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# NEW JERSEY REGISTER

*THE JOURNAL OF STATE AGENCY RULEMAKING*

**VOLUME 23 NUMBER 17**

**September 3, 1991 Indexed 23 N.J.R. 2561-2806**

**(Includes adopted rules filed through August 12, 1991)**

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 17, 1991**
**See the Register Index for Subsequent Rulemaking Activity.**

**NEXT UPDATE: SUPPLEMENT JULY 15, 1991**

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# INTERESTED PERSONS

**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until **October 3, 1991.** 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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| **November 4 issue:** | |
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| **Adoptions** | **October 11** |
| **November 18 issue:** | |
| **Proposals** | **October 17** |
| **Adoptions** | **October 24** |


**NEW JERSEY REGISTER**

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

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


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# EXECUTIVE ORDER

## (a)

## OFFICE OF THE GOVERNOR
## Governor James J. Florio
## Executive Order No. 38(1991)
## Implementation of Reorganization Plan No. 002-1991

Issued: August 14, 1991.
Effective: August 19, 1991.
Expiration: Indefinite.

WHEREAS, Reorganization Plan (No. 002-1991) is due to become effective on August 19, 1991 in order to enhance the coordination and integration of the State's utility, environmental and energy policies; and

WHEREAS, the provisions of this Plan with respect to the operations and organization of the Board of Regulatory Commissioners and the Department of Environmental Protection and Energy warrant further clarification and specificity; and

WHEREAS, implementation of this Plan requires the coordinated efforts and assistance of other departments and agencies of the Executive Branch; and

WHEREAS, the prompt, efficient and effective implementation of the Plan is in the best interest of the State particularly during this difficult fiscal period;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All departments and agencies of the Executive Branch shall—

a. Take all actions reasonably necessary and appropriate for the effective implementation of Reorganization Plan (No. 002-1991), and provide any assistance, as may be appropriate and requested by the Board of Regulatory Commissioners (the Board) or the Department of Environmental Protection and Energy (the Department), or both, to implement the provisions of the Plan.

b. Use the title "Board of Regulatory Commissioners" and "Department of Environmental Protection and Energy" when referring to the Board or the Department, as the case may be, in rules and regulations, orders, directives and other official correspondence, reports, documents and writings.

c. Use the title "Chairman" or "Chairwoman" as the case may be, when referring to the designated presiding officer of the Board.

2. The Board of Regulatory Commissioners and the Department of Environmental Protection and Energy shall—

a. Assume and fulfill the responsibilities assigned to each agency pursuant to the provisions of the Plan, under which the regulatory decision-making functions of the Board shall be independent of any supervision or control by the Department or the Commissioner or any officer or employee thereof or any other department or agency of the Executive Branch of State Government. The Board shall exercise these functions with respect to rates, mergers, acquisitions, certificates, and all other regulatory matters under the jurisdiction of the Board through the technical utility regulation units assigned to the Board, including Gas, Electric, Water and Sewer, and Telecommunications and Cable Television.

b. Enter into a protocol, which shall—

(1) identify the duties and responsibilities of the personnel who shall perform the budgetary, fiscal, personnel and day-to-day administrative responsibilities of the Board and the Department jointly;

(2) provide for the performance of these responsibilities and other staff support services, including but not limited to the services of the Office of the Economist, in a manner that ensures the Board's control over the information, analysis and research services needed by the Board to perform its regulatory functions under the Plan;

(3) include a personnel allocation plan which identifies each position assigned to the Board as of August 19, 1991 and allocates each of these positions to one of the following categories:

Class I—Utility Ratemaking Positions
Class II—Support Positions
Class III—Consolidated Positions

Class I positions shall be designated as Board of Regulatory Commissioners positions, and shall remain under the direct control of the Board. Class I shall include all positions in the technical utility regulation units which have been assigned to the Board. All decisions concerning the assignment, hiring or termination of personnel in such positions shall reside solely with the Commissioners of the Board in accordance with uniform personnel policies and practices that shall be adopted by the Board pursuant to subsection b of section 3 of this Order.

Class II positions shall be support positions which will be centralized within the Department under the control and supervision of the Commissioner, and shall include, but not be limited to, positions assigned to the Board of Public Utilities' Office of the Economist, Division of Audits, Office of Public Information and Bureau of Customer Assistance. These positions shall perform support staff functions that are consistent with their job title and classification and in accordance with the provisions of the protocol; provided, however, that the Commissioner shall ensure that the services provided to the Board are adequate for the Board to carry out its lawful responsibilities in a timely manner.

Class III positions are consolidated positions and shall include but not be limited to positions assigned to the Board's Division of Administration, Division of Operations and Office of Employee Relations. Class III positions shall be assigned to the Department under the control and supervision of the Commissioner. These positions shall perform clerical and administrative support functions for both the Board and the Department in a manner that is consistent with their respective job title and classification and the protocol.

(4) set forth procedures by which the Board shall receive services and information from the Department.

A copy of the written protocol developed pursuant to this section shall be forwarded for review to the Office of the Governor within 30 days of the effective date of this Order.

3. The Board of Regulatory Commissioners shall—

a. Make annual budget recommendations to the Governor for review and recommendation for approval in the same manner as all other proposed departmental budgets; and

b. Adopt personnel policies and practices governing the employment in Class I positions, provided that the employment policies and practices of the Board shall not be inconsistent with the employment policies and practices of the Department.

4. The Department of Personnel shall forthwith confer with the Department of Environmental Protection and Energy and the Chairman of the Board of Regulatory Commissioners and take appropriate actions to assure that job titles, classifications, assignments and other personnel-related actions are taken on an expedited basis in order to implement the objectives of the Plan.

5. The Department of Treasury, General Services Administration, shall forthwith confer with the Department of Environmental Protection and Energy and the Chairman of the Board of Regulatory Commissioners to provide adequate office space for the Department and the Board, both in the city of Trenton and the City of Newark, in order to effectuate the objectives of the Plan. Additionally, the Office of General Services Administration shall allocate office resources as may be necessary to provide for the timely transfer of personnel, office equipment and office furnishings among and between the various offices of the Department and the Board to implement the Plan.

