who were insured or reinsured by the Association from 1976 to 1982.

(b) A surcharge of three and thirty-five hundredths percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering hospitals and health maintenance organizations that were insured 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 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 these new rules, and to the additional premiums on all endorsements effective on or after the effective date of these new rules.

(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 is 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 these new rules go into effect 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.

(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 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 Services
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 pursuant to N.J.S.A. 17:33-2.

(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 of the Department of Insurance 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.

LABOR

(a)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Board of Review and Appeal Tribunal
Telephone Hearing Procedures
Proposed New Rules: N.J.A.C. 12:20-6

Authorized By: Charles Serraino,Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 43:21-6(d) and (e), and 43:21-10.

Proposal Number: PRN 1989-324.

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Submit comments by July 19, 1989 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

In September, 1983, the Department of Labor (Department) instituted the policy of conducting telephone hearings for unemployment and disability insurance interstate appeals pursuant to the Federal Interstate Agreement.

The purpose of telephone hearings is to make it possible for parties who are separated by great distances to have a hearing where confrontation of the parties and witnesses can occur. Another purpose of telephone hearings is to accommodate parties who cannot appear at a hearing in person due to illness or handicap.

To date, the Department has successfully conducted telephone hearings involving parties separated by great distances. For example, one telephone hearing involved an employer from Israel and a New Jersey claimant. The use of the telephone hearing made it convenient for both parties in that the employer did not have to travel to New Jersey and the claimant received an expedited hearing.

The Department proposes to set forth its current telephone hearing policy in rule form.

N.J.A.C. 12:20-6.1 sets forth the purpose and scope of the subchapter.

N.J.A.C. 12:20-6.2 sets forth the definitions of words and terms used in the subchapter.

N.J.A.C. 12:20-6.3 sets forth that a telephone hearing may be initiated by the Board of Review or Appeal Tribunal, or at the request of any party.

N.J.A.C. 12:20-6.4 sets forth that the Board of Review or Appeal Tribunal may initiate a telephone hearing for the convenience of the parties and witnesses.

N.J.A.C. 12:20-6.5 sets forth the procedures for telephone hearings requested by a party.

N.J.A.C. 12:20-6.6 sets forth the procedures for objecting to a telephone hearing.

N.J.A.C. 12:20-6.7 sets forth notice and documentation requirements.

N.J.A.C. 12:20-6.8 sets forth the rules of conduct for telephone hearings.

Social Impact

The proposed new rules will benefit claimants and employers in that telephone hearings will enable parties who are separated by great distances or unable to appear in person to have a hearing in which confrontation of the parties and witnesses can occur.

The proposed new rules also will benefit the Department in that they enable the Department to receive more participation in hearing process. This, in turn, enables the Department to issue a better determination.

Economic Impact

The proposed new rules will benefit employers and claimants in that telephone hearings eliminate need to travel to a hearing. This, in turn, will save employers and claimants time and money. The Department also will benefit from the proposed new rules in that telephone hearings will eliminate the need to conduct a separate hearing for employer and claimant testimony in cases where the parties are separated by great distances.

Regulatory Flexibility Statement

The proposed new rules do not place any recordkeeping or reporting requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Employers, who may be small businesses, are required to comply with the telephone hearing request and objection rules, if circumstances warrant. These minimal requirements are necessary for the proper administration of such hearings; therefore, no business-size differentiation in requirements is provided.

Full text of the proposal follows:

SUBCHAPTER 6. TELEPHONE HEARINGS

12:20-6.1 Purpose and scope

(a) The purpose of this subchapter is to set the procedures for appeal hearings by telephone.

(b) The procedures in this subchapter apply to appeals to the Board and Tribunal.

12:20-6.2 Definitions

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

"Board" means Board of Review established under N.J.S.A. 43:21-10(d).

"Hearing" means any in-person hearing or any telephone hearing before the Board or the Tribunal.

"Telephone hearing" means a hearing at which all parties, witnesses, representatives and attorneys appear via telephone.

"Tribunal" means Appeal Tribunal established under N.J.S.A. 43:21-6(d).

12:20-6.3 Authorization of telephone hearings

(a) A telephone hearing may be conducted at the initiation of the Board or the Tribunal or upon the request of any party with the consent of the Board or Tribunal. Telephone hearings shall be subject to the general rules governing hearings and appeals in N.J.A.C. 12:20-3 and 12:20-4 as well as the rules governing telephone hearings.

12:20-6.4 Telephone hearings scheduled by the Board or Tribunal

(a) The Board or Tribunal, in its discretion, may initiate or schedule a telephone hearing;

1. When it appears from the record that a party or necessary witness is located more than 50 miles from the location from which the Board or Tribunal will conduct the hearing; or

2. When a party or witness cannot appear in person because of a physical, medical or other compelling reason.

12:20-6.5 Telephone hearings requested by a party

(a) Any party to an appeal may request a telephone hearing by submitting, in writing, the reasons for the request to the Board or Tribunal no less than three days before the scheduled in-person hearing.

(b) The Board of Tribunal shall exercise its discretion in granting or denying such requests and immediately notify the parties of its decision.

12:20-6.6 Objections to a telephone hearing

(a) Any party may object to a telephone hearing. Objections shall:

1. Be in writing and received by the Board or Tribunal at least two days before the scheduled telephone hearing; and

2. Set forth the reasons supporting the objections.

(b) The hearing officer may reject a party's objection to a telephone hearing if the hearing officer determines any of the following:

1. That the objecting party's intent is to purposely inconvenience the other party or delay the proceeding;

2. That a party or witness is more than 50 miles away; or

3. That a person is unable to appear in person because of physical, medical or other compelling reason.

(c) If the hearing officer accepts a party's objections to a telephone hearing, the hearing shall be held at a location to be determined by the hearing officer.

12:20-6.7 Telephone hearing notice and documentation

(a) The notice of telephone hearing shall contain the following:

1. That the parties have a right to object to a telephone hearing;

2. The circumstances under which the telephone hearing will be conducted; and

3. Written instructions as to how the telephone hearing will be conducted.

(b) Any party that intends to offer documentary or physical evidence at the telephone hearing shall submit a copy of that evidence to the Board or Tribunal at least five days prior to the hearing.

1. Any evidence not submitted as required in this subsection may be admitted only with the consent of all parties.

(c) When scheduling a telephone hearing, the Board or Tribunal shall enclose with the hearing notice copies of all documents that are to be offered into evidence.

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12:20-6.8 Conduct of telephone hearings

(a) The Board or Tribunal, at the inception of the hearing, shall advise all participants that the proceedings are being recorded.

(b) Any party who fails to appear at the scheduled telephone hearing shall meet the requirements of N.J.A.C. 12:20-3 or 12:20-4 before any reopening of the hearing shall be granted.

(c) The Board or Tribunal shall permit any party a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of such witness.

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Hazardous Waste Operations and Emergency Response

Proposed Amendments: N.J.A.C. 12:100-4.2 and 5.2

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1989-323.

Submit comments by July 19, 1989 to:
Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees.

On November 5, 1984, rules were promulgated by the Commissioner which adopted the Federal Occupational Safety and Health Administration (OSHA) standards by reference in N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

On March 6, 1989, Federal OSHA issued a final rule on Hazardous Waste Operations and Emergency Response. This rule was published in the Federal Register on March 6, 1989. The rule becomes effective on March 6, 1990. It replaces the interim final rule which Federal OSHA issued on December 19, 1986. The interim final rule was adopted by reference by the Commissioner of Labor on September 2, 1987. The notice of adoption appeared in the November 2, 1987 issue of the New Jersey Register at 19 N.J.R. 2060(b).

The final rule dated March 6, 1989 amends the Federal OSHA standards for hazardous materials by adding a new section 1910.120 to Subpart H of 29 CFR Part 1910. This 29 CFR Part 1910.120, "Hazardous Waste Operations and Emergency Response" addresses operations involving hazardous substance response, clean-up, and hazardous waste storage, disposal and treatment.

Additionally, the Federal rule incorporates these appendices:

Appendix A—Personnel Protective Equipment Test Methods;

Appendix B—General Description and Discussion of the Levels of Protection and Protective Gear;

Appendix C—Compliance Guidelines; and

Appendix D—References.

The proposed amendment addresses these items: Containers; drums; emergency response; flammable and combustible liquids; hazardous materials; hazardous substances; hazardous wastes; materials handling and storage; personal protective equipment; storage areas; training; and waste disposal.

N.J.S.A. 34:6A-30 states, in part: " . . . the Commissioner shall provide, at the minimum, for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the Secretary under the authority of the Occupational Safety and Health Act of 1970." The new Federal rule 29 CFR Part 1910.120, Hazardous Waste Operations and Emergency Response, is an amendment as described above and is the rule which the Division of Workplace Standards of the Department of Labor proposes to adopt herein by reference. This new rule, 29 CFR Part 1910.120, can be adopted by reference by amending N.J.A.C. 12:100-4.2(a) and 5.2(a).

The date effective for the final rule as provided in the Federal Register notice of March 6, 1989 is March 6, 1990. The proposed amendment will have a delayed operative date of March 6, 1990 in accordance with the Federal rule. While the Department has already proposed changing the reference date in its rule from September 29, 1988 to January 19, 1989 (see 21 N.J.R. 1089(a)), that amendment must and will be adopted before the instant amendment can be made effective.

The amendment to N.J.A.C. 12:100-5.2(a)16 merely changes the name of the subpart.

Social Impact

The proposed amendment to N.J.A.C. 12:100-4.2 will protect the health, safety and welfare of public employees engaged in certain hazardous waste operations. Implementation of the amendment will reduce illness occurring among public employees. The proposed amendment will improve working conditions, when such employees are responding to emergency situations, will reduce the demoralization and disorganization caused by exposure to hazardous wastes, and will enhance the welfare and morale of affected public employees.

Economic Impact

Compliance with these proposed amendments will impose some increased costs on public employers. The creation and implementation of the described employee training program will involve an outlay of additional funds. There will be an increase in costs to implement these proposed amendments; however, the implementation of the amendments will result in overall savings in workers' compensation payments and medical and social security payments.

State agencies will incur some additional costs as they comply with this proposed rule. Other governmental bodies and municipal and county agencies, such as fire services and utility authorities, will bear additional expenses from these proposed amendments.

Regulatory Flexibility Statement

The proposed amendment does not place any additional reporting, recordkeeping or compliance requirements on small businesses, pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as only public employers in the State of New Jersey will be affected by the proposed amendments. Therefore, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards with the amendments published in the Federal Register through [September 28, 1988] **March 6, 1989** with certain exceptions noted in (b) and (c) below are adopted as occupational safety and health standards and shall include:

1.-19. (No change.)

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

12:100-5.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1926, Construction Industry Standards with the amendments published in the Federal Register through [September 28, 1987] **June 16, 1988**, are adopted as occupational safety and health standards and shall include:

1.-14. (No change.)

15. Subpart Q—Concrete [, Concrete Farms, and Shoring] **and masonry construction**;

16.-22. (No change.)

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

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(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees

Proposed Amendment: N.J.A.C. 12:100-9.2

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1989-322.

Submit comments by July 19, 1989 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

The Department is proposing this amendment to delete an inaccurate citation in the definitions section of N.J.A.C. 12:100-9, Work in Confined Spaces, and to replace the incorrect citation with an accurate one. The citation referenced in the current definition is to a rule which was proposed but never adopted by the Department. The new citation is a reference to a recently-adopted rule concerning air contaminant exposure limits and to the Federal regulation concerning the same topic.

Social Impact

As the proposed amendment merely corrects an incorrect citation, the Department does not see any social impact resulting from the amendment itself, beyond clarification of the rule for public information purposes.

Economic Impact

The Department does not foresee any economic impact as a result of the proposed amendment, as it is only a technical change to correct an existing error.

Regulatory Flexibility Statement

The proposed amendment does not impose any additional reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as the amendment merely conducts an inaccuracy in a definition. The rule itself concerns only public employers.

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

12:100-9.2 Definitions

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

"Hazardous atmosphere" means an atmosphere presenting a potential for death, disablement, injury, or acute illness from one or more of the following causes.

1.-3. (No change.)

4. An atmosphere concentration of any toxic or hazardous substance above the permissible exposure limits pursuant to [N.J.A.C. 12:100-7, Standards for Toxic and Hazardous Substances] **29 CFR §1910.1000 and N.J.A.C. 12:100-4.2, Air contaminant exposure limits;**

5.-6. (No change.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CRIMINAL JUSTICE POLICE TRAINING COMMISSION

Instructor Certification

Proposed Amendment: N.J.A.C. 13:1-4.5

Authorized By: Robert T. Winter, Director, Division of Criminal Justice and Chairman, Police Training Commission.

Authority: N.J.S.A. 52:17B-71(d) and N.J.S.A. 52:17B-71(h).

Proposal Number: PRN 1989-297.

Submit written comments by July 19, 1989 to:
Leo A. Culloo
Administrator of Police Services
Police Training Commission
CN-085
Trenton, New Jersey 08625

The agency proposal follows:

Summary

As of Fiscal Year 1988, there were approximately 2,500 active instructors who were certified by the Police Training Commission to train law enforcement officers at schools approved by it. The vast majority of these are veteran instructors who, under the present rule, are re-certified annually. There will be a substantial increase in the number of certified instructors required to train corrections officers and juvenile detention officers as the result of the enactment of P.L. 1988, c. 187. Based upon its experience, the Commission proposes that instructor certifications and renewals should be for a period of three years instead of one. In order to convert to a three year system, instructor certifications will be staggered.

Social Impact

The proposed amendment will have no adverse social impact. Instead of annual certifications and renewals of instructors by the Police Training Commission, such certifications will be for a period of three years.

Economic Impact

It is anticipated that the proposed amendment will result in a modest cost savings to the Police Training Commission by eliminating the need for annual review of instructor certification renewals.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It relates solely to the certification of instructors at Police Training Commission-approved schools.

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

13:1-4.5 Certification

(a) Initial **instructor** certifications and renewals thereof shall expire on December 31 of the [granting or renewal] **third** year **after the granting or renewal of the certification, provided that, renewals of certifications approved prior to December 31, 1988 shall be staggered for periods of one, two or three years as determined by the Administrator of Police Services in order that approximately one-third of all certifications will be subject to approval each year.**

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

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(a)

DIVISION OF CONSUMER AFFAIRS
HEARING AID DISPENSERS EXAMINING COMMITTEE
License Renewal; Continuing Education Requirement
Proposed New Rule: N.J.A.C. 13:35-8.18

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.
Authority: N.J.S.A. 45:9A-8.
Proposal Number: PRN 1989-298.

Submit comments by July 19, 1989 to:
Morris W. Eugene, Assistant Executive Director
State Board of Medical Examiners
Hearing Aid Dispensers Examining Committee
28 West State Street, Rm. 602
Trenton, New Jersey 08608

The agency proposal follows:

Summary

The requirement of continuing education for hearing aid dispensers is established in N.J.S.A. 45:9A-8. It allows the Hearing Aid Dispensers Examining Committee to require as a condition of license renewal that a candidate attend courses designed to update and refresh his or her knowledge and skills as a hearing aid dispenser.

The proposed new rule imposes a requirement that a candidate for license renewal as a hearing aid dispenser must participate and successfully complete 20 hours of continuing education in courses which will update and refresh the licensee's knowledge and skills.

Social Impact

The proposed new rule requires that a licensed hearing aid dispenser must update and refresh his or her knowledge and skills on a biennial basis. This will have a favorable impact upon the public since it will help to assure that the qualifications of hearing aid dispensers meet current standards and reflect the most recent learning in the field. It will also have a favorable impact upon licensees because it will allow them to rely on the updated skill and knowledge of hearing aid dispenser employees and colleagues to whom they may refer customers.

Economic Impact

The economic impact of the proposed rule will not be significant. While there will be a fixed cost associated with participation in 20 hours of continuing education on a biennial basis, this cost is outweighed by the positive impact that will be achieved by having each licensed hearing aid dispenser update skills and knowledge on a continuing basis.

Regulatory Flexibility Analysis

The New Jersey Regulatory Flexibility Act defines small business as "any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees." (N.J.S.A. 52:14B-17). Under this definition, sole practitioners are considered to be "small businesses" and, consequently, the proposed new rule impacts on small businesses.

Licensees must provide the Board with documentation of their participation in and successful completion of 20 hours of continuing education courses on a biennial basis. It is impossible to estimate the cost of compliance with the propsoed rules. However, this requirement is minimal when viewed against the significant public interest served in assuring that licensed hearing aid dispensers will maintain updated skill and knowledge in the practice of hearing aid fitting and dispensing. The obligation of supplying the Board with documentation of participation in continuing education courses is reasonable and in line with the requirements of other professions. Therefore, no exemption from the rules is feasible.

Full text of the proposal follows:

13:35-8.18 License renewal; continuing education requirement

(a) No license renewal shall be issued by the Director unless the applicant confirms on his or her renewal applications to the Hearing Aid Dispensers Examining Committee that during the two calendar days preceding application for renewal he or she participated in courses of continuing education of the types and number of credits specified in this section. Such continuing education is a mandatory requirement for license renewal. Licensees shall be solely responsible for obtaining and maintaining documentation on his or her completion of the required continuing education courses during the registration period. Such documentation shall be submitted to the Committee upon request, and will be surveyed on a random basis. The provisions of this subsection shall not apply to licensees renewing their licenses for the first time.

(b) Evidence of 20 documented course hours of continuing education shall be required of each applicant as a condition of biennial license renewal.

(c) The number of creditable course hours and course contents must be accepted and approved by the National Institute for Hearing Instruments Studies (NIHIS), the Educational Arm of The National Hearing Aid Society (NHAS), except for courses completed through an accredited college or university. A course in hearing aid dispensing creditable by the institution toward three or more credits completed at an accredited college or university shall receive credit for 10 continuing education course hours.

(d) Acceptable continuing education courses shall be in any area which will update and refresh the clinical skills or knowledge of a hearing aid dispenser. Notwithstanding that the continuing education course meets the requirements, the Committee at its discretion may at any time examine and review any course claimed for credit. If, in the opinion of the Committee, such course does not clearly meet the requirements of this section, the course shall be disallowed for credit toward the required 20 continuing education credits.

(e) In the event that a candidate for license renewal shall complete in two years a number of hours in excess of the number of hours required by this section, the documented hours in excess of those required shall not be credited toward license renewal for subsequent years.

(b)

BOARD OF NURSING
Temporary Work Permits; Employment
Proposed Amendments: N.J.A.C. 13:37-2.3, 3.5 and 4.4

Authorized By: Board of Nursing, Sister Teresa Harris, R.N., M.S.N., Executive Director.
Authority: N.J.S.A. 45:11-24(d)(19).
Proposal Number: PRN 1989-326.

Submit comments by July 19, 1989 to:
Sister Teresa Harris, R.N., M.S.N.
Executive Director
Board of Nursing, Room 508
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendments to the rules for temporary permit holders indicate the parameters of permissible nursing employment for the unlicensed graduate nurse, graduate practical nurse and foreign nurse graduate. They are required to work under the direct supervision of a registered professional nurse. Employment by private employment agencies, in private offices of licensed physicians or dentists or as private duty nurses or independent practitioners is prohibited.

Social Impact

The public will benefit significantly from these proposed amendments. They clarify and codify long-standing Board policy and they delineate accepted standards of nursing practice. The amendments will require the supervision and monitoring of graduate nurses which will most certainly promote the health, safety and welfare of all health care consumers.

The individuals affected by these amendments are unlicensed holders of temporary work permits. Under current rules, they receive temporary permission to work during the period of time they graduate from nursing school and are waiting to sit for the first licensing examination following graduation until the time when they receive the results of the examination.

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In the case of foreign nurse graduates, they receive temporary permission to work during the period of time they first enter this country and sit for the first scheduled licensing examination until the time they receive the results of the examination.

Current licensees will not be affected by these amendments. The amendments will not limit the ability of licensed physicians or dentists to employ ancillary nursing personnel, provided they do not perform activities restricted to licensees of the Nursing Baord.

The amendments will favorably impact the public by ensuring that graduate nurses work in a supervised setting, where their level of competency can be monitored.

Economic Impact

The economic impact of these proposed amendments on the graduate nurses will be minimal since most graduate nurses ordinarily seek employment in a licensed acute care or long-term care facility immediately following graduation. The amendments will have a positive impact on those acute care and long-term care facilities because it will increase the number of graduate nurses available for employment, under supervision of a registered nurse, in such institutions. These amendments will not remove any nurses from the work force.

Regulatory Flexibility Analysis

The proposed amendments impose no reporting or recordkeeping requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance requirements are placed upon licensed acute care facilities, long-term care facilities and home health agencies, some of which may be small businesses, in that graduate professional and practical nurses holding temporary work permits employed by such entities must work under the direct supervision of a registered professional nurse. As this compliance requirement furthers the Board's objective to protect the public health in the provision of competent nursing care, no differentiation in compliance based upon business size is provided.

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

13:37-2.3 Examinations; temporary work permits

(a)-(h) (No change.)

(i) A graduate professional nurse who holds a temporary work permit may be employed by a licensed acute care facility, long-term care facility or home health agency. All graduate professional nurses employed in these facilities or agencies shall work under the direct supervision of a registered professional nurse. For the purposes of this subsection, "direct supervision" means the physical presence of a registered professional nurse within the patient care unit.

(j) A graduate professional nurse who holds a temporary work permit shall not render nursing services within or while employed by private employment agencies or physicians' or dentists' offices, nor shall such services be rendered as an independent practitioner or private duty nurse.

13:37-3.5 Examinations; temporary work permits

(a)-(h) (No change.)

(i) A graduate practical nurse who holds a temporary work permit may be employed only by a licensed acute care facility, long-term care facility or home health agency. All graduate practical nurses employed in these facilities or agencies shall work under the direct supervision of a registered professional nurse. For the purposes of this subsection, "direct supervision" means the physical presence of a registered professional nurse within the patient care unit.

(j) A graduate practical nurse who holds a temporary work permit shall not render nursing services within or while employed by private employment agencies or physicians' or dentists' offices, nor shall such services be rendered as a private duty nurse.

13:37-4.4 Examinations; temporary work permits

(a)-(h) (No change.)

(i) For the purpose of rendering nursing services, a graduate professional nurse or a graduate practical nurse who holds a temporary work permit may be employed only by a licensed acute care facility, long-term care facility or home health agency. All graduate professional nurses and graduate practical nurses employed in these facilities or agencies shall work under the direct supervision of a registered professional nurse. For the purposes of this subsection, "direct supervision" means the physical presence of a registered professional nurse within the patient care unit.

(j) A graduate professional nurse or a graduate practical nurse who holds a temporary work permit shall not render professional or practical nursing services within or while employed by private employment agencies or physicians' or dentists' offices, nor shall such services be rendered as an independent practitioner or private duty nurse.

(a)

BOARD OF PSYCHOLOGICAL EXAMINERS

Examination Fees

Proposed Amendment: N.J.A.C. 13:42-1.2

Authorized By: Board of Psychological Examiners, Jeannette V. Balber, Executive Director.

Authority: N.J.S.A. 45:14B-13.

Proposal Number: PRN 1989-299.

Submit comments by July 19, 1989 to:
Jeannette V. Balber, Executive Director
Board of Psychological Examiners, Room 512
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:42-1.2(a)2 increases the written examination fee from $150.00 to $200.00. This amendment is necessary since the American Association of State Psychology Boards has raised the cost per candidate for the administration of the Examination for the Professional Practice of Psychology.

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

The Board of Psychological Examiners has been advised of an increase in the written examination fee by the test administrators. 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. Individuals seeking licensure will be affected by this increase.

Regulatory Flexibility Statement

The proposed amendment to the Board of Psychological Examiners fee schedule will only affect individual applicants; no regulatory flexibility analysis is, therefore, necessary.

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

13:42-1.2 Fees

(a) Charges for examinations, licensure and other services are:

1. (No change.)

2. Examination fee: [$150.00] **$200.00** written, $75.00 oral

i. Re-examination fee: [$150.00] **$200.00** written, $75.00 oral

3.-12. (No change.)

(b) (No change.)

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PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Basis of Discontinuance of Service

Proposed Amendment: N.J.A.C. 14:3-3.6

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: AX88081013U.
Proposal Number: PRN 1989-333.

Submit comments by July 19, 1989 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 14:3-3.6(a)3i prohibits a utility from discontinuing service for non-payment of a customer's repair charges, merchandise charges, and non-tariff contracted service charges between the customer and the utility.

The proposed amendment to N.J.A.C. 14:3-3.6(c) limits utilities' discontinuance of service to between the hours of 8:00 A.M. and 4:00 P.M., Monday through Thursday, unless there is a safety related emergency. It prohibits discontinuance of service on Fridays, Saturdays and Sundays or on the day before a holiday or on a holiday absent such emergency.

Social Impact

The proposed amendment to N.J.A.C. 14:3-3.6(a)3i gives customers the right to have basic utility services uninterrupted for non-payment of repair charges, merchandise charges and non-tariff contracted service charges between the customer and the utility, provided that the tariff services are paid for.

The proposed amendment to N.J.A.C. 14:3-3.6(c) will allow customers to make arrangements for restoration of utility services during normal business hours of a utility, including the opportunity to contact social service agencies for monetary help during normal business hours. It would prohibit discontinuance of service on Fridays, thereby minimizing the potential for tragedy during weekends due to a lack of utility service.

Economic Impact

The proposed amendments will have no impact on the Board.

The proposed amendment to N.J.A.C. 14:3-3.6(a)3i follows previously established utility policy concerning discontinuance of service for non-payment of repair charges, merchandise charges and non-tariff contracted service charges between the customer and the utility, so there would be minimum impact upon the utilities.

The current rule prohibits discontinuance of service on weekends and holidays, and after 1:00 P.M. on a Friday or day before a holiday, and utilities assert that most discontinuances are made between 8:00 A.M. and 4:00 P.M. Therefore, little economic impact is anticipated with the second amendment.

Regulatory Flexibility Analysis

The proposed amendments will apply to one small municipal electric utility and more than 100 small water and sewer utility businesses. There are no small gas utility businesses.

Since the proposed amendments closely follow presently established procedures or rules, there will be little capital cost or annual cost of compliance arising therefrom. There are no additional reporting or recordkeeping requirements which these proposals would impose.

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

14:3-3.6 Basis of discontinuance of service

(a) The utility shall, upon reasonable notice, when it can be reasonably given, have the right to suspend or curtail or discontinue service for the following reasons:

1.-2. (No change.)

3. For any of the following acts or omissions on the part of the customer:

i. Nonpayment of a valid bill due for service furnished at a present or previous location. However, nonpayment for business service shall not be a reason for discontinuance of residence service[(;)], except in cases of diversion of service pursuant to N.J.A.C. 14:3-7.16, **and service shall not be discontinued for nonpayment of repair charges, merchandise charges and non-tariff contracted service charges between the customer and the utility, nor shall notice threatening such discontinuance be given.**

ii.-ix. (No change.)

4. (No change.)

(b) (No change.)

(c) Public utilities [may] **shall** not discontinue [residential] service **except** [on Saturday, Sunday or a holiday on which the utility company's commercial offices are closed or after 1:00 P.M. of the business day prior to a weekend or such holiday for non-payment] **between the hours of 8:00 A.M. and 4:00 P.M., Monday through Thursday, unless there is a safety related emergency. There shall be no termination of service on Fridays, Saturdays, and Sundays or on the day before a holiday or on a holiday, absent such emergency.**

(d) (No change.)

(b)

BOARD OF PUBLIC UTILITIES

Tests by Utility on Request and Meter Replacement

Proposed Amendments: N.J.A.C. 14:3-4.5 and 14:3-4.10

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: AX88030431.
Proposal Number: PRN 1989-321.

Submit comments by July 19, 1989 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 14:3-4.5 would require an electric, gas or water utility where a bill dispute exists to advise the customer involved that the customer has the option of obtaining a Board witnessed or conducted test of the customer's meter. The proposed amendment of N.J.A.C. 14:3-4.10 would require an electric, gas or water utility, where a bill dispute exists and where the utility has tested the meter of the customer involved, to retain the meter for 30 days before it resets the meter, thereby allowing the customer time to obtain a test or examination of the meter by the Board.

Social Impact

The proposed amendments will allow customers of electric, gas or water utilities greater access to the meter test options authorized by the Board. Customers should benefit by an earlier involvement of Board staff in a bill dispute involving such utilities. The amendments will also shorten the time needed to resolve a bill dispute where a customer questions the accuracy of a meter of such utilities.

Economic Impact

The proposed amendments should have minimal economic impact on the Board because the meter testing procedure is already in place. N.J.S.A. 48:2-56E(15) requires the Board to charge a $5.00 fee for a Board inspection or test of an electric, gas or water meter. Customers will continue to have the option of having the meter tested by the utility without charge, so the economic impact upon customers remains unchanged. There should be little economic impact upon the utilities since they will likely test the meter regardless of the Board's involvement. These proposed amendments may increase the number of meter tests performed by utilities, and may increase the number of meter tests in which Board

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staff is involved. This increased Board involvement, however, should expedite the resolution of bill disputes brought before the Board.

The proposed amendment of N.J.A.C. 14:3-4.10, to require the retaining of meters for 30 days before resetting same, will have no economic impact on the Board or utility customers. The utilities, however, may have to increase their inventory of meters, thus causing an economic impact upon them to that extent.

Regulatory Flexibility Analysis

There are no small gas utility businesses but there is one small electric utility business and more than 100 small water utility businesses to which the proposed amendments would apply. The proposed amendments will require all electric, gas and water utilities to maintain records of meter tests conducted by them as a result of a billing dispute. The records must be so noted that the tested meters will be retained by the utility for 30 days. Existing reporting and recordkeeping requirements are contained in N.J.A.C. 14:3-4.8, Meter test reports, and N.J.A.C. 14:3-4.9, Meter records. Since the proposed amendments will follow previously established procedures, there will be little initial capital cost and little or no annual cost of compliance. The proposed amendments will expedite the processing of bill disputes brought before the Board which should shorten the time needed to resolve bill disputes.

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

14:3-4.5 Tests by utility on request

(a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.

(b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file at the office of the utility in accordance with [Section 4.9 (Meter records) of this Chapter] **N.J.A.C. 14:3-4.9, Meter records.**

(c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board either conduct a test of the meter or witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.

14:3-4.10 Meter replacement

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

(c) When a billing dispute is known to exist and the meter has been tested by an electric, gas or water utility such utility shall retain the meter for 30 days before it is reset, unless otherwise authorized or directed by the Board, to permit a retest of the meter by the Board or a retest of the meter by the utility witnessed by a Board representative and in either event the customer may have the test witnessed by a third party.

(a)

BOARD OF PUBLIC UTILITIES

Adjustment of Charges and Determination of Water Meter Accuracy

Proposed Amendments: N.J.A.C. 14:3-4.7 and 14:9-3.3

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: AX88081015U.
Proposal Number: PRN 1989-335.

Submit comments by July 19, 1989 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 14:3-4.7, Adjustment of charges, and N.J.A.C. 14:9-3.3, Determination of water meter accuracy, would reduce the measurement of accuracy for water meters from two percent to one and one-half percent, thereby conforming the standard of accuracy in these rules to the uniform standards of the American Water Works Association.

The proposed amendment to N.J.A.C. 14:3-4.7 would also prohibit a utility from re-billing a customer for consumption previously not billed for due to a slow meter, a practice which utilities have informally stopped at the request of the Board's staff.

Social Impact

The proposed amendment to N.J.A.C. 14:3-4.7 would affect all utilities which use meters to measure service provided to customers and the customers of such utilities. It would modify and clarify the standards for adjustment of charges. The proposed amendment to N.J.A.C. 14:9-3.3 would revise the standards for determining water meter accuracy.

The proposed amendments should reduce and expedite the processing of meter adjustments and bill disputes brought before the Board.

Economic Impact

The proposed amendments will have no economic impact on utilities because they codify existing industry standards or practices. The proposed amendments will have favorable economic impact upon utility customers. A utility customer may not be re-billed for consumption underbilled due to a slow meter. In the case of a fast water meter, the adjustment of charges is calculated when the meter is tested at one and one-half percent fast rather than two percent fast.

Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 14:3-4.7 will apply to all utilities which use meters to measure service, that is, gas, electric and water utilities. There are no small gas utilities to be affected, but there is one small municipal electric utility and more than 100 small water utilities which will be affected. The amendments will not impose any additional reporting or recordkeeping requirements and should not impose any initial capital costs or annual compliance costs.

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

14:3-4.7 Adjustment of charges

(a) Whenever a meter is found to be registering fast by **more than** two percent, or **in the case of water meters** more **than one and one half percent**, an adjustment of charges shall be made in accordance with the following:

1. If the date when the meter had first become inaccurate can be definitely ascertained, then the adjustment shall be such percentage as the meter is found to be in error at the time of test **adjusted to 100 percent** on the amount of the bills covering the entire period that the meter had registered inaccurately.

2. In all other cases the adjustment shall be such percentage as the meter is found to be in error at the time of test on [1/2] **one-half** of the total amount of the billing affected by the fast meter **adjusted to 100 percent** since the previous test, but not to exceed a period of six years for electric meters subject to testing by an approved scientific sampling technique.

(b) (No change.)

(c) No adjustment shall be made for a meter that is found to be registering less than 100 percent, except in the case of meter tampering.

14:9-3.3 Determination of water meter accuracy

(a) A water meter shall be considered correct if, when [passing] **flowing** water at [full capacity] **each of the three required flow capacities low, intermediate, and full, as set forth in the American Water Works Association M-6 Manual,** it shows an error which is not greater than [two percent] **one and one half percent.**

(b) An error at any flow capacity in excess of one and one half percent shall be subject to an adjustment of charges as defined in N.J.A.C. 14:3-4.7.

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(a)

BOARD OF PUBLIC UTILITIES
Return of Deposits
Proposed Amendment: N.J.A.C. 14:3-7.5

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: AX88081012U.
Proposal Number: PRN 1989-332.

Submit comments by July 19, 1989 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 14:3-7.5(b) would require utilities, after satisfactory credit has been established, to issue a separate check to refund a deposit and not to credit a deposit refund to the customer's account.

Social Impact

Utilities presently apply a deposit refund to a customer's account and deduct the current bill from the customer's credit balance. The effect of this procedure is that the customer pays a bill without seeing it, is deprived of the 10 day period to pay the bill provided by N.J.A.C. 14:3-7.12, and, where a bill dispute exists, pays a bill which has not been accepted or determined to be valid.

The proposed amendment will allow utility customers who have made a deposit to establish credit, access to a refund of same and discretion in determining what to do with it.

Economic Impact

The proposed amendment should have minimal impact upon utilities because they are now required by N.J.A.C. 14:3-7.5(b) to refund deposit monies and because rate structures and rates of return are determined with the return of deposit rules currently in effect. There will be no additional cost to the Board of Public Utilities.

Regulatory Flexibility Analysis

The proposed amendment will apply to one small municipal electric utility, more than 100 small water and sewer utility businesses and over 600 solid waste businesses. There are no small gas utility businesses.

The proposed amendment will require all utilities to refund a deposit by check when the requirements of N.J.A.C. 14:3-7.5(b) have been met. The amendment should involve little capital cost and a modest cost for compliance. The reporting and recordkeeping requirements of this proposed amendment are defined in N.J.A.C. 14:3-7.4 and N.J.A.C. 14:3-7.5. Thus, there are no additional reporting or recordkeeping requirements.

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

14:3-7.5 Return of deposits

(a) (No change.)

(b) Each utility shall review a residential customer's account at least once every year and a nonresidential customer's account at least once every two years and if such review indicates that the customer has established credit satisfactory to the utility, then the outstanding deposit shall be refunded to the customer, **by separate check in a period not to exceed one billing cycle or 30 days, whichever is sooner.**

(c) (No change.)

(b)

BOARD OF PUBLIC UTILITIES
Disputes as to Bills
Proposed Amendment: N.J.A.C. 14:3-7.13

Authorized By: Board of Public Utilities,
Christine Todd Whitman, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: AX88081014U.
Proposal Number: PRN 1989-334.

Submit comments by July 19, 1989 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 14:3-7.13 would require a utility to allow a customer at least 45 days to make payment before it could assess a late payment charge. A late payment charge could be assessed only under a rate schedule approved by the Board which provides for such a charge. In addition, the amendment would prohibit late payment charges to a state, county or municipal government entity.

Social Impact

The proposed amendment will allow a customer provided service under a rate schedule which permits late payment charges 45 days to make payment before such charges are assessed. This should provide sufficient time for such customer, usually business or commercial, to review a bill and make payment before a late payment charge is assessed. The proposed amendment will provide an incentive to a customer to make timely payments to avoid late payment charges.

Service to a government entity, be it state, county or municipal, will not be subject to a late payment charge.

Economic Impact

The proposed amendment should reduce the number of customers incurring late payment charges.

Utilities which now assess late payment charges in less than 45 days will be adversely affected in two ways. First, they probably will experience a decrease in revenues attributable to late payment charges and, secondly, they will incur minor costs in adjusting their billing systems to conform to the new time period.

Government entities will be exempt from late payment charges, thereby creating a savings for such of them as would otherwise be subject thereto.

Regulatory Flexibility Analysis

There are no small gas or telephone utilities to which the amendment would apply. There are, however, approximately 100 small water and sewer utilities, approximately 600 solid waste utilities and one small electric utility to which it would apply. Affected utilities which now assess late payment charges in less than 45 days will have to revise their recordkeeping and billing systems to comply with this amendment. Such revision should involve only a minimal initial capital cost and no annual cost of compliance.

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

14:3-7.13 Disputes as to bills

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

(f) A utility shall not assess a late payment charge on an unpaid bill unless such charge is provided for in the utility's applicable rate schedule approved by the Board.

1. A late payment charge shall not be approved if it is applicable to bills less than 45 days after rendering.

2. A late payment charge shall not be approved for a rate schedule applicable to a state, county or municipal government entity.

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(a)

STATE BOARD OF PUBLIC UTILITIES

Notice of Pre-Proposal

In the matter of the Petition of the New Jersey Association of the Deaf concerning Establishment of a 24 hour Dual Party Relay System:

BPU Docket Number: TX89050481.

Pre-Proposal Number: PPR 1989-5.

Take notice that the Board of Public Utilities has issued a notice of pre-proposal requesting written comments on the subject of improving telecommunications for the hearing or speech impaired by July 19, 1989. These comments should be directed to the Board's Secretary for inclusion in the record of this proceeding. In addition the notice establishes July 6, 1989 at 10:00 A.M. for **a public meeting** which will also be included in the record of this proceeding. The meeting will be held at the offices of the Board of Public Utilities, Two Gateway Center, Newark, New Jersey.

On February 22, 1989, at a regularly scheduled meeting of the Board of Public Utilities, the New Jersey Association of the Deaf made a presentation to the Board concerning the need for a Statewide dual party relay system on a 24 hour basis. A dual party relay system uses attendants or "translators" to make connections between those who use a telecommunications device for the deaf because of a hearing or speech impairment and non-impaired persons who do not possess an appropriate device.

As a result of that meeting, on May 1, 1989, the Board received a petition filed by the New Jersey Association of the Deaf requesting the Board to consider the establishment, implementation, and operation of a Statewide 24 hour dual party relay center. The Board has reviewed this petition in detail, made a number of changes, and have issued the notice of pre-rulemaking proceeding.

Comments received will become a part of this proceeding and will assist this Board in determining what path will provide the best overall improvement in communications accessibility for the hearing and/or speech impaired of New Jersey.

The Board is interested in obtaining comments as to the practicality of establishing an appropriate system in New Jersey. To fully explore this issue, the Board seeks comments from all interested parties on the following:

a. What should be the sources of funding for:

1. Equipment (both individual users and telephone utility)

2. Operating and maintenance of system

Should funding sources be from all telephone consumers statewide, system users only, state funds, or other sources?

b. How should charges be assessed to fund the system?

c. Who should plan the system?

d. Who should operate the system?

e. What are the anticipated call volumes?

f. What is the estimate of the number of people who would use the service?

g. How will the utilities handle corridor toll and interstate traffic?

h. How will billing of intrastate toll to end users be handled (full price, discounted, other)?

i. Should calls be billed as if sent directly to the called party, or actual routing which could entail a toll call to the relay center and back?

j. Should an 800 number be established for the relay center(s) and who pays for the 800 service?

k. Should there be a regional center or a New Jersey only relay center?

l. Should we establish an advisory committee and who should be on the committee?

m. What is an appropriate target date for implementation of a dual party relay service in New Jersey; in the region?

n. What other alternative methods or technologies for providing telecommunications for the speech and/or hearing-impaired exist?

Comments must be addressed to:

State of New Jersey
Board of Public Utilities
Attn: Margaret Foti, Secretary
Two Gateway Center
Newark, New Jersey 07101

Commenters are invited to submit five copies.

TRANSPORTATION

(b)

DESIGN AND RIGHT OF WAY
DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Bureau of Electrical Engineering
Release of Traffic Signal Information

Proposed Readoption with Amendments: N.J.A.C. 16:26-1

Proposed Repeals: N.J.A.C. 16:26-2 and 3

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5 and 6.

Proposal Number: PRN 1989-330.

Submit comments by July 19, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "Sunset" and other provisions of Executive Order No. 66 (1978), the Department of Transportation proposes to readopt Subchapter 1, N.J.A.C. 16:26, "Release of Traffic Signal Information", concerning the operations of the Bureau of Electrical Engineering (formerly the Electrical Bureau) within the Division of Traffic Engineering and Local Aid, Design and Right of Way, with amendments.

In view of the recent organizational changes within the Department of Transportation and the transfer of activities, N.J.A.C. 16:26-2 and 3 are being repealed. New rules concerning drawbridge operations and reimbursed highway safety eligibility will soon be proposed at N.J.A.C. 16:46 within the Division of Construction of Maintenance, Engineering Support, Construction and Maintenance.

The proposed readoption provides the basic guidelines concerning traffic signal information and outlines the procedures to be followed. It has been reviewed by the staff of the Bureau of Electrical Engineering and found to be adequate, necessary and required for the efficient operation of the Bureau and meets the purpose for which promulgated. Because of added administrative costs, the fee for information is being increased to $100.00.

Social Impact

The proposed readoption provides a simple procedure for obtaining traffic signal information from the Department. Such procedure has a positive social impact in that it allows for ease of public access to such information.

Economic Impact

The Department and local government will incur direct and indirect costs involved in obtaining information concerning the operation and maintenance of traffic signals. Individuals other than local government officials will experience increased economic impact since the fee presently charged, $50.00, is being increased to $100.00.

Regulatory Flexibility Statement

The proposed readoption does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily provides guidelines to be followed in obtaining traffic signal information by the counties and municipalities.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 16:26-2 and 3, and also at 21 N.J.R. 1151(a).

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

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CHAPTER 26
ELECTRICAL [BUREAU] ENGINEERING

SUBCHAPTER 1. RELEASE OF TRAFFIC SIGNAL INFORMATION

16:26-1.1 Requirements

(a) All requests for information concerning the operation or maintenance of traffic signals shall be referred to the [Electrical Bureau] **Bureau of Electrical Engineering** for processing.

(b) Requests for such information must be submitted in writing, accompanied by a check or money order for [$50.00] **$100.00** made payable to the New Jersey Department of Transportation.

(c) (No change.)

16:26-1.2 Authorization

The [Chief, Electrical Bureau] **Manager, Bureau of Electrical Engineering**, may furnish information on traffic signals only if the requirements of [section 1 of this subchapter] **N.J.A.C. 16:26-1.1** are observed. These requirements may be waived if the information is for official use of government agencies.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code; Uniform Fire Code Tent Permits

Proposed Amendments: N.J.A.C. 5:18-2.7 and 5:23-3.14

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

Authority: N.J.S.A. 52:27D-198, 52:27D-124.

Proposal Number: PRN 1989-328.

Submit comments by July 19, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

As they currently exist, the State Uniform Construction Code, BOCA/87 Section 626.1.1 and the State Uniform Fire Code, F-1700.1.1 (N.J.A.C. 5:18-2.7) vary with respect to size of tents which require permits. The Construction Code applies to tents in excess of 120 square feet in area. The fire code applies to tents in excess of 1200 square feet in area or in excess of 30 feet in any dimension. Because the two codes vary in application, there is confusion in municipalities and among those members of the general public engaged in erecting tents as to the permits required for different sizes of tents. Additionally, where the Construction Code and Fire Codes overlap, there is duplication of effort. This proposed rulemaking amends both the State Uniform Construction Code and State Uniform Fire Code so as to make the applicability of both codes identical. With the amendments, any tents or tensioned membrane structure which exceeds 900 square feet or 30 feet in any dimension would require permits. Fire Officials would be the primary authority for the issuance of tent and tensioned membrane structure permits. Only where tents or tensioned membrane structures contain appurtenances such as platforms or special electrical equipment would the construction official retain responsibility for the issuance of a permit.

Social Impact

The proposed amendments would create one standard for the size of tents and tensioned membrane structures to be regulated in the State. The current building code standard, more than 120 square feet in area, is generally considered too small as it includes even backyard pup tents and small structures for which egress is not a problem. The Fire Code Standard of 30 feet in any dimension is a preferred, reasonable lower limit for tents and tensioned membrane structures requiring regulation. By unifying this requirement for the Fire and Construction Codes, a reasonable and consistent lower limit may be set without compromising public safety.

Economic Impact

The Department does not anticipate any direct economic impact from these amendments other than that several tent manufacturers and firms which erect tents for consumers renting them have complained that confusion in the municipalities as to what official should grant permits for what size tents has caused delay and annoyance and time and money may thus be saved by this unified, consistent method of regulation.

Regulatory Flexibility Statement

This simplified regulatory scheme will benefit all those involved in the use of tents, be they manufacturers, sellers, lessors or consumers. Small businesses that fall into any of these categories will benefit in the same manner as those who are not small businesses. No additional reporting, record keeping or compliance requirements are imposed upon small businesses by these amendments. The amendments serve to clarify an existing, confusing regulatory scheme.

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

5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1. (No change.)

2. Type 1 permit:

i-ii. (No change.)

iii. Tents **and temporary tensioned membrane structures without appurtenances, such as platforms and special electrical equipment, which** exceed[ing 1,200] **900** square feet or 30 feet in any dimension (excluding canopies), whether single or made up of multiple smaller units when used for purposes which would constitute a life hazard use were the use to be found in a building;

iv-ix. (No change.)

3. Type 2 permit

i.-ii. (No change.)

[iii. Membrane covered cable and air supported structures covering an area in excess of 120 square feet erected for a period of less than 90 days.]

Renumber iv.-v. as **iii.-iv.** (No change in text.)

5:23-3.14 Building subcode

(a) (No change.)

(b) The following articles or sections of the following subcode are modified as follows:

1.-4. (No change.)

5. The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements[.]":

i.-xi. (No change.)

xii. Section 626.1.1 is [amended to delete the phrase "code official" and substitute in lieu thereof "construction official"] **deleted in its entirety and the following language is substituted in lieu thereof:**

(1) Permit required: All temporary structures except tents and tensioned membrane structures which do not contain appurtenances such as platforms or special electrical equipment, covering an area in excess of 120 square feet (11.16m²), including all connecting areas or spaces with a common means of egress or entrance, and used or intended to be used for gathering together of 10 or more persons, shall not be erected, operated or maintained for any purpose without obtaining a permit from the construction official. Tents and tensioned membrane structures without appurtenances which exceed 900 square feet or 30 feet in any dimension (excluding canopies), whether single or made up of multiple smaller units, shall obtain a permit pursuant to the fire safety code. Tents used exclusively for recreational camping purposes shall be exempt from the above requirements. Special permits required by the building code shall be secured from the construction official.

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(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code; Fire Service Training and Certification

Proposed New Rules: N.J.A.C. 5:18C
Proposed Repeals: N.J.A.C. 5:18A-4

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-198 and 52:27D-219.
Proposal Number: PRN 1989-319.

Public hearings concerning the proposed new rules and repeals will be held on the following dates, at the following places:

July 12, 1989 at 7:00 P.M.
Morris County Police and Fire Academy
500 West Hanover Avenue
Parsippany, New Jersey

July 19, 1989 at 7:00 P.M.
William Ashby Community Affairs Building
101 South Broad Street
Trenton, New Jersey

July 27, 1989 at 7:00 P.M.
Landis School
61 West Landis Avenue
Vineland, New Jersey

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

The agency proposal follows:

Summary

This proposed new chapter N.J.A.C. 5:18C replaces N.J.A.C. 5:18A-4 and augments the existing rules by establishing standards for training programs as well as for certification of persons enforcing the Uniform Fire Code. Procedures are established for the approval of training facilities and courses. Minimum standards for qualification of instructors and for facilities are also established.

Social Impact

Establishment of minimum requirements for training programs will help firefighters who take the courses to do their jobs more safely and efficiently, with consequent benefit both to those whom they might have to rescue or assist and to themselves.

Economic Impact

Some existing fire training programs may have to be upgraded to qualify for Department approval. However, the rules do provide for flexibility and acceptance of suitable alternatives where appropriate, so there is not likely to be a great economic burden on any facility. Moreover, the program is voluntary, so no facility will be required to apply for approval.

Regulatory Flexibility Statement

Training programs for firefighters are run by fire departments and schools. These rules are, therefore, not likely to have any impact upon small businesses and a regulatory flexibility analysis is not needed.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 5:18A-4.

Full text of the proposed new rule follows.

CHAPTER 18C
STANDARDS FOR FIRE SERVICE TRAINING AND CERTIFICATION

SUBCHAPTER 1. GENERAL PROVISIONS

5:18C-1.1 Title; division into subchapters

(a) The rules contained in this chapter shall be known as "Standards for Fire Service Training and Certification" and are referred to herein as the Standards.

(b) The Standards are divided into five parts:

1. Subchapter 1 is entitled "General Provisions" and may be cited throughout the Standards as N.J.A.C. 5:18C-1, and when referred to in subchapter 1 of this chapter, may be referred to as this subchapter.

2. Subchapter 2 is entitled "Educational Programs and Facilities" and may be cited throughout the Standards as N.J.A.C. 5:18C-2, and when referred to in subchapter 2 of this chapter, may be referred to as this subchapter.

3. Subchapter 3 is entitled "Fire Official/Fire Inspector" and may be cited throughout the Standards as N.J.A.C. 5:18C-3, and when referred to in subchapter 3 of this chapter, may be referred to as this subchapter.

4. Subchapter 4 is entitled "Firefighter I" and may be cited throughout the Standards as N.J.A.C. 5:18C-4, and when referred to in subchapter 4 of this chapter, may be referred to as this subchapter.

5. Subchapter 5 is entitled "Instructor" and may be cited throughout the Standards as N.J.A.C. 5:18C-5, and when referred to in subchapter 5 of this chapter, may be referred to as this subchapter.

5:18C-1.2 Authority

These Standards are promulgated by the Commissioner of Community Affairs pursuant to the authority of the Uniform Fire Safety Act (P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., specifically 52:27D-198 and 52:27D-219) and of the act which established a Bureau of Fire Safety in the Department of Community Affairs (P.L. 1983, c.382, N.J.S.A. 52:27D-25a et seq., specifically 52:27D-25d).

5:18C-1.3 Intent and purpose

(a) It is the intent of the Standards to control all matters relating to qualifications for, and the training and certification of:

1. All fire officials and fire inspectors engaged in, or to be engaged in, the administration and enforcement of the New Jersey Uniform Fire Code; and

2. All members of the fire service, including firefighters and officers engaged in, or to be engaged in, fire suppression activities, and all fire service instructors.

(b) The Uniform Fire Safety Act and related legislation, specifically N.J.S.A. 52:27D-25a et seq., have been adopted to ensure public safety and welfare. In order for fire suppression and fire code enforcement activities to be conducted adequately and effectively, members of the fire service will need to have sufficient knowledge and competence. This can best be achieved through the creation of an education and training program and the development of certification requirements.

1. It is the purpose of this chapter:

i. To establish standards and procedures for the certification of fire officials, including, but not limited to, fire officials and inspectors and to require all persons performing duties with respect to the inspection for compliance with the New Jersey Uniform Fire Code in any political subdivision within this State, to be certified as provided in this chapter; and

ii. To establish standards and procedures for the certification of persons involved in fire suppression activities including but not limited to firefighter recruits, firefighters, fire officers, and fire service instructors.

(c) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this chapter.

5:18C-1.4 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise:

"Bureau" means the Bureau of Fire Safety in the Division of Housing and Development of the Department of Community Affairs.

"Commission" means the Fire Safety Commission created under N.J.S.A. 52:27D-25a et seq.

"Commissioner" means the Commissioner of the Department of Community Affairs or his or her delegate.

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"Council" means the Training and Education Advisory Council created to advise the Commission under the provisions of N.J.S.A. 52:27D-25a et seq.

"Department" means the Department of Community Affairs.

"Shall" indicates a mandatory requirement.

"Should" indicates a recommendation or that which is advised but not required.

5:18C-1.5 Office established; hearings

(a) There is hereby established in the Bureau of Fire Safety, Division of Housing and Development, an Office of Training and Certification. The office shall consist of such employees of the Department of Community Affairs as may be required for the efficient implementation of this chapter.

(b) The Office shall have the following responsibilities in addition to all others provided in this chapter:

1. To issue such certifications as may be called for herein when warranted and to affix the seal of the Commissioner thereon;

2. To keep accurate records of all applications for a certification and any official action thereon and to make such records available for inspection by the public at all reasonable times; and

3. To suspend or revoke a certification provided for herein upon the establishment of good cause.

(c) Any person aggrieved by any notice, action, ruling or order of the Commissioner, with respect to this subchapter, shall have a right to a hearing before the Office of Administrative Law, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The final decision in any such case shall be issued by the Commissioner.

1. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being contested. The request shall be made to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, N.J. 08625. The request for hearing shall raise all issues that will be set forth at the hearing.

5:18C-1.6 Certifications required

(a) No person shall carry out the duties of fire official or fire inspector unless that person is certified pursuant to the subchapter. The term "carry out the duties" shall mean and include representing oneself as authorized to carry out inspection of life hazard uses on behalf of the Commissioner, issuing orders pursuant to the Uniform Fire Safety Act, and assessing or imposing any of the penalties provided for by the act.

(b) No local enforcing agency shall employ any person to enforce the provisions of the Uniform Fire Code unless that person shall be certified in accordance with the provisions of this subchapter.

(c) When a local enforcing agency, which enforces the Code in life hazard uses, has a vacancy that leaves the agency without a certified fire official, then the appointing authority shall appoint a certified person to the position within 45 days of the vacancy having occurred. The appointing authority may request an extension of 30 days in which to make the appointment. Such requests shall be made within the initial 45 day period, by the appointing authority or his designee, to the Bureau, Attention: LEA Supervisor, shall set forth the reasons why additional time is necessary and shall indicate if any inspection or enforcement matters require Bureau assistance in the interest of public health, safety or welfare. Within seven business days from receipt of an extension request, the Bureau shall send a written determination either granting or denying the request.

1. Fire officials appointed to fill vacancies shall so notify the Bureau in writing on the local enforcing agency letterhead within five days of the appointment.

2. Fire officials shall undertake duties within 10 days of being appointed.

3. The appointing authority or his designee shall notify the Bureau, Attention: LEA Supervisor, in writing within five days of the date that the fire official vacates his or her office.

4. The Bureau shall be notified in writing by either the appointing authority or the fire official at least 10 days in advance of any leaves of absence by the fire official in excess of 30 days, which notification shall include the provisions which have been made to enforce the Code during the period of absence.

5. If no fire official is appointed within the applicable time, the Bureau shall assume responsibility for enforcement and modify the Registry accordingly. Registration fees collected for the period during which the Bureau is responsible, as well as for the preceding period of the fire official's vacancy, shall ensure to the Bureau.

(d) The following shall be deemed a violation of the Uniform Fire Safety Act subject to a penalty of not more than $500.00 for each offense:

1. To carry out inspections or issue notices or orders pursuant to the Act in connection with life hazard uses if not certified;

i. This shall not preclude notifying the owner of a life hazard use of a perceived violation observed by a firefighter during the course of any normal fire service activity, such as routine inservice inspections. A copy of such notification shall be transmitted to the fire official for appropriate action.

2. To appoint or employ a person who is not certified to carry out the responsibilities of fire official in connection with life hazard uses; or

3. To fail or notify the Bureau of Fire Safety concerning a vacancy as required by this subsection.

(e) No person shall serve as a fire service instructor for any module if such person does not have at least the level of instructor certification and/or special instructor certificate required pursuant to this chapter for the teaching of such module. Except as may otherwise be expressly provided in this chapter, no course taught by any person not so certified shall serve as a basis for credit towards certification as a fire inspector or fire official.

5:18C-1.7 Requirements for certification

(a) Any candidate for certification in any of the fire service areas pursuant to the chapter shall submit an application to the Office of Training and Certification in the Bureau of Fire Safety accompanied by the required fee established at N.J.A.C. 5:18C-1.10. The application shall include such information and documentation as the Office may require.

(b) The Office shall determine by examination of the application and review of any supporting documents, including any evidence of experience, training and/or education submitted whether an applicant is qualified for certification for which the application has been made. If the application is satisfactory, the Office shall issue a certification to the applicant upon payment of the required fee. This certification will show that the person has met the established requirements and is entitled to be employed in the state in accordance with the provisions of these regulations. The Office may deny or refuse to issue a certification to an applicant upon proof that there has been any act or omission which would constitute grounds for revocation under this chapter.

5:18C-1.8 Renewal of certification

(a) The Bureau shall issue a certification following submission of an application, payment of the required fee, and verification by the Office of Training and Certification that the applicant meets the requirements for the certification established herein.

(b) Every two years the fire official/fire inspector certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of Training and Certification that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Bureau shall renew the certification previously issued for a term of two years. The renewal date shall be 60 days prior to the expiration date.

(c) Where the holder of a certification has allowed the certification to lapse by failing to renew the certification as provided for in (b) above, a new application and certification shall be required. If such application is made within six months of the certification having lapsed, then application may be made in the same manner as a renewal, but the application shall be accompanied by the fee for a new application. Upon a finding that a certification was previously held that any applicable continuing education requirements have been satisfied the certification shall be issued. Where the former

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certification has lapsed for a period exceeding six months, a new application shall be required in accordance with N.J.A.C. 5:18C-1.5.

(d) The Bureau shall issue, upon application, a duplicate certificate of any type and specialty upon a finding that the certification has been issued and the applicant is entitled to such certification to replace the one which has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commisioner shall be required.

(e) After revocation of a certification upon any of the grounds set forth in this chapter, the Bureau may not renew or reinstate such certification; however, a person may file a new application for a certification with the Bureau. When it can be shown that all loss caused by the act or omission for which the certification was revoked has been fully satisfied, that the applicant has been legally rehabilitated and that all conditions imposed by the decision of revocation have been complied with, the Bureau may issue a new certification. No new certification shall be issued if the cause for revocation was conviction of any crime in connection with Fire Code Enforcement.

(f) Fire Service Instructor (Reserved)

5:18C-1.9 Revocation of certifications and alternative sanctions

(a) The Bureau may suspend and/or revoke a certification of a fire official/fire inspector, and/or assess a civil penalty of not more than $500.00, if the Department has determined that the holder:

1. Has violated any of the provisions of the Uniform Fire Code rules;

2. Has obtained a certification by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation;

3. Has aided or abetted in practice as a certified fire official or inspector any person not authorized to practice as a certified fire official or inspector under the provisions of this chapter.

4. Has fraudulently or deceitfully practiced as a certified fire official or inspector;

5. Has been grossly negligent or has engaged in misconduct in the performance of any of his or her duties;

6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;

7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under the Uniform Fire Safety Act or other appropriate law of this or any other state or jurisdiction;

8. Has failed to comply with any order issued by the Department;

9. Has made a false or misleading written statement, or has made a material omission in any submission to the Department;

10. Has failed to enforce the Uniform Fire Code; or

11. Has violated any provision of this chapter or of N.J.A.C. 5:18.

(b) The Bureau may suspend and/or revoke a certification of a firefighter if the Department has determined that the holder:

1. Has obtained a certification by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation;

2. Has fraudulently or deceitfully practiced as a certified firefighter;

3. Has been grossly negligent or has engaged in misconduct in the performance of any of his or her duties;

4. Has failed, over a period of time, to maintain a minimally acceptable level of competence;

5. Has failed to comply with any order issued by the Department;

6. Has made a false or misleading written statement, or has made a material omission in any submission to the Department; or

7. Has violated any provision of this chapter.

(c) The Bureau may suspend or revoke a certification of an Instructor Level 1, Instructor Level 2 or any special Instructor Certificate if the Department has determined that the holder:

1. Has obtained a certification by fraud or misrepresentation, or the person named in the certificate has obtained it by fraud or misrepresentation;

2. Has fraudulently or deceitfully practiced as a certified Instructor Level 1 or Instructor Level 2 or a holder of any special Instructor Certificate;

3. Has been grossly negligent or has engaged in misconduct in the performance of any of his or her duties;

4. Has failed, over a period of time, to maintain a minimally acceptable level of competence;

5. Has failed to comply with any order issued by the Department;

6. Has made a false or misleading written statement, or has made a material omission in any submission to the Department; or

7. Has violated any provision of this chapter.

(d) The Bureau, in addition or as an alternative, as the case may be, to revoking or suspending a certification, or assessing a penalty, may issue a letter or warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants a letter of warning, reprimand, or censure. Such letter, in addition to any other filing requirements, shall be made a part of the certification file of the individual.

(e) Conviction of a crime, or an offense in connection with the practice as a certified Code Enforcement official inspector, fighter, fire officer or fire service instructor shall result in revocation of a certification.

(f) Any sanctions imposed by the Bureau of Construction Code Enforcement pursuant to N.J.S.A. 52:27D-119 et seq. shall constitute grounds for imposition of sanctions against a fire official/fire inspector under this subsection.

(g) Any person grieved by any action of the bureau pursuant to this chapter shall be entitled to a hearing before the Office of Administrative Law in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, as provided in N.J.A.C. 5:18A-4.2

5:18C-1.10 Fees

(a) No application for certification shall be acted upon unless the application is accompanied by the appropriate fee.

(b) The fee schedule is as follows:

1. For fire official/fire inspector:

i. The initial application fee shall be $20.00; and

ii. The two-year renewal application fee shall be $20.00.

2. For instructor:

i. The initial application fee for Instructor Level 1 shall be $5.00;

ii. The initial application fee for Instructor Level 2 shall be $5.00;

iii. The initial application for a Live Burn Certificate shall be $5.00;

iv. The initial application for an SCBA/Smokehouse certificate shall be $5.00; and

v. The two-year renewal application shall be $5.00.

3. For firefighter:

i. The application fee for firefighter I shall be $5.00.

SUBCHAPTER 2. EDUCATIONAL PROGRAMS AND FACILITIES

5:18C-2.1 Standards for educational programs

(a) To carry out their responsibilities, fire service personnel must be fully knowledgeable and adequately prepared. This subchapter adopts standards for fire service and Fire Code enforcement official training and education programs.

1. Programs for fire code enforcement personnel must meet certain standards to ensure fire officials and fire inspectors have the necessary technical and administrative training to effectively enforce the Uniform Fire Code at the local level.

2. Programs for firefighters must meet certain standards to ensure firefighters have the necessary skills and knowledge which the specialized and hazardous nature of fire fighting requires.

3. Programs for fire service instructors must meet certain standards to ensure they have the knowledge and skills necessary to provide instruction for fire service members.

5:18C-2.2 Eligible organizations

(a) A fire department or district, a combination of fire department or districts, an institution of higher learning or a recognized governmental entity is eligible to submit an application to offer courses or modules which meet the requirements of this chapter.

(b) An applicant for module or course approval shall have satisfied the following requirements:

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1. All courses or modules offered shall meet the knowledge and skill content, hours of instruction and facility and equipment criteria set forth in this chapter;

2. The following provisions relate to instructors of courses for fire official/fire inspector certification;

i. Faculty members shall be competent in the field and have contacts with fire code enforcement environments and other sources so their teaching and research are current and relevant.

ii. The quality of the faculty is one of the more important factors in judging the effectiveness of an institution. Appraisal of the faculty shall be made in terms of its competence to provide the program for which approval is being sought. Each faculty member shall have a high degree of competency in his or her area. The faculty consists of those instructors who teach the curricula and all personnel who direct students in all types of activities included as part of the curriculum. Those who teach courses shall be familiar with practices in Fire Code enforcement and/or fire protection technology generally.

iii. The institution, recognizing that an appropriate faculty is one of the major determinants of the quality of its education program, shall make provision for the use of part-time or adjunct faculty.

iv. No individual who has ever had a license suspended for a period of six months or more or has ever had a license or certification revoked for any reason set forth in N.J.A.C. 5:23-5.11 or N.J.A.C. 5:18C-1.7 shall be eligible to instruct Fire Code Enforcement educational programs.

3. Concerning instructors of courses for fire service personnel certification, all courses shall be taught by the level of instructor required by this chapter who have satisfied the requirements for certification set forth in N.J.A.C. 5:18C-5.

4. A recordkeeping system required by the Office of Training and Certification including, but not limited to, attendance, course schedules and examination scores shall be maintained.

5. Course schedules shall be provided to the Office of Training and Certification indicating the course or modules being taught or proposed to be taught and the dates and times for the course or module offering.

5:18C-2.3 Procedure for approving educational programs

(a) Any eligible institution or organization may submit to the Office of Training and Certification any course or module required by this chapter for approval. The application shall be submitted on a form prescribed by the Bureau at least 60 days prior to the first class session of the course and shall contain all the information specified in this section.

(b) Each application shall be submitted in the name of the institution or organization by a person authorized to do so. It shall contain the following minimum information:

1. The name of the course, program, or module;

2. A description of the length of each session, the frequency of the sessions and the total number of sessions;

3. An outline showing the course or program content by session;

4. A description of any texts or materials to be used. The description shall identify whether the text or materials will be mandatory or suggested.

5. The list of certified instructors who will teach each module or course for fire service courses or a description of the institution or organizations standard for faculty members who will be employed to teach the course or programs for fire code enforcement courses;

6. An estimate of the number of times the course will be offered;

7. A statement that the institution or organization will notify the Office of Training and Certification if the program is withdrawn or changed at any time;

8. A statement that the institution or organization will conduct the course or program in accordance with this standard and will maintain such records as are herein required;

9. A statement of the charges the institution has established for the course program; and

10. The facilities where instruction will take place. The description shall identify any specialized structures which may be used for teaching the course.

(c) The Department shall have the right to undertake such reviews as may be necessary to verify the accuracy of an application, or conformity with this standard. The institution, by submitting an application, expressly agrees to cooperate in such reviews.

(d) Upon verification that the program or course will satisfy the educational program requirements, the Office of Training and Certification shall:

1. Issue a letter of approval to the institution or organization which letter shall contain any terms or conditions of such approval;

2. Place the name of the institution and the course on the Bureau's list of approved courses. That list will be made available to the public.

i. Any approval shall be limited in that it is effective only as long as the course conforms to the application submitted and approved.

(e) Whenever a course or program has been approved by the Bureau, the institution or organization offering the course may include the statement "This course is approved for credit toward a certification issued by the Department of Community Affairs" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(f) The Office of Training and Certification may revoke its approval, after due notice and the opportunity to be heard, whenever it ascertains that a course has lapsed, is no longer in conformity with the requirements of these regulations or the terms of the Bureau's approval or for other good cause. Whenever approval has been revoked or a course or module has been withdrawn by an institution or organization, a new application and approval shall be required before the course or module may again be offered as providing credit toward a certification.

(g) Any institution or organization may submit an application for approval for a course administered after January 1, 1989 so that applicants may receive credit for it. Any such application shall be judged against the standards for programs established herein.

5:18C-2.4 Facility requirements

(a) In order to provide firefighter training, the facilities must be adequate. The requirements of this section are the minimum requirements for firefighter training facilities.

(b) Classroom Level A requirements are as follows:

1. A separate classroom for instruction shall be provided. The classroom size shall adequately accommodate the number of students.

i. For classroom training for modules for firefighter 1, a meeting hall or large room will be accepted as an alternative to a separate classroom.

2. The following are required:

i. Adequate lighting;

ii. A writing surface for each student;

iii. Sufficient chairs for students;

iv. A chalkboard, or large pad with easel;

v. Access to overhead projector and screen;

vi. Adequate space for each student;

vii. Comfortable room temperature;

viii. Access to sanitary facilities;

ix. Sufficient electrical outlets for use of training aids; and

x. The classroom must be in a quiet area, that is, removed from disturbances.

(c) Drill Area A requirements are as follows:

1. The area to be provided for drills shall be sufficient to allow hands-on practice by all students. Sufficient area shall be provided for the following activities:

i. The typing of lists;

ii. The carrying and raising of ladders;

iii. The rolling and loading, carrying and dragging and coupling of hose; and

iv. The practice of salvage operations.

2. The following practice aids shall be available:

i. A fire hydrant or other water source;

ii. A sprinkler connection or simulated sprinkler connection; and

iii. Simulated roof area and sufficient practice boards to practice venting through roofs.

3. The following materials shall be available:

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i. Fire hose, couplings and tools as specified in N.J.A.C. 5:18C-4.3(a)12vi;

ii. Forcible entry tools as specified in N.J.A.C. 5:18C-4.3(a)3vi;

iii. Salvage covers as specified in N.J.A.C. 5:18C-4.3(e)10vi;

iv. Lengths of rope as specified in N.J.A.C. 5:18C-4.3(a)8vi;

v. Ladders as specified in N.J.A.C. 5:18C-4.3(a)16vi;

vi. PEOSHA approved breathing apparatus for each student;

vii. PEOSHA approved personal protective clothing for each student;

viii. Materials for rescue drills as specified in N.J.A.C. 5:18C-4.3(a)21vi; and

ix. Wedges or sprinkler tongs as specified in N.J.A.C. 5:18C-4.3(a)23vi.

(d) Classroom Level B: (Reserved)

(e) Drill Area Level B: (Reserved)

(f) Smoke building requirements are as follows:

1. The purpose of the structurally safe smoke building is to acquaint the trainees with the skills and abilities necessary for survival in an oxygen deficient atmosphere by creating a controlled learning situation that is under constant supervision.

2. The smoke building shall meet the following requirements:

i. There shall be an exterior exit or secondary means of egress in every room;

ii. The smoke building shall be equipped for simulating smoke filled atmosphere and conditions;

iii. The building shall be so designed and equipped so as to allow for constant surveillance of the trainees; and

iv. There shall be a means to provide emergency ventilation which may include manual control of roof openings, doors and exterior windows.

3. Smoke used should be of a controlled composition with minimum toxicity. Specially designed mechanical equipment may be installed in the facility to produce smoke.

(g) Drill tower requirements are as follows:

1. The purpose of the drill tower is to train fire fighters in basic evolutions using pumper and ladder equipment.

2. The tower shall meet the following requirements.

i. It shall be not less than two stories in height;

ii. It shall be suitable for use with ladders and rescue equipment;

iii. It shall be so designed as to permit raising, lowering, and manuvering of hose lines and other equipment;

iv. It may be of wood frame, reinforced concrete, steel or other durable material;

v. It shall have structurally sound interior and exterior walls which will withstand the force of master streams;

vi. It shall contain stairways which provide means of access between floor levels;

vii. All stairway treads should be slip resistant;

viii. The drill tower should include provisions for standpipe connections at all floor levels of the facility;

ix. Roof openings should be provided for practice of ventilation procedures;

x. Safety railings should be provided for roof operations; and

xi. A temporary or permanent safety net on at least one exterior side of the building should be provided.

(h) Live burn facility requirements are as follows:

1. The following apply to burn buildings:

i. The purpose of the burn building is to safely train fire fighters in methods of interior fire suppression. Every room should have an exterior exit or a secondary means of egress.

ii. Walls, floors, ceilings, and other permanent features shall have strong resistance to heat generated by Class A materials.

iii. Class B materials shall not be used for fuel except as part of approved simulation.

iv. Fires should be limited to short duration.

v. Emergency ventilation should be provided by manual control of the roof openings, doors, and exterior shuttered windows:

2. The following apply to the flammable liquid and flammable gas area:

i. This area should be located as remote from any building as possible. Fencing and/or curbing should be provided as a safety factor.

ii. Pit aprons should be made of concrete, crushed stone, or iron ore slag.

iii. There shall be adequate water supply, fuel supply, fuel pumping capability and drainage.

iv. If flammable liquid or gas is fed to an area, the flow shall be controlled by quick shutoff valves. In case of an emergency, an instantaneous shutdown will be necessary.

(i) The following relate to exemptions:

1. An exemption from the training facility requirements may be made upon the following findings:

i. There is no facility in the immediate area where the training can be provided or there are minimum facilities in the area and all prospective applicants cannot be accommodated; and

ii. That alternative training in the form of simulation or other method will be provided which will provide, to the greatest extent possible the same practice/drill opportunity.

2. An application for exemption to this section shall be filed in writing and set forth specifically:

i. A statement of the requirements from which an exemption is sought;

ii. A statement of the manner by which strict compliance with said provisions would result in practical difficulties; and

iii. A statement of the feasible alternatives which would adequately provide the same practice/drill opportunity.