6. The Department of Treasury, Office of Management and Budget, shall forthwith confer with the Department of Environmental Protection and Energy and the Chairman of the Board of Regulatory Commissioners and take appropriate actions to assure that accounts, budget categories, classifications and other appropriate financial systems are established to effectuate the goals and provisions of the Plan.

7. This Order shall take effect on the effective date of Reorganization Plan (No. 002-1991).

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# RULE PROPOSALS

## HEALTH

## (a)

### DIVISION OF COMMUNITY HEALTH SERVICES

### Catastrophic Illness in Children Relief Fund Program Proposed Amendments: N.J.A.C. 8:18

Authorized By: Catastrophic Illness in Children Relief Fund Commission, Frances J. Dunston, M.D., M.P.H., Chairman, and Commissioner, Department of Health.

Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-154i.

Proposal Number: PRN 1991-439.

Submit written comments by October 3, 1991 to:
Mary Ann Whiteman, Executive Director
Catastrophic Illness in Children Relief Fund Commission
New Jersey Department of Health
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 8:18 reflect the Catastrophic Illness in Children Relief Fund Commission's first annual review of the rules. Although the rules have been amended previously, these amendments represent the first comprehensive review following a full year of the program's activity. These proposed amendments are not only for New Jersey residents who are interested in applying to the Fund, but also for the provider community who maintain an important and vital role in children's access to care. The Commission is interested in serving as many New Jersey families as possible, and these amendments not only serve to increase the public's awarenesss of the program's resources but also access to the program.

As of April 1, 1991, the Special Child Health Services County Case Management role has been streamlined. Initially, case managers were responsible for screening applications and making initial determinations of eligibility. Now, their role is to provide information and referral to families who are applying to the program. This change will not hinder any access to the program. The State Office of the Commission is now solely responsible for screening applications, reviewing providers' and vendors' charges and making initial determinations of eligibility.

The proposed amendments reflect the revised role of both the State Office of the Commission and the county case managers, with the latter now identified in a simplified description as local agencies.

Since the State Office is now responsible for making initial determinations of eligibility, there is no need to maintain a two-step appeals process. The appeals process will be streamlined to a one-step process, which will not disadvantage the public. Currently, the State Office reviews and responds to all appeals in the timeline already established by rule.

The program is designed to assist families with children's medically-related expenses exceeding 30 percent/40 percent of a family's income. Since the program defines "catastrophic" in financial terms, it is available to any child regardless of the medical illness or condition, provided that the out-of-pocket medically-related expenses exceed 30 percent/40 percent. The program may provide financial relief to a child who experiences any addictive disorder, substance abuse or mental health condition. Including these specific references as eligible health services clarifies the intent and scope of the program.

Another clarification in eligible health services pertains to the review of experimental medical treatment. After a year of operation, the Commission has approved a process for reviewing experimental medical treatment and/or experimental drugs to determine whether these expenses would be considered eligible under the program rules. As a result, expenses pertaining to experimental care are considered eligible subject to special review, and this reference is deleted from ineligible health services and identified as an eligible health service.

Currently, the program reviews applications that identify income and expenses incurred in a prior calendar year. The Commission is also proposing that the time period change to a consecutive 12-month period. This provision will benefit families and increase access to the program in two ways: families will be able to submit expenses for periods of time which bridge two calendar years, and expenses may be considered for payment or reimbursement in a more timely basis rather than having to wait until the following calendar year for a Commission determination of eligibility.

The annual cap is proposed to increase from $25,000 to $100,000. The existing cap suggests an undue restriction for families experiencing extraordinary hardship. To date, the Fund has provided assistance for nearly all of a family's expenses. There are adequate resources available in the Fund, and the Commission would like to encourage families to apply who have significant expenses. An increase in the cap will highlight the potential relief available through the Fund for the public who may not yet be aware of the program.

Other amendments include the addition of money raised by fundraising as a non-cash income disregard, and deletion of the limit on reimbursement to out-of-State providers. Expenses eligible for consideration in assessing whether the eligibility threshold is reached have been revised to include travel-related expenses; 50 percent of a health insurance premium, including supplemental and dependent coverage, paid by a family; home modification; and purchase of a specialized modified vehicle. The time limit for receipt of appeals is increased to 30 days, and a provision for waiver of this deadline for cause is added.

**Social Impact**

The proposed amendments would have a positive social impact on all eligible New Jersey residents with children under 18 years of age in that the amendments serve to further assist in preserving the integrity of the family and the family's ability to cope with the responsibilities which accompany health problems in children.

Local agencies would have decreased responsibilities for the application process; however, they would continue to provide services to all applicant families through information and referral to all local, county, State and Federal programs or resources for which they appear eligible. Local agencies would also continue to be available to respond to the public on general requests for program information; however, with the centralization of screening for eligibility in the State Office, program staff would now be available to work directly with families as needed to identify and verify all possible eligible expenses.

Families trying to deal with the double burden of caring for an ill child while struggling with the financial complexities of the health care delivery system would benefit from the more timely relief offered by a more flexible prior 12 month period for measuring income and expenses.

**Economic Impact**

In proposing these amendments, the Catastrophic Illness in Children Relief Fund Commission seeks to improve access to the resources of the fund for families of all income levels who are in need of this financial support. Amending the rules may result in significant fiscal impact on the fund; however, adequate funds exist and assistance for families may be made on the basis of need as demonstrated in the requirements for eligibility. The proposed amendments would have a positive impact on the public.

Applications for assistance would be reviewed upon completion of a prior 12 month period, rather than at the end of a current calendar year. Disbursements from the fund for approved applications would then follow and financial relief be realized more timely by eligible families. Based on the experience of the Commission to date in review of applications, this change for some families would prevent loss of ongoing access to specific health care providers and personal bankruptcy proceedings.

The Commission has become aware that families with expenses greater than $25,000 have hesitated to apply for assistance, believing that their applications would not be considered under the current cap. It is the intent of the program to provide financial support for such families. Raising the cap, a standard fund disbursement guideline, would provide families with very high uncovered expenses with needed support.

Specific identification of treatment for addictive disorders, substance abuse and mental illness as eligible health services in a variety of settings acknowledges the financial burden families often face in trying to provide care for children with such conditions. Lack of coverage or very limited coverage provided by many traditional resources has discouraged families from realizing that the Fund is available to provide payment or reim-

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bursement regardless of diagnosis when a child's care is medically authorized.

Expenses for care or pharmaceuticals identified as experimental are often denied approval by insurers or other resources. Families of children diagnosed with cancer and other serious conditions have expressed concern that the Fund would not support needed care. The amendment would encourage families whose child received such care to apply for consideration. As it is the purpose of the fund to assist families with expenses not covered by other State, Federal or insurance contracts, these expenses will be reviewed for eligibility when medically authorized.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. The rulemaking does not impact on small businesses because the proposed amendments pertain to the processing of applications and the amount of assistance a family may receive under N.J.A.C. 8:18.

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

8:18-1.2 Definitions

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

. . .

["County case manager" means to the Special Child Health Case Manager, located in each county in New Jersey, who has responsibility for conducting the initial screen (that is, determining if child's medical expenses exceed 30 percent of income of families with incomes of $100,000 or less or 40 percent of incomes over $100,000).]

. . .

"Income" means the following:

1.-20. (No change.)

21. Income does not include the following money receipts: withdrawals from a bank; sale of property, house or car; tax refunds; gifts; one-time insurance payments; or compensation from injury, unless the injury directly relates to a child's condition which is the basis for an application being made to the Fund. Also disregarded is non-cash income **and any money raised by fundraising**. . . .

**"Local agency" means the agency responsible for assisting families in the application process, forwarding applications to the State Office, and making appropriate referrals to other state programs and benefits.**

8:18-1.4 Initial application process

(a) Applications may be submitted on a year-round basis to the [county case managers] **local agency**. The name, address, and phone number for [county case managers] **the local agencies** shall be available from the State Office. The [county case managers] **local agency** shall [conduct the initial screen and] forward [completed] written applications on forms provided by the State Office for those children who qualify to the State Office[, along with the relevant documentation of expenses and income.].

8:18-1.5 State Office and Commission review process

(a) Upon receipt of the [completed] application[s] from the [county case managers] **local agency**, the State Office shall consider the [reasonableness of] providers' and vendors' charges **submitted**. [Out-of-State providers shall not be reimbursed at a rate greater than that of in-State providers.]

(b)-(d) (No change.)

8:18-1.7 Annual cap

[(a)] The amount of Fund's disbursements on behalf of a child shall be capped at [$25,000] **$100,000** per year.

8:18-1.10 [County case manager] **Local agency** responsibilities

(a) The [county case managers] **local agency** shall[:

1. Conduct the initial screen to determine whether a child's medical expenses exceed 30 percent of income of families with incomes of less than $100,000 or 40 percent of income over $100,000; and

2. Make] **make** referrals and assist in the application process for other programs and benefits (for example, Medicaid, Hospital Charity Care, and other programs), where applicable.

8:18-1.11 State Office responsibilities

(a) The State Office shall:

**1. Screen applications to determine whether a child's medical expenses exceed 30 percent of family's income with income of $100,000 or less, or 40 percent of family income greater than $100,000;**

**2. Maintain oversight to the local agency responsible for assisting families with Program, accepting applications and providing local outreach/information;**

Recodify existing 1-5 as **3-7**. (No change in text.)

8:18-1.13 Time period of measuring expenses and income

In screening a child/family for eligibility for the Fund, expenses and income shall be measured by any 12 (consecutive) month period which ends the last day of the month [of December] preceding a family's initial application to the Fund. **The income will be reported for the same 12 (consecutive) month period back to January 1988**. [However, for the Fund's first year of operation the time period shall be expanded to include the 12 (consecutive) month period which begins on January 1988, the month in which the Act became law.] In addition, a supplemental statement of current income and expenses may be submitted at the request of the State Office. Applications shall be accepted any time throughout the year.

8:18-1.14 Eligible health services

(a) Categories of incurred health and health-related expenses eligible for consideration in assessing whether a family has reached its 30 percent/40 percent eligibility threshold include, but are not limited to, the following:

1. (No change.)

2. Specialized pediatric ambulatory care, including physician-authorized rehabilitative therapies (for example, speech occupations, and physical), physician-authorized **care for treatment of addiction disorders and** mental health care, dental care, [physician-authorized] eye care, chiropractic care[)];

3. Care in an acute hospital in New Jersey (treatment for acute and chronic conditions **and treatment of addiction disorders and mental health conditions**);

4. Care in acute hospitals in other states (treatment for acute and chronic conditions, **and treatment of addiction disorders and mental health conditions** as well as highly specialized care such as organ transplants);

5.-11. (No change.)

12. Family transportation **and travel-related expenses including, but not limited to, mileage allowance, tolls, parking receipts, temporary shelter costs and telephone calls** related to medical condition; [and]

13. [The portion of the health insurance premium for the child's coverage paid by family. This includes supplemental and dependent coverage.] **Fifty percent of a health insurance premium including supplemental and dependent coverage that is paid by a family;**

**14. Home modification;**

**15. Purchase of a specialized, modified vehicle; and**

**16. Experimental medical treatment/experimental drugs which are recognized by Federal and State agencies or licensed health care providers. Applications involving experimental treatment may require additional review.**

8:18-1.15 Ineligible health services

(a) Categories of health and health-related expenses which are not eligible for consideration in assessing whether a family has reached its 30 percent/40 percent eligibility threshold shall include, but are not limited to, the following:

1.-2. (No change.)

[3. Experimental medical treatment/experimental drugs which are not recognized by Federal and State agencies (for example, the Food and Drug Administration). Applications involving experimental treatment may be forwarded by the Commission to an expert for

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review for possible coverage under N.J.A.C. 8:18-1.14, Eligible health services.]