SUBCHAPTER 3. FIRE OFFICIAL/FIRE INSPECTOR

5:18C-3.1 Requirements for certification

(a) A certification as a fire official/fire inspector shall be issued to any applicant who meets any one of the following standards:

1. A person who served as a fire inspector in the fire service for all of the period between February 19, 1984 and February 19, 1985. Such person shall have been appointed to the position of an inspector, whether full- or part-time, and shall have been vested with authority to enforce a validly adopted fire prevention or fire safety code. Such appointments shall be verified by a letter signed by the appointing authority. The performance of inspections which are supplementary to the primary duty of a firefighter shall not be considered experience as a fire inspector.

2. A person who has successfully completed an educational program approved by the Bureau pursuant to N.J.A.C. 5:18C-3.2.

3. A person who holds a valid license as an ICS or HHS fire protection subcode official issued by the New Jersey Bureau of Construction Code Enforcement pursuant to N.J.A.C. 5:23-5.

5:18C-3.2 Course requirements

(a) The course of study for fire official/fire inspector shall consist of a planned pattern of instruction and experiences designed to meet the following standards. The course shall provide at least 45 contact hours of instruction, not including examination and support time, and it shall ensure by examination technical competence in the following subject areas:

1. The theory of fire code enforcement;

2. Administration and enforcement of fire codes;

3. The life safety systems of buildings and uses including, but not limited to, means of egress, fire suppression systems, fire alarm systems, and methods for limiting the flame spread, flammability or combustibility of materials;

4. The safe use and maintenance of facilities, buildings and uses which are subject to the New Jersey Uniform Fire Code including, but not limited to:

i. Airports, heliports and helistops;

ii. Application of flammable finishes;

iii. Bowling alleys;

iv. Dry cleaning plants;

v. Dust explosion hazards;

vi. Fruit ripening processes;

vii. Lumber yards and woodworking plants;

viii. Oil burning equipment;

ix. Ovens and furnaces;

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x. Places of assembly;
xi. Service stations and garages;
xii. Tents and air supported structures;
xiii. Welding or cutting;
xiv. Places of amusement; and
xv. High level alarms
5. The safe handling of materials which pose a fire hazard, including, but not limited to:
i. Cellulose nitrate products;
ii. Combustible fibers;
iii. Compressed gasses;
iv. Cryogenic liquids;
v. Explosives, ammunition and blasting agents;
vi. Fireworks;
vii. Flammable and combustible liquids;
viii. Hazardous materials and chemicals such as oxidizing materials, radioactive materials, unstable (reactive) chemicals, and poisonous gases;
ix. Liquified petroleum gases and liquified natural gases;
x. Magnesium;
xi. Matches; and
xii. Organic coatings.

SUBCHAPTER 4. FIREFIGHTER I

5:18C-4.1 Duties and responsibilities of firefighter I
(a) A certified firefighter I shall work under direct supervision.
(b) Prior to receiving a certification as firefighter I, firefighter candidates grade 1 and grade 2 may perform the designated functions after completing the following modules:
1. Upon successful completion of modules 1, 3a, 3b, 6a, 6b, 8a, 8b, 13a, 13b and 14 as described in N.J.A.C. 5:18C-4.3, an individual shall receive a certification as a firefighter candidate grade 1 and may, under direct supervision, respond to fire alarms and assist in exterior firefighting involving laying and connecting hose lines and raising ladders.
2. Upon successful completion of modules 2a, 2b, 4a, 4b, 5a, 5b, 11a, 11b, 12, and 15 as described in N.J.A.C. 5:18C-4.3, an individual shall receive a certification as a firefighter candidate grade 2 and may, under direct supervision, assist with all exterior fireground operations.
3. Upon successful completion of all modules in N.J.A.C. 5:18C-4.3, an individual shall receive a certification as a firefighter I and may perform interior structural firefighting under direct supervision.

5:18C-4.2 Firefighter I certification
(a) A certification for firefighter I shall be granted to an individual who has met the following requirements:
1. Is at least 18 years of age;
2. Has successfully completed all instructional modules listed in N.J.A.C. 5:18C-4.3;
3. Has taken and passed a written examination as established by N.J.A.C. 5:18C-4.4(a); and
4. Has successfully passed a skills test as established by N.J.A.C. 5:18C-4.4(b).

5:18C-4.3 Training requirements
(a) An applicant for firefighter I certification shall have satisfactorily completed instructional modules conforming to the following standards:
1. Module 1: Orientation/Fire Department Organization
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: three classroom;
v. Subject areas:
(1) Fire department history, development;
(2) Organizational structure/chain of command;
(3) Firefighter candidate duties and responsibilities;
(4) Local department form of organization (municipal department, fire district, volunteer non-profit, other) and how it relates to local government structure;
(5) Area covered by local department geographical boundaries;
(6) Standard operating procedures of department;
(7) Training program overview;
(8) PEOSHA requirements;
(9) Familiarization of training facilities;
(10) New Jersey Motor vehicle laws with respect to emergency vehicles and blue light law;
(11) Right-to-know law; and
(12) Fire Prevention
vi. Required materials:
(1) Copy of ordinance, certificate of incorporation or other document creating fire department;
(2) Map showing geographical boundaries of fire department;
(3) "Right to Know" brochure; and
(4) Copy of Hazardous Substance Fact Sheet.
2. Module 2a: Forcible Entry
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: three classroom;
v. Subject areas:
(1) Reasons for forcible entry;
(2) Identification and major function of the following forcible entry tools:
i. Pick head ax;
ii. Flat head ax;
iii. Halligan bar;
iv. Circular saw;
v. Bolt cutters;
vi. Pike pole;
vii. Wrecking bar;
viii. Ceiling hook;
ix. Sledge hammer; and
x. All other tools used by the local fire department;
(3) Safety requirements for tool usage and carrying;
(4) Maintenance and inspection of tools;
(A) Testing of tools; and
(B) Cleaning tools;
(5) Methods of forcible entry:
(A) Through doors;
(B) Through windows;
(C) Through roofs;
(D) Through floors and ceilings; and
(E) Through walls;
(6) Forcible entry safety precautions;
vi. Required materials:
(1) Pick head ax;
(2) Flat head ax;
(3) Halligan bar;
(4) Circular saw;
(5) Bolt cutters;
(7) Pike pole;
(8) Wrecking bar;
(9) Ceiling hook;
(10) Sledge hammer; and
(x) All other tools used by the local fire department.
3. Module 2b: Forcible Entry Drill
i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: three drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the areas listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate the function of each tool listed below by simulating the use of the tool on teaching aid:

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(A) Pick head ax;
(B) Flat head ax;
(C) Halligan bar;
(D) Circular saw;
(E) Bolt cutters;
(F) Pike pole;
(G) Wrecking bar;
(H) Ceiling hook; and
(I) Sledge hammer;
(2) Demonstrate the methods of opening various types of windows;
(3) Demonstrate safety procedures to be followed in use of equipment;
(4) Demonstrate methods of properly cleaning, maintaining and inspecting each type of forcible entry tool and equipment;
(5) Identify each forcible entry tool;
vi. Required materials and tools:
(1) Pick head ax;
(2) Flat head ax;
(3) Halligan bar;
(4) Circular saw;
(5) Bolt cutters;
(6) Pike pole;
(7) Wrecking bar;
(8) Ceiling hook; and
(9) Sledge hammer;
vii. Prerequisite: Module 2a—Forcible Entry.
4. Module 3a: Protective Breathing Apparatus
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
iii. Examination: written;
iv. Hours required: three classroom;
v. Subject areas:
(1) Respiratory hazards encountered by firefighters;
(2) Types of required breathing apparatus;
(3) Mechanical operating procedures for breathing equipment;
(4) Inspection, testing and servicing procedures for breathing equipment;
(5) Physical requirements of wearer;
(6) Major components, purpose, use and limitations of breathing equipment;
(7) Methods of donning breathing equipment;
(8) Safety rules for use of breathing equipment;
(9) Use of safety lines;
(10) PEOSHA requirements for breathing equipment;
(11) "Right to Know" requirements; and
(12) Emergency operating techniques;
vi. Required materials:
(1) PEOSHA approved breathing apparatus for demonstration.
5. Module 3b: Protective Breathing Apparatus Drill 1
i. Facility Requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
iii. Examination: skills test;
iv. Hours required: three drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the areas listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate donning breathing apparatus in full turn out gear;
(2) Demonstrate care, maintenance and testing of breathing apparatus;
(3) Demonstrate operation of breathing equipment;
(4) Demonstrate use of tag line; and
(5) Identify parts of breathing apparatus;
vi. Required materials and tools:
(1) PEOSHA-approved breathing apparatus for each student; and
(2) PEOSHA-approved personal protective clothing for each student;
vii. Prerequisite: Module 3a—Protective Breathing Apparatus.
6. Module 3c: Protective Breathing Apparatus Drill 2
i. Facility requirements: Smoke building per N.J.A.C. 5:18C-2.4(f);
ii. Instructor requirements: Instructor Level 2 certification and SCBA/Smokehouse certificate;
iii. Examinations: skills test;
iv. Hours required: three drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate search and rescue techniques as a member of a team under simulated conditions:
(A) One room search; and
(B) Whole building search; and
(2) Demonstrate use of equipment in dense smoke environment;
vi. Required materials and tools:
(1) PEOSHA-approved breathing apparatus for each student; and
(2) PEOSHA-approved personal protective clothing for each student;
vii. Prerequisites:
(1) Module 3a—Protective Breathing Apparatus; and
(2) Module 3b—Protective Breathing Apparatus Drill 1.
7. Module 4a: Ropes and Knots
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: one-half classroom;
v. Subject areas:
(1) Use of rope in the fire service;
(2) Care and maintenance of rope;
(3) Types and uses of following knots:
(A) Square knot;
(B) Becket bend;
(C) Clove hitch;
(D) Figure 8 knot;
(E) Bowline;
(F) Bowline-on-a-bight; and
(G) Chimney hitch;
(4) Types and characteristics of rope; and
(5) Methods of using rope to hoist tools;
vi. Required materials:
(1) Pieces of practice rope at least six feet in length; and
(2) One or more 100 feet or longer sections of one-half inch rope.
8. Module 4b: Ropes and Knots Drill
i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: two and one-half drill hours
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate procedure for inspecting rope;
(2) Demonstrate tying the following knots;
(A) Square knot;
(B) Becket band;
(C) Clove hitch;
(D) Figure 8 knot;
(E) Bowline;
(F) Bowline-on-a-bight; and
(G) Chimney hitch;
(3) Demonstrate storing, bagging and coiling rope;
(4) Using an approved knot, hoist a forcible entry tool up a ladder to a height of at least 20 feet;
vi. Required materials and tools:
(1) Pieces of practice rope at least six feet in length; and

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(2) One or more 100 feet or longer sections of one-half inch rope;
vii. Prerequisite: Module 4a—Ropes and Knots.
9. Module 5a: Salvage and Overhaul
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: One Classroom;
v. Subject areas:
(1) Definition and purpose of salvage and overhaul;
(2) Salvage and overhaul terminology;
(3) Salvage organization and duties;
(4) Types of salvage equipment, including covers and tools;
(5) Methods of inspecting, cleaning, maintaining and storing salvage equipment;
(6) Methods of folding and spreading salvage covers;
(7) Methods of handling water removal and handling water runoff;
(8) Techniques for removing debris from the building and restoring the premises;
(9) Techniques for searching for and extinguishing hidden fires; and
(10) Safety precautions during overhaul
10. Module 5b: Salvage and Overhaul Drill
i. Facility requirements: Drill Area A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: three drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate folding and spreading salvage covers:
(A) One person roll and spread;
(B) Two person roll and spread; and
(C) Two person fold;
(2) Demonstrate proper procedures for inspecting, cleaning, maintaining and storing salvage equipment;
(3) Demonstrate methods of removing and routing water from a structure;
(4) Demonstrate the construction and use of a water chute and catch all;
vi. Required materials:
(1) Salvage covers of assorted sizes;
vii. Prerequisite: Module 5a—Salvage and Overhaul.
11. Module 6a: Fire Hose, Nozzles, and Appliances
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: three classroom;
v. Subject areas:
(1) Types, construction and use of hose, and nozzles;
(2) Inspection, testing and maintenance of hose;
(3) Types and uses of coupling attachments;
(4) Advancing and operating hose line;
(5) Hydrant hookup and operation;
(6) Types of hose lays;
(7) Hose carries, drags and rolls;
(8) Techniques of connecting hose to standpipe and operating hose from a standpipe;
(9) Methods of replacing burst section of hose line;
(10) Techniques of advancing a hose up a ladder and hoisting hose;
(11) Methods and techniques of advancing a hose from a pumper; and
(12) Methods of loading fire hose on an apparatus.
12. Module 6b: Fire Hose, Nozzles and Appliances Drill 1
i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: three drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the areas listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate the connection of a fire hose to a hydrant;
(2) Demonstrate the proper procedure for cleaning hose, couplings and nozzles;
(3) Demonstrate inspecting and testing hose for damage and recommend replacement or repairs;
(4) Demonstrate at least three hose rolls;
(5) Demonstrate at least two hose carries;
(6) Demonstrate at least two hose drags;
(7) Demonstrate hose lays;
(8) Demonstrate the methods for extending a hose line and replacing a burst section;
(9) Demonstrate the use of nozzles, hose adaptors and appliances;
(10) Demonstrate the loading of a hose on the fire apparatus; and
(11) Demonstrate making hose connections;
vi. Required materials:
(1) Several hundred feet of hose used locally;
(2) Nozzles;
(3) Access to a fire hydrant; and
(4) Spanner and hydrant wrenches;
vii. Prerequisite: Module 6a—Fire Hose, Nozzles and Appliances
13. Module 6c: Fire Hose, Nozzles and Appliances Drill 2
i. Facility requirements: Drill Tower per N.J.A.C. 5:18C-2.4(g);
ii. Instructor requirements: Instructor Level 2 certification;
iii. Examination: skills test;
iv. Hours required: six drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) The firefighter 1 candidate, given the necessary equipment and operating as an individual and as a member of a team, shall advance dry hose lines of two different sizes, both of which shall be one and one-half inch or larger from a pumper:
(A) Into a structure;
(B) Up a ladder into an upper floor window;
(C) Up an inside stairway to an upper floor;
(D) Up an outside stairway to an upper floor;
(E) Down an inside stairway to a lower floor;
(F) Down an outside stairway to a lower floor; and
(G) To an upper floor by hoisting;
(2) The firefighter 1 candidate, given the necessary equipment and operating as an individual and as a member of a team, shall advance charged attack lines of two different sizes, both of which shall be one and one-half inch or larger from a pumper:
(A) Into a structure;
(B) Up a ladder into an upper floor window;
(C) Up an inside stairway to an upper floor;
(D) Up an outside stairway to an upper floor;
(E) Down an inside stairway to a lower floor;
(F) Down an outside stairway to a lower floor; and
(G) To an upper floor by hoisting;
(3) The firefighter 1 candidate shall demonstrate working from a ladder with a charged attack line which shall be one and one-half inch or larger;
vi. Required materials:
(1) Several hundred feet of hose used locally;
(2) Extension ladders;
(3) Rope hose tools;
(4) Nozzles;
(5) Hose hoist; and
(6) Rope;
vii. Prerequisites:
(1) Module 6a—Fire Hose, Nozzles and Appliances; and
(2) Module 6b—Fire Hose, Nozzles and Appliances Drill 1;
(3) Module 13a—Safety;
(4) Module 13b—Safety Drill;
(5) Module 8a—Ladders;
(6) Module 8b—Ladder Drill 1; and

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(7) Module 8c—Ladder Drill 2.
14. Module 7: Fire Streams
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: three classroom;
v. Subject areas:
(1) Definition of fire streams and fire stream technology;
(2) Requirements, principles and characteristics of fire streams;
(3) Methods of producing fire streams;
(4) Design, use and operation of various types of nozzles;
(5) Water as an extinguishing agent;
(6) Conditions that cause pressure loss in hose; and
(7) Definition of water hammer and means of prevention;
vii. Prerequisites:
(1) Module 6a—Hoze Nozzles and Appliances; and
(2) Module 6b—Hoze Nozzles and Appliances Drill 1.
15. Module 8a: Ladders
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: one classroom;
v. Subject areas:
(1) Types of ladders and ladder terminology;
(2) Ladder construction and use;
(3) Methods of ladder visual inspection and maintenance;
(4) Methods of removing ladders from apparatus;
(5) Methods of carrying and manipulating ground ladders;
(6) Proper ladder placement;
(7) Methods of raising and climbing ladders;
(8) Methods of securing ladders;
(9) Equipment and techniques to safely work while on ladders;
(10) Methods of assisting victims down a ladder, ladder rescue;
(11) Ladder safety;
(12) Methods of advancing a hose up a ladder; and
(13) Techniques of using a charged line from a ladder.
16. Module 8b: Ladders Drill 1
i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor requirements: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: three drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate visual inspection for different types of ladders;
(2) Demonstrate proper procedure for cleaning ladders;
(3) Demonstrate ladder carries:
(A) One person;
(B) Two persons;
(C) Three persons;
(D) Four persons;
(E) Five persons; and
(F) Six persons;
(4) Demonstrate the following ladder raises as an individual and as a team:
(A) Flat raise;
(B) Beam raise; and
(C) Under obstruction;
vi. Required materials:
(1) Assorted ladders; and
(2) Rope
vii. Prerequisite: Module 8a—Ladders.
17. Module 8c: Ladders Drill 2
i. Facility required: Drill Tower per N.J.A.C. 5:18C-2.4(g);
ii. Instructor required: Instructor Level 2 certification;
iii. Examination: skills test;
iv. Hours required: six drill hours;
v. Subject areas: The firefighter 1 candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Raise the following ladders:
(A) 12 to 14 foot roof ladder;
(B) 24 to 28 foot extension ladder; and
(C) 35 foot extension ladder;
(2) Climb the full length of the following ground ladders:
(A) 12 to 14 foot roof ladder;
(B) 24 to 28 foot extension ladder; and
(C) 35 foot extension ladder;
(3) Climb the 35 foot ladders carrying the following fire fighting tools and equipment:
(A) Axe;
(B) Pike pole; and
(C) 14 foot roof ladder
(4) Demonstrate the methods of working from a ladder with and without a life belt;
(5) Climb the full length of the ladder and demonstrate bringing an injured person down (using a training aid dummy);
(6) Using an approved knot, hoist a selected forcible entry tool and ground ladder to a height of at least 20 feet;
(7) Demonstrate the method of working from a ladder with charged lines of two different sizes, both of which shall be one and one-half inch or larger from a pumper;
(8) Demonstrate method of lowering a victim using bowline on bight rescue knot;
vi. Required materials:
(1) Ladders of the following sizes:
(A) 12 to 14 foot roof ladder;
(B) 24 to 28 foot extension ladder; and
(C) 35 foot extension ladder
(2) Life belt;
(3) Training aid dummy for practice;
(4) Small entry tools; and
(5) Rope;
vii. Prerequisites:
(1) Module 8a—Ladders;
(2) Module 8b—Ladders Drill 1;
(3) Module 6a—Fire Hose, Nozzles and Appliances;
(4) Module 6b—Fire Hose, Nozzles and Appliances Drill 1
(5) Module 13a—Safety;
(6) Module 13b—Safety Drill;
(7) Module 4a—Ropes and Knots; and
(8) Module 4b—Ropes and Knots Drill.
18. Module 9a: Ventilation
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C:2-4(b);
ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
iii. Examination: written;
iv. Hours required: three classroom;
v. Subject areas:
(1) Definition of ventilation;
(2) Principles of ventilation;
(3) Advantages of ventilation;
(4) Safety precautions;
(5) Vertical and horizontal ventilation;
(6) Principles and methods of forced ventilation; and
(7) Techniques of using water fog to expel smoke and gas;
vii. Prerequisites:
(1) Module 8a—Ladders; and
(2) Module 8b—Ladders Drill 1;
19. Module 9b: Ventilation Drill
i. Facility requirements: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor requirements: Instructor Level 1 certification and SCBA/Smokehouse certificate;
iii. Examination: skills test;
iv. Hours required: three drill hours;

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v. Subject areas: The firefighter I candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate proper method of creating a ventilation opening;
(2) Demonstrate proper techniques of horizontal ventilation; and
(3) Demonstrate proper techniques of mechanical ventilation;
vi. Prerequisites:
(1) Module 3a—Protective Breathing Apparatus;
(2) Module 3b—Protective Breathing Apparatus Drill 1;
(3) Module 9a—Ventilation;
(4) Module 2a—Forcible Entry; and
(5) Module 2b—Forcible Entry Drill.
20. Module 10a: Rescue
i. Facility requirement: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirement: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: one classroom;
v. Subject areas:
(1) Situations involving rescue operations;
(2) Safety precautions during rescue;
(3) Rescue tools;
(4) Rescue procedures;
(5) Search and rescue techniques;
(6) Methods of removing victims from hazard:
(A) Carries and drags;
(B) Placing victim on stretcher; and
(C) Lowering a victim; and
(7) Elevator evacuation;
vii. Prerequisites:
(1) Module 3a—Protective Breathing Apparatus;
(2) Module 3b—Protective Breathing Apparatus Drill 1;
(3) Module 8c—Ladder Drill 2; and
(4) Module 14—Fire Behavior.
21. Module 10b: Rescue Drill
i. Facility required: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor required: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: three drill hours;
v. Subject areas: The firefighter I candidate must be able to perform the skill in the area listed below. Performance shall be determined by using evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate methods of locating victims;
(2) Demonstrate procedures to be used in rescuing victim from electrical contact;
(3) Demonstrate the following carries and drags:
(A) Lone rescuer lift and carry;
(B) Extremities carry;
(C) Bunker coat or blanket drag;
(D) Hip carry—one person;
(E) Seat carry—two persons;
(F) Chair carry—two persons;
(G) Carrying stretchers; and
(H) Improvised stretcher with pike poles;
vi. Required materials:
(1) Rope;
(2) Pike poles;
(3) Blankets; and
(4) Stretchers
vii. Prerequisites:
(1) Module 3a—Protective Breathing Apparatus;
(2) Module 3b—Protective Breathing Apparatus Drill 1;
(3) Module 8c—Ladder Drill 2;
(4) Module 14—Fire Behavior;
(5) Module 10a—Rescue;
(6) Module 8a—Ladders;
(7) Module 8b—Ladders Drill 1;
(8) Module 4a—Ropes and Knots;
(9) Module 4b—Ropes and Knots Drill;
(10) Module 13a—Safety;
(11) Module 13b—Safety Drill;
(12) Module 14—Fire Behavior;
(13) Module 9a—Ventilation; and
(14) Module 9b—Ventilation Drill.
22. Module 11a: Sprinklers
i. Facility required: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor required: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: one classroom;
v. Subject areas:
(1) Types and components of sprinkler system;
(2) Types of and operation of sprinkler heads;
(3) Purpose and operation of fire department sprinkler connection; and
(4) Waterflow alarms.
23. Module 11b: Sprinkler Drill
i. Facility required: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor required: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: one drill hour;
v. Subject areas: The firefighter I candidate must be able to perform the skill in the area listed below. Performance shall be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstration of fire department connection; and
(2) Demonstrate shutting down individual heads using a wedge or sprinkler tongs;
vi. Required materials:
(1) Sprinkler head mounted for shut downs; and
(2) Wedge or sprinkler tongs to shut down heads;
vii. Prerequisite: Module 11a—Sprinklers.
24. Module 12: Fire Alarm and Communications
i. Facility required: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor required: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: one classroom;
v. Subject areas:
(1) Procedure for a person to report a fire or other emergency;
(2) Procedure for initiating an action after receiving alarm:
(A) Method of receiving and recording calls;
(B) Method of establishing location and nature of emergency; and
(C) Methods of dispatching equipment and apparatus;
(3) Purpose and function of alarm receiving instruments;
(4) Purpose and function of traffic control devices;
(5) Fire alarm signals;
(6) Organization of county/local network;
(7) Policy and procedures for ordering and transmitting multiple alarms from the emergency scene; and
(8) Types of fire alarm signals
vi. Required materials:
(1) Local radio operating procedures; and
(2) County radio operating procedures where applicable.
25. Module 13a: Safety
i. Facility required: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor required: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: two classroom;
v. Subject areas:
(1) Protective clothing:
(A) PEOSHA requirements;
(B) Right to know requirements;
(C) Types of clothing;
(D) Care, maintenance testing and repair procedures; and
(E) Donning and wearing procedures;
(2) Types and causes of occupational injuries;
(3) Proper methods of going to and from a fire:
(A) Mounting a vehicle;
(B) Riding apparatus; and
(C) Dismounting vehicle;
(4) Safety at the fire scene:
(A) Toxic gas/respiratory hazards;
(B) Structural hazards; and

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(C) Electrical hazards.
26. Module 13b: Safety Drill
i. Facility required: Drill Area Level A per N.J.A.C. 5:18C-2.4(c);
ii. Instructor required: Instructor Level 1 certification;
iii. Examination: skills test;
iv. Hours required: one hour drill;
v. Subject areas: The firefighter I candidate must be able to perform the skill in the area listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate testing and maintenance requirements for each article of personal protective equipment;
(2) Demonstrate donning personal protective equipment; and
(3) Demonstrate proper procedures for mounting and demounting a vehicle;
vi. Required materials and tools:
(1) OSHA approved personal protective clothing for each student;
vii. Prerequisite: Module 13a—Safety.
27. Module 14: Fire Behavior
i. Training facility: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor required: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: three classroom;
v. Subject areas:
(1) Definitions of terms used to describe fire activity;
(2) Basic theory of combustion;
(A) Fire triangle/tetrahedron; and
(B) Heat sources;
(3) Phases of a fire:
(A) Incipient;
(B) Flame spread;
(C) Hot smoldering;
(D) Flash over and backdraft;
(E) Steady state; and
(F) Clear burning;
(4) Heat transfer;
(5) Products of combustion;
(6) Common paths of fire spread;
(7) Classes of fire;
(8) Fire extinguishment theories; and
(9) Thermal balance.
28. Module 15: Portable Fire Extinguishers
i. Training facility: Classroom Level 1 per N.J.A.C. 5:18C-2.4(b);
ii. Instructor level: Instructor Level 1 certification;
iii. Examination: written;
iv. Hours required: three classrooms;
v. Subject areas:
(1) Extinguisher rating system;
(2) Types of fire extinguishers and selection of extinguisher for various types of fires;
(3) Capabilities, advantages and limitations of various extinguishers;
(4) Identification of damaged or obsolete extinguishers;
(5) Proper care and inspection of fire extinguishers; and
(6) Types of extinguishing agents;
vi. Prerequisites:
(1) Module 14—Fire Behavior;
(2) Module 13a—Safety; and
(3) Module 13b—Safety Drill.
29. Module 16: Live Fire Evolution
i. Facility requirements: Live burn facility per N.J.A.C. 5:18C-2.4(h);
ii. Instructor requirements: Instructor Level 2 certification and live burn certificate;
iii. Examination: skills test;
iv. Hours required: 12 drill hours;
v. Subject areas: The firefighter I candidate must be able to perform the skills in the areas listed below. Performance will be determined by using skill evaluation forms provided by the Office of Training and Certification.
(1) Demonstrate manipulating a fire hose nozzle so as to attack at least two live fires, including a Class A fire and a Class B liquid fire;
(2) Demonstrate attack on automobile fire;
(3) Demonstrate the proper positioning of attack lines;
(4) Demonstrate interior fire attack;
(5) Demonstrate by simulation the use of all of the following portable extinguishers and by actual demonstration of one of the following on both a Class A and a Class B fire:
(A) Stored pressure water extinguisher;
(B) Aqueous film forming foam extinguisher;
(C) Carbon dioxide extinguishers;
(D) Dry chemical extinguishers;
(6) Demonstrate inspection of fire extinguisher;
vi. Prerequisite: All Modules.

5:18C-4.4 Examination requirements
(a) Applicants for the firefighter I certification shall demonstrate knowledge of the subject areas by successful completion of the firefighter I written examination administered through the Office of Training and Certification.
(b) Applicants for the Firefighter I certification shall demonstrate competence by successful completion of the firefighter Level I skills examination administered through the Office of Training and Certification.

5:18C-4.5 Optional courses
(a) The firefighter I may receive additional endorsements in the following areas:
1. Module 17A: Emergency Medical Care—First Aid
i. Facility requirements: Classroom Level A per N.J.A.C. 5:18C-2.4(b);
ii. Instructor requirements: Current first aid instructor certificate issued by the American Heart Association or the American National Red Cross;
iii. Examination: No examination required—current first aid card must be submitted;
iv. Hours required: eight;
v. Subject areas:
(1) Recognize and understand treatment of fractures and splinting;
(2) Recognize and understand treatment of burns;
(3) Understand types of external and internal bleeding and its control;
(4) Understand the symptoms and treatment for various poisons;
(5) Recognize symptoms of shock and understand treatment;
(6) Understand primary and secondary survey; and
(7) Understand priority injuries.
2. Module 17B: Emergency Medical Care—CPR (Reserved)
3. Module 18: Hazardous Materials—Awareness (Reserved)
4. Module 19: Fire Pumps—(Reserved)
5. Module 20: Hazardous Materials—(Reserved)
6. Module 21: Fire Prevention—(Reserved)
7. Module 22: Arson Awareness—(Reserved)
8. Module 23: Ground Cover Fires—(Reserved)
9. Module 24: Vehicle Fires—(Reserved)
10. Module 25: Foam—(Reserved)
11. Module 26: Electric—(Reserved)
12. Module 27: Fire Service Law—(Reserved)
13. Module 28: Natural/LPG Gas—(Reserved)
14. Module 29: Marine Firefighting—(Reserved)
15. Module 30: Vehicle Extrication—(Reserved)
16. Module 31: High Hazard Buildings—(Reserved)
17. Module 32: High Rise Fires—(Reserved)
18. Module 33: Building Construction—(Reserved)
19. Module 34: Truck Company Operations—(Reserved)
20. Module 35: Below Grade/Confined Space Rescue—(Reserved)

SUBCHAPTER 5. INSTRUCTORS

5:18C-5.1 General provisions
It is the object of this subchapter to establish criteria for certification of various levels of instructors of fire service courses.

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5:18C-5.2 Instructor Level 1

(a) The Instructor Level 1 may provide training for those modules or courses in this chapter where Instructor Level 1 certification is required.

(b) To obtain a certification as an Instructor Level 1, an individual shall meet the following requirements:

1. Be at least 18 years of age;

2. Satisfactorily complete the 16 hour course "Instruction Techniques: Instructor Level 1" as specified in (c) below;

3. Satisfactorily complete the 16 hour course "Instructor I Level 1 Safety" as specified in N.J.A.C. (d) below;

4. Satisfactorily pass the safety skills test specified in (e) below; and

5. Satisfactorily pass the written test specified in (f) below or possess three years of active firefighting service.

(c) The following standard applies to programs designed to satisfy the requirements for the course "Instruction Techniques: Instructor Level 1":

1. Hours required: 16;

2. Subject areas. The course must cover the following subject areas:

i. Communication;

ii. Concepts of learning/adult learning;

iii. Human relations in the teaching-learning environment;

iv. Methods of teaching;

v. Organizing the learning environment;

vi. Performance evaluation;

vii. Records and reports;

viii. Testing and evaluation;

ix. The instructor's roles and responsibilities;

x. The lesson plan;

xi. The teaching technique; and

xii. The use of instructional materials;

3. The following certificates, courses, or experience will be accepted as substitutes for the course "Instruction Techniques: Instructor Level 1" for a period of two years from the effective date of this chapter:

i. A valid New Jersey Teacher's Certificate;

ii. A valid Instructional Certificate with an endorsement for a teacher of skilled trades: fire science;

iii. The course "Instructional Techniques for Company Officers" as developed by the National Fire Academy taken prior to the effective date of these regulations;

iv. Any other course taken prior to the effective date of this chapter can be submitted by the candidate to the Office of Training and Certification for an evaluation by the office as equivalent. The office will maintain a list of reviewed and approved substitute courses; or

v. Two years of experience as a fire service instructor with 10 contact hours of instruction during the two years prior to the effective date of this chapter may be substituted for the "Instruction Techniques: Instructor Level 1" course.

(d) Applicants for an Instructor Level 1 certificate must complete the 16 hour safety course promulgated by the Office of Training and Certification. The approved course materials are incorporated by reference and are provided by the Office of Training and Certification, Division of Housing and Development, Department of Community Affairs, CN 809, Trenton, New Jersey 08625.

(e) Applicants for the Instructor Level 1 certification shall demonstrate competence by successful completion of the Instructor Level 1 Skills examination administered through the Office of Training and Certification.

(f) Applicants for the Instructor Level 1 certification shall demonstrate knowledge of the subject areas by successful completion of the Instructor Level 1 written examination administered through the Office of Training and Certification.

1. Three years of active firefighting experience prior to the effective date of the regulations may be substituted for the written examination for a period of two years from the effective date of this chapter.

5:18C-5.3 Instructor Level 2

(a) The Instructor Level 2 may provide training for those modules or courses in this chapter where Instructor Level 1 or 2 is required.

(b) To obtain a certification as Instructor Level 2, an individual must meet the following requirements:

1. Be at least 18 years of age; and

2. Possess a certification as Instructor Level 1 for two years.

i. For a period of two years from the effective date of these regulations, two years of experience as a fire service instructor with 20 contact hours of instruction during the two years prior to the effective date of this chapter plus satisfactory completion of the safety course specified in N.J.A.C. 5:18C-5.2(d) may be substituted for the above.

3. Satisfactorily complete the 45 hour course "Instruction Techniques: Instructor Level 2" as specified in (c) below;

4. Satisfactorily pass the skills test specified in (d) below; and

5. Satisfactorily pass the written test specified in (e) below.

i. Five years of active firefighting experience prior to the effective date of this chapter may be substituted for the written examination for a period of two years following the effective date of this chapter.

(c) The following standard applies to programs designed to satisfy the requirements for the course "Instruction Techniques: Instructor Level 2."

1. Hours required: 45;

2. Subject areas: The course must cover the following subject areas:

i. Methods of instruction;

ii. Lesson development;

(1) Task analysis;

(2) Writing lesson objectives (behavioral or performance);

(3) Preparing basic projected visual aids:

(A) Overhead transparencies;

(4) Preparing non-projected visual aids:

(A) Charts and graphs;

(5) Preparing demonstration materials:

(a) Models;

(b) Mock-ups; and

(c) Cutaways;

(6) Preparing printed materials:

(A) Student handout materials;

iii. Testing and evaluation:

(1) Developing lesson examinations (written, oral and performance); and

(2) Evaluating examinations;

3. Presentations: Each student shall make the following presentations:

i. A seven minute presentation;

ii. A 15 minute presentation; and

iii. A 30 minute presentation which is videotaped and reviewed with instructor;

4. For two years following the effective date of this chapter, the following certificates or courses can be substituted for the course "Instruction Techniques: Instructor Level 2."

i. A valid New Jersey Teachers Certificate;

ii. A valid Instructional Certificate with an endorsement for a teacher of skilled trades: fire science;

iii. The course "Educational Methodology" as developed by the National Fire Academy taken prior to the effective date of this chapter;

iv. Any other course taken prior to the effective date of this chapter can be submitted by the candidate to the Office of Training and Certification for evaluation as an equivalent. The office will maintain a list of reviewed and approved substitute courses; or

v. Two years of experience as a fire service instructor with 20 contact hours of instruction during the two years prior to the effective date of this chapter.

(d) Applicants for the Instructor Level 2 certification shall demonstrate competence by successful completion of the Instructor Level 2 Skills examination administered through the Office of Training and Certification.

(e) Applicants for the Instructor Level 2 Certification shall demonstrate knowledge of the subject areas by successful completion of the

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Instructor Level 2 written examination administered through the Office of Training and Certification.

1. Five years of active firefighting experience may be substituted for the written examination.

5:18C-5.4 Special instructor certificates

(a) In addition to the Instructor Level 1 or Instructor Level 2 certifications, individuals shall possess special certificates as indicated in this chapter to teach specific modules.

(b) The following relate to the live burn instructor certificate:

1. A live burn certificate is required to teach specified modules for firefighter 1.

2. An individual seeking a live burn instructor certificate shall complete the following requirements:

i. Possess a certificate as Instructor Level 1 or Instructor Level 2;

ii. Successfully complete the eight hour live burn course promulgated by the Office of Training and Certification, including instructor and student manuals, which is incorporated herein by reference. The course materials are provided by the Office of Training and Certification, Department of Community Affairs, CN 809, Trenton, N.J. 08625; and

iii. Successfully complete the live burn instructor written and skills examination administered through the Office of Training and Certification.

(c) The following apply to the SCBA/Smokehouse certificate:

1. An individual seeking a SCBA/Smokehouse certificate shall meet the following requirements:

i. Possess a certificate as an Instructor Level 1 or Instructor Level 2;

ii. Successfully complete the eight hour SCBA/Smokehouse course promulgated by the Office of Training and Certification including instructor and student manuals which is incorporated herein by reference. The course materials are provided through the Office of Training and Certification, Department of Community Affairs, CN 809, Trenton, N.J. 08625; and

iii. Successfully complete the SCBA/Smokehouse instructor written and skills examination administered through the Office of Training and Certification.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Commercial Fertilizer and Soil Conditioner Commercial Values

Adopted Amendment: N.J.A.C. 2:69-1.11

Proposed: April 3, 1989 at 21 N.J.R. 813(a).
Adopted: May 24, 1989 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: May 25, 1989 as R.1989 d.326, **without change.**

Authority: N.J.S.A. 4:9-15.26 and 15.33.

Effective Date: June 19, 1989.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:69-1.11 Commercial values

(a) The State Board of Agriculture, pursuant to N.J.S.A. 4:9-15.26, determines the commercial value of primary plant nutrients to be:

1. Nitrogen:	$4.00 per unit;
2. Water Insoluble Nitrogen:	$7.50 per unit;
3. Available phosphoric acid	$3.00 per unit;
4. Soluble potash:	$3.00 per unit.

(b) These values shall be effective July 1, 1989 through June 30, 1990.

BANKING

(b)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Mortgage Loans, Fees, Charges, Obligations Definitions

Adopted Amendment: N.J.A.C. 3:1-16.1

Proposed: April 17, 1989 at 21 N.J.R. 957(a).
Adopted: May 26, 1989 by Robert M. Jaworksi, Acting Commissioner, Department of Banking.
Filed: May 26, 1989 as R. 1989 d. 332, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:11B-5 and 13.

Effective Date: June 19, 1989.
Operative Date: July 16, 1989.
Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

The Department of Banking (DOB) received four public comments in response to the proposed amendment. One comment was from a commercial bank, two from or on behalf of licensed mortgage bankers, and one from a trade association. A summary of the comments and responses follows:

COMMENT: One comment addressed the definition of "broker" set forth in N.J.A.C. 3:1-16.1. The comment suggests the definition is too broad.

RESPONSE: This comment falls outside the scope of the proposed amendment which does not seek to change the rule's definition of "broker." The comment is, therefore, rejected.

COMMENT: Another comment addresses the definition of the term "business day" as set forth in N.J.A.C. 3:1-16.1. The comment requests clarification whether such would include a day when the mortgage division of a bank or its mortgage application processing department would be closed but the bank itself might be open to conduct other financial business.

RESPONSE: This comment is also rejected since it too falls outside the scope of the proposed amendment, which does not seek to change the rule's definition of "business day." It is noted, however, that the Department interprets the term "business day" in the context of the office or offices designated by the lender at which the borrower must submit required documentation, that is, if submission of documents may only be made at an office which is closed on Saturdays, then Saturday would not be a "business day" within the meaning of the rule.

COMMENT: One comment asks whether a commitment issued before July 16, 1989 may be extended or renewed after that date without complying with N.J.A.C. 3:1-16.

RESPONSE: Again, this comment falls outside the scope of the proposed amendment which does not seek to change the rule's operative date. The DOB interprets the rule as applying only to applications taken after that date.

COMMENT: One comment suggests that the proposed definition of "current market yield" be changed: (a) In paragraph 1, to add the word "required" before "yield being sought", so as to permit inclusion in the definition of the .25 percent margin which assertedly must be added to FNMA and FHLMC published yields to achieve their required yields to be delivered; (b) In paragraphs 2 and 3, to expressly include costs incurred by the lender in connection with the asset sale transaction but which may not be included in the yield quote, and to "cap" the "current market yield" by the rate and points originally locked in or committed; (c) In paragraph 2, to base the current market yield on the yield sought by an average of three of the five secondary market purchasers who do the most business with the lender rather than simply by the lender's primary purchaser; and (d) In paragraph 2, to include a specific definitional category applicable "in the instance where the lender intends to pool and securitize a mortgage loan on its own behalf."

RESPONSE: The DOB rejects these suggestions. It sees no compelling need for the changes, which would, in the Department's view, merely serve to further complicate an already complex definition without significantly improving on it. Specifically with reference to the first suggestion, moreover, the definition would already appear to permit lenders to equate "yield being sought" with the "yield required to be delivered" to FNMA and FHLMC.

COMMENT: One comment suggests that the definition of "substantial fault of the borrower" include "Acts of God." An example is given where a builder cannot complete construction due to unexpected weather conditions.

RESPONSE: The DOB rejects the suggestion. In the example, the lender has the ability to protect itself by appropriately conditioning its commitment, that is, to necessitate submission of a certificate of occupancy as part of the closing package. Moreover, the amendment allows for the term "borrower's agent", in appropriate cases, to include "the seller."

Full text of the adoption follows:

3:1-16.1 Definitions

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

"Borrower" means a natural person or persons to whom credit is offered or extended primarily for personal, family or household purposes.

"Borrower's agent" means a person or entity hired, contracted or requested by the borrower to supply information or documentation to the lender. A borrower's agents may include the seller, the borrower's attorney, depository institutions, title insurance companies, employer, spouse, surveyor, etc. A borrower's agents shall not include any person or entity hired, contracted or selected by the lender to perform a service or provide information or documentation to the lender, such as an appraiser, a credit reporting agency, the lender's attorney, the investor, etc.

. . .

"Current market yield" means:

1. In the case of a mortgage loan originated under a special program of, or committed for sale before expiration of the lock-in

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agreement to, a particular secondary market purchaser, the yield being sought by that purchaser for that loan; or

2. In the case of a mortgage loan not originated or committed as described in paragraph 1 above and not to be held in the lender's portfolio, the yield being sought, for the type of mortgage loan applied for, by the secondary market purchaser which purchased the highest dollar volume of such mortgage loans from the lender during the preceding 12-month period; or

3. In the case of a mortgage loan to be held in the lender's portfolio, the average commitment rate offered by the lender, for the type of mortgage loan applied for, during the preceding 30-day period.

. . .

"Substantial fault of the borrower" means that the borrower or the borrower's agent:

1. Failed to provide in a timely manner information or documentation required by the lender;

2. Provided or omitted any information, in the application or subsequently, which upon verification proves to be significantly inaccurate causing the need for review or further investigation by the lender;

3. Failed to produce on or before the date specified by the lender, all of the documentation specified in the commitment or closing instructions as being required for closing; or

4. Failed to be ready, willing and able to close the loan on or before the date specified by the lender;

5. For purposes of this definition:

i. A person provides information or documentation "in a timely manner" if such information and documentation is received by the lender within seven calendar days after the person receives a request for same or within the time frame established by the lender if that time frame extends beyond seven calendar days after receipt of the request; and

ii. Information is "significantly inaccurate" if the correct information would, in the reasonable opinion of the lender, cause the borrower to be disqualified for the type of loan for which the borrower has applied or cause the secondary market source for which the loan is originated to refuse to purchase the loan.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Retirement Community Full Disclosure Requirements; Planned Real Estate Development Full Disclosure Act Regulations

Adopted Repeal: N.J.A.C. 5:17

Adopted Amendments: N.J.A.C. 5:26-1.3 and 11.7

Proposed: April 17, 1989 at 21 N.J.R. 958 (a).

Adopted: May 18, 1989 by William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

Filed: May 22, 1989 as R.1989, d.317, **without change.**

Authority: N.J.S.A. 45:22A-11 and 45:22A-35.

Effective Date: June 19, 1989.

Expiration Date: March 1, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

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

5:26-1.3 Definitions

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

"Act" means the Planned Real Estate Development Full Disclosure Act, Chapter 419, P.L. 1977, N.J.S.A. 45:22A-21 et seq., as amended; provided, however, that "act" means the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (N.J.S.A. 45:22A-1 et seq.) when applied to any portion of a retirement community issued a notice of filing or registered pursuant thereto.

. . .

5:26-11.7 Applicability

(a) These rules shall be applicable as follows:

1. To any portion of a planned real estate development which did not have on November 22, 1978:

i.-ii. (No change.)

2. (No change.)

3. To any portion of a retirement community, regardless of the issuance of building permits or approval of site plans or subdivision plats and regardless of whether it has been issued a notice of filing pursuant to the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (N.J.S.A. 45:22A-1 et seq.) or has been registered pursuant thereto.

4.-6. (No change.)

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Control and Prohibition of Air Pollution by Volatile Organic Substances

Adopted Amendments: N.J.A.C. 7:27-16.1, 16.2, 16.5 and 16.6

Proposed: December 19, 1988 at 20 N.J.R. 3052(a).

Adopted: May 25, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: May 26, 1989 as R.1989 d.331, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEP Docket Number: 044-88-11.

Effective Date: June 19, 1989.

Operative Date: July 24, 1989.

Expiration Date: Exempt under 42 U.S.C. 7401 et seq.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances, hereinafter referred to as subchapter 16. These amendments further regulate emissions of volatile organic substances (VOS) to the atmosphere. Volatile organic substances, in the presence of sunlight, participate in the formation of ozone and other reactive pollutants. A variety of sources are affected by the adoption of these amendments. Additional external floating roof storage tanks (EFRTs) are required to install secondary seals. Exclusion rates for surface coating and manufacturing sources are reduced which requires smaller sources to comply with the provisions of this subchapter. In addition, automobile refinishers and custom topcoaters are required to reduce emissions of VOS. The adoption of these amendments is part of the Department's continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone.

Public hearings on the proposed amendments were held at the New Jersey Records Storage Center in Trenton, New Jersey, on January 19, 1989 and at the Herrmann Lewis Labor Education Center in New Brunswick, New Jersey on January 23, 1989. The comment period closed on January 27, 1989. The Department received written comments from 96 people and 20 people presented comments at the public hearings.

General Comments

COMMENT: Several commenters offered general support of the proposed amendments as a step toward protecting public health and the environment. One commenter further stated that the adoption and implementation of the proposed amendments are important and necessary steps toward New Jersey's attainment of the NAAQS for ozone. These

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amendments also will contribute towards the reduction of ambient levels of airborne toxic substances.

RESPONSE: The Department is implementing as quickly as feasible those measures identified in the State Implementation Plan (SIP) for Attainment and Maintenance of the NAAQS for Ozone and Carbon Monoxide as necessary for the State to bring ozone levels down to the NAAQS. The Department appreciates support for its efforts in this regard. In those cases where toxic VOS are used in equipment affected by these amendments, there will be a reduction of the emission of such toxics into the air.

COMMENT: All regulatory measures should be subject to an evaluation addressing questions such as need, cost effectiveness and available alternatives. New rules should be reasonable and technically feasible to have a practical effect in reducing VOS emissions. As outlined in the economic impact analysis of the proposal, extraordinary costs are associated with these measures. What will be the cost/benefit ratio for citizens of New Jersey?

RESPONSE: When the SIP was revised in 1980, the factors of need, cost effectiveness, and available alternatives were weighed. When the Department completed its analysis, those measures which best met these criteria were included in the SIP. The need is obvious. On 45 days during the 1988 ozone season, the ozone standard was exceeded. New Jersey has always been at the forefront of air pollution control and all easy, obvious measures have been instituted. There are a few control alternatives left and smaller and smaller sources must now be controlled.

The question of cost effectiveness is often the most difficult to address. The Clean Air Act (CAA) does not include cost as a consideration when a NAAQS is established to protect human health. While the Department does consider the relative cost effectiveness of alternative methods of reducing emissions, the NAAQS must be achieved regardless of cost. Recent studies show that ozone is most likely more detrimental to human health than originally believed. In addition to the cost in human health, it has been estimated that damage to crops such as tomatoes and soybeans caused by ozone results in an annual loss of $5 billion nationwide. There is also a loss associated with the effect of ozone on materials such as rubber and plastics, which has not been estimated.

A simple cost/benefit ratio of how much it will cost to reduce VOS emissions by a certain amount can be determined. However, such a ratio does not take into account the mitigation of these other costs of ozone pollution. Additionally, it is difficult to assign a monetary value to the improved health of the citizens of New Jersey.

COMMENT: One commenter strongly believes these amendments will not bring New Jersey into compliance with the NAAQS for ozone. Doubt has been cast on the efficacy of VOS emission controls as a means of reducing atmospheric ozone concentrations. The Department has maintained in comments to the United States Environmental Protection Agency (USEPA) that such controls have not impacted ozone levels significantly. Tighter, more costly VOS controls should not be considered until a positive impact on ozone nonattainment in New Jersey can be predicted.

RESPONSE: These amendments by themselves will not bring New Jersey into compliance with the NAAQS for ozone. As part of the overall plan for attainment of the NAAQS contained in the SIP, these measures are important. The VOS emission reductions available from the implementation of these measures are a necessary part of the overall reduction needed.

Three factors determine the amount of ozone in the air: VOS, nitrogen oxides, and sunlight. The Department has no means of controlling sunlight. Of the remaining two factors, VOS was chosen for control. Through modeling, the Department has determined the reduction in VOS emissions necessary to lower the ozone concentration to below the NAAQS. This modeling takes into account the interaction of all the factors contributing to ozone formation. The reduction of VOS emissions has been shown to have a positive effect in reducing ozone.

COMMENT: The Department should look as closely at all ozone precursors as it does VOS now.

RESPONSE: The other two main factors contributing to ozone formation are nitrogen oxides and sunlight. The Department cannot do anything to control sunlight. The control of emissions of nitrogen oxides from mobile and stationary sources is under consideration at this time.

COMMENT: New Jersey has continually imposed control requirements on sources without achieving the air quality improvements anticipated, apparently because of increased out-of-State emissions subject to regional transport. Without similar, or even "ordinary", strategies being imposed in upwind states, what benefits will citizens gain from their sacrifices and what chance does the State have of meeting the NAAQS for ozone? Will rendering New Jersey business noncompetitive improve New Jersey's air quality or will downwind states be the primary beneficiaries of these proposals?

RESPONSE: Under the CAA, each state is responsible for attaining the various NAAQS within its borders. USEPA does not recognize the problem of transport of ozone and ozone precursors over long distances. The Department has been advocating at least regional, and preferably national, control strategies in respect to ozone. However, until such strategies are implemented, it is the responsibility of the Department to do everything possible to attain the NAAQS for ozone in the State of New Jersey.

The anticipated reduction in the ozone concentration may not have occurred, but the concentration has decreased. In addition, the reduction of VOS emissions has helped reduce the "chemical soup" often present in the ambient air, and thus reduced the exposure of New Jersey citizens to toxic VOS and odors.

COMMENT: While it is indisputable that motor vehicle emissions are the largest source of VOS, it is also indisputable that the aggregate effect of VOS emissions from numerous different kinds and sizes of stationary sources present a major obstacle to attaining the NAAQS for ozone.

RESPONSE: The importance of small sources in the reduction of ozone is well known. The Department included such sources in the extraordinary measures contained in the SIP. These measures are now being implemented in the State. Because motor vehicle emissions are also a part of the problem, measures controlling them are presently under consideration, or are being implemented. A rule limiting the volatility of gasoline during the summer has been promulgated and submitted to USEPA for inclusion in the SIP.

COMMENT: The proposal summary speaks of advances in the art of air pollution control. What is the state-of-the-art (SOTA) policy going to be when the new exclusion rates are promulgated? How is SOTA going to be defined for VOS emissions? Will subchapter 8 be revised to explain SOTA and, if it will, then what timetable would this be on?

RESPONSE: The Department's SOTA policy does not change because of new exclusion rates for existing sources. It changes because of advances made in the area of air pollution control.

The SOTA policy has evolved over the years and certain criteria have been established. Some of the factors defining SOTA are: the degree of use of a given control; cost; environmental effect of the failure to use the specified control, which only applies to Prevention of Significant Deterioration applications; and the utility, meaning public importance, of the application. These criteria are applied on a case-by-case basis to VOS sources.

Amendments to N.J.A.C. 7:27-8 are being prepared for proposal sometime later this year. At this time, the content of these amendments is still being considered.

COMMENT: The Northeast States for Coordinated Air Use Management, which includes New Jersey, agreed on October 12, 1988 to a control technology requiring all new air pollution sources to attain the Lowest Achievable Emission Rate (LAER). This policy should be considered when making control decisions for new sources of ozone precursors in both attainment and nonattainment areas. The policy should also require some new major sources of pollution to obtain offsets if they are to be built.

RESPONSE: Subchapter 16 was established to provide standards for existing sources of VOS emissions and to set minimum requirements for new sources. N.J.S.A. 26:2C-9.2 gives the Department the right to require the use of air pollution control that incorporates advances in the state of the art. This has always been done for new sources. N.J.A.C. 7:27-18 contains New Jersey's requirements in regard to offsets for new sources.

COMMENT: The Department should consider use of USEPA's regulatory negotiation process for rulemaking to involve all parties which may be affected by proposed rules. Early involvement of industry is especially appropriate here because of the complexity of the refinishing industry and the many facets including product technologies, types of products and their uses, the end customers, the refinishers, and the manufacturers.

RESPONSE: The Department generally solicits information and input from those that would be affected by a rule during the initial stages of rulemaking, especially in areas that have not previously been considered for control and for which no detailed information is available. However, certain restraints are placed on the interaction the Department may have with outside parties once a certain point in the process is reached. This is necessary to ensure all interested parties have an equal opportunity for input. Because of the short time period available for the development of these amendments, some of the information used had to come from secondary sources, such as reports and studies performed by other states. However, the Department found consistency between the various sources

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of information. With the adjustments made to the rules based on public comment, the Department is confident the rules are appropriate.

COMMENT: The Department should expend more effort on companies that produce products hazardous to health. Large corporations should be held responsible for their products and the effects of those products, rather than placing more of a burden on the small businessman.

RESPONSE: Large corporations, both producers and users, already have many rules that govern what they can do. There are rules limiting their discharge of pollutants into various media, such as air or water. There are rules establishing standards to protect people's health from harmful products. In many ways, large corporations are regulated as much as possible. The Department attempts to ensure, through appropriate rules, that all corporations, large and small, produce products that are not environmental health hazards, either in production or use.

As the ozone concentration in New Jersey's air continues to remain high, smaller and smaller companies are affected by the increasingly tighter VOS rules. Everyone will have to bear part of the burden, including consumers and motorists.

COMMENT: One commenter questioned the Department's authority to adopt without the benefit of public comment and formal promulgation the reduced exclusion rates for evaluating new or renewal permit applications.

RESPONSE: N.J.S.A. 26:2C-9.2(c) requires the Department to ensure, prior to the issuance of an operating certificate, that

"except in the case of a renewal certificate, the equipment incorporates advances in the art of air pollution control . . ."

This requirement necessarily involves the analysis of that technology current at the time of review of the new permit application. It had been determined that technology that was current in August, 1985 made the reduced exclusion rates for new sources representative of advances in the art of air pollution control. Any future technology that improves on the reduction in VOS emissions for the State will be immediately applicable to new sources.

COMMENT: Are standard industrial classification (SIC) codes used to classify facilities subject to the rules in this subchapter? If so, will SIC group 49, particularly subgroup 495 through 4953, be included? If not, SIC codes should be used and these subgroups specifically covered. The groups mentioned include liquified petroleum gas, transmission and distribution systems, and refuse systems.

RESPONSE: SIC codes are not used to determine which sources are subject to subchapter 16. The deciding factor is whether or not a given source fits into one of the defined categories set forth in the subchapter. A given SIC specification may cover a variety of types of equipment. Control criteria is established by the type of equipment, not the type of industry. Much of the equipment in SIC group 49 would fall into categories covered by N.J.A.C. 7:27-16.6.

COMMENT: Fugitive emissions from most of the sources regulated are potentially as great as direct emissions and should be focused on. Changes in the solvent base should be preferred over add-on controls where practical. At the point where fugitive emissions exceed allowable emissions, manufacturers should be allowed the alternative of controlling fugitive emissions.

RESPONSE: Fugitive emissions, in the form of leaks, are regulated under subchapter 16. In N.J.A.C. 7:27-16.6, a program for detecting and repairing leaks is set forth for certain types of facilities. This source category is also under study for further control. The Department agrees, in almost all cases, a change in the solvent base is the simplest or only way to reduce fugitive emissions. The Department does not believe allowing the control of fugitive emissions instead of direct emissions is a sound policy. If fugitive emissions are large, they should be controlled in addition to direct emissions.

N.J.A.C. 7:27-16.1

COMMENT: A definition for the term "custom topcoating" should be added to N.J.A.C. 7:27-16.1. One commenter stated that if this is the same as auto refinishing the rule should say so. Another commenter suggested antique restoration and logo decorations as two possible definitions. Would a vehicle working in an adverse atmosphere qualify? A third commenter suggested stripping, stencilling and specialty effects should be defined as custom topcoating applications.

RESPONSE: The Department agrees that there is a need for a definition of "custom topcoating". It has been added to N.J.A.C. 7:27-16.1. This definition clarifies that custom topcoating is a subcategory of refinishing. It covers things such as logo decorations, stripping, stenciling, and specialty effects. Things such as antique restoration could fall into either category, depending on the types of coatings used. The criterion that creates this subcategory is, as the definition of custom would indicate, that the finish is made to the specifications of an individual purchaser.

COMMENT: The definition of refinishing should be clarified to make it explicit that it covers all coatings, except body fillers, used to achieve the finished appearance. Also, it should specify whether undercoating or rustproofing applied to the underside of the vehicle is covered. Lastly, the commenter stated that the definition and the surface coating section of the summary in the proposal document leave a potential loophole by using the terms "worn or damaged". These terms should be removed from the definition.

RESPONSE: The definition of refinishing has been modified slightly. The words "worn or damaged" have been deleted, to clarify that where a change of color is the reason for replacing the original manufacturer's finish, this is also considered a refinishing operation. There is no need for further clarification of the definition of refinishing. All coatings used in the refinishing of an automobile would be necessary for recoating, and are therefore included in the definition. Undercoating and rustproofing may be considered either refinishing or custom topcoating, dependent on the circumstances of the operation. In either case, the coating would be subject to the 5.0 pounds per gallon VOS limit.

COMMENT: The term VOS should be interchangeable with the term volatile organic compounds (VOC). Manufacturers, to comply with other rules using the term VOC, have placed the term VOC on Material Safety Data Sheets, Product Data Sheets and other documents. Using the term VOS rather than VOC will cause confusion to the customer and result in expense to manufacturers without any effect on VOS emissions. One commenter stated this was important in the event labeling requirements are imposed.

RESPONSE: The term VOS as used in New Jersey and the term VOC as used in many other states are not directly interchangeable. Certain compounds are exempted from the various definitions of VOC but are included in the definition of VOS.

The Department does not currently have labeling requirements in this subchapter and has no plans to institute such requirements in New Jersey. Therefore, there is no need to consider the use of VOC as a substitute for VOS on the label in cases where the terms are equivalent.

COMMENT: Exemptions for chlorinated solvents should be removed. Even if they do not contribute to lower atmosphere ozone, they do cause ozone problems in the upper atmosphere.

RESPONSE: Subchapter 16 is concerned with the ground-level health effects of VOS. Chlorofluorocarbons (CFCs) do not have health effects at ground level. USEPA allows for compounds that are negligibly involved in the formation of ozone at ground level to be exempt from control. CFCs have been determined by USEPA to be such compounds. The Federal government is working at the international level to address the problem of stratospheric ozone depletion. Because CFCs are not often used in the types of operations covered by these amendments there will not be an increase in their emissions as a result of this exemption.

N.J.A.C. 7:27-16.2

COMMENT: Three commenters support the requirement for secondary seals on EFRTs with a capacity of 20,000 gallons or greater. This has been done effectively in the South Coast Air Quality Management District (AQMD) in California for 10 years.

RESPONSE: The Department appreciates this support..Information from the South Coast AQMD was used in the development of the amendments.

COMMENT: All external floating roof tanks (EFRTs) storing VOS with a vapor pressure of 1.0 pounds per square inch absolute (psia) or greater should be required to have secondary seals. Capacity should not be a factor. Regardlless of capacity, VOS with a vapor pressure of 1.0 psia or more creates emission problems. Reduction in the solvent base would be a more reasonable approach.

RESPONSE: The factors included in the USEPA equation for estimating emissions from EFRTs are the type of primary seal, average wind velocity, the vapor pressure and molecular weight of the stored VOS, and the diameter of the EFRT. The diameter of the EFRT is one of the major influences on the emission rate. Diameter and capacity are related, although not linearly. USEPA has defined reasonably available control technology (RACT) in terms of EFRT capacity.

The diameter and capacity of an EFRT affect the cost of retrofitting secondary seals to the tanks. The capacity chosen as a lower limit takes current costs and environmental benefits into consideration. Controlling EFRTs of a smaller capacity is not cost effective at the present time.

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The compounds stored in EFRTs are things such as gasoline, crude oil, and pure solvents. There is no way to reduce the solvent base of three items.

COMMENT: External floating roof tank regulations are based on volumetric criteria. Factors such as height and diameter of the tank can influence the VOS emissions from EFRTs of the same volume, with a short, large diameter EFRT giving off greater emissions. The Department should consider looking at quantity of VOS emitted rather than the quantity of the container.

RESPONSE: The Department analyzed the various factors that contribute to VOS emissions from EFRTs and determined that a volumetric criterion was the best one for application of the requirements. The use of the volume of the EFRT takes into account VOS emission rates and cost effectiveness of control. It is also straightforward and easy to implement and enforce.

COMMENT: The rule could be interpreted as relaxing the permissible gap provision for secondary seals on EFRTs. The gap provision specifies the maximum gap area between the secondary seal and the tank wall and is necessary for enforcement. The permissible gap provision should be repeated in N.J.A.C. 7:27-16.2(h).

RESPONSE: The Department agrees that the gap provision is an important aspect of rules governing EFRTs and has always included it in EFRT provisions. This provision establishes the parameters for a secondary seal and is a necessary standard. Therefore, the gap provision has been repeated in N.J.A.C. 7:27-16.2(h)2 as requested in order to clarify its continued applicability.

COMMENT: N.J.A.C. 7:27-16.2(i) should be expanded to include any EFRT having a maximum capacity equal to or greater than 40,000 gallons rather than just those greater than 40,000 gallons.

RESPONSE: N.J.A.C. 7:27-16.2(i) is the original provision which has been in effect since December, 1981. Because this provision will be superseded by the more stringent 20,000 gallons or greater criterion, no change is necessary.

COMMENT: N.J.A.C. 7:27-16.2(j)1 should contain an interim date by which facilities containing affected EFRTs are required to submit a list to the Department identifying these tanks. This date should be at least six months prior to the effective date of the rule.

RESPONSE: The Department already has a list of most of the affected EFRTs. To require that the facilities responsible for these EFRTs submit a list identifying these tanks again is redundant and unnecessary. There is no need for an interim date by which to submit such a list.

N.J.A.C. 7:27-16.5

COMMENT: One commenter supported the reduction of exclusion rates in N.J.A.C. 7:27-16.5(c) but suggested the exclusion rates should apply to the total quantity of surface coating formulation applied at the facility, not to each individual surface coating operation or graphic arts operation.

As the rule stands, the source owner could report coating usage so that each operation appears to use less than 2.5 gallons per day (gpd) when in reality certain operations use more than the exclusion rate. Further, it is suggested facilities claiming exemption be required to maintain daily records to verify the facility's daily consumption.

RESPONSE: The Department has always had source-by-source criteria for establishing applicability of rules, rather than facility based criteria. If a facility wishes to risk falsifying records, neither method of exemption will prevent it. However, in either case, the owner would be subject to penalty. In addition, the operator of a variety of sources should not have the right to a greater exemption by placing those sources in different locations. With a facility-based exemption rate, an operator with 10 sources at one location may be subject to the rule, while placing each source in a separate location may exempt them all. A per source exemption rate can be more fairly applied and enforced.

Recordkeeping requirements for surface coating operations are presently under development. They will be included in amendments to be proposed early next year.

COMMENT: N.J.A.C. 7:27-16.5(c) provides a 2.5 gpd exclusion rate for surface coating operations other than automobile refinishing. Assuming coatings that are 50 percent VOS, this is equivalent to about 1.25 tons per year (tpy) rather than the general 10 tpy the Department states it uses in the summary. To avoid any ambiguity, a single exclusion rate should be set and stated as 10 tpy.

RESPONSE: The 10 tpy figure which appeared in the summary is a rule of thumb used as a demarcation between small and not so small sources. It does not necessarily apply to every type of emission source. It is not automatically used as an exclusion rate. Sources that fall below 10 tpy in emissions must be given more careful consideration before control is required. Factors such as available technology for very small sources and the environmental benefit of control of such sources affect the feasibility of control.

In the case of many surface coating categories, complying coatings are in wide use. These coatings make add-on control unnecessary and the cost of reducing VOS emissions is therefore negligible. For automobile refinishing, New Jersey is among the first states adopting rules relevant to this source category and complying coatings are not widely distributed and used. Therefore, it is difficult to justify requiring small automobile refinishing facilities to comply with the rule.

COMMENT: An exclusion based on gallons of coating used in an hour is impossible to enforce. As an example, spray guns can spray a half gallon in an hour. If a coater claims he is spraying less than this, how will the Department prove otherwise? To oversee operations to determine if they are subject to the rule would tie up an enormous amount of Department resources. Because of this, all surface coating sources should be regulated with no exclusion as is done in New York.

RESPONSE: Because gallons of coating used in an hour directly translates into an emission rate, the Department believes it is the best standard to use. With the present standard of five gpd, coating usage must be determined. Methods for this have been established.

The exlcusion rate allows very small sources with a negligible contribution to the VOS in the outdoor air to forgo the need for very expensive control equipment or the study necessary to identify complying coatings. The VOS emission reduction from such small sources does not justify the cost.

Enforcement of this new provision will be no more difficult or problematic than for larger sources. Documents and physical evidence of the amount of coating used will be gathered in the way it always has. This includes observing operations, obtaining records, and examining physical evidence such as empty paint cans.

COMMENT: The Department should modify its rule affecting automobile refinishing to be consistent with the VOS limits set by New York.

RESPONSE: The Department has not revised the rule to be identical to New York. Changes have been made in response to specific issues raised by various commenters. New York's rule was considered, but the approach chosen for New Jersey responds to the concerns of automobile refinishers while maintaining an equivalent level of emission reductions. The Department believes the resulting rule is appropriate and compatible with that in effect in New York.

COMMENT: Implementation of this rule would have a severe impact on refinishing businesses according to several commenters. Some commenters opposed the rule on automobile refinishing because they believe it will greatly restrict their ability to do business. These commenters requested that a less restrictive means be pursued which would allow them to both obey the law and protect the environment.

RESPONSE: The Department believes that the rule has been written in the least restrictive way possible. It simply establishes the allowable VOS emissions for a gallon of coating used in automobile refinishing. The means of complying with this emission rate is left up to the affected facilities.

If the rule had no environmental benefit, there would be no reason to adopt it. The VOS limits have been chosen to incorporate the latest available technology and to speed up the spread of that technology throughout the industry.

COMMENT: A number of commenters stated that the rule covering automobile refinishing will put them out of business and there must be an alternative which treats everyone, including the environment, shops, and jobbers, equitably. One commenter estimated nine out of 10 auto body shops would be put out of business by this provision. This is not only because of the prohibitive cost of complying, but also because the insurance industry, which pays for most refinishing, would probably not increase their payments to allow for amortization of control equipment. Another commenter further requested that the Department make sure rules will work in the field before they are adopted.

RESPONSE: The Department does not anticipate compliance being costly and putting facilities out of business. The use of add-on control equipment such as a thermal oxidizer, which is one of the most costly alternatives considered, is not necessary. Complying coatings are available at a much lower cost of compliance. Add-on control would involve costs of up to $250,000 for an automobile refinishing spray booth used to apply eight gallons of coating per day. Switching to complying coatings may cost up to $30,000, but only if new application equipment or a new spray booth is needed.

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In light of the severe ozone problem faced by the State, the alternative chosen has been determined to be equitable. Also, based on the information the Department has, it is workable.

COMMENT: Emissions from other factories and businesses are far greater than auto body shops which comply with the most recent laws on VOS emissions. This rule is unjust to auto body shop owners when you can drive down the New Jersey Turnpike and see factories letting off emissions to the atmosphere at a greater volume than body shops. Another commenter stated that automobiles which sit in traffic all day create the majority of the ozone problem.

RESPONSE: Individually, automobile refinishing operations are not large sources of VOS. However, in the aggregate their impact can be great. There are over 2,000 automobile refinishers in the State. As a category, these facilities emit over 4,000 tons of VOS each year.

At this time, virtually all types of manufacturing equipment are subject to subchapter 16. Emissions that can be seen are usually water vapor, which is not a pollutant. In regard to VOS, all facilities have emission limits they must adhere to. Some of these emission limits may be greater than the emissions from an auto body shop, but these limits often represent only five to 10 percent of the potential emissions of VOS from that source.

Motor vehicle exhaust is a major contributor of ozone precursors. An inspection program to check the efficiency of catalytic controls has been in place in New Jersey for a number of years. In addition, the Department encourages the use of car pools and mass transit. The Department is studying how best to implement additional controls on the emissions from automobiles. However, the Federal preemption on new car emission standards makes reductions from this category difficult.

COMMENT: New car manufacturers' employees state their industry is exempt from rules. These manufacturers should be covered before small refinishers who contribute much less in VOS emissions.

RESPONSE: Manufacturers who apply the original finish to new vehicles are subject to subchapter 16, and have been since 1979. The previously established limits in N.J.A.C. 7:27-16.5, Table 3A, apply to such operations.

COMMENT: The automobile refinishing industry is working on a model rule for the control of VOS which it hopes to complete in the very near future. This rule attempts to reduce VOS emissions by forcing technology and at the same time to protect the refinishing industry, small and big alike. One commenter stated the rule in the long run will reduce overall emission levels below that required in some state rules. New Jersey should meet with industry to consider this proposal which will meet the needs of both New Jersey for their NAAQS compliance plan and of the small business person making a living in the refinishing industry before promulgating these rules. Other commenters supported the model rule as necessary in encouraging a uniform rule across the state lines to make coating industry compliance practical.

RESPONSE: The Department agrees that uniform, national regulation of this source category is a more practical approach. However, because of the continued exceedance of the NAAQS for ozone in the State, and court-ordered deadlines, emission reductions must be required now. At the public hearing, the Department was informed that this model rule would not be ready before the end of the public comment period. There is not time for the Department to wait for a model rule to come out and then to determine whether it is appropriate for the State's purpose. With the information available now, this rule has been proposed and adopted in order to protect the health of the citizens of New Jersey and respond to court-ordered deadlines for achieving reasonable emission reductions from this source category. The Department will review the model rule when ready to see if it offers a better approach or the possibility of greater reductions for consideration in the 1992 ozone SIP.

COMMENT: The Department should have people from the paint manufacturers, spray booth industry, and body shop industries represented on committees to explain and be helpful to the State when formulating amendments. The commenter believes that most of the problems could be addressed by the manufacturers of paints and solvents and through increased transfer efficiency rather than through rules which restrain growth.

RESPONSE: Information has been obtained from many sources, including manufacturers of coatings and equipment, and automobile refinishers. Some of this information was obtained directly by the Department, and some came from other states. Given the short time in which amendments had to be developed, a committee of advisors could not be established.

The Department agrees that the development of complying coatings by paint manufacturers is the best solution. Several manufacturers indicated during the comment period that, with minor modifications, they could supply complying products. The Department does not believe the rule will restrain growth.

COMMENT: The refinishing industry will use non or low VOS coatings when manufacturers make these available. The problem should be attacked at the sources, the paint manufacturers who are already working on this. Complying products will not only help the outdoor air, but will be less polluting to the atmosphere the applicators must breathe in the spray booths. Also, the harm of chemicals to applicators' hands will be lessened. However, shops have little control over what the manufacturers supply and it is dangerous to assume these coatings will not present their own environmental problems. One possible problem cited is that disposal of non-VOS paint wastes to sewer systems will be very tempting since these wastes will have no recovery/recycled fuel value.

RESPONSE: According to information received from manufacturers during the comment period, there are refinishing coatings that can meet the requirements of the rule. Therefore, the refinishing industry can use such coatings to achieve compliance with the rule.

As to the other possible environmental problems associated with these types of coatings, that is nothing new. There has always been the possibility of disposal of wastes to the sewer system, even for high VOS content coatings. Virtually all paints are hazardous wastes because of the metallic pigments they contain. They must be disposed of properly pursuant to N.J.A.C. 7:26 or penalties will be imposed. There has always been the problem of disposal.

COMMENT: The Department's proposal used a study completed by Radian Corporation. There are a number of problems with this study and its interpretation by the Department. The study does not recognize the difference between basecoat/clearcoat systems and single stage topcoat systems. The study recognizes only one type of undercoat when there are actually four with different properties and VOS levels. The study uses the percent by volume VOS to calculate weight of VOS per gallon, when the weight percent should be used in the calculation. The study is significantly incorrect in estimating total VOS emissions for the industry based on the commenter's analysis of his sales data for New Jersey, which he offered to share under an agreement of confidentiality. The study states that sources indicate waterborne paints have been marketed to the refinishing industry in the past with acceptable results, which the commenter disputes. It would require up to five years to determine if this technology could be developed for commercial use in the refinishing industry. The study does not recognize that while use of enamel and polyurethane paints instead of lacquer can reduce VOS emissions, these processes require the use of isocyanates whose hazards many less sophisticated shops are not equipped to handle.

The Department used this study and chose a number for the exclusion rate to exempt those facilities emitting less than 10 tpy of VOS, yet the maximum emissons reported in the study by any auto body shop in the State is 2.9 tpy.

The Department's emission reduction estimate does not appear to agree with the report. The study states Model B shops, which it is inferred from the proposal summary the Department intends to regulate, account for 37 percent of the refinishing business volume based on number of partial equivalent jobs completed by these shops compared to the total number for the State. The Department incorrectly states these shops account for 37 percent of the total emissions. The proposal states that all of the shops in the category will be affected. However, the exclusion rate of 25 partial equivalent jobs per week would only affect five of 91 shops in the survey or 5.5 percent. Lastly, the proposal states that 550 tpy of VOS emissions will be prevented by the rule which is 37 percent of the Radian studies total emission estimate of 1454 tpy. While the Model B shops do 37 percent of refinishing business volume of partial equivalent jobs, the Radian study states this category emits only 485 tons per year of VOS and, as previously stated, only 5.5 percent of the shops in this category will be affected once the exclusion rate is taken into account.

Based on these factors, the commenter expressed concern over the process used and the actual reductions which will result.

RESPONSE: The Department recognizes that there are some problems with the Radian study which was only one of the sources used in developing this rule, but it provides some useful information. The study does mention some of the differences between basecoat/clearcoat systems and single stage systems. There are different types of undercoats, but primer is the major category, and its inclusion in the study is reasonable. The information contained in the report on the VOS content is on a weight percent basis. The data were incorrectly labeled. As for the emiss-

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ion estimate, using information available in the USEPA publication "Reduction of Volatile Organic Compound Emissions from Automobile Refinishing" yields an emission estimate of 7600 tpy of VOS. This indicates that the emission estimate in the Radian study is most likely incorrect. However, it is in the direction of an underestimation.

Waterborne primers are mentioned in the USEPA report as having been developed and available. Their use is not widespread and they are not universally applicable. As for the substitution of one type of coating for another, polyurethane coatings use isocyanates but enamels do not. The hazards are not great, and small shops have many options.

The survey performed by Radian overlooked many large shops. Other sources available to the Department indicate that there are facilities in New Jersey refinishing automobiles and emitting 10 tpy or more VOS. In addition, information in the USEPA report indicates that there are approximately 250 facilities in New Jersey that would meet the criterion for application of this rule. It is possible the emission reductions available from this control strategy may have been slightly overestimated. However, even if the 37 percent of emissions is incorrect, a conservative estimate based on the information available in the USEPA report indicates that 33 percent of the emissions are attributable to facilities that would be affected by this rule.

COMMENT: The VOS limits should be applied to the group of products used to complete a refinishing operation on a single vehicle including primer and topcoat. This would allow the use of low VOS primer with slightly higher VOS color coat which would provide better flow, increased gloss retention, and better color match. The commenter suggested that the manufacturer should be required to develop and certify VOS levels for batch refinishing.

RESPONSE: The Department has considered the group of products used to refinish automobiles and has determined that basecoat/clearcoat systems should be considered as a whole, while other products should be considered individually. Such changes have been incorporated into the rule by establishing VOS limits for basecoats and clearcoats in N.J.A.C. 7:27-16.5, Table 3A.

COMMENT: Because there is no commercial basecoat system which will comply with the proposed 5.0 pounds per gallon VOS limit, the reformulation effort will result in more than the negligible costs the Department predicts. Research and development of technology will be required and then the thousands of color formulations necessary for commercial introduction will have to be developed. A similar effort will be required for other refinishing coatings. The cost will be in the millions for each company which will ultimately be passed on to the consumer. The commenter offered to submit confidential data showing costs if the comment period was extended. Another commenter stated that the time frame specified is insufficient for the necessary effort. Proceeding on this basis will cripple industry's ability to repair vehicles for the New Jersey consumer.

RESPONSE: Because color basecoats are used in conjunction with clear topcoats, the limit applying to basecoats has been raised while that for clearcoats has been lowered. Information from the USEPA report and from testimony submitted during the public comment period was used to develop the individual VOS limits for basecoats and clearcoats. These limits appear in Table 3A of N.J.A.C. 7:27-16.5. When used to coat a vehicle, the emission of VOS for the two coatings together still will not exceed 5.0 pounds per gallon on average. This will allow many formulations to be retained.

With this modification to the rule, the Department does not anticipate the need for a large reformulation effort. Several manufacturers have indicated that they already market products that can comply with this rule.

While the Department appreciates the commenter's offer of confidential data, such material is not acceptable as comment in the rulemaking process. All comments received are part of the public record.

COMMENT: The VOS limit contained in Table 3A should be increased from the proposed 5.0 pounds per gallon to 6.2 pounds per gallon for refinishing. A VOS limit of 5.0 pounds per gallon will result in darker and dirtier colors which will cause color match problems in repairing original equipment finishes. Poor color match will result in larger areas of repair, which will increase VOS emissions due to the increased volume of coating used. Color match is crucial to successful repair of a damaged vehicle. It is influenced by a number of factors and will be made at best extremely difficult by changing VOS limits.

RESPONSE: The Department has raised the VOS limit on basecoats, which contain the color, from 5.0 pounds per gallon to 6.0 pounds per gallon. This will allow for better color match while in combination with low VOS content clearcoats, achieving the same overall emission reduction to 5.0 pounds per gallon. The Department believes this is sufficient to address this problem.

COMMENT: The rule should specify a 5.0 pounds per gallon VOS limit for overall repairs or coating and a 6.2 pounds per gallon VOS limit for spot and panel repairs or touch-ups as in New York's rule. These two limits should apply to both custom topcoating and refinishing. This would prevent the overall increase of VOS emissions that would result if jobs which could be done as spot repairs are required to be done as overall repairs due to color match problems. It would also allow the use of acrylic lacquer for spot repairs, which is important because of its ease of application, fast dry characteristics, less dirt pick-up and excellent durability.

RESPONSE: The Department is not adopting a spot repair VOS limit at this time. The need for such a category is under consideration and further information will be gathered to determine if it is necessary.

COMMENT: Basecoat/clearcoat finishes are currently the major topcoat technology used on original equipment automobiles. Typical VOS levels of current basecoats average 6.0 pounds per gallon. Another commenter stated 6.9 pounds per gallon is typical. Use of low VOS basecoats in refinishing will not satisfactorily match the color of the original equipment coating. If basecoat/clearcoat finishes are considered in combination since one cannot be used without the other, a high solids clearcoat with a VOS limit of 4.4 pounds per gallon can be used and the resulting VOS of the combined system will be less than the required 5.0 pounds per gallon. The Department should accept basecoat/clearcoat systems as one refinishing coating and consider the VOS level to be the mathematical combination of the two components. Another commenter similarly recommended VOS calculation for the system, but stated a VOS level of 6.2 pounds per gallon combined is necessary.

Another commenter disputed other estimates and stated that two combined limits are needed: a limit of 6.2 pounds per gallon for the system used in spot repairs and a limit of 5.0 pounds per gallon for complete repairs. This is necessary because blending the edges of a spot repair would not be feasible with a high solids clearcoat. It is also consistent with New York. The mathematical combination will not cause compliance problems because deviating from the ratio of one third basecoat to two thirds clearcoat would be counterproductive for the refinisher. Not maintaining this ratio will result in using more coating, while the performance of the finish drops off rapidly. This increases the auto body shop's liability exposure and nullifies the paint manufacturer's warranty. Documentation exists already in each shop including purchase records and hazardous waste records which could be used to determine for enforcement purposes if the ratio of basecoat to clearcoat has been abused. Even with this allowance, both limits would be forcing technology.

Another commenter suggested limits for the two components rather than mathematical combination. These limits should be 6.3 pounds per gallon for basecoats and 4.5 pounds per gallon for clearcoats.

RESPONSE: The Department agrees that basecoat/clearcoat finishes should be considered as a system. However, a mathematical combination is not the best way to do this. Instead, a limit has been set for each component of the system. Basecoats have a VOS limit of 6.0 pounds per gallon. Clearcoats have a VOS limit of 4.4 pounds per gallon. When such a basescoat/clearcoat system is applied to an automobile, the VOS emissions will be 5.0 pounds per gallon of the total coatings used. Therefore overall emissions remain the same, while allowing for the higher VOS necessary in the color coat for better color match. The individual limits for the two coats will facilitate enforcement.

COMMENT: Specialty additives or treatments should be exempt due to their small volume (less than three percent) as a percentage of total refinishing products sold, the minimal amounts of these products used in certain applications and the resulting minimal contribution to overall VOS emissions. The following products should be exempt: clear polypropylene primers, specialty primers for plastics, adhesion promoters, aerosols, uniform finish blenders, accelerators, fisheye eliminators, silicone additives, flex agents and elastomeric materials, bright metal trim repair and chrome paint, vinyls for interiors, gloss flatteners, low reflective accessory coatings required for safety purposes, and rubbing or polishing compounds. These products are low volume and for specific purposes, making reformulation difficult without destroying their unique properties. Serious problems can result from using some of these products in more than recommended amounts, so increased use will not be a problem. Without these products, various paint systems might fail resulting in the need for repainting which will increase VOS emissions.

RESPONSE: The Department has considered the categories suggested and has clarified that adhesion promoters, uniforming finishes or

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blenders, low reflective accessory coatings, and specialty primers for plastics are not included in this rule. This exemption has been included in the definitions of custom topcoating and refinishing of automobiles and light duty trucks in N.J.A.C. 7:27-16.1. These represent only slightly more than one percent of all refinishing products, and their use either decreases the possibility of recoating the repair or increases the safety of the vehicle.

The Department does not agree that additives should be exempt. The additive by itself will not need to be in compliance with the rule. The coating into which it is blended must meet the VOS limits in its as-applied state. Because additives are generally used in small amounts, they should not have a significant effect on the VOS content of the coating. However, if they do significantly alter the as-applied coating, only minor adjustments will have to be made to either the additive or the coating.

COMMENT: Specialty pretreatment materials are needed for automobiles to promote adhesion. These formulations, which are low in solids (VOS level of approximately 6.7 pounds per gallon), are applied at very low film thickness and are typically only used in spot repairs. The volume applied per vehicle is very low. Additionally, zinc phosphate pretreatment material is needed to pre-coat bare steel substrates prior to application of waterborne primer surfacer, and it too is applied at very low film thickness. These specialty materials represent less than two percent of total coating use and would be extremely difficult or impossible to reformulate to meet the proposed level. These materials should be classified as pretreatment materials and excluded from the rules.

RESPONSE: The use of adhesion promoters is not covered. In addition, the Department agrees that zinc phosphate coatings are for pretreatment and should not be included as refinishing coatings. Its use allows the subsequent use of low VOS content coatings for the primer, color coat, and topcoat, thus leading to an overall decrease in VOS emission. The small volume of these types of treatments used ensures that they will not contribute significant VOS emissions. Neither of these coatings was included in the original analysis used in the development of this rule. Their exception is included in N.J.A.C. 7:27-16.1 and will not affect the expected emission reductions.

COMMENT: The proposal mentions that consultants may need to be hired by small businesses. Several new fees and consultant charges have combined to place a large burden on small businesses. The Department should be required to develop and publish simple forms to enable auto body shops to perform studies to select from alternative compliance options and simple forms to comply with the planning and reporting phases of the rule.

RESPONSE: The Department does not anticipate a great need for consultants. Much of the information and support needed can be obtained from coating manufacturers. Therefore, there should be little additional burden placed on small business.

In addition, the Department is looking into standardized forms. These forms could be used for the various reports required by the rule. If appropriate forms are developed, their availability will be publicized.

COMMENT: The Department should be concerned with the impact the additional costs imposed by these rules will have on insurance rates in the State. Citizens of New Jersey already pay the highest rates in the country.

RESPONSE: The cost of clean air must be borne by everyone. It is expected that some of the cost will be passed on to the customer. However, since complying coatings are available for use, which should preclude the need for control equipment, no large increase in costs is expected. Therefore, there should be little impact on insurance rates.

COMMENT: Any refinishing facility that installs and maintains a control device to comply with the rule should be allowed to add a pro rata charge to every repair order which no insurance company operating in the State should be allowed to refuse to pay. Auto body shops do not control what is paid for repairs and are not allowed by the insurance industry to pass on costs. The industry is willing to help clean up the air, but it must be done in a cost effective manner that does not result in the closing of more than half the industry.

RESPONSE: The Department does not anticipate the need for control equipment because complying coatings are available. Therefore, there should not be any large cost to be passed on to consumers.

COMMENT: Other alternatives must be looked at before expensive afterburners are required. While some shops do not meet the 25 car minimum now, as larger shops are forced out of business by the costs of afterburners, smaller shops will pick up their business and they will soon reach the 25 car exemption, producing a domino effect. Better delivery systems are being developed and, while in their infancy now, will be one way of lowering VOS at a much more reasonable cost. Reformulation of products is also an alternative.

RESPONSE: There should not be a need for afterburners, since complying refinishing coatings exist. In addition, the continued development of delivery systems and coatings will some day enable the Department to reduce the exclusion rate that applies to automobile refinishing.

COMMENT: The proposed amendment will provide an incentive to auto shops in the State to remain very small businesses because of the large economic burden placed on larger facilities, while doing nothing to enhance air quality. To cover the capital cost of $242,000 for a thermal oxidation unit, amortized over a five year period, and the annual maintenance costs of $42,000 contained in the proposal, a shop now at capacity and doing $1,950,000 per year in business would need an annual sales increase of $248,288 or 13.25 percent. An increase of this magnitude would be intolerable in light of the current insurance crisis. A different estimate arrived at a necessary increase of $900,900 in sales to cover the $45,000 estimated annual operating costs, which is a 35 percent increase in operating costs. If installation is included, there would be a 60 percent rise in costs over a five year period. With no decrease in the number of vehicles repaired and the fact that large facilities will not remain competitive with smaller shops since the insurance industry will require the lowest price be sought, the result will be many small, nonconforming facilities contributing to one very large air quality problem in the State. The Department should consider the situation further.

RESPONSE: The Department has considered the situation and does not anticipate a great need for incinerators as control. Complying coatings exist, and their use will preclude the need for add-on control.

Also, in considering the figures presented on costs, the Department arrived at different costs. A thermal oxidation unit with a capital cost of $242,000 amortized over five years at 12 percent interest and the annual maintenance costs yields a total of $109,000. With a five percent profit margin, this comes to $115,000 per year which is less than half of the $248,288 cited. In fact, if a thermal oxidation unit is amortized over 10 years, the total annual costs would be $84,830. With a five percent profit margin, $89,100 in increased sales would be needed. This is only a five percent increase in annual sales.

COMMENT: The proposed VOS control systems for auto body shops have costs ranging well into six figures according to the proposal. This is far beyond the economic and technological means of most shops. One commenter cited a cost range of $175,000 to $750,000 for incinerators fired by natural gas and stated some areas may not even have the high pressure gas feeds necessary. Another commenter contended that a USEPA study shows capital costs of $150,000 and operating costs of $339,600. These are not cost-effective technologies for the few pounds per day per shop of VOS emissions controlled. Another commenter stated that the costs associated with one type of carbon adsorption unit, which has an initial cost of $20,000, include the purchase of 800 pounds of charcoal which costs about $600 but is saturated in one to two weeks. Regeneration is costly and the efficiency of the carbon decreases to a point where it does not meet State requirements according to several commenters. Additionally, there is no technology for small unit regeneration according to one commenter, so disposal is the only option. As a hazardous waste, it is expensive to dispose of. Because of these factors, the annual maintenance cost can be $30,000. Combined with downdraft spray booth costs of $45,000 to $65,000, the doors of many shops will be closed.

RESPONSE: The Department does not anticipate a need for add-on control. There are complying coatings available for use by automobile refinishers.

The costs contained in the proposal were based on certain assumptions. As stated by USEPA in their study, the assumptions used for specific facilities must be carefully considered. These cost estimates are not directly comparable.

There are carbon adsorption units specifically designed for the high air flow, low VOS concentrations associated with automobile refinishing spray booths. These systems continually regenerate the carbon and are 90 to 95 percent efficient. The carbon adsorption is an intermediate step in these units, which concentrate the VOS for final processing. There is no hazardous waste generated if carbon adsorption is not used for final control.

COMMENT: One commenter supports the exclusion of small auto shops from the rule because of the cost that would be involved to control a small amount of emissions but stated that even for larger shops the proposed technologies will be difficult to implement because of cost, space availability, and operating capability. Intermittent operation of a spray booth coupled with the high air flow needed for safe operation present unique problems conventional control hardware cannot cope with. As

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an example, the carbon adsorption systems suggested could produce up to two tons of carbon per week which would have to be regenerated. This will be expensive if a vendor can even be identified. On-site storage of carbon, a hazardous waste, in such quantities is expected to subject the shop to hazardous waste regulations as they would no longer be a "small generator" which will require even further documentation. Further, there is no known domestic manufacturer of adsorption or regeneration equipment suitable to the high air flow of the industry. As a final note, the commenter stated that several of the oxygenated VOS common to current refinishing coatings are not particularly well adsorbed on carbon.

RESPONSE: The Department knows of three companies located in the United States which supply adsorption equipment suitable for use in the automobile refinishing industry. This equipment is 90 to 95 percent efficient, and there is no need for carbon regeneration. The carbon is continuously regenerated in this system.

The Department does not anticipate the need for control equipment. The use of complying coatings should be sufficient.

COMMENT: Equipment cleaning requirements for automobile refinishers mandating enclosed cleaning could result in large VOS reductions. The commenter estimated that conservatively this would result in a VOS emission reduction of 342 tpy. Two counties in Texas and parts of California have put such a requirement in their rules.

RESPONSE: This suggestion is being taken under consideration for future inclusion in the rule.

COMMENT: N.J.A.C. 7:27-16.5(i)1ii, which refers to mathematical combination of source emissions, should be retained rather than deleted as proposed. USEPA allows for 24 hour averaging within each category of coatings. Many sources, including automotive refinishers, can only comply with the assigned VOS limits by a daily weighted average of the coating applied because of the different coatings and their corresponding different VOS contents which must be applied. The 24 hour averaging within each category should continue to be allowed.

RESPONSE: The provision allowing for 24 hour averaging within each category of coatings is found at N.J.A.C. 7:27-16.5(a)3. This provision applies to a single surface coating line. The mathematical combination of source emissions is for use with several coating lines. Because New Jersey has such a severe ozone nonattainment problem, mathematical combinations of source emissions will no longer be accepted. The averaging allowed under N.J.A.C. 7:27-16.5(a)3 will remain.

COMMENT: Small business owners who are already overburdened with regulatory paperwork will be unnecessarily burdened by the proposed reporting requirement. The Permit to Construct and Operate required for any spray booth or add-on control technology should provide all necessary information.

Another commenter suggested that the reports referred to in N.J.A.C. 7:27-16.5(i)2 should be required of manufacturers, not auto body shops who will not have meaningful information on the advancement of technology. To maintain pressure on the manufacturer by the user, the shops should instead be required to certify they have contacted their manufacturer within that four month period and to identify on each submission the names of the manufacturers of products used so the Department can contact manufacturers directly to confirm progress.

RESPONSE: The reports to be submitted to the Department should include the information mentioned: what manufacturers have been contacted and whether they can supply complying products. If manufacturers claim a needed time frame for development and manufacturing, this should also be reported.

The reporting requirement only involves four reports, less if compliance is achieved prior to June 15, 1990. Also, reports are required only if complying coatings are to be used. The use of add-on control does not require the submission of reports. This should not be a significant burden to the industry and is necessary to ensure timely compliance.

COMMENT: N.J.A.C. 7:27-16.5(i)2 should be revised to include to whom the detailed progress reports should be submitted.

RESPONSE: The Department agrees that the recipient of the reports should be stated. N.J.A.C. 7:27-16.5(i)2 has been revised to include this information.

COMMENT: The exclusion rates in the proposed amendment are much too lenient. The exemption level in the rule leaves three quarters of the industry uncontrolled which discourages reformulation of coatings by coating suppliers. Enforcement will be dangerously compromised as every shop will start painting only 24 cars per week or four cars per day. The rule should instead exempt very few with most of the industry being covered.

RESPONSE: The adoption of this rule is the first time that the category of automobile refinishing is being regulated in New Jersey. The Department is starting with the larger facilities to allow those involved to gain the experience and expertise to implement the use of complying coatings on a large scale. At a later date, the exclusion rate will probably be lowered to include smaller facilities, and the experience and expertise that has developed can be used to make the transition easier for these smaller businesses.

COMMENT: The definitions need to be clarified to make it apparent that the 25 vehicles per week figure used in N.J.A.C. 7:27-16.5(k) refers to refinishing of an entire vehicle. One commenter questioned whether refinishing one-fourth of four cars would count as one repaint job. Other commenters stated that regardless of whether a "vehicle" is part of the automobile or the whole automobile, this must be more clearly defined in the rule.

RESPONSE: All figures used by the Department in its analysis of the emissions from this source and in setting the exclusion rate were based on coating of a complete vehicle or, in other words, "complete car equivalents". Under this analysis, coating one-fourth of one car would not be considered as a vehicle in determining whether the 25 vehicles per week standard was met, but coating one-fourth of four vehicles would count as one vehicle. In order to avoid the confusion created by the use of a number of vehicles per week standard, the exemption has been changed to a gallons per week standard. The exemption is now for any facility using less than 50 gallons of coating in a week. This standard is equivalent to that originally proposed and will affect the same facilities.

COMMENT: There is no reference within the rule as to whether the exemption in N.J.A.C. 7:27-16.5(c)2 for auto body shops using less than two and a half gallons per day and the 25 vehicle per week exemption are to be "additive" or "exclusive". This should be clarified with the commenter suggesting they should be exclusive.

RESPONSE: N.J.A.C. 7:27-16.5(k) specifically states "The provisions of this section shall not apply to", and then lists the exemption for automobile refinishing. It is an absolute exemption exclusive of the exemption included in N.J.A.C. 7:27-16.5(c)2 and no further clarification is needed.

COMMENT: N.J.A.C. 7:27-16.5(k) grants refinishing operations and small custom topcoaters emitting less than 10 tpy an exemption. This exemption should be applied to all new and existing source operations as VOS from auto body shops have no less environmental impact than VOS from any other source.

RESPONSE: Subchapter 16 applies to existing sources. New sources are subject to the Department's SOTA policy under subchapter 8. Although the VOS from both new and existing sources has the same environmental impact, controlling it does not have the same economic impact. New sources can easily incorporate advances in control, or new, less polluting, processes. Existing sources must retrofit control which is more expensive. For this reason the same standard is not being applied to both.

COMMENT: The summary material refers to a 10 tpy exclusion for industries but only provides an exclusion for automobile refinishers of 25 vehicles per week implying this is equivalent to 10 tpy. Even using an excessive estimate of two gallons of thinned coating per vehicle, the number should more appropriately be 33 vehicles. Using a more realistic figure of one gallon per vehicle, the weekly exclusion should be at least 50 vehicles. Another commenter estimated 10 tpy would equate to 38 total refinishes a week or, for repairs, 435 refinished panels per week. Based on an average of four panels per repair, this means 108 cars per week. The Department should clarify whether 25 cars or 10 tpy is the actual exclusion rate. If 25 cars is the exclusion rate, a very unfair economic advantage is created for the larger facility. Ten tpy should be used as more quantifiable and less ambiguous. The permit to construct and operate should give any data necessary to enforce this standard.

Another commenter estimated a 2.3 tpy exclusion rate results from the 25 vehicle standard but stated even this was too high.

RESPONSE: In order to eliminate the confusion generated by the number of vehicles exemption, a gallon of coating used exemption rate has replaced it. Usage of two gallons for all coats and full vehicles were assumed. This yields a 50 gallon per week exemption rate, which has been adopted.

COMMENT: The Department should provide a two tier exclusion level for automobile refinishers. Because of differences in area coated, the 25 vehicles per week exclusion applied to shops doing collision repairs is well below the rate that yields the desired VOS emissions goal of less than 10 tpy per facility, while paint shops specializing in complete refinishing can easily exceed 10 tpy at the 25 vehicle per week rate. Shops

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doing collision repairs should have an exclusion level of 50 vehicles per week while facilities specializing in overall refinishing should have an exclusion level of 25 vehicles per week.

RESPONSE: The exemption rate adopted, based on gallons of coating used and not number of vehicles, eliminates this discrepancy. There is now no need for a two tier exclusion rate.

COMMENT: One commenter supported the provision limiting the VOS content of coatings used for automobile refinishing and custom topcoating as both consistent with New York and furthering the source reduction goals of the State. Complying coatings exist for nearly every surface coating application and paint reformulation is perhaps the most effective and least expensive means of controlling VOS emissions in auto refinishing according to a report the commenter cited. However, several commenters disagreed with exemptions for small automobile refinishers and custom topcoaters. The Department should address all sources of these emissions. New York and the South Coast AQMD in California have included small sources in their recently adopted rules. The following reasons were given for eliminating this exemption:

1. Exempting businesses refinishing less than 25 vehicles per week will exempt 90 percent of automobile refinishing shops in the State.

2. Enforceability problems will result if these exemptions remain. Departmental monitoring of operations will be necessary to verify who is subject to the rule.

3. The South Coast AQMD deleted an exemption for facilities using less than one gallon per day from their rule on adoption because of the loophole this created. This exemption would have exempted shops refinishing seven automobiles or less per week. The South Coast AQMD found that an additional 20 tpy emission reduction would be achieved by including these facilities.

4. The New Jersey SIP for ozone requires smaller and smaller sources of VOS be regulated to attain the NAAQS.

Another commenter disagreed that enforceability would be a problem stating that a requirement that shops make records available would be sufficient.

RESPONSE: The Department believes that the exemption is reasonable. This is the first time automobile refinishing and custom topcoating will be subject to VOS rules. The SIP does require the regulation of smaller and smaller sources, but even large automobile refinishers are small sources. As the technology advances, the exclusion rate can be lowered. For now, it represents a balance of the environment, cost, and continued availability of a desired service.

Enforcement of this new provision will be no more difficult or problematic than for any other type of surface coating. The Department has various means of determining the large refinishing operations in the State and the reporting requirement will help in keeping track of their progress toward compliance.

N.J.A.C. 7:27-16.6

COMMENT: The cost impact in the proposal is greatly understated both in terms of dollars per ton of VOS emission reduced and in terms of the economic dislocation caused by the expensive controls on economically marginal emission sources. The complexity of installing sophisticated equipment such as thermal oxidizers has also been underestimated. Industrial experience for plants equivalent to Model 2 in the proposal shows cost effectiveness closer to $1,200 per ton than the $300.00 per ton estimated by the Department. A full economic evaluation may determine that halving the exclusion rates is not a desirable VOS emission reduction strategy.

RESPONSE: The range of cost effectiveness stated in the proposal for the Model 2 plant is $300.00 to $3,000 per ton of VOS emission reduction. The $1,200 cited by the commenter falls within this range. The Department has not underestimated the cost of controlling such sources. Nor is the range of costs unreasonable. There are other means of reducing emissions besides add-on control. Changes in operations can be used. Some economically marginal sources may be shut down because of any additional expense, but the Department does not anticipate many of these cases.

COMMENT: The rule encourages industry to install smaller, less energy efficient equipment to comply since there is no recognition of the quantity of materials processed in the equipment. Many companies may opt to replace larger VOS emitting sources with a number of smaller VOS emitting sources to comply. The less energy efficient equipment coupled with more sources of VOS fugitive emissions will result in an increase in overall VOS emissions as well as an increase in combustion by-products.

RESPONSE: The replacement of manufacturing sources with smaller ones is not a reasonable course of action. Such equipment would be subject to SOTA requirements as new sources, and possibly emission offset requirements. These requirements would cover fugitive emissions and combustion by-products. They would most likely be more stringent than the requirements the existing equipment must meet, making this option unattractive.

COMMENT: The Department's Air Pollution Emissions Data System's data base significantly overstates existing emissions, and hence reductions available, by a factor of between two and ten because of well-known inaccuracies. A random survey by the commenter of five pharmaceutical plants in New Jersey in 1983 showed emission reductions from halving the exclusion rates of 17.5 tpy or 0.047 tons per day (tpd), which is insignificant compared to the State goal for the new exclusion rates of 11 tpd. In addition, the cost of these control measures extrapolates to expenditures of $47.9 million per tpd of VOS reductions. This is not a cost effective allocation of resources.

RESPONSE: The Department recognizes the drawbacks of the data base, and that is why it was not relied on for this proposal. A survey of the permit files was performed as the basis of the economic and environmental analyses for this source category. The information gathered from the permit files supports a cost estimate of up to $90,900 per ton of VOS removed, but not $47.9 million. Actual costs will be lower than the upper limit estimated in the proposal because of the use of excess capacity in existing control equipment, manifolding of some emissions, and other such practices.

COMMENT: The summary states manufacturing sources are included as sources subject to VOS control. In determining a manufacturing source, the output should be a consideration and the production of steam by resource recovery incinerators should qualify them for inclusion under the rule. A well designed plant would produce 3.3 tpy of non-methane hydrocarbons including some toxic organics if it burns 500 tons of garbage a day. With at least one facility proposed in each county and the fact that some will burn as much as 2,000 tons of garbage per day, this is a significant production of VOS. Incineration facilities should be required to meet higher furnace temperatures of 2,000 degrees Fahrenheit to reduce production of dioxins and VOS with the addition of thermal deNOx technology which USEPA considers to be Best Available Control Technology (BACT) to control increased nitrogen oxide production at this higher incineration temperature. Reduction of VOS must be a responsibility of all sources including billion dollar industries.

RESPONSE: Incinerators and other fuel burning equipment are specifically exempt from subchapter 16. Such equipment, which operates at high temperatures, are known to emit VOS in relatively small amounts and in low concentrations in very large exhaust gas flows. The amounts of VOS emitted are not sufficient to justify the imposition of control equipment or constant monitoring. Incinerators operate on a continuous basis. Emissions of 3.3 tpy of VOS is only 0.75 pounds per hour. This emission rate falls below the exclusion rate of the applicable range in Table 4 of N.J.A.C. 7:27-16.6.

In addition, the resource recovery facilities presently being designed and built are new sources. As such, they are subject to the more stringent requirements of Prevention of Significant Deterioration and LAER. There is no need for these facilities to be subject to subchapter 16.

COMMENT: One commenter stated the additional sources covered by halving the exclusion rate in N.J.A.C. 7:27-16.6(a) will result in a significant reduction of VOS emissions and further stated this provision is similar to a rule adopted by New York.

RESPONSE: The Department appreciates the support and agrees that a significant reduction in VOS emissions will result from this amendment.

COMMENT: Halving of the exclusion rates as proposed at N.J.A.C. 7:27-16.6 is not unreasonable for new sources starting June 15, 1990, but is unreasonable for existing facilities. This should only apply to new sources and existing sources as they are altered or modified as defined in N.J.A.C. 7:27-8. Retrofitting existing sources, especially for older facilities, can be economically prohibitive. One source can cost $2 million in capital costs and approximately $200,000 in operating costs per year and a facility may have 15 to 200 existing sources at one site. It would be impossible to develop, design, and implement retrofitting in any one year for anything other than the most simple sources. Larger and older facilities do not have resources to accomplish simultaneous retrofit of all sources.

RESPONSE: The exclusion rates that apply to new sources were halved in August, 1985, and since that time smaller sources have been required to be controlled. The highest cost for retrofitting an existing

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source was estimated by the Department to be $72,000 in capital costs and $33,000 for operating costs. Because no supporting information was submitted with the commenter's cost estimates, the Department cannot verify their accuracy. Also no information was submitted that contradicted the timeframe included in the rule. The Department believes the time given for compliance is sufficient.

COMMENT: Chemical facilities have up to 1000 air permits per plant covered by subchapter 16. It will take an enormous and prolonged effort to engineer controls for each stack, obtain needed permit revisions and install the equipment. To account for this, the compliance date should be extended by approximately one year to June 1991. This will provide the necessary time for selection, design, procurement, installation, startup and debugging of complex equipment and for facilities to "tie-in" several small sources to a single thermal oxidizer.

RESPONSE: It is highly unlikely that all existing sources at a facility will be affected by the reduction in the exclusion rates. The percent of uncontrolled emissions standard contained in Column 2 of Table 4 in N.J.A.C. 7:27-16.6 has been maintained. Any source which meets this criterion will not require additional control. The majority of sources previously subject to N.J.A.C. 7:27-16.6 are in compliance with Column 2 of Table 4. Therefore, the number of sources that will be affected is not expected to be large. The Department does not believe an extra year is needed for compliance.

COMMENT: N.J.A.C. 7:27-16.6 will substantially increase nitrogen oxides (NOx) emissions for those operations which, due to size and low concentration of VOS in the exhaust, still must resort to afterburners in order to comply with the lower allowable VOS emission rates. Reducing a small quantity of VOS could actually increase NOx emissions which are known precursors of ozone. The commenter cited a source for which compliance would create over 17 pounds per hour of NOx emission for a reduction of 3.5 pounds per hour of VOS. To address this problem, a new N.J.A.C. 7:27-16.6(c)3 should be added as follows:

"Where an existing source complies with an existing BACT based standard, and the required VOS reduction required in N.J.A.C. 7:27-16.6 will result in an equal or greater increase in NOx emission, this source shall be exempt from N.J.A.C. 7:27-16.6."

RESPONSE: The commenter did not supply the particulars about the cited source, so the Department cannot confirm the contention that 17 pounds of NOx would be created during the control of 3.5 pounds of VOS. Incinerating 3.5 pounds of toluene in a boiler burning 5000 cubic feet of natural gas will result in approximately 0.5 pounds of NOx. This is not a significant amount. In addition, there are other means of control, such as condensers, which do not generate other pollutants. The Department believes there is no need for the suggested exemption.

COMMENT: To encourage voluntary industry reduction of overall emissions, some credit should be given to those who agree to lower maximum annual average VOS emissions. A new N.J.A.C. 7:27-16.6(d) should be added to read:

"Where there is an enforceable annual average pound per hour VOS, lower than the maximum pound per hour VOS, and when this lower limit is written into and made part of the air permit for the source, this lower annual average should be used to determine compliance with N.J.A.C. 7:27-16.6. The maximum pound per hour VOS emission shall remain on the permit as an enforceable instantaneous limit. Documentation shall be provided to the Department, if requested, to confirm the attainment of the lower annual average emission rates."

RESPONSE: The ozone standard is not an annual average, but an hourly average. Therefore, no credit can be given for annual averages.

COMMENT: Sources subject to Federal or State BACT standards should be exempt from N.J.A.C. 7:27-16.6. N.J.A.C. 7:27-16.10 allows a three year variance where it can be demonstrated that SOTA has not progressed to a point where compliance is attainable. Since the governing agency continually refines and improves the standards as new technological breakthroughs are achieved, this exclusion should be automatic, specific to the source and should not expire. To accomplish this, N.J.A.C. 7:27-16.10 should be amended to include a new provision (c) as follows:

"If a source is regulated, either directly or indirectly, by a federal or state regulation that requires Best Available Control Technology controls on any specific VOS, this source is permanently exempt from this same source in excess of the appropriate exclusion rates in N.J.A.C. 7:27-16.6."

RESPONSE: BACT applies to new sources. Subchapter 16, in general, applies to existing sources. As BACT is redefined, the Department does not go back to existing sources, with or without control equipment, if they are in compliance with the VOS emission limits established in subchapter 16. Therefore, there is no need for an exemption as described.

Agency Initiated Changes

As a result of the Department's review of the proposed amendments, the following changes have been made to clarify the meaning of the rules to avoid misunderstandings.

1. N.J.A.C. 7:27-16.5(i)1ii, a reference to the exclusion contained in N.J.A.C. 7:27-16.5(k) is added since both exclusions apply to custom topcoating and refinishing.

2. In N.J.A.C. 7:27-16.5(i)2, the term "subject to an emission limitation for custom topcoating or refinishing" is added to further clarify that this provision, as part of N.J.A.C. 7:27-16.5(i), is limited to these types of facilities.

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

7:27-16.1 Definitions

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

"Custom topcoating of automobiles and light duty trucks" means the application of surface coating formulations, except during original equipment manufacturing, to the main body or other exterior areas of any passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans, to achieve a finish that meets individual specifications, including, but not limited to, custom color, design, or gloss. It shall not include the use of adhesion promoters, zinc phosphate pretreatments, uniforming finishes or blenders, specialty primers for plastics, or low reflective accessory coatings.

"Refinishing of automobiles and light duty trucks" means the recoating of the main body or other exterior areas of any *[worn or damaged]* passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed primarily for purposes of transportation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans. ***It shall not include the use of adhesion promoters, zinc phosphate pretreatments, uniforming finishes or blenders, specialty primers for plastics, or low reflective accessory coatings.***

. . .

"Surface coating of automobiles and light-duty trucks" means the application, flashoff, and curing of prime, topcoat and repair coat on main body and other exterior sheet metal of any passenger car or passenger car derivative capable of seating 15 or fewer passengers or any motor vehicle rated at 8,500 pounds (3,856 kilograms) gross weight or less which is designed primarily for purposes of transporation of property, or a derivative of such vehicle including, but not limited to, pick-ups, vans, and window vans.

. . .

7:27-16.2 Storage of volatile organic substances

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

(h) No person shall cause, suffer, allow, or permit the storage of a VOS in any stationary storage tank equipped with an external floating roof, unless:

1. Prior to June 15, 1990, any such storage tank having a maximum capacity of 40,000 gallons (151,400 liters) or greater is equipped with control apparatus as determined in accordance with the procedure for using Table 1A or as approved by the Department as being equally or more effective in preventing the emission of VOS into the outdoor atmosphere.

2. As of June 15, 1990 and continuously thereafter, any such storage tank containing a VOS having a vapor pressure of 1.0 pounds per square inch absolute (50 millimeters of mercury) or greater at standard conditions and having a maximum capacity of 20,000 gallons (75,700 liters) or greater is equipped with a double seal-envelope combination or equipment approved by the Department as being equally or more effective in preventing the emission of VOS into the outdoor atmosphere. ***For the secondary seal, the gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the seal**

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and the tank wall shall not exceed 1.0 square inch per foot (6.5 square centimeters per 0.3 meters) of tank diameter.*

Procedure for Using Table 1A
(No change.)

TABLE 1A
(No change.)

(i) Prior to June 15, 1990, no person shall cause, suffer, allow, or permit the storage of a VOS having a vapor pressure of greater than 1.5 pounds per square inch absolute (75 millimeters of mercury) at standard conditions in any stationary storage tank having a maximum capacity of greater than 40,000 gallons (151,400 liters) and equipped with an external floating roof having a vapor-mounted primary seal unless such tank is equipped with a second seal-envelope combination. The gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the secondary seal and the tank wall shall not exceed 1.0 square inch per foot of tank diameter (6.5 square centimeters per 0.3 meters of tank diameter).

(j)-(m) (No change.)

7:27-16.5 Surface coating and graphic arts operations

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

(c) The provisions of (a) and (b) above and (f), (g), and (h) below shall not apply to any individual surface coating or graphic arts operation in which the total surface coating formulations containing VOS are applied:

1. Prior to June 15, 1990, at rates not in excess of one gallon per hour and five gallons per day;

2. As of June 15, 1990 and continuously thereafter, at rates not in excess of one half gallon per hour and two and one half gallons per day; or

3. (No change in text.)

(d) Any person subject to the emission standards specified in Table 3A pertaining to spray prime and spray topcoat surface coating formulations may, as an alternative to the maximum allowable emissions set forth in Table 3A, comply with the provisions of Table 3C.

TABLE 3A

MAXIMUM ALLOWABLE EMISSIONS FOR AUTOMOBILE AND LIGHT DUTY TRUCK SURFACE COATING OPERATIONS

Type of Operation	Maximum Allowable Emissions Per Volume of Coating (Minus Water)		Final Compliance Date
	Pounds Per Gallon	Kilograms Per Liter	
Prime			
Electrophoretic dip prime	1.2	0.14	December 31, 1982
Spray prime	2.8	0.34	December 31, 1984
Topcoat			
Spray topcoat	2.8	0.34	December 31, 1986
Repair	4.8	0.58	December 31, 1986
Custom Topcoating	5.0	0.60	June 15, 1990
Refinishing	*[5.0	0.60	June 15, 1990]*
***Base coat**	**6.0**	**0.75**	**June 15, 1990**
Clear coat	**4.4**	**0.54**	**June 15, 1990**
All others	**5.0**	**0.60**	**June 15, 1990***

Table 3B-Table 3E (No change.)

(e)-(h) (No change.)

(i) Any person subject to an emission limitation for custom topcoating or refinishing set forth in Table 3A of *[N.J.A.C. 7:27-16.5]* ***this section*** shall comply with the following schedule:

1. By July 1, 1989, a plan must be submitted to the *[Department]* ***Assistant Director, Enforcement Element, New Jersey Department of Environmental Protection, CN 027, Trenton, NJ 08625,*** for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include:

i. (No change.)

ii. Documentation of the rates of application of surface coating formulations in surface coating operations excluded under the provisions of (c) above ***or (k) below***;

iii. (No change from proposal.)

2. By July 1, 1989 and by the first day of every fourth month thereafter, persons ***subject to an emission limitation for custom topcoating or refinishing*** using surface coating reformulation as a measure for complying with the provisions of (a) above shall submit detailed reports describing the progress made with specific surface coating manufacturers and suppliers toward the development of suitable formulations. ***The reports shall be sent to the Assistant Director, Enforcement Element, at the address in (i)1 above.***

3. By no later than six months prior to the applicable final compliance date set forth in Table 3A, construction or installation of equipment and control apparatus, in accordance with the approved plan, shall commence.

4. (No change.)

(j) (No change.)

(k) The provisions of this section shall not apply to:

1. The surface coating of aircraft and marine vessel exteriors, exclusive of parts coated prior to installation or assembly;

2. The refinishing of automobiles, if *[production is less than 25 vehicles per week]* ***coating use is less than 50 gallons (200 liters) per week***;

3. The customized topcoating of automobiles and trucks, if *[production is less than four vehicles per day]* ***coating use is less than 48 gallons (182 liters) per week***; and

4. (No change.)

7:27-16.6 Source operations other than storage tanks, transfers, open top tanks, surface cleaners, surface coaters and graphic arts operations

(a) No person shall cause, suffer, allow, or permit VOS to be emitted into the outdoor atmosphere from any source operation not subject to the provisions of N.J.A.C. 7:27-16.2, 16.3, 16.4, 16.5, 16.7, and 16.8 in excess of the maximum allowable emission rate as determined in accordance with the procedure for using Table 4.

Procedure for Using Table 4

1.-4. (No change.)

5. The maximum allowable emission rate shall be the pounds (kilograms) per hour (or per batch cycle hour) equivalent to the percent of the process emissions shown in Column 2 or:

i. Prior to June 15, 1990, the Exclusion Rate shown in Column 3, whichever is greater.

ii. As of June 15, 1990 and continuing thereafter, the Exclusion Rate shown in Column 4, whichever is greater.

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TABLE 4

MAXIMUM ALLOWABLE EMISSIONS FOR VOS FROM SOURCE OPERATIONS

Column 1	Column 2	Column 3		Column 4	
Range Determined From Table 5	Maximum Allowable Emissions, Percent of Process Emissions by Weight	Exclusion Rates Prior to June 15, 1990 Continuous or Batch Cycle Emission		Exclusion Rates As of June 15, 1990 Continuous or Batch Cycle Emission	
		Pounds Per Hour	Kilograms Per Hour	Pounds Per Hour	Kilograms Per Hour
Range A	15	7	3.18	3.5	1.59
Range B	15	6	2.72	3	1.36
Range C	15	5	2.27	2.5	1.14
Range D	12	4	1.82	2	0.91
Range E	10	3	1.36	1.5	0.68
Range F	8	2	0.91	1	0.46
Range G	2	1	0.45	0.5	0.23
Range H	0.3	0	0	0	0
Range I	15	7	3.18	3.5	1.59

TABLE 5
(No change.)

(b) (No change.)

(c) For the purpose of this section:

1. (No change.)

2. Source operations normally falling within the category subject to the provisions of this section but used for research or development purposes are exempt from compliance with (a) above provided they do not exceed the hourly exclusion rates for their ranges, as set forth in Table 4, Column 3 or Column 4, as applicable; or provided:

i. No more than two times the applicable hourly exclusion rate set forth in Table 4, Column 3 or Column 4 is emitted in any one hour; and

ii. No more than three times the applicable hourly exclusion rate set forth in Table 4, Column 3 or Column 4 is emitted in any 24-hour period.

3. The maximum allowable emission rate for source gases physically combined (manifolded) for more than one source operation shall be the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27-16.5(a), (f), (g) and (h), and 16.6(a) and (b). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 4, Column 3 or Column 4;

4. (No change.)

5. The Department may approve such mathematical combining of source gases provided:

i. (No change.)

ii. The sum of the emission rates of separate gases does not exceed the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27-16.5(a), (f), (g) and (h), and 16.6(a) and (b). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 4, Column 3 or Column 4;

iii.-ix. (No change.)

(d)-(l) (No change.)

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Adopted Amendments: N.J.A.C. 8:33-1.5 and 2.8

Proposed: February 6, 1989, at 21 N.J.R. 272(a).

Adopted: May 24, 1989, by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: May 24, 1989 as R.1989 d.322, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: June 19, 1989.

Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:

Written comments were received from the New Jersey Association of Health Care Facilities.

COMMENT: The proposed amendments would result in automatic approval of any unbatched application for the conversion of hospital beds to non-acute use, precluding consideration and approval of possible competing certificate of need applications that might offer a more valuable service to the community.

RESPONSE: The proposed amendments do not alter the existing rules and planning criteria which are currently used for the purpose of evaluating hospital conversion projects. An unbatched certificate of need application will continue to be subject to these requirements for bed conversions, and the project may be denied by the Commissioner if it does not comply with the applicable rules.

COMMENT: Affected parties may not have the opportunity to express their views regarding an unbatched application, given the weakening of the health systems agencies.

RESPONSE: The proposed amendments require that hospital conversion applications receive a full certificate of need review. Any application undergoing a full review, whether batched or unbatched, is reviewed by the local health systems agency. The health systems agencies are currently funded by the State for this purpose. During the process, certificate of need applicants and affected parties have the opportunity to express their views regarding projects.

COMMENT: Hospital-to-nursing-home conversion projects may be costly and may result in the creation of facilities with quality shortfalls due to the absence of adequate areas for dining, activities, and so forth. The high cost of bringing hospitals into compliance with the building codes for long-term care may subsequently be passed on to patients.

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RESPONSE: The Long-Term Care Policy Manual at N.J.A.C. 8:33H-3.5(a)iv states that hospitals converting beds to long-term care shall be given priority consideration provided that "the capital cost of converting the acute care beds is less than that of new long-term care facility construction." The latter provision and other existing criteria will continue to be used in evaluating certificate of need applications for the conversion of hospital beds to long-term care use. The unit costs and programmatic features of an unbatched hospital conversion project can readily be compared to those of other long-term care applications received by the Department during prior batching cycles. If an application for the conversion of hospitals beds to long-term care does not compare favorably with similar projects and does not comply with the applicable guidelines, and rules, it may be denied by the Commissioner.

Full text of the adoption follows.

8:33-1.5 Batching cycles and deadlines dates

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

(e) Applications for New Jersey hospitals to convert all licensed acute care beds (medical/surgical, pediatric, obstetric, or ICU/CCU) to any non-acute care licensure category(ies), through merger/acquisition (transfer of ownership) projects or through independent action, to which batching criteria as described at N.J.A.C. 8:33-1.5 and 2.8 otherwise would apply, are not required to be batched. All such applications shall undergo the full certificate of need review process beginning in the cycle within which they apply.

8:33-2.8 Batching

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

(d) Applications for New Jersey hospitals to convert all licensed acute care beds (medical/surgical, pediatric, obstetric, or ICU/CCU) to any non-acute care licensure category(ies), through merger/acquisition (transfer of ownership) projects or through independent action, to which batching criteria as described at N.J.A.C. 8:33-1.5 and 2.8 otherwise would apply, are not required to be batched. All such applications shall undergo the full certificate of need review process beginning in the cycle within which they apply.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Alcoholism Treatment Facilities
Standards for Licensure
Adopted Repeal and New Rules: N.J.A.C. 8:42A

Proposed: December 19, 1988 at 20 N.J.R. 3059(a).

Adopted: May 24, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: May 24, 1989 as R.1989 d.323, **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-1 et seq., specifically 26:2H-5.

Effective Date: June 19, 1989.

Expiration Date: June 19, 1994.

Summary of Public Comments and Agency Responses:

The Department received two letters of comment concerning the proposed standards for licensure of alcoholism treatment facilities. Letters were submitted by the New Jersey State Nurses Association and by the health officer of the Atlantic City Division of Health. The Department responded to each of the commenters by letter. Copies of the letters of comment submitted and the Departmental letters of response are on file at the Office of Administrative Law and at the Standards Program of the Department.

Changes have been made to the proposed rules. The Department discovered errors in the text of the proposed rules as published in the December 19, 1988, New Jersey Register at 20 N.J.R. 3059(a). Most of these errors were corrected by means of a notice of administrative correction, which was published on April 3, 1989, at 21 N.J.R. 833(a). Four of the definitions in N.J.A.C. 8:42A-1.3, however, require correction in this notice of adoption. In each case, one or more sentences had been omitted from the definition in the December 19, 1988, notice of proposal. Consequently, the definitions of "clinical note," "drug administration," "patient treatment plan," and "unit dose drug distribution system" have been formally completed through the addition of the previously omitted sentences. The complete definitions were approved by the Health Care Administration Board prior to publication of the notice of proposal. Also, part of the definition of "drug administration" had been added to proposed N.J.A.C. 8:42A-13.3(a) in the notice of proposal. As a result of the completion of the definition of "drug administration" in adopted N.J.A.C. 8:42A-1.3, the definitional addition to proposed N.J.A.C. 8:42A-13.3(a) has been deleted. Identical language does appear, however, at N.J.A.C. 8:42A-8.5(a)1.

Further review of the proposed rules by the Department and the Office of Administrative Law has led to a number of technical and editorial changes. Proposed N.J.A.C. 8:42A-2.3(c), which requires "health care" facilities to submit construction plans to the Department for review and approval prior to the initiation of construction, has been revised so as to clearly pertain to "alcoholism treatment" facilities. Proposed N.J.A.C. 8:42A-8.5(a)9ii and the title of proposed N.J.A.C. 8:42A-13.3 have also been revised, solely in the interest of clarity. An editorial change has been made to proposed N.J.A.C. 8:42A-15.2(a)15.

On the basis of a recommendation of the New Jersey State Nurses Association, proposed N.J.A.C. 8:42A-8.4(a)3 has been rewritten so as to more clearly indicate the responsibilities of licensed nursing personnel which must be performed by a registered professional nurse.

In response to another comment submitted by the New Jersey State Nurses Association, the Department has revised proposed N.J.A.C. 8:42A-8.5(a)9iii in such a way that it now requires a declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts to be made at the termination of each tour of nursing duty regardless of whether or not a unit dose drug distribution system is utilized. Since maintenance of a declining inventory facilitates effective drug control, this deletion of the exemption for facilities with a unit dose system will not diminish the ability of the rules to promote patient health and safety.

A change has been made to proposed N.J.A.C. 8:42A-18.3(a)1, which specifies patient identification data to be included in the patient medical record. Whereas the proposed rule lists "race" as an optional entry in the medical record, the revised rule requires that the patient's race be recorded, as it is recorded on the Alcoholism-Intake Record of the Department. Proposed N.J.A.C. 8:42A-3.8(b) requires the facility to complete the Alcoholism-Intake Record for each patient.

The following is a summary of the comments and recommendations received by the Department and the corresponding Departmental responses.

COMMENT: A definition of "social setting detoxification services" should be added to proposed N.J.A.C. 8:42A-1.3, and a subchapter regarding "social setting detoxification units" should be added to the rules. Adoption of the new rules should be delayed pending development of the recommended subchapter.

RESPONSE: The rules have not been revised in the manner suggested. The recommended additions would take the rules beyond their intended scope and would require a decision on the part of the Division of Alcoholism of the Department of Health to establish social setting detoxification as a category for licensure. The letter of comment has been forwarded to the director of the Division of Alcoholism. Although the Department does not currently license social setting detoxification services, the Department does currently license facilities as alcoholism treatment facilities and, therefore, does not agree that the proposed rules "should be delayed."

COMMENT: The Atlantic City Division of Health stated that "establishment of these regulations will eliminate social setting detoxification in Atlantic City. . . ."

RESPONSE: It should not be the case that "establishment of these regulations will eliminate social setting detoxification in Atlantic City", since neither current N.J.A.C. 8:42A nor proposed N.J.A.C. 8:42A extends to social setting detoxification.

COMMENT: In "regulating all detoxification centers as medical models," the Department is misinterpreting the intent of N.J.S.A. 26:2B-16 and 17.

RESPONSE: The purpose of N.J.A.C. 8:42A is to establish standards for licensure of alcoholism treatment facilities, not to interpret the Alcoholism Treatment and Rehabilitation Act, N.J.S.A. 26:2B-7 et seq. Thus the Department does not agree that the intent of N.J.S.A. 26:2B-16 and 17 has been "misinterpreted." The authority of the Standards Program of the Department to promulgate rules for licensure of health care

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facilities derives, rather, from the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq.

COMMENT: The economic impact of the proposed rules on free-standing detoxification centers would be "dramatic." The Atlantic City Division of Health stated that the annual cost of operating its facility would increase by at least $172,000.

RESPONSE: The Department contends that the differences between the current rules and the proposed rules with respect to their economic implications for facilities which provide social setting detoxification services may have been overestimated. The basis for the commenter's claim that the proposed rules would cause the annual cost of operating its facility to increase by at least $172,000 is unclear. The proposed rules are similar in structure to the current rules and are less stringent in some cases. Adoption of the rules will not result in the reclassification of facilities providing social setting detoxification services as facilities providing medical detoxification services. More specifically, adoption of the rules will not change the classification of the facility in Atlantic City to that of a facility licensed to provide medical detoxification services.

COMMENT: Adoption of the proposed rules would make it more difficult for homeless and uninsured alcoholics to receive treatment for alcoholism. The purpose of the rules is to protect the health and safety of patients in alcoholism treatment facilities and, therefore, the rules apply uniformly to all facilities licensed to provide this particular modality of care regardless of the economic status of the patient population.

COMMENT: Although proposed N.J.A.C. 8:42A-8.4(a)3 requires that the initial assessment of the nursing care needs of the patient be performed by a registered professional nurse, the rule should also require that further assessment be performed by a registered professional nurse.

RESPONSE: After considering the comment, the Department has deleted the misleading language concerning "the initial assessment" from proposed N.J.A.C. 8:42A-8.4(a)3 and replaced it with a statement that a registered professional nurse shall assess the nursing care needs of the patient, develop nursing diagnoses, and prepare the nursing portion of the patient treatment plan based upon the assessment.

COMMENT: In reference to the proposed rule regarding the prepouring of drugs, N.J.A.C. 8:42A-8.5(a)3, the possibility of there being a facility without a unit dose drug distribution system was questioned.

RESPONSE: Although pharmaceutical services in licensed hospitals must now have a unit dose drug distribution system, it is not the case that all alcoholism treatment facilities currently utilize a unit dose system. In fact, only facilities providing medical detoxification services are required by N.J.A.C. 8:42A-13.5(a)3 to have a unit dose drug distribution system within three years of the effective date of the rules. N.J.A.C. 8:42A-8.5(a)3, therefore, recognizes the fact that some drug doses will be prepared outside of the context of a unit dose drug distribution system.

COMMENT: One respondent questioned the basis for the difference between requirements for hospitals and for alcoholism treatment facilities with respect to the storage of intravenous infusion solutions.

RESPONSE: N.J.A.C. 8:42A-8.5(a)6 requires that intravenous infusion solutions be stored in accordance with a system of accountability specified by the facility. This rule is equivalent to N.J.A.C. 8:43B-10.10(a)12 of the Manual of Standards for Hospital Facilities.

COMMENT: Proposed N.J.A.C. 8:42A-8.5(a)6 should state that drugs requiring refrigeration must be kept in a locked refrigerator.

RESPONSE: N.J.A.C. 8:42A-8.5(a)6 is intended to ensure that all drugs requiring refrigeration are both refrigerated and kept in a locked space. The rule lists three alternative ways of satisfying these requirements. The Department contends that specification of a single method would be unduly restrictive. The rule, therefore, has not been revised.

COMMENT: The New Jersey State Nurses Association questioned the basis for the part of proposed N.J.A.C. 8:42A-8.5(a)9iii which exempts facilities with a unit dose drug distribution system from having to make a declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts at the termination of each tour of nursing duty.

RESPONSE: As discussed above, the Department has revised proposed N.J.A.C. 8:42A-8.5(a)9iii in response to this comment by deleting the exemption for facilities with a unit dose system. Since the unit dose drug distribution system described in N.J.A.C. 8:42A-13.5(a)3 allows for a 72-hour supply of medication to be available in the patient care area, the Department agrees that maintenance of a declining inventory will increase the effectiveness of the facility's procedures concerning accountability for drugs.

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

CHAPTER 42A
MANUAL OF STANDARDS FOR LICENSURE OF ALCOHOLISM TREATMENT FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:42A-1.1 Scope

The rules in this chapter pertain to all facilities which provide inpatient alcoholism treatment services, including hospitals which provide these services as a separate service. These rules constitute the basis for the licensure of alcoholism treatment facilities by the New Jersey State Department of Health.

8:42A-1.2 Purpose

Alcoholism treatment facilities provide specialized, integrated care to patients in order to assist these patients in reaching the functional levels of which they are capable as well as to protect their health and safety. The aim of this chapter is to establish minimum rules to which an alcoholism treatment facility must adhere in order to be licensed to operate in New Jersey.

8:42A-1.3 Definitions

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

"Alcoholic" means any person who chronically, habitually, or periodically consumes alcoholic beverages to the extent that such use substantially injures his or her health or substantially interferes with his or her social or economic functioning in the community on a continuing basis, or who has lost the power of self-control with respect to the use of such beverages, pursuant to N.J.S.A. 26:2B-7 et seq., and amendments thereto.

"Alcoholism treatment facility" means a facility or a distinct part of a facility which is licensed by the New Jersey State Department of Health to provide health care for the prevention and treatment of alcoholism under medical supervision for 24 or more consecutive hours to two or more patients who are not related to the governing authority or its members by marriage, blood or adoption.

1. The alcoholism treatment facility may be a designated unit of a licensed health care facility providing any or all of the services specified in these rules.

2. The alcoholism treatment facility may provide medical detoxification services if licensed by the Department to provide medical detoxification services.

"Ancillary nursing personnel" means unlicensed workers employed to assist licensed nursing personnel.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bylaws" means a set of rules adopted by the facility for governing its operation. A charter, articles if incorporation, and/or a statement of policies and objectives is an acceptable equivalent.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" means a written, signed and dated notation made by a health care professional who renders a service to the patient. ***Clinical notes are written into the patient's medical record the day service is rendered.***

"Co-dependency" means behavior on the part of one or more of the patient's family which impedes the ability of the patient to achieve his or her treatment goals and which derives from the co-dependent's need to maintain the patient's dependence on alcohol.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding,

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instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970, N.J.S.A. 24:21-1 et seq.

"Current" means up-to-date, extending to the present time.

"Daily census" means the number of patients residing in the facility on a given day.

"Department" means the New Jersey State Department of Health.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

"Documented" means written, signed, and dated.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures. ***The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.***

"Drug dispensing" means a procedure entailing the interpretation of the original or direct copy of the prescriber's order for a drug and, pursuant to that order, the proper selection, measuring, labeling, packaging, and issuance of the drug to a patient or a service or unit of the facility, in conformance with all applicable Federal, State, and local rules and regulations.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Family" means persons related by blood, marriage, or commitment.

"Formulary" means a list of all drugs approved for use in the facility. The formulary may also list drugs which are considered appropriate for treating specific illnesses, or may list substitutions of chemically or therapeutically equivalent drugs for trade name prescription drugs.

"Full-time" means relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

"Hospital" means a health care facility as defined in the Manual of Standards for Hospital Facilities, N.J.A.C. 8:43B.

"Intervention" means a planned process in which a suspected substance abuser is confronted with evidence of his or her unacceptable behavior and may be presented with a warning that certain consequences will follow unless the person agrees to take specified measures regarding evaluation and treatment.

"Intravenous infusion admixture service" means the preparation by pharmacy personnel of intravenous infusion solutions requiring compounding and/or reconstitution.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties, and responsibilities, and accountability required, of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Medical detoxification services" means treatment, prescribed by a physician and conducted under medical supervision, to reduce a patient's symptoms of withdrawal from alcohol or other chemical substances, which includes observation, monitoring, assessment, treatment, counseling, and the referral of the patient for continued care.

"Medical record" means all records in the facility which pertain to the patient, including radiological films.

"Monitor" means to observe, watch, or check.

"Multidisciplinary team" means those persons, representing different professions, disciplines, and services, who work together to provide care to the patient.

"Nosocomial infection" means an infection acquired by a patient while in the facility.

"Nursing unit" means a continuous area on one floor, approved by the Department, which includes rooms housing patients.

"Patient" means any person admitted to an alcoholism treatment facility pursuant to N.J.S.A. 26:2B-7 et seq., and amendments thereto.

"Patient treatment plan" means a written plan of patient care which contains documentation of joint planning by the multidisciplinary team. ***The plan is based upon the patient assessments of all services participating in the patient's care and includes care and treatment to be provided and a discharge plan. Each service that the patient receives develops its own portion of the treatment plan.***

"Prescriber" means a person who is authorized to write prescriptions in accordance with Federal and State laws.

"Progress note" means a written, signed, and dated notation summarizing information about health care provided and the patient's response to it.

"Reasonable hour" means any time between the hours of 8 A.M. and 8 P.M. daily.

"Restraint" means a physical device or chemical (drug) used to limit, restrict, or control patient movements.

"Self administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed, labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand.

"Staff education plan" means a written plan which describes a coordinated program for staff education for each service, including inservice programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises within view of the supervisor.

"Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. ***Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.***

8:42A-1.4 Qualifications of the administrator of the alcoholism treatment facility

The administrator shall have a baccalaureate degree in administration, a social science, or a related field and two years of full-time, or full-time equivalent, administrative or supervisory experience. One

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year of full-time, or full-time equivalent, administrative or supervisory experience may be substituted for each year of the four-year degree requirement. Four years of such administrative or supervisory experience may be used to satisfy the degree requirement.

8:42A-1.5 Qualifications of alcoholism counselors
Each alcoholism counselor shall be certified by the New Jersey Alcoholism Counselor Certification Board as a Certified Alcoholism Counselor or shall be actively pursuing certification as indicated by the documented completion of at least one-fourth of the educational and direct alcoholism counseling requirements for certification by the New Jersey Alcoholism Counselor Certification Board during the 12 months immediately preceding the licensure survey.

8:42A-1.6 Qualifications of dietitians
(a) Each dietitian shall:
1. Be registered or eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association; or
2. Have a bachelor's degree from a college or university with a major in foods, nutrition, food service or institution management, or the equivalent course work for a major in the subject area; and have completed a dietetic internship accredited by the American Dietetic Association or a dietetic traineeship approved by the American Dietetic Association, or have one year of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility; or
3. Have a master's degree plus six months of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility.

8:42A-1.7 Qualifications of the director of alcoholism counseling services
(a) The director of alcoholism counseling services shall:
1. Have a master's degree in social work, psychology, guidance and counseling, or a related field, or shall be certified by the New Jersey Alcoholism Counselor/Certification Board as a Certified Alcoholism Counselor; and
2. Have one year of full-time, or full-time equivalent, supervisory experience in the provision of alcoholism counseling services.

8:42A-1.8 Qualifications of the director of nursing services
The director of nursing services shall be a registered professional nurse and shall have at least one year of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a health care facility.

8:42A-1.9 Qualifications of food service supervisors
(a) Each food service supervisor shall;
1. Be a dietitian; or
2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association; or
3. Be a graduate of a course, approved by the New Jersey State Department of Education, providing 90 or more hours of classroom instruction in food service supervision and have one year of full-time, or full-time equivalent, experience as a food service supervisor in a health care facility, with consultation from a dietitian; or
4. Have training and experience in food service supervision and management in a military service equivalent to the programs listed in (a) 2 or 3 above.

8:42A-1.10 Qualifications of licensed practical nurses
Each licensed practical nurse shall be so licensed by the New Jersey State Board of Nursing.

8:42A-1.11 Qualifications of medical record practitioners
(a) Each medical record practitioner shall:
1. Be eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Medical Record Association; or
2. Be a graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Medical Record Association.

8:42A-1.12 Qualifications of pharmacists
Each pharmacist shall be so registered by the New Jersey State Board of Pharmacy.

8:42A-1.13 Qualifications of physicians
Each physician shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

8:42A-1.14 Qualifications of registered professional nurses
Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:42A-2.1 Certificate of Need
(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for, and receipt of, a Certificate of Need issued by the Commissioner.
(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:
Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625
(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:42A-2.2 Application for licensure
(a) Following receipt of a Certificate of Need, any person, organization, or corporation desiring to operate an alcoholism treatment facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:
Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
(b) The Department shall charge a nonrefundable fee of $500.00 plus $3.00 per bed for the filing of an application for licensure of an alcoholism treatment facility and for the annual renewal of the license. If alcoholism treatment services are offered by a licensed hospital as a separate service, the hospital shall be charged $150.00 for the filing of an application for licensure of the service and $150.00 for the annual renewal of the license.
(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program and:
Division of Alcoholism
New Jersey State Department of Health
CN 362
Trenton, New Jersey 08625-0362

8:42A-2.3 Newly constructed or expanded facilities
(a) The licensure application for a newly constructed or expanded facility shall include written approval of final construction of the physical plant by:
Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
(b) An on-site inspection of the construction of the physical plant shall be made by representatives of Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

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(c) Any *[health care]* ***alcoholism treatment*** facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:42A-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:42A-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto:

2. Written approvals are on file with the Department from the local zoning, fire, health and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this chapter; and

5. Personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:42A-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less, as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met.

8:42A-2.6 Surrender of license

The facility shall notify each patient, the patient's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:42A-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:42A-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary license and facilities with a full license.

8:42A-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted 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 Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Adminstrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42A-3.1 Types of services provided to patients

(a) The facility shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients in accordance with the rules in this chapter.

(b) The facility shall provide at least medical, nursing, and alcoholism counseling services directly in the facility.

(c) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

(d) If a hospital facility licensed by the Department provides alcoholism treatment services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the Manual of Standards for Hospital Facilities, N.J.A.C. 8:43B.

8:42A-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days

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prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:42A-3.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing, Certification and Standards Program of the Department.

8:42A-3.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) The facility shall maintain written staffing schedules. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. Staffing schedules shall be implemented to ensure continuity of care.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training. The staff education plan shall be developed at least annually and implemented throughout the year.

1. All personnel shall receive orientation at the time of employment and continuing in-service education regarding emergency plans and procedures, discharge planning, and the infection prevention and control program.

(e) At least one person trained in cardiopulmonary resuscitation in an approved course, as defined in the facility's policy and procedure manual, shall be in all patient areas when patients are present.

(f) The facility shall have awake and on duty at all times in each residential building at least two direct care staff members, as defined in the facility's policies and procedures, for 50 or fewer patients, and at least one additional staff member for each additional 50 or fewer patients, based on the daily census.

8:42A-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's treatment, philosophy, mission, and objectives, which shall include at least the following:

i. Methods for providing patients with a foundation for recovery and rehabilitation, based on personal responsibility;

ii. The concept of alcoholism having multiple causes and effects; and

iii. Provision of services for the management of signs and symptoms of withdrawal from alcohol;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the facility;

3. A description of the modalities of treatment provided, including a listing of services and procedures which may be performed in the facility;

4. A description of the quality assurance program for patient care and staff performance;

5. Specification of business hours and visiting hours;

6. Policies and procedures for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.[1], including, but not limited to, the following:

i. The designation of a staff member(s) to be responsible for coordinating the reporting of diagnosed and/or suspected cases of child abuse and/or neglect, recording the notification to the Division of Youth and Family Services on the medical record, and serving as a liaison between the facility and the Division of Youth and Family Services;

ii. The development of written protocols for the identification of diagnosed and/or suspected cases of child abuse and/or neglect and the treatment of abused and/or neglected children; and

iii. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis;

7. Policies and procedures for the maintenance of personnel records for each employee, including at least his or her name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance;

8. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and persons providing direct patient care services through contractual arrangements or written agreement. Such policies and procedures shall ensure that:

i. Each employee who cannot document the result of a previous rubella screening test shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test approved by the Department. Each new employee who cannot document the result of a previous rubella screening test shall be given the rubella screening test upon employment. An employee who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine shall not be required to have a rubella screening test;

(1) Each employee tested shall be informed in writing by the facility of the results of his or her rubella screening test;

(2) Each employee's personnel record shall contain documentation of all tests performed and the results; and

(3) A list shall be maintained of all employees who are seronegative and unvaccinated, to be used in the event that an employee is exposed to rubella and a determination is needed as to whether or not the employee may continue to work;

9. A written plan for informing persons in need of alcoholism treatment services, co-dependents, the public, and health care providers of the availability of the facility's services, including designation of staff responsible for implementation of the plan; and

10. Policies and procedures for making information about alcohol use and misuse available to the public.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

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[1]Copies of the law can be obtained from the local district office of the Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, New Jersey State Department of Human Services, CN 717, Trenton, New Jersey 08625.

8:42A-3.6 Patient transportation

The facility shall develop and implement a method of patient transportation for services provided outside the facility which shall include plans for security and accountability for the patient and his or her personal possessions, as well as transfer of patient information to and from the provider of the service.

8:42A-3.7 Written agreements

(a) The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered and require that services be provided in accordance with the rules in this chapter.

(b) The facility shall have in effect a written agreement with one or more hospitals such that emergency care, inpatient hospital care, and other hospital services are available to the facility's patients.

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8:42A-3.8 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7725 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption or cessation of services listed in the rules in this chapter;

2. Termination of employment of the administrator, and the name and qualifications of his or her replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to patients and/or personnel, disruption of services, and extent of damages; and

5. All alleged or suspected crimes committed by or against patients, which shall also be reported at the time of occurrence to the local police department in accordance with Federal laws regarding confidentiality (42 CFR Part 2).

(b) The facility shall complete for each patient the Alcoholism—Intake Record and Alcoholism—Termination Record forms provided by the Department. The patient care information so collected shall be submitted to the Department on a monthly basis.

8:42A-3.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility between 8:00 A.M. and 8:00 P.M. daily to patients and the public:

1. All waivers granted by the Department;

2. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiences from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding patient rights;

4. Visiting hours (including at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily) and business hours of the facility, including the policies of the facility regarding limitations and activities during these times; and

5. The names and addresses of the members of the governing authority.

8:42A-3.10 Information reportable to State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2, the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing on forms provided by the Department, within 30 days of the proceeding or action, request, settlement, judgment or award. Forms shall be submitted to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. (Questions may be directed to the Board office at 609-292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board; and

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgment, or award; and

vi. Other information relating to the settlement, judgment, or arbitration award as may be required by the Board.

8:42A-3.11 Maintenance of records

(a) The facility shall maintain a chronological listing of patients admitted and discharged, including the destination of patients who are discharged.

(b) The facility shall maintain and submit to the Department statistical data as required by the Department.

8:42A-3.12 Financial reports

(a) Upon development of a uniform cost reporting system approved by the Health Care Administration Board, the facility shall adopt and maintain the uniform system of cost reporting, from which reports will be prepared to meet the requirements of the Commissioner as stated in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(b) An annual financial report shall be submitted to the Department and shall include a statement of income and expenditure by unit of service.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:42A-4.1 Responsibility of the governing authority

(a) The facility shall have a governing authority which shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;

2. Provision of a safe physical plant equipped and staffed to maintain the facility and services;

3. Adoption and documented review of written bylaws, or their equivalent, according to a schedule established by the governing authority;

4. Appointment, reappointment, assignment of privileges, and curtailment of privileges of health care professionals, and written confirmation of such actions;

5. Development and documented review of all policies and procedures, according to a schedule established by the governing authority;

6. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within the facility. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;

7. Determination of the frequency of meetings of the governing authority and its committees, or their equivalents, holding such meetings, and documenting them through minutes;

8. Delineation of the duties of the officers of any committees, or their equivalents, of the governing authority. When the governing authority establishes committees or their equivalents, their purpose, structure, responsibilities, and authority, and the relationship of the committee or its equivalent to other entities within the facility shall be documented;

9. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents; and

10. Approval of the medical staff bylaws or their equivalent.

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SUBCHAPTER 5. ADMINISTRATION

8:42A-5.1 Appointment of administrator

(a) The governing authority shall appoint a full-time administrator who shall be available on the premises of the facility at all times. An alternate shall be designated in writing to act in the absence of the administrator.