8:18-1.16 Administration of payments

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

(c) [Insurance premiums shall be considered for payment.] **When the Commission decides that a purchase of insurance may reduce the need for a family to reapply to the Fund in the next year, it shall consider to fund the purchase of insurance for one year.**

8:18-1.17 Appeals process

[(a) The following applies to first level appeals:

1. An applicant who disputes a determination made by the county case manager may appeal to the State Office by filing a written appeal addressed to:

New Jersey State Department of Health
Catastrophic Illness in Children Relief Fund Program
CN 364
363 West State Street
Trenton, NJ 08625
Attn: Executive Director

2. The appeal shall comply with the following requirements:

i. The appeal shall be in writing;

ii. The written appeal must include all reasons for the appeal and any documentation or proof in support thereof; and

iii. Appeals must be received by the State Office no later than 21 days from the date of notice of the determination made by the county case manager.

3. Upon receipt of the appeal, the State Office shall:

i. Acknowledge receipt of the appeal in writing to the applicant within 14 days;

ii. Conduct such review and analysis as is necessary to determine if there is a basis for the claim; and

iii. Issue a written determination to the applicant within 90 days of original receipt of the appeal]

[(b)]**(a)** The following applies to [second level] **the** appeals **process**:

1. (No change.)

2. Appeals mut be received at the above address no later than [21] **30** days from the date of notice of the determination made by the State Office. **The Commission may waive the deadline for cause.**

3.-6. (No change.)

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

---

# (a)

## HEALTH FACILITIES EVALUATION AND LICENSING

## Manual of Standards for Licensure of Invalid Coach and Ambulance Services

## Proposed Readoption with Amendments: N.J.A.C. 8:40

Authorized By: Frances J. Dunston, 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. and 30:4D-6.2 et seq., specifically 30:4D-6.3 and 4.

Proposal Number: PRN 1991-452.

Submit written comments by October 3, 1991 to:

George Leggett
Chief Administrator
Office of Emergency Medical Services
New Jersey Department of Health
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

**Summary**

These rules proposed for readoption with amendments will affect an estimated 130 agencies, including non-volunteer municipal emergency ambulance services, hospital-operated ambulance services and private firms. These agencies have been subject to licensure and regulation by the Department since 1985. The rules, and the proposed amendments, only apply to "non-volunteer" providers of invalid coach and ambulance services. (The Legislature specifically exempted volunteer services in the enabling statutes.)

In May 1981, the Legislature passed N.J.S.A. 30:4D-6.2 which requires the Department to regulate invalid coach services. The Department has the authority under N.J.S.A. 26:2H-1 et seq. to regulate both invalid coach and ambulance services. These rules apply to both types of services.

In preparing to amend and readopt the rules, which expire on January 31, 1992, pursuant to a waiver of Executive Order No. 66(1978) by Governor James J. Florio on June 19, 1991, they were thoroughly reviewed. Changes which have been made fall into three major categories: (1) clarification of existing standards, (2) new or expanded standards because of improvements in emergency medical services (EMS) state-of-the-art, and (3) suggestions from the industry and Department staff based on field experience.

A summary of major changes, which includes an outline of chapter contents, follows:

**Subchapter 1. Definitions**

Definitions have been added for "advanced life support," "basic life support," "certificate of need," "conditional vehicle permit," "emergency medical technician," "impervious," "in-service," "inter-hospital care," "paramedic," "payment for services," "staff," and "volunteer first aid, rescue or ambulance squad."

"A.N.S.I. Standard" was deleted because references to this standard were deleted from the text.

The definition of "patient" was expanded. Deceased persons were specifically excluded from the definition, so that providers would not be forced to transport the deceased.

**Subchapter 2. Authority and Licensure Procedures**

There was no change at N.J.A.C. 8:40-2.1, Authority.

A clarifying statement has been added at N.J.A.C. 8:40-2.2, Application of regulations. This resulted in the subsequent items being recodified.

The address of the Certificate of Need Program was changed in (b) of N.J.A.C. 8:40-2.3, Certificate of need required. Information was added at subsection (c) explaining that agencies must give 90 days prior notice of discontinuing service. This is necessary for continuity of patient care.

Under N.J.A.C. 8:40-2.4, Licensing requirements, clarification on the temporary permit was made. References to a decal (which never was actually available) were deleted. This is also reflected in N.J.A.C. 8:40-2.10, Vehicle licenses, and elsewhere.

Clarification of existing policy and an updated citation were made in N.J.A.C. 8:40-2.5, Exemptions from licensing requirements.

The definition of "in-service" was removed from N.J.A.C. 8:40-2.6, Surveys. This now appears in subchapter 1 as a definition. The Department agrees to notify licensees, in writing, of survey results (this formalizes current practice).

In N.J.A.C. 8:40-2.7 through N.J.A.C. 8:40-2.9 (Applications for provider licensure and/or vehicle licenses, Temporary provider permit, and Full provider license, respectively), the Department proposes moving to a two-year licensing cycle. Because of the growing number of services, the annual licensing process is becoming burdensome. The annual fees for licensure would not change and the Department would retain the prerogative of spot inspections to assure quality care.

Minor clarifications and address changes were made in N.J.A.C. 8:40-2.11 through N.J.A.C. 8:40-2.14 (Vehicle licenses, Vehicle recognition number, Waiver, Non-transferability, and Return of vehicle license, respectively).

N.J.A.C. 8:40-2.15, Discontinuance of vehicle use, contains some minor wording changes. Additionally, the option of having an "Out-of-Service" notice removed by a New Jersey Division of Motor Vehicles Inspection Station has been deleted. This option was seldom viable in the past and the changing role of these stations in the future negates their use. In new N.J.A.C. 8:40-2.15(e), the Office of Emergency Medical Services (OEMS) now proposes a prompt reinspection once the licensee notifies OEMS by telephone the deficiencies have been corrected.

Changes in N.J.A.C. 8:40-2.16, Action against a licensee, and N.J.A.C. 8:40-2.17, Hearings, are for clarification and simplification.

**Subchapter 3. General Requirements**

Information has been added to N.J.A.C. 8:40-3.1, Agency ownership, so that licensees are aware of certificate-of-need criteria (a separate, but

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related, area) which may impact on their licenses. A clarification on agency ownership is also made.