(b) If an administrator has both administrative and other functions, written documentation of the administrator's time spent in the other functions shall be maintained.

(c) The administrator's time spent in administrative functions shall not be included in computation of staffing levels for nursing or counseling services.

8:42A-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;

2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Participating in the quality assurance program for patient care;

4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

5. Ensuring the provision of staff orientation and staff education; and

6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families.

SUBCHAPTER 6. PATIENT CARE POLICIES

8:42A-6.1 Patient care policies and procedures

(a) Written patient care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures regarding the following:

1. Patient rights;

2. The determination of staffing levels on the basis of patient need;

3. The referral of patients to other health care providers, including medical consultants and specialists, in order to provide a continuum of patient care;

4. Emergency care of patients, including notification of the patient's family; care of patients during an episode of communicable disease; and care of patients with tuberculosis which is not communicable following initiation of chemotherapy, or is nonpulmonary and therefore not transmissible;

5. Obtaining written informed consent and the circumstances under which written informed consent shall be obtained;

6. Patient instruction and health education, including the provision of printed and/or written instructions and information for patients, with multilingual instructions as indicated;

7. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq.;

8. Discharge, termination by the facility, transfer, and readmission of patients, including criteria for each;

9. The care and control of pets if the facility permits pets in the facility or on its premises;

10. Patients leaving the facility, including delineation of the person(s) who shall accompany the patient and permitted destinations;

11. Provision of clothing suitable for the climate and weather conditions, of proper size, and compatible with that worn by the patient's peers, in the event that clothing is provided by the facility;

12. The housekeeping activities which a patient may perform as part of his or her patient treatment plan, as documented in the patient's medical record; and

13. Care of deceased patients, including, but not limited to, policies and procedures regarding the following:

i. Pronouncement of death: The patient's family shall be notified at the time of death. The deceased shall not be discharged from the facility until pronounced dead and the death documented in the patient's medical record;

ii. Removal of the deceased from rooms occupied by other patients; and

iii. Transportation of the deceased in the facility, and removal from the facility, in a dignified manner.

8:42A-6.2 Financial arrangements

(a) The facility shall:

1. Inform patients of the fees for services and supplies (where a fee is charged);

2. Maintain a written record of all financial arrangements with the patient and/or his or her family, with copies furnished to the patient;

3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

i. Upon written approval and authority of the patient and/or his or her family, who shall be given a copy of the written approval;

ii. Upon written orders of the patient's physician, stipulating specific services not included in the admission agreement;

iii. Upon 15 days' prior written notice to the patient and/or his or her family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or

iv. In the event of a health emergency involving the patient and requiring immediate special services or supplies to be furnished during the period of the emergency;

4. Describe for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance; and

5. Describe sliding fee scales and any special payment plans established by the facility.

8:42A-6.3 Intervention

The facility shall participate in the process of intervention. Written policies and procedures shall specify, at least, the responsibilities of staff and the information to be documented with respect to the process of intervention.

8:42A-6.4 Admission and retention of patients

(a) The administrator or the administrator's designee shall conduct an interview with the patient and the patient's family prior to or at the time of the patient's admission. The interview shall include at least orientation of the patient to the facility's policies, business hours, fee schedule, services provided, patient rights, and criteria for admission, treatment, and discharge. A summary of the interview shall be documented in the patient's medical record.

(b) Each patient admitted shall be placed under the supervision of a physician.

(c) Each patient, upon admission, shall be certified by a physician to be free of communicable disease, mobile under his or her own power with or without assistive devices, and able to leave the building by himself or herself, except in a facility licensed by the Department to provide medical detoxification services.

(d) Unconscious persons shall not be admitted to the facility, unless the facility is licensed by the Department to provide medical detoxification services. Such persons who are not admitted shall be immediately transferred to a hospital.

(e) Patients requiring medical detoxification shall be admitted only to facilities licensed by the Department to provide medical detoxification services.

(f) Patients under 18 years of age shall be admitted only to an area within the facility approved for such occupancy by the Department.

(g) A patient who manifests such a degree of behavioral disorder that he or she is a danger to himself or herself or others, or whose behavior interferes with the health or safety of other patients, shall not be admitted or retained.

(h) If the facility is not of fire-resistive construction, patients who are blind or who can walk independently assisted by crutches shall be housed on the first floor.

(i) Patients who require wheelchairs shall be restricted to the first floor of the facility. A facility which has been granted any physical plant waiver by the Department shall not admit a patient requiring a wheelchair.

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(j) If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or his or her family shall be given the reason for such denial in writing, signed by the administrator, within 15 days.

(k) Each patient shall be admitted or retained only upon his or her own volition.

8:42A-6.5 Involuntary discharge

(a) Written notification by the administrator shall be provided to a patient of a decision to involuntarily discharge the patient from the facility. The notice shall include the reason for discharge and the patient's right to appeal. A copy of the notice shall be entered in the patient's medical record.

1. The patient shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the patient's medical record with the disposition or resolution of the appeal.

8:42A-6.6 Verbal and telephone orders

Verbal and telephone orders shall be written into the patient's medical record by the person accepting them and countersigned by the prescriber within 24 hours. Verbal and telephone orders shall be limited to emergency situations, as defined in the facility's policies and procedures.

8:42A-6.7 Notification of family

The patient's family shall be notified in the event that the patient sustains any injury requiring medical care, any accident or incident occurs, the patient is transferred from the facility, or the patient expires, in accordance with the facility's policies and procedures. Such notification shall be given and then documented in the patient's medical record, at the time of occurrence.

8:42A-6.8 Use of restraints

(a) The facility shall not use any physical, chemical, or other type of restraint, unless the facility is licensed by the Department to provide medical detoxification services.

1. If restraints are used, the facility shall develop and implement policies and procedures regarding their use including, as a minimum:

i. Specification of the uses of restraints and types of restraints permitted, specification of the frequency with which a patient placed in restraint shall be monitored and of the personnel responsible for monitoring the patient, and specification of the required documentation;

ii. Prohibition of the use of locked restraints and confinement of a patient in a locked or barricaded room, and prohibition of the use of restraints for punishment or for the convenience of facility personnel;

iii. Specification that restraints be used so as not to cause physical injury or discomfort to the patient and only when authorized for a specified period of time. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each one-hour period in which a physical restraint is employed, to ensure opportunity for elimination of body wastes, good body alignment, circulation, and change of position; and

iv. A requirement that a physical restraint be used only when authorized in writing by a physician except when necessitated by an emergency, in which case it shall be approved by the medical director or the director of nursing services or his or her designee.

8:42A-6.9 Calibration of instruments

All instruments of measurement shall be calibrated in accordance with manufacturers' instructions.

8:42A-6.10 Interpretation services

The facility shall provide interpretation services if the patient population is non-English-speaking and for patients who are blind or deaf.

SUBCHAPTER 7. MEDICAL SERVICES

8:42A-7.1 Provision of medical services

Medical services shall be available to all patients 24 hours a day, seven days a week.

8:42A-7.2 Appointment of medical director

(a) The governing authority shall appoint a physician to serve as medical director.

(b) The medical director or the medical director's alternate, who shall be a physician, shall be available to patients 24 hours a day, seven days a week. Available, in this instance, means capable of being reached and able to be present at the facility within 30 minutes.

(c) If the facility is licensed to provide medical detoxification services, the medical director or the medical director's alternate shall be on the facility's premises daily, seven days a week.

8:42A-7.3 Medical director's responsibilities

(a) The medical director shall be responsible for the direction, provision, and quality of medical services provided to patients. The medical director shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the medical service;

2. Participating in planning and budgeting for the medical service;

3. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for the medical staff, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Developing, implementing, and reviewing written medical policies in cooperation with the medical staff, including, but not limited to, the following:

i. Medical staff bylaws or their equivalent:

ii. A plan for medical staff meetings and their documentation through minutes; and

iii. A mechanism for establishing and implementing procedures relating to credentials review, delineation of qualifications, medical staff appointments and reappointments, evaluation of medical care, and the granting, denial, curtailment, suspension, or revocation of medical staff privileges.

8:42A-7.4 Responsibilities of physicians

(a) The physician responsible for providing care to the patient shall document in the patient's medical record:

1. An admission, medical, alcoholism, and drug history, a diagnosis, and a report of a physical examination upon the patient's admission;

2. Certification that the patient requires the level of care provided by the facility;

3. Orders for laboratory tests including at least the following:

i. Complete blood count and differential;

ii. Serological test for syphilis as needed;

iii. Routine and microscopic urinalysis;

iv. Smear and culture for gonorrhea as appropriate;

v. A Mantoux tuberculin skin test with five tuberculin units of purified protein derivative;

(1) If the Mantoux tuberculin skin test reaction is less than 10 millimeters (mm) of induration (not significant) between 48 and 72 hours after administration, the test shall be repeated one to two weeks later;

(2) If the first or second Mantoux tuberculin skin test reaction is 10 or more mm of induration (significant), a chest X-ray shall be performed and, if not compatible with tuberculosis, shall be followed by chemoprophylaxis therapy, when prescribed by a physician. If the chest X-ray is compatible with tuberculosis, then the patient shall be referred for additional medical tests, clinical evaluation, and chemotherapy;

(3) Patients who have had two Mantoux tuberculin skin tests within the six-month period immediately prior to admission shall not be required to have another Mantoux tuberculin skin test upon admission. Patients who have had one Mantoux tuberculin skin test within the six-month period immediately prior to admission shall be required to have only one additional Mantoux tuberculin skin test. Patients who are readmitted to the facility shall be tested with a frequency of once per year;

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(4) Patients who have had a significant reaction to a Mantoux test prior to admission shall have a chest X-ray performed if one has not been performed and documented since the time of the reaction or if the patient is symptomatic for tuberculosis. If the chest X-ray is compatible with tuberculosis, then the patient shall be referred for additional medical tests, clinical evaluation, and chemotherapy;

(5) Patients who have had a significant reaction to Mantoux test prior to admission and who have completed at least six months of chemoprophylaxis or chemotherapy may be exempted from receiving a chest X-ray, unless symptomatic for tuberculosis;

vi. Drug screening as appropriate; and

vii. Multiple screening tests related to the medical consequences of the patient's substance abuse;

4. The medical portion of the patient treatment plan;

5. Progress notes; and

6. All initial and subsequent orders for services to be provided to the patient, including frequency and modality of treatment.

(b) The physician shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

SUBCHAPTER 8. NURSING SERVICES

8:42A-8.1 Provision of nursing services

(a) Nursing services shall be available to all patients 24 hours a day, seven days a week.

(b) The facility shall have at least one licensed nurse on duty at all times. Additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

(c) A facility providing medical detoxification services shall provide at least one registered professional nurse on each nursing unit 24 hours a day, seven days a week, in addition to having at least one licensed nurse on duty at all times in the facility. Additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

8:42A-8.2 Appointment of director of nursing services

(a) A registered professional nurse shall be appointed in writing as the full-time director of nursing services. A registered professional nurse shall be designated in writing to act in the director's absence.

(b) Computation of nurse staffing levels shall not include the hours of the director of nursing services unless the facility does not provide medical detoxification services and has 30 or fewer beds.

8:42A-8.3 Responsibilities of director of nursing services

(a) The director of nursing services shall be responsible for the direction, provision, and quality of nursing services provided to patients. The director of nursing services shall be responsible for, but not limited to, the following:

1. Developing and implementing a nursing philosophy, written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;

2. Participating in planning and budgeting for the nursing service;

3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for nursing and ancillary nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Ensuring that nursing services are provided to the patient as specified in the nursing portion of the patient treatment plan, which shall be initiated upon the patient's admission, and that nursing personnel are assigned to patients in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

8:42A-8.4 Responsibilities of licensed nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., as interpreted by the New Jersey State Board of Nursing, and written job descriptions, licensed nursing personnel shall be responsible for providing nursing care, including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;

2. Care toward prevention of infection, accident, and injury;

3. Assessing the nursing care needs of the patient, preparing the nursing portion of the patient treatment plan based upon the assessment, providing nursing care services as specified in the nursing portion of the patient treatment plan, reassessing the patient, and revising the nursing portion of the patient treatment plan. *[The initial assessment shall be performed by a registered professional nurse.]* Each of these activities shall be documented in the patient's medical record***. A registered professional nurse shall assess the nursing care needs of the patient, develop nursing diagnoses, and prepare the nursing portion of the patient treatment plan based upon the assessment***;

4. Teaching, supervising, and counseling the patient, family, and staff regarding nursing care and the patient's needs. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel;

5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

6. Writing clinical notes and progress notes.

8:42A-8.5 Nursing care services related to pharmaceutical services

(a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All drugs administered are prescribed in writing and the order signed and dated by the prescriber. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration. ("Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39.) Drugs shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:

i. Registered professional nurses;

ii. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;

iii. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and

iv. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member;

2. Vital signs, as defined in the facility's policies and procedures, are measured prior to drug administration in situations specified in the facility's policies and procedures;

3. Drugs are not prepoured. Drugs shall be administered promptly after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;

4. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;

5. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the nurse who administered the drug;

6. All drugs are kept in locked storage areas, except intravenous infusion solutions which shall be stored according to a system of accountability, as specified in the facility's policies and procedures. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements;

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7. Drugs for external use are kept separate from drugs for internal use;

8. Needles and syringes are procured, stored, used, and disposed of in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and

9. Drugs are stored and verified according to the following:

i. Drugs in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs (except that drugs in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled drugs);

ii. The keys for the storage compartments for drugs in Schedules II, III, and IV shall be *[retained by]* ***kept on the person of*** one of those persons listed in (a)1 above; and

iii. *[Except in a unit dose drug distribution system, a]* ***A*** declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be made at the termination of each tour of duty wherever these drugs are maintained. This record shall be signed by both the outgoing and incoming nurses listed in (a)1 above. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse who administered the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse who witnessed the destruction or wasting of the drug (when appropriate).

(b) Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing may calculate and adminster drug doses in accordance with facility policy and the rules of the New Jersey State Board of Nursing.

SUBCHAPTER 9. PATIENT ASSESSMENTS AND TREATMENT PLAN

8:42A-9.1 Patient assessment

(a) Each patient shall have a written patient treatment plan. The patient treatment plan shall be developed from the assessments of each service participating in the patient's care and shall be entered in the patient's medical record. Treatment planning shall be initiated upon the patient's admission.

1. The patient assessment shall include, but not be limited to, assessment of the medical, psychological, social, recreational, legal, and vocational and educational needs of the patient, including the following:

i. A medical, alcoholism, and drug history, a record of interventions, if any, and a record of a physical examination;

ii. Histories of drinking and psychological problems or treatment, and a determination of the patient's current psychological status;

iii. A psychiatric assessment, if ordered by a physician;

iv. A social assessment of the patient's family and relationships, including relationships characterized by co-dependency, of legal proceedings involving the patient, and of the patient's current living situation;

v. A recreational assessment, including assessment of at least the patient's interests and physical abilities and limitations; and

vi. A vocational and educational assessment, including assessment of at least the following:

(1) Current work skills and potential for improving those skills or developing new ones;

(2) Educational background;

(3) Aptitudes, interests, and motivation;

(4) Physical abilities and any handicaps or disabilities; and

(5) Relationship with co-workers and supervisors.

2. Health care practitioners in each of the services participating in the patient's care shall develop the portion of the patient treatment plan which pertains to that service. Each portion of the patient treatment plan shall include care to be provided based upon the patient assessment.

3. The patient treatment plan shall include, but not be limited to, the following:

i. Orders for treatment or services, medications, and diet;

ii. The patient's goals for himself or herself;

iii. The specific goals of treatment or services;

iv. The time intervals at which the patient's response to treatment or services will be reviewed;

v. Anticipated time frame(s) for the accomplishment of the goals;

vi. The measures to be used to assess the effects of treatment or services;

vii. Plans for discharge; and

viii. The person(s) responsible for implementation of the plan.

4. The patient and, if indicated, family members shall participate in the development of the patient treatment plan, including the discharge plan. Participation shall be documented in the patient's medical record.

i. If the patient's participation in the development of the patient treatment plan is medically contraindicated, as documented by a physician in the patient's medical record, a designated member of the multidisciplinary team shall review the treatment plan with the patient prior to implementation, and the family shall be informed of the treatment plan. These activities shall be documented in the patient's medical record.

8:42A-9.2 Implementation of treatment plans

(a) Each health care practitioner participating in the patient's care shall provide services in accordance with the patient treatment plan.

(b) Health care practitioners providing services to the patient shall establish criteria to measure the effectiveness and outcome of services provided and shall assess and reassess the patient to determine if services provided meet the established criteria. Assessment and reassessment shall be documented in the patient's medical record.

(c) Health care practitioners providing services to the patient shall participate as members of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

1. The multidisciplinary team shall review and revise the patient treatment plan based upon the patient's response to the care provided by each of the participating services and upon the patient's abilities and disabilities. The patient's medical record shall indicate review and revision of the patient treatment plan.

SUBCHAPTER 10. ALCOHOLISM COUNSELING SERVICES AND SUPPORTIVE SERVICES

8:42A-10.1 Provision of alcohol counseling and supportive services

(a) Alcoholism counseling services shall be provided directly in the facility to meet the needs of patients.

(b) Staffing, equipment, and space for the provision of alcoholism counseling and supportive services shall be provided.

(c) Each patient shall be assigned to an alcoholism counselor who shall be responsible for ensuring that alcoholism counseling services and supportive services are provided in accordance with the patient treatment plan.

(d) There shall be a ratio of at least one alcoholism counselor for every eight patients, calculated on the basis of the daily census.

(e) The facility shall provide to each patient at least 10 hours of counseling per week, utilizing individual and/or group counseling techniques, on at least five separate occasions.

(f) The facility shall provide to each patient at least 10 didactic alcoholism sessions per week. Each session shall be one to two hours in duration.

(g) The facility shall provide family counseling, including counseling of family members exhibiting co-dependent behavior, in accordance with the patient treatment plan.

(h) A facility providing medical detoxification services shall provide alcoholism counseling as ordered by a physician, who shall

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specify in the patient's medical record when to initiate counseling and the frequency of counseling.

8:42A-10.2 Appointment of director of alcoholism counseling services

(a) The facility shall appoint a director of alcoholism counseling services who shall be responsible for the direction, provision, and quality of alcoholism counseling services. The director of alcoholism counseling services shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the alcoholism counseling service;

2. Participating in planning and budgeting for the alcoholism counseling service;

3. Ensuring that services are provided as specified in the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for alcoholism counseling personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:42A-10.3 Responsibilities of alcoholism counseling personnel

(a) In accordance with written job descriptions, each alcoholism counselor shall be responsbile for providing patient care, including, but not limited to, the following:

1. Assessing the counseling needs of the patient, preparing the counseling portion of the patient treatment plan based on the assessment, providing services as specified in the counseling portion of the patient treatment plan, reassessing the patient, and revising the counseling portion of the patient treatment plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

3. Writing clinical notes and progress notes.

8:42A-10.4 Supportive services

(a) The following supportive services shall be available to patients:

1. Vocational and educational counseling; and

2. Legal services by an attorney, who practices law pursuant to Article 6, Section 2, and Paragraph 3 of the Constitution of the State of New Jersey, and New Jersey Court Rule 1:21-1 et seq., when such services are related to the patient's treatment.

(b) The administrator shall assign responsibility for the coordination and delivery of supportive services to one or more persons, in accordance with written job descriptions, the written organizational plan, and the facility's policies and procedures.

(c) All supportive services shall be provided in accordance with the patient treatment plan.

1. All supportive services shall be documented in the patient's medical record by the person(s) providing the service(s).

(d) Each patient and the patient's family, including those family members exhibiting co-dependent behavior, shall be informed of the desirability of participating in self-help and support groups such as Alcoholics Anonymous, Al-Anon, and Alateen. The facility shall further ensure that literature and representatives of support groups are available to patients and their families. Patients and their families shall have access to meetings of support groups.

SUBCHAPTER 11. RECREATIONAL SERVICES

8:42A-11.1 Provision of recreational services

(a) A planned, diversified program of recreational activities shall be provided for patients, including individual and/or group activities.

(b) Diverse physical, social, intellectual, cultural, and recreational activities shall be available.

(c) Indoor and outdoor recreational activities shall be provided.

8:42A-11.2 Administrator's responsibility for recreational services

(a) The administrator or the administrator's designee shall be responsible for the direction, provision, and quality of the recreational service. The administrator shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the recreational service;

2. Ensuring that recreational services are provided as specified in the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient. All recreational services shall be documented in the patient's medical record;

3. Assisting in developing and maintaining written job descriptions for recreational service personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

4. Posting a current weekly recreational activities schedule where it can be read by patients and staff.

SUBCHAPTER 12. LABORATORY AND RADIOLOGICAL SERVICES

8:42A-12.1 Provision of laboratory and radiological services

(a) The facility shall make available laboratory and radiological services directly or through written agreement.

(b) All laboratory services shall be provided by facilities licensed or approved by the Department.

(c) Radiological services shall be provided by facilities licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiation Protection.

SUBCHAPTER 13. PHARMACEUTICAL SERVICES

8:42A-13.1 Provision of pharmaceutical services

Pharmaceutical services shall be available to patients 24 hours a day, seven days a week. If the facility has an institutional pharmacy, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department in accordance with the Controlled Dangerous Substances Acts.

8:42A-13.2 Pharmacy and Therapeutics Committee

(a) A multidisciplinary Pharmacy and Therapeutics Committee shall be appointed by, and accountable to, the governing authority. The committee shall be responsible for, but not limited to, the following:

1. Development of policies and procedures, approved by the governing authority, and documentation of their review. These policies and procedures shall govern evaluation, selection, obtaining, dispensing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients;

2. Development and at least annual review and approval of a current formulary; and

3. Review of medication errors and adverse drug reactions, as part of the facility's quality assurance program.

8:42A-13.3 Policies *[and procedures]* for drug administration

(a) The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. *[The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.]* Policies and procedures shall include, but not be limited to, the following:

1. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

2. Policies and procedures, approved by the Pharmacy and Therapeutics Committee and in accordance with these rules, regarding emergency kits and emergency carts, including the following:

i. Approval of their locations and contents;

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ii. Determination of the frequency of checking contents, including expiration dates;

iii. Approval of the assignment of responsibility for checking contents; and

iv. A requirement that emergency kits be secure, but not be kept under lock and key;

3. Policies and procedures, approved by the medical staff of the facility, to ensure that all drugs are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all drugs are administered in accordance with the laws of the State of New Jersey;

4. Policies and procedures for drug administration, including, but not limited to, establishment of the times for administration of drugs prescribed;

5. If facility policy permits, policies and procedures regarding self-administration of drugs, including, but not limited to, the following:

i. A requirement that self-administration be permitted only upon a written order of the prescriber;

ii. Storage of drugs;

iii. Labeling of drugs;

iv. Methods for documentation in the patient's medical record of self-administered drugs;

v. Training and education of patients in self-administration and the safe use of drugs; and

vi. Establishment of precautions so that patients do not share their drugs or take the drugs of another patient;

6. Policies and procedures for documenting adverse drug reactions, medication errors, and drug defects;

i. Allergies shall be documented in the patient's medical record and on its outside front cover; and

ii. Drug product defects shall be reported in accordance with the USP-FDA (United States Pharmacopoeia, Food and Drug Administration) Drug Product Defect Reporting System;

7. Policies and procedures for ensuring the immediate delivery of stat. doses. Stat. (statim) means immediately;

8. If facility policy permits, policies and procedures for the use of floor stock drugs. "Floor stock" means a supply of drugs provided by the pharmacist to a service or unit in a labeled container in limited quantities, as approved by the Pharmacy and Therapeutics Committee of the facility. A list shall be maintained of floor stock drugs and their amounts stored throughout the facility;

9. Policies and procedures for discontinuing drug orders, including, but not limited to, policies and procedures for the following:

i. The length of time drug orders may be in effect, for drugs not specifically limited as to duration of use or number of doses when ordered, including intravenous infusion solutions; and

ii. Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered;

10. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs, in accordance with New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and the Controlled Dangerous Substances Acts and amendments thereto;

11. Policies and procedures for the procurement, storage, use, and disposition of needles and syringes in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

12. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

i. Provision for a verifiable record system for controlled drugs;

ii. Policies and procedures to be followed in the event that the inventories of controlled drugs cannot be verified or drugs are lost, contaminated, unintentionally wasted, or destroyed. A report of any such incident shall be written and signed by the persons involved and any witnesses present; and

iii. In all areas of the facility where drugs are dispensed, administered, or stored, procedures for the intentional wasting of controlled drugs, including the disposition of partial doses, and for documentation, including the signature of a second person who shall witness the disposition;

13. Policies and procedures for the maintenance of records of prescribers' Drug Enforcement Administration numbers for New Jersey;

14. Specification of the information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage to be provided in each nursing unit. Authoritative, current antidote information and the telephone number of the regional poison control center shall also be provided in each nursing unit. Current Federal and State drug law information shall be available to the pharmaceutical service;

15. A list of abbreviations, metric apothecary conversion charts, and chemical symbols, approved by the medical staff, to be kept in each nursing unit; and

16. Policies and procedures concerning the activities of medical and pharmaceutical sales representatives in the facility.

8:42A-13.4 Storage of drugs

(a) All drugs, except intravenous infusion solutions, shall be kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use. (The word "medication" is used interchangeably with the word "drug" in this subchapter. "Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39.)

(b) All drugs shall be stored in accordance with manufacturers' instructions. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the nursing unit. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements.

(c) All drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs.

(d) Drugs for external use shall be kept separate from drugs for internal use.

8:42A-13.5 Facilities providing medical detoxification services

(a) Facilities licensed by the Department to provide medical detoxification services shall adhere to the following:

1. At intervals specified in the policy and procedure manual, a pharmacist shall inspect all areas in the facility where drugs are dispensed, administered, or stored and shall maintain a record of such inspections;

2. A pharmacist shall be appointed as director of pharmaceutical services or as consultant pharmacist and shall be responsible for the direction, provision, and quality of pharmaceutical services. The pharmacist shall be responsible for, but not limited to, the following:

i. Together with the Pharmacy and Therapeutics Committee, developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the pharmaceutical service;

ii. Participating in planning and budgeting for the pharmaceutical service;

iii. Coordinating and integrating the pharmaceutical service with other patient care services to provide a continuum of care for the patient;

iv. Assisting in developing and maintaining written job descriptions for pharmacy personnel, if any, and assigning duties based upon education, training, competencies, and job descriptions;

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v. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

vi. Maintaining a means of identifying the signatures of all prescribers authorized to use the pharmaceutical service for prescriptions; and

vii. Maintaining records of the transactions of the pharmaceutical service, as required by Federal, State, and local laws, to ensure control and accountability of all drugs. This shall include a system of controls and records for the requisitioning and dispensing of pharmaceutical supplies to all services of the facility;

3. The facility shall have a unit dose drug distribution system within three years of the effective date of this chapter. "Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.

i. At least one exchange of patient medications shall occur every three days. The number of doses for each patient shall be sufficient for a maximum of 72 hours. No more than a 72-hour supply of doses shall be delivered to or available in the patient care area at any time;

ii. Cautionary instructions and additional information, such as special times of administration, regarding dispensed medications shall be transmitted to the personnel responsible for the administration of the medications;

iii. If the facility repackages medications in single unit packages, the facility's policies and procedures shall indicate how such packages shall be labeled to identify the lot number or reference code and the manufacturer's or distributor's name;

iv. Policies and procedures shall specify the drugs which will not be obtained from manufacturers or distributors in single unit packages and will not be repackaged as single units in the facility; and

4. The facility shall have an intravenous infusion admixture service operated by the pharmaceutical service within three years of the effective date of this chapter. If the preparation, sterilization, and labeling of parenteral medications and solutions are performed in the exempt areas within the facility, as specified by facility policy, but not under direct supervision of a pharmacist, the pharmacist shall be responsible for providing written guidelines and for approving the procedures. Policies and procedures for the use of intravenous infusion solutions shall include, but not be limited to, the following:

i. Safety measures for the preparation, sterilization, and admixture of intravenous infusion solutions. These shall be prepared under a laminar air flow hood, except in patient care areas specified by facility policy;

ii. Quality control procedures for laminar air flow hoods, including cleaning of the equipment used on each shift, microbiolgical monitoring as required by the infection prevention and control policies and procedures of the facility, and documented checks at least every 12 months for operational efficiency; and

iii. Policies and procedures for the labeling of intravenous infusion solutions, such that a supplementary label is affixed to the container of any intravenous infusion solution to which drugs are added. The label shall include the patient's first and last name and room number; the name of the solution; the name and amount of the drug(s) added; the date and time of the addition; the date, time, and rate of administration; the name or initials of the pharmacy personnel who prepared the admixture; the name, initials, or identifying code of the pharmacist who prepared or supervised preparation of the admixture; supplemental instructions, including storage requirements; and the expiration date of the solution.

SUBCHAPTER 14. DIETARY SERVICES

8:42A-14.1 Provision of dietary services

The facility shall provide dietary services to meet the daily nutritional needs of patients.

8:42A-14.2 Appointment of dietitian

(a) The facility shall appoint a dietitian who shall be responsible for the direction, provision, and quality of the dietary service. If a dietitian is appointed on a consultant basis, the dietitian's hours shall be scheduled at different hours of the day for successive visits. The dietitian shall be responsible for, but not limited to the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the dietary service;

2. Participating in planning and budgeting for the dietary service;

3. Ensuring that dietary services are provided as specified in the dietary portion of the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:42A-14.3 Food service supervisor

The facility shall appoint a full-time food service supervisor who functions under the direction of a dietitian. A dietitian and/or food service supervisor shall be on duty seven days a week.

8:42A-14.4 Responsibilities of dietary personnel

(a) In accordance with written job descriptions, dietary personnel shall be responsible for providing dietary care, including, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary portion of the patient treatment plan based on the assessment, providing dietary services to the patient as specified in the dietary portion of the patient treatment plan, reassessing the patient, and revising the dietary portion of the patient treatment plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

3. Writing clinical notes and progress notes.

8:42A-14.5 Requirements for dietary services

(a) Dietary personnel shall be scheduled for a continuous period of at least 12 hours daily.

(b) The dietary service shall adhere to the provisions of N.J.A.C. 8:24.

(c) A current diet manual shall be available in the dietary service and in each nursing unit.

(d) Meals shall be planned, prepared and served in accordance with, but not limited to, the following:

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of patients;

2. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in one week;

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus, with changes, shall be kept on file in the dietary service for at least 30 days;

4. Diets served shall be consistent with the diet manual and in accordance with physicians' orders;

5. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient;

6. At least three meals or their equivalent shall be prepared and served daily to patients. At least two meals shall contain three or more menu items, one of which shall be or shall include a high quality protein food such as meat, fish, eggs, or cheese. Each meal shall represent no less than 20 percent of the day's total calories, and at least 10 percent of the day's total calories shall be provided by protein;

7. Nutrients and calories shall be provided for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National

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Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the patient;

8. Between-meal nourishments shall be provided and beverages shall be available at all times for each patient, unless medically contraindicated as documented by a physician in the patient's medical record;

9. Substitute foods and beverages of equivalent nutritional value shall be available to all patients; and

10. No more than 14 hours shall elapse between an evening meal and breakfast the next morning.

SUBCHAPTER 15. PATIENT RIGHTS

8:42A-15.1 Policies and procedures regarding patient rights

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients, staff, and the public and shall be conspicuously posted in the facility.

(b) The staff of the facility shall be trained to implement policies and procedures regarding patient rights.

(c) The facility shall adhere to all applicable State and Federal statutes and rules concerning patient rights.

8:42A-15.2 Rights of each patient

(a) Patient rights, policies, and procedures shall ensure that, at a minimum, each patient admitted to the facility:

1. Is informed of these rights, as evidenced by his or her written acknowledgment prior to or at the time of admission, and receives an explanation, in terms that he or she can understand, and a copy of the patient rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for his or her care, and of fees and related charges, including the payment, fee, deposit and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is assured of treatment and medical care in accordance wtih the patient treatment plan, is informed of the patient treatment plan and of his or her condition, unless medically contraindicated as documented by a physician in the patient's medical record, is informed of the risks associated with the use of any drugs and/or procedures, and has the opportunity to participate in the planning of his or her treatment, to refuse medication and treatment, and to refuse to participate in experimental research;

4. Is informed of the alternatives for care and treatment;

5. Is transferred or discharged only for medical reasons or for his or her welfare or that of other patients, upon the written order of a physician, or for nonpayment for the patient's stay (except as prohibited by sources of third-party payment), and such actions are documented in the patient's medical record, except in an emergency situation, in which case the administrator shall notify the physician and the family immediately and document the reason for the transfer in the patient's medical record. If a transfer or discharge on a nonemergency basis is requested by the facility the patient and his or her family shall be given at least 10 days advance notice of such transfer or discharge;

6. Has access to and/or may obtain a copy of his or her medical record, in accordance with the facility's policies and procedures and with applicable Federal and State laws and rules;

7. Is free from mental and physical abuse and free from the use of chemical and physical restraints, except those restraints used in accordance with N.J.A.C. 8:42A-6.8. Drugs and other medications shall not be used for punishment, for convenience of facility personnel, or in quantities that interfere with a patients rehabilitation or living activities;

8. Is assured confidential treatment of his or her records and disclosures. in accordance with State and Federal statutes and rules;

9. Is treated with courtesy, consideration, respect, and recognition of his or her dignity, indivduality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures. Privacy of the patient's body shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for patient safety or assistance;

10. Is not required to perform work for the facility unless the work is part of the patient treatment plan. Such work shall be in accordance with local, State and Federal laws and rules;

11. May associate and communicate privately with persons of his or her choice, in accordance wtih the patient treatment plan, may send and receive personal mail, and, upon his or her request, is given assistance in the reading and writing of correspondence;

12. May participate in facility activities and meet with, and participate in activities of, social, religious, and community groups, in accordance with the patient treatment plan. Arrangements shall be made, at the patient's expense, for attendance at religious services of his or her choice, when requested;

13. Is allowed to leave the facility in accordance with the patient treatment plan. A signout sheet shall record the patient's whereabouts at these times;

14. Is assured security in retaining and using personal clothing and possessions as space permits, unless to do so would be unsafe or would infringe upon the rights of other patients. If the patient has property on deposit with the facility, he or she shall have daily access to such property during specific periods established by the facility;

15. Is allowed visiting time at reasonable hours in accordance with the patient treatment plan and, if critically ill, is allowed visits from his or her family at any time, unless medically contraindicated*,* as documented by a physician in the patient's medical record. Members of the clergy shall be notified by the facility at the patient's request and shall be admitted at the request of the patient and/or family at any time;

16. Is allowed to conduct private telephone conversations at a reasonable hour in accordance with the patient treatment plan;

17. Is assured that if restrictions are placed on visitations, telephone calls, and/or other forms of communication, as documented in the patient's medical record, such restrictions shall be evaluated at least every seven days by the director of counseling services, who shall document the evaluation in the patient's medical record;

18. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any patient;

19. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The patient's participation may be restricted or prohibited if recommeded by a physician in the patient's medical record and consented to by the patient;

20. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility or because he or she is an alcoholic; and

21. Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, may voice grievances on behalf of himself or herself or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination, or reprisal.

(b) The administrator shall provide all patients and/or their families with the name, address, and telephone number of the following office where complaints may be lodged:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
Telephone: (800) 792-9770

This telephone number shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

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SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

8:42A-16.1 Emergency plans and procedures

(a) The facility shall have a written emergency plan which shall include plans and procedures to be followed in case of medical emergencies, equipment breakdown, fire, or other disaster.

(b) Emergency medical services shall be provided directly in the facility to patients requiring these services. The facility shall have a written plan for emergency transportation of patients to another facility for care.

(c) Procedures for emergencies shall specify persons to be notified, locations of emergency equipment and alarm signals, evacaution routes, procedures for evacuating patients, frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(d) The emergency plans and all emergency procedures shall be conspicuously posted throughout the facility. Personnel shall be trained in the location and use of emergency equipment in the facility.

8:42A-16.2 Drills and tests

(a) Simulated drills of emergency plans shall be conducted on each shift at least four times a year (a total of 12 drills) and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills on each shift shall include at least one drill for emergencies due to fire and one drill for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident.

(b) The facility shall test at least one manual pull alarm each week of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(c) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (N.F.P.A.) requirements.

8:42A-16.3 Emergency care policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding the provision of emergency care, which shall include, but not be limited to, the following:

1. Criteria for determining a patient's need for emergency care, based upon an assessment of physical, psychological and social needs;

2. Assignment of responsibility for assessing a patient's need for emergency care and determining the services to be provided; and

3. Criteria, approved by a physician, for determining a patient's need for a medical evaluation in the event of an emergency.

SUBCHAPTER 17. DISCHARGE PLANNING SERVICES

8:42A-17.1 Discharge plan

(a) The facility shall provide discharge planning services to patients.

(b) Each patient shall have a written discharge plan. Discharge planning shall be initiated upon admission.

(c) The patient and, if indicated, family members shall participate in developing the patient discharge plan. Participation shall be documented in the patient medical record.

8:42A-17.2 Discharge planning policies and procedures

(a) Written policies and procedures shall be established and implemented for discharge planning services, which shall describe:

1. The functions of the person or persons responsible for planning, providing, and/or coordinating discharge planning services, including, but not limited to, the following:

i. Interviewing each patient, and evaluating needs and developing goals for aftercare services for each patient;

ii. Making referrals to community agencies and resources for aftercare services not provided directly by the facility to provide a continuum of care for the patient;

iii. Requesting representatives of support groups, such as Alcoholics Anonymous, to accompany patients to support group meetings following discharge; and

iv. Assessing the outcome of aftercare services planned for each patient;

2. The time period for completing each patient's discharge plan;

3. The time period that may elapse before a reevaluation of each patient's discharge plan is performed;

4. Use of the multidisciplinary team in discharge planning;

5. Criteria for patient discharge;

6. Methods of patient and family involvement in developing the discharge plan; and

7. Criteria for termination of aftercare services.

8:42A-17.3 Patient and family education

(a) Discharge planning services shall include education of the patient and his or her family. The facility shall provide information regarding at least the following:

1. Alcoholism, and the symptoms, effects, and treatment of alcoholism;

2. Co-dependency and its effect on the treatment of alcoholism;

3. Implementation of self-care and rehabilitation measures following discharge;

4. Community agencies and resources available for aftercare services, including outpatient alcoholism treatment services, halfway houses, health care facilities, vocational rehabilitation centers, legal and social agencies, and rehabilitation programs; and

5. Support groups, including Alcoholics Anonymous, Al-Anon, and Alateen, and their availability.

SUBCHAPTER 18. MEDICAL RECORDS

8:42A-18.1 Maintenance of medical records

(a) A current medical record shall be maintained for each patient and shall contain documentation of all services provided.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical record services shall be developed and implemented.

(c) A record system shall be maintained in which the patient's complete medical record is filed as one unit in one location within the facility.

8:42A-18.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:42A-18.3 Contents of medical records

(a) The patient medical record shall include, but not be limited to, the following:

1. Patient identification data, including name, date of admission, address, date of birth, race *[(optional)]*, religion (optional), sex, referral source, marital status, and the name, address, and telephone number of the person to be notified in an emergency;

2. Copies of the Alcoholism-Intake Record and Alcoholism-Termination Record forms;

3. The patient's signed acknowledgment that he or she has been informed of, and given a copy of, patient rights;

4. A summary of the admission interview;

5. Documentation of the medical history and physical examination, signed and dated by the physician;

6. A patient treatment plan, signed and dated by the physician;

7. Clinical notes, which shall be entered on the day service is rendered;

8. Progress notes;

9. Documentation of the patient's participation in the development of his or her treatment plan, or documentation by a physician that the patient's participation is medically contraindicated;

10. A record of medications administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;

11. A record of self-administered medications, if the patient self-administers medications, in accordance with the facility's policies and procedures;

12. Documentation of allergies in the medical record and on its outside front cover;

13. The results of laboratory, radiological, diagnostic, and/or screening tests performed;

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14. Reports of accidents;
15. A record of referrals to other health care providers;
16. Summaries of consultations;
17. A record of the clothing, personal effects, valuables, funds, and other property deposited by the patient with the facility for safekeeping, signed by the patient or his or her family and substantiated by receipts given to the patient or his or her family;
18. Any signed written informed consent forms;
19. A record of any treatment, drug, or service offered by personnel of the facility and refused by the patient;
20. Instructions given to the patient and/or the patient's family for care following discharge;
21. The discharge plan; and
22. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:42A-18.4 Requirements for entries

(a) All orders for patient care shall be prescribed in writing and signed and dated by the prescriber.

(b) All entries in the patient medical record shall be legible and signed and dated by the persons entering them.

(c) The patient medical record shall be completed within 15 days following the patient's discharge.

8:42A-18.5 Medical records policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding medical records including, but not limited to, policies and procedures for the following:

1. The protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use. The patient's consent shall be obtained for release of medical record information;
2. The transfer of patient information when the patient is transferred to another health care facility, or if the patient becomes an outpatient at the same facility; and
3. The provision of copies of the patient's medical record to the patient and/or the patient's authorized representative. Such written policies and procedures shall include, but not be limited to, the following:

i. Establishment of a fee schedule for obtaining copies of the patient's medical record;

ii. Policies and procedures regarding the patient's access to his or her medical record during business hours;

iii. Policies and procedures regarding availability of the patient's medical record to the patient's authorized representative if it is medically contraindicated, as documented by a physician in the patient's medical record, for the patient to have access to or obtain copies of the record; and

iv. Procedures to ensure that a copy of the patient's medical record is provided within 30 calendar days of a written request.

8:42A-18.6 Preservation, storage, and retrieval of medical records

(a) All medical records shall be preserved in accordance with N.J.S.A. 26:8-5 et seq.

(b) If the facility plans to cease operations, it shall notify the Department in writing, at least 14 days before cessation of operations, of the location where medical records will be stored and of methods for their retrieval.

SUBCHAPTER 19. INFECTION PREVENTION AND CONTROL

8:42A-19.1 Administrator's responsibility

The administrator shall ensure the development and implementation of an infection prevention and control program.

8:42A-19.2 Infection prevention and control policies and procedures

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures for the following:

1. A definition of nosocomial infection;
2. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;
3. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;
4. Surveillance techniques to minimize sources and transmission of infection;
5. Techniques to be used during each patient contact, including handwashing before and after caring for a patient;
6. The prevention of decubitus ulcers;
7. Isolation of patients, including criteria for isolation;
8. Sterilization, disinfection and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and nondisposable patient care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

9. The collection, storage, handling, and disposition of all pathological and infectious wastes within the facility, and for the collection, storage, handling, and disposition of all pathological and infectious wastes to be removed from the facility;

i. Needles and syringes shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto;

ii. Solid, sharp, or rigid items shall be placed in a puncture-resistive container and incinerated or compacted prior to disposal;

iii. In facilities licensed to provide medical detoxification services, all solid waste shall be collected in three mil plastic bags or equivalent and disposed of in a sanitary landfill approved by the New Jersey State Department of Environmental Protection; and

iv. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into the sewerage system.

(b) Each service in the facility shall develop written infection prevention and control policies and procedures for that service.

SUBCHAPTER 20. HOUSEKEEPING, SANITATION, AND SAFETY

8:42A-20.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for patients.

(b) The facility shall provide housekeeping, laundry and pest control services.

(c) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for housekeeping, sanitation and safety services shall be developed and implemented.

8:42A-20.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures, including the use, cleaning, and care of housekeeping and cleaning equipment.

8:42A-20.3 Patient care environment

(a) The following housekeeping, sanitation and safety conditions shall be met:

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborages;
2. Nonskid wax shall be used on all waxed floors;
3. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;
4. All patient areas shall be free of noxious odors;
5. Throw rugs or scatter rugs shall not be used in the facility;

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6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;

7. All equipment shall have unobstructed space provided for operation;

8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;

9. Thermometers shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

10. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

11. Articles in storage shall be elevated from the floor and away from walls;

12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;

13. Unobstructed aisles shall be provided in storage areas;

14. A program shall be implemented and maintained to keep rodents, insects, vermin, and birds out of the facility;

15. Toilet tissue, soap, and towels or air dryers shall be provided in each bathroom at all times;

16. Solid or liquid waste, garbage, and trash shall be stored or disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24;

17. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

18. Wastebaskets and ashtrays shall be made of noncombustible materials;

19. Latex foam pillows shall be prohibited;

20. The temperature of the hot water used for showers, bathing, and handwashing shall not exceed 110 degrees Fahrenheit (43 degrees Celsius); and

21. The temperature in the facility shall be kept at a minimum of 70 degrees Fahrenheit (21 degrees Celsius) during the day and a minimum of 65 degrees Fahrenheit (18 degrees Celsius) at night. "Day" means the time between sunrise and sunset.

8:42A-20.4 Linen and laundry services

(a) Written policies and procedures shall be established and implemented for linen and laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage, transportation, and laundering of linen and personal laundry;

2. Accessibility of a laundry room which patients may use for washing their clothes;

3. The frequency of laundering linen and personal laundry;

4. The frequency of changing bed linen, towels, and washcloths;

5. Provision of a supply of clean linen, including at least sheets, pillow cases, blankets, towels, and washcloths;

6. Collection of soiled linen and laundry so as to avoid microbial dissemination into the environment, and placement in impervious bags or containers that are closed at the site of collection. Separate containers shall be used for transporting clean linen and laundry and for transporting soiled linen and laundry;

7. Storage of soiled linen and laundry in a ventilated area separate from any other supplies. Soiled linen and laundry shall not be stored, sorted, rinsed, or laundered in patient rooms, bathrooms, areas of food preparation and/or storage, or areas in which clean linen, material, and/or equipment are stored; and

8. Protection of clean linen from contamination during processing, transporting, and storage.

SUBCHAPTER 21. VOLUNTEER SERVICES

8:42A-21.1 Provision of volunteer services

(a) The facility may provide volunteer services as an integral part of the facility's services.

(b) Volunteers shall not provide services in lieu of staff.

(c) Volunteers shall not administer medications.

(d) Volunteers shall receive orientation at the time of employment and continuing in-service education regarding at least emergency plans and procedures, discharge planning, and the infection prevention and control program.

(e) If volunteers have access to patient medical records, confidentiality shall be maintained in accordance with the facility's policies and with all applicable laws and rules.

(f) Volunteers shall not receive gifts or gratuities from patients.

8:42A-21.2 Volunteer policies and procedures

(a) If the facility provides volunteer services, the facility shall establish and implement written policies and procedures including, but not limited to, policies and procedures regarding the following:

1. Acceptance and retention in, and exclusion from, the volunteer service, including at least the following criteria:

i. Minimum age and physical examination requirements for volunteers; and

ii. The minimum period of time during which former substance abusers (alcohol and/or drugs) shall be continuously substance free before serving as volunteers;

2. Methods for obtaining information regarding each volunteer, including, at least, education, work experience, and arrests or convictions, if any;

3. Assignment of volunteers to patients, including criteria for assignment; and

4. Functions which volunteers may perform. Volunteer services shall be provided under the supervision of staff and in accordance with patient treatment plans, so as to ensure continuity of care.

8:42A-21.3 Administrator's responsibility for volunteer services

(a) The administrator or the administrator's designee shall be responsible for the direction, provision, and quality of the volunteer services provided. The administrator shall be reasonsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the volunteer service;

2. Participating in planning and budgeting for the volunteer service;

3. Coordinating and integrating the volunteer service with other patient care services to provide a continuum of care for the patient; and

4. Assisting in developing and maintaining written job descriptions for all paid staff of the volunteer service and volunteers, and assigning duties based upon education, training, competencies, and job descriptions.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAM

8:42A-22.1 Quality assurance plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the person(s) responsible for the quality assurance program and shall provide for ongoing monitoring of staff and patient services.

8:42A-22.2 Quality assurance activities

(a) Quality assurance activities shall include, but not be limited to, the following:

1. At least annual review of staff and physician qualifications and credentials;

2. At least annual review of staff orientation and staff education;

3. Evaluation of patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, emergency services, discharge planning services, and volunteer services;

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4. Evaluation by patients of care and services provided by the facility;

5. Audit of patient medical records (including those of both active and discharged patients) on an ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care; and

6. Establishment of a patient care outcome assessment system for evaulation of the patient care provided by each service.

8:42A-22.3 Measures for corrections and improvements

(a) The results of the quality assurance program shall be submitted to the governing authority at least annually and shall include at least deficiencies found and recommendations for corrections or improvements. Deficiencies which jeopardize patient safety shall be reported to the governing authority immediately. The administrator shall, with the approval of the governing authority, implement measures to ensure that corrections or improvements are made.

(b) The administrator shall evaluate written reports of State and local sanitary inspections and shall take necessary corrective action.

SUBCHAPTER 23. (RESERVED)

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL

Notice of Administrative Correction Interchangeable Drug Products

N.J.A.C. 8:71

Take notice that the Drug Utilization Review Council has discovered errors in the listing of products and manufacturers set forth as "not adopted but still pending" in three notices of adoption of amendments to N.J.A.C. 8:71 published in the May 15, 1989 New Jersey Register. The listing as published in the Register does not correspond to the documents filed with the Office of Administrative Law. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a).

Full text of the corrected listing of products not adopted but still pending as published at 21 N.J.R. 1429(b) follows (deletions indicated in brackets [thus]):

The following products were **not adopted but are still pending**:

...

Prazosin caps 1, 2, 5 mg	[Cord,] Par[, Lederle, Zenith]

...

Full text of the corrected listing of products not adopted but still pending as published at 21 N.J.R. 1429(c) follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

The following products were **not adopted but are still pending**:

...

Fenoprofen calcium tabs 600 mg	[PharmBasics] **Lederle**
Fluocinonide [cream,] oint 0.05%	Clay-Park

...

Full text of the corrected listing of products not adopted but still pending as published at 21 N.J.R. 1430(a) follows (deletions indicated in brackets [thus]):

The following products were **not adopted but are still pending**:

...

Methylprednisolone tabs 2, 4, 8[, 16, 24, 32] mg	Par

...

Triamcinolone oint 0.025, 0.1[, 0.5]%	Naska

...

HUMAN SERVICES

(b)

CONTRACT POLICY AND MANAGEMENT UNIT

Contract Administration
Conflict of Interest

Adopted New Rule: N.J.A.C. 10:3-1.14.

Proposed: November 21, 1988 at 20 N.J.R. 2849(a).

Adopted: May 17, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: May 19, 1989 as R. 1989 d. 315, **without change.**

Authority: N.J.S.A. 30:1-12; Executive Order No. 189.

Effective Date: June 19, 1989.

Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:3-1.14 Conflict of interest

(a) The violation of any of the prohibitions contained in this section shall render any vendor committing such violation liable to debarment in the public interest.

(b) The provisions of (c) through (h) below shall be included in all requests for proposals issued by the Department of Human Services.

(c) No vendor shall pay, offer to pay, or agree to pay, 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.

(d) 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 from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

(e) No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell 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 is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(f) No vendor shall influence, or attempt 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.

(g) No vendor shall cause or influence, or attempt 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.

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(h) The provisions cited in this section shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public, subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

(a)

DIVISION OF PUBLIC WELFARE

Organizational Rules

Organization of the Division of Public Welfare

Adopted Repeals and New Rules: N.J.A.C. 10:80

Adopted: May 19, 1989 by Drew Altman, Commissioner, Department of Human Services

Filed: May 19, 1989 as R.1989 d.316.

Authority: N.J.S.A. 52:14B-3(1) and 52:14B-4(b).

Effective Date: May 19, 1989.

Expiration Date: May 19, 1994.

Take notice that the Department of Human Services hereby adopts as new rules, a description of the organizational structure and operation of the Division of Public Welfare (DPW). N.J.A.C. 10:80, which would have expired on August 23, 1989, pursuant to the "sunset" provisions of Executive Order No. 66(1978), is being repealed and replaced by these rules in order to reflect the recent reorganization of DPW.

These rules are intended to inform the public of the existence of and the basic tasks and responsibilities delegated to DPW and how it is organized to implement those duties. The rules also provide procedures for obtaining copies of the various officially promulgated rules governing participation in and benefits of the public assistance programs under the jurisdiction of the DPW.

These organizational rules are exempt from the notice and hearing requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and become effective upon filing.

Full text of the adoption follows:

CHAPTER 80
ORGANIZATION OF THE DIVISION OF PUBLIC WELFARE

SUBCHAPTER 1. ORGANIZATION

10:80-1.1 Division of Public Welfare responsibilities

(a) The Division of Public Welfare (DPW) is charged by statute (N.J.S.A. 30:4B-1 et seq.) with the responsibility for the administration or supervision of specific program functions required or authorized under all public assistance programs in the State of New Jersey. To accomplish this, DPW must establish, maintain and supervise an orderly, uniform and efficient public assistance system for those New Jersey residents in need of income maintenance services. DPW must ensure the provision of financial assistance and related services, based on existing standards of need, to all eligible individuals and families and assist such individuals and families in their efforts to regain financial self-sufficiency. DPW must also ensure that the public is kept informed of public assistance program needs, priorities and developments.

(b) Currently, DPW is responsible for administering, directing and overseeing the following public assistance programs which are implemented through the county welfare agencies (CWAs):

1. Aid to Families with Dependent Children (AFDC) (Title IV-A, Social Security Act; 45 CFR, Part 200; N.J.S.A. 44:10-1 et seq.);
2. Refugee Resettlement Program (RRP) (Immigration and Nationality Act, Section 412(a)(9); 45 CFR, Part 400);
3. Federal Food Stamp Program (FSP) (Food Stamp Act of 1977 as amended; 7 CFR, Part 200; N.J.S.A. 30:4B-2 et seq.);
4. Federal Low Income Home Energy Assistance Program (HEAP) (45 CFR, Parts 16, 74 and 96); and
5. Child Support and Paternity Program (CSP) (Title IV-D, Social Security Act; 45 CFR, Part 300).

(c) DPW directs and oversees the General Assistance (GA) Program (N.J.S.A. 44:8-107 et seq.) which is administered through municipal welfare departments (MWDs). It also costs the appropriate charges for health care services authorized for General Assistance recipients.

10:80-1.2 DPW organizational unit functions

(a) The Office of the Director is responsible for the entire operation of DPW. The Director sets priorities, coordinates efforts, resolves disputes, ensures implementation of Federal and State laws, Federal regulations and applicable court decisions, adheres to departmental policies and ensures that DPW operates in a professional and prudent manner through a network of components.

(b) The responsibilities described in N.J.A.C. 10:80-1.1 are accomplished through functions assigned to the various constituent units of DPW.

1. Office of Information Systems (OIS): Primarily, OIS coordinates and directs units within DPW involved with the computerization of the public assistance programs. It also administers and monitors the federally funded HEA program operation through the 21 CWAs and the development and maintenance of the HEA data processing system to ensure timely and efficient provision of program benefits to eligible households.

i. The task of achieving and maintaining an overall public assistance electronic data management system involves numerous functions as listed below:

(1) Management of feasibility studies, cost benefit analysis, budget estimation, detailed design specifications, programming systems tests and users orientation/approval;

(2) Liaison to Electronic Data Processing (EDP) audit and user groups;

(3) Management of production and distribution scheduling, negotiations with distribution vendor (armored courier) and with support vendors (keypunch, printing);

(4) Monitoring the computer terminal network utilization and security procedures as well as all operational system outputs; and

(5) Providing field support in implementing projects approved for EDP conversion/implementation.

2. Fiscal Operations: The Fiscal Operations segment of DPW is responsible for preparing, monitoring and revising the public assistance portions of DPW's spending plan, and providing fiscal evaluations for program proposals. Additionally, it participates with administrators within DPW in the development of managerial policies in the area of administrative budgets and spending plans, administrative accounting and purchasing/inventory control.

i. The following highlights the functions assigned to Fiscal Operations:

(1) Account for all administrative and public assistance expenditures in the 21 CWAs and 567 MWDs;

(2) Coordinate the CWA budget process and act as cost consultants to CWAs, MWDs and units within DPW;

(3) Implement and revise the Cost Allocation Plan, provide fiscal procedures, information and monthly reports of fiscal data;

(4) Distribute, account for and reconcile the Authorization to Participate (ATP) cards in the Food Stamp Program for the 21 CWAs and handle all fiscal activity relating to food stamp coupon issuances in accordance with Federal regulations;

(5) Record child support payments received and reported by the 21 CWAs and act as a clearing house for collected support monies and incentives which are due the 50 states or 21 CWAs within New Jersey; and

(6) Perform all the accounting functions for the HEA program and coordinate activity between banks.

3. Office of Program Regulations (OPR): OPR has responsibility for developing and recommending policy for all the public assistance programs, including the Federal Food Stamp Program, and providing Policy interpretations of Federal and State regulations to CWA administrative staff, municipal welfare directors, public and private agencies, and the general public. It prepares comments on pending

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legislation affecting the responsibilities of DPW and assists in drafting legislation when required.

i. Specific functions with respect to the Office of Program Regulations are as follows:

(1) Timely preparation (in accordance with State and Federal law, Federal regulation and applicable legal decisions) of accurate, concise and easily understandable policy and regulatory material;

(2) Translation, into Spanish, of all appropriate forms, pamphlets and notices developed by DPW;

(3) Development of allowance standards and benefit levels;

(4) Maintenance of a system for detection of intentional violations by public assistance recipients and conduct of internal investigations of suspected criminal activity related to assistance programs in the State, counties and municipalities;

(5) Determine appropriateness of charges for health care services including charges for medication from pharmacy providers, authorized by MWDs; and

(6) Receive and register requests for fair hearings from recipients/applicants of various programs. Transmit hearing requests to the Office of Administrative Law. Review final hearing decisions for action by the Director. Monitor implementation of decisions.

4. Office of Child Support and Paternity Programs (OCSPP): Pursuant to Title IV-D of the Social Security Act, and certain other amendments, the State has established the OCSPP to administer the Child Support Program throughout the State. The OCSPP acts to locate absent parents, establish paternity and/or child support obligations and to recover past due child support payments in order to preclude non-welfare families from requiring public assistance to survive and to reduce the general tax burden on the public. Under the direction of this Office, every County has been required to establish a local Child Support and Paternity Unit within the welfare agency. Also under the provisions of the Act, OCSPP has entered into cooperative agreements with State and local agencies involved in the collection of child support. These agencies include the Administrative Office of the Courts, county probation departments, county prosecutors, county adjusters, county sheriffs, county law departments, and Juvenile and Domestic Relations Court intake units. The OCSPP supervises and directs the activities of all agencies involved in the collection of child support and ensures that Federal regulations and requirements in regard to the collection of child support are met. The OCSPP also operates the State Parent Locator Service (SPLS) which has direct access to other State agency files, that is, Labor, Motor Vehicles, Treasury, Corrections, and to the Federal Parent Locator Service, Social Security Administration, Internal Revenue Service, Veterans Administration, and so forth. SPLS is also available to non-public assistance persons as well as individuals receiving public assistance benefits.

5. Office of County Municipal Operations: The Office of County Municipal Operations is responsible for supervising and monitoring the operations of local welfare agencies (county and municipal), and providing a channel of communication between such agencies and DPW.

6. Administrative Operations: Responsibilities of Administrative Operations include:

i. Direct all DPW management support services including mailroom, messenger service, records management, telephone, State cars, inventory, security and word processing center;

ii. Develop training programs for presentation to the staff of DPW, other State agencies, CWAs and MWDs; coordinate training activities sponsored by other agencies; evaluate educational leave requests and manage tuition aid process for DPW staff;

iii. Carry out all personnel related functions including announcement of promotional examinations, responsibility for certification, disposition and appointments from promotional and open competitive lists, processing all necessary forms for appointments, terminations, salary increases and maintenance of employees' records; and

iv. With regard to the 21 CWAs, pursuant to Public Law 1984, Chapter 14, the Division is responsible for the review and analysis of all collective bargaining agreements between CWAs and their respective labor organizations; review the staffing portion of CWA budgets; review for approval of all county personnel actions and classification requests (for the Somerset CWA only since that agency is not covered under Civil Service law and regulations); respond to procedural questions and provide technical assistance; and, conduct evaluation of overall personnel operations in the CWAs.

7. Office of Planning and Operations Review: The responsibilities of the Office of Planning and Operations Review are to maintain caseload figures and projections; prepare and tabulate various required statistical reports for publication for Federal, State and county use as well as private agencies, and produce the sample selection of public assistance cases for quality control purposes. Other responsibilities include:

i. Coordination of the quality control case review process, analysis of quality control statistics for error trends, and recommendation of action to reduce errors;

ii. Coordination of other agency reviews; and

iii. Maintenance of quality assurance for the Division.

10:80-1.3 Public information requests

The public may obtain information or copies of the various officially promulgated manuals, upon payment of the requisite fee, by addressing inquiries to: Director's Office, Division of Public Welfare, CN 716, Trenton, New Jersey 08625.

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephone
Correspondence to and from Other Inmates
Publications to and from Other Inmates
Adopted Amendments: N.J.A.C. 10A:18-2.5 and 4.4

Proposed: April 3, 1989 at 21 N.J.R. 837(a).

Adopted: May 12, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: May 22, 1989 as R.1989 d.318, **without change.**

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

Effective Date: June 19, 1989.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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

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

10A:18-4.4 Publications to or from other inmates

All publications to or from inmates housed in other correctional facilities may be read to ensure that the publications do not contain any contents prohibited by N.J.A.C. 10A:18-4.9.

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INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Admission Requirements for Foreign and Alien Property and Casualty Insurers

Adopted New Rules: N.J.A.C. 11:1-10

Proposed: February 21, 1989, at 21 N.J.R. 426(a).

Adopted: May 26, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: May 26, 1989 as R.1989 d.329, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:10-4.3).

Authority: N.J.S.A. 17:1C-6(e) and (i); 17:1-8 and 8.1; 17:17-1 et seq.; 17:23-1 et seq.; 17:32-1 et seq. and 17:32-15.

Effective Date: June 19, 1989.

Expiration Date: February 3, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: David Green, on behalf of MCA Insurance Companies (MCA), commented that the $1,000 application fee is too high and will subject New Jersey insurers to retaliation. He also comments that "very few states charge a fee in advance of admission."

RESPONSE: The $1,000 application fee is directly related to the Department's estimate of the labor expended in reviewing an application. The fact that other jurisdictions may charge less is most certainly a consequence of the nature and extent of their application process and is generally irrelevant. To protect the public interest, the Department will require the receipt of substantial amounts of information and will expend a substantial amount of time reviewing this information. Accordingly, the fee is considered to be reasonable.

Since the fee is an application fee, rather than an admission fee, it is payable in advance to offset the costs of the application process. The Department cannot reasonably be expected to expend time and effort in reviewing applications which are later withdrawn or rejected. With the promulgation of these rules and the standards clearly described therein, applicants should know in advance, with reasonable certainty, whether they will qualify for admission. Therefore, in most cases, the expenditure will not be wasteful.

As to the issue of retaliation, while it is true that other states may retaliate against New Jersey Insurers, the Department believes that this is an inescapable consequence of the thorough application and review process required in New Jersey. In weighing the equities, the Department believes that this process cannot be adulterated and the public interest neglected so that insurers can be saved the cost of a reasonable application fee. Further, the Department believes that, as a practical matter, few New Jersey companies may apply for admission in a substantial number of the states in any one year or at any one time to make the retaliatory fee expenditure truly significant and burdensome. In any event, as previously noted, the fee is directly related to costs incurred and is therefore necessary and reasonable.

COMMENT: Mr. Green also comments that the Department should relax the admission requirements for a wholly-owned subsidiary of a parent company in New Jersey, just as the rules allow for a waiver of the seasoning requirements for a wholly-owned subsidiary of a parent company licensed in New Jersey. He argues that since the officers, directors and methods of operation of a wholly-owned subsidiary are already known through the parent, strict scrutiny is not needed.

RESPONSE: The Department is opposed to the relaxation of the general admission requirements for wholly-owned subsidiaries of a New Jersey permit. The reason given, that the management and method of operation of the subsidiary are already known to the Department through the parent, is insufficient and unpersuasive. The Department believes it is imperative that it review each applicant on its own merit. An independent review is considered to be essential. Creating this exception also weakens the integrity of the rule and may require other and endless exceptions to be made.

COMMENT: Elmer Matthews, Esq. on behalf of his client, Capital Guaranty Insurance Company, made several comments, as follows:

1. He would add "Duff and Phelps, Inc." and "Fitch Investors Services" to the list of rating services from which a rating can be secured in satisfaction of the requirements of the proposed new rules (see proposed N.J.A.C. 11:1-10.4(a)5ii(3), (a)5iii(2) and (a)5iii(4)(C). Mr. Matthews argues that the present list is too restrictive, particularly in the case of monoline financial guaranty companies.

RESPONSE: The Department does not wish to unncessarily restrict the rating or evaluation services which may be used by an applicant to those listed in the proposed new rule. However, it is the Department's belief that the four services it has chosen have proven themselves sufficiently credible and reputable over time, and provide enough choice to make the listing of other services unnecessary at this time. Additionally, the Department has been advised that all of the rating or evaluation services identified in the rule, except A.M. Best, will rate monoline financial guaranty companies.

2. Mr. Matthews would "clarify" that the requirements in proposed N.J.A.C. 11:10-4(a)5ii do not apply to an insurer to whom the five year seasoning requirement does not apply by operation of the waiver or reduction provisions in (a)5iii.

RESPONSE: The Department agrees with this clarification and will make the appropriate change upon adoption. Both proposed N.J.A.C. 11:1-10.4(a)5i and ii are inapplicable in cases where a waiver of the seasoning requirement is secured. Since this change is clarificatory only, it is consistent with N.J.A.C. 1:30-4.3.

3. Mr. Matthews would add "or controlled" to proposed N.J.A.C. 11:1-10.4(a)5iii(1) after the words "wholly-owned," so that a waiver may be had in cases where a new insurer is organized by an existing seasoned insurer and the new insurer remains under the "control" of that insurer ("controlled-subsidiary waiver"). He states that including controlled subsidiaries in this rule will permit the Department to license controlled subsidiaries of seasoned insurers when the circumstances warrant. This will be particularly important for insurers who have organized new units as "spin offs" with some outside investors, but have retained "control" as defined by the proposed new rule (see N.J.A.C. 11:1-10.3).

RESPONSE: The Department's definition of "control" in proposed N.J.A.C. 11:1-10.3 is essentially a defensive mechanism by which the Department can require certain necessary filings, etc., in cases where a minimum, but still significant, amount of ownership is recognized. In the instant context, where there is a request for a waiver of the general seasoning requirement, the Department is looking for substantially more presence and control as evidenced by the "wholly-owned" requirement. In the context of a seasoning waiver, therefore, Mr. Matthews' proffered suggestion is inappropriate.

4. Mr. Matthews would delete or modify the requirement for having a field examination report conducted by its state of domicile after two years where an applicant is an insurance company with a non-insurance company parent and is seeking a reduction in the seasoning requirement to three years (see proposed N.J.A.C. 11:1-10.4(a)5iii(4)). He notes that obtaining an additional examination in two years rather than at the usual regulatory cycle is costly and may not be possible to obtain given limited regulatory resources.

RESPONSE: The Department disagrees. The Department does not see how it can reduce the seasoning requirements to three years and not require a review of an applicant's two year report. This would seem to be a minimum and necessary requirement as a *quid pro quo* for a seasoning reduction. If a company anticipates seeking admission in New Jersey, then they should affirmatively request a timely examination to satisfy this requirement.

5. Mr. Matthews would modify the net premium to surplus ratio requirement of 1:1 or greater appearing in that part of proposed N.J.A.C. 11:1-10.4(a)5iii(4) which requires that the first two years of operations of an applicant seeking a seasoning reduction (from five to three years) be of "sufficient magnitude" to make the examination report "useful and meaningful" to the Department. He noted that this ratio is not realistic for some businesses (for example, those starting with substantial surplus and most financial guaranty companies).

RESPONSE: The Department agrees that requiring a particular ratio may be too inflexible and that the Commissioner should be free to consider a two year examination report, even though a different ratio exists, in cases where the report is still "useful and meaningful" to the Department. Accordingly, the Department will delete this particular ratio requirement upon adoption and require only that the report be "useful and meaningful" to the Department. Since this change provides more flexibility for applicants, without impinging upon the public interest, it is consistent with N.J.A.C. 1:30-4.3.

6. Mr. Matthews comments that the rating requirement for the parent company should be allowed as an alternative for the rating of the appli-

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cant-insurer where an applicant seeks a reduction in the seasoning requirement from five to three years (see proposed N.J.A.C. 11:1-10.4(a)5iii(4)).

RESPONSE: The Department sees no reason (nor is one given) for this change since the applicant has its own three year "track record".

7. Mr. Matthews would modify the surety bond provisions in proposed N.J.A.C. 11:1-10.4(a)5iii(5). He says the language is vague and that as a consequence it has been difficult to secure such a bond. Accordingly, he requests that the Department promulgate the form of the bond. Specifically, he requests that the Department specify the exact surety bond coverage required. He also suggests that the persons to be protected under the bond should only be New Jersey "policyholders" and he would delete "claimants and creditors." He would also specify that the surety bond term requirement is not to exceed the balance of the seasoning periods, or, at most, five years. He further requests that the Department consider the possibility of using parental guarantees or letters of credit. Finally, he wishes to phase out the surety bond requirement when capital and surplus is maintained at the level of $50,000,000 and a rating service gives it one of the top two ratings. He offers a proposed amendment to the rule incorporating these changes.

RESPONSE: The Department does not wish to specify the exact amount of the surety bond coverages required since it will vary with each applicant according to relevant factors, such as the general financial condition of the applicant and underwriting strategy (for example, the volume and type of risk to be written) (see, for example, proposed N.J.A.C. 11:1-10.4(a)5iii(4)(D)). The Department disagrees respecting the issue of protecting "policyholders," "claimants," and "creditors". The reason given, that this effectually converts the bond into an indemnity policy rather than an instrument of surety, is unpersuasive. All three classes are proper subjects for protection. The Department agrees that a surety bond term requirement should be identified in the rule and has changed the rule upon adoption to require a term not to exceed five years from the date a certificate of authority is issued. This time period coincides with the normal seasoning requirement. Since this change substantially limits the surety term requirement from an open-ended requirement to a more limited "date-certain" requirement, this change is consistent with N.J.A.C. 1:30-4.3. The Department will not accept letters of credit or parent guarantees in lieu of a surety bond. Mr. Matthews offers no reason for their acceptance by the Department. However, the Department notes that letters of credit are obtainable without regard to subjective (non-monetary) factors and are thus a poor substitute for a surety bond issued by an insurance company approved by the Commissioner or authorized in New Jersey. A surety bond provides the Department with another layer of review of an applicant's suitability. The Department notes that parental guarantees have already been used as a means of securing a waiver of, or reduction in, the seasoning requirement in other provisions of the rule. Mr. Matthews does not explain the manner in which he would use parental guarantees other than that presently existing in the rules as proposed.

8. Mr. Matthews comments that the surety bond requirement should be phased out when capital and surplus is maintained at a level of $50,000,000 and a rating service gives it one of the top two ratings. Mr. Matthews notes that the Department's previous objection to a pure capital and surplus test was that it lacked subjective evaluation of an insurer's business. The proposed change utilizes rating services to provide this qualitative analysis.

RESPONSE: The Department does not approve of this proposed change since it is still too mathematical. The consideration of subjective factors by a rating service should not be a substitute for Departmental review of all factors in each case.

Agency Initiated Changes

1. In proposed N.J.A.C. 11:1-10.4(a)3i, the word "it" is inserted before the words "is authorized" to correct a typographical error.

2. In proposed N.J.A.C. 11:1-10.4(a)4i and ii, the term "immediate regulatory attention" is changed to "first priority," since the latter term is currently used by the National Association of Insurance Commissioners (NAIC), but has the same meaning as the term in the rule as proposed. Accordingly, this change is technical only and is consistent with N.J.A.C. 1:30-4.3.

3. In proposed N.J.A.C. 11:1-10.4(a)4iii, the term "targeted" is changed to "second or third priority" for the reasons noted in paragraph 2 above.

4. In proposed N.J.A.C. 11:1-10.4(a)4iii, the conjunction "and" is replaced with "or" for grammatical purposes.

5. In proposed N.J.A.C. 11:1-10.4(a)6, the word "the" is inserted before "business affairs" to correct a typographical error.

6. In proposed N.J.A.C. 11:1-10.9, the term "operative date" is changed to the date that the rule becomes effective since it will be operative upon the effective date, June 19, 1989. Further, applicants whose letters of intent are on file with the Department prior to the effective date of the proposed new rule are given 30 calendar days, until July 19, 1989, to notify the Department that they wish to have their applications considered under the new provisions. This change provides more time to applicants who wish to use the new procedures than the rule as originally proposed, and is thus consistent with N.J.A.C. 1:30-4.3.

7. Where a rating service requirement exists in the proposed rule, a distinction is made between a "rating" and an "evaluation" since, for example, Dun and Bradstreet's service is better classified as the latter rather than the former. The requirement in the adopted rule that the Dun and Bradstreet evaluation be "acceptable" to the Department is an attempt to transfer the substance of the original rating requirement in the rule as proposed (the top two or top three ratings) to the more subjective service provided by Dun and Bradstreet.

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

SUBCHAPTER 10. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN PROPERTY AND CASUALTY INSURERS

11:1-10.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien companies engaged in the business of property and casualty insurance for a Certificate of Authority to transact the business of insurance in the State of New Jersey.

11:1-10.2 Scope

This subchapter applies to any foreign and alien company engaged in the business of property and casualty insurance that applies for a Certificate of Authority to transact the business of insurance in the State of New Jersey. The filing requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing Certificates of Authority except where the Commissioner, pursuant to law, shall otherwise so require.

11:1-10.3 Definitions

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

"Affiliate" of, or person "affiliated" with, a specific person, means a person who or which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"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.

"Authorized insurer" means a domestic, foreign or alien insurer, duly authorized by a Certificate of Authority issued by the Commissioner of the Department of Insurance of the State of New Jersey to transact the business of insurance in the State of New Jersey.

"Certificate of authority" means a certificate issued by the Commissioner of the Department of Insurance of the State of New Jersey evidencing the authority of an insurer to transact the business of insurance in the State of New Jersey.

"Commissioner of Insurance" or "Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey, or his or her designee as may be permitted by law.

"Committee on Admissions" of the Department of Insurance of the State of New Jersey means the advisory committee appointed by the Commissioner to aid in the review of applications for admission to transact the business of insurance in the State of New Jersey and to render to the Commissioner's recommendations as to the disposition of such applications.

"Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the manage-

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ment and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise; unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of this subchapter. This presumption may be rebutted by a showing made in the manner provided by N.J.S.A. 17:27A-3(i) that control does not exist in fact. The Commissioner may determine, after furnishing all interested persons with notice and an opportunity to be heard and after making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

"Department" means the Department of Insurance of the State of New Jersey.

"Domestic insurer" means an insurer formed under the laws of the State of New Jersey.

"Domicile" means:

1. As to alien insurers, the country under the laws of which the insurer was formed;

2. As to all other insurers, including United States branches of alien insurers, the state, districts, territories, commonwealths or possessions under the laws of which the insurer was formed;

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States of America, other than the State of New Jersey.

"Hazardous financial condition" means a financial condition deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)1 indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, claimants, creditors, or the public.

"Hazardous operations" means operations deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)2 indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholders, claimants, creditors or the general public. "Insurance holding company system" means two or more affiliated persons, one or more of whom or which is an insurer.

"Insurer" means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance in this State; except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

"Subsidiary" of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

11:1-10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, the requirements in this section shall be satisifed in addition to any other requirements in this subchapter or any other provision of law.

1. The insurer shall satisfy the Commissioner that it is not in a hazardous financial condition. A hazardous financial condition shall exist when the following factors indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, stockholders or the public:

i. The existence of adverse findings reported in financial condition and market conduct examination reports;

ii. The NAIC Insurance Regulatory Information System ratios and or its related reports have been deemed adverse;

iii. The ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income could lead to an impairment of capital and surplus;

iv. That the asset portfolio of the insurer, when viewed in light of current economic conditions, is determined by the Commissioner to be of insufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

v. The ability of an assuming reinsurer to meet the obligations being assumed and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

vi. That the insurer's operating loss in the last 12 month period, or any shorter period of time as the Commissioner may determine, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to stockholders, is greater than 50 percent of such insurer's remaining surplus for policyholders in excess of the minimum required;

vii. Whether any affiliate of an insurer, subsidiary or reinsurer of such insurer, is insolvent, or, in the opinion of the Commissioner, threatened with insolvency, or delinquent in the payment of its monetary or other obligations;

viii. Whether contingent liabilities, pledges or guarantees which, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

ix. Whether any person controlling an insurer is delinquent in making payments of net premiums to such insurer;

x. The age and collectibility of receivables;

xi. Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, has failed to demonstrate the level of competence and fitness deemed necessary by the Commissioner;

xii. Whether management of an insurer has filed any false or misleading financial statement, or has released any false or misleading financial statement to lending institutions or to the public, or has made a false or misleading entry, or has omitted an entry of a material amount in the books of the insurer;

xiii. Whether, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

xiv. Whether, in the opinion of the Commissioner, the insurer has experienced, or is likely to experience in the foreseeable future, cash flow and/or liquidity problems.

2. The insurer shall satisfy the Commissioner that its financial condition is not such as would render its operations hazardous to the policyholders, stockholders or the general public. Such operations shall be deemed hazardous when the following standards indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholder, stockholders or the general public.

i. That the insurer has refused to maintain, or to submit for examination, books, records, accounts, or any other information about the company's affairs deemed relevant by the Commissioner;

ii. That the insurer has concealed or removed records or altered any valuable information from such records, or removed or altered any assets in violation of any applicable state law;

iii. That the insurer has willfully violated its charter or bylaws; and/or

iv. That the insurer has an officer, director or manager who has unlawfully refused to be examined under oath concerning the affairs of the insurer.

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3. The insurer shall satisfy the following capital and surplus licensure requirements:

i. An applicant shall satisfy, at a minimum, the statutorily-prescribed minimum capital and surplus requirements for all lines of insurance that ***it*** is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile, whether or not the applicant desires to transact any of those lines of insurance in the State of New Jersey. The Department shall make an adjustment of surplus regarding all applicant companies as follows:

(1) There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

(2) All applicants shall include in their Annual Statement a provision for unauthorized reinsurance for unearned premiums and losses in connection with the reinsurance in all companies not authorized to transact business in New Jersey. An amount in these items slightly larger than that required for New Jersey shall be acceptable where the liability is based on the calculation for some other state. These penalties may be adjusted for subsequent legal action on license status in the State of New Jersey or in other jurisdictions.

ii. Requirements for an application to meet the minimum capital and surplus amounts for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile may be modified by the Commissioner if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the Certificate of Authority issued by its state or county of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the Certificate of Authority issued by its state, districts, territories, commonwealth, possessions or country of domicile.

4. The applicant shall be deemed ineligible if any one of the following conditions exist:

i. An applicant company which has received from the NAIC *[an "immediate regulatory attention"]* ***a "first priority"*** designation for the calendar year next preceding its application date shall not be considered for admission until such designation has been removed by the NAIC;

ii. An applicant company which is a member of an insurance holding company system, where its parent or subsidiary has received from the NAIC *[an "immediate regulatory attention"]* ***a "first priority"*** designation, shall not be considered for admission until such designation has been removed by the NAIC from the parent or subsidiary;

iii. An applicant company which has been identified as *[targeted]* ***"second or third priority"*** and/or has failed four or more Insurance Regulatory Information System (IRIS) tests shall have its application deferred until it has demonstrated to the Commissioner and its state, districts, territories, commonwealth, possessions or country of domicile that these IRIS test results are not indicative of a financial condition that may be hazardous to the general public, policyholders and stockholders; *[and]* ***or***

iv. An applicant company which has failed to file with the NAIC an Annual Statement for the prior year shall have its application deferred until it has filed with the NAIC such Annual Statement.

5. The insurer shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a Certificate of Authority to transact the business of insurance in the State of New Jersey unless the Commissioner has been furnished with evidence that the applicant, under its present control, has been authorized by its/their state(s), district(s), territory(ies), commonwealth(s), possession(s) or country(ies) of domicile, to engage in the kind(s) of insurance business for which the applicant seeks a Certificate of Authority, and has in fact been actively engaged in such business for a period of at least five years prior to the date of the application for the New Jersey Certificate of Authority.

ii. An applicant insurer qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein either of the two most current years of business operations, it generated a net income from operations, after Federal taxes, as reported in the Underwriting and Investment Exhibit in the Annual Statement;

(2) Surplus has not decreased due to operations over the five year period in question; and

(3) It has received one of the top three ratings***, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department,*** from at least two of the following *[rating services]*: Standard and Poor's; Dun and Bradstreet; Moody's; and A.M. Best. If the applicant has received a rating of less than one of the top three ratings, the Department shall be so notified even if one of the top three ratings is received as required herein.

iii. The Commissioner may, upon the request of an applicant, on a case by case basis, waive, in the case of (a)5iii(1), (2), (3) and (5) below, or reduce, in the case of (a)5iii(4) below, the five year seasoning requirement required by (a)5i ***and ii*** above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisifed, and, in addition, whether any one of the applicable requirements provided in (a)5iii(1) through (5) below have been satisified. These requirements include:

(1) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State; or

(2) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least one year, and secured admission into New Jersey by having been in operation for at least five years pursuant to (a)5i ***and ii*** above. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer, which shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State. The insurer parent shall also be required to have one of the top two ratings***, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department,*** from at least two of the following *[rating services]*: Standard and Poor's; Dun and Bradstreet; Moody's and A.M. Best; or

(3) Whether the applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for which the applicant seeks a New Jersey Certificate of Authority and has been actively engaged in such insurance business for at least five years and is currently in good standing; or

(4) Whether the applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of domicile, which report is in accordance with the New Jersey Department of Insurance standards for examinations. The first two full years of operations covered by the examination report shall be *[of]* sufficient *[magnitude (net premiums written to surplus as regards policyholders of 1:1 or greater)]* to make the report useful and meaningful to the Department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent that the applicant will meet the minimum required capital and surplus requirements on a quarterly basis, for a period of five years from the date of admission;

(B) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey Certificate of Authority;

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(C) The ultimate parent shall have one of the top two ratings*, **or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department,*** from at least two of the following *[rating services]* for at least three years prior to application and shall maintain said rating for at least three years after admission: Standard and Poor's; Dun and Bradstreet; and Moody's. The Commissioner may initiate proceedings to revoke authorization for non-compliance with this requirement; and

(D) The ultimate parent shall have a net worth of at least $25,000,000, which amount shall be set by the Commissioner upon his or her consideration of the general financial condition of the parent and relevant underwriting factors such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate; or

(5) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an amount to be determined by the Commissioner, with a minimum requirement of $5,000,000 and issued for a period of time as shall be determined by the Commissioner***, but which shall not exceed five years***. The Commissioner shall exercise his or her discretion in setting an amount for a surety bond upon consideration of the factors noted in (a)5iii(4)(D) above. This bond shall be prepared in such a way as to meet the requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company.

6. The insurer shall procure a New Jersey Certificate of Authority by establishing compliance with the applicable requirements of N.J.S.A. 17:17-1 et seq. and shall successfully complete an admissions process which shall include a detailed review by the Commissioner of ***the*** business affairs and financial condition of the applicant as provided by this subchapter.

(b) An applicant company intending to make a formal application for admission shall first submit a letter of intent which shall consist of the preliminary information set forth in N.J.A.C. 11:1-10.5.

11:1-10.5 Letter of intent

(a) Prior to the acceptance of a final application for a Certificate of Authority in the State of New Jersey, all foreign and alien insurers engaged in the business of property and casualty insurance who desire to transact the business of insurance in the State of New Jersey shall submit, as a preliminary application, a letter of intent, which shall include the information required in (a)1 through 8 below.

1. The name of the applicant;

2. Where applicable, the name of any person, as defined in this subchapter, or other entity, by whom the applicant is controlled;

3. The applicant's current insurance holding company systems chart;

4. Where applicable, the name of any insurer(s) currently licensed in the State of New Jersey with whom the applicant is affiliated;

5. The type(s) of insurance proposed to be written by the applicant in the State of New Jersey;

6. A certified copy of the applicant's most recent Annual Statement, prepared on the NAIC annual and quarterly statements forms used by New Jersey domestic insurers;

7. A certified copy of the applicant's current Certificate of Authority from its state, district, commonwealth, territory, possession or country of domicile; and

8. The results of the most recent NAIC Insurance Regulatory Information System (IRIS) tests and related communications concerning the applicant, which shall satisfy the requirements of N.J.A.C. 11:1-10.4(a)4i-ii.

11:1-10.6 Final application

(a) After the submission of the letter of intent as required by N.J.A.C. 11:1-10.5, the applicant shall be instructed by the Department to file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of its bylaws as currently in force, certified by a senior officer of the company;

3. A statement of the company's financial condition as of December 31 of the preceding calendar year, in the NAIC format, signed and sworn to by the president of the company, its corporate secretary and its treasurer;

4. A Certificate of Compliance under the official seal of the commissioner of insurance of the company's domiciliary state or country;

5. A certified copy of a report of the most recent examination of the company's affairs by the department of insurance or its equivalent, of the state or country in which the company is domiciled;

6. An appointment, by the company, of the Commissioner as attorney for service of process;

7. An application for admission, on a form to be prescribed and provided by the Department, including the payment of a non-refundable application fee of $1,000;

8. A "statement of opinion" by a qualified actuary relating to loss and loss adjustment expense reserves, pursuant to N.J.A.C. 11:1-21;

9. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;

10. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the state, district, territory, commonwealth, possessions or country of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

11. A statement of ownership of the applicant. This statement shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;

12. A copy of any agreements by which the right to conduct or influence any of the affairs of the applicant is transferred to others;

13. Any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the applicant, directly or indirectly, participates;

14. Any tender offer materials (advertisements, invitations, etc.) if any tender offer has been made by the company or its parent to acquire another company within the three years preceding;

15. Modified NAIC biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;

16. A corporate plan of operation consisting of:

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications;

(2) All jurisdictions from which the applicant has withdrawn during the preceding 10 years, and the reasons for withdrawal; and

(3) All administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates, or any of its directors or principal officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent in a jurisdiction which does not use this designation of a crime, such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto.

ii. A description of the applicant's present business plan or plan(s) for conducting an insurance business, including, but not limited to:

(1) Geographical areas in which business is being written;

(2) The types of insurance to be written;

(3) Marketing methods;

(4) A summary of the methods for establishing premium rates; and

(5) A description of agency systems, including any managing general agency contracts.

iii. A proposed plan for conducting an insurance business in the State of New Jersey, including, but not limited to:

(1) The geographical area in which business is intended to be done;

(2) The types of insurance intended to be written;

(3) Proposed marketing methods;

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(4) Proposed methods for the establishment of premium rates; and

(5) A three year forecast of anticipated premiums in this State by line of business.

iv. A summary of the applicant's reinsurance program on assumed and ceded business, indicating the name of the reinsurers, retentions, maximum risks, types of contract (such as pro rata), excess of loss, and any other information which may be relevant to this part of the applicant's operation. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant;

v. A summary of the applicant's reinsurance assumed program, with retentions, maximum risks, types of business, types of contracts to be issued, and other factors which may, in the opinion of the Department, be relevant to this part of the applicant's operations;

vi. The number and ratio of complaints as defined by the state or country of domicile to the premium volume in the state or country of domicile, for those lines of business in which the state, districts, territories, commonwealth, possessions or country of domicile makes such determinations; and

vii. Copies of all management, exclusive agency, administrative services, or any other operating contracts with affiliates or non-affiliates, where applicable, signed by the parties and certified to by the company secretary and chief operating officer.

17. If a United States Branch, the applicant shall provide the Department with:

i. A certificate of deposit from its insurance commissioner showing the amount in trust for policyholders;

ii. A certified copy of power of attorney in favor of its United States manager; and

iii. A certified copy of a deed of trust to the trustee of the funds of the company.

18. If the applicant is an alien insurer, a statement of trusteed surplus in the United States.

(b) The Department shall evaluate the difference between the admitted value and the actual market value of all bonds held by the company.

(c) Applicants who wish to write or have the authority to write health insurance in the State of New Jersey shall complete and submit a consumer suitability study on a form prescribed and provided by the Department. This study shall be reviewed and approved by the Department.

(d) Applicants who desire authority to write workers' compensation and employers' liability insurance shall, prior to admission, become members of the Compensation, Rating and Inspection Bureau, located at 60 Park Place, Newark, New Jersey 07102. The Bureau shall be consulted for membership at the point in time when all requirements for admission have been satisfied and the application for admission is actually submitted. The Bureau shall be advised by the Department that the applicant is in the process of filing for admission in the State of New Jersey.

11:1-10.7 Review procedures; appeals

(a) Upon receipt of a final application, the Commissioner shall conduct a thorough background investigation and review which shall include the information contained in N.J.A.C. 11:1-10.4, 10.5 and 10.6, inquiries regarding claims settlement practices and any other information which, in the opinion of the Commissioner, may be necessary to make an appropriate decision on an application.

(b) Applicant companies shall ensure that all filings submitted to the Department are current. Any amendments, changes or replacements to constituent documents on file shall be timely updated.

(c) Applications accepted after the 1st day of December of each year shall have their review deferred until the Annual Statement for the current year is available and received for review. The review of the filings of the prior year shall begin as of the 1st day of April of each year, after the receipt of Annual Statements, which shall be submitted not later than the 1st day of March of each year.

(d) Before a decision on an application is made, the Department may request from an applicant, in writing, any additional information it may require. Failure by an applicant to respond to written inquiries by the Department within 45 days may be considered grounds for rejection of the application.

(e) Application reviews shall be conducted by the Department on a monthly basis. The Committee on Admissions shall make a recommendation to the Commissioner concerning each application which has been reviewed. The Commissioner shall consider the recommendation and make his or her decision on the application within 10 working days from receipt of the recommendation. Written notice of the decision shall be mailed to the applicant by registered mail within 10 working days of the date of the Commissioner's decision.

(f) When the Commissioner rejects an application, the notice of rejection shall include a statement specifying the reasons for the rejection.

1. Such notice shall further inform the applicant of the right to request an informal Departmental review of the rejection within 20 days of receipt of the notice of rejection.

2. Such notice shall further inform the applicant of the right to provide to the Department a written statement, with supporting documentation, if any, disputing with specificity the reasons for rejection within 30 days of the receipt of the notice of rejection.

3. Upon the timely receipt of the request for Departmental review and the written statement of the company, if any, the Department shall promptly review the application, attached documents, department records and the written statement. In appropriate circumstances, the Commissioner may provide the applicant with an opportunity to present its position in person.

4. If, after reviewing the record, the Commissioner determines that the applicant has failed to qualify, the Commissioner shall promptly so inform the applicant and advise the applicant of its right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1-10.8 Requirements upon admission

(a) Applicants who request authority to write automobile liability and/or automobile physical damage coverage in the State of New Jersey shall, upon admission, automatically become members of and shall be subject to the requirements of the statutes and rules concerning the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA"). Any questions concerning this organization shall be directed to the General Manager, NJAFIUA, 293 Eisenhower Parkway, Livingston, New Jersey 07039.

(b) Applicants contemplating the writing of homeowners or comprehensive personal liability polices in the State of New Jersey shall be required to afford coverage against liability for the payment of any obligation which the policyholder may incur to an injured domestic servant, or household employee, or the dependents thereof, pursuant to the provisions of the Workers' Compensation Law of the State of New Jersey. The Compensation, Rating and Inspection Bureau shall be informed by the Department accordingly.

(c) Applicants who wish to have their Certificate of Authority limited to "reinsurance" only, may disregard the requirement of N.J.A.C. 11:1-10.8(a) pertaining to the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA") and those regulatory requirements concerning membership in the Compensation, Rating and Inspection Bureau and the completion of a consumer suitability study for health insurance identified in 11:1-10.6(c) and (d).

11:1-10.9 Compliance

This subchapter shall apply to all applicants submitting a letter of intent on or after *[the operative date of this subchapter]* ***June 19, 1989***. Applicants whose letters of intent have been received by the Department prior to *[the operative date of this subchapter]* ***June 19, 1989,*** may elect to proceed under this subchapter if they so notify the Department no later than *[the operative date of this subchapter]* ***July 19, 1989***. Applicants whose letters of intent have been received by the Department prior to *[the operative date of this subchapter and]* ***June 19, 1989*** who do not timely notify the Department that they wish to proceed under this subchapter***,*** shall have their applications reviewed under the procedures pre-existing this subchapter.

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11:1-10.10 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

DIVISION OF ADMINISTRATION

Rating Organizations: Private Passenger Automobile Filings

Adopted Repeal: N.J.A.C. 11:3-17

Proposed: April 17, 1989 at 21 N.J.R. 973(a).

Adopted: May 26, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: May 26, 1989 as R. 1989 d. 328, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29A-1 et seq.

Effective Date: June 19, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-17, until its deletion through updating of the Code text.

(b)

DIVISION OF ACTUARIAL SERVICES

Notice of Administrative Correction
Residual Market Equalization Charges (RMECs)
Collection of RMECs; Definition of Private Passenger Automobile

N.J.A.C. 11:3-25.3 and 25.4

Take notice that the Department of Insurance has discovered errors in the published adopted text of N.J.A.C. 11:3-25.3 and 25.4 published in the May 15, 1989 New Jersey Register at 21 N.J.R. 1361(a).

In N.J.A.C. 11:3-25.3(a)1, the word "should" was filed with the Office of Administrative Law (OAL) as "shall" in the notice of proposal (see PRN 1989-80) but erroneously published in the February 6, 1989 New Jersey Register (see 21 N.J.R. 278(a)). The word was published as "should" in the adoption as the paragraph was submitted as unchanged from the published proposal.

In N.J.A.C. 11:3-25.4(a), the words "registered or" added upon adoption were incorrectly published as "registered as."

In N.J.A.C. 11:3-25.4(b)8, the Department neglected to add the words "another policy" after the conjunction "and," clouding the meaning of the phrase "is issued to the lender." While "another policy" may be implied from the adopted language, the Department has requested pursuant to N.J.A.C. 1:30-2.7(a)3, and the OAL has agreed, the addition of the clarifying words. This change inserts language identical to that found in N.J.A.C. 11:3-24.4, Definition of private passenger automobile, at paragraph (b)8 (see 21 N.J.R. 1358(b)).

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

11:3-25.3 Collection of RMECs; remittance

(a) All private passenger and commercial automobile insurers and self-insurers which are subject to the provisions of this subchapter shall collect RMECs, pursuant to N.J.S.A. 17:30E-8, on private passenger automobiles as defined herein on a uniform net direct car year of liability exposure basis and a net direct car year of physical damage exposure basis (except as set forth at N.J.A.C. 11:3-25.4(b)7) in the amounts approved by the Commissioner and in effect when each policy or certificate of self-insurance is issued or renewed.

1. Each insurer [should] **shall** assess six month policies one-half the approved RMEC and quarterly policies one-fourth the approved RMEC. The RMEC charge is prorated for motor vehicles that are added or deleted mid-term from any policy subject to this subchapter. In the case of additions, the applicable RMEC is prorated to the end of the policy term. In the case of deletions, the unearned RMEC collected is refunded to the insured.

2.-5. (No change.)

(b)-(e) (No change.)

11:3-25.4 Definition of private passenger automobile

(a) "Private passenger automobile" means an automobile registered [as] **or** principally garaged in the State of New Jersey, of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; or a motor vehicle with a pick-up body, a van, a delivery sedan, a panel truck, a motorized camper type vehicle, or a motorcycle registered or principally garaged in the State of New Jersey, and owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, professional or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile. Motor vehicles owned by a governmental entity, agency or instrumentality thereof, and motor vehicles owned by a religious or nonprofit institution, are not considered private passenger automobiles.

(b) The following motor vehicles which otherwise meet the definitions of private passenger automobile are also subject to the assessment of RMECs:

1.-7. (No change.)

8. A motor vehicle in which an insurance policy covering the lender's or borrower's interest in the motor vehicle has lapsed and **another policy** is issued to the lender;

9.-10. (No change.)

(c)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Administrative Correction
Advertising Rules

N.J.A.C. 11:5-1.15

Take notice that the Real Estate Commission has discovered an error in the text of N.J.A.C. 11:5-1.15(c) in that the word "Realtist" is misspelled "Realist". This notice of administrative correction is made pursuant to N.J.A.C. 1:30-2.7(a)3. Note that this error is also reflected in the text of the proposed amendment to that subsection published in the May 15, 1989 New Jersey Register at 21 N.J.R. 1312(a).

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

11:5-1.15 Advertising rules

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

(c) All advertising shall clearly indicate after the licensee's regular business name that the advertising licensee is engaged in the real estate brokerage business. Except as prescribed by N.J.S.A. 45:15-17(j), examples of permissible language shall include, but are not limited to, "Realtor," ["Realist,"] **"Realtist,"** "real estate broker," "broker," or "real estate agency." Examples of prohibited language when used alone shall include, but are not limited to, "realty," "real estate," "land sales," and "land investments." This provision shall not apply when the word "agency" appears in the advertisement as part of the licensee's regular business name or when the licensee has legal or equitable ownership of the property.

(d)-(m) (No change.)

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(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Organizational Rules
Organization and Functions
Adopted Repeal and New Rule: N.J.A.C. 11:5-2.2
Adopted Amendment: N.J.A.C. 11:5-2.3

Adopted: May 22, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: May 24, 1989 as R. 1989 d. 324.
Authority: N.J.S.A. 45:15-6.

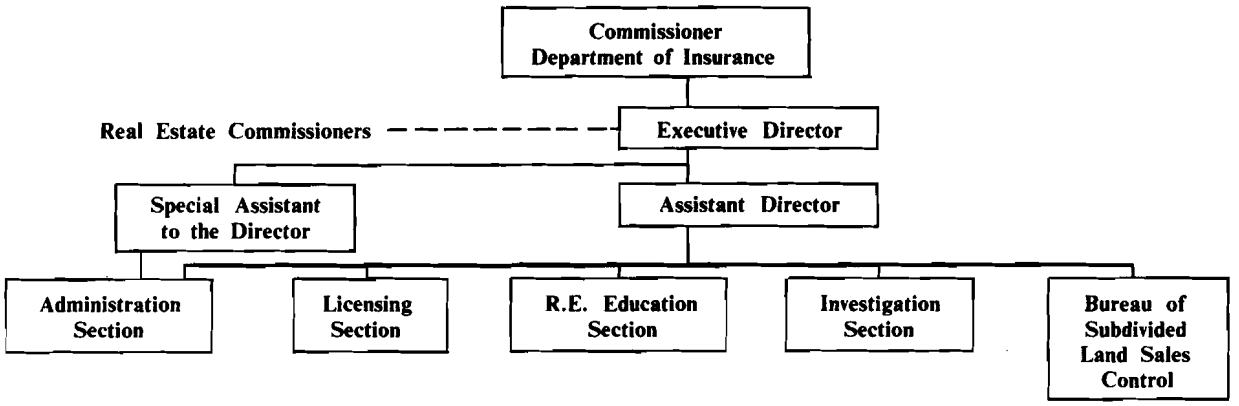
Effective Date: May 24, 1989.
Expiration Date: October 23, 1993.

Take notice that the New Jersey Real Estate Commission has adopted a repeal and new rule at N.J.A.C. 11:5-2.2 revising the organizational chart of the Commission, which contained an inaccuracy as adopted. In addition, the Commission has adopted an amendment to N.J.A.C. 11:5-2.3(a)3 to clarify responsibility in the Real Estate Education Section. This new rule and amendment effect changes to those rules published in the May 15, 1989 New Jersey Register at 21 N.J.R. 1364(a).

Full text of the adopted repeal may be found at 21 N.J.R. 1364(a).

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

11:5-2.2 Organization of the Commission
The organization chart of the Real Estate Commission is as follows:



11:5-2.3 Functions of the Commission
(a) The Commission is comprised of five sections whose functions are as follows:
1-2. (No change.)
3. The Real Estate Education Section is responsible for reviewing the qualifications of real estate school and instructor applicants and for regulating their activities as such ***through the Education Subsection.***
4-5. (No change.)

LABOR

(b)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Unemployment Benefit Payments
Disclosure of Information
Adopted Amendments: N.J.A.C. 12:17-7.1, 7.2 and 7.3

Proposed: April 17, 1989 at 21 N.J.R. 975(a).
Adopted: May 26, 1989 by Charles Serraino, Commissioner, Department of Labor.
Filed: May 26, 1989 as R.1989 d.327, **without change.**
Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-11(g).
Effective Date: June 19, 1989.
Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

12:17-7.1 Administration of New Jersey Unemployment Compensation and Temporary Disability Benefits Law
No disclosure of information obtained at any time from and identifiable to specific workers, employers or other persons in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law shall be made directly or indirectly, except as authorized by the Commissioner or his or her representative in accordance with this subchapter.

12:17-7.2 Authorized disclosure of information
(a) Disclosure of any information in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law may be authorized in the following cases for the following purposes:
1. (No change.)
2. To any properly identified claimant for benefits or payments under an unemployment compensation or readjustment allowance law of the federal government, or of a state or territorial government, or of a foreign government with which reciprocal arrangements have been made, or to his or her duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his or her claim;
i. Requests for claim-related information received directly from a claimant, in writing, in person or by telephone are to be honored once the identity of the claimant has been verified and provided that the intended use of such information does not conflict with the provisions of N.J.S.A. 43:21-11(g).
ii. Telephone, informal, or written requests from an attorney or other individual who states that he or she is the claimant's representative are not to be honored unless the claimant provides the Department with a signed and dated authorization for the release of the specified information.
3. (No change.)
4. To officers or employees of any agency of the Federal government or any state, territorial or local government (or officers or employees of a foreign government agency with which reciprocal arrangements have been made and which is lawfully charged with

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the administration of an unemployment compensation or readjustment allowance law) if such disclosures will not impede the operation of, and are not inconsistent with, the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law.

i. Requests by law enforcement agents for the release of Departmental information must be made in writing, and the identity of the requester must be verified prior to the release of information by the showing of a badge, warrant, written and signed request on agency letterhead, or some other similar indication of official purpose.

(1) Information which may be released includes the claimant's name(s), current address, current or most recent employer, and the next scheduled reporting date; and

(2) A request for surveillance or photography in connection with an investigation must be approved in writing by the Director of the Division of Unemployment and Disability Insurance.

ii. Public employees must certify that the information requested is to be used in furtherance of their public duties and must certify in writing that the confidentiality of the disclosed information will be maintained.

(1) Telephone inquiries from legislators or the Office of the Public Advocate may be answered verbally, provided that the identity of the caller can be verified; and

(2) Written requests by State or Federal legislators on official letterhead shall be honored, provided that the information will be used in furtherance of their public duty or provided that the claimant has requested that the information be released.

5. To officers or administrators of public or private organizations such as colleges, universities, or foundations to perform research or engage in public service activities, which can be expected to benefit the residents of New Jersey by improving or promoting their health, safety, economic or social well-being, provided that the benefit of such research or public service activity to New Jersey residents is certified in writing by the administrator of a New Jersey municipal, county or State executive agency, or his or her designated representative, and provided that such disclosure will not impede the operation of, and is not inconsistent with, the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law, and provided that the officer or administrator of the agency engaged in research or other public service activities certifies in writing that the confidentiality of the disclosed information will be maintained.

12:17-7.3 Unauthorized disclosure of information

Nothing contained in this subchapter shall, or shall be construed to, contravene 20 C.F.R. §401.1 et seq. (1987) relating to the disclosure of official records and information.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Commercial Drivers' Schools

Readoption: N.J.A.C. 13:23

Proposed: April 17, 1989 at 21 N.J.R. 976(a).

Adopted: May 23, 1989 by Glenn R. Paulsen, Director of the Division of Motor Vehicles.

Filed: May 26, 1989 as R.1989 d.333, **without change.**

Authority: N.J.S.A. 39:12-4.

Effective Date: May 26, 1989.

Expiration Date: May 26, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:23.

DIVISION OF CONSUMER AFFAIRS

(b)

BOARD OF MEDICAL EXAMINERS

Advertising and Solicitation Practices

Adopted Amendment: N.J.A.C. 13:35-6.10

Proposed: March 20, 1989 at 21 N.J.R. 696(a).

Adopted: May 10, 1989 by the Board of Medical Examiners, Frank J. Malta, M.D., President.

Filed: May 24, 1989 as R.1989 d.325, **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. 45:9-2.

Effective Date: June 19, 1989.

Expiration Date: November 19, 1989.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:35-6.10, relating to advertising and solicitation practices. The official comment period ended on April 19, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 20, 1989 at 21 N.J.R. 696(a). Announcements were also forwarded to the Star Ledger, Trenton Times, Asbury Park Press and Camden Courier Post, newspapers of general circulation; the Medical Society of New Jersey; the Federation of State Medical Boards; the New Jersey Association of Osteopathic Physicians and Surgeons; the New Jersey Hospital Association; the New Jersey Podiatric Medicine Society; the New Jersey Chiropractic Society; the Garden State Chiropractic Society; the Department of Health; the University of Medicine and Dentistry of New Jersey; and interested individuals.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Room 602, 28 W. State Street, Trenton New Jersey 08608.

Summary of Public Comments and Agency Responses:

The Board received six letters during the 30-day comment period from:

University of Medicine & Dentistry of New Jersey (School of Osteopathic Medicine)

Chiropractic Legal Action Committee

New Jersey Podiatric Medical Society (2 letters)

Ira Sweet, Ed.D.

American Board of Medical Specialities

COMMENT: It is suggested that N.J.A.C. 13:35-6.10(g), 3, 4, 5, and 6 be deleted from the proposed amendment since the added recordkeeping requirements, relating to free or discounted services, will probably eliminate the practice of providing free or discounted services.

RESPONSE: The proposed amendment relates only to advertised free or discounted services. The amendment, as proposed, does not apply to the waiver of an office fee (at the time of the patient visit and without public announcement) which would otherwise be charged, for charitable or other reasons.

COMMENT: Strong exception is taken to the "burdensome requirement" (N.J.A.C. 13:35-6.10(g)3) that a licensee must maintain a list of patients receiving free or discounted services by name and date or an appointment book where such patients are identifiable for a period of seven years.

RESPONSE: The Board believes that it is logical to require that maintenance of the appointment list be made coextensive with the requirement to maintain patient records for seven years, particularly since an appointment book may be considered part of a patient record. The number of patients receiving free or discounted services cannot be so extensive that the "voluminous" records suggested by the commenter are necessitated. The Board notes that the burden to, in effect, maintain an index of patient records is miniscule in comparison to the requirement of keeping appropriate patient records.

COMMENT: Prefiling of advertisements by the Board is a "prior restraint on free speech" and cannot be permitted.

RESPONSE: The Board believes that the commenter's objection misinterprets the proposed amendment. The rule at N.J.A.C. 13:35-6.10(g)4 states "Any person offering free or discounted medical services shall file copies of any such advertisement with the Board **within 30 days of initial publication.**" This requirement is not a prior restraint, but simply a filing requirement within 30 days subsequent to publication.

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COMMENT: The proposed prohibition on charging for any service rendered within 72 hours from the time a free service is rendered (N.J.A.C. 13:35-6.10(g)8) does not provide for the discovery of a serious condition requiring emergent treatment, as a result of the free examination.

RESPONSE: The Board did consider emergent situations when creating the proposed rule. However, the Board believes that the 72-hour period would prevent the use of an offer for a free service as "bait" to charge for conditions revealed at the time of service. In the event of a truly emergent situation, the patient can be referred to an emergency room or elsewhere or treated without cost to the patient. The board believes that if a professional advertises free services he should accept the responsibilities connected with that offer.

COMMENT: The exclusion from recordkeeping requirements in N.J.A.C. 13:35-6.10(g)3 and 6, relating to mass screening programs performed off-site as a community service, sponsored by a governmental or non-profit organization, does not include community services which are neither non-profit nor governmental (that is, screening sponsored by Medicine Shoppes or a shopping mall.)

RESPONSE: The Board will require recordkeeping as to proprietary, for-profit offers of community service screening. For example, records of services provided will be required if programs are run by for-profit organizations or physicians, whether for their personal aggrandizement, monetary gain or simply to spread their name or increase patient load.

COMMENT: Clarification is sought regarding the term "graphic representations", which are false, fraudulent, misleading or deceptive, as used in proposed N.J.A.C. 13:35-6.10(c)1.

RESPONSE: False, fraudulent, misleading or deceptive graphic representations, just as words which are false, fraudulent, misleading or deceptive, will be judged on a case by case basis. One extreme example would be a graphic of a hernia attached to a portion of the body which is not possible.

COMMENT: Doctors identifying themselves as specialists should be required to state whether they are Board certified, Board eligible or simply that they have a practice limited to that area.

RESPONSE: Although the commenter raises an issue not covered in this proposed amendment, the Board wishes to note that the word specialist does not necessarily require Board certification, but merely indicates that the doctor specializes, or usually practices, in a particular area. Included in this amendment is a requirement that physicians are to be truthful if they represent Board certifications, and the Board is adding a requirement that such certification be by an acceptable and recognized certifying agency. Since many physicians possess numerous certifications, it would be impractical and costly, for example, to require a physician indicating specialization in five different areas to include each such certification in their telephone listings.

COMMENT: Referring to N.J.A.C. 13:35-6.10(m), the American Board of Medical Specialties (ABMS) recommends that the Board adopt language from the Florida Administrative Code specifically naming it (ABMS) as a Board recognized certifying agencies which would evaluate Board specialties.

RESPONSE: The Board will request additional information from the American Board of Medical Specialties (ABMS) for review and possible approval as a "recognized agency." If approved, ABMS will be placed on a list of recognized certifying agencies. The Board does not consider it necessary to specifically name the various certifying agencies in the rule.

On its own initiative, the Board is correcting upon adoptive misspellings in N.J.A.C. 13:35-6.10(l) and (n)1ii. The Board is also changing "received by a person" at N.J.A.C. 13:35-6.10(n)1iii to "received by or on behalf of a person," in order to clarify the term "direct or indirect."

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

13:35-6.10 Advertising and solicitation practices

(a) The following words and terms, when used in the section, shall have the following meanings, unless the context clearly indicates otherwise.

1.-6. (No change.)

7. The term "graphic representation" shall mean the use of drawings, animations, clinical photographs, dramatizations, music or lyrics.

(b) (No change.)

(c) A Board licensee who engages in the use of advertising which contains any of the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim or format including, but not limited to, a graphic representation, which is false, fraudulent, misleading or deceptive.

2.-6. (No change.)

7. Any personal testimonial attesting to the quality or competence of a service or treatment by a licensee involving medical or technical assessments which are beyond the patient's competency to assess, or any testimonial not in compliance with (n) below;

8. The communication of any fact, data or information which may personally identify a patient without that patient's signed written permission obtained in advance;

9.-10. (No change.)

11. Any guarantee of results from any procedure is prohibited;

12. Any violations of (d) through (n) below.

(d) (No change.)

(e) A Board licensee shall not engage either directly or through the use of any agent, employee or representative in in-person solicitation with a prospective patient or consumer. This subsection shall not prohibit a licensee from offering services through materials provided to a community service organization which makes known the availability of all professional services desiring to be listed; nor shall it prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not to limited to, employers, labor union representatives, or insurance carriers.

(f) (No change.)

(g) The requirements for advertising free or discounted services are as follows:

1. An advertisement offering a fee reduction shall state the reduced fee or range of fees and the physician's usual fee or range of fees for each service for which a reduction is advertised. The reference fee required in this subsection shall have been the usual fee charged for the advertised service for a period of not less than 90 days prior to the advertised reduction.

2. All offers of free services or discounts shall include a statement of the specific charges for all associated or reasonably anticipated services which are not included in the offer of free or discounted services. If the discount or free service does not apply to all services to be rendered, the advertisement shall specify any associated or reasonably anticipated services which are not included (for example, free eye screening for senior citizens does not include charges for refraction, eyeglasses and contact lens fitting).

3. The licensee shall maintain a list of the patient names and dates of service for all patients for whom he or she has provided free or discounted services. The list may be maintained as part of the physician's appointment book as long as the patient receiving free or discounted services is identifiable. The list shall be maintained for seven years from the date of last entry except in the case of massive screening programs performed off-site (out of the office) as a community service, and which are sponsored by a governmental or non-profit organization.

4. Any person offering free or discounted medical services shall file copies of any such advertisement with the Board within 30 days of initial publication. The Board's acceptance for filing of such an advertisement shall not be deemed approval of the advertisement's content.

5. Any offer of free or discounted diagnostic services shall include the providing of results to the patient or a designated licensee or duly authorized representative within 30 days of a written request by the patient or duly authorized representative.

6. A patient record shall be maintained for all discounted or free services for seven years from the date of last entry except in the case of massive screening programs done off-site (out of the office) as a community service, and which are sponsored by a governmental or non-profit organization.

7. The patient record maintained shall be made available upon patient request to the same extent as under the Board's patient record rule (N.J.A.C. 13:35-6.5), and the patient shall be advised at the time

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the service is rendered that the record will be available to him or her.

8. Except for those services specifically excluded in the advertisement offering free services, the physician shall not charge for any service whatsoever rendered during a period of 72 hours from the time the free service was rendered.

(h)-(k) (No change.)

(l) All Board licensee advertisements and public representations intended to be displayed or circulated away from the office premises, including telephone directory advertisements, may, if desired, list the professional service corporation or trade name under which the practice is conducted but shall disclose the nature of the practice, and the name and address or telephone number of at least one of the principal *[practictioners]* ***practitioners***. This requirement does not apply to licensees employed by an ambulatory health care facility licensed by the New Jersey State Department of Health.

(m) Any licensee advertising Board certification in a specialty must possess certification by a certifying agency recognized by the Board of Medical Examiners. A list of recognized agencies shall be maintained by the Board.

(n) The requirements for testimonial advertisements are as follows:

1. All testimonials involving a specific or identifiable procedure shall truthfully reflect the actual experience of the patient and shall include the following conspicuously displayed statements:

i. "This procedure may not be suitable for every patient. All patients must be evaluated by a physician as to the appropriateness of performing the procedure" or words to the same effect.

ii. "The above testimonial represents the individual's response and reaction to the procedure; however, no medical procedure is risk*-*free. Associated potential risks and complications should be discussed with the physician rendering this procedure" or words to the same effect.

iii. Any compensation, direct or indirect, received by ***or on behalf of*** a person giving a testimonial shall be disclosed by specifying the type of compensation and amount or value of compensation in the testimonial advertisement.

2. A physician who advertises through the use of testimonials shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation and a signed, notarized statement and release verifying the truthfulness of the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement obtained prior to the time the testimonial is advertised.

3. Any guarantee of results from any procedure is prohibited.

(o) Nothing contained in this section shall be construed to prohibit the licensing board from adopting additional rules concerning advertising by Board licensees. To the extent that any conflict or inconsistency may arise between the provisions of this section and any subsequently adopted rule dealing more specifically with the same subject matter as set forth, such subsequent adopted rule shall control.

(a)

STATE BOARD OF PHARMACY

Board of Pharmacy Rules

Adopted Repeal and New Rules: N.J.A.C. 13:39

Proposed: July 18, 1989 at 20 N.J.R. 1648(a).

Adopted: March 15, 1989 by the New Jersey State Board of Pharmacy, William Weinert, President.

Filed: May 19, 1989 as R.1989 d.314, **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. 45:14-1 et seq.

Effective Date: June 19, 1989.

Expiration Date: June 19, 1994.

The New Jersey State Board of Pharmacy afforded all interested parties an opportunity to comment on the reproposed repeal and new rules, N.J.A.C. 13:39, relating to the practice of pharmacy, including a public hearing on August 17, 1988, which concluded the official comment period. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 18, 1988 at 20 N.J.R. 1648(a). Announcements were also forwarded to: The Star Ledger, the Trenton Times, the Camden Courier Post and the Bergen Record; the New Jersey Pharmaceutical Association, the New Jersey Society of Hospital Pharmacists, Rite-Aid Corporation, Wakefern Food Corporation, Supermarkets General Corporation, and a number of pharmacists and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Pharmacy, Room 325, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

N.J.A.C. 13:39-1.2 Definitions

"Compounding"

COMMENT: One commenter pointed out that this definition includes intravenous admixture preparation, but coupled with restrictions on supportive personnel at N.J.A.C. 13:39-6.7(b), would severely limit the use of such personnel.

RESPONSE: The restrictions on supportive personnel were eliminated at N.J.A.C. 13:39-6.7(b); thus, the use of such personnel would not be limited in the manner the commenter noted.

"Device"

COMMENT: One hospital asked whether the pharmacy is responsible for rectal tubes and other non-drug related equipment and supplies based on the proposed definition.

RESPONSE: No.

COMMENT: The New Jersey Hospital Association objected to the use of the word "implant" in the definition of "device," stating that certain specific devices, for example, Hickman catheters, would thus be included under this definition.

RESPONSE: The qualifying term at the end of the definition of "device," that is—"in the usual scope of pharmacy practice"—limits the definition and the Board believes the definition does not extend to those devices which the New Jersey Hospital Association mentions.

"Direct personal supervision"

COMMENT: Several comments were made opposing this definition. Hospital pharmacists in particular objected to the use of the words "personal" in conjunction with "observation," claiming that the intensive nature of such "over-the-shoulder" supervision would negate the value of supportive personnel. Why, they argued, use supportive personnel if it was easier to do it oneself?

Further, several commenters said that "direct personal supervision" was not defined consistently: the term "direct supervision" was also used, in a somewhat different sense, in other sections of the proposed rules. In particular, commenters said that supervision of supportive personnel in the Nuclear Pharmacy section of the proposed rules allowed a lesser degree of supervision than in other types of pharmacies.

Two representatives from chain drug stores also objected to the "over-the-shoulder" aspects of this definition.

RESPONSE: The Board agrees with the essence of the comments and has reworded the entire section to make it less stringent. Specifically, the word "personal" is removed from the definition, as is the word "observation," and the inconsistencies in different sections have been removed by eliminating the word "personal."

The Board makes these changes because it does not intend that supervision of supportive personnel be so close and intensive that "over-the-shoulder" scrutiny is needed. However, the Board reiterates the necessity for pharmacists to control and check each phase of the processes they delegate so that the necessary functions of supportive personnel are performed in a safe manner.

"Dispense or dispensing"

COMMENT: Four negative comments were received. Two comments stated that the definition would prevent home deliveries by non-pharmacists. A third commenter felt the wording prohibited anyone other than the patient from receiving the drug, and a fourth interpreted the definition to mean that the pharmacist would have to consult with the person administering the drug.

RESPONSE: The definition was reworded to satisfy the commenters' objections. Home deliveries would not be affected, persons other than the patient can pick up the drug, and the words connoting consultation with the "individual administering the drug" were deleted. Further, non-

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direct means of consultation, such as pamphlets, are specified as an alternative to face-to-face consultation.

"Drug or medicine" and "legend drug or device"

COMMENT: One person objected to the inclusion of "diagnosis" in the definition of drug or medicine, stating that this might be construed to mean the pharmacist is responsible for "non-therapeutic forms of chemicals."

The same person objected to the words "or words of similar import" in the definition of legend drug or device, stating that this might mean that the pharmacist is responsible for items labeled "restricted to sale by or on the order of a physician."

RESPONSE: No change has been made; the definitions stand as proposed. In neither instance was the Board trying to extend pharmacists' control to substances or materials normally not considered part of usual pharmacy practice.

"Pharmaceutical services"

COMMENT: The New Jersey Pharmaceutical Association objected to the last sentence (". . . teaching and counselling on the proper and safe use of drugs and medications."), feeling that it mandated patient counselling, which they feel is a professional prerogative, not always appropriate, and expensive. The New Jersey Council of Chain Drug Stores objected to the same phrase, questioning the stretching of the pharmacist's role to teaching and counselling.

RESPONSE: This phrase was meant to encourage pharmacists to give time to communities in a teaching role, and not to mandate counselling on each prescription. (But see comments under Dispense or dispensing, above). Further, the Board feels that the "teaching and counseling" function is a natural one for health professionals and should be encouraged. The phrase is retained.

"Registered pharmacist"

COMMENT: The New Jersey Pharmaceutical Association notes that this definition means that a pharmacist would have to possess both a valid license and a valid renewal certificate in order to be a registered pharmacist.

RESPONSE: The New Jersey Pharmaceutical Association's comment that this definition is incorrect is valid; it has been changed so that the phrase ". . . by virtue of a renewal certificate being obtained." is dropped.

N.J.A.C. 13:39-1.3 Fee schedule

COMMENT: The New Jersey Pharmaceutical Association pointed out an omission, namely, no renewal fee for annual pharmacy permits.

RESPONSE: The omission has been incorporated, typographical errors have been corrected, and the fee schedule has been reworded to be more easily understood.

N.J.A.C. 13:39-2.1 Education requirements

COMMENT: One person asked why "foreign education" is not incorporated into this section.

RESPONSE: Foreign-trained pharmacists are a special case and are fully treated in a separate section.

N.J.A.C. 13:39-3.2 Duplicate certificate of registration

COMMENT: One person said the first word in the last line should be "upon."

RESPONSE: The section is correct as it is.

N.J.A.C. 13:39-3.4 Change of employment or address

COMMENT: Both the New Jersey Pharmaceutical Association and the New Jersey Council of Chain Drug Stores objected to the requirement that pharmacists' hours worked each week be reported to the Board; they felt it impractical and unnecessary.

RESPONSE: The Board agrees and has deleted the requirement.

N.J.A.C. 13:39-3.5 Certification of records

COMMENT: One person asked what "certification" is, questioning whether release of private information may result.

RESPONSE: This section refers to certification of that document received from the National Association of Boards of Pharmacy when a person is attempting to reciprocate registration. No private information is released to the public pursuant to this section.

N.J.A.C. 13:39-3.10 Clear record of law observance

COMMENT: The New Jersey Department of Health commented that the word "narcotics" should be replaced with the words "controlled dangerous substances."

RESPONSE: This comment is correct and the proper wording has been incorporated.

N.J.A.C. 13:39-3.17(a) and (b)

COMMENT: Two commenters pointed out that these sections are in conflict with N.J.A.C. 13:39-1.3(a)4 in that they state that reinstatement needs only one $42.50 payment, whereas N.J.A.C. 13:39-1.3(a)4 mandates one payment for each year lapsed up to 5 years.

RESPONSE: The comments are correct; there is a conflict. This section has been reworded to eliminate the conflict; the fee schedule at 13:39-1.3 is correct.

N.J.A.C. 13:39-3.18 Pharmacist-in-charge

COMMENT: The New Jersey Pharmaceutical Association asserts that the Board has allowed one person to act as a pharmacist-in-charge in more than one site and asks that the Board amend this section to prohibit such activity.

RESPONSE: The Board does not agree with the assertion and does not allow a pharmacist-in-charge to be in charge of more than one site at one time. The language remains the same and no amendment is needed.

N.J.A.C. 13:39-3.18(c)

COMMENT: The New Jersey Pharmaceutical Association, the New Jersey Council of Chain Drug Stores, and another commenter object to the requirement that a joint inventory be taken when the pharmacist-in-charge changes. They point out that the pharmacist-in-charge who is replaced may not be available, deceased, not willing, etc.

RESPONSE: The Board agrees and has deleted the word "jointly," as well as correcting the citation at the end of this section from the incorrect N.J.S.A. 24:21-5 through 24:21-8 to the correct one: N.J.A.C. 8:65-10.1 through 8:65-10.5.

N.J.A.C. 13:39-3.18(e)

COMMENT: The New Jersey Council of Chain Drug Stores stated that the term "for a sufficient amount of time" was vague and thus open to interpretation. They suggested alternate wording.

RESPONSE: The Board accepted the suggested wording change, replacing the unacceptable phrase with the words "that amount of time necessary."

N.J.A.C. 13:39-3.18(e)4

COMMENT: A chain drug store commented that pharmacists in pharmacy departments are more restricted in their movements than those in other types of pharmacies, having to close the department when they are not present, and asks that more latitude be given to them.

RESPONSE: The Board agrees and has added a phrase which stipulates who shall have access when the pharmacist is temporarily absent due to personal needs or for customer assistance in the non-prescription area.

N.J.A.C. 13:39-3.18(e)5 and 6

COMMENT: The New Jersey Hospital Association asserts that this section obviously does not apply to hospitals because it excludes nurses, who are also legally able to communicate with patients and physicians regarding medication orders.

RESPONSE: The Board states that this section does apply to hospital pharmacies, but not to persons legally qualified by other laws and regulations to provide communication to physicians, etc. The Board again states that these rules were not intended to expand pharmacists' domain, but to clarify the rules that affect pharmacists, pharmacies and their employees. The section thus remains unchanged.

N.J.A.C. 13:39-3.18(e)8

COMMENT: One hospital pharmacist and the New Jersey Council of Chain Drug Stores objected to having the name of the pharmacist-in-charge on labels as being not helpful to the public, and potentially confusing to them. They point out the practical need to change labels when the pharmacist-in-charge changes, which is not infrequent.

RESPONSE: The Board disagrees with these comments. The initials of the pharmacist filling the prescription are not sufficiently descriptive to the consumer to allow him or her to contact the pharmacist who is in a managerial role, whereas the full name of the pharmacist-in-charge is quite clear and thus allows a consumer to contact him or her immediately when a problem arises.

In addition, the advent of computer-generated labels allows the pharmacist-in-charge's name to be changed more readily than when preprinted labels were universally used. The section remains as proposed.

N.J.A.C. 13:39-3.18(e)12

COMMENT: Several commenters said that the words "a complete service" were ambiguous, vague and thus unenforceable, and, therefore, this section should be deleted.

The New Jersey Pharmaceutical Association also felt clarification was necessary, perhaps by stipulating the services or by using additional wording to make the section clear.

The New Jersey Hospital Association stated that this section is not applicable to institutions.

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RESPONSE: The Board agrees that the section needs to be more specific and that it does not apply to hospitals. To clarify the section, the Board has added additional wording so that pharmacies will be mandated to dispense all medications normally prescribed by practitioners in the general area of the pharmacy.

N.J.A.C. 13:39-3.18(e)13

COMMENT: The New Jersey Council of Chain Drug Stores stated that the term "good pharmaceutical practices" was vague and thus open to many interpretations; they asked that the section be changed to stipulate that the pharmacist-in-charge would assure that the pharmacy was operated in accord with State law.

RESPONSE: The Board agrees that the paragraph is vague and has deleted this paragraph from the section. The suggested re-wording was not used because it duplicates N.J.A.C. 13:39-3.18(e)15.

N.J.A.C. 13:39-4.4 Change of ownership

N.J.A.C. 13:39-4.5 Change of corporate officers or stockholders, non-public companies

COMMENT: The New Jersey Pharmaceutical Association stated that these requirements discriminate against sole proprietorships and partnerships versus non-public companies. Further, they object to publicly-held companies not having to do anything. They suggest deletion of any change of ownership requirements or development of equitable requirements encompassing all types of pharmacy owners.

RESPONSE: In agreement with the substance of the comments, the Board has changed N.J.A.C. 13:39-4.4 so that sole proprietorships, partnerships, and non-publicly held companies are treated identically. A revised N.J.A.C. 13:39-4.5 would make publicly held companies also report changes in ownership.

N.J.A.C. 13:39-4.6 Change of location

COMMENT: The New Jersey Pharmaceutical Association states that subsections (a) and (b) are confusing; why not delete (a) and just say that pharmacies changing location need apply for a new permit?

RESPONSE: The Board agrees and has deleted subsection (a) and slightly reworded subsection (b) to accomplish what the New Jersey Pharmaceutical Association asked.

N.J.A.C. 13:39-4.6(b)

COMMENT: The New Jersey Council of Chain Drug Stores asks that the 30 day advance notice be reduced to 15 days notice. They state that too much advance notice will alert their employees too soon and cause them to quit earlier than they otherwise might.

RESPONSE: Fifteen days is too little time for the Board to schedule a review of any proposed new location; the 30 day advance notice has been retained.

N.J.A.C. 13:39-4.6(b)

COMMENT: One hospital pharmacist questions why the remodeling/relocation advance notice exists and whether it applies to institutional pharmacies.

RESPONSE: Advance notice allows the Board to schedule inspections of the new premises before use to ascertain whether the new location or remodeled location meets Board standards. This section does apply to institutional permit holders. This section remains as proposed.

N.J.A.C. 13:39-4.7(c)

COMMENT: The New Jersey Pharmaceutical Association comments that this subsection should be changed to allow the Board to collect information concerning prescribers who might have even very limited ownership of pharmacies.

RESPONSE: The Board agrees and has changed the subsection to be able to collect information on all prescribers who might be owners.

N.J.A.C. 13:39-4.7(e)

COMMENT: The New Jersey Pharmaceutical Association pointed out that renewal applicants should also be of high moral character. They also request the Board to look into the moral character of certain unspecified "major corporations and large chains."

RESPONSE: The Board agrees with the comment on renewal applicants and has changed the section's wording accordingly. General allegations of improper moral character are not germane to the proposed rules; the New Jersey Pharmaceutical Association should be specific and write to the Board concerning those entities they believe should not be eligible for permits or renewals based on lack of moral character.

N.J.A.C. 13:39-4.7 New pharmacies eligibility and application

COMMENT: The New Jersey Hospital Association asks that a new subsection (h) be added to this rule which would specifically allow institutional permit holders "to open a retail pharmacy."

RESPONSE: The Board disagrees with the need for such a specification because institutional permit holders are currently able to apply for, and receive, permits to open retail pharmacies. No new section is thus necessary.

N.J.A.C. 13:39-4.9 Change of business hours

COMMENT: The New Jersey Pharmaceutical Association asked that this section be deleted as unnecessary; business hours change only infrequently and are reported annually on permit renewals.

RESPONSE: The Board needs current business hour information for inspection purposes. The fact that such changes are infrequent supports the Board's request that notice be given to the Board in a timely fashion.

N.J.A.C. 13:39-4.12 Reproduction of permits

COMMENT: The New Jersey Pharmaceutical Association stated that obtaining the express written permission of the Board for routine copies was burdensome and unnecessary; they asked to delete or clarify this section.

RESPONSE: The Board agrees that written authorization is not needed and has deleted the word "written," as well as adding language which allows copies for certain uses without Board approval.

N.J.A.C. 13:39-4.13 Certification of records

COMMENT: The New Jersey Pharmaceutical Association asked that the section be changed or deleted because their recent request for such information was denied, despite the existence of this rule.

RESPONSE: The Board points out that information not considered part of the public record can be withheld by the Board at their discretion; the section remains unchanged.

N.J.A.C. 13:39-4.14 Contract pharmaceutical services

COMMENT: Two commenters asked that this section be clarified, and an additional commenter pointed out that the N.J.A.C. citation was incorrect.

RESPONSE: This section was extensively changed to make it clear and the citation was corrected.

N.J.A.C. 13:39-4.15(b)1

COMMENT: One commenter said that the word "main" was missing in the text.

RESPONSE: The Board included the word "main" in two places to make the paragraph clearer.

COMMENT: The New Jersey Society of Hospital Pharmacists asked that the phrase "Board approved security system" be clarified.

RESPONSE: The Board recognizes that many different types of security systems may be in place and does not wish to preclude alternatives to those mentioned, but the Board wishes to reserve to itself approval of such alternatives. The language remains unchanged.

N.J.A.C. 13:39-4.15(b)2

COMMENT: The New Jersey Pharmaceutical Association asks that this paragraph be expanded so that pharmacists in pharmacies be the only ones with keys, not just pharmacists in pharmacy departments.

In contrast, the New Jersey Council of Chain Drug Stores asks that others, not just the pharmacist-in-charge, be allowed to possess keys for emergency purposes.

RESPONSE: The Board points out that pharmacy departments need this provision because the store in which they are housed has a manager who may try to have access to the pharmacy department. Pharmacies, on the other hand, are not routinely under physical management by non-pharmacists, thus there is no need to expand the provision.

The highly unlikely need for emergency access is not outweighed by the more possible misuse of access by non-pharmacist personnel. In addition, access to the pharmacy department when it is closed is no more problematic to emergency personnel than is access to any type of facility when it is closed.

The Board retains N.J.A.C. 13:39-4.15(b)2 unchanged.

N.J.A.C. 13:39-4.15(b)3

COMMENT: The New Jersey Council of Chain Drug Stores states that this section is inconsistent with N.J.A.C. 13:39-4.15(b)2 in that paragraph (b)2 allows no one other than the pharmacist in the area, but paragraph (b)3 allows authorized persons.

COMMENT: The New Jersey Pharmaceutical Association asserts that one cannot ascertain who an "authorized person" is, so they ask that the paragraph be clarified or the word "authorized" be deleted.

RESPONSE: The Board has deleted this section in favor of new wording at N.J.A.C. 13:39-3.18(e)4.

COMMENT: The New Jersey Council of Chain Drug Stores points out that pharmacists in pharmacy departments are more restricted in their movements than are pharmacists in regular drug stores, and asks that

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this section be changed to allow pharmacists in pharmacy departments more freedom of movement for necessary purposes.

RESPONSE: The Board agrees, and has changed N.J.A.C. 13:39-3.18(e)4 so that more freedom is afforded pharmacy department pharmacists to attend to customers or pharmacists' personal needs without closing the pharmacy department.

N.J.A.C. 13:39-4.15(b)4

COMMENT: The New Jersey Pharmaceutical Association states that the word "medication" is confusing and could be interpreted to mean that no non-prescription medication could be sold other than in the Pharmacy Department. They ask that the word "medication" be deleted.

RESPONSE: The section has been changed to address this comment.

N.J.A.C. 13:39-4.15(b)6

COMMENT: The New Jersey Society of Hospital Pharmacists comments that this paragraph only pertains to retail pharmacies.

RESPONSE: The Board agrees.

N.J.A.C. 13:39-4.15(b)8

COMMENT: The New Jersey Council of Chain Drug Stores commented that the full word "department" should also be allowed to be abbreviated "dept." on signs, etc.

RESPONSE: The Board agrees that the usual abbreviation, "dept.," would also be acceptable and meet this rule without so specifying in the rule itself.

N.J.A.C. 13:39-4.15(b)12

COMMENT: The New Jersey Pharmaceutical Association asserts that this paragraph is in conflict with N.J.A.C. 13:39-4.15(b)4 and therefore should be clarified.

RESPONSE: The word "area" has been changed to the more appropriate word, "device," thus clarifying this paragraph and preventing conflict with N.J.A.C. 13:39-4.15(b)4.

COMMENT: The New Jersey Council of Chain Drug Stores commented that they support the current wording of this paragraph as benefiting consumers.

N.J.A.C. 13:39-4.16(a)

COMMENT: The New Jersey Pharmaceutical Association believes that this subsection is in conflict with State law (N.J.S.A. 45:14-36.2). In addition, they state that this subsection gives the Board too much power; to limit that power, the New Jersey Pharmaceutical Association asks that only two types of limited use permits—IV admixture and nuclear pharmacy—be issued under this subsection. They also comment that the Board's wording in N.J.A.C. 13:39-4.16(a), allowing waiver of certain rules, negates the consumer protection aspects of the public hearing process.

RESPONSE: The Board has deleted the words "limited use" in subsections (a) and (b) and has the authority under the Act to issue special permits. The citation by the New Jersey Pharmaceutical Association is not considered pertinent to this section.

The Board wishes to retain the "waiver" provisions because specialized practices are inherently much different from those for retail and institutional practice and cannot be expected to meet many of the requirements that attend those more common permits.

N.J.A.C. 13:39-4.17 Steering prohibited

COMMENT: The New Jersey Pharmaceutical Association comments in general support for this section as being in the public interest, but asks that the section reflect a statute (N.J.S.A. 45:14-12(a)), which they claim impacts on this rule by referring to "other persons," not just those who write prescriptions, as being possibly involved in unprofessional conduct.

RESPONSE: The Board added the words "or with any health care facility" after the word "prescriptions," so as to more extensively prohibit steering. The Board believes this rule now covers the majority of possible offenders.

COMMENT: National Pharmacies commented that this section, they believe, does not prohibit HMOs, etc., from entering into agreements with pharmacies to provide benefits to consumers who choose that HMO.

RESPONSE: The Board agrees. The patient may "steer" himself or herself to a particular pharmacy through choice of an HMO or other health care facility option.

N.J.A.C. 13:39-5.1 Imprinted prescription blanks

COMMENT: One hospital pharmacist expressed fears that this rule would preclude the common practice of using prescription blanks with the hospital's name imprinted on them, and asked that an exception be made.

RESPONSE: The Board does not apply this rule to such prescription blanks.

N.J.A.C. 13:39-5.3 Record of prescription refills

COMMENT: Eight commenters opposed this rule as being impractical, costly, burdensome in application, not necessary to make refills safer, and antithetical to computerized systems. However, one hospital pharmacist felt that all refills should be noted on the original prescription, not just the first two refills.

RESPONSE: The Board believes these comments have merit and has deleted N.J.A.C. 13:39-5.3 in its entirety.

N.J.A.C. 13:39-5.4 Authorization for renewal of prescriptions

COMMENT: Somerset Medical Center commented that it was unclear if a large number of refills allowed one to exceed the stated one year automatic expiration date.

RESPONSE: The one year rule prevails; no other clarification is needed.

N.J.A.C. 13:39-5.5 Approval of FDA necessary

COMMENT: The New Jersey Council of Chain Drug Stores pointed out that certain drugs are widely prescribed and legally available, but do not have, nor need, FDA approvals of the types specified.

RESPONSE: The Board agrees and has changed the wording to allow other types of approval. In addition, the words "for a new drug clearance order" have been deleted as being unnecessary.

COMMENT: The New Jersey Hospital Association asked that this section reflect the same treatment of investigational drugs as given at N.J.A.C. 13:39-9.6(a)8ii.

RESPONSE: FDA approval and investigational drug handling and labelling are two different matters. There is no need to make the two sections identical.

N.J.A.C. 13:39-5.6 Copies of prescriptions; transfers

COMMENT: The New Jersey Pharmaceutical Association strongly objected to this section, which they claim allows electronic transfers of information between pharmacies with the same database without the benefit of verbal communication between pharmacists. They also assert that computer systems do not contain all vital information that is needed for the safe transfer of prescriptions, such as warnings that a patient may refill prescriptions too soon, or has a history of controlled dangerous substance problems.

In addition, the New Jersey Pharmaceutical Association claims that wording is no longer included which mandated voiding of the original prescription, which in unsafe for the public and discriminatory against those pharmacies which do not share databases.

RESPONSE: While not denying the usefulness of verbal communication between pharmacists, the Board must allow modern means of data sharing to be utilized. The Board understands that such electronic transfers do not allow duplicative refills, thus protecting the public.

N.J.A.C. 13:39-5.6(c)1

COMMENT: The New Jersey Pharmaceutical Association asks that the words "to whom" be changed so that both the receiving and transferring pharmacist's names are recorded, not just the store's name.

RESPONSE: The Board agrees with this comment and has changed the wording accordingly.

COMMENT: The New Jersey Council of Chain Drug Stores recommends that wording be used specifically allowing new technology to be used, that is, computer transfers of prescription records between pharmacies under the same ownership so long as the same information is captured as in the manual system.

RESPONSE: The Board believes that the rules allow computer transfers if all the information that is mandated for manual transfers is recorded in the computer system. No change in the section is thus needed.

N.J.A.C. 13:39-5.6(d)

COMMENT: The New Jersey Council of Chain Drug Stores, and CVS Pharmacies, object to the rule or request clarification as to whether copies of prescriptions void refills. They point out that some copies are informational, and should not therefore void refills. The New Jersey Council of Chain Drug Stores suggested new wording to avoid the problem.

RESPONSE: The words "in writing" have been deleted, thus removing the problem. Informational copies do not void refills.

N.J.A.C. 13:39-5.7 Record of pharmacist filling prescription

COMMENT: The New Jersey Council of Chain Drug Stores commented that subsections (a) through (d) seem to require both manual and computer entries for the required information. They ask that the information be allowed either manually or electronically, not both.

RESPONSE: The Board does not agree that the rules mandate duplicate recording. The information specified must be recorded; whether that is manually or by computer, either method is acceptable.

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COMMENT: The New Jersey Council of Chain Drug Stores asked that only the initials of the pharmacist, and not those of the intern or extern, be required for recordkeeping purposes.

RESPONSE: Those subsections requiring intern/extern initials ((c) and (d)), as well as the words "intern or extern" in subsection (f), have been deleted in response to this comment. The pharmacist-in-charge, not interns or externs, are legally responsible for drugs dispensed. In addition, most computerized recordkeeping systems do not allow for input of more than one set of initials.

COMMENT: The New Jersey Pharmaceutical Association objects to subsections (b) and (d), which they claim require the pharmacist or intern to place initials on the back of prescriptions for all refills, in conflict with current requirements that allow other types of records for initials. Further, they state that subsection (f) is confusing.

RESPONSE: As noted above, the intern/extern initial rule has been deleted. Further, the Board has dropped the initialling by pharmacists of the back of prescriptions on refills when other acceptable methods are used.

COMMENT: One hospital pharmacist asked whether inpatient medication orders must be initialed, or just the profile, and also asked how long such records must be kept.

RESPONSE: Initials need not be placed on the copy of the prescriber's order, just on the profile. Those records must be kept for five years.

N.J.A.C. 13:39-5.7(e)

COMMENT: The New Jersey Council of Chain Drug Stores asks for deletion of this entire subsection because the five year recordkeeping requirement is too burdensome. At the same time, they suggest a two year requirement.

COMMENT: Supermarkets General Corporation also stated that the five year requirement was excessive, asking that two years be the requirement. In addition, they stated that keeping the address of the pharmacist was redundant with Board records.

RESPONSE: The Board disagrees that five years is too burdensome. The prescriptions have to be kept for five years; keeping the initials for a lesser period of time would not allow the Board to track pharmacists' initials. Although pharmacists' addresses are also kept by the Board, often pharmacists do not inform the Board of address changes, thus the need for an additional source of information.

The subsection remains unchanged relevant to these comments.

N.J.A.C. 13:39-5.7(f)

COMMENT: National Pharmacies found this subsection confusing as it affects the use of electronic means rather than manual means of recording information.

RESPONSE: This comment was part of National's objection to recording initials manually on the first two refills, which has been deleted by the Board.

The Board did delete from this subsection the words "or intern or extern" in response to other comments.

N.J.A.C. 13:39-5.7(g)

COMMENT: Supermarkets General Corporation objected to the "next working day" provision as being impractical as well as the generation of the log slowing down customer service in a busy store. They also objected to the one year of on-line data as being expensive; they suggest six months of on-line retrieval.

COMMENT: The New Jersey Society of Hospital Pharmacists said that the procedure is too cumbersome and that signing a log doesn't verify accuracy.

COMMENT: The New Jersey Council of Chain Drug Stores and Supermarkets General Corporation both stated that printing out one year's information while a pharmacy is open would not be possible. Both commenters suggested wording that would allow the printing out of the information after hours within three business days.

RESPONSE: The Board agrees and has deleted the requirement that signed daily logs be kept.

N.J.A.C. 13:39-5.7(h)

COMMENT: The New Jersey Council of Chain Drug Stores and Supermarkets General Corporation ask that a provision be added allowing time for the documentation to be obtained; they suggest three business days.

RESPONSE: The Board has changed the wording so that the information need be viewable "on-line" immediately and a printed copy be made available within three business days.

N.J.A.C. 13:39-5.7(i)

COMMENT: Supermarkets General Corporation asks that entry numbers be allowed, not initials (unless automatically assigned by the computer).

COMMENT: Somerset Medical Center states that initials (being known to everyone) offer no security, but a personal access code would.

RESPONSE: The Board agrees and has added wording which allows use of access code numbers.

N.J.A.C. 13:39-6.1(a)

COMMENT: The New Jersey Pharmaceutical Association states that the words "outside the scope of practice of the prescriber" may place pharmacists in a judgmental position that properly belongs to that prescriber's licensing board. They ask that these words be deleted.

RESPONSE: Clear instances of abuse of the prescribing right are known to the Board. This language is necessary so that pharmacists can refuse such prescriptions; the pharmacist can judge such situations and doing so does not place the pharmacist in the role of a licensing board, in the Board of Pharmacy's opinion.

N.J.A.C. 13:39-6.1(b)

COMMENT: One hospital pharmacist asks whether the original prescription need be on hand in the pharmacy which is honoring an emergency request.

RESPONSE: It need not; this provision is not just for patients who run out of refills.

N.J.A.C. 13:39-6.1(b)3

COMMENT: One hospital pharmacist asks whether a patient's signature is needed if a valid prescription is on file at a different drug store.

RESPONSE: Yes.

N.J.A.C. 13:39-6.2 Prescription prepared, compounded or dispensed by pharmacy externs or interns

COMMENT: The New Jersey Hospital Association objected to "directed personal supervision" because it does not recognize the delegatory role of the pharmacist.

RESPONSE: As previously noted, the word "personal" has been stricken and "direct supervision" has been re-defined to allow delegation and supervision without "over-the-shoulder" observation.

N.J.A.C. 13:39-6.4 Direct personal supervision of dispensing and compounding

COMMENT: One hospital pharmacist asks if supportive personnel can fill patient bins without a pharmacist being present, recognizing that such bins will be checked later by a pharmacist.

RESPONSE: They cannot; the new definition of direct supervision dictates a pharmacist's presence. Despite eliminating the direct observation of such personnel, there is value in having a pharmacist present in the area. For example, supportive personnel might ask questions if the pharmacist is there, thus avoiding a potential mistake.

COMMENT: The New Jersey Hospital Association made the same comment as under N.J.A.C. 13:39-6.2, about the delegatory role of the pharmacist.

RESPONSE: See the Board's response under N.J.A.C. 13:39-6.2.

COMMENT: The New Jersey Society of Hospital Pharmacists objected to the term "direct personal supervision" as dictating too close supervision.