Under N.J.A.C. 8:40-3.2, Administrator required, a clarification is made in subsection (d) as to a primary contact between the agency and the Department.

N.J.A.C. 8:40-3.3, Written policies, procedures and task outlines, has been completely rewritten to spell out what is needed in the required manual of standard operating procedures.

N.J.A.C. 8:40-3.4, Business locations, now requires the Department be notified of satellite offices and vehicle storage sites.

N.J.A.C. 8:40-3.5, Report of unusual occurrences, has been changed to clarify when a report is required and has added some other situations. This is necessary for recordkeeping purposes on vehicles, for tracking EMS trends, and for quality assurance.

Changes in N.J.A.C. 8:40-3.6, Advertising restrictions, clarify wording which cannot be used in advertising and the need for a relevant certificate-of-need when responding to a bid proposal to provide service.

Personnel would be required to possess "and have readily available for inspection" driver's licenses and training credentials under N.J.A.C. 8:40-3.7, Minimum personnel requirements. Currently, personnel are required to carry these credentials on their persons. Police and fire personnel often keep these types of credentials in the emergency vehicle, not on their persons. In N.J.A.C. 8:40-3.8, Personnel files required, a copy of the driver's license would also be kept in the employee's personnel file.

There are no changes in N.J.A.C. 8:40-3.9, Maintenance of records.

N.J.A.C. 8:40-3.10, General vehicle requirements, contains clarification of current policies regarding maintenance and use of vehicles and interior health and safety features. Additionally, it emphasizes that vehicle interiors may not be changed, once the vehicle has been presented for inspection and licensed by the Department. This has been an ongoing problem.

There are minor clarifying changes in N.J.A.C. 8:40-3.11, Motor vehicle chassis, body and components. There are no changes in N.J.A.C. 8:40-3.12, Vehicle heater/air conditioner.

N.J.A.C. 8:40-3.13, Restrictions on carbon monoxide concentrations, has been changed to say that carbon monoxide testing will be required whenever a situation arises in which carbon monoxide intrusion is suspected or as an optional part of an inspection. Previously, testing was required every 12 months. More vehicles are using diesel engines, in which carbon monoxide is not a problem.

N.J.A.C. 8:40-3.14, Sanitation requirements, now also refers to the federal Center for Disease Control disinfection guidelines and the need to have latex gloves available for staff use.

N.J.A.C. 8:40-3.15, Required insurance coverage, has been rewritten to reflect changes in the insurance market's coverage packages. The three types of insurance—premises and operations, bodily injury/property damage, and malpractice are still required. The procedure for documenting appropriate insurance coverage has been simplified after initial licensure, but the Department can ask for further documentation, should questions arise. N.J.A.C. 8:40-3.16, Provision of certificate of insurance, has been eliminated.

Editing changes have been made in N.J.A.C. 8:40-3.16 (formerly 3.17), Pneumatic testing required. Provisions have also been made to accept pneumatic testing results of approved outside agencies.

Automatic ventilators have been added to the list of biomedical equipment which should be tested periodically in N.J.A.C. 8:40-3.17 (formerly 3.18), Biomedical equipment testing required.

Clarification has been made in N.J.A.C. 8:40-3.18 (formerly 3.19), Physical behavioral restraints, that a "law enforcement officer" can apply "hard restraints" to patients. The officer must then be willing to accompany the patient in the rear of the vehicle.

**Subchapter 4. Specific Invalid Coach Requirements**

Invalid coach service shall not be provided to a patient who requires a ventilator or whose breathing is ventilator-assisted. All other provisions of N.J.A.C. 8:40-4.1, Patient restrictions, remain the same.

There was an editing change (the word "decal" was removed) in N.J.A.C. 8:40-4.2, General vehicle requirements.

N.J.A.C. 8:40-4.3, Patient compartment requirements and dimensions, was changed in paragraph (c)4 to require the use of a "standard automotive industry door handle" on the vehicle's doors. A variety of nonstandard items (including wire) had been used. In paragraph (c)3, modifications clarified that doorways cannot be blocked by immovable objects, except for operating ramps or lifts. Another change occurred in subsection (e) when information on wheelchair restraint systems and wheelchair patient restraints was expanded and clarified—this is consistent with current practice.

N.J.A.C. 8:40-4.4, Ramp or lift required, has been changed to clarify that ramps should be permanently attached to the vehicle and that manual backup devices need to operate in a timely manner.

There are several changes to N.J.A.C. 8:40-4.5, Vehicle markings, based upon experience. Trade names shall be six inches high or larger on all vehicles originally licensed after March 1, 1992. The current permitted minimum height is three inches, but few names are that small. Larger type will allow easier service recognition. The wording on the "no smoking" sign has been simplified in subsection (d). Additional clarification is made in subsection (f) to the list of prohibited words or symbols which might imply the service provides emergency care or advanced life support.

The reference to an emergency vehicle light and siren permit in N.J.A.C. 8:40-4.6, Emergency warning devices prohibited, has been removed. These permits are no longer necessary for licensed emergency vehicles. Invalid coaches, however, are still prohibited from being equipped with emergency warning devices.

There are no changes in N.J.A.C. 8:40-4.7, Litters and stretchers prohibited.

Clarifying information has been added to N.J.A.C. 8:40-4.8, General equipment and supplies requirement. All equipment, including unoccupied wheelchairs, must be stored safely. Reference is also made to N.J.A.C. 8:40-3.10(e), Unsafe storage of equipment can be extremely hazardous to patients.

N.J.A.C. 8:40-4.9, Oxygen administration devices, has been modified at subsection (c) to note that all storage arrangements shall comply with applicable provisions of Federal Specification KKK-A-1822. Flowmeter accuracy has been delineated at subsection (e) and is consistent with the pneumatic testing standards used during vehicle inspections.

N.J.A.C. 8:40-4.10, Safety equipment, has been changed to permit battery-operated flashers or flares, as well as safety triangles, to be carried on vehicles. Fire extinguishers may have either a gauge or a tag indicating they are charged.

N.J.A.C. 8:40-4.11, Required staff, has been modified to require a second staff person if a patient in a wheelchair must be moved up or down five or more steps or if the patient in a wheelchair weighs 200 or more pounds. It is unsafe for one person to move a patient under these circumstances.