RESPONSE: Previously answered; see response under N.J.A.C. 13:39-6.2.

N.J.A.C. 13:39-6.5 Restriction on display of prescription legend drugs and controlled dangerous substances

COMMENT: The New Jersey Pharmaceutical Association suggests that the word "devices" be inserted so as to conform to definition used earlier in the rules.

RESPONSE: The Board agrees and has inserted the word "devices," as well as changing "may" to "shall."

N.J.A.C. 13:39-6.6 Foreign prescriptions

COMMENT: The New Jersey Pharmaceutical Association requests deletion of this section based on humanitarian grounds.

RESPONSE: The Board notes that Federal regulations forbid the filling of foreign prescriptions; thus, this section is retained.

N.J.A.C. 13:39-6.7(a)

COMMENT: One person said that restricting supportive personnel to clerical duties underutilizes them.

RESPONSE: By changing subsection (b), the Board agrees with this comment.

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N.J.A.C. 13:39-6.7(b)

COMMENT: National Pharmacies objects to restriction of supportive personnel from choosing the medication. They claim that checking the accuracy at the end of the filling process obviates the need for initial checking.

RESPONSE: No such restriction exists in these proposed rules.

COMMENT: Several hospital pharmacists and the New Jersey Society of Hospital Pharmacists objected to the restrictions placed on supportive personnel.

RESPONSE: Changes the Board made in this subsection respond favorably to these comments.

COMMENT: One hospital pharmacist points out that supportive personnel may not perform certain functions according to some subsections, yet may perform them in others.

RESPONSE: The changes made in subsection (b) remove this source of confusion.

COMMENT: A New Jersey Department of Human Services employee asks that specific wording be added stating that the filling of patient bins in a unit-dose system requires direct supervision and inspection of each dose.

RESPONSE: No such wording is needed because the rules as they stand mandate such.

COMMENT: One hospital pharmacist asks that the role of supportive personnel be expanded, except into weighing and consulting areas.

RESPONSE: The changes largely show agreement with this comment, even allowing weighing under direct supervision; but consulting is reserved to pharmacists.

COMMENT: The New Jersey Hospital Association asks that this subsection not apply to hospital pharmacies as it would eliminate supportive personnel due to the restrictions imposed.

RESPONSE: The expanded definition and roles allowed respond adequately to this comment. The changed definitions and ratios do apply to hospital pharmacies.

N.J.A.C. 13:39-6.7(c)

COMMENT: The New Jersey Pharmaceutical Association and a pharmacist from the Robert Wood Johnson Hospital wrote in support of the 2:1 supportive personnel ratio.

COMMENT: Eight commenters asked whether the 2:1 ratio for supportive personnel included secretaries, clerks, cashiers, volunteers, delivery people, and others who are not directly involved in dispensing.

RESPONSE: Such persons are not included. The subsection has been changed to clarify this, while stating that personnel doing computer processing of prescriptions are incuded in the ratio.

COMMENT: Automated Pharmaceutical Services stated that filling patient bins under a unit-dose system could allow a 4:1 ratio, not just 2:1.

RESPONSE: The Board disagrees. Such systems often entail the choice of thousands of individual medications a day, thus necessitating no more than the 2:1 ratio.

COMMENT: The New Jersey Hospital Associaiton and one hospital pharmacist asked that specific staffing ratios not be codified, but be left up to the institution.

RESPONSE: The expanded role of supportive personnel requires close supervision, which can only be guaranteed by some ratio. The chosen 2:1 ratio has not been pointed out to be specifically burdensome to any institution or pharmacy when clerks, secretaries, etc. are not included; thus, it is not really restrictive at this point, but creates a "safe ceiling" beyond which permit holders may not go. The ratio has been retained.

COMMENT: National Pharmacies objected to the 2:1 ratio if it is narrowly construed and thus would hinder their operations which are large facilities. They are particularly concerned that their pharmacists may not be "proximate" to the supportive personnel and thus may violate this ratio.

RESPONSE: If supportive personnel in large facilities are working without the necessary 2:1 supervision in their dispensing compounding area (despite an overall acceptable ratio in the facility as a whole), then the Board will decide on an individual basis if the safety ensured by the ratio has been violated.

COMMENT: Local 262 of New Jersey (AFL-CIO) objected to the 2:1 ratio because this severe restriction would cause job losses. Even without the ratio, they argue, the proposed rules are safe for the consumer.

RESPONSE: Public safety, not job preservation, is the Board's primary aim. However, the Board again points out that no one else contended that the 2:1 ratio, especially since it does not include clerks, etc., would cause job losses. Those who did comment said they were within the 2:1 ratio. The Board does not think that any job losses will occur due to the 2:1 ratio.

N.J.A.C. 13:39-6.8(d)

COMMENT: The Rite-Aid Corporation objected to the need to stipulate the effective period of any advertised price quote because they cannot guarantee any price beyond today's price.

RESPONSE: To take advantage of advertised prices, consumers need to know how soon they must act. In addition, advertisers typically specify an expiration date for advertised specials and sales; thus, the Board does not believe this subsection needs to be changed.

SUBCHAPTER 7. PHARMACY FACILITY AND RECORDS

COMMENT: The New Jersey Hospital Association stated that they do not believe this entire subchapter pertains to hospital pharmacies.

RESPONSE: The Board agrees that several sections obviously do not pertain to hospital pharmacies, for example, those sections stating "retail" in their title or text, but other sections do pertain to hospitals. The Board feels there is no need to further clarify this subchapter because it is obvious which sections pertain to which type of permit holder.

N.J.A.C. 13:39-7.2 Retail pharmacy signs

COMMENT: CVS, Rite-Aid, the New Jersey Council of Chain Drug Stores, and Supermarkets General Corporation all objected to the need for signs, especially because large malls forbid such signs, as may town ordinances and lease agreements. A sign on the "establishment" is suggested.

RESPONSE: The Board has changed the wording so that a waiver may be obtained when lease agreements prohibit a sign.

COMMENT: One hospital pharmacist asks if hospitals need to erect a pharmacy sign outside the hospital.

RESPONSE: No. The rule specifies RETAIL pharmacy signs.

N.J.A.C. 13:39-7.4 Prescription counter

COMMENT: The New Jersey Pharmaceutical Association objected to deletion of counter length and width requirements and asks that they be reinserted.

RESPONSE: The Board has done so.

COMMENT: The New Jersey Hospital Association objects to the prescriptive nature of the counter requirements and aisle requirements as being impractical and unnecessary.

RESPONSE: The proposed rules were not prescriptive and did not state anything about aisle space. However, the New Jersey Hospital Association may certainly object to the reinserted counter length and width requirements. The Board agrees with the New Jersey Pharmaceutical Association; to avoid instances in which counter space is so restricted as to be potentially unsafe, the length and width requirements should be retained.

N.J.A.C. 13:39-7.5 Prescription area sink

COMMENT: The New Jersey Hospital Association states that this requirement is inappropriate for institutional pharmacies and their satellites and should be eliminated.

RESPONSE: The Board disagrees; a sink is absolutely essential for sanitary practices accompanying medication preparation. However, the Board agrees that it is not necessary to have one in every satellite or intravenous admixture room; thus, the Board has changed the wording from "must be provided in" to "must be easily accessible to," thus allowing access without necessitating new sinks.

N.J.A.C. 13:39-7.7(a)

COMMENT: The New Jersey Pharmaceutical Association asks for 30 days to replace missing or broken equipment before fines are levied.

RESPONSE: Minimum equipment must be on hand, not on order, in order to safely dispense prescriptions. Replacement should occur when needed, not just when the Board finds the equipment missing or broken. No 30 day grace period will be granted.

COMMENT: The New Jersey Hospital Association and two hospital pharmacists stated that this subsection should not apply to institutions, as evidenced by no need for DURC placards, poison books, etc.

COMMENT: The New Jersey Society of Hospital Pharmacists states that this subsection should only apply to the main pharmacy, not satellites.

RESPONSE: Some items are obviously not pertinent to institutional practice, but the majority are. Satellites need not follow the complete equipment list, but the central pharmacy should.

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N.J.A.C. 13:39-7.7(a)1

COMMENT: The New Jersey Society of Hospital Pharmacists states that the reference texts and equipment should be those recommended by the Pharmacy and Therapeutics Committee.

RESPONSE: The reference texts required are general ones that any pharmacy, institutional or not, would expect to have on hand. Only the USP DI is specified. The Pharmacy and Therapeutics Committee coordinates policies of a pharmacy with the medical staff of an institution and would not be expected to suggest reference texts.

N.J.A.C. 13:39-7.7(a)2

COMMENT: One hospital pharmacist asks whether an institution need have a poison record book when it doesn't dispense poisons.

RESPONSE: It need not.

N.J.A.C. 13:39-7.7(a)17

COMMENT: CVS Pharmacies, the New Jersey Council of Chain Drug Stores, the Supermarkets General Corporation, and one hospital pharmacist all objected to the requirement that labels bear the name of the pharmacist-in-charge as being of no value to consumers, and CVS and the New Jersey Council of Chain Drug Stores also objected to the presence of the DEA number as being unnecessary.

RESPONSE: The DEA number requirement was dropped as suggested, but the pharmacist-in-charge's name was retained. The initials of the pharmacist filling the prescription have no identification value to consumers, who don't even know they are on the label. When consumers need to complain, the Board believes that a person's name should be listed so that the consumer can reach the supervisory person immediately. Thus the requirement for the pharmacist-in-charge's name being printed has been retained.

N.J.A.C. 13:39-7.7(a)18

COMMENT: The New Jersey Pharmaceutical Association asked if a poison sticker placed on a regular label will suffice for this requirement, and if so, asks that such language be added.

RESPONSE: It will suffice. The rule does not preclude this simple method, and, thus, no change is needed.

COMMENT: The Supermarkets General Corporation and the New Jersey Council of Chain Drug Stores both object to the pharmacist-in-charge's name being required on poison labels.

RESPONSE: The Board disagrees for the same reasons given under N.J.A.C. 13:39-7.7(a)17, above.

N.J.A.C. 13:39-7.7(a)19

COMMENT: The Rite-Aid Corporation objects to a mandatory suppository mold, feeling it is specialized and seldom needed.

RESPONSE: The Board agrees it is seldom needed, but when it is, the device is absolutely essential. The requirement remains.

N.J.A.C. 13:39-7.7(a)20

COMMENT: One hospital pharmacist asks if DURC placards are needed in institutional pharmacies.

RESPONSE: No. Institutional pharmacies are exempt from the generic substitution law and thus do not need the placards unless they also have a retail permit.

Note: The Board clarified N.J.A.C. 13:39-7.7(a)20 to include the requirement that pharmacies also possess a copy of the most recent Drug Utilization Review Council Formulary (which is sent automatically to pharmacies at no charge), without which legal mandatory substitution, which the Board assesses, would be impossible.

N.J.A.C. 13:39-7.9 Television in area prohibited

COMMENT: Two hospital pharmacists note that continuing education videotapes are widely available, the viewing of which should not constitute violation of this rule.

RESPONSE: Any commercial television viewing, whether for entertainment or education, consumes one's attention to the exclusion of proper attention to prescription duties; thus, the use of a television in the pharmacy, for any purpose, will continue to be prohibited.

N.J.A.C. 13:39-7.10 Return of prescription medication

No comments were received, but the Board decided to be more explicit in the citation, changing it to N.J.A.C. 13:39-9.6(a)13ii

N.J.A.C. 13:39-7.11 Prescription balances, scales, weights and automatic counting devices

COMMENT: The New Jersey Pharmaceutical Association points out that local municipalities often fail to certify weights and balances, their failure causing the pharmacist to be penalized. The New Jersey Pharmaceutical Association asks that the Board accept "some proof" that the pharmacy tried to have the weights, etc. inspected.

RESPONSE: Failure of the municipality does not remove the pharmacist's responsibility for having accurate, currently inspected weights. The Board believes this responsibility should remain on the pharmacist.

N.J.A.C. 13:39-7.12 Disposal of unwanted drugs

COMMENT: The New Jersey Hospital Association asks that such disposal be in accord with "hospital policy," in addition to local, State and Federal codes.

RESPONSE: If the suggestion were adopted, a potential would exist for 100 different "hospital policies;" thus, the Board retains the current wording.

N.J.A.C. 13:39-7.13 Outdated drugs or drugs marked "sample"

COMMENT: The New Jersey Pharmaceutical Association asks that the words "maintained in active stock" be deleted because they increase overhead and prescription costs for little public benefit.

RESPONSE: The Board could not disagree more. Deleting those words would mean that pharmacists increase overhead costs, etc. One of the most common areas of pharmacy violations is extensive retention of outdated drugs in active stock. The wording remains unchanged.

COMMENT: The New Jersey Council of Chain Drug Stores asks for clarification so as to differentiate between "active stock" and a section of the pharmacy reserved for consolidating outdated products.

RESPONSE: Pharmacies maintaining outdated drugs grouped in a separate section need not fear that that section will be considered "active stock." The Board feels that no clarification is needed.

N.J.A.C. 13:39-7.14 Patient profile record system

COMMENT: For economy reasons, the New Jersey Pharmaceutical Association asks for a "transient" profile for persons who will only use a pharmacy briefly.

RESPONSE: The Board asks how one knows whether a person will be "transient" or has just come to a pharmacy for the first time and may continue there for life. Even in stable (that is, non-resort) areas, patients visit pharmacies infrequently and often a profile is generated, possibly never to be used again. Such "wastage" is inevitable, but not very expensive, and thus the Board believes that a "transient profile" is not needed.

COMMENT: The New Jersey Hospital Association states that this entire section does not pertain to institutional pharmacies.

RESPONSE: The commenter is correct; records for institutional providers are given at N.J.A.C. 13:39-9.7.

N.J.A.C. 13:39-7.14(b)

COMMENT: One person asked whether this section or N.J.A.C. 13:39-9.7 pertains to institutional pharmacies.

RESPONSE: N.J.A.C. 13:39-9.7 is operative for institutional pharmacies.

N.J.A.C. 13:39-7.14(b)7

COMMENT: In reference to "quantity dispensed," Automated Pharmaceutical Services points out that the amount to be dispensed in long term care facilities is not ordered by physicians, nor is it necessarily the amount consumed by the patient. They ask that the amount dispensed in a 24 hour unit dose system for long term care facilities be the amount used by the patient, as determined after the drug's order expires. A separate record of doses dispensed would also be kept.

RESPONSE: Recording the doses dispensed and the doses used would satisfy this rule.

N.J.A.C. 13:39-7.14(b)8

COMMENT: The New Jersey Pharmaceutical Association states that this paragraph is confusing in that it appears to allow pharmacists' initials on the patient profile system without entering on the prescription, contrary to other sections of the proposed rules. They ask for entry of initials and the date of refills on any one of the several board-approved systems.

RESPONSE: This paragraph has been deleted. N.J.A.C. 13:39-7.14(b)4 has been amended to clarify the requirements and allow records under any one of the board-approved systems.

N.J.A.C. 13:39-7.14(e)

COMMENT: The New Jersey Pharmaceutical Association comments that high-volume mail order pharmacies obviously do not comply with this subsection and they ask whether this provision is applied equally to all pharmacies, as it should be, in their opinion.

RESPONSE: The Board will apply all rules equally.

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COMMENT: The New Jersey Council of Chain Drug Stores comments that electronic screening of patient profiles for interactions and allergies should suffice without the pharmacist looking at every profile. Supermarkets General Corporation agrees with this comment by the New Jersey Council of Chain Drug Stores, and asks that the subsection be deleted.

RESPONSE: While computer screening of profiles is extremely helpful, profiles need to be reviewed not only for interactions and allergies, but for a myriad of other reasons, none of which the computer can do. For example, is the prescription a new one for a medicine that was just obtained very recently, possibly indicating misuse or overuse? Another would be dosage information; does the new prescription show a different dose than this patient always took before? If so, perhaps the doctor made a mistake or the patient needs to be alerted to the changed directions. In summary, the computer does not "know all." It is only a helpful tool; patient profile review by the pharmacist is still necessary and thus the subsection will remain unchanged.

COMMENT: The Rite-Aid Corporation states that mandating patient counseling is unnecessary because they already do it.

RESPONSE: Others may not provide this necessary service; thus, the Board proposes it.

COMMENT: National Pharmacies states their presumption that "electronic scanning" of patient profiles meets this rule.

RESPONSE: It does not; as pointed above, computers are limited and thus a pharmacist's review is mandated.

N.J.A.C. 13:39-7.14(e)2

COMMENT: The New Jersey Pharmaceutical Association comments that this paragraph apparently mandates that the pharmacist consult with the patient or prescriber every time a prescription is refilled. They suggest wording that makes such consultation needed only when appropriate.

RESPONSE: The Board agrees and has made the wording changes.

N.J.A.C. 13:39-7.14(e)3

COMMENT: The New Jersey Council of Chain Drug Stores asks that this paragraph be deleted because they doubt pharmacists should be doing this and because it makes pharmacists serve as physicians.

RESPONSE: The Board disagrees; consulting with the patient or prescriber does not make pharmacists physicians, and the Board believes pharmacists must fill the role of calling aberrant drug usage to the attention of the patient or prescriber.

N.J.A.C. 13:39-7.14(e)4

COMMENT: One hospital pharmacist questioned whether the word "card" is meaningful and should be used in this paragraph; also, whether the current drug history needs be recorded, and, if so, where and how frequently.

RESPONSE: The word "card" has been deleted, as it refers to the older, manual method of making profiles. The patient's drug history need not be recorded except if pertinent to the current medication record.

N.J.A.C. 13:39-8.2(b)

COMMENT: The New Jersey Pharmaceutical Association points out that the word "extern" is missing, although included in later sections. Was this deliberate?

RESPONSE: Yes. Preceptors for externs are responsible to colleges of pharmacy, not to the Board.

N.J.A.C. 13:39-8.2(e)3vi and vii

COMMENT: One hospital pharmacist points out that these requirements obviously do not pertain to institutional settings.

RESPONSE: The Board agrees; preceptors in institutions need not provide these experiences.

N.J.A.C. 13:39-8.2(e)3vii

COMMENT: The New Jersey Pharmaceutical Association objected to this requirement, asking that it be deleted because it would preclude certain pharmacies from acting as preceptor sites.

RESPONSE: Few, if any, pharmacies do not participate in Medicaid or the State PAAD program, which are third parties. In addition, the upcoming Medicare Catastrophic coverage is a third party, and few pharmacies would not participate. The economic life of pharmacies often revolves around third-party plans; thus, the Board believes that experience with them is necessary for students. The requirement remains.

N.J.A.C. 13:39-8.4 Internship and externship practical experience

COMMENT: One hospital pharmacist comments that he presumes these proposed rules have been reviewed and approved by the Rutgers College of Pharmacy.

RESPONSE: The approval of the Board's rules by the Rutgers College of Pharmacy is not needed, but Rutgers did comment and was satisfied with the proposed rules as stated.

N.J.A.C. 13:39-8.6(a)4

COMMENT: The New Jersey Pharmaceutical Association objects to the lack of definition of "chain community pharmacy," not agreeing that there is any need to differentiate that type from other permit holders, and asks that the word "hospital" be changed so that other types of institutional permit holders be allowed. In addition, they suggest adding the word "manufacturing" before "industry" to better describe that member. They also ask that the Committee's meetings be subject to the Open Public Meetings Act.

RESPONSE: The paragraph was changed to drop the word "community" as being unnecessary and to add the words "manufacturing" and "institutional" as suggested. The Board believes that, although there are only two basic types of retail permit, two major segments exist within the retail permit; thus, participation of both segments is desirable. While not being defined, "chains" have a meaning to most pharmacists; thus, a definition is not needed here. The Board has also changed the language so that all meetings are in accordance with the Open Public Meetings Act, as suggested.

COMMENT: The New Jersey Council of Chain Drug Stores asks that the "chain" representative be from the membership of the New Jersey Council of Chain Drug Stores.

RESPONSE: The Board does not believe it appropriate to specify the name of trade associations within the rules.

N.J.A.C. 13:39-9.1 Definitions

COMMENT: The Family Planning Association of New Jersey indicated agreement with the definitions as proposed.

COMMENT: The New Jersey Society of Hospital Pharmacists asked that all "authorized prescribers" be specified.

RESPONSE: Other State agencies decide who shall prescribe; thus, the Board will leave this definition general.

COMMENT: One hospital pharmacist suggests that the term "direct personal supervision" should be redefined and replaced with the term "direct supervision", which should be defined in this section.

RESPONSE: The Board agrees with this suggestion and has done as suggested, placing the new definition just after the definition of the term "authorized prescriber."

COMMENT: One hospital pharmacist suggested that a pharmacist's electronic signature be permitted as is allowed for prescribers under the definition of "medication order."

RESPONSE: The Pharmacist's signature is not required on any document, just his or her initials, which are allowed to be used via electronic means as per other sections of this chapter.

COMMENT: The New Jersey Hospital Association asks whether the definition of "medication order" prohibits institutions from filling prescriptions for employees, etc.

RESPONSE: It does not. Medication orders are for inpatients; prescriptions would not be used for outpatients, employees, etc.

COMMENT: One hospital pharmacist asked that the Board adopt an identical definition for "unit dose distribution system" as that used by the New Jersey State Department of Health.

RESPONSE: The definitions are already totally consistent, although the Department of Health's rules are much more explicit, and, thus, the proposed general definition need not be changed.

N.J.A.C. 13:39-9.3(b)

COMMENT: The New Jersey Hospital Association agreed with this subsection.

N.J.A.C. 13:39-9.4 Pharmaceutical services

COMMENT: One hospital pharmacist asks for clarification of the words "a program for the control and accountability of all drug products." Are non-prescription drugs included? Does control mean that type of control used for controlled dangerous substances?

RESPONSE: Institutions vary widely in the drugs they use and systems they have in place to control those drugs. The Board hereby sets forth a goal, and cannot, nor wishes to, specify the exact system used to control drugs within a facility. However, control of non-prescription drugs is also included. This section does not dictate control of all drugs to that level of control afforded controlled dangerous substances, however. Since some drug products in use in facilities are beyond the control of the pharmacist, this control requirement has been deleted as not workable.

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N.J.A.C. 13:39-9.5(a)

COMMENT: The New Jersey Pharmaceutical Association points out that this subsection is in conflict with the actual way drugs are purchased in State institutions: low bidder wins. They ask that the section not be adopted until the Board, the Department of Human Services, and the Department of Health can work out a compromise.

RESPONSE: The Board believes there is no conflict with actual practices; the wording allows the pharmacist to set up specifications and then have a buyer or other agent do the procurement.

COMMENT: The New Jersey Society of Hospital Pharmacists asks for deletion of the words "chemical, biological products, and accessories" and also deletion of the phrase, "who shall be a pharmacist."

RESPONSE: The first set of words has been deleted, since some of these products and accessories are neither used nor maintained by the pharmacy. The second phrase has not been deleted. Approval of the purchase by a pharmacist is considered essential by the Board.

COMMENT: One hospital pharmacist states that hospitals vary in the ways they control drugs; thus, the wording should be general, "those committees," rather than just specifying the Pharmacy and Therapeutics Committee.

RESPONSE: The Pharmacy and Therapeutics Committee is the official committee joining the pharmacy and the medical staff. If other committees make drug specifications, the Board believes this subsection would allow the pharmacist to remain in control of drug specifications by appealing to the Pharmacy and Therapeutics Committee. No change has been made in the wording.

COMMENT: One commenter asked that specific wording be added to this subsection precluding drug orders from being opened other than under the supervision of a pharmacist.

RESPONSE: The Board believes that such problems can be avoided by the general rules which specify that the pharmacist must set up a system of drug control within the institution.

N.J.A.C. 13:39-9.5(d)

COMMENT: One hospital pharmacist asks that the dispensing of investigational drugs on an outpatient basis by physicians with private offices within an institution be exempted from this subsection.

RESPONSE: No new wording is needed because private medical offices are not under the control of pharmacists within institutions and this subsection does not intend that such offices come under pharmacists' control.

N.J.A.C. 13:39-9.5(e)

COMMENT: One hospital pharmacist asked for definition of "a system of control."

RESPONSE: See response under N.J.A.C. 13:39-9.4.

COMMENT: One hospital pharmacist asks if this system of control is the same as given at N.J.A.C. 13:39-9.4.

RESPONSE: Yes.

COMMENT: The New Jersey Society of Hospital Pharmacists and one hospital pharmacist state that this subsection does not allow the pharmacist or institution to define its own system of control.

RESPONSE: Yes, it does. Obviously, when a system is mandated, the pharmacist and/or institution shall define it.

COMMENT: The New Jersey Hospital Association states that medication areas need not be inspected only by a pharmacist; they suggest "pharmacist or designee."

RESPONSE: The Board disagrees. Non-pharmacist designees, while able to assess routine areas (sanitation, orderliness, outdated drugs), would not possess the breadth of knowledge to recognize potentially hazardous, non-routine problem areas, such as storage of externals with internals and recognition of mislabeled products. In addition, assessment of controlled dangerous substances inventories is an important part of these reviews and a non-pharmacist designee should not be used. A pharmacist shall perform these important medication area reviews.

N.J.A.C. 13:39-9.6(a)1

COMMENT: One hospital pharmacist asks that clarifying medication entries, some of which are not of major importance, be allowed in records other than the patient's chart, which may not be available or which may have restriction on entries based on hospital policy.

RESPONSE: The qualifying words, "where appropriate," allow judgment on the pharmacist's part as to the importance of the situation. The Board retains the entries into the medical chart because certain clarifying consultations are important enough to be entered so that they may affect the nurse's actions. Such an influence on the nurse will not happen if records are only kept in the pharmacy's records.

COMMENT: The New Jersey Hospital Association asks that this paragraph be changed so that clarifying orders are recorded "in accordance with hospital policy."

RESPONSE: According to an earlier comment, some hospitals' policies may prevent pharmacists from entering comments in the patient's medical records, which the Board believes could work to patients' detriment. The proposed wording is to be retained.

COMMENT: One hospital pharmacist asks how "stat" doses, etc. are to be handled since they may not have a copy of the order.

RESPONSE: "Stat," operating room, emergency room, and other immediately needed orders are routinely chosen from limited floor stock by nurses or physicians and occur before the pharmacy dispenses anything; thus, this paragraph would ordinarily not apply. However, common sense dictates that before dispensing any medication, the pharmacy should receive the original order, a direct copy, or converse with the prescriber; otherwise, how does the pharmacist know that any order exists?

N.J.A.C. 13:39-9.6(a)2

COMMENT: One hospital pharmacist asks that the paragraph be expanded to allow receiving of physicians' orders for drugs by respiratory therapists and physical therapists.

RESPONSE: The regulatory boards of those health occupations control their own licensees; thus, the Board of Pharmacy will not expand this paragraph to include them.

COMMENT: The New Jersey Hospital Association comments that order sheets are not always used; instead, computers may be; and that the word "immediately" is impractical and should be eliminated.

RESPONSE: The paragraph specifically allows recording in a computer. The word "immediately" is retained because verbal orders can easily be forgotten or later misconstrued from hastily written notes. Immediate recording lessens these possibilities and thus is safer.

N.J.A.C. 13:39-9.6(a)3

COMMENT: The New Jersey Pharmaceutical Association states that this paragraph appears to allow persons other than pharmacists to compound IV solutions and that this is unsafe, as well as being contrary to other sections of the proposal, and should be reserved to pharmacists.

RESPONSE: Allowing other than pharmacists to compound IV solutions was intentional. The conflict with other sections has been resolved by expanding the allowable duties of supportive personnel in those sections. Supportive personnel have prepared IVs in hospitals for decades without calamities befalling patients. The Board agrees that preparing IVs requires safe practices, but the definition of "direct supervision" maintains safe practices.

COMMENT: One hospital pharmacist comments that, if direct supervision means observation of the acts supportive personnel do, then this paragraph is impractical.

RESPONSE: As previously pointed out, observation has been eliminated from the definition of direct supervision.

COMMENT: The New Jersey Hospital Association states that this paragraph is "very extreme and detrimental to patient care" in that it does not allow preparation of medications without the presence of a pharmacist.

RESPONSE: The Board realizes that the need will still exist for medication preparation when pharmacists are not present, such as at night or in the operating room and emergency room, as well as extemporaneously by nurses to meet an immediate need. This paragraph is not intended to preclude those valid needs, which the Board presumes will continue. The Board does not believe that this paragraph requires that pharmacists be present or available in all areas of the institution.

N.J.A.C. 13:39-9.6(a)5

COMMENT: One hospital pharmacist asks whether charge floor stock, such as in the operating room, is acceptable under this paragraph.

RESPONSE: The Board believes that no portion of these rules prevents the common practice of issuing limited floor stock.

N.J.A.C. 13:39-9.6(a)6

COMMENT: One hospital pharmacist objected to the vagueness of the term "little or no," and asks for specific guidelines.

RESPONSE: The Board retains the words. While agreeing that the words are not specific, they allow leeway for new technology systems that require some small amount of handling by nurses and yet essentially retain the advantages of the unit dose system.

COMMENT: The New Jersey Society of Hospital Pharmacists asks that the words "shall" be replaced with should.

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RESPONSE: "Should" is merely exhortatory and has no place in regulations.

N.J.A.C. 13:39-9.6(a)6i

COMMENT: One hospital pharmacist asks who shall place supplementary labels on the IV solutions, and also requests that the required label contents match the requirements emanating from the New Jersey State Department of Health.

RESPONSE: This subparagraph refers to pharmacy personnel; it is assumed that manufacturers will label IV solutions appropriately. These requirements generally conform to those from the New Jersey State Department of Health and, therefore, will not be changed.

COMMENT: The New Jersey Hospital Association asks that the words "supervising or dispensing pharmacist" be deleted because they would exclude physicians and nurses.

RESPONSE: Again, the Board states that these rules pertain to its licensees, and not to other professions. These rules do not restrict other professions from operating within the rules of their licensing boards.

COMMENT: Community Memorial Hospital comments that supplementary labeling should only apply to in-house preparation of IV solutions, and not to IVs with additives prepared by pharmaceutical manufacturers.

RESPONSE: The Board agrees. These rules do not require an additional IV label beyond that supplied by the manufacturer unless an in-house manipulation has added additional medications.

COMMENT: One hospital pharmacist comments that some modes of IV administration use small containers not suitable for full labels, and asks for leeway to label these small containers.

RESPONSE: This subparagraph does not prevent modified labeling so as to fit on to smaller items, such as syringes for IV use.

N.J.A.C. 13:39-9.6(a)8i

COMMENT: The New Jersey Pharmaceutical Association notes that institutional pharmacists have to record and scrutinize medications patients bring into the hospital, but do not have to record medications patients may be taking, while retail pharmacists do have to ascertain this information.

RESPONSE: This comment is mistaken. N.J.A.C. 13:39-9.7(b) clearly states that institutional pharmacies shall keep patient profile records in accordance with N.J.A.C. 13:39-7.14. The latter section requires inquiry into patients' medication history, so there is no inequity in this regard between institutional and retail pharmacies.

N.J.A.C. 13:39-9.6(a)8ii

COMMENT: One hospital pharmacist repeated their comment about private medical offices and investigational drugs as noted under N.J.A.C. 13:39-9.5(d).

RESPONSE: See response under N.J.A.C. 13:39-9.5(d).

N.J.A.C. 13:39-9.6(a)9

COMMENT: One hospital pharmacist points out that recalls often direct that medications be sent back to the wholesaler, an option this paragraph precludes.

RESPONSE: The Board agrees and has therefore dropped the sentence dictating exactly how such drugs should be handled.

COMMENT: The New Jersey Hospital Association states that the term "immediate" is excessive and should be eliminated.

RESPONSE: The Board disagrees. Outdated and, especially, recalled drugs present some present danger to the public's health and therefore immediate action is warranted.

COMMENT: The New Jersey Society of Hospital Pharmacists asks that "drugs sent in error" be added to this paragraph, and that return to the wholesaler be allowed.

RESPONSE: Drugs sent in error are not a health problem, but an economic one; thus, the immediacy of this paragraph does not apply and routine business return procedures can be followed. As noted above, a sentence has been deleted which then allows returns to wholesalers.

N.J.A.C. 13:39-9.6(a)11

COMMENT: One hospital pharmacist asks that the paragraph conform to those standards from the New Jersey State Department of Health.

COMMENT: Community Memorial Hospital asks that route of administration not be required in that it is redundant.

RESPONSE: The entire sentence expressly stating what has to be recorded has been deleted as being too prescriptive.

N.J.A.C. 13:39-9.6(a)12

COMMENT: The New Jersey Hospital Association states that a "drug-dispensing device" is apparently a "night cabinet."

RESPONSE: Such a device would be a night cabinet or a machine.

N.J.A.C. 13:39-9.6(a)13i

COMMENT: One hospital pharmacist states that partially used vials and ampules should be allowed to be disposed of under approved policies and not be sent back to the pharmacy.

RESPONSE: The language has been changed to mandate return of all unidentified medicines, whether open or not, and no longer refers to "unused or open" medications. Usual institutional policies should control partially used vials and ampules.

N.J.A.C. 13:39-9.6(b)

COMMENT: One hospital pharmacist states that this subsection does not mention "employee dependents," and asks to whom institutions may dispense prescriptions and whether N.J.S.A. 45:14-32 remains the same.

RESPONSE: The subsection specifically **does** mention "employee dependents." Institutions can continue to dispense prescriptions as they have done before, and other statutes and regulations are unchanged by these rules.

N.J.A.C. 13:39-9.7(b)

COMMENT: One hospital pharmacist and Automated Pharmaceutical Services point out that N.J.A.C. 13:39-7.15 does not exist and should be N.J.A.C. 13:39-7.14.

RESPONSE: The citation has been corrected.

N.J.A.C. 13:39-9.7(b)1

COMMENT: Automated Pharmaceutical Services repeats its comments as given under N.J.A.C. 13:39-7.14(b)7 regarding the "quantity dispensed."

RESPONSE: See N.J.A.C. 13:39-7.14(b)7.

N.J.A.C. 13:39-9.7(b)3

COMMENT: Nine comments expressed opposition to this requirement as being impractical and unnecessary.

RESPONSE: The language has been changed to drop the requirement that records be placed in patients' medical records; new language mandates a general requirement for accessible storage for five years, as most of the commenters suggested.

N.J.A.C. 13:39-9.8(a)

COMMENT: The New Jersey State Department of Health said that the citation is incorrect and should be N.J.A.C. 13:39-7.7.

RESPONSE: The citation has been corrected.

N.J.A.C. 13:39-9.9 Access to the institutional pharmacy

COMMENT: The New Jersey Pharmaceutical Association strenuously opposed access of anyone other than a pharmacist to the full pharmacy stock. They suggest, if a 24 hour pharmacist is not available, that nurses have access to a limited stock for emergencies.

RESPONSE: The Board agrees with this philosophy, but practical considerations dictate that 24 hour pharmacist service does not exist for most hospitals. The Board believes that limiting access to one nurse is the only practical alternative when pharmacists are not employed on a 24 hour basis.

COMMENT: The New Jersey Society of Hospital Pharmacists and one hospital pharmacist asked that the words "after hours" be added to the heading of this section.

RESPONSE: The Board agrees and has done so.

N.J.A.C. 13:39-9.9(a)

COMMENT: The New Jersey State Department of Health asks why Schedule V prescription drugs are not included.

RESPONSE: They have been added.

N.J.A.C. 13:39-9.9(b)

COMMENT: Two hospital pharmacists ask that more than one nurse per shift be allowed access to the pharmacy, to accommodate large hospitals.

RESPONSE: Control decreases as the number of persons having access increases. The Board believes that, even for the largest hospitals, emergency access should only be by one person.

COMMENT: Two hospital pharmacists asks that the "eight" be dropped from the shift; they point out that shifts often are longer than eight hours, especially due to nursing shortages.

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RESPONSE: The Board agrees and has changed the wording to "any given shift."

COMMENT: One hospital pharmacist asks that the words "in an emergency" be deleted, arguing that access should accommodate needs, many of which are not true emergencies.

RESPONSE: The Board disagrees. Floor stock of drugs and access to a night supply should take care of most needs. Access to the full pharmacy stock should be reserved for emergencies.

COMMENT: One hospital pharmacist asks if this subsection would limit access to drug stocks by pharmacy supportive personnel.

RESPONSE: No. The section heading now clarifies that this section is for "after hours."

N.J.A.C. 13:39-9.9(c)1

COMMENT: One hospital pharmacist comments that this subsection mandates pre-packaging by a pharmacist only. Wording is suggested that would allow other pharmacy personnel to pre-package.

RESPONSE: The Board agrees and has changed the wording to "or a drug pre-packaged by the pharmacy for use in the institution."

N.J.A.C. 13:39-9.9(c)2

COMMENT: One hospital pharmacist asks if a nurse may remove more than one dose if the order calls for "every three hours."

RESPONSE: Yes. If a single dose will not cover the patient's needs until the pharmacy opens, more than one dose may be taken.

N.J.A.C. 13:39-9.9(d)2

COMMENT: One hospital pharmacist questions the need for the name of the manufacturer to be recorded.

RESPONSE: The Board agrees and has deleted (d)2 as unnecessary.

N.J.A.C. 13:39-9.9(f)

COMMENT: The Board has reconsidered and changed this requirement to one year from three years. The purpose of maintenance of this record is to check for compatibility with the prescriber's order. Such checking is done very soon after the record entry; thus, three year record maintenance was considered unnecessary.

N.J.A.C. 13:39-9.12 Institutional pharmacy staff

COMMENT: One hospital pharmacist states that the section is vague and that mandating "competent" personnel is unnecessary.

RESPONSE: The Board cannot determine and quantify staffing levels for hospitals; thus, the requirement is a general one.

N.J.A.C. 13:39-9.14 Non-pharmacist staffing

COMMENT: The New Jersey Society of Hospital Pharmacists asks that the heading be changed to "Supportive personnel."

RESPONSE: The Board agrees and has done so.

COMMENT: The New Jersey Hospital Association asks that the word "employed" be dropped in favor of "working."

RESPONSE: This section does not use the word "employed."

COMMENT: The New Jersey Hospital Association objects to "direct supervision" as previously stated.

RESPONSE: The Board has changed the definition, making it much less intrusive, and thus believes the new definition meets the New Jersey Hospital Association's request.

COMMENT: One hospital pharmacist asked that this section be expanded to include pharmacist/supportive staff ratios, as well as to define the pharmacist's delegatory responsibility.

RESPONSE: The Board disagrees. The ratio has been set elsewhere in the rules, and the commenter's suggested wording is too vague ("reasonable and prudent" pharmacist).

N.J.A.C. 13:39-9.15(b)

COMMENT: The New Jersey Pharmaceutical Association asks that the citation be expanded to include sections through N.J.A.C. 13:39-7.6.

RESPONSE: The Board agrees and has also included N.J.A.C. 13:39-7.7 for completeness.

N.J.A.C. 13:39-9.17 Equipment

COMMENT: The New Jersey Pharmaceutical Association notes that no specific equipment is listed for institutions, in contrast to specific needs for retail permit holders. They find this unfair and ask that institutions also have a required equipment list. In addition, one hospital pharmacist suggests an equipment list for institutional pharmacies.

RESPONSE: Institutions vary much more widely in their services than do retail pharmacies, so no equipment list would suit all institutions and therefore the Board has not been specific.

Note: The Board has extensively revised this section to eliminate unnecessary wording (deleting the words ". . . to maintain . . . basis.")

N.J.A.C. 13:39-9.17(b)

COMMENT: Automated Pharmaceutical Services asks that this subsection be deleted because some institutions do not prepare any intravenous solutions.

RESPONSE: The Board has deleted this subsection entirely.

N.J.A.C. 13:39-9.18 Institutional decentralized pharmacies

COMMENT: One hospital pharmacist asks what constitutes a "satellite." They point out that different types of pharmacy services (for example, mobile pharmacists) may make nursing stations "satellites" under this section.

RESPONSE: Satellites refers to physical areas under the control of the pharmacy department in an institution.

COMMENT: The New Jersey Hospital Association objects to the entire section as being excessive and costly.

RESPONSE: The changes made by the Board throughout this section probably render moot many of the New Jersey Hospital Association's general objections.

N.J.A.C. 13:39-9.18(a)

COMMENT: Two hospital pharmacists ask that the requirement for a pharmacist to be present be changed to specify that medications not be dispensed unless a pharmacist is present.

RESPONSE: The Board has made this change. While it is impractical for the pharmacist to be present at all times in the pharmacy, the change allows no drug to be dispersed about the pharmacist.

N.J.A.C. 13:39-9.18(b)

COMMENT: The New Jersey Hospital Association states that a remodeling application for decentralized pharmacies should be eliminated.

RESPONSE: Adequacy of facilities with permits is a Board determination and can only be made if the Board is made aware of changes in those facilities. This is a routine paperwork requirement and should not present a problem.

COMMENT: One hospital pharmacist asks if the application is the same as that mentioned at N.J.A.C. 13:39-4.6.

RESPONSE: Yes.

N.J.A.C. 13:39-9.18(d)1

COMMENT: One hospital pharmacist and the New Jersey Society of Hospital Pharmacists ask that texts in the satellite be at the discretion of the pharmacists, there being different needs depending on the clinical area served.

RESPONSE: The Board agrees and has deleted all words after the word "texts."

N.J.A.C. 13:39-9.18(d)3

Note that the last word in the section was changed from the improper "disbursed" to the correct "dispersed."

N.J.A.C. 13:39-9.18(d)6

COMMENT: One hospital pharmacist asked that poison labels not be required.

RESPONSE: The Board has dropped this requirement, since poisons are not dispersed to outpatients, a practice which would require such labels.

N.J.A.C. 13:39-9.18(d)7

COMMENT: One hospital pharmacist and the New Jersey Society of Hospital Pharmacists, as well as the New Jersey Hospital Association, objected to the need for a sink in each decentralized pharmacy. They suggest access to a sink, not presence in the satellite of a sink.

RESPONSE: The Board agrees and has reworded this section to require "easy access," rather than having each decentralized pharmacy install a sink.

N.J.A.C. 13:39-9.18(e)

COMMENT: Both the New Jersey Society of Hospital Pharmacists and one hospital pharmacist said that this section was not needed.

RESPONSE: The Board agrees and has deleted it, since the Board's authority to impose additional requirements is elsewhere retained.

N.J.A.C. 13:39-10.1 Sterile admixture service

COMMENT: The New Jersey Pharmaceutical Association asks whether this section pertains only to institutional pharmacies or only to special limited permit holders.

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RESPONSE: As proposed, the section refers to both. Changes in the subchapter heading make this explicit.

COMMENT: One hospital pharmacist asks whether this section makes pharmacies responsible for enteral nutrition products. The Community Memorial Hospital points out that "enteral" should probably be "parenteral."

RESPONSE: The wording has been changed to eliminate the phrase "irrigation and enteral nutrition." In addition, the phrase starting with "intended" and ending with "setting" has been eliminated as being unnecessary.

N.J.A.C. 13:39-10.3(a)

COMMENT: Several commenters asked whether current providers of this service need notify the Board, or would they be grandfathered? One comment suggested only retail and special permit holders notify the Board; another stated that the sentence needed clarification.

RESPONSE: Permit holders currently providing this service need not notify the Board; others intending to provide this service must notify the Board.

N.J.A.C. 13:39-10.3(b)

The Board deleted this section. Pharmacies limited to providing sterile admixture service do not advertise themselves through public signs as pharmacies, within the general public conception on the term. Therefore, the object of this subsection, to clarify that perception, is unnecessary.

N.J.A.C. 13:39-10.4(a)

COMMENT: The New Jersey Pharmaceutical Association states that this subsection might mean that the entire retail pharmacy is under the supervision of the specialized pharmacist; they suggest starting the paragraph with the words, "That section of."

RESPONSE: The Board agrees and has done as suggested.

COMMENT: One hospital pharmacist asks who will determine the adequacy of the pharmacist's background and training in this area. The New Jersey Hospital Association asks that the term "adequate" be defined.

RESPONSE: Formalized training in sterile admixture services is not universally available, often being "on-the-job" experience. The Board is retaining this subsection as proposed because, despite lack of acceptable standards for training, specialized knowledge is required and the Board feels that it must encourage persons entering this area of service to obtain a background in it before offering this service.

N.J.A.C. 13:39-10.4(b)

COMMENT: Four comments noted that the citation was incorrect.

RESPONSE: Reference to the citation has been deleted.

COMMENT: The New Jersey Pharmaceutical Association asks that the wording be changed so as to specify exactly where the specialized pharmacist has the mentioned responsibilities.

RESPONSE: The wording suggested by the New Jersey Pharmaceutical Association has been incorporated into the revised subsection.

N.J.A.C. 13:39-10.4(b)5

COMMENT: The New Jersey Pharmaceutical Association asks that this paragraph be changed so that supportive personnel are not allowed to prepare compounded parenteral preparations.

RESPONSE: Supportive personnel have prepared such preparations under pharmacist supervision throughout the country for decades. This paragraph expressly approves such activity when carried out under direct supervision, as previously redefined. The Board does not agree with the New Jersey Pharmaceutical Association that such activities need be reserved to pharmacists only.

COMMENT: One hospital pharmacist points out that the activities allowed here contradict restrictions on supportive personnel given N.J.A.C. 13:39-6.7(b).

RESPONSE: The latter section has been revised so that no contradiction remains.

COMMENT: One hospital pharmacist asks that "direct supervision" be changed to "supervision."

RESPONSE: The paragraph has not been changed. Direct supervision is now defined less restrictively than in the original proposal; thus, the Board believes this request has been met.

N.J.A.C. 13:39-10.5 Handling, packaging and delivery

COMMENT: Community Memorial Hospital suggests "a label," not a "permanently affixed label." This would allow recycling of medications.

RESPONSE: Permanently affixed labels can be covered with new labels for recycling purposes. The wording remains unchanged.

N.J.A.C. 13:39-10.5(a)1

COMMENT: Community Memorial Hospital states that the date dispensed is unneeded and might be confused with the expiration date. One hospital pharmacist states that "date prepared" should be required.

RESPONSE: The Board agrees with both suggestions and has changed this requirement to "date prepared."

N.J.A.C. 13:39-10.5(a)4

COMMENT: One hospital pharmacist asks whether the full directions for use are needed, or just the rate. The Community Memorial Hospital also states that directions for use are often not needed, being present in the nurse's administration records, etc.

RESPONSE: The Board believes that "directions for use" allows latitude to include only pertinent information.

N.J.A.C. 13:39-10.5(a)7

COMMENT: Two hospital pharmacists state that this paragraph should allow the initials of the pharmacist who supervised the preparation; as it now stands, this paragraph requires that a pharmacist prepare admixtures.

RESPONSE: Other sections allow supportive personnel to prepare admixtures. This paragraph has been changed to read "Name or identifying code of the pharmacist who checked or prepared the admixture."

N.J.A.C. 13:39-10.5(a)8

COMMENT: One hospital pharmacist stated that "adequate documentation" of extended expirations may allow persons to follow guidelines from a poorly designed study. They suggest that allowed documentation be, besides the manufacturer's insert, a textbook or more than one article from a reputable journal.

RESPONSE: Inadequate documentation can be a problem, but the onus is on the pharmacist to utilize only those extended expiration dates that have been clearly found acceptable. No change has been made.

N.J.A.C. 13:39-10.6 Patient records

COMMENT: The Community Memorial Hospital states that this section implies two separate profiles, one being for sterile products alone.

RESPONSE: This is a misinterpretation. Separate profiles are not required.

N.J.A.C. 13:39-10.7(a)1 through 12

COMMENT: The New Jersey Hospital Association objects to this section as being too prescriptive. They feel this section only applies to retail permit holders.

RESPONSE: The Board disagrees. Proper policy and procedural manuals are a necessity in general, and doubly so for sterile admixture services. This section applies to both institutional and other permit holders.

N.J.A.C. 13:39-10.7(a)13

COMMENT: The New Jersey Hospital Association states that this paragraph mandates a quality assurance program inconsistent with, as well as in conflict with, "accreditation standards."

RESPONSE: Exactly how this section is inconsistent and in conflict with unspecified accreditation standards was not stated. The section is general and the Board believes covers only those general areas that any quality assurance program would demand. The section remains unchanged.

N.J.A.C. 13:39-10.8(b)

COMMENT: The New Jersey Hospital Association states that the wording could (mistakenly, they believe) be misinterpreted to mean a separate room.

RESPONSE: A separate room is NOT intended.

N.J.A.C. 13:39-10.9 through 13:39-10.12

COMMENT: The New Jersey Hospital Association states that these sections are "too prescriptive" and thus unacceptable. They request unstated amendments.

RESPONSE: These sections have been slightly changed, but not to meet this objection. The Board believes that specification of temperatures, space, supplies, and equipment is necessary so that this important service is adequately undertaken. It is doubtful that any institution does not already meet these specifications.

N.J.A.C. 13:39-10.10(a)1

COMMENT: The New Jersey Society of Hospital Pharmacists desires a definition for a "class 100 cabinet or environment."

RESPONSE: The term "class 100" has an official definition, but it is a technical one. To clear up the terminology, the Board has changed the wording to "A suitable laminar air flow hood."

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N.J.A.C. 13:39-10.10(a)3

COMMENT: The New Jersey Pharmaceutical Association objects to the need for a separate refrigerator located in the admixture area, stating that the one already mandated should be sufficient.

RESPONSE: The Board has changed the wording so that the distinct refrigerator for admixture need not be in the admixture area, but still shall be separate. Sterile admixtures often take up much space, which experience shows is not present in most pharmacy refrigerators.

N.J.A.C. 13:39-10.11 Supplies

The mistakenly commendatory "should" has been changed to the proper requisite "shall." Parenthetical language in paragraph (a)1 was deleted as unnecessary.

N.J.A.C. 13:39-10.12 Library references

COMMENT: The New Jersey Society of Hospital Pharmacists asks that the section be changed to require references pertinent to this specialized area and as recommended by the Pharmacy and Therapeutics Committee.

RESPONSE: This section also addresses retail and specialized permit holders, so the Pharmacy and Therapeutics Committee is not pertinent.

COMMENT: The New Jersey State Department of Health notes that the citation should correctly read N.J.A.C. 13:39-7.7.

RESPONSE: The citation has been corrected.

N.J.A.C. 13:39-10.13(a)

COMMENT: One hospital pharmacist states that annual inspections are too lenient, and should be semiannual.

RESPONSE: The language should have stated "semiannually" and now has been so stated.

N.J.A.C. 13:39-11.1 Definitions

COMMENT: Automated Pharmaceutical Services asks why nuclear pharmacists have more leeway to delegate than do retail or other pharmacists?

RESPONSE: Under the revised proposal, they do not. Supervised personnel under all types of permits can have similar degrees of duties delegated to them by pharmacists under the revised definition of "direct supervision."

COMMENT: The New Jersey State Department of Health states that "a qualified nuclear pharmacist" has not been defined.

RESPONSE: While this comment is technically correct, definition has not been made because the very specialized training and/or education and experience such nuclear pharmacists must have permits them to be readily identified by facilities employing them.

COMMENT: Both the New Jersey Pharmaceutical Association and Medi+Physics asked that the term "supervising" be replaced with "qualified." The supervisor is not always present.

RESPONSE: The Board agrees and have made that change in the revised definition.

COMMENT: The New Jersey Society of Hospital Pharmacists repeated its comment that "direct supervision" was not defined consistently in this section versus other sections.

RESPONSE: The Board believes such inconsistencies have been eliminated with the reworded definition.

COMMENT: The New Jersey Pharmaceutical Association and Medi+Physics both asked that the term "radiopharmaceutical" be redefined to include products defined under "Nuclear Pharmacy Guidelines" from the FDA.

RESPONSE: This suggestion has been adopted.

N.J.A.C. 13:39-11.2(a)

COMMENT: Both Medi+Physics and the New Jersey Pharmaceutical Association commented that the New Jersey Bureau of Radiation Protection be incorporated into this subsection.

RESPONSE: Reference to this Bureau has been added in several sections, where appropriate.

COMMENT: Medi+Physics and the New Jersey Pharmaceutical Association asked that the first sentence be deleted because it prevented a corporation from being an applicant.

RESPONSE: The words "site employing" have been incorporated to rectify this problem.

N.J.A.C. 13:39-11.2(b)

COMMENT: The New Jersey Pharmaceutical Association asked that the words "established for all pharmacies in the State" be deleted as meaningless.

RESPONSE: The words were deleted.

N.J.A.C. 13:39-11.2(e)6

COMMENT: Both Mallinckrodt and Medi+Physics asks that the designation "cubic centimeters" be changed to "milliliters."

RESPONSE: The change was made to provide the scientifically correct measurement for liquid volume.

N.J.A.C. 13:39-11.2(e)10

COMMENT: Several comments stated that the patient's name is often not known at the time the dose is prepared; the commenters asked that the patient's name not be a requirement, for practical reasons.

RESPONSE: The words, "if available," have been added to the end of this section in accordance with these comments.

N.J.A.C. 13:39-11.2(f)3 and 4

Note: These two requirements were dropped by the Board as being unnecessary.

N.J.A.C. 13:39-11.2(h)

COMMENT: Medi+Physics states that this subsection prevents distribution of a multidose solution.

RESPONSE: The word "individual" was dropped to accommodate this comment.

N.J.A.C. 13:39-11.2(1)

COMMENT: The New Jersey Pharmaceutical Association reiterated their comment that the word "qualified" be used in place of pharmacist-in-charge.

RESPONSE: Qualified has replaced pharmacist-in-charge.

N.J.A.C. 13:39-11.4(b)7

COMMENT: The New Jersey Pharmaceutical Association and Medi+Physics ask for wording changes that allow more stringent requirements.

RESPONSE: The paragraph has been deleted and replaced with situation specific wording in agreement with that suggested by these commenters.

N.J.A.C. 13:39-11.4(c)1

COMMENT: The New Jersey Pharmaceutical Association asks whether it was intentional to refer to USP-NF and not USP DI, as with all other types of pharmacies.

RESPONSE: This paragraph should have stated USP DI.

Agency Initiated Changes

Although many technical corrections and minor adjustments have been made, which are discussed in the comments/responses summary above, the State Board of Pharmacy considers the following to be the most significant changes from the reproposal:

In the Definitions section, N.J.A.C. 13:39-1.2, the proposed definition of "direct personal supervision" was changed to "direct supervision," such that pharmacists will not be required to conduct intensive "over-the-shoulder" observation of supportive personnel, but may assure themselves of safe practices by checking the supportive personnel at several specified steps in the process.

N.J.A.C. 13:39-3.18(e)4 has been changed to allow the pharmacist to specify who may be present in the pharmacy department in his or her temporary absence and also to allow the pharmacist to be temporarily absent from the pharmacy department without the necessity of closing that department. Paragraph (e)13 was changed to allow a pharmacist-in-charge more time to advise the Board of his or her termination at a specific location.

Proposed N.J.A.C. 13:39-5.3, record of prescription refills, was deleted in its entirety. Although refill dates still need to be recorded in an approved fashion, there is no longer a requirement to record the first two refills manually on the original prescription if any other approved method (for example, a computer record) is used. This change eliminates duplication of effort.

In N.J.A.C. 13:39-5.7(g), the proposed requirement that pharmacists using a computer system maintain and sign a daily log of prescriptions has been eliminated.

At N.J.A.C. 13:39-6.7(b), the prohibition against supportive personnel weighing or measuring has been removed, while retaining the need for pharmacists' direct supervision of such acts. This change was made for consistency with other provisions in the nuclear pharmacy subchapter.

The proposed fee schedule at N.J.A.C. 13:39-1.3 inadvertently omitted the annual renewal fee of $85.00, which has now been reinstated. This does not represent a change from the fee that is currently charged.

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The definition of health care facility in N.J.A.C. 13:39-9.1 was revised by the Board since, upon reconsideration, the definition was considered to be too restrictive in scope under the authorizing statutes.

N.J.A.C. 13:39-9.6(a)8 was changed to remove the unnecessary mention of medical staff in developing drug administration policies and procedures. The Pharmacy and Therapeutics Committee is composed, in part, of medical staff, and, as defined, the Committee is the pharmacy-medical staff liaison. The records maintenance citation in subparagraph (a)12i was deleted as redundant; record keeping requirements are already set forth under paragraph (a)4. The limitation of access to the drug storage area of a drug-dispensing device to pharmacists in subparagraph (a)12ii was deleted as unnecessary in light of the revision of the "direct supervision" definition. Technicians should be able to restock the devices. The last sentence in subparagraph (a)12v was deleted as repetitive of requirements found elsewhere.

The return or destruction requirement for unused investigational drugs was deleted from N.J.A.C. 13:39-9.7(e) as potentially in conflict with individual manufacturer instructions provided in accordance with Federal law.

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

CHAPTER 39
STATE BOARD OF PHARMACY

SUBCHAPTER 1. GENERAL PROVISIONS

13:39-1.1 Purpose and scope

(a) This chapter is promulgated by the New Jersey State Board of Pharmacy. The rules contained in this chapter implement the provisions of the Pharmacy Act, N.J.S.A. 45:14-1 et seq. and regulate the practice of pharmacy within the State of New Jersey.

(b) This chapter shall apply to all registered pharmacists, pharmacist applicants, interns, externs, supportive personnel and anyone within the jurisdiction of the Board of Pharmacy.

13:39-1.2 Definitions

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

"Board" means the New Jersey State Board of Pharmacy.

"Compounding" means the act of preparing pharmaceutical components into medications, pursuant to a licensed practitioner's prescription or medication order, including, but not limited to prescription compounding, bulk compounding and intravenous admixture preparation.

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under Federal or State law to be prescribed by a licensed practitioner and dispensed by a pharmacist, in the usual scope of pharmacy practice.

["Direct personal supervision" means the observation by a registered pharmacist of all functions of the process of preparation or compounding and dispensing of drugs, including the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.]

"Direct supervision" means that the registered pharmacist shall be physically present in the compounding/dispensing area where the supportive personnel are performing delegated duties, and shall conduct in-process and final checks of all steps in preparation, compounding, and dispensing of drugs. This supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

"Dispense or dispensing" means the procedure entailing the interpretation of a licensed practitioner's prescription order for a drug or device, and pursuant to that order, the proper selection, measuring, labeling, and packing in a proper container*[, and the issuance of the drug or device to a patient or other individual entitled to receive the drug or device]*. The act of dispensing shall include, if necessary, a pharmacist's, extern's or intern's consultation with the prescribing physician and/or the patient or *[individual administering the drug]* ***patient's agent*** to assure proper preparation, use and administration of medication. ***This consulting may be on a personal one-to-one basis or, as an alternate, a detailed explanatory patient brochure accompanying prescription, with verbal backup readily available if necessary.***

"Drug or medicine" means:

1. Articles recognized in the official United States Pharmacopoeia/National Formulary, official Homeopathic Pharmacopoeia of the United States, or any official supplement to any of them;

2. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;

3. Articles (other than food) intended to affect the structure of any function of the body of human beings or animals; and

4. Articles intended for use as a component of any article specified in 1, 2 or 3 above, but does not include devices or their components, parts or accessories. Articles, such as sugar or starch, which may be components of any articles in 1, 2, or 3 above, are not considered drugs or medicines when sold as food.

"Legend drug or device" means any drug or pharmaceutical that:

1. Bears the statement, "Caution: Federal law prohibits dispensing without a prescription" or words of similar import; or

2. Requires a prescription or order by a licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions and medication orders.

"Licensed practitioner" means a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions and medication orders.

"Pharmaceutical" means any drug as defined above and all other adjunct substances or materials required in the preparation of the drug for use.

"Pharmaceutical services" means all services provided by *[or under the direct supervision of]* a registered pharmacist. These services shall be concerned with, but not limited to: interpreting the prescription or medication order; selecting, preparing, compounding, packaging, labelling, distributing and dispensing prescribed drugs; the proper and safe storage of drugs; the monitoring of drug therapy; the reporting and recording of adverse drug reactions and the provision of appropriate drug information; teaching and counselling on the proper and safe use of drugs and medications.

"Poison" means:

1. Any drug, chemical, substance or preparation which according to standard works on medicine, materia medica or toxicology is liable to be destructive of adult human life in doses of 60 grains or metric equivalent or less;

2. Any substance recognized by standard authorities on medicine, materia medica or toxicology as poisonous;

3. Any item enumerated in Schedule A of N.J.S.A. 45:14-19 or any item enumerated in Schedule B of N.J.S.A. 45:14-20; and

4. Any drug, chemical, substance or preparation which is labeled "poison".

"Prescription" means any order for drugs and related items as defined in N.J.S.A. 45:14-14.

"Professional judgment" means judiciousness and discretion based upon thorough knowledge and sound application of the specialized body of knowledge peculiar to the practice of pharmacy, and an understanding of the relationship of this knowledge and its application to the well-being of the patient and to the judgment of the prescriber.

"Registered pharmacist" or "pharmacist" means a person holding an unsuspended and unrevoked license as a pharmacist issued by the Board whose certificate is in good standing *[by virtue of a renewal certificate having been obtained]* for the current registration period.

"Supportive personnel" means those persons who perform pharmaceutical functions under the direct supervision of a registered pharmacist. Interns and externs are specifically excluded from this definition.

13:39-1.3 Fee schedule

(a) The following fees shall be charged by the Board:

1. For pharmacists as follows:

i. Examination: $50.00 plus the cost of the National Association of Boards of Pharmacy Licensing Examination (NABPLEX).

(1) Repeat of law examination only: $25.00.

ii. Reciprocal registration: $125.00.

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iii. Reinstatement of licensure: $42.50 per year up to 5 years.
iv. Duplicate registration: $10.00.
v. Certification fee: $5.00.
vi. Biennial registration: $85.00.
vii. Duplicate renewal: $5.00.
viii. Transfer of grades: $50.00.
2. For pharmacies as follows:
[i. Duplicate permit: $5.00.]
*[ii.]***i.** Pharmacy permits:
(1) New: $200.00.
(2) Annual renewal: $85.00.
*[(2)]***(3)* Change of ownership: $200.00.
*[(3)]***(4)* Change of location: $200.00.
ii. Duplicate permit: $50.00.

13:39-1.4 Payment of penalties
(a) Any penalties levied by the Board must be paid within 30 calendar days of the receipt of a penalty letter or final order of the Board unless otherwise prescribed by statute or terms of a final order.
(b) Failure to comply with this rule will result in action by the Board according to the provisions of N.J.S.A. 45:1-24.

13:39-1.5 Hearings
(a) Any time the Board seeks to impose a disciplinary sanction upon a licensee, the licensee may request a hearing.
(b) Any hearings held shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 2. APPLICANT QUALIFICATIONS AND EXAMINATIONS REQUIREMENTS

13:39-2.1 Education requirements
(a) An applicant for the written examination shall have been duly granted or have fully completed all the requirements for graduation of a minimum five-year pharmacy course leading to a degree of Bachelor of Science in pharmacy or Doctor of Pharmacy given in a school or college of pharmacy approved by the Board.
(b) Before being admitted to the examination, either a transcript of the applicant's record or a certificate by the registrar of the school or college of pharmacy attended must be supplied stating that the applicant has either graduated or has completed all of the requirements for graduation. If the transcript or certificate does not state that the applicant has graduated or has completed all the graduation requirements, the Board may require other forms of proof to be supplied by the applicant.

13:39-2.2 Application to be filed
An applicant for the written examination must file an application for such examination at least 60 days prior to the date of the examination unless this requirement is waived by the Board because of extenuating circumstances. The required fees as prescribed in N.J.A.C. 13:39-1.3 must also be submitted.

13:39-2.3 Birth certificate
An applicant for the written examination who was born in the United States shall submit the original or a certified copy of his or her birth certificate which will be retained by the Board. The birth certificate must bear the name under which the application for the examination is being made. In those instances where there has been a legal name change, documentation attesting to the legal name change must be submitted along with the birth certificate.

13:39-2.4 Proof of citizenship
(a) An applicant for the written examination who was born outside of the United States but is a citizen of the United States must present either citizenship papers or derivative citizenship papers. If the applicant is not a citizen, he or she must first present proof of intention to become a citizen.
(b) An applicant who presents citizenship papers of his or her parents which list the applicant's name as a minor child or who presents other proof of citizenship from the United States Immigration and Naturalization Bureau may be admitted to the written examination pending the submission of derivative citizenship papers.

13:39-2.5 Language comprehension requirement
All applicants for licensure who earned their undergraduate pharmacy degree in countries wherein the primary language is other than English, prior to being granted licensure, shall comply with the requirements of N.J.A.C. 13:39-3.11.

13:39-2.6 Age requirement
An applicant who is not of legal age, that is, the age of majority in the State of New Jersey, but who has otherwise met the application requirements, with the exception of the internship requirement, may be admitted to the written examination; however, the applicant shall not be eligible for licensure until attaining legal age.

13:39-2.7 Proof of character
(a) An applicant for the written examination shall submit, in advance, an application containing evidence of good moral character and evidence that he or she:
1. Is not a chronic or persistent inebriate;
2. Is not addicted to the use of any controlled dangerous substance or other habit-forming drug;
3. Has not been convicted of violating any law of this State or any other state of the United States relating to controlled dangerous substances or other habit-forming drugs;
4. Has not been convicted of violating the provisions of any law relating to the sale of liquors;
5. Has not been convicted of violating any law relating to the practice of pharmacy;
6. Has not been convicted of a crime involving moral turpitude; and
7. Has not had his or her license or, if a permit holder, his or her permit, suspended or revoked in the last five years as a result of any administrative or disciplinary proceedings in this or any other jurisdiction which proved the applicant to be in violation of any laws, rules or regulations pertaining to the practice of pharmacy, and that the applicant is not currently under suspension or revocation.

13:39-2.8 Proof of identity of applicant
An applicant for the written examination must submit to the Board 60 days in advance of the date of the written examination a bust photograph mounted on a document to be supplied by the Board requesting certain identification information.

13:39-2.9 Alleged violations of Pharmacy Act
If an applicant for any Board examination is involved in any alleged violation of the Pharmacy Act, N.J.S.A. 45:14-1 et seq., the Board in its discretion may deny the applicant the opportunity to take the examination.

13:39-2.10 Written examinations; grades
(a) The written examination shall be that of the National Association of Boards of Pharmacy (NABPLEX). An applicant shall attain a passing grade of not less than 75. If an applicant fails the examination, he or she will be required to repeat the examination.
(b) The applicant shall also pass a written examination on the laws governing the practice of pharmacy in the State of New Jersey. A passing grade of not less than 75 shall be attained. If an applicant fails the examination, he or she will be required to repeat the examination.
(c) If the applicant should fail either the NABPLEX or the law examination three times, the applicant shall be required to take review courses as approved by the Board prior to retaking the failed examination(s).

SUBCHAPTER 3. REGISTRATION OF PHARMACISTS

13:39-3.1 Certificate of registration
An applicant who has successfully passed all Board examinations shall receive an authorization signed by the Secretary of the Board granting the applicant the right to practice pharmacy in the State of New Jersey until such time as an original certificate of registration may be issued.

13:39-3.2 Duplicate certificate of registration
A duplicate certificate of registration may be issued by the Board upon payment of a fee as prescribed in N.J.A.C. 13:39-1.3 and upon

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submission of proof of the applicant's identity and reasonable proof of the loss or destruction of the original certificate of registration or upon return of the damaged original certificate to the Board.

13:39-3.3 Change of name

If a registered pharmacist legally changes his or her name, the name change shall be recorded in the Board's records. The registered pharmacist shall submit original proof of the change of name or a certified copy of the court order or marriage certificate which will be retained by the Board. When a duplicate certificate is issued, the original certificate must be returned for cancellation along with the required fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-3.4 Change of employment or address

(a) A registered pharmacist shall notify the Board in writing of any change in his or her home address within 30 days.

(b) A registered pharmacist shall notify the Board in writing within 30 days of any change in his or her place of employment *[and the number of hours to be worked each week]*.

13:39-3.5 Certification of records

Upon payment of the required fee as prescribed in N.J.A.C. 13:39-1.3, a certification of any of the information on file in the Board records concerning an application for registration of a registered pharmacist will be supplied.

13:39-3.6 Reproduction of original certificate of registration prohibited

The original certificate of registration issued by the Board to any pharmacist shall not be reprinted, photographed, photostated, duplicated or reproduced by any other means either in whole or in part, without the express written authorization of the Board.

13:39-3.7 Limitation or reciprocal registration

(a) Reciprocal registration of out-of-state pharmacists shall be limited to those pharmacists who have been duly licensed in mutually reciprocating states.

(b) Applicants who have graduated from pharmacy schools which have not been accredited by the American Council on Pharmaceutical Education but who have been licensed by the District of Columbia, a reciprocating state or a United States territory shall be eligible for transfer of licensure if the Board is satisfied that the licensing procedures applicable to graduates of non-accredited schools in the state of original licensure provide for an adequate evaluation of the applicant's education, training and experience.

13:39-3.8 Basic requirement for transfer of licensure

An application for reciprocal registration to the State of New Jersey shall fully meet all of the requirements in effect in this State as of the date of his or her registration in the state of original licensure, or in any other state of licensure by examination, including the district of Columbia and territories of the United States.

13:39-3.9 Out of state practice requirement for transfer of licensure from a mutually reciprocating state

An applicant for reciprocal registration to the State of New Jersey must have practiced in a pharmacy for at least 2000 hours within the one year immediately prior to application and be in good standing with that state and any other state in which the applicant is licensed.

13:39-3.10 Clear record of law observance

Eligibility for reciprocal registration shall be denied any person against whom there *[is]* ***are*** pending any formal charges for any alleged violations of the laws governing the practice of pharmacy or the dispensing of *[narcotics]* ***controlled dangerous substances***, alcohol or other regulated drugs, or who has been convicted of any crime within the past five years. All applicants for transfer of licensure must meet the character requirements outlined in N.J.A.C. 13:39-2.7.

13:39-3.11 TOEFL examination

(a) All pharmacist applicants from countries where the primary language is other than English, prior to being granted licensure as professional pharmacists in this State, shall submit to the Board evidence that they have successfully completed the Test of English as a Foreign Language (TOEFL) Examination and have attained a minimum passing score. This test shall be taken within two years of application for licensure in this State.

(b) A request for waiver of the TOEFL examination shall be made to the Board in the applicant's own handwriting and must delineate good cause for the waiver request. The Board may, after due consideration and within its own discretion, waive the TOEFL examination.

13:39-3.12 Physical and mental fitness of reciprocal registrants

(a) An applicant for reciprocal registration shall be physically and mentally fit to perform all the duties normally required of a registered pharmacist.

(b) The Board, at its discretion, may require proof of the applicant's physical and mental fitness to practice pharmacy in this State.

13:39-3.13 Preliminary application

A preliminary application obtained from the Board for reciprocal registration shall be submitted to the National Association of Boards of Pharmacy.

13:39-3.14 New Jersey pharmacy law examination: reciprocal registration

(a) The applicant for reciprocal registration shall pass a written test on the laws governing the practice of pharmacy in this State. A passing grade of not less than 75 shall be attained. If an applicant fails the examination, he or she will be required to repeat the examination.

(b) If the applicant for reciprocal registration fails the examination three times, the applicant shall be required to take review courses as approved by the Board prior to retaking the law examination.

13:39-3.15 Biennial registration renewal

(a) Every registered pharmacist, on or before April 30 of each odd-numbered year, shall renew his or her certificate of registration through the payment of a registration renewal fee as prescribed by N.J.A.C. 13:39-1.3 and the filing of a renewal application to be obtained from the Board.

(b) The renewal application shall list the name, home address, original certificate of registration number, date of issuance of original certificate of registration, places and hours of employment, continuing education credits, and other information as requested by the Board.

(c) The renewal application shall be signed by the applicant.

13:39-3.16 Duplicate renewal certificate of registration

If a renewal certificate of registration is lost or destroyed, a duplicate renewal certificate may be obtained upon payment of a fee as prescribed in N.J.A.C. 13:39-1.3. Proof of the applicant's identity and proof of loss or destruction of the applicant's renewal certificate originally issued must be submitted.

13:39-3.17 Reinstatement in good standing

(a) If a registered pharmacist permits his or her registration to lapse for a period of less than five years through a failure to renew his or her certificate of registration, the registration may be brought into good standing through payment ***as per N.J.A.C. 13:39-1.3(a)1iii*** of the current ***and lapsed*** renewal fee and upon submission of proof of identity and the filing of an application to be obtained from the Board.

(b) If the registration has lapsed for a period of five years or longer, the applicant for such reinstatement must pass the New Jersey pharmacy law examination. Copies of excerpts of the laws governing the practice of pharmacy in the State of New Jersey will be supplied to the applicant by the Board beforehand for study purposes. The applicant shall also submit payment ***as per N.J.A.C. 13:39-1.3(a)1iii*** of the current renewal fee and proof of identity along with an application to be obtained from the Board.

(c) Every applicant for reinstatement must submit evidence of satisfactory completion of the continuing education requirements which are 15 credits per year up to a maximum of five years or 75 credits.

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13:39-3.18 Pharmacist-in-charge

(a) A registered pharmacist shall not assume the responsibilities of a registered pharmacist-in-charge of more than one pharmacy or pharmacy department simultaneously.

(b) There shall not be more than one registered pharmacist-in-charge of any one pharmacy or pharmacy department.