N.J.A.C. 8:40-4.12, Required training of staff, has been changed. When the rule was first promulgated in 1985, provision for "grandfathering" certain staff through April 1987 were included. This provision has expired and was, therefore, removed. Information on the required cardiopulmonary resuscitation (CPR) and Passenger Assistance Techniques (PAT) courses was added. If oxygen administration devices are carried on the vehicle, the staff person must be an Emergency Medical Technician-Ambulance, in addition to holding PAT and CPR certifications.

N.J.A.C. 8:40-4.13, Duties of staff, has some additions in paragraphs (a)1, 2, 3 and 6 to clarify prior information and practice.

N.J.A.C. 8:40-4.14, Call report, notes at subsection (a) that the Department must approve the call report which is used. Currently, this is part of the usual licensure process, but report forms sometimes are modified later without Department input. When call reports are filled out, the full names of all staff (not first names or identification numbers) must be included.

N.J.A.C. 8:40-4.15, Radio communications, includes extensive editorial changes which have resulted in recodifying of most of the section. Requirements have not changed.

**Subchapter 5. Specific Transport Ambulance Requirements**

A new section, N.J.A.C. 8:40-5.1, Restrictions on future licensing, has been added. This section will limit future licensing of transport ambulances. Existing vehicles will be allowed to continue operation. Transport ambulances are not a large contingent of the regulated vehicles. By limiting future licensure, but allowing current vehicles to continue operation, providers offering this service can phase in other service levels.

Insertion of the new information at N.J.A.C. 8:40-5.1 has caused most other sections to be recodified, which is reflected in the section references in the following paragraphs.

The list of patient conditions which might require the use of a transport ambulance was clarified in N.J.A.C. 8:40-5.2, Patient restrictions.

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There were only editorial changes in N.J.A.C. 8:40-5.3, General vehicle requirements.

N.J.A.C. 8:40-5.4, Patient compartment requirements, was changed in paragraph (b)4 to require the use of a "standard automotive industry door handle" on the inside of the vehicle. A variety of non-standard items (including wire) had been used. Another change occurred in subsection (f) when information on wheelchair restraint systems and wheelchair patient restraints was expanded and clarified—this is consistent with current practice. In subsection (g), a reference was added to refer to N.J.A.C. 8:40-3.10(e) which contains more specific information on storage.

There are no changes in N.J.A.C. 8:40-5.5, Patient compartment dimensions.

N.J.A.C. 8:40-5.6, Ramp or lift, has been changed to clarify that ramps shall be permanently attached to the vehicle and that manual backup devices need to operate in a timely manner.

There are several changes to N.J.A.C. 8:40-5.7, Vehicle markings, based upon experience. Trade names shall be six inches high or larger on all vehicles originally licensed after March 1, 1992. The current permitted minimum height is three inches, but few names are that small. Larger type will allow easier service recognition. The wording on the "no smoking" sign has been simplified in subsection (d). Vehicles operated by or associated with a volunteer first aid or rescue squad may use a Greek Cross on the vehicle (this is currently prohibited). Additional clarification is made in subsections (f) and (h) to the list of prohibited words which might imply the service provides emergency care or advanced life support.

Information in N.J.A.C. 8:40-5.8, Emergency warning devices, has been changed to note that all emergency lighting and audible warning devices must comply with standards of the New Jersey Division of Motor Vehicles. This allows more flexibility as new laws or regulations regarding such devices are adopted.

N.J.A.C. 8:40-5.9, Use of emergency warning devices, has editorial changes at subparagraph (a)2ii. Information on airhorn use has been removed, since use would be subject to local ordinance.

N.J.A.C. 8:40-5.10, General equipment and supplies requirement, now requires in subsection (a) that equipment temporarily left on a patient be replaced as soon as the vehicle returns to the location where backup equipment is stored and that a record be kept on the call report so the equipment can be retrieved later. This is necessary so future patients can be cared for appropriately and equipment is not lost. Supplies should be stored so they are clearly visible or there should be a list of contents on cabinet doors. Previously all doors needed content lists; the list often obscured the visibility of contents in "see through" cabinets.

One of the changes in N.J.A.C. 8:40-5.11, Standard patient transport devices, clarified that a combination stretcher/stairchair can be used. A Federally-approved child restraint system for child patients has been mandated in subsection (e). This is consistent with State law on the restraint of children traveling in motor vehicles.

N.J.A.C. 8:40-5.12, Oxygen administration devices, has been modified at subsection (b) to note that all storage arrangements shall comply with applicable provisions of Federal Specification KKK-A-1822. Flowmeter accuracy has been delineated at subsection (d) and is consistent with the pneumatic testing standards used during vehicle inspections. The number of clear inhalation masks at subsection (e) has been reduced to four (two of each size).

Standards in N.J.A.C. 8:40-5.13, Resuscitation devices, have been updated to meet current national standards. Standards for child-size bag-valve-mask resuscitators have been added at paragraph (c)2, although carrying infant or child-size bag-valve masks is optional in subsection (a). The number of rescuscitation face masks needed has been reduced from three to two in subsection (d).

N.J.A.C. 8:40-5.14, Aspirator/suction devices, has been modified to be clearer in subsection (a). The information relating to the number and sizes of required suction catheters has been simplified in subsection (c). A notice is given in subsection (d) that any portable suction device is optional, but, if present, must meet the same operational criteria as and installed device.

An editing change was made in N.J.A.C. 8:40-5.15, Airway maintenance supplies, at paragraph (a)1. The number and sizes of airways has been simplified at paragraph (a)2. This is consistent with carrying one commercially-available airway kit.

N.J.A.C. 8:40-5.16, External cardiac compression support, contains a new provision that the board shall not be stored under a benchseat. Such storage hampers immediate availability.

Equipment requirements in N.J.A.C. 8:40-5.17, Spine boards, have been extensively cut. Only a long spine board must be carried now, along with a set of three straps. Velcro®-type closures are prohibited on these patient restraint straps, since they could come loose in an emergency situation and endanger the patient. The short spine board, board splints and extremity traction splint previously required are deleted, as transport ambulances should not respond to emergency calls (where splints generally are used).