(c) Whenever there is a change of a pharmacist-in-charge of a pharmacy or other Board-licensed establishment, the incoming *[and outgoing]* pharmacist*[s]*-in-charge shall *[jointly]* take an inventory of all controlled dangerous substances as defined in *[N.J.S.A. 24:21-5 through 24:21-8]* ***N.J.A.C. 8:65-10.1 through 10.5***.

(d) Whenever a registered pharmacist assumes the duties of a pharmacist-in-charge of a pharmacy or other Board-licensed establishment, he or she shall so advise the Board in writing within 30 days by completing a form provided by the Board.

(e) A registered pharmacist-in-charge shall be physically present in the pharmacy or pharmacy department for *[a sufficient amount of time]* ***that amount of time necessary*** to ensure the fulfilling of the following responsibilities:

1. Employment and supervising personnel in a prescription department or pharmacy department;

2. Maintaining accurate records of all prescription medication received and dispensed;

3. Ensuring that medication dispensed conforms with the prescription received;

4. Maintaining the security of the prescription area and its contents***, which includes the restriction of persons unauthorized by the pharmacist on duty from being present in the prescription area while the pharmacist is temporarily absent attending to over-the-counter drugs or the pharmacist's personal needs***;

5. Ensuring that only pharmacists, interns or externs provide professional consultation with patients and physicians;

6. Ensuring that only pharmacists, interns or externs accept telephone prescriptions and renewal authorizations;

7. Ensuring that all dispensed medication is properly labeled;

8. Ensuring the use of prescription labels naming the pharmacist-in-charge;

9. Ensuring the posting of the name of the pharmacist-in-charge on the entrance to the pharmacy or pharmacy department in such a way as to be visible to the public;

10. Prohibiting the presence of misbranded, deteriorated or outdated drugs in the active stock in the pharmacy;

11. Operating the prescription area in an orderly and sanitary manner;

12. Ensuring the delivery of a complete service to the community by a retail pharmacy***. This means that the pharmacy shall provide full pharmaceutical services needed to satisfy the health requirements of the population located in the general vicinity of the licensed premises, said services to include the dispensing of all medication generally prescribed by practitioners in the trading area of the licensed premises***;

[13. Ensuring that the pharmacy area is operated in conformance with good pharmaceutical practices;]

*[14.]****13.*** Notifying the Board in writing within *[10]* ***30*** days when his or her duties as pharmacist-in-charge terminate at a specific location; and

*[15.]****14.*** Ensuring compliance with all statutes, rules and regulations governing the practice of pharmacy.

SUBCHAPTER 4. PHARMACY PERMITS

13:39-4.1 Issuance of permits

All permits shall be issued by the Board in the name of the pharmacy or other licensed establishment for the operation of which the permit is issued.

13:39-4.2 Display of permits

A permit issued by the Board for the operation of a pharmacy or other licensed establishment shall be conspicuously displayed.

13:39-4.3 Death of owner or partner

In the case of death of an individual owner or a partner, the permit issued to the deceased owner or to the partnership becomes null and void. If the operation of the pharmacy is to be continued, the estate or heirs of the deceased partner and the remaining partners shall apply immediately for a new permit on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.4 Change of ownership

Whenever there is any change in ownership of more than 10 percent of the stock of a partnership or sole proprietorship ***or non-public company***, the new ownership shall apply for a new permit 30 days in advance of the change of ownership on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.5 Change of corporate officers or stockholders *[, non-]* ***of*** public companies

If there is a change of registered agents or officers or a change of stock ownership involving 10 percent or more of the outstanding stock, the corporation shall file an affidavit with the Board within 30 days indicating the changes that have taken place and any other information requested by the Board.

13:39-4.6 Change of location

[(a) Change of location is defined as a physical move of a pharmacy by the same owners to a new location that is within a five mile radius of the original location. Any move beyond a five mile radius is considered to be the opening of a new pharmacy and is subject to the requirements of N.J.A.C. 13:39-4.7.]

*[(b)]****(a)*** Whenever a pharmacy or licensed establishment changes location, the pharmacy or licensed establishment shall apply *[for a new permit]* on a form prescribed and furnished by the Board at least 30 days in advance of the proposed date of opening at the new location. The pharmacy or licensed establishment shall pay a fee for the new permit pursuant to N.J.A.C. 13:39-1.3.

*[(c)]****(b)*** Prior to the remodeling of a pharmacy, pharmacy department or licensed establishment, where such remodeling entails a physical change of location of the prescription area within the premises or a change of the physical specifications of the licensed premises or the compounding area, it shall be necessary to notify the Board at least 30 days in advance on a form prescribed by the Board.

13:39-4.7 New pharmacies eligibility and application

(a) A permit application shall be submitted to the Board by every person or corporation desiring to operate a new pharmacy. Such application shall be made on a form furnished by the Board.

(b) The permit application shall indicate the exact intended location and plan or physical arrangement of the proposed pharmacy area and shall indicate any premises contiguous to but not necessarily a part of the pharmacy.

(c) The permit application shall bear the exact trade name, if any; the corporate name***s***, if any; the name and addresses of the owners and operators, if a sole proprietorship or partnership; the names and addresses of the officers and principal stockholders holding 10 percent or more stock, ***and the names and addresses of all principals duly licensed to write prescriptions*** if the pharmacy is a non-publicly held corporation; and the names and addresses of the officers, if a publicly held corporation.

(d) The permit application shall include the name of the pharmacist-in-charge who shall be a registered pharmacist in good standing in the State of New Jersey.

(e) No person or other business entity shall be eligible for a ***new*** permit ***or a renewal thereof*** who is not of high moral character or against whom there is pending any indictment or any alleged violation of local, state or Federal law pertaining to the practice of pharmacy or the dispensing of controlled dangerous substances or any drug under N.J.S.A. 24:21-2.

(f) A person submitting an application may be interviewed by the Board to review his or her qualifications and eligibility.

(g) Upon approval of the permit application, the Board shall issue a permit number that will allow the applicant to place prescription legend drugs in stock.

13:39-4.8 Discontinued pharmacies

(a) Whenever a pharmacy is terminated by suspension, retirement or death of the owner, sale or other cause including insolvency, all drugs signs shall be removed from both the inside and outside of

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the discontinued pharmacy, and the permit shall be returned to the Board for cancellation within 30 days of the closing. Prescription records and other information may be requested by the Board as outlined in N.J.A.C. 13:39-5.8.

(b) Whenever a pharmacy is to be discontinued, it shall be the responsibility of the permit holder to immediately notify by telephone the State Board of Pharmacy, the Drug Control Program in the State Department of Health and the Drug Enforcement Administration of the proposed closing at least 15 days beforehand, followed by a letter in writing to those agencies. All medication (both prescription legend and controlled drugs) shall remain on the licensed pharmacy premises with all licenses and registrations in effect until such medications are disposed of in the manner prescribed by the above agencies.

13:39-4.9 Change of business hours

If any changes are made in the opening or closing hours of a pharmacy or other Board-licensed establishment, the Board office shall be notified in writing of these changes within 30 days.

13:39-4.10 Duplicate permit

A duplicate permit may be issued by the Board upon payment of a fee pursuant to N.J.A.C. 13:39-1.3 and submission of an affidavit describing the loss or destruction of the permit originally issued, or upon return of the damaged permit.

13:39-4.11 Change of name

(a) A change in the name of a pharmacy or other Board-licensed establishment shall be made upon the submission to the Board for approval of the new name and of prescription labels bearing the new name.

(b) An amended permit bearing the new name may be obtained upon return of the original permit to the Board for cancellation and payment of the permit fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-4.12 Reproduction of permits

Any permit issued by the Board for the operation of a pharmacy or other board-licensed establishment***, with the exception of single copies to State agencies*** shall not be printed, photographed, photostated, duplicated or reproduced by any other means either in whole or in part, without the express *[written]* authorization of the Board.

13:39-4.13 Certification of records

A certification of any of the information not obtained by the Board on a confidential basis, which appears in the Board records and concerns the ownership or registration of a pharmacy or other Board-licensed establishment, will be supplied only upon written request and payment of a certification fee as prescribed in N.J.A.C. 13:39-1.3.

13:39-4.14 Contract pharmaceutical services

An institutional permit is required *[of]* ***for*** any ***area within an*** institution ***where drugs are stored, manufactured or compounded and which is*** serviced by an outside vendor that performs pharmaceutical services as defined in N.J.A.C. 13:39-*[1.3]****1.1*** *[in an area where drugs are stored, manufactured or compounded]*.

13:39-4.15 Retail permit; prescription department or pharmacy department

(a) If the area for which a pharmacy permit is sought is less than the total store area of the enterprise, the area subject to permit shall be known as the "Prescription Department" or "Pharmacy Department".

(b) The holder of a permit to operate a prescription or pharmacy department and the registered pharmacist-in-charge of the department shall be subject to the following additional requirements:

1. The prescription or pharmacy department shall be constructed so as to enable the closing off and securing of the department from the *[remainder of the]* ***main*** store area. The department shall be separated from the ***main*** store area by a secured barrier or partition extending from the floor or fixed counter to the ceiling of either the department or main store and attached thereto. *[The]* ***Any*** entrance to *[the barrier or partition, door or doors and]* the prescription or pharmacy department shall be capable of being locked and connected to a security device or other Board approved security system.

2. The registered pharmacist on duty shall be responsible for keeping the prescription department secure and locked and the alarm system turned on at all times when he or she does not have full vision or control of the department or when he or she is not present within the department. Only the registered pharmacist(s) shall maintain possession of the keys to the department.

[3. No unauthorized person shall be permitted in the department while a registered pharmacist is not present.]

*[4.]****3.*** No prescription shall be accepted or ***prescription*** medication *[delivered]* ***supplied*** to anyone during the period that a registered pharmacist is not present within the department.

*[5.]****4.*** All medications requiring supervision of a pharmacist, including dispensed medication, shall remain within the confines of the department when the pharmacist is not in the prescription department.

*[6.]****5.*** The hours that the department is open shall be posted in plain view at the entrance to the department and at the public entrance to the enterprise containing the department.

*[7.]****6.*** When the enterprise in which the department is located maintains different store hours from the pharmacy or prescription department, all advertising, announcements, signs or statements indicating store hours and the presence of the pharmacy or prescription department shall clearly and distinctly indicate the hours that the department is open.

*[8.]****7.*** Any advertising, announcements, signs or statements relating to the business enterprise and containing the words "pharmacy", "prescription", "drugs", or other like terms shall include the word "department" and shall in no way indicate that the entire business enterprise is a drugstore, pharmacy, or apothecary.

*[9.]****8.*** The prescription department shall have a published telephone number different from that of the establishment in which the department is located. No extensions of this phone shall be located outside the department.

*[10.]****9.*** The name of the pharmacist-in-charge shall be posted so as to be visible from outside of the department. The telephone number of the pharmacist-in-charge shall be available in the office of the manager of the establishment.

*[11.]****10.*** There shall be provided a secure area for the receiving of prescription drugs from suppliers. No prescription drug shall be accepted from any supplier during the hours the prescription or pharmacy department is closed unless adequate security for the storage of department shipments has been provided and approved by the Board.

*[12.]****11.*** If a drop-off *[area]* ***device*** is utilized for prescriptions it shall be of a one-way, irretrievable design.

13:39-4.16 Permits; specialized, *[limited use]* ***permits***

(a) The Board may issue a special *[or limited-use]* permit, wherein the type of service is of a limited nature. The permit so issued, being based on special conditions of use imposed by the Board, may necessitate the waiver of certain rule requirements.

(b) Specialized *[or limited-use]* permits shall pertain to pharmacies providing *[miscellaneous services that are not expressly provided for within the Act]* ***specific services as may be necessary and proper to efficiently meet a limited public need for pharmaceutical services***. An applicant for any specialized pharmacy permit shall provide the Board with an application and a policy and procedure manual which sets forth a detailed description of the type of specialized pharmacy services to be provided within the pharmacy practice. The policy and procedure manual shall also contain detailed provisions which ensure the protection of the public welfare as determined by the Board.

13:39-4.17 Steering prohibited

It shall be unlawful for a pharmacist or a pharmacy permit holder to enter into an arrangement with a health care practitioner who is licensed to issue prescriptions, ***or with any health care facility*** for the purpose of directing or diverting patients to or from a specified pharmacy or restraining in any way a patient's freedom of choice to select a pharmacy.

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13:39-4.18 Responsibilities of pharmacists and permit holders

(a) All pharmacists and all permit holders are responsible for compliance with all the rules, regulations and laws governing the practice of pharmacy.

(b) Any pharmacist and any permit holder may be held liable for violations of the Act and these rules and may be subject to disciplinary action.

SUBCHAPTER 5. PRESCRIPTIONS

13:39-5.1 Imprinted prescription blanks

No prescriber's prescription blanks shall bear the imprint of the name of any pharmacy or other licensed premises or bear the name and address of any person registered under N.J.S.A. 45:14-1 et seq.

13:39-5.2 Lack of directions on original prescription

(a) If the prescriber fails to include on the original prescription directions to the patient for use of the medication, the registered pharmacist shall indicate on the label the words "use as directed" or "as ordered by the physician" or similar words to the same effect.

(b) When, in the judgment of the pharmacist, directions to the patient or cautionary messages are necessary, either for clarification or to ensure proper administration of the medication, the pharmacist may add such directions or cautionary messages to those indicated by the prescriber on the original prescription.

*[13:39-5.3 Record of prescription refills

If a prescription is refilled, a record of the date on which the prescription is refilled shall appear on the original prescription. In an electronic data system, a record of the refill shall be recorded on the original prescription for at least the first two refills.]*

13:39-5.*[4]****3*** Authorization for renewal of prescriptions

(a) A prescription for medication or devices which pursuant to State or Federal law may be sold, dispensed or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber, and the prescription may not be refilled after one year from the date of original prescription.

1. Prescriptions marked "PRN" or other letters or words meaning refill as needed shall not be renewed beyond one year past the date of original prescription.

(b) When the renewals listed on the original prescription have been depleted, no additional renewals may be added to the original prescription. For additional dispensing, a new prescription must be authorized by the prescribing physician as provided in N.J.S.A. 45:14-14, which must be reduced to writing by the pharmacist and entered into either a manual or into the electronic data processing system as a new prescription. A new prescription shall be generated and the original prescription shall remain in the prescription file in chronological order.

13:39-5.*[5]****4*** Approval of FDA necessary

No drug or medicine other than a compounded prescription order shall be sold or dispensed in any pharmacy within the State of New Jersey until such drug or medicine has received an approved NDA, ANDA *[or]**,* INDA *[from the Federal Food and Drug Administration for a "new drug clearance order"]* ***or other Federal Food and Drug Administration approval****.

13:39-5.*[6]****5*** Copies of prescriptions; transfers

(a) Copies of prescriptions issued directly to the patient by the pharmacy where the medication was dispensed, pursuant to the receipt of the prescription, shall state in letters at least equal in size to those describing the medication dispensed, the underlined statement: "COPY—FOR INFORMATION ONLY".

(b) Presentation of a prescription label or a prescription marked "COPY—FOR INFORMATION ONLY" shall be for information purposes only and have no legal status as a valid prescription order. The recipient pharmacist of such copy or prescription label shall contact the prescribing practitioner or transferor pharmacy and obtain all information required by (c)2 below for authorization to dispense the prescription, which is the same as obtaining an original prescription order.

(c) A copy of a prescription may be transferred by telephone by pharmacists between pharmacies for the purpose of refill dispensing provided that:

1. The transferor pharmacist invalidates the prescription on file as of the date the copy is transferred by writing "VOID" on its face, and records on the back of the invalidated prescription order that a copy has been issued, *[to whom,]* the date of issuance of such copy, ***to which pharmacy and pharmacist,*** and the initials of the pharmacist issuing the transferred prescription order.

2. The transferee pharmacist, upon receiving such prescription directly from another pharmacist, records the following:

i. The name, address and original prescription number of the pharmacy from which the prescription was transferred;

ii. The name of the transferor pharmacist;

iii. All information constituting a prescription order, including the following:

(1) Date of issuance of original prescription;

(2) Original number of refills authorized on original prescription;

(3) Complete refill record from original prescription;

(4) Date of original dispensing;

(5) Number of valid refills remaining.

3. The transferee pharmacist informs the patient that the original prescription has been cancelled at the pharmacy from which it was obtained.

(d) When a copy of a prescription is issued *[in writing or]* by telephone, refill authorizations shall be cancelled on the original prescription and the fact that a copy has been issued shall be noted on the original prescription along with the date the copy was issued.

13:39-*[5.7]*****5.6*** Record of pharmacist filling prescription

(a) A registered pharmacist who fills or compounds a prescription or who supervises the filling or compounding of a prescription by an intern or extern shall place his or her signature or readily identifiable initials on the face of the original prescription. In using an electronic data processing system, the initials of the pharmacist responsible for the filled prescription shall also be recorded.

(b) A registered pharmacist who refills a prescription shall place his or her signature or readily identifiable initials on the reverse side of the original prescription next to the date of the refill and the amount dispensed in refilling the prescription if it is different from the original amount prescribed. In using an electronic data processing system, the identical refill information shall also be recorded.

*[(c) An intern or extern who fills or compounds a prescription under the direct supervision of a registered pharmacist shall place his or her signature or readily identifiable initials on the face of the original prescription. In using an electronic data processing system, the initials of the intern or extern responsible for the filling of the prescription shall also be recorded.

(d) An intern who refills a prescription under the direct supervision of a registered pharmacist shall place his or her signature or readily identifiable initials on the reverse side of the original prescription next to the date of the refill and the amount dispensed in refilling the prescription if different from the original amount prescribed. In using an electronic data processing system, this information shall also be recorded.]*

*[(e)]****(c)*** A record identifying such initials with the signature*[,]* ***and*** name and address of the pharmacist*[, intern or extern]* shall be maintained for a period of five years after the termination of employment of said pharmacist*[, intern or extern]*.

*[(f)]****(d)*** If an electronic data processing system is utilized in connection with the dispensing of medication and the required recording of prescription information, a means acceptable to the Board shall be utilized to identify the pharmacist or intern or extern dispensing the medication.

*[(g)]****(e)*** In using an electronic data processing system, the pharmacist in charge shall maintain a document log *[in which each pharmacist shall sign a statement on the pharmacist's next working day attesting to the fact that the prescription information he or she entered in the electronic data processing system on the previous working day is accurate and complete and that the identifying designations are correct]*. The document log shall be maintained at the pharmacy for a period of five years after the date of the last entry.

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The five years of record information***, including refills,*** shall be kept in such a manner as to be sight-readable within two weeks. The most recent one year of record information shall be immediately retrievable.

*[(h)]****(f)*** In using an electronic data processing system, the system shall have the capability of producing sight-readable documents of all original and refilled prescription data, and, in addition, the number of refills authorized by the prescribing physician for a period of not less than five years. Five years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of record information shall be immediately *[retrievable]* ***reviewable on-line and available in printed form within three business days***. The term "sight-readable", as it appears in all rules of the Board, shall mean that the Board or Attorney General shall be able to examine and read the record of information. During the course of an on-site inspection, the record may be read from a cathode ray tube (CRT), microfiche, microfilm, hard copy printout or other ***Board*** acceptable method. For the purpose of administrative proceedings before the Board, records shall be provided in a paper printout form.

*[(i)]****(g)*** Initials ***and/or access code number(s)*** of the dispensing pharmacist and intern or extern, if applicable, shall be entered into the system each time a prescription is filled or refilled. Computer programs which automatically generate pharmacist's initials without requiring a direct entry by the dispensing pharmacist at the time of dispensing are prohibited.

13:39-*[5.8]****5.7*** Availability of records upon termination of business

(a) Where a pharmacy ceases operation as the result of a suspension, retirement or death of the owner, sale or other cause including insolvency, the licensee, or the one responsible for supervising the disposition of the practice, shall make every effort to notify patrons of their right to retrieve currently valid prescriptions and the location of the prescriptions and profile records for a six-month period following notice, using all of the following methods:

1. Notification in writing to the Board;

2. Publication, once weekly for two successive weeks in a newspaper whose circulation encompasses the major area of the licensee's former practice, of a notice advising patrons of the right to retrieve their prescriptions and the location of the prescriptions for a six-month period following publication; and

3. A sign placed in the pharmacy location informing the patrons of the right to retrieve their prescriptions and the location of the prescriptions.

SUBCHAPTER 6. DISPENSING AND ADVERTISING DRUGS

13:39-6.1 Professional judgment in dispensing drugs

(a) The pharmacist shall have the right to refuse to fill a prescription if, in his or her professional judgment, the prescription is outside the scope of practice of the prescriber; or if the pharmacist has sufficient reason to question the validity of the prescription; or to protect the health and welfare of the patient.

(b) A pharmacist may dispense an emergency supply (no more than a 72-hour quantity) of a chronic maintenance drug (except controlled dangerous substances) or device in the absence of a current valid prescription, if, in his or her professional judgment, refusal would endanger the health or welfare of the patient.

1. The pharmacist must first ascertain to the best of his or her ability, by direct communication with the patient, that such a medication or device was prescribed for that patient by order of a licensed practitioner.

2. The pharmacist shall document the communication and require the patient to provide suitable identification and sign a statement attesting to the need before dispensing.

3. A patient's signature is not required for emergency refilling of a previously valid prescription.

13:39-6.2 Prescription prepared, compounded or dispensed by pharmacy externs or interns

A pharmacy intern or extern may prepare, compound or dispense prescriptions only under the direct *[personal]* supervision of a registered pharmacist of this State.

13:39-6.3 Sale of controlled dangerous substances and prescription legend drugs by other than a registered pharmacist in a Board-licensed establishment

A non-registered person shall only sell or furnish a controlled dangerous substance or prescription legend drug under the direct *[personal]* supervision of a registered pharmacist.

13:39-6.4 Direct *[personal]* supervision of dispensing and compounding

The registered pharmacist supervising the activities of *[a non-registered individual must]* ***supportive personnel shall*** be physically present in the compounding/dispensing area and *[must]* ***shall*** be personally responsible for the accuracy of the filled prescription.

13:39-6.5 Restriction on display of prescription legend drugs and controlled dangerous substances

Prescription legend drugs***, devices*** and controlled dangerous substances *[may]* ***shall*** not be displayed in the licensed establishment in such a manner that they can be accessible to the public.

13:39-6.6 Foreign prescriptions

Prescriptions written or signed by other than a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions in the United States, District of Columbia, or any territory of the United States are not considered valid prescription orders and shall not be honored.

13:39-6.7 Supportive personnel

(a) Supportive personnel may assist the registered pharmacist in a clerical manner such as the retrieving of prescription files, profile cards, and other such records, the typing of labels and the completing of prescription receipts and other such forms.

(b) Supportive personnel shall not interpret a prescription order or *[professionally]* consult with a patient or physician or the agent of the physician *[or weigh, measure or otherwise compound or dispense a prescription]*. Supportive personnel may, however, count***, weigh, measure,*** or pour prescription medication under the direct *[personal]* supervision of the registered pharmacist as long as the contents and finished-product are verified by a registered pharmacist.

(c) There shall be no more than two supportive personnel***, not including cashier, stocking and clerical help,*** being supervised by one pharmacist at any given time. ***Those personnel who do computer processing of prescriptions are to be included in the 2 to 1 ratio.***

13:39-6.8 Advertising and sale of prescription drugs

(a) "Advertisement" means any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to purchase or enter into an agreement to purchase services or goods from a Board licensee.

(b) Price quotations for prescription drugs appearing in any advertisement shall stipulate the strength and quantity required to be purchased for the offered cost. Price quotations shall include the usual and customary prescription cost. All services including, but not limited to, delivery charges rendered by the pharmacy which will add additional costs to the price quoted, must be set forth in the advertisement.

(c) Any reference in any form of advertisement to the quality of a drug or its beneficial use is prohibited.

(d) Price quotations for drugs appearing in any advertisement shall stipulate the effective period of price quotation.

(e) Upon request by any consumer, the pharmacist shall be required to give price information over the telephone and shall stipulate the effective period of the price quotation.

(f) All advertisements shall be predominantly informational and shall not be misleading, confusing or false. Any advertisement demeaning the quality of professional services rendered by another

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licensee or permittee shall be prohibited. No advertisement shall rely in any way on techniques to obtain attention that demonstrate a clear and intentional lack of relevance to the selection of professional services.

SUBCHAPTER 7. PHARMACY FACILITY AND RECORDS

13:39-7.1 Retail pharmacy access and egress

Retail pharmacies shall be required to maintain entrances which are easily and safely accessible to the general public. Access to and egress from the pharmacy shall not be such that the public must traverse or traffic through any enterprise in which prescriptions are generated.

13:39-7.2 Retail pharmacy signs

Retail pharmacies shall be required to post a sign on the exterior of the building or a sign which is otherwise visible from a public roadway, conspicuously identifying the existence of a pharmacy on the premises***, unless prohibited by lease agreement. In such case, a copy of the lease must be furnished to the Board***.

13:39-7.3 Spatial requirement of a retail pharmacy prescription area

(a) For pharmacies in operation prior to July 1, 1963, the space devoted to the prescription area and laboratory shall not be less than 10 percent of the main floor area of the pharmacy or drugstore, and in no instance shall it be less than 50 square feet. If the main floor area of such pharmacy exceeds 1,200 square feet, the 10 percent requirement does not apply and the minimum requirement for the prescription area shall not be less than 120 square feet.

(b) For all other retail pharmacies including pharmacies subject to the provisions of (a) above which are moving to a new location, the prescription area must occupy exclusively a minimum of 150 square feet.

13:39-7.4 Prescription counter

There shall be a prescription counter on which to work, and the ***free working space shall not be less than 18 inches in width and not less than 12 continuous feet in length. This minimum*** working surface must be kept clear at all times for the compounding of prescriptions and *[for]* other pharmaceutical manufacturing*[, commensurate with the scope of practice]*.

13:39-7.5 Prescription area sink

An adequate sink with hot and cold running water shall be provided in the prescription area of retail and institutional pharmacies, easily accessible to the prescription counter. A similarly equipped sink must be *[provided in]* ***easily accessible to*** institutional satellite pharmacies as well as institutional and retail pharmacy intravenous admixture rooms.

13:39-7.6 Storage and adequate stock

There shall be sufficient shelf, drawer or cabinet space within the prescription area for proper storage of a representative stock of prescription labels, *[and]* ***an*** assorted stock of prescription containers, an adequate stock of prescription drugs and chemicals and the required equipment.

13:39-7.7 Minimum equipment and facilities

(a) The following minimum amount of equipment and facilities shall be required to be in every prescription area, and this equipment shall be stored so as to be readily accessible and shall be kept in a clean condition:

1. The current *[USP/DI]* ***USP DI*** and supplements and suitable reference texts including at least *[the]* ***a*** current edition on pharmacology, the general practice of pharmacy, drug interactions and drug product composition;

2. Poison record book;

3. Over the counter Schedule V Record Book

4. Permanent prescription filing device and patient profile record system;

5. Properly safeguarded storage place for Schedule II controlled substances if not dispersed;

6. Class A prescription balance;

7. Set of metric weights;

8. Devices capable of measuring 0.3 ml to 500 ml

9. Mortars and pestles:

i. Wedgewood: approximately 4 oz. and 24 oz. or the metric equivalent thereof.

ii. Glass: 4 oz. and 8 oz. or the metric equivalent thereof.

10. Glass funnels: 1 oz., 4 oz. and 8 oz. or the metric equivalent thereof;

11. Stirring rods;

12. A small, medium and large steel spatula and a spatula of rubber or composition;

13. Ointment tile or parchment paper;

14. Refrigerator;

15. Filter papers and powder papers;

16. Suitable counting trays or approved counting device;

17. Labels, upon dispensing to contain the name of the registered pharmacist-in-charge, ***and the*** address and telephone number *[and the Drug Enforcement Administration (D.E.A.)]* number of ***the*** pharmacy;

18. Poison labels containing name of the registered pharmacist-in-charge, address and telephone number of pharmacy;

19. Suppository mold; and

20. Two Drug Utilization Review Council Placards ***and the current Drug Utilization Review Council Formulary***.

13:39-7.8 Cleanliness, orderliness and sanitation

The entire prescription area shall at all times be kept in a clean, orderly and sanitary condition.

13:39-7.9 Television in prescription area prohibited

No commercial television, other than for security measures, may be operated in a prescription area or in any location outside of a prescription area such that its operation may be viewed from the prescription area.

13:39-7.10 Return of prescription medication

No prescription medication shall be placed in stock for reuse or resale which has been returned after leaving the pharmacy, except as provided in N.J.A.C. 13:39-9***.6(a)13ii***.

13:39-7.11 Prescription balances, scales, weights and automatic counting devices

All pharmacies shall prove to the satisfaction of the Board that all balances, scales, weights and automatic counting devices have been currently inspected by the Department of Weights and Measures of the municipality or county in which such pharmacy, drugstore, or other Board-licensed establishment is located, and that such balances, scales, weights and automatic counting devices have been properly sealed by the applicable authority.

13:39-7.12 Disposal of unwanted drugs

Unwanted drugs shall be disposed of in a manner that does not cause them to become a health hazard, and in accordance with all local, State, and Federal codes.

13:39-7.13 Outdated drugs or drugs marked "sample"

No outdated, misbranded, deteriorated or adulterated drugs, or any drugs marked "sample" or with any like designation or meaning shall be placed or maintained in active stock for use or sale.

13:39-7.14 Patient profile record system

(a) A patient profile system must be maintained by all pharmacies for persons for whom prescriptions are dispensed. The Patient Profile Record System (PPRS) shall be devised so as to enable the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile record may be maintained for members of a family living at the same address and possessing the same family name.

(b) The following information shall be recorded in the PPRS:

1. The family name and the first name of the person for whom the medication is intended (the patient);

2. The address of the patient;

3. Indication of the patient's age, birth date or age group (infant, child, adult);

4. The original ***or refill*** date the medication is dispensed *[pursuant to the receipt of the physician's prescription]* ***and the***

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initials of the dispensing pharmacist, if said initials and such date are not recorded on the back of the original prescription or in any other Board-approved record*;

5. The number or designation identifying the prescription;

6. The prescriber's name; ***and***

7. The name, strength and quantity of the drug dispensed*[; and

8. The initials of the dispensing pharmacist, and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the back of the original prescription]*.

(c) The pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic conditions which may relate to drug utilization, as communicated to the pharmacist by the patient.

1. If there are no patient allergies, idiosyncrasies or chronic conditions which may relate to drug utilization, the pharmacist shall so indicate on the patient profile record system.

(d) The pharmacist shall use professional judgment to review and monitor the patient profile, determine if there should be any adjustment in the original patient information and so indicate the appropriate change in the patient profile record.

(e) Upon receipt of a new or refill prescription, a pharmacist shall examine the patient's profile record either in a manual or electronic data processing system before dispensing the medication, to determine the possibility of a harmful drug interaction, reaction or misutilization of the prescription. Upon determining a harmful drug interaction, reaction or misutilization, the pharmacist shall take the appropriate action to avoid or minimize the problem, which shall, if necessary, include consultation with the patient and/or the physician.

1. Upon receipt of a new prescription for a drug which has not been previously dispensed to a patient, the pharmacist shall determine if the patient requires additional information or consultation to support the prescriber's instructions, and if so, proceed appropriately.

2. Upon receipt of a refill prescription, a pharmacist shall determine if a substantial time, as is appropriate for that drug in the ***reasonable and prudent*** pharmacist's professional judgement, has elapsed from the last filling*[, and]**. **When necessary,*** the pharmacist shall consult with the prescriber and/or the patient to assure himself or herself that continued use is appropriate.

3. When patient profile records indicate sporadic, erratic or irrational use of medication by a patient, the pharmacist shall consult with the patient and/or the prescriber to determine if continued use is appropriate.

4. All prescription patients who patronize a pharmacy shall have a profile record *[card]* as specified by this section, and the pharmacist shall inquire as to whether other prescription drugs are being concomitantly utilized in order to establish a current drug history for the patient.

5. All of the foregoing assumes the patient is willing and capable of participating in his or her own plan of care.

(f) A patient profile record must be maintained for a period of not less than five years from the date of the last entry in the profile record. The oldest four years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of a record information must be immediately retrievable.

(g) If the pharmacy uses an electronic data processing system, an auxiliary recordkeeping system shall be established when the electronic data processing system is inoperative for any reason. When the electronic data processing system is restored to operation, the patient profile information and number of refills authorized during the time the electronic system was inoperative shall be entered into the electronic data processing system within 72 hours.

(h) If an electronic data processing system is used, the system shall provide adequate safeguards against manipulation and alteration of records and to protect confidentiality of the information contained in the data bank.

(i) The holder of the pharmacy permit shall make arrangements with the supplier of data processing services or materials to ensure that the pharmacy will continue to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason.

(j) Failure to comply with this section shall subject the pharmacist to disciplinary sanctions.

SUBCHAPTER 8. INTERNSHIPS; EXTERNSHIPS; APPROVED TRAINING PHARMACY

13:39-8.1 Definitions

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

"Approved training pharmacy" means a pharmacy or pharmacy department approved by the Board to provide accredited practical experience to pharmacy interns or externs.

"Certified preceptor" means a pharmacist registered in this State who assumes the responsibility to supervise and tutor a pharmacy intern or extern as outlined in N.J.A.C. 13:39-8.2.

"Pharmacy intern" means any person who has graduated from an accredited school or college of pharmacy approved by the Board, or if a foreign pharmacy graduate, any person who has met all of the requirements of the National Association of Boards of Pharmacy Foreign Pharmacy Graduate Examination Commission in order to qualify to take the National Association of Boards of Pharmacy Licensing Examination (NABPLEX), who is employed in an approved training pharmacy for the purpose of acquiring accredited practical experience and who has first registered for said purposes with the Board.

"Pharmacy extern" means any person who is in the fifth or sixth college year (or third or fourth professional year) at an accredited school or college of pharmacy approved by the Board who is assigned to an approved training pharmacy for the purpose of acquiring accredited practical experience under the supervision of the school or college at which he or she is enrolled.

"Pharmacy internship or externship" shall mean the program of acquiring practical experience by a pharmacy intern or extern respectively.

13:39-8.2 Preceptor certification application; procedures; responsibilities

(a) A registered pharmacist who wishes to be a certified preceptor shall make application to the Board upon such form as shall be prescribed and shall furnish evidence satisfactory to the Board that he or she:

1. Has been registered and employed as a pharmacist on a full-time basis for at least two years in the State of New Jersey;

2. Has been engaged in the compounding and dispensing of pharmaceutical preparations and prescriptions and the supplying of drug products in a registered pharmacy for a period of at least two years, one year of which must have been immediately prior to the beginning of any pharmacy internship he or she is to supervise;

3. Has a record of law observance deemed satisfactory by the Board; and

4. Has attended professional meetings or preceptor training conferences as may be designated by the Board.

(b) The Board shall assign a certified preceptor to each pharmacy intern. At no time may one certified preceptor supervise the training of more than one pharmacy intern. The Board reserves the right to determine the suitability of pharmacists to serve as preceptors.

(c) The certified preceptor in an approved training pharmacy must indicate a willingness to cooperate with the Board in developing pharmacy intern or extern training and shall report to the Board from time to time as requested by the Board on the progress and aptitude of any pharmacy intern or extern under his or her supervision.

(d) The compounding and dispensing of all prescriptions and drugs by the pharmacy intern or extern must be done under the direct supervision of a registered pharmacist.

(e) The certified preceptor is charged with the responsibility for the following:

1. Supervising the activities of the pharmacy intern or extern and ensuring that the intern or extern will keep abreast of developments in pharmacy by reading current professional literature and journals

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and by attending seminars and meetings of professional and scientific organizations;

2. Providing the pharmacy intern or extern with experiences that will make the intern or extern proficient in compounding and dispensing of pharmaceutical preparations, drug products, health aids and related items;

3. Providing the pharmacy intern or extern with instruction and guidance in:

i. Procedure for opening and closing a pharmacy;

ii. General pharmacy operation;

iii. Ordering drugs and checking drug orders;

iv. Over the counter preparation, including their composition and consultation with consumers;

v. Drug Enforcement Administration inventory and preparation of Drug Enforcement Administration orders;

vi. Sale of Drug Enforcement Administration Schedule V preparations and sale of poisons;

vii. Third-party prescriptions programs;

viii. Telephone procedure with physicians and patients;

ix. Consulting with physicians and patients; and

x. Usage of reference books in the pharmacy and reference material from other sources;

4. Arranging an interview with a physician for the intern or extern; and

5. Preparing the intern or extern in any other area of pharmacy important to good management and professional practice.

13:39-8.3 Training pharmacy approval

(a) To be approved as a training pharmacy for interns and externs, a pharmacy shall meet the following requirements:

1. Have a satisfactory record of observance of Federal, state and municipal laws and ordinances governing the activity in which it is or has been engaged.

2. Have a total number of prescriptions or medication orders filled annually, including renewals, of at least 10,000, with no more than one pharmacy intern or extern in training for each 10,000 prescriptions filled in the pharmacy.

3. Establish and maintain as part of the service it renders, a medication recordkeeping system for its patients that is approved by the Board.

4. Have available an adequate reference library for use by the pharmacy intern or extern.

13:39-8.4 Internship and externship practical experience

(a) The minimum accredited internship and externship practical experience requirement shall be the equivalent of 1,000 hours as follows:

1. One thousand hours for completion of a structured internship conducted after graduation from an accredited college of pharmacy and consisting of no less than 24 weeks supervised by a certified preceptor. Each week of practical experience shall consist of no less than 35 hours and no more than 45 hours of actual service per week. If the intern is a foreign pharmacy graduate, he or she must have met all of the requirements of the National Association of Boards of Pharmacy Foreign Pharmacy Graduate Examination Commission.

2. In lieu of the requirements set forth in (a)1 above, an applicant may obtain up to 1,000 hours practical experience by completion of a structured, college-credited externship and clinical pharmacy clerkship program of an accredited college of pharmacy. Such programs shall first be approved by the Board.

3. In cases of a structured, college-credited externship and clinical pharmacy clerkship program, where less than 1,000 hours are accepted and approved by the Board, the balance of hours to make a total of 1,000 must be gained through completion of a structured internship, conducted after graduation from an accredited college of pharmacy and supervised by a certified preceptor with each week of practical experience consisting of no less than 35 hours and no more than 45 hours of actual service per week.

(b) A Board-approved college of pharmacy externship program shall provide that no less than 75 percent of the hours credited toward the practical experience requirement of the Board be gained in settings in which there is direct involvement with consumers or patients, registered pharmacists, and other licensed health care practitioners such as physicians, dentists and nurses. No less than 50 percent of the hours credited toward the practical experience requirement of the Board shall be acquired in an approved training pharmacy under the supervision of a certified preceptor. Not more than 40 hours of Board-accredited experience shall be acquired per week.

(c) Credit for college externships or other experience programs shall not be allowed for experience gained prior to the fifth college year (or third professional year) in the college of pharmacy program.

(d) The preceptor and the pharmacy intern shall keep accurate records of the time spent by the pharmacy intern for credit toward the requirements of (a)1 above. The Board shall provide appropriate forms to be submitted to the Board for approval of postgraduate practical experience.

(e) The pharmacy college shall certify that the requirements of (a)2 above have been met. The Board shall provide appropriate forms for such certification.

13:39-8.5 Change in intern status

(a) A pharmacy intern applying for registration as a pharmacist in the State of New Jersey shall notify the Board within 10 days of:

1. The beginning of a term of internship;

2. The termination of an internship;

3. Change in number of hours of employment;

4. Change in the scheduled hours of employment;

5. Change of preceptor; and/or

6. Change in employing pharmacy.

(b) Each certified preceptor shall file reports quarterly or whenever requested by the Board.

13:39-8.6 Committee on Pharmacy Internship and Externship

(a) A Committee on Pharmacy Internship and Externship shall be established which shall consist of:

1. Two members of the Board of Pharmacy;

2. Two faculty members of the College of Pharmacy of Rutgers, the State University of New Jersey;

3. Two fifth or sixth year pharmacy students from the College of Pharmacy of Rutgers, the State University of New Jersey; and

4. Four approved pharmacy preceptors, one of whom shall be a practicing pharmacist in an independent *[community]* pharmacy, one of whom shall be a practicing pharmacist in a chain *[community]* pharmacy, one of whom shall be a practicing pharmacist in *[a hospital]* ***an institution***, and one of whom shall be a registered pharmacist whose primary employment is in the pharmaceutical ***manufacturing*** industry.

(b) The Committee is established to advise and assist the Board in all matters relating to the pharmacy internship/externship program.

(c) All meetings of the Committee shall be *[held in a public place and shall be open to attendance by members of the public]* ***held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq***.

(d) All members of the Committee shall be approved by the Board. The President of the Board shall designate a member of the Board to be the chairperson of the Committee.

13:39-8.7 Pharmacist intern log

(a) Pharmacist interns shall maintain a log for the internship period which meets the following requirements:

1. The log shall consist of an 8 by 11 inch looseleaf notebook.

2. Entries shall be made in the log weekly and shall contain:

i. The total number of prescriptions filled in the pharmacy and the number filled by the intern;

ii. A brief summary of all new prescription drug products (new generic entities only) dispensed, such as physical-chemical characteristics, dosage, forms, and usage; and

iii. One example of each of the following professional responsibilities:

(1) The use of the patient profile record requiring contact with patient, physician or hospital to resolve potential problems;

(2) Consultation with the patient, physician or nurse concerning special instructions regarding the use of medications;

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(3) Consultation with the patient concerning over the counter medication.

(b) The log shall be submitted to the Board at the completion of the internship period.

SUBCHAPTER 9. PHARMACEUTICAL SERVICES WITHIN HEALTH CARE FACILITIES

13:39-9.1 Definitions

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

"Authorized prescriber" means a practitioner licensed to write prescriptions and/or any other person legally authorized to write medication orders under the supervision of a licensed practitioner.

"Direct supervision" means that the registered pharmacist shall be physically present in the compounding/dispensing area where the supportive personnel are performing delegated duties, and shall conduct in-process and final checks of all steps in preparation, compounding, and dispensing drugs. This supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures.

"Formulary" means a continually revised compilation of pharmaceuticals available in the pharmacy for use in the facility developed by the Pharmacy and Therapeutics Committee.

"Health care facility" means:

[1.] A place where the sick and injured are cared for under a common roof*[; that is]* ***such as***, hospitals (proprietary and non-proprietary); long term care facilities; homes for the aged; ***and establishments similar to those delineated in N.J.S.A. 45:14-32.***

*[2. Intermediate care facilities for the mentally retarded; or

3. Government institutions (regardless of classification) including Federal, State and local prisons and jails, and other institutions of custodial care where pharmaceuticals are stored, manufactured, compounded and dispensed.]*

"Institutional pharmacy" means the area in the health care facility licensed by the Board as a pharmacy that maintains an institutional permit. This area shall include, but is not limited to, other areas of the health care facility where pharmaceuticals are stored, manufactured, compounded and dispensed.

"Medication order" means a written request for medication originated by a licensed practitioner or authorized prescriber or by a certified nurse midwife acting pursuant to and within the scope of the regulations of the Board of Medical Examiners, N.J.A.C. 13:35-2.12, and intended for patient use in the health care facility, and not for use of the institution's employees or their dependents or outpatients of the facility's clinics. A valid medication order contains the date ordered, the patient's name and location within the facility, the name, dose, route, and frequency of administration of the medication, and any additional instructions. Computer-generated medication orders within an institutional setting, utilizing a physician's electronic signature, will meet legal requirements for a physician's original handwritten signature on medication orders. Computerized signatures will be accepted provided that the facility has adequate safeguards which assure the confidentiality of each electronic signature and which prohibit the improper or unauthorized use of computer generated signatures.

"Pharmacy and Therapeutics Committee" means the active standing committee of the institution or health care facility which is the organizational line of communication and liaison between the medical and pharmacy staff and which acts to review and promote rational drug therapy and utilization in the facility. Its organization and function are described under N.J.A.C. 13:39-9.11.

"Unit dose drug distribution system" means a system of dispensing drugs and biologicals to be administered to patients of the facility whereby the medications are delivered daily (or more frequently) by the pharmacy to the patient care units in amounts equal to a 24-hour supply or less and are prepared, whenever possible, in single unit use packaging.

13:39-9.2 Licensure of institutional pharmacies

Any institutional pharmacy as defined under N.J.A.C. 13:39-9.1 shall be registered with and possess an institutional permit issued by the Board. The permit shall be conspicuously displayed in the facility's pharmacy. The institutional pharmacy is subject to and shall be conducted in accordance with all existing State and Federal rules and regulations.

13:39-9.3 Control of institutional pharmaceutical services

(a) The pharmaceutical services of the health care facility shall be the responsibility of and under the control, supervision, and direction of the pharmacist-in-charge.

(b) If a health care facility does not have an institutional pharmacy on its premises, it may enter into an agreement with a pharmacy licensed by the Board. The pharmacist-in-charge of the pharmacy and the designated pharmacist of the institution shall direct, control, supervise and be responsible for the pharmaceutical services provided to the facility.

(c) The pharmacist-in-charge, with the cooperation of the Pharmacy and Therapeutics Committee, shall develop written policies and procedures as needed to provide the pharmaceutical services of the facility. The written policies and procedures shall be available to the Board.

13:39-9.4 Pharmaceutical services

The pharmaceutical services shall be provided in accordance with accepted professional principles and appropriate Federal, State and local laws. These services shall be responsive to the medication needs of the patient *[and shall include a program for the control and accountability of all drug products throughout the facility]*.

13:39-9.5 Pharmaceuticals

(a) The pharmacist-in-charge, with the cooperation of the Pharmacy and Therapeutics Committee, shall be responsible for determining the specifications for drugs*[, chemicals,]* ***and*** pharmaceutical preparations *[and biological products and accessories]* used in the treatment of patients of the facility as to quality, quantity and source of supply. An authorized purchasing agent and/or materials manager and/or pharmacy buyer of the facility may perform the actual procurement. In such a case, the purchase shall be approved by the pharmacist-in-charge or his or her designee, who shall be a pharmacist.

(b) Drugs approved by the Pharmacy and Therapeutics Committee for use in the facility shall be of an amount sufficient to compound or dispense all medication orders and prescriptions which may reasonably be expected to be compounded or dispensed by the pharmacist.

(c) The institutional pharmacy shall have an adequate inventory of drugs and biologicals to assure timely initiation of routine, emergency and disaster drug therapy.

(d) The storage and dispensing of all Investigational New Drugs shall be a pharmaceutical service provided in cooperation with, and in support of the principal investigator. Under these parameters the dispensing of these drugs shall not be construed to be a violation of N.J.A.C. 13:39-5.5.

(e) The pharmacist-in-charge, in cooperation with the Pharmacy and Therapeutics Committee, shall establish a system of control for all drugs dispensed for use in the drug therapy of patients of the facility. Inspections shall be conducted by a pharmacist of all medication areas located in the facility or any other service of the facility. These inspections shall be fully documented. Written inspection reports shall be prepared and signed by the inspecting pharmacist. Procedures for the review of these reports shall be developed and instituted by the pharmacist-in-charge and can be incorporated into the overall quality assurance program of the hospital.

13:39-9.6 Drug disbursement

(a) The pharmacist-in-charge shall develop and implement policies and procedures for the following activities to ensure a safe and effective drug disbursement system with adequate controls:

1. The pharmacist shall review the prescriber's original order, a direct copy thereof, or an electro-mechanical facsimile before any initial dose of medication is dispensed, except as provided for in (a)

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5 below. Drugs not specifically limited as to time or number of doses when ordered shall be controlled by the automatic stop order procedure or other methods in accordance with written policies of the facility. Orders involving abbreviations and chemical symbols shall be carried out only if the abbreviations and symbols are included on a standard list that has been approved by the medical staff. When appropriate, the pharmacist shall make necessary clarifying entries into the patient medical record relative to drug use after consultation with the prescriber.

2. Physicians' oral orders for drugs may be given to another licensed practitioner, a pharmacist, a registered nurse or an authorized prescriber. Such orders shall be immediately recorded and signed by the person receiving the order on the physician's order sheet or into the electronic data processing system. Oral orders for Schedule II controlled substances shall be permitted only in the case of a bona fide emergency situation. Oral orders shall be countersigned by the prescriber as required by the Code of Federal Regulations 20:3-405.1024(g) (6) and 405.1123(h).

3. Compounding of individual medication orders or prescriptions, the formulation of special drug needs and all bulk compounding (sterile or non-sterile) shall be done by or under the direct supervision of a pharmacist. Aseptic control procedures shall be maintained for the preparation of intravenous admixtures, the reconstitution of other sterile parenteral preparations, and the compounding and sterilization of other pharmaceutical products as needed.

4. All prepackaging and labeling of drugs shall be done by or under the direct supervision of a pharmacist. Procedures shall be established for maintaining the integrity and manufacturer's control identity of prepackaged material. The prepackaging records shall be initialed by the supervising pharmacist.

5. The pharmacist shall be responsible for monitoring drug therapy of patients in the facility. This shall include, but is not limited to, maintaining and reviewing the patient medication profile prior to the dispensing of medications. When the pharmacy is closed, and in instances involving the issuance and administration of STAT orders (orders requiring immediate attention) these drugs shall be documented on the patient's medication profile immediately after the pharmacy is reopened.

6. The pharmacist shall be responsible for providing medication in a form that requires little or no further alterations, preparation, reconstitution, dilution or labeling by other licensed personnel. The pharmacist shall provide adequate instructions for those products that are not dispensed in finished form.

i. Whenever drugs are added to intravenous solutions, supplementary labeling shall be affixed to the container *[indicated]* ***indicating*** the names and amounts of all ingredients, the name and location of the patient, the date and time of expiration and the initials of the supervising or dispensing pharmacist.

ii. Labeling of medications, other than intravenous solutions, shall be in conformance with written policies and procedures controlling the drug distribution system in use within the facility and in accord with current acceptable standards of pharmaceutical practice. Dispensing and labeling of outpatient prescriptions shall conform to N.J.S.A. 45:14-14.

7. Written policies and procedures that govern the safe administration of drugs shall be developed by the Pharmacy and Therapeutics Committee.

8. No drugs shall be administered to a patient except those provided through the pharmacy. Any exception to this rule must be governed by written policies and procedures developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee *[and the medical staff]*.

i. Although the use of patient's own medications may be warranted in certain situations, it should be discouraged as a general or routine practice. If a patient's previously acquired medication is to be used, a written order to this effect shall be signed and dated by the patient's physician. Such medications shall be given to the pharmacist for identification of contents and dispensing origin. Also, these medications shall be documented as part of the pharmacy's patient profile record system.

ii. Investigational drugs shall be properly labeled and stored in the pharmacy until dispensed. Essential information on the investigational drug shall be maintained in the pharmacy. The investigational drug may be administered only after basic chemical, pharmaceutical and pharmacological information has been made available to all concerned and all the requirements of the Federal Food and Drug Administration and the facility are satisfied.

9. There shall be procedures established to assure the immediate and efficient removal of all outdated and recalled drugs from patient care areas and from the active stock of the pharmacy. *[These drugs shall be either returned to the manufacturer or safely destroyed.]* The pharmacist-in-charge shall develop written policies and procedures governing the removal from the facility of outdated or recalled drugs.

10. Limited quantities of emergency drugs shall be placed under controlled conditions in locations within the facility to assure immediate access by authorized licensed health care personnel for use in an emergency situation. Written policies and procedures for the maintenance, content, control and accountability of emergency drugs supplied and located throughout the facility shall be developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee.

11. Controlled dangerous substances shall be purchased, received, stored, dispensed, administered, recorded and controlled in accordance with State and Federal laws and regulations. Written policies and procedures concerning control, use and accountability of controlled drugs shall be maintained by the pharmacist-in-charge. *[Administration records shall include name, dose, route of administration, and dosage form for the drug, the date and time, the patient's name and location, the prescribing physician's name, and the signature of the administering licensed individual.]*

12. Where the use of a drug-dispensing device is approved as an integral part of the drug distribution system by the facility, the pharmacist-in-charge and the Pharmacy and Therapeutics Committee, the device may be used when the pharmacist is not on duty (absent during either the day or night), provided that any absence of the pharmacist does not exceed 24 hours, or when the pharmacist is on duty, provided that proper review of the use of the drug-dispensing device can be ascertained. The drug-dispensing device shall be checked for accuracy and cleanliness every 24 hours by a pharmacist when on duty and so documented.

i. Packaging and labeling of medication for drug-dispensing devices, when done in the facility, shall be performed under the direct supervision of a pharmacist in the employ of or under contract to the facility. *[Records shall be maintained in accordance with (a)4 above.]*

ii. Stocking of the drug-dispensing devices with prepackaged medications shall be performed by or under the direct supervision of a pharmacist. *[Only a pharmacist shall have access to that area of the drug-dispensing device where drugs are stored.]*

iii. At least every 24 hours, a pharmacist shall check medications withdrawn from the drug-dispensing device. Other than a pharmacist, only authorized registered nurse(s) shall have access to the withdrawal of medication from each drug-dispensing device during authorized times of use. A record of all withdrawals, including the identity of the registered nurse making the withdrawal, shall be recorded and available to the pharmacist.

iv. A pharmacist shall check the record of all medications withdrawn from the drug-dispensing device against the order as written by the licensed practitioner or authorized prescriber. This check shall be performed and documented within 24 hours from the time of the original order and so noted on the pharmacy's patient medication profile.

v. When there is no licensed pharmacy on the premises and when the drug-dispensing devices are an integral part of the approved drug distribution system of the facility, the devices shall be controlled by the pharmacist-in-charge who is responsible for the pharmaceutical services of the institution. Under these circumstances, the time between medication order checks shall not exceed 24 hours. *[The drugs stored in these drug-dispensing devices shall be selected by the pharmacist-in-charge with the approval of the Pharmacy and Therapeutics Committee.]*

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vi. The pharmacist shall be responsible for checking the drugs in the drug-dispensing devices at least monthly for expiration date, misbranding, physical integrity, security and accountability.

13. Written policies and procedures governing unused medications shall be established and implemented by the pharmacist-in-charge and shall comply with the following requirements:

i. All *[unused]* medications *[in open containers, where the seal of the container is broken or]* where the drug source, control number or expiration date are missing, shall be sent to the pharmacy for *[a]* final disposition as required.

ii. If a unit dose packaged medication has been stored in a medication room or secure area in the institution and the medication seal and control number are intact, the medication may be recycled and redispensed.

iii. Any and all medication returned by out-patients of the facility shall not be redispensed.

iv. The record of disposal of unused or non-administered controlled dangerous substances expended or wasted either by accident or intent shall be signed and witnessed by a licensed nurse, physician or pharmacist and returned to the pharmacy with a written explanation.

(b) Prescriptions written for employees of the institution or their dependents, or for outpatients of the facility's clinic, shall conform to the prescription requirements of N.J.S.A. 45:14-14.

13:39-9.7 Records and reports

(a) Records of the pharmaceutical services of the facility shall be the responsibility of the pharmacist-in-charge. These records shall be maintained and made available to persons authorized to inspect them under State and Federal law.

(b) The institutional pharmacy shall maintain a patient profile record for each patient receiving drug therapy in accordance with N.J.A.C. 13:39-7.*[15]**14*** and as follows:

1. The profile records for inpatients shall contain: the date of each entry; the name; sex; age or birthdate; location of the patient; the drug name, dose, route of administration and quantity dispensed; the initials of the pharmacist performing the dispensing or supervising; the reported diagnosis of the patient, and reported allergies and chronic condition(s) of the patient.

2. All notations made on the inpatients' profile records by supportive personnel shall be verified and countersigned by the supervising pharmacist.

3. The inpatient profile record shall *[become a permanent part of the patient medical record and filed as such]* ***be filed and stored in a readily retrievable manner for five years following patient discharge***.

(c) All outpatient prescriptions dispensed and outpatient profile records in the institutional pharmacy shall be signed or initialed by the dispensing pharmacist, dated, filed and kept for not less than five years from the last dispensing record date.

(d) Records for receipt, use and final disposition of controlled dangerous substances shall be maintained by the institutional pharmacy in compliance with the requirements of Federal and State controlled dangerous substances laws and regulations. Nursing administration of and audit for controlled dangerous substances records shall be available for review by the pharmacy.

(e) Records of the receipt, dispensing and disposal of investigational drugs shall be maintained by the institutional pharmacy in compliance with Federal and State laws and regulations. *[Unused drugs shall be returned to the principal investigator or destroyed at the end of the clinical study.]*

(f) The pharmacist-in-charge shall be responsible for maintaining a system by which all reported adverse drug reactions are recorded and reviewed by the Pharmacy and Therapeutics Committee. This information shall be made available to the Federal Food and Drug Administration or other appropriate agencies upon request.

13:39-9.8 Drug information and education

(a) The pharmacist-in-charge shall be responsible for maintaining drug standards, references and sources of drug information current and adequate to meet the needs of the pharmacists, physicians, nurses, other health care personnel, and patients of the facility. Reference texts shall include, but not be limited to, those required by the Board under N.J.A.C. 13:39-*[7.8]***7.7***.

(b) On each patient care unit, the pharmacist shall maintain the following:

1. A metric-apothecary conversion table;

2. A copy of the current institutional formulary;

3. A reference drug compendium which will give basic information concerning drugs approved by the Pharmacy and Therapeutics Committee; and

4. The telephone number of either the local or regional poison control center.

(c) The pharmacist shall participate in the drug education programs of the facility.

13:39-9.9 *[Access]* ***After hours access*** to the institutional pharmacy

(a) Only a pharmacist shall have access to the pharmacy stock of controlled dangerous substances in Schedules II thru *[IV]* ***V***.

(b) Only a pharmacist shall have access to the pharmacy stock of drugs except that in a pharmacist's absence from an institution, a registered nurse designated by the institution*[,]* may obtain ***medication*** from the hospital pharmacy's stock of drugs as needed in an emergency*[,]* ***and*** not available as floor stock. Only one registered professional nurse in any given *[eight-hour]* shift shall have access to the pharmacy stock of drugs.

(c) A nurse may remove the following from the pharmacy stock of drugs:

1. A drug in its original container or a drug pre-packaged by *[a pharmacist]* ***the pharmacy*** for use in the institution;

2. A single dose of a drug from the original container for a specific patient.

(d) A nurse shall leave in the pharmacy on a suitable form a record of any drugs removed showing the following:

1. The name of the drug;

[2. The name of its manufacturer;]

*[3.]***2.*** The dosage size;

*[4.]***3.*** The amount taken;

*[5.]***4.*** The date;

*[6.]***5.*** The patient's name and station; ***and***

*[7.]***6.*** The signature of the nurse.

(e) The nurse shall leave with the record in (d) above the container from which the single dose was taken for drug administration purposes in order that it may be properly checked by a pharmacist.

(f) All records in (d) above shall be kept by the pharmacy for *[three]* ***one*** year*[s]*.

13:39-9.10 Advisory committees

The pharmacist-in-charge, or designee, shall be an actively participating member on any committees of the facility that may be concerned with drugs and their utilization.

13:39-9.11 Pharmacy and Therapeutics Committee

In all health care facilities providing pharmaceutical services to patients, an active standing committee of the institution entitled the Pharmacy and Therapeutics Committee or other appropriate name shall be established. A Pharmacy and Therapeutics Committee shall be multidisciplinary and include a pharmacist.

13:39-9.12 Institutional pharmacy staff

The institutional pharmacy shall be staffed by sufficient, competent personnel in keeping with the size, scope and complexity of the pharmaceutical services provided.

13:39-9.13 Pharmacist staff

(a) The institutional pharmacist staff shall include the following:

1. A pharmacist-in-charge, who shall direct the institutional pharmacy service and be responsible to the Administration of the facility.

2. Pharmacists who shall assist the pharmacist-in-charge as required depending on the size, scope and complexity of the service.

3. Any pharmacy interns, externs, and students, who shall function in accordance with the Board's rules and under qualified preceptor(s).

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13:39-9.14 *[Non-pharmacist]* ***Supportive personnel*** staffing

[Non-pharmacist] ***Supportive*** personnel in the institutional pharmacy shall work under the direct supervision and control of a registered pharmacist as provided in N.J.A.C. 13:39-6.4 and 6.7.

13:39-9.15 Pharmacy facilities; space

(a) Adequate facilities (space, lighting, equipment, temperature control and supplies) shall be provided for the control of the professional, technical and administrative functions of the institutional pharmacy as needed for the effective and efficient assurance of patient safety through proper purchasing, receipt, storage, dispensing, administration and control of drugs.

(b) The facilities shall include, but are not limited to, those requirements provided in N.J.A.C. 13:39-7.3 ***through 7.7***.

(c) The space provided for the institutional pharmacy shall be in accord with the size of the facility and the scope and complexity of the pharmaceutical services.

13:39-9.16 Storage and security

(a) Provisions shall be made for adequate safe storage of drugs and biologicals wherever they are stored in the health care facility.

1. All drugs shall be secured for safe use and protected against illicit diversion. Controlled dangerous substances in the institutional pharmacy and throughout the facility shall be stored and protected in conformance with State and Federal laws and regulations.

2. Supplies of external preparations stored in patient care areas shall be kept separate from internal medications.

3. The pharmacist-in-charge shall be responsible for all the medications in the facility, that is, the drugs in the pharmacy service area, drugs in transit, and the drugs in the patient care areas.

4. The drugs throughout the facility shall be maintained under adequate storage conditions including proper lighting, ventilation and temperature control as required by the United States Pharmacopoeia/National Formulary.

5. Adequate storage for pharmacy records shall be provided. Records not currently in use need not be stored in the pharmacy, but the storage facilities must be secure, and the records shall be readily retrievable by the pharmacy staff and authorized inspectors. Patient records shall be kept confidential.

13:39-9.17 Equipment

[(a)] Adequate equipment shall be provided for the compounding, packaging, labeling, refrigeration, sterilization, testing and safe distribution of drugs and biologicals, and other functions. The equipment shall be sufficient to process drugs required by the facility *[to maintain a continuing source of medications necessary to supply the patients on a routine basis]*.

[(b) In an institutional pharmacy, equipment shall be provided for the compounding and dispensing of intravenous solutions, and admixtures thereof, and other parenteral and nonparenteral sterile preparations.]

13:39-9.18 Institutional decentralized pharmacies

(a) Institutional decentralized pharmacies, that is, "satellite pharmacies", means areas within the health care institution other than the original institutional permit location, where the preparation*,* dispensing*,* and compounding of medications are performed *[by a pharmacist. The institutional decentralized pharmacy may only function with a pharmacist present]*. ***Medication shall not be dispensed without a pharmacist present.***

(b) Institutions utilizing or desiring to utilize institutional decentralized pharmacies shall file a remodeling application to the Board to conduct a decentralized pharmacy.

(c) Institutional decentralized pharmacies will be subject to normal Board inspections.

(d) The minimum equipment requirement for an institutional decentralized pharmacy shall be the following:

1. The current USP*[/]*DI and supplements and suitable reference texts *[including at least the current edition of texts on pharmacology, the general practice of pharmacy, drug interactions and drug product composition]*;

2. Patient profile record system;

3. Properly safeguarded storage place if necessary for Schedule II controlled dangerous substances if not *[disbursed]* ***dispersed***;

4. A refrigerator if necessary for the exclusive storage of biologicals and other medicinal products requiring refrigeration;

5. Labels; ***and***

[6. Poison labels; and]

*[7.]****6.*** A sink with hot and cold running water ***exclusive of restroom facilities shall be easily accessible to institutional decentralized pharmacy personnel***.

[(e) The Board may also require any other equipment and/or special specifications that the Board deems necessary for the institutional decentralized pharmacy.]

SUBCHAPTER 10. STERILE ADMIXTURE SERVICES ***IN RETAIL AND INSTITUTIONAL PHARMACIES***

13:39-10.1 Sterile admixture services defined

A sterile admixture service is one involving the dispensing and specializing in the compounding and distribution of sterile parenteral *[irrigation and enteral nutrition products intended for administration to patients in the home or in or out of an institutional setting]* ***products***.

13:39-10.2 Compliance

A pharmacy which intends to compound and dispense sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements contained in this subchapter.

13:39-10.3 General requirement*[s]*

[(a)] A pharmacy presently supplying or intending to supply a sterile admixture service shall notify the Board.

[(b) A pharmacy which is limited to providing sterile admixture service only shall conspicuously post a sign at the entrance to the premises notifying the public of this limitation.]

13:39-10.4 Pharmacist's responsibilities

(a) *[A]* ***That section of a*** pharmacy which provides a sterile admixture service shall be under the direct supervision of a pharmacist licensed to practice in this State who should have practical or academic training in sterile product compounding, clean room technology, laminar flow technology, and quality assurance techniques. The registered pharmacist should have an adequate pharmacy background in clinical application of intravenous drug therapy either through experience or academic training.

(b) *[In addition to those responsibilities described in N.J.A.C. 13:39-3.19, this]* ***This*** pharmacist shall have the responsibility *[for]*, ***in that section of the pharmacy which provides this special service for the following*** at a minimum*[, the following]*:

1. Preparation of sterile admixtures compounded within the pharmacy;

2. Storage of all materials pertinent to the preparation of sterile admixtures, including drugs, chemicals and biologicals, and the establishment of specifications for procurement of the materials;

3. Labeling of all containers of sterile admixture preparations;

4. Recording all transactions of the pharmacy as may be applicable to State, Federal and local laws and rules, as may be necessary to maintain accurate control over, and accountability for, all pharmaceutical materials; and

5. Assuring that only licensed pharmacists meeting the requirements of (a) above or supportive personnel under direct supervision of a pharmacist prepare, compound, and dispense the sterile admixture preparations.

13:39-10.5 Handling, packaging and delivery

(a) The pharmacy shall provide special handling and packaging of compounded parenteral preparations for delivery from the pharmacy to the patient in order to assure and maintain sterility and stability of these preparations. The dispensed container shall bear a permanently affixed label with at least the following information:

1. Date *[dispensed]* ***prepared***;

2. Name of physician, except for institutional inpatients;

3. Name of the patient;

4. Directions for use;

5. Name and amount of drug(s) added;

6. Name of the basic solution;

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7. Name or identifying code of the pharmacist who ***checked or*** prepared the admixture;

8. The expiration date of the sterile preparation, which shall be the manufacturer's recommended expiration date or 24 hours, unless otherwise stated by the manufacturer, or an extended time may be substantiated with adequate documentation. This date shall appear on the label;

9. Name, address and telephone number of the pharmacy, except for institutional inpatients; and

10. Any ancillary and cautionary instructions as needed.

(b) Delivery of compounded parenteral preparations from the pharmacy to the patient shall be made within a reasonable time in order to ensure integrity and efficacy.

13:39-10.6 Patient records

A patient profile record shall be maintained and monitored for each patient. The patient profile record must contain available medical information consistent with prevailing pharmacy standards, and the complete record of the formulations of the sterile products which were dispensed.

13:39-10.7 Policy and procedure manual

(a) A policy and procedure manual shall be maintained at each pharmacy and be available for inspection by authorized agents of the Board. The policy and procedure manual shall set forth, in detail, the objectives and operational guidelines of the permit holder. The policy and procedure manual shall be maintained in current status. The Manual shall contain written documentation of such objectives and operational guidelines, including:

1. Microbiological evaluation, consistent with current standards for preparation of total parenteral nutrition, antineoplastic agents, antibiotics, large and small volume parenterals or other parenteral therapy;
2. Security;
3. Equipment;
4. Sanitation;
5. Reference materials;
6. Drug storage;
7. Drug dispensing;
8. Drug labeling;
9. Drug destruction and returns;
10. Delivery of drugs;
11. Recordkeeping;
12. Investigational new drugs; and
13. A quality assurance program which monitors personnel qualifications, training, performance, equipment, facilities, and such others as may be specified by the Board.

13:39-10.8 Pharmacy environment

(a) The compounding and dispensing of sterile admixture preparations shall be conducted in a pharmacy environment subject to the pharmacy permit laws of this State and in accordance with those requirements for the safe handling of drugs.

(b) The environment for this practice shall be set apart and designed and equipped to provide controlled aseptic conditions. Aseptic technique shall prevail in this environment to minimize the possibility of microbial contamination.

13:39-10.9 Minimum requirements for space

(a) The area for preparing sterile admixtures as provided for in these rules shall be referred to as the sterile admixture area and shall be set apart from general work and storage areas. This area shall be adequately air conditioned to maintain a temperature of 59 to 86 degrees Fahrenheit. This separated area is to be used solely for the aseptic compounding of sterile admixture products.

(b) The sterile admixture area shall provide space for a minimum of one *[class 100 air flow cabinet]* ***laminar air flow hood***. The area shall be of adequate size to accommodate other equipment as provided in these rules and sufficient space to allow the pharmacist and other personnel in the sterile admixture area to adequately, safely, and accurately fulfill their duties related to sterile compounding.

(c) For the compounding and dispensing of antineoplastic agents, there shall be sufficient additional space to accommodate a *[class 100 air containment cabinet (]*vertical ***air*** laminar flow hood*[)]*.

(d) The sterile admixture area shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs, and additional space as needed, depending on the size and scope of pharmaceutical services.

(e) The sterile admixture area shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

13:39-10.10 Minimum requirements for equipment

(a) The sterile admixture area shall contain the following equipment:

1. A *[Class 100 cabinet or environment]* ***suitable laminar air flow hood***;
2. A sink with hot and cold running water exclusive of restroom facilities, shall be easily accessible to the personnal preparing sterile admixtures. This sink shall be maintained in a sanitary condition at all times.
3. A refrigerator as required by U.S.P. standards*[.]* ***exclusively for storing of IV admixtures shall be easily accessible to personnel preparing the sterile admixtures; and***
4. Appropriate waste containers for:
   i. Used needles and syringes; and
   ii. All waste including disposal of apparel used in preparation of antineoplastics.

13:39-10.11 Supplies

(a) The sterile admixture area *[should]* ***shall*** maintain the following supplies;

1. Gloves, masks, and gowns *[(when compounding antineoplastics), etc. as needed]*;
2. Needles and syringes of various sizes;
3. Disinfectant cleaning agents;
4. Clean towels;
5. Handwashing materials, including antimicrobial skin cleaner; and
6. Any and all supplies necessary for the aseptic preparation of sterile admixture products.

13:39-10.12 Library references

In addition to the minimum reference library mandated in N.J.A.C. 13:39-*[7.8]***7.7***, each sterile admixture service shall contain references pertinent to this specialized practice.

13:39-10.13 Compounding requirements

(a) All sterile admixture compounding shall be performed within a certified air flow environment. *[Air]* ***Laminar air*** flow *[cabinet(s) and/]* ***hoods*** or environments shall be certified and so documented at least *[annually]* ***semiannually***.

(b) Proper aseptic procedures must be used at all times to prevent bacterial contamination of the product.

13:39-10.14 Disposal of drugs and materials

All unused drugs and materials used in the preparation of sterile admixture solutions, including antineoplastic agents, must be disposed of properly in accordance with accepted professional standards and applicable laws. Unused drugs and materials shall be disposed of in a manner so as not to endanger the public health.

13:39-10.15 Security

The sterile admixture area and its contents and other areas where drugs are stored shall be secured, so as to prevent access by unauthorized personnel.

SUBCHAPTER 11. NUCLEAR PHARMACIES

13:39-11.1 Definitions

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

"Authentication of product history" includes, but is not limited to, identifying the purchase source, the ultimate use or disposition

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and any intermediate handling of any components of a radiopharmaceutical.

"Authorized practitioner" means a practitioner duly authorized by applicable Federal and State law to possess, use and administer radiopharmaceuticals.

"Designated agent" means an individual under the direct supervision of a practitioner authorized to communicate the practitioner's instructions to the nuclear pharmacy.

["Direct supervision" means that the supervising licensed nuclear pharmacist shall be physically present in the general area or location where the supportive personnel are performing supportive duties and shall conduct in-process and final checks.]

"Direct supervision" means that a qualified nuclear pharmacist shall be physically present in the compounding/dispensing area where the supportive personnel are performing delegated duties, and shall conduct in-process and final checks of all steps in preparation, compounding, and dispensing of drugs. This supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

"Internal test assessment" includes, but is not limited to, conducting those tests necessary to insure the integrity of the test.

"Radiopharmaceutical" means any substance defined as a drug in Section 201(g)(1) of the Federal Food, Drug and Cosmetic Act ***or in the FDA's Nuclear Pharmacy Guidelines and*** which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any such drug which is intended to be made radioactive. This definition includes non-radioactive reagent kits and nuclide generators which are intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

"Radiopharmaceutical quality assurance" includes, but is not limited to, the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history and the keeping of proper records.

"Radiopharmaceutical service" includes, but is not limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; and the offering of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a nuclear pharmacy.

13:39-11.2 General requirements for pharmacies providing radiopharmaceutical service

(a) The application for a specialized retail permit to operate a pharmacy providing radiopharmaceutical services shall only be issued to a ***site employing a*** qualified nuclear pharmacist. All personnel performing tasks in the preparing and distribution of drugs shall be under the direct supervision of the nuclear pharmacist who shall be responsible for all ***nuclear*** operations of the licensed area and shall be in personal attendance at all times when the nuclear pharmacy is open for business.

(b) Nuclear pharmacies shall have adequate space, commensurate with the scope of services required and provided, meeting minimal United States Nuclear Regulatory Commission ***or its successor's*** requirements *[established for all pharmacies in the State]* ***and the requirements established by the State of New Jersey Bureau of Radiation Protection***. The nuclear pharmacy shall be separate from the pharmacy areas for non-radioactive drugs and shall be inaccessible to all unauthorized personnel. All pharmacies handling radiopharmaceuticals shall be provided with a radioactive storage and decay area. A nuclear pharmacy dispensing radioactive drugs may be exempted from the general space requirements for pharmacies.

(c) The process used for handling radioactive materials by any license holder must involve appropriate procedures for the purchase, receipt, storage, manipulation, compounding, distribution, and disposal of radioactive materials. In order to ensure the public health, safety, and welfare, a nuclear pharmacy shall first meet the following general requirements:

1. The environment where the handling of radioactive materials takes place shall be properly ventilated so that radioactive materials cannot be airborne from that environment to other non-occupationally unrestricted areas;

2. The environment shall be properly located so that the receipt and dispersal of radioactive materials does not result in inadvertent and undesired contamination of other non-occupationally labeled areas; and

3. The area shall be designed in such a manner that radioactive materials can be contained in given areas to ensure adequate safety and protection to personnel working in or near them and to insure proper operation of the corresponding assay equipment.

(d) Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with rules and regulations of the United States Nuclear Regulatory Commission.

(e) The immediate outer container of a radioactive drug to be dispensed shall be labeled with the following:

1. The standard radiation symbol;
2. The words, "CAUTION—RADIOACTIVE MATERIAL";
3. The radionuclide;
4. The chemical form;
5. The amount of radioactive material contained in millicuries or microcuries;
6. If a liquid, the volume in *[cubic centimeters]* ***milliliters***;
7. The requested calibration time for the radioactivity contained;
8. The name, address, and telephone number of the nuclear pharmacy;
9. The prescription number; and
10. The date and patient's name***, if available***.

(f) The immediate container shall be labeled with the following:

1. The standard radiation symbol;
2. The words, "CAUTION—RADIOACTIVE MATERIAL";
*[3. The name of the nuclear pharmacy;
4. The prescription number; and]*
*[5.]***3.*** The name of the radiopharmaceutical.

(g) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.

(h) A nuclear pharmacist may transfer to authorized persons and United States Nuclear Regulatory Commission licensed medical practitioners radioactive materials not intended for drug use, in accordance with the regulations of the United States Nuclear Regulatory Commission ***or its successor***. A nuclear pharmacy may furnish radiopharmaceuticals to these practitioners for *[individual]* patient use.

(i) Nuclear pharmacies shall comply with all applicable laws and regulations of Federal and State agencies including those laws and regulations governing non-radioactive drugs. For nuclear pharmacies handling radiopharmaceuticals exclusively, the Board of Pharmacy may waive rules pertaining to pharmacy permits for nonradiopharmaceuticals which requirements do not pertain to the practice of nuclear pharmacy.

(j) Radioactive drugs are to be dispensed only upon a non-refillable prescription order from a United States Nuclear Regulatory Commission licensed medical practitioner (or the designated agent) authorized to possess, use and administer radiopharmaceuticals.

(k) Prescription orders for delivery of radioactive drugs for use in the medical practice of a United States Nuclear Regulatory Commission licensed medical practitioner may be placed on a telephone answering and recording device, only if the practitioner (or the designated agent) is identified in such a manner that is clearly recognized by the nuclear pharmacist dispensing the radioactive drug.

(l) A *[pharmacist-in-charge of a nuclear pharmacy]* ***qualified nuclear pharmacist*** shall have the authority to delegate to any qualified and properly trained person or persons, acting under his or her direct supervision, any nuclear pharmacy act which a reasonable and prudent pharmacist would find is within the scope of sound pharmaceutical judgment to delegate. Such delegation may only occur if, in the professional opinion of the *[delegating pharmacist-in-charge]* ***qualified nuclear pharmacist***, the act may be properly and safely

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performed by the person to whom the pharmacy act is delegated. The delegated act may only be performed in its customary manner, not in violation of other statutes. The person to whom a nuclear pharmacy act is delegated shall not hold himself or herself out to the public as being authorized to practice pharmacy.

13:39-11.3 General requirements for a nuclear pharmacist

(a) A qualified nuclear pharamcist shall meet the following requirements:

1. He or she is a pharmacist licensed to practice in the State of New Jersey; and

2. He or she meets minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the United States Nuclear Regulatory Commission * **or its successor and the State of New Jersey Bureau of Radiation Protection.***

13:39-11.4 Minimum requirements for space, equipment, supplies, and library

(a) Each nuclear pharmacy must meet the following requirements for space:

1. The area for the storage, compounding and dispensing of radioactive drugs shall be completely separate from pharmacy areas for non-radioactive drugs;

2. Hot lab and storage area shall be a minimum of 120 square feet; and

3. The compounding and dispensing area shall be a minimum of 300 square feet.

(b) Each nuclear pharmacy shall be equipped with at least the following items of equipment:

1. Dose calibrator;

2. Refrigerator;

3. Drawing station;

4. Well scintillation counter;

5. Microscope;

6. Chromatographic apparatus or comparable means of effectively assuring tagging efficiency;

7. *[Portable radiation survey meter capable of detecting 0.005 microcuries of activity of any radionuclides utilized]* ***Radiation survey equipment of the appropriate type and calibration to detect quantities of radioactive materials as prescribed in the appropriate radioactive material licenses***; and

8. Other equipment deemed necessary for radiopharmaceutical quality control for products compounded or dispensed as may be determined by the United States Nuclear Regulatory Commission ***or its successor and the State of New Jersey Bureau of Radiation Protection***.

(c) Each nuclear pharmacy shall have on the premises the following reference books. All books must be current editions or revisions:

1. *[United States Pharmacopoeia-National Formulary]* ***USP DI*** with supplements;

2. State statutes and rules relating to pharmacy;

3. State and Federal regulations governing the use of applicable radioactive materials; and

4. Text relating to the practice of nuclear pharmacy and radiation safety.

13:39-11.5 Quality control

The holder of a nuclear pharmacy permit shall be responsible for the radioactive quality control of all drugs, including biologicals, dispensed or manufactured. Radioactive pharmaceutical quality controls include, but are not limited to, the carrying out and interpretation of data resulting from chemical, biological and physical tests on potentially radioactive pharmaceuticals to determine the suitability for use in humans and other animals, including internal test assessment and authentication of product history.

(a)

BUREAU OF SECURITIES

Performance Fee Compensation

Adopted New Rule: N.J.A.C. 13:47A-2.10

Proposed: January 3, 1989 at 21 N.J.R. 12(a).

Adopted: April 25, 1989 by James McLelland Smith, Chief, Bureau of Securities.

Filed: May 22, 1989 as R.1989 d.319, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 49:3-53(b)(1) and 49:3-67.

Effective Date: June 19, 1989.

Expiration Date: October 5, 1992.

The Bureau of Securities ("Bureau") afforded all interested parties an opportunity to comment on the proposed new rule N.J.A.C. 13:47A-2.10, relating to performance fee compensation for investment advisors. The official comment period ended February 2, 1989; however, the Bureau has summarized and responded to comments received after that date. Announcement of the opportunity to respond to the Bureau appeared in the New Jersey Register on January 3, 1989 at 21 N.J.R. 12(a). Announcements were forwarded to the Star Ledger and Trenton Times, newspapers of general circulation, as well as to:

The Investment Company Institute
The International Association for Financial Planning
The Securities Industry Association
The National Association of Securities Dealers, Inc.
The New Jersey Law Journal
The New York Law Journal
The New Jersey State Bar Association
Commerce Clearing House, Inc.
The New York Stock Exchange, Inc.
The American Stock Exchange, Inc.

A full record of this opportunity to be heard can be inspected by contacting the Bureau of Securities, Two Gateway, 8th Floor, Newark, New Jersey 07102.

The Bureau received seven comment letters; four from law firms, one from an investment advisor, one from the Investment Company Institute and one from the Investment Counsel Association of America. All of the letters supported the concept of allowing performance based compensation; however, six of the letters suggested various changes.

Summary of Public Comments and Agency Responses:

COMMENT: Six of the letters expressed concern that the Bureau's proposed rule was stricter than a similar rule adopted by the Securities and Exchange Commission ("SEC"), which permits receipt of performance fees if the client has a $1,000,000 net worth *or* $500,000 under management and which does not exclude home, farm, car and furnishings from the computation of net worth. These writers suggest changing the $1,000,000 net worth *plus* $500,000 under management with an advisor to $1,000,000 or $500,000 under management. Two writers ask that the $500,000 be reduced to $150,000 to $250,000 under management. One writer was confused as to why a farm was not treated the same as a factory.

RESPONSE: The proposed rule follows the SEC rule closely except that it combines the net worth ($1,000,000) and assets under management ($500,000) requirements and excludes home, farm, car and furnishings from the computation of net worth. The exception in N.J.S.A. 49:3-53(b)(1) prohibiting investment advisors from being compensated on the basis of a share of capital gains or capital appreciation of the client's funds is patterned after the Uniform Securities Act of 1956, which itself is modeled on Section 205 of the Investment Advisors Act. This prohibition was enacted to discourage advisors from taking undue risks with clients' funds. The protection of investment advisor clients prevails as the legislative intent except that the Bureau is now permitted to set conditions under which clients do not need such protection. The Bureau believes that the SEC's net worth requirement is insufficient as an indication of sophistication if it includes a clients' home, farm, car and furnishings. The Bureau also believes that the farm exclusion should not be deleted from the computation of net worth because it applies only to individual farm owners and many farms encompass the owner's main residence. After taking into consideration the exceptions to the net worth require-

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ment, which has the effect of increasing the net worth requirement beyond that required by the SEC rule, the Bureau has decided to eliminate the requirement that a client have a specific amount under management. The Bureau has decided not to use the amount under management alone as a criterion because $500,000 in cash is too small a sum to indicate sophistication. The Bureau believes that using the $500,000 under management alone would expose unsophisticated, possibly elderly persons who have accumulated $500,000 from the sale of a home, from life savings, insurance or lottery winnings to possible abuse.

COMMENT: Two writers were also concerned about the lack of a grandfather provision allowing an investment advisor to charge a private investment company, which changes its membership requirements to comply with this proposed rule, performance based fees even though current members of the investment company do not meet the rules' requirements. One writer suggests a future role to deal with that situation.

RESPONSE: The Bureau will consider the advisability of proposing such a rule in the future but has decided not to amend the current proposed rule in this regard.

COMMENT: Two writers, the Investment Company Institute and the Investment Counsel Association of America, suggested that subsection (d) be deleted because it appeared to require that so called "independent agents" of investment advisors be registered and comply with the anti-fraud requirements of the law. Both writers believed that such persons may not be required to comply with such requirements.

RESPONSE: The Bureau did not intend to change existing law by the proposal of subsection (d). On its own initiative, the Bureau is substituting the term "representative" for the term "independent agent". This is being done for two reasons: first, the Bureau does not recognize the concept of independent agent whether it is a defined agent of a broker-dealer or a common law agent of an investment advisor. If the "agent" is truly independent, then such agent must comply with any applicable registration requirement. Second, the term "agent" is defined in N.J.S.A. 49:3-49(b) as an individual representing a broker-dealer or issuer in effecting or attempting to effect securities transactions. It is noted that representatives of investment advisors or so-called solicitors may have a duty to be registered and/or the investment advisor may have a duty to note such individuals in question 12 of the Investment Advisor Application Form SB-2. It should also be noted that attorneys and accountants are not excluded from the definition of investment advisor by virtue of their profession alone and may be required to register as investment advisors or broker-dealers when they receive remuneration from broker-dealers, advisors or issuers to bring clients to such persons.

COMMENT: The Investment Counsel Association of America, Inc. was puzzled by subsection (c) and believed that it should be deleted as having no relevance since it states all contracts are renegotiable.

RESPONSE: The Bureau believes that since N.J.S.A. 49:3-53(b) restricts certain contracts, this subsection is beneficial and has decided to retain it to avoid any confusion as to whether or not such contracts may be renegotiated and under what conditions.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

13:47A-2.10 Performance fee compensation

(a) The provisions of N.J.S.A. 49:3-53(b)(1) shall not prohibit any investment advisor registered as an investment advisor pursuant to N.J.S.A. 49:3-56(a) from entering into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the conditions of this section are met and all conditions of Rule 205-3 (17 CFR 275.205-3) under the Investment Advisors Act of 1940***,*** 15 U.S.C. 80b-1 et seq., which are not in conflict with the conditions set forth in this section are satisfied.

(b) The client entering into the contract subject to this regulation must be a natural person or a company as defined in Rule 205-3, *[who immediately after entering into the contract has at least $500,000 under the management of the investment advisor; and]* who the registered investment advisor (and any person acting on the investment advisor's behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company as defined in Rule 205-3, whose net worth at the time the contract is entered into exceeds $1,000,000. The net worth of a natural person may include assets held jointly with such person's spouse but shall not include home, farm, car and furnishings.

(c) Nothing in this section shall prevent the renegotiation, for the purposes of changing the method of compensation in compliance with this section, of an investment advisory contract between a registered investment advisor and the client of such investment advisor provided both parties agree to the new or additional terms.

(d) Nothing in this section relieves a client's *[independent agent]* ***representative*** from any of the obligations under N.J.S.A. 49:3-47 et seq. including, but not limited to, the obligation to register with the Bureau pursuant to N.J.S.A. 49:3-56(a) and the obligation to comply with N.J.S.A. 49:3-52 and 49:3-53.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Routes N.J. 27 in Union County and N.J. 67 in Bergen County

Adopted Amendments: N.J.A.C. 16:28A-1.18 and 1.71

Proposed: April 17, 1989 at 21 N.J.R. 978(a).

Adopted: May 18, 1989 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 23, 1989 as R.1989 d.321, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Effective Date: June 19, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.18 Route 27

(a) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no stopping or standing" zones.

1. through 16. (No change.)

17. No stopping or standing in the City of Linden, Union County:

i. Along the east side (East St. George Avenue):

(1) Beginning at the northerly curb line of East Baltimore Avenue and extending to the southerly curb line of Chandler Avenue.

ii. Along both sides:

(1) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in the areas where an official township resolution has been submitted.

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. Along Lemoine Avenue:

(1) Far side bus stops:

(A) (No change.)

(B) Columbia Avenue—Beginning at the southerly curb line of Columbia Avenue and continuing to a point 120 feet south therefrom.

(2) Near side bus stops:

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(A) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 107 feet northerly therefrom.

(B) Lincoln Avenue—-Beginning at the northerly curb line of Lincoln Avenue and extending 155 feet northerly therefrom.

(C) Whiteman Street—Beginning at the northerly curb line of Whiteman Street and extending 155 feet northerly therefrom.

(D) Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending 105 feet northerly therefrom.

(3) Mid-block bus stop:

(A) Between Main Street and Bridge Plaza South—Beginning 132 feet north of the northerly curb line of Main Street and extending 149 feet northerly therefrom.

ii. Along Palisade Avenue:

(1) Far side bus stops:

(A) Riverdale Drive—Beginning at the southerly curb line of Riverdale Drive and extending 165 feet southerly therefrom.

(B) Forest Road—Beginning at the southerly curb line of Forest Road and extending 150 feet southerly therefrom.

(C) Route N.J. 5—Beginning at the southerly curb line of State highway Route 5 and extending 114 feet southerly therefrom.

2. (No change.)

3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. Along Lemoine Avenue:

(1) Far side bus stops:

(A) through (G) (No change.)

(H) Washington Avenue—Beginning at the northerly curb line of Washington Avenue and extending 105 feet northerly therefrom.

(2) Mid-block bus stop:

(A) Between Bridge Plaza North and Lincoln Avenue—Beginning 326 feet north of the northerly curb line of Bridge Plaza North and extending 154 feet northerly therefrom.

ii. Along Palisade Avenue:

(1) Near side bus stops:

(A) Route 5—Beginning at the prolongation of the southerly curb line of Route 5 and extending 155 feet southerly therefrom.

(B) Palisade Terrace—Beginning at the northerly curb line of Palisade Terrace and extending 155 feet southerly therefrom.

(2) Far side bus stop:

(A) Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 100 feet northerly therefrom.

(b) The certain parts of State highway Route 67 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. No stopping or standing in Fort Lee Borough, Bergen County:

i. Along both sides:

(1) For the entire length within the corporate limits of Fort Lee Borough including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas, no parking certain hours. Signs to be posted only in areas where an official borough resolution has been submitted.

(c) The certain parts of State highway Route 67 described in the subsection are designated and established as "no stopping or standing" zones during certain hours. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs.

1. No stopping or standing in Fort Lee Borough, Bergen County:

i. Along the easterly (northbound) side:

(1) Between the hours of 8:00 A.M. and 4:00 P.M., between a point south of the prolongation of the southerly curb line of Lincoln Avenue and the intersection of New York Avenue.

(2) Mondays from 5:00 A.M. to 7:00 A.M. (Street cleaning) from Dahill Square to Bridge Plaza North.

ii. Along the westerly (southbound) side:

(1) Tuesdays from 5:00 A.M. to 7:00 A.M. (Street cleaning) from Bridge Plaza North to Dahill Square.

TREASURY-GENERAL

(a)

Public Employees' Retirement System Enrollment

Adopted Amendment: N.J.A.C. 17:2-2.3

Proposed: February 21, 1989, at 21 N.J.R. 437(b).

Adopted: May 11, 1989, by the Public Employees' Retirement System, Janice Nelson, Secretary.

Filed: May 17, 1989 as R.1989 d.312, **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. 43:15A-17.

Effective Date: June 19, 1989.

Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:

A suggestion was made by Peter J. Calderone, Assistant Commissioner of the Department of Personnel, to clarify the text of N.J.A.C. 17:2-2.3(a)6 by changing "classified or unclassified service" to "career, senior executive or unclassified service." The suggestion was approved by the PERS Board of Trustees and is incorporated in the final adoption of the amendment.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***: deletions from proposal indicated in brackets with asterisks *[thus]*):

17:2-2.3 Ineligible persons

(a) The following classes of persons are ineligible for membership in the system:

1.-3. (No change.)

4. Any employee who is provisionally appointed to a Civil Service position is considered as an employee with temporary employment status and is ineligible to establish membership until he or she receives a regular Civil Service appointment, or has one year of continuous service.

5. (No change.)

6. Any person not in *[classified or unclassified]* ***the career, senior executive and unclassified*** service, or a regular budgeted position, who is employed on an on-call basis and works on average less than 10 days a month throughout the regular work year of the employer. This type of employment is temporary employment which is not continuous.

(b)

Public Employees' Retirement System Outstanding Loans at Retirement

Adopted Amendment: N.J.A.C. 17:2-6.4

Proposed: March 6, 1989, at 21 N.J.R. 629(a).

Adopted: May 10, 1989, by the Public Employees' Retirement System, Janice Nelson, Secretary.

Filed: May 17, 1989 as R.1989 d.313, **without change.**

Authority: N.J.S.A. 43:15A-17.

Effective Date: June 19, 1989.

Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

17:2-6.4 Outstanding loan

(a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with interest, as follows:

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:2-6.3; or

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2. By retention of retirement benefit payments, excluding authorized deductions, by the retirement system until the loan balance, with interest, is repaid.

i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal income tax withholding. If the member does not request repayment in full, repayment is by retention of retirement benefits.

(b) A member who retires on a disability pension or because of medical illness or disability as determined by the board of trustees with an outstanding loan balance may repay the balance as follows:

1. In the manner prescribed in (a) above; or

2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with interest, is repaid.

i. If a member who retires on a disability pension does not request another repayment option, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.

(c) A member whose retirement is other than a disability retirement and who wants to establish that the retirement is necessitated by medical illness or disability shall submit an application acceptable to the retirement system together with a report of the member's personal or attending physician and all other physician's reports, hospital records or other medical evidence which the member can supply pertaining to the illness or disability. The medical evidence shall be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system, and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.

(d) If a retirant dies before the loan balance, with interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments or the balance of the Option I reserves or the balance of the retirant's accumulated deductions and regular interest that are due to the beneficiary or estate. If the retirant designated multiple beneficiaries to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

(a)

Consolidated Police and Firemen's Pension Fund Nominating Petitions; Elections

Adopted Amendment: N.J.A.C. 17:6-1.4

Proposed: February 21, 1989, at 21 N.J.R. 438(a).

Adopted: May 7, 1989, by the Consolidated Police and Firemen's Pension Fund Commission, Anthony Ferrazza, Secretary.

Filed: May 23, 1989 as R.1989 d.320, **without change.**

Authority: N.J.S.A. 43:16-7.

Effective Date: June 19, 1989.

Expiration Date: November 22, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:6-1.4 Election of members-commission

(a) (No change.)

(b) Requirements for the election notice and petition shall include:

1.-2. (No change.)

3. The election notice will also indicate that at least five eligible or retired members must sign the petition in order for a candidate's name to be placed on the ballot.

4.-8. (No change.)

(c)-(j) (No change.)

(b)

OFFICE OF THE STATE TREASURER

Community Affairs

Division of Local Government Services

Local Finance Board

Debts Owed to New Jersey Higher Education Assistance Authority by State, County, and Municipal Employees

Readoption: N.J.A.C. 17:25

Proposed: April 3, 1989, at 21 N.J.R. 887(a).

Adopted: May 26, 1989, by Feather O'Connor, State Treasurer, and Barry Skokowski, Chairman, Local Finance Board.

Filed: May 26, 1989 as R.1989 d.330, **without change.**

Authority: N.J.S.A. 18A:72-23, 24, 25 and 25.2; N.J.S.A. 52:18A-30; 52:27BB-10.

Effective Date: May 26, 1989.

Expiration Date: May 26, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:25.

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

Corporation Business Tax

Scope of Allocable Receipts; Sales of Tangible Personal Property

Adopted Amendment: N.J.A.C. 18:7-8.8

Proposed: February 21, 1989 at 21 N.J.R. 438(b).

Adopted: May 12, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: May 16, 1989 as R.1989 d.311, **without change.**

Authority: N.J.S.A. 54:10A-27.

Effective Date: June 19, 1989.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

One letter was received during the comment period. It raised concerns as to the application of the amendment where a New Jersey manufacturer places goods in transit with a common carrier in New Jersey for delivery at a destination in a foreign state and whether this change in possession to the carrier would result in a distortion of the New Jersey receipts numerator. The question was whether the rule in that case operates to "throwback" receipts to New Jersey by virtue of the common carrier taking possession in New Jersey, when the foreign state will also consider the receipt at the destination. The writer used the states of Pennsylvania or Connecticut as examples.

The Division responded to these examples by pointing out that the writer was misinterpreting the meaning of the rule. In the example found in N.J.A.C. 18:7-8.8(a)1iv, a situation was presented in which a possession change to a common carrier occurred and no New Jersey receipt resulted. As further support, the Division pointed out that the example in subparagraph (a)1iii provides that the common carrier is deemed an agent of the seller regardless of the F.O.B. point. Transfer of possession to the customer is a key element in interpreting the rule.

The writer also raised an example wherein a cabinet is manufactured in Missouri and shipped to a New Jersey subcontractor where electronic instrumentation is fitted in it. Then the cabinet is shipped to Texas for installation at the ultimate customer's premises. (It is assumed the Mis-

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souri company is authorized to do business in New Jersey.) Again in this example New Jersey would not pick up a Texas receipt. A sale of the product is not made until the product is complete and delivered in Texas. However, the Division pointed out that, for the Missouri company, there would be a question as to property in inventory located in New Jersey and its property fraction would be affected. The average value of the property would be reported in the New Jersey property numerator by the Missouri company.

Since the assumption of the writer's question regarding possession changes was not in accord with the meaning of the rule, it does not follow that New Jersey will ignore transactions at New Jersey destinations for vendors who are "qualified" in New Jersey and otherwise required to file New Jersey returns, as was noted on the supplemental critique attached to the writer's letter.

A telephone comment was also made, but after the expiration of the comment period. To assist taxpayers and their advisers, it is noted here nevertheless. First, the questioner asked if a New Jersey customer goes to New York to pick up items, would that be respected as a non-New Jersey sale. The response to the question is that it would be considered a non-New Jersey receipt, provided that the invoice and other documentation establish that the pick up was actually in New York.

Second, a variation of subparagraph (a)1iv was presented in which goods were brought to New Jersey in taxpayer's own truck and then sent to an out-of-State destination. This modification would not alter the conclusion given in the example that no New Jersey receipt is present.

Third, a question was raised whether the rule relates to nexus of foreign corporations with New Jersey. In response it was noted that the rule is intended to deal with the receipts fraction. However, any operation can be taken into account to determine whether an unauthorized corporation is subject to New Jersey corporation business tax.

Finally, it may be noted that in a variation of the example under subparagraph (a)1iv where a separate corporate subsidiary of a non-New Jersey manufacturer takes delivery in New Jersey of goods which it then transports out of New Jersey, a non-New Jersey manufacturer having nexus with New Jersey would have a New Jersey receipt.

The adopted rule preserves the concept of the Division of Tax Appeals opinion in *Texas Eastern Transmission Corporation v. Director, Division of Taxation,* Dkt. Number M.C. 339, June 5, 1975, affirmed without opinion, Superior Ct., App. Div., Dkt. Number A-4190-74, June 23, 1976; Petition for certif. den. 71 N.J. 533 (1976); appeal dismissed for want of a substantial federal question, 430 U.S. 925, 97 S. Ct. 1540 (1977).

Full text of the adoption follows.

18:7-8.8 Scope of allocable receipts

(a) Unless otherwise noted herein, receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and trans-shipped to a point outside this State.

i. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example: Taxpayer, a manufacturer located outside of New Jersey, transports goods directly to a customer's location in New Jersey. Since possession of the goods is transferred in New Jersey, shipment is deemed to be in this State resulting in receipts allocable to this State.

ii. The sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example: Taxpayer, a manufacturer located outside of New Jersey, transports goods into New Jersey where such goods are picked up by a non-New Jersey customer or a customer's representative in New Jersey for further transportation outside of this State. Since possession of the goods passed between the taxpayer and its customer in New Jersey, the sale results in receipts allocable to New Jersey.

iii. The sale of goods shipped by a taxpayer from outside of New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point.

Example: Taxpayer, a manufacturer located outside of New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside of New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside of New Jersey results in receipts which are not allocable to New Jersey.

Example: Taxpayer, a non-New Jersey manufacturer, transports goods from outside of New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside of New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside of New Jersey results in receipts not allocable to New Jersey.

2.-5. (No change.)

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

BOARD OF PUBLIC UTILITIES

Notice of Action on Petition for Rulemaking on Control of Acid Rain

Petitioners: Environmental Defense Fund, New Jersey Conservation Foundation, New Jersey Chapter of the Sierra Club, and Pennsylvanians for Acid Rain Control.

Take notice that on June 7, 1988, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) received a petition for rulemaking concerning the control of acid rain. Public notice of this petition was published in the August 15, 1988 New Jersey Register (see 20 N.J.R. 2099(a)).

In accordance with N.J.A.C. 1:30-3.6, the DEP and the BPU have determined that the matter will receive further deliberation. The agencies have held several meetings to formulate a response to the petition, and in accordance with the provisions of N.J.A.C. 1:30-3.6, have decided to solicit additional comments at a fact-finding public hearing. The **public hearing** will be held on:

Thursday and Friday, July 20 and 21, 1989 at 10:00 A.M.
at the Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

The issues raised in the petition center on requests to adopt an acid deposition standard, to make further in-State emission reductions, and to reduce acid-deposition causing emissions produced while generating electricity for export to New Jersey. Background on these issues is provided below, followed by possible options to address the petitioners' requests. Finally, specific topics upon which the agencies would like to receive comment are given after each issue.

Phase I

A. Request to adopt a deposition standard

This standard would set a limit on the mass of sulfate (or some other acid surrogate) that is deposited per unit time. Among the issues that need to be addressed in the context of this request, and on which the agencies are soliciting input, are:

1. Verification of the impacts of acidic deposition in New Jersey;
2. Quantification of those impacts;
3. The cost impacts of the damage alleged to be caused by acidic deposition in New Jersey; and
4. Whether unilateral action by New Jersey would adequately address the problem or whether interstate coordination is necessary.

Among the possible options for New Jersey are adoption of a sulfate standard, a nitrate standard, a combined deposition standard, a fine particulate standard, or no standard at all.

B. Further emission reductions from in-State sources

Sulfur dioxide (SO_2): Data indicate that electric utilities produce the largest fraction of New Jersey's sulfur dioxide emissions. Together with industrial boilers and industrial processes, they account for more than two-thirds of the State's SO_2 emissions. Sulfur emissions from all of these source categories are regulated under existing subchapters of the New Jersey Air Pollution Control Code: sulfur from manufacturing processes (N.J.A.C. 7:27-7), sulfur content of fuel oils (N.J.A.C. 7:27-9), and sulfur content of solid fuels (N.J.A.C. 7:27-10). The limits on the sulfur content of fuel vary by zone withi the State.

Among the possible options for further sulfur control in New Jersey are reduction of sulfur in heavy oil in the Northwest and Southeast zones; making the sulfur-in-fuel zones uniform across the State; rescinding the single currently-used sulfur-in-solid-fuel waiver under N.J.A.C. 7:27-10; eliminating the 1.5 percent sulfur coal waiver which is no longer used; phasing out all unscrubbed coal burning at existing sources; or simply maintaining our current efforts.

Nitrogen oxides (NO_x): The State has no specific rules to control existing sources of NO_x. However, state of the art requirements (N.J.A.C. 7:27-8) are applied to new and modified sources upon application for permits to construct. Under these rules, New Jersey also requires low-NO_x burners on new or modified boilers.

The options for further control of nitrogen oxides in New Jersey might include developing NO_x rules for existing sources; reliance on additional cogeneration to replace existing generation and its emissions; supporting conservation and other demand-side strategies; or maintaining the agencies' efforts to date.

The agencies are interested in obtaining factual information concerning quantification of the costs of New Jersey SO_2 and NO_x emission control efforts to date, identification and quantification of the sources of SO_2 and NO_x emissions and reductions achieved to date, and an identification and evaluation of potential sources of further SO_2 and NO_x emission reductions in New Jersey.

C. Emission reductions from out-of-State sources

A substantial amount of the electricity consumed in New Jersey is generated outside the State, where in many cases, there are less stringent emission limitations than those in New Jersey. This power is supplied in several ways: under contract from specific generating stations or specific utility systems, from facilities of which New Jersey utilities are part owners, and through purchases from the regional power grid (the "PJM interconnection").

The agencies are interested in receiving comment on what other state and Federal agencies have done to control SO_2 and NO_x emissions from both utility and non-utility sources, in identifying and quantifying the emissions sources associated with exported power production for New Jersey, in quantifying the effects in New Jersey of acidic deposition due to in-state versus out-of-State emissions sources, and in the effects and feasibility of emission reductions at those sources.

Finally, the agencies are interested in comments on specific environmental effects of emission reductions at those sources.

Phase II

Upon completion of the first-phase proceeding as described above, the agencies will evaluate the information obtained and make a determination of the need for a second-phase proceeding. Such a proceeding, if necessary, would address the various options for achieving required levels of acidic deposition reductions in the State, and the cost implications of each. The options New Jersey could pursue include, but are not limited to, leveraging other part owners at out-of-State plants; seeking the institution of least emissions dispatch or partially emissions-sensitive dispatch for the PJM grid; requiring that power contract conditions include emission limitations; and supporting strong Clean Air Act amendments.

The agencies also foresee a need to solicit information regarding the status and nature of Federal acid deposition control legislation, and options for meeting proposed federal standards in an efficient and least-cost manner.

Copies of this notice have been sent to the petitioners as required by N.J.A.C. 1:30-3.6. **Copies of this notice and of the petition** are being deposited and will be available for inspection during normal office hours until July 26, 1989 at:

Atlantic County Health Department
1200 Harding Highway
Mays Landing, NJ 08330

Burlington County Health Department
Woodlane Road
Mount Holly, NJ 08060

Hudson Regional Health Commission
215 Harrison Avenue
Harrison, NJ 07029

Middlesex County Air Pollution Control Program
280 Hobart Street
Room #518
Perth Amboy, NJ 08861

Warren County Health Department
151 Washington Avenue
Washington, NJ 07882

New Jersey Department of Environmental Protection
Division of Environmental Quality
401 East State Street
Second Floor
Trenton, NJ 08625

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New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Northern Regional Office
1259 Route #46
Parsippany, NJ 07054

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Southern Regional Office
20 East Clementon Road
Gibbsboro, NJ 08026

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, NJ 07052

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Twin Rivers Professional Building
Route #33
East Windsor, NJ 08520

Written comments will be received until three days after the conclusion of the public hearing (July 24, 1989). Send written comments to:

Steven Tarnowski
EDF Acid Rain Hearing
New Jersey Department of Environmental Protection
Division of Regulatory Affairs
401 East State Street
CN 402
Trenton, NJ 08625-0402

Send a duplicate copy of written comments to:

Joseph Haldusiewicz
EDF Acid Rain Hearing
New Jersey Board of Public Utilities
Regulatory Division
Two Gateway Center
Newark, NJ 07102

Upon completion of the agencies' deliberations, the decision will be mailed to the petitioners and subsequently published in the New Jersey Register.

(a)

DIVISION OF WATER RESOURCES

Change in Date for Public Hearing
Treatment Works Approval Annual Report and Fee Schedule
Public Hearing

Take notice that the Department of Environmental Protection has canceled the public hearing concerning the Treatment Works Approval Annual Report and Fee Schedule scheduled for June 22, 1989, notice of which was published in the New Jersey Register on June 5, 1989 (see 21 N.J.R. 1579(b)).

The Department will hold a public hearing to present the Treatment Works Annual Report and Fee Schedule for fiscal year 1989-1990. The Department proposed a new fee formula for treatment works approvals by proposing amendments to N.J.A.C. 7:1C, in the April 3, 1989, New Jersey Register (see 21 N.J.R. 819(a)). The Department anticipates that the proposed amendments to N.J.A.C. 7:1C will be adopted and published in the July 17, 1989, New Jersey Register. The hearing will be held:

July 21, 1989 at 10:00 A.M.
Labor Education Center Auditorium
Cook College
Ryders Lane
Rutgers University
New Brunswick, New Jersey

The Treatment Works Annual Report and Fee Schedule will be available at the hearing location. **Advance copies** can be obtained at 401 East State St., Trenton, New Jersey between 9:00 A.M. and 4:00 P.M. (telephone requests cannot be taken) or by sending a self-addressed 10 inch by 13 inch envelope to:

New Jersey Dept. of Environmental Protection
Division of Water Resources
Wastewater Facilities Management Element
Bureau of Construction and Connection Permits
Annual Report Request
CN 029
Trenton, New Jersey 08625

Contact Erin Indelicato for further information at (609) 292-4543.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Areawide Water Quality Management Plans
Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) proposes to amend the Water Quality Management (WQM) Plans for the following areas: Atlantic, Cape May, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Sussex, Tri-County, Upper Delaware, and Upper Raritan. Wherever these WQM plans contain language restricting development in freshwater wetlands, that language will be replaced with the following:

"Development requiring wastewater facilities shall not be permitted in freshwater wetlands. This exclusion applies to all infrastructure associated with the proposed development including utilities, roads, stormwater facilities, recreational and other structural facilities, with the exception of those facilities determined by the Department, through the issuance of a permit addressing the activity in wetlands, to be unavoidable. In general, unavoidable development shall be limited to access roads and utility crossings that are necessary to service upland development and that have no practicable alternative. Where such unavoidable development in freshwater wetlands is allowed, the wetlands encroachment shall be minimized to the maximum extent practicable."

The intent of this amendment is to provide uniformity in implementing the wetlands aspects of the WQM Plans. A previously proposed amendment to these WQM Plans, that would have stipulated that "any provisions in this WQM Plan for the protection of freshwater wetlands shall have no regulatory force", has been withdrawn. That amendment was noticed in the New Jersey Register on July 18, 1988 at 20 N.J.R. 1746(f).

This notice is being given to inform the public that the Department is proposing to amend the Atlantic, Cape May, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Sussex, Tri-County, Upper Delaware, and Upper Raritan WQM Plans. These WQM Plans are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday, at the office of the Department of Environmental Protection, Division of Water Resources, Bureau of Water Quality Planning, located at 401 East State Street, Third Floor, CN 029, Trenton, New Jersey 08625.

Interested persons may submit written comments on the proposed amendment to George Horzepa, Bureau of Water Quality Planning, at the Department address cited above. All comments must be submitted within 30 days of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the proposed amendment.

Any interested person may request in writing that the Department hold a nonadversarial public hearing on the proposed amendment. This request must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the Department address cited above. If a public hearing is held, the public comment period in this notice shall be extended for 15 days following the hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan
Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Borough of Franklin Lakes Wastewater Management

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Plan (WMP). That document allows for the expansion of the Urban Farms Shopping Center Treatment Plant and establishes a sewer service area for that facility. The Borough of Franklin Lakes will be designated as the Wastewater Management Agency.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on March 31, 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 includes the site of the Environmental Park in Egg Harbor Township in the Atlantic County Utilities Authority (ACUA) sewer service area. The Environmental Park includes a 900 tons per day Resource Recovery Facility, an ash landfill, a regional recycling center, and associated uses on 343 acres. Wastewater generation is estimated at 80,000 gallons per day. Treatment will be at the ACUA's City Island Sewerage Treatment Plant.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that on January 25, 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 Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment is for the expansion of the Middlesex County Utilities Authority sewer service area to include the Industrial Highway Corporation development (Lots 3, 4, and 6 of Block 71) in Woodbridge Township. Approval of sewer service for Lot 6, however, is conditioned on obtaining a Water Quality Certification.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that on March 14, 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 Monmouth County Water Quality Management Plan was adopted by the Department. This amendment is to adopt the Western Monmouth Utilities Authority's (WMUA) Wastewater Management Plan (WMP). The WMP addresses wastewater planning for the Townships of Manalapan and Marlboro as member communities and the Borough of Englishtown and a portion of Freehold Township as customer communities. The WMP expands portions of the sewer service areas, projects flows based on population, delineates areas to be served by on-site wastewater facilities and individual disposal systems. Additionally, the WMP provides for the expansion of the WMUA's Pine Brook Sewage Treatment Plant from 6.6 million gallons per day (MGD) to 9.0 MGD.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that on March 31, 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 Ocean County Water Quality Management Plan was adopted by the Department. This amendment is to expand the sewer service area of the Stafford Township Municipal Utilities Authority to include the site of the Stafford Township Intermediate School, Block 118 Lot 1.

(e)

DIVISION OF PARKS AND FORESTRY

Natural Areas System Management Plan for Allamuchy Natural Area

Authority: N.J.S.A. 13:1B-15.12a et seq.

Take notice that, in accordance with N.J.A.C. 7:2-11.8 and the recommendation of the Natural Areas Council, Christopher J. Daggett, Commissioner, Department of Environmental Protection, has adopted a management plan for Allamuchy Natural Area.

The Allamuchy Natural Area, located within Allamuchy Mountain State Park in Allamuchy Township, Warren County, and Byram Township, Sussex County, is a State-owned parcel administered by the Department's Division of Parks and Forestry through Hopatcong State Park. The designation objective for Allamuchy Natural Area is preservation of a hardwood forest of significant size, preservation of successional fields, and protection of a rare plant community (limestone fen community). The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long and short term management techniques and public uses to ensure preservation of the natural area in accordance with its designation objective (see N.J.A.C. 7:2-11.8).

At the February 1, 1989 Council meeting, the Natural Areas Council reviewed a draft management plan prepared by the Department and received staff recommendations regarding the management of the Allamuchy Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Allamuchy Natural Area and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection for his approval. The Commissioner of Environmental Protection approved the Allamuchy Natural Area Management Plan on May 24, 1989.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

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Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State Street
Station Plaza Bldg. #5, 2nd Floor
Trenton, New Jersey 08625

This notice is published as a matter of public information.

HUMAN SERVICES

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Notice of Public Hearings
Long Range Plan 1990-2000

Take notice that the Commission for the Blind and Visually Impaired will hold **public hearings** as follows, in order to receive comments about the Commission's draft Long Range Plan 1990-2000.

Thursday, July 6, 1989
12:00 noon to 3:00 P.M.
5:00 P.M. to 8:00 P.M.
Hall of Justice
Court Room 46, 4th floor
Fifth Street and Mickle Blvd.
Camden, N.J. 08103

Friday, July 7, 1989
2:00 P.M. to 8:00 P.M.
New Jersey Transit Corporate Headquarters
Board Room
Market Street and McCarter Highway
Newark, N.J. 07102

Monday, July 10, 1989
12:00 noon to 3:00 P.M.
5:00 P.M. to 8:00 P.M.
Morristown Public Library
1 Miller Road (corner of Miller Rd. and South St.)
Morristown, N.J. 07960

Monday, July 17, 1989
1:30 P.M. to 4:30 P.M.
7:00 P.M. to 9:00 P.M.
Dover Township Municipal Building
Community Room
Lower Level
33 Washington Street
Toms River, N.J. 08753

Persons who wish to testify should call Karl A. Seidman, Planning Coordinator, at 201-648-3251. A written copy of your oral testimony should also be provided, if possible.

Comments may also be submitted in writing up to July 21, 1989 and should be sent to:

Karl A. Seidman, Planning Coordinator
Commission of the Blind and Visually Impaired
1100 Raymond Boulevard
Newark, N.J. 07102

A copy of the draft Long Range Plan may be obtained by calling or writing Karl A. Seidman. This document is also available on cassette tape upon request.

(b)

OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Availability of Grant Funds
Statewide Public Education Multi-Media Campaign for the Prevention of Mental Retardation and Developmental Disabilities

Take notice that, in compliance with P.L. 1987, c.7, which supplements Title 52 of the Revised Statutes, the Department of Human Services announces the following availability of funds.

A. Name of the grant program that have funds available:

Statewide Public Education Multi-Media Campaign for the Prevention of Mental Retardation and Developmental Disabilities.

B. Purpose for which the grant program funds shall be used:

Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD) has funds available to support the design and implementation of a Statewide public education multi-media campaign for the prevention of mental retardation and developmental disabilities. The goal of the campaign is to educate the community about healthy preconceptional and prenatal behaviors which will, over time, help to decrease the incidences of infant mortality and low birth weight in New Jersey.

C. Amount of money in the grant program:

One grant in the amount of $80,000 will be awarded.

D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:

Applicants may be non-profit, for profit, or public entities.

E. Qualifications needed by an applicant to be considered for the grant program:

Applicants must have professional expertise in marketing, public relations, and working with the media. They must demonstrate knowledge and experience in the following areas: (1) prevention of the birth of preterm infants who are at great risk of developmental disabilities; (2) socioeconomic factors which may be barriers to healthy preconceptional and prenatal behaviors (for example, substance abuse, adolescent pregnancy, etc.); (3) designing educational programs for "hard-to-reach" populations, such as school drop-outs and individuals who may be illiterate; and (4) familiarity with other State programs which serve at risk women and families, such as the New Jersey Department of Health, Healthy Mothers/Healthy Babies Coalitions or the Women, Infant, and Children (WIC) Nutrition Program.

F. Procedure for eligible entities to apply for grant funds:

Proposal packages may be requested from:

Deborah E. Cohen, Director
Department of Human Services
Office for Prevention of Mental Retardation
and Developmental Disabilities
222 South Warren Street, 4th floor
CN 700
Trenton, New Jersey 08625
609-884-3351

G. Address of division, office or official receiving application: Same as F. above.

H. Deadline by which applications must be submitted to the office:

Proposals must be submitted by July 15, 1989.

I. Date by which applicants shall be notified whether they will receive funds under the grant program:

Applicants shall receive notice of approval or disapproval by September 1, 1989.

(c)

OFFICE FOR THE PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Availability of Grant Funds
School Based Youth Services

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Office for the Prevention of Mental Retardation and Developmental

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Disabilities hereby announces the availability of the following grant program funds.

A. **Name of program:**
Technical Assistance in Disability Prevention for the School Based Youth Services Program.

B. **Purpose:**
To provide technical assistance to the personnel of the 29 school districts which are participating in the School Based Youth Services Program, relative to the prevention of disabilities among adolescents, in the following areas: substance abuse, maternal and child health, general health, suicide prevention, depression and mental health services, and injury prevention, specifically in regard to motor vehicle and recreational accidents.

C. **Amount of money in the program:**
One grant, in the amount of $75,000, will be awarded.

D. **Organizations which may apply for funding under this program:**
Agencies must be New Jersey-based organizations, non-profit or public entities.

E. **Qualifications needed by an applicant to be considered for funding:**
The applicant must demonstrate prior knowledge and experience in:
1. The prevention of disabilities;
2. The design and implementation of training programs;
3. Work with school personnel; and
4. The obtaining and dissemination of resource materials to the school based youth services projects.

F. **Procedure for eligible organizations to apply:**
Proposal packages may be requested from:

Deborah E. Cohen, Director
Office for the Prevention of Mental
Retardation and Developmental
Disabilities, Department of Human Services
222 South Warren St., 4th floor
CN 700
Trenton, N.J. 08625
609-984-3351

G. **Address to which applications must be submitted:**
Same as F, above.

H. **Deadline by which applications must be submitted:**
Proposals must be submitted by July 15, 1989.

I. **Date by which applicant shall be notified of approval or disapproval:**
Applicants will receive notice of approval or disapproval by September 1, 1989.

(a)

OFFICE FOR THE PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Availability of Grant Funds
Statewide Coalition

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Office for the Prevention of Mental Retardation and Developmental Disabilities hereby announces the availability of the following grant program funds.

A. **Name of program:**
Statewide Coalition for the Prevention of Mental Retardation and Developmental Disabilities.

B. **Purpose:**
The purpose of the grant is to support the administration of the Coalition, which consists of individuals and agencies throughout New Jersey which advocate for the prevention of the above-named disabilities, and which sponsors an annual conference which features speakers with nationally-known expertise in the field, develops curricula for elementary and secondary schools, and conducts training of teachers, nurses, health educators, and other school personnel.

C. **Amount of money in the program:**
One grant, in the amount of $83,000, will be awarded.

D. **Organizations which may apply for funding under this program:**
Agencies must be New Jersey-based organizations, non-profit or public entities.

E. **Qualifications needed by an applicant to be considered for funding:**
The applicant must demonstrate prior knowledge and experience in:
1. The prevention of mental retardation and developmental disabilities;
2. The organization of large statewide conferences;
3. Education and organization of community groups regarding prevention, and gaining their support in the Coalition;
4. Provision of technical assistance to local communities and agencies in the development of prevention programs; and
5. The obtaining and dissemination of related materials and resources.

F. **Procedure for eligible organizations to apply:**
Proposal packages may be requested from:

Deborah E. Cohen, Director
Office for the Prevention of Mental
Retardation and Developmental
Disabilities, Department of Human Services
222 South Warren St., 4th floor
CN 700
Trenton, N.J. 08625
609-984-3351

G. **Address to which applications must be submitted:**
Same as F, above.

H. **Deadline by which applications must be submitted:**
Proposals must be submitted by July 15, 1989.

I. **Date by which applicant shall be notified of approval or disapproval:**
Applicants will receive notice of approval or disapproval by September 1, 1989.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Coupon Cashing Machines
N.J.A.C. 19:45-1.46

Petitioner: Trump Plaza Associates
Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on May 19, 1989, Trump Plaza Associates filed a rulemaking petition with the Casino Control Commission proposing an amendment to N.J.A.C. 19:45-1.46.

The petitioner proposes that N.J.A.C. 19:45-1.46 be amended to allow the use of a machine capable of redeeming coupons issued pursuant to that rule for complimentary cash or slot tokens. The petitioner contends that limiting coupon redemption to changepersons, at slot change booths by slot cashiers, or at the cashier's cage by a general cashier constitutes an impediment to efficient operation because of a shortage of licensed personnel in those job categories. Accordingly, the petitioner would amend N.J.A.C. 19:45-1.46(i) to allow the use of coupon cashing machines in addition to the redemption sources now authorized.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 52:14B-4.

(c)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Shuffle and Cut of Cards
N.J.A.C. 19:47-3.5 and 7.5

Petitioners: Eleven Casino Licensees
Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on May 10, 1989, 11 casino licensees filed a rulemaking petition with the Casino Control Commission proposing amendments to N.J.A.C. 19:47-3.5 and 7.5.

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The petitioners propose to eliminate the lacing of the cards from the shuffle and cut procedure currently required in the games of baccarat punto banco and minibaccarat. The petitioners contend that the lacing process, during which the dealer, after shuffling the cards, inserts approximately one deck of cards evenly dispersed into the remaining stack, renders the games susceptible to cheating and swindling because of the possibility of "spiked" cards being inserted. Accordingly, the petitioners would eliminate the lacing equipment by amending N.J.A.C. 19:47-3.5(b) and 7.5(b).

After due notice, the petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 52:14B-4.

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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 May 1, 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 APRIL 17, 1989

NEXT UPDATE: SUPPLEMENT MAY 15, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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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. 1317 and 1500	June 20, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1179 and 1472	May 15, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2949 and 3046	December 5, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to OAL	21 N.J.R. 1181(a)		
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
Most recent update to Title 1: TRANSMITTAL 1989-3 (supplement April 17, 1989)				
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importations	21 N.J.R. 1477(a)		
2:5	Equine infectious anemia and avian influenza	21 N.J.R. 1479(a)		
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)	R.1989 d.270	21 N.J.R. 1384(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:69-1.11	Commercial values of primary plant nutrients	21 N.J.R. 813(a)	R.1989 d.326	21 N.J.R. 1668(a)
2:71-2.2, 2.4	"Jersey Fresh" logo program	21 N.J.R. 591(a)	R.1989 d.235	21 N.J.R. 1118(a)
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)	R.1989 d.234	21 N.J.R. 1118(b)
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)		
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)		
Most recent update to Title 2: TRANSMITTAL 1989-4 (supplement April 17, 1989)				
BANKING—TITLE 3				
3:1-16.1	Mortgage loan practices	21 N.J.R. 957(a)	R.1989 d.332	21 N.J.R. 1668(b)
3:11	Lending and investments by State banks	21 N.J.R. 367(a)	R.1989 d.236	21 N.J.R. 1121(a)
3:22-1	Insurance premium finance agreements	21 N.J.R. 661(a)	R.1989 d.307	21 N.J.R. 1516(a)
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		
Most recent update to Title 3: TRANSMITTAL 1989-1 (supplement April 17, 1989)				
CIVIL SERVICE—TITLE 4				
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(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)	20 N.J.R. 2955(b)		
4:3-16	Layoffs in local service	21 N.J.R. 1185(a)		
4:3-16	Layoffs in local service: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1480(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)				
PERSONNEL—TITLE 4A				
4A:3-2.2	Designation of SES positions: administrative correction	_____	_____	21 N.J.R. 1331(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)				
COMMUNITY AFFAIRS—TITLE 5				
5:2-1	Organization of department (see also 5:51-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:2-2	Petitions for rules (recodified from 5:29-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:10-11.1	Hotels and multiple dwellings: correction to text	_____	_____	21 N.J.R. 1123(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:11-8.5	Recovery of relocation assistance costs	21 N.J.R. 1039(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)	R.1989 d.10	21 N.J.R. 1123(b)
5:15-3.1, 3.4	Emergency shelters for homeless	21 N.J.R. 1509(a)		
5:17	Retirement community full disclosure	21 N.J.R. 958(a)	R.1989 d.317	21 N.J.R. 1669(a)
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:26-1.3, 11.7	Retirement community full disclosure	21 N.J.R. 958(a)	R.1989 d.317	21 N.J.R. 1669(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:29-1	Petitions for rules (see 5:2-2)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:29-2	Landlord-tenant relations	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)	R.1989 d.227	21 N.J.R. 1133(a)
5:51-1	Handicapped Persons' Recreational Opportunities Act (recodified from 5:2-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)	R.1989 d.259	21 N.J.R. 1331(b)
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)		
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:92-1.3, 11.2, 14.3	Council on Affordable Housing: alternative living arrangements	21 N.J.R. 595(a)	R.1989 d.264	21 N.J.R. 1331(c)
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)	R.1989 d.265	21 N.J.R. 1332(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 the institutionalized elderly	21 N.J.R. 368(a)	R.1989 d.295	21 N.J.R. 1516(b)
5:100	Ombudsman for the institutionalized elderly: extension of comment period	21 N.J.R. 958(b)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		

Most recent update to Title 5: TRANSMITTAL 1989-4 (supplement April 17, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:28	Special education	21 N.J.R. 239(a)	R.1989 d.239	21 N.J.R. 1385(a)
6:30-1.7, 2.3, 2.6	Adult education programs: monitoring and funding	21 N.J.R. 1039(b)		
6:39	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:46-4.1, 4.4–4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)	R.1989 d.241	21 N.J.R. 1137(a)

Most recent update to Title 6: TRANSMITTAL 1989-4 (supplement April 17, 1989)

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7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2–1.5, 1.7–1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)		
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)		
7:6	Boating rules	Emergency (expires 6-11-89)	R.1989 d.244	21 N.J.R. 1157(a)
7:6-1.44, 4.7, 9	Lanyard cut-off switch; Greenwood Lake boating; personal watercraft	Emergency (expires 6-11-89)	R.1989 d.245	21 N.J.R. 1157(b)
7:7	Coastal Permit Program	21 N.J.R. 369(a)	R.1989 d.309	21 N.J.R. 1526(a)
7:7	Coastal Permit Program: extension of comment period	21 N.J.R. 1041(a)		
7:7	Coastal Permit Program: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:7-2.3	Waterfront development	21 N.J.R. 4(a)	R.1989 d.243	21 N.J.R. 1141(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-1.4, 2.5, 6, 7	Freshwater wetlands transition areas	21 N.J.R. 596(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)	R.1989 d.271	21 N.J.R. 1332(b)
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:11-2.1–2.5, 2.8–2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)	R.1989 d.310	21 N.J.R. 1527(a)
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9, 9.12	Shellfish-growing water classification	21 N.J.R. 1041(b)		
7:13	Flood hazard area control	21 N.J.R. 371(a)		
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13	Flood Hazard Area Control: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)		
7:13-7.1(d)	Redelineation of Ramapo River: extension of comment period	21 N.J.R. 1482(a)		
7:14	Water pollution control	21 N.J.R. 373(a)	R.1989 d.282	21 N.J.R. 1530(a)
7:14A	New Jersey Pollutant Discharge Elimination System (NJPDES)	21 N.J.R. 707(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:23	Emergency flood control	21 N.J.R. 1051(a)		
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)		
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)		
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)	R.1989 d.269	21 N.J.R. 1333(a)
7:25-22.1–22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(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)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)	R.1989 d.308	21 N.J.R. 1558(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)	R.1989 d.331	21 N.J.R. 1669(b)
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:28-25	Radiation laboratory fee schedule	21 N.J.R. 826(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1–11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		

Most recent update to Title 7: TRANSMITTAL 1989-4 (supplement April 17, 1989)

HEALTH—TITLE 8

8:8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)	R.1989 d.246	21 N.J.R. 1412(a)
8:31B-3.16	Hospital reimbursement: labor cost component	21 N.J.R. 661(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.22, 3.23, 3.24, App. XI	Hospital reimbursement: graduate medical education	21 N.J.R. 1059(a)		
8:31B-3.51–3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)		
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)	R.1989 d.272	21 N.J.R. 1419(a)
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)	R.1989 d.322	21 N.J.R. 1680(a)
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)		
8:33G	Computerized tomography services: certificate of need process	21 N.J.R. 1061(a)		
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)	R.1989 d.276	21 N.J.R. 1423(a)
8:33J-1.1–1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)	R.1989 d.274	21 N.J.R. 1423(b)
8:33M	Rehabilitation hospitals and comprehensive rehabilitation services: need review process	21 N.J.R. 1062(a)		
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(b)	R.1989 d.273	21 N.J.R. 1425(a)
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)	R.1989 d.323	21 N.J.R. 1681(a)
8:42A	Licensure of alcoholism treatment facilities: correction to proposal	21 N.J.R. 833(a)		
8:43B-11.1, 11.3, 11.4	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43H	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)		
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:60-1.4, 2.1 (12:120-1.4, 2.1)	Asbestos removal defined	20 N.J.R. 1049(a)	R.1989 d.247	21 N.J.R. 1333(b)
8:61-2.4	Retrovir reimbursement program	21 N.J.R. 606(b)	R.1989 d.275	21 N.J.R. 1429(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b), 756(b))	20 N.J.R. 1766(a)	R.1989 d.257	21 N.J.R. 1430(a)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c), 756(a))	20 N.J.R. 2356(a)	R.1989 d.256	21 N.J.R. 1429(c)
8:71	Interchangeable drug products (see 21 N.J.R. 755(b))	20 N.J.R. 3078(a)	R.1989 d.255	21 N.J.R. 1429(b)
8:71	List of Interchangeable Drug Products (see 21 N.J.R. 755(a))	21 N.J.R. 7(a)		
8:71	Interchangeable drug products	21 N.J.R. 662(a)		
8:71	Interchangeable drug products	21 N.J.R. 1488(a)		
8:71	Interchangeable drug products: administrative correction	———	———	21 N.J.R. 1699(a)

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9:2-4.1	Alternate benefit program: eligibility for enrollment	21 N.J.R. 1268(a)		
9:4-1.3, 1.9, 1.10, 2.1–2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:9-11	Stafford Loan Program: institution compliance standards	21 N.J.R. 963(a)		
9:11-1.5	Educational Opportunity Fund: eligibility for undergraduate grants	21 N.J.R. 1489(a)		
9:15	Graduate medical education program	21 N.J.R. 1271(a)		

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HUMAN SERVICES—TITLE 10				
10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)	R.1989 d.315	21 N.J.R. 1699(b)
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)	R.1989 d.284	21 N.J.R. 1562(a)
10:37-5.6–5.11, 5.16–5.24	Repeal (see 10:31)	21 N.J.R. 273(a)	R.1989 d.283	21 N.J.R. 1572(a)
10:40	Organization of Division of Developmental Disabilities	Exempt	R.1989 d.301	21 N.J.R. 1572(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)	R.1989 d.302	21 N.J.R. 1573(a)
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:49-1.1, 1.7–1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:63-3.21	Long-term care facilities: Medicaid occupancy level supplemental payment	Emergency (expires 6-17-89)	R.1989 d.254	21 N.J.R. 1456(a)
10:67-1.1, 1.6	Psychological Services: correction to text	_____	_____	21 N.J.R. 1430(b)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:80-1	Organization of Division of Public Welfare	Exempt	R.1989 d.316	21 N.J.R. 1700(a)
10:81-3.5	Verification of income and resources: administrative correction	_____	_____	21 N.J.R. 1430(c)
10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)		
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)		
10:81-14.5, 14.18	REACH Program: post-AFDC child care	21 N.J.R. 1086(b)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)	Expired	
10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)		
10:85-3.2	GAM application process: correction to text	_____	_____	21 N.J.R. 1147(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:97	Vending Facility Program for blind and visually impaired	21 N.J.R. 424(a)	R.1989 d.249	21 N.J.R. 1431(a)
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:120	Youth and Family Services hearings: reopening of comment period	21 N.J.R. 1580(a)		
10:122	Requirements for child care centers	20 N.J.R. 3079(b)	R.1989 d.261	21 N.J.R. 1431(b)
10:123-3.2	Residential health care facilities/boarding homes: personal needs allowance	21 N.J.R. 788(a)	R.1989 d.285	21 N.J.R. 1575(a)
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)		

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10A:9-1.3, 5.2	Application of time credits to mandatory minimum term	21 N.J.R. 664(a)	R.1989 d.299	21 N.J.R. 1516(c)
10A:16-2.9	Infirmary care	21 N.J.R. 969(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)		
10A:18-2.5, 4.4	Correspondence between inmates at different facilities; exchange of publications	21 N.J.R. 837(a)	R.1989 d.318	21 N.J.R. 1701(a)
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:19	Public information	21 N.J.R. 1490(a)		
10A:33	Juvenile Detention Commitment Programs	21 N.J.R. 667(a)	R.1989 d.286	21 N.J.R. 1517(a)
10A:34-2.16, 2.20	Municipal detention facilities: surveillance of detainees; reporting deaths	21 N.J.R. 969(b)		

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11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)	R.1989 d.329	21 N.J.R. 1702(a)
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-11.1, 11.6, 11.15, 11.18, 23.3, 23.5, 23.8	Life and health insurance advertising: third-party endorsements	21 N.J.R. 970(a)		
11:2-24	High-risk investments by insurers	21 N.J.R. 838(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 611(a)		
11:3-17	Rating organizations: private passenger automobile filings	21 N.J.R. 973(a)	R.1989 d.328	21 N.J.R. 1708(a)
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-20	Private passenger automobile insurers: financial disclosure and excess profits reporting	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1335(a)
11:3-20	Financial disclosure and excess profits reporting: corrected responses to comments	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1517(b)
11:3-20A	Private passenger automobile insurers: computation of excess profits	21 N.J.R. 842(a)	R.1989 d.306	21 N.J.R. 1517(c)
11:3-22.1, 22.3, Forms A, B	Automobile coverage option survey: PIP and tort threshold	21 N.J.R. 619(a)	R.1989 d.267	21 N.J.R. 1358(a)
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)	R.1989 d.278	21 N.J.R. 1358(b)
11:3-25	Automobile coverage: residual market equalization charges	21 N.J.R. 278(a)	R.1989 d.279	21 N.J.R. 1361(a)
11:3-25.3, 25.4	Residual market equalization charges: administrative correction	_____	_____	21 N.J.R. 1708(b)
11:3-26, 27, 28	Unsatisfied Claim and Judgment Fund rules	21 N.J.R. 688(a)	R.1989 d.268	21 N.J.R. 1363(a)
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)		
11:4-33	Life insurers: excess interest reserve adjustment	21 N.J.R. 1308(a)		
11:5-1.10	Real estate broker and salesperson employment agreement	21 N.J.R. 1308(b)		
11:5-1.10	Real estate broker and salesperson employment agreement: correction to proposal summary	21 N.J.R. 1494(a)		
11:5-1.12	Record maintenance by real estate brokers	21 N.J.R. 1310(a)		
11:5-1.14	License lending by real estate licenses	21 N.J.R. 1311(a)		
11:5-1.15	Advertising by licensed real estate brokers	21 N.J.R. 1312(a)		
11:5-1.15	Real estate advertising: administrative correction	_____	_____	21 N.J.R. 1708(c)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of primary real estate offices	21 N.J.R. 1312(b)		
11:5-1.19	Supervision of branch real estate offices	21 N.J.R. 1313(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)	Expired	
11:5-2	Organization of Real Estate Commission	Exempt	R.1989 d.258	21 N.J.R. 1364(a)
11:5-2.2, 2.3	Real Estate Commission organization and functions	Exempt	R.1989 d.324	21 N.J.R. 1709(a)
11:5-3, 4, 5	Formal proceedings by Real Estate Commission	21 N.J.R. 1314(a)		
11:15-2.2, 2.13, 2.21	Joint insurance funds for local government units	21 N.J.R. 1494(b)		
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record	20 N.J.R. 2855(a)		

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12:16-4.8	Employee remuneration for lodging and meals, room and board	21 N.J.R. 689(b)	R.1989 d.303	21 N.J.R. 1576(a)
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:17-7.1, 7.2, 7.3	Unemployment Compensation and Temporary Disability: disclosure of information	21 N.J.R. 975(a)	R.1989 d.327	21 N.J.R. 1709(b)
12:20	Board of Review: appeals of unemployment benefit determinations	21 N.J.R. 1496(a)		

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12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-2	Transportation for employees of sheltered workshops	21 N.J.R. 690(a)	R.1989 d.305	21 N.J.R. 1576(b)
12:46–12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:56-2.1	Wage and hour compliance: trainees in company programs	21 N.J.R. 692(a)	R.1989 d.304	21 N.J.R. 1578(a)
12:100-4.2	Public employee safety and health: air contaminant exposure limits	21 N.J.R. 1089(a)		
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:100-8	Public employee safety and health: indoor firing ranges	21 N.J.R. 1094(a)		
12:100-11	Public employee safety and health: control of hazardous energy sources	21 N.J.R. 620(a)	R.1989 d.238	21 N.J.R. 1144(a)
12:120-1.4, 2.1 (8:60-1.4, 2.1)	Asbestos removal defined	20 N.J.R. 1049(a)	R.1989 d.247	21 N.J.R. 1333(b)

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12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
12A:100-1.2, 1.3, 1.4	Commission on Science and Technology: Innovation/Partnership program	21 N.J.R. 433(a)	R.1989 d.225	21 N.J.R. 1146(a)
12A:120-2	Urban Enterprise Zone Program: certification for zone business benefits	21 N.J.R. 693(a)		

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13:1-1.1, 4.6, 5.1	Police Training Commission: training of corrections and juvenile detention officers	21 N.J.R. 695(a)	R.1989 d.260	21 N.J.R. 1365(a)
13:2-20	Transportation of alcoholic beverages by licensees; insignia	21 N.J.R. 1300(a)		
13:2-21	Transportation of alcoholic beverages into, through or out of State	21 N.J.R. 1304(a)		
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)		
13:23	Commercial driving schools	21 N.J.R. 976(a)	R.1989 d.333	21 N.J.R. 1710(a)
13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 4.13	Architectural practice and responsibility	21 N.J.R. 433(b)	R.1989 d.294	21 N.J.R. 1519(a)
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
13:29-6.5	Practice of accountancy: clarification concerning CPE credits	_____	_____	21 N.J.R. 1147(b)
13:29-6.8	Accountancy continuing education credit hours: administrative correction	_____	_____	21 N.J.R. 1366(a)
13:30-2.19	Inactive dental hygienists: resumption of practice	21 N.J.R. 1500(c)		
13:35-6.10	Advertising and solicitation by physicians	21 N.J.R. 696(a)	R.1989 d.325	21 N.J.R. 1710(b)
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)	R.1989 d.252	21 N.J.R. 1366(b)
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)	R.1989 d.314	21 N.J.R. 1712(a)
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:44	Board of Veterinary Medical Examiners	21 N.J.R. 1501(a)		
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13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-2	Motor vehicle advertising practices	21 N.J.R. 115(a)	R.1989 d.253	21 N.J.R. 1368(a)
13:45A-2.3	Motor vehicle advertising practices: administrative correction	_____	_____	21 N.J.R. 1520(a)
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45B-4	Temporary help service firms	20 N.J.R. 2684(a)		
13:47-2.8	Legalized games of chance: organization ID numbers	21 N.J.R. 698(a)		
13:47-7.1	Bingo games	21 N.J.R. 698(b)		
13:47A-2.10	Investment advisory contracts: performance fee compensation	21 N.J.R. 12(a)	R.1989 d.319	21 N.J.R. 1741(a)
13:47C	Weights and measures: general commodities	21 N.J.R. 1096(a)		
13:75	Practice and procedure before Violent Crimes Compensation Board	21 N.J.R. 881(b)		

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14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
14:17	Office of Cable Television: practice and procedure	21 N.J.R. 440(a)	R.1989 d.266	21 N.J.R. 1374(a)
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14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
14A:14-2.1	Definition of electric facility	21 N.J.R. 882(a)		
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16:20A-2.1, App. I	Federal and Urban System Substitution Program: administrative correction	_____	_____	21 N.J.R. 1520(b)
16:20B-1.1–1.4, 2.1, 3.1, 3.2, 4.1–4.3, 5.1, App. I, II	New Jersey Transportation Trust Fund: municipal aid	21 N.J.R. 626(a)	R.1989 d.228	21 N.J.R. 1149(a)
16:26-3	Reimbursed highway safety lighting	21 N.J.R. 628(a)	R.1989 d.230	21 N.J.R. 1151(a)
16:28-1.49	Speed limits on Route 35 in Monmouth County	21 N.J.R. 698(c)	R.1989 d.287	21 N.J.R. 1520(c)
16:28-1.49	Speed limits along Route 35 in Woodbridge	21 N.J.R. 1097(a)		
16:28-1.72, 1.75	Speed limit zones along U.S. 206 in Atlantic and Burlington counties, and Route 36 in Monmouth County	21 N.J.R. 435(a)	R.1989 d.248	21 N.J.R. 1375(a)
16:28-1.72, 1.77	School and speed limit zones along U.S. 206 in Hamilton and Route 29 in Stockton	21 N.J.R. 1501(b)		
16:28-1.76	Speed limit zones along Route 15 in Sussex County	21 N.J.R. 699(a)	R.1989 d.292	21 N.J.R. 1521(a)
16:28A-1.1, 1.21, 1.24, 1.38	Parking and stopping restrictions along U.S. 1 in Plainsboro, U.S. 30 in Somerdale, Route 34 in Old Bridge, and Route 71 in Asbury Park	21 N.J.R. 1283(a)		
16:28A-1.6	Handicapped parking space on Route 7 in Belleville	21 N.J.R. 883(a)	R.1989 d.296	21 N.J.R. 1521(b)
16:28A-1.7	Bus stop zone along U.S. 9 in Old Bridge	21 N.J.R. 1284(a)		
16:28A-1.13, 1.25, 1.46, 1.110	Restricted parking and standing along U.S. 22 in Lopatcong, Route 35 in Eatontown, U.S. 130 in Westville, and Route 91 in North Brunswick	21 N.J.R. 883(b)	R.1989 d.298	21 N.J.R. 1522(a)
16:28A-1.18	No parking zones along Route 27 in South Brunswick and Franklin Township	21 N.J.R. 700(a)	R.1989 d.288	21 N.J.R. 1522(b)
16:28A-1.18, 1.71	Parking and standing restrictions along Route 27 in Linden and Route 67 in Fort Lee	21 N.J.R. 978(a)	R.1989 d.321	21 N.J.R. 1742(a)
16:28A-1.19, 1.109	Restricted parking along Route 28 in Elizabeth, and no stopping or standing zones along Route 324 in Logan Township	21 N.J.R. 701(a)	R.1989 d.290	21 N.J.R. 1523(b)
16:28A-1.21	Bus stop zones along U.S. 30 in Lindenwold	21 N.J.R. 1097(b)		
16:28A-1.31, 1.46	Bus stop zones along Route 45 in Mannington Township and U.S. 130 in Delran Township	21 N.J.R. 701(b)	R.1989 d.289	21 N.J.R. 1523(a)
16:28A-1.53	Parking alone Route 179 in Lambertville: administrative correction	_____	_____	21 N.J.R. 1152(a)
16:28A-1.55	Time limit parking zones along U.S. 202 in Bernardsville	21 N.J.R. 436(a)	R.1989 d.250	21 N.J.R. 1376(a)
16:30-9.1	Use of Route 35 bridge over Manasquan River in Point Pleasant and Brielle	21 N.J.R. 437(a)	R.1989 d.251	21 N.J.R. 1376(b)

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16:31-1.27	Prohibited turns along Route 17 in Rutherford	21 N.J.R. 884(a)	R.1989 d.297	21 N.J.R. 1524(b)
16:33	Repeal (see 16:45)	21 N.J.R. 1284(b)		
16:45	Construction control: contractor claims; substantial completion	21 N.J.R. 1284(b)		
16:53	Autobus specifications and inspection fees	21 N.J.R. 1098(a)		
16:53B	Jurisdictional assignments for railroad overhead bridges	21 N.J.R. 1103(a)		
16:53D	Bus carrier zone of rate freedom	21 N.J.R. 703(a)	R.1989 d.293	21 N.J.R. 1524(c)
16:56	Airport Safety Improvement Aid	21 N.J.R. 1502(a)		
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)	R.1989 d.242	21 N.J.R. 1376(c)
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16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)		

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17:2-4.3	Public Employees' Retirement System: school year members	21 N.J.R. 979(a)		
17:2-6.4	Public Employees' Retirement System: outstanding loans at retirement	21 N.J.R. 629(a)	R.1989 d.313	21 N.J.R. 1743(b)
17:2-6.27	Public Employees' Retirement System: benefit coverage during work-related travel	21 N.J.R. 1285(a)		
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	21 N.J.R. 980(a)		
17:3-5.9	Teachers' Pension and Annuity Fund: lump-sum purchases	21 N.J.R. 980(b)		
17:4-6.4	Police and Firemen's Retirement System: outstanding loans at retirement	21 N.J.R. 630(a)	R.1989 d.280	21 N.J.R. 1524(d)
17:6-1.4	Consolidated Police and Firemen's Pension Fund: candidates for commission membership	21 N.J.R. 438(a)	R.1989 d.320	21 N.J.R. 1744(a)
17:9-2.4, 5.11	State Health Benefits Program: enrollment of dependents of 10-month employees	21 N.J.R. 886(a)		
17:9-2.6, 2.7	State Health Benefits Program: effective date of coverage	21 N.J.R. 1503(a)		
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:9-7.2	State Health Benefits Program: reenrollment after termination of covered public employment	21 N.J.R. 886(b)		
17:20-8.1	Lottery vendors' code of ethics	21 N.J.R. 631(a)		
17:25	Collection of educational loan debts owed by public employees	21 N.J.R. 887(a)	R.1989 d.330	21 N.J.R. 1744(b)

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19:45-1.3	Section 99 submissions	21 N.J.R. 1506(a)		
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19:45-1.28	Deposit of checks from gaming patrons	21 N.J.R. 1288(a)		
19:47-2.15	Blackjack irregularities	20 N.J.R. 3014(a)	R.1989 d.231	21 N.J.R. 1155(a)
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