Quantities of supplies generally have been reduced or specifications modified to allow alternatives in N.J.A.C. 8:40-5.18, Wound dressing and burn treatment supplies. Saline solution must be current (not expired).

N.J.A.C. 8:40-5.18, Obstetrical kit, has been deleted. Transport ambulances should not respond to maternity calls.

Prepackaged liquid activated charcoal replaces dry activated charcoal in N.J.A.C. 8:40-5.19, Poison treatment supplies, at the request of the New Jersey Poison Information and Education System.

Several new items have been added to N.J.A.C. 8:40-5.20, Other patient care equipment. Some of these items (for example, penlights) are usually carried by services, but were not previously listed in these rules. Addition of gloves and personnel protection garments is consistent with national standards for "universal precautions." The number of blankets required now varies by season.

N.J.A.C. 8:40-5.21, Safety equipment, has been changed to permit battery-operated flashers and flares to be carried on the vehicles. Fire extinguishers may have either a gauge or a tag to indicate they are charged.

N.J.A.C. 8:40-5.22, Required staff, has been modified so it is clearer as to what staffing is required. The requirements have not changed.

N.J.A.C. 8:40-5.23, Required training staff, has been changed. When the rules were first promulgated in 1985, provisions for permitting certain persons to staff the vehicle were included. This training is no longer available, so the information, therefore, was removed. Both staff persons must now be emergency medical technicians. Information on the required cardiopulmonary resuscitation (CPR) course was added. Emergency medical technicians must always possess current CPR certification, but the name of the course was not previously delineated in the regulations.

N.J.A.C. 8:40-5.24, Duties of staff, has some additions in paragraphs (a)4, 8 an 9 to clarify prior information. Child passengers must be properly secured in child safety seats, according to paragraph (a)4, consistent with State law.

N.J.A.C. 8:40-5.25, Call report, notes at subsection (a) that the Department must approve the call report which is used. Currently, this is part of the usual licensure process, but report forms sometimes are modified later without Department input. When call reports are filled out, the full names of all staff (not first names or identification numbers) must be included. An editorial change was made in paragraph (a)6.

N.J.A.C. 8:40-5.26, Radio communications, includes extensive editorial changes which have resulted in recodification of most of the section. The basic requirements have not changed.

**Subchapter 6. Specific Emergency Ambulance Requirements**

The list of patient conditions which might require the use of an emergency ambulance was simplified in N.J.A.C. 8:40-6.1, Patient restrictions.

There were no changes in N.J.A.C. 8:40-6.2, General vehicle requirements.

N.J.A.C. 8:40-6.3, Patient compartment requirements, was changed in paragraph (b)4 to require the use of a "standard automotive industry door handle" on the vehicle's doors. A variety of non-standard items (including wire) had been used. Another change occurred in subsection (f) when information on wheelchair restraint systems and wheelchair patient restraints was expanded and clarified—this is consistent with current practice. In subsection (g) a reference was added to refer to N.J.A.C. 8:40-3.10(e) which contains more specific information on storage.

The initial publication of the rules in 1985 contained provisions to "grandfather" certain vehicles until 1987. This information has been removed from N.J.A.C. 8:40-6.4, Patient compartment dimensions, since it is no longer applicable. The normal minimum dimensions are unchanged in subsection (a).

N.J.A.C. 8:40-6.5, Certification to Federal specifications, has been modified to clarify which versions of the Federal Specification KKK-A-1822 would be applicable to a particular vehicle and which exceptions to those specifications are permitted or optional (the actual exceptions have not changed.) References to particular numbered paragraphs of

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"KKK" have been removed, since these may vary as the Federal Specifications are updated (titles do not change).

N.J.A.C. 8:40-6.6, Ramp or lift, has been changed to clarify that ramps shall be permanently attached to the vehicle and that manual backup devices need to operate in a timely manner.

There are several changes to N.J.A.C. 8:40-6.7, Vehicle markings, based upon experience. Trade names shall be six inches high or larger on all vehicles originally licensed after March 1, 1992. The current permitted minimum height is three inches, but few names are that small. Larger type will allow easier service recognition. The wording on the "no smoking" sign has been simplified in subsection (d). Vehicles operated by or associated with a volunteer first aid or rescue squad may use a Greek Cross on the vehicle (this is currently prohibited). Additional clarification is made to the list of prohibited words which might imply the service provides advanced life support.

Information in N.J.A.C. 8:40-6.8, Emergency warning devices, has been changed to note that all emergency lighting and audible warning devices must comply with standards of the New Jersey Division of Motor Vehicles. This allows more flexibility as new laws or regulations regarding such devices are adopted.

N.J.A.C. 8:40-6.9, Use of emergency warning device, has editorial changes at subparagraphs (a)3ii and (b)3ii. Information on airhorn use has been removed, since use would be subject to local ordinance.

N.J.A.C. 8:40-6.10, General equipment and supplies requirements, now requires that equipment temporarily left on a patient be replaced as soon as the vehicle returns to the location where backup equipment is stored and that a record be kept on the call report so the equipment can be retrieved later. This is necessary so future patients can be cared for appropriately and equipment is not lost. Supplies should be stored so they are clearly visible or there should be a list of contents on cabinet doors. Previously all doors needed content lists; the list often obscured the visibility of contents in "see through" cabinets.

One of the changes in N.J.A.C. 8:40-6.11, Standard patient transport devices, clarified that a combination stretcher/stairchair can be used. A Federally-approved child restraint system for child patients has been mandated in subsection (e). This is consistent with State law on the restraint of children traveling in motor vehicles.

There are no changes in N.J.A.C. 8:40-6.12, Special patient transport devices.

N.J.A.C. 8:40-6.13, Oxygen administration devices, has been modified at subsection (b) to note that all storage arrangement shall comply with applicable provisions of Federal Specification KKK-A-1822. Flowmeter accuracy has been delineated at subsection (d) and is consistent with the pneumatic testing standards used during vehicle inspections. The number of clear masks at subsection (e) has been reduced to four (two of each size).

Standards in N.J.A.C. 8:40-6.14, Resuscitation devices, have been updated to meet current national standards. Standards for child-size bag-valve-mask resuscitators have been added at paragraph (e)2. The number of resuscitation face masks needed has been reduced from nine to six in subsection (f).

N.J.A.C. 8:40-6.15, Aspirator/suction devices, has been modified to be clearer in subsections (a) and (b). The information relating to the number and sizes of required suction catheters has been simplified in subsection (d). A requirement for an infant bulb syringe and a wide-bore, semi-rigid suction tip has been added.

An editing change was made in N.J.A.C. 8:40-16, Airway maintenance supplies, at paragraph (a)1. The number and sizes of airways has been simplified at paragraph (a)2. This is consistent with carrying two commercially-available airway kits.

N.J.A.C. 8:40-6.17, External cardiac compression support, contains a new provision that the board shall not be stored under a benchseat. Such storage hampers immediate availability.

Equipment specifications in N.J.A.C. 8:40-6.18, Spine boards, orthopedic litter and splints, have been modified extensively. Most changes recognize that alternative equipment, when approved by the Commissioner, may perform a task as well as traditional devices. This permits changes in state-of-the-art during the coverage period of the regulations. Velcro®-type closures are prohibited on straps which could be used for patient restraint in paragraphs (a)3 and 4 (they could come loose in an emergency situation and endanger the patient). Sandbags have been replaced by rigid cervical collars (state-of-the-art) at paragraph (a)5 and a head restraint system at paragraph (a)6. Options for extremity splinting have been expanded in paragraphs (a)7 and (a)8.

Quantities of supplies generally have been reduced or specifications modified to allow alternatives in N.J.A.C. 8:40-6.19, Wound dressing and burn treatment supplies. Saline solution must be current (not expired).

The requirements for complete sterility have been eased in N.J.A.C. 8:40-6.20, Obstetical kit. Certain items (that is, towels, blanket) need not be sterile. Scalpels are now permissible. Goggles or other eye protection and a box of sanitary pads have been added to the required equipment list.

Prepackaged liquid activated charcoal replaces dry activated charcoal in N.J.A.C. 8:40-6.21, Poison treatment supplies, at the request of the New Jersey Poison Information and Education System.

A number of new items have been added to N.J.A.C. 8:40-6.22, Other patient care equipment. Many of these items (for example, penlights, cold packs) are usually carried by services, but were not previously listed in these rules. Addition of gloves and personnel protection garments is consistent with national standards for "universal precautions." The number of blankets required now varies by season. Equipment may be carried which would permit staff to render care at the Emergency Medical Technician-Intermediate or Emergency Medical Technician-Defibrillator level, if the service is part of an approved program.

Most of the equipment listed in N.J.A.C. 8:40-6.23, Extrication equipment, remains the same. The crow bar at paragraph (s)9 can be 36 inches, instead of 51 inches long. Tin snips have been eliminated. The specifications for the rope in paragraph (a)13 now allow various types of rope to be acceptable. A heavy rescue hydraulic tool may be substituted for the portable hydraulic set in paragraph (a)11 and the hand-operated ratchet hoist set in paragraph (a)14. Protective "turn out" gear is a new requirement at paragraph (a)20. Provisions for alternative rescue services have been rewritten in subsection (b) to better clarify the procedure.

N.J.A.C. 8:40-6.24, Safety equipment, has been changed to permit battery-operated flashers and flares to be carried on the vehicles. All vehicles providing "street EMS" or which respond to motor vehicle accidents, shall now be equipped with a copy of the U.S. Department of Transportation guidebook on responding to hazardous materials incidents and a copy of the local emergency operations plan.

N.J.A.C. 8:40-6.25, Required staff, has not been changed.

N.J.A.C. 8:40-6.26, Required training of staff, has been changed. When the rules were first promulgated in 1985, provision for "grandfathering" staff through April 1986 were included. This provision has expired and was, therefore, removed. Information on the required cardiopulmonary resuscitation (CPR) course was added. Emergency medical technicians must always possess current CPR certification, but the name of the course was not previously delineated in the rules.

N.J.A.C. 8:40-6.27, Duties of staff, has some additions in paragraphs (a)8, 9 and 11 to clarify prior information. Child passengers must be properly secured in child safety seats, according to paragraph (a)5, consistent with State law.

N.J.A.C. 8:40-6.28, Special staff required, has been changed at subsection (a) to clarify the titles and numbers of additional specialty staff required during neonatal transports. Subsection (b) has been rewritten to eliminate confusion as to how many and what types of specialty staff are needed during transport of patients receiving intravenous fluids and/or medications. Provisions of this section will become null and void upon adoption of critical care transport rules.

N.J.A.C. 8:40-6.29, Call report, notes at subsection (a) that the Department must approve the call report which is used. Currently, this is part of the usual licensure process, but report forms sometimes are modified later without Department input. When call reports are filled out, the full names of all staff (not first names or identification numbers) must be included. An editorial change was made in paragraph (a)6.

N.J.A.C. 8:40-6.30, Radio communications, includes extensive editorial changes which have resulted in recodification of most of the section. Explanations have been included to better differentiate between radio requirements for vehicles which do "street work" and other emergency vehicles. These can be found at paragraph (b)2, and subsections (f), (g) and (h). The information on the grace period for installing mobile and portable radios (which appeared in the 1985 publication of the rules and which has expired) has been eliminated. Licensees which are part of a disaster plan must have appropriate radio communications elements which allow them to participate under the plan.

Based on current practice, N.J.A.C. 8:40-6.31, Disaster planning required, has been modified. Services providing EMS to a political subdivision must participate with local government and the applicable office of emergency management in developing an EMS disaster plan or an EMS annex to a basic disaster plan. Plans must be tested yearly.

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**Subchapter 7. Specific Helicopter Ambulance Requirements**

When originally written, the subchapter on helicopter ambulances referred mainly to basic life support functions. The field has evolved rapidly and is now a specialty advanced life support service. When the EMS advanced life support rules (N.J.A.C. 8:41) are written, helicopter provisions will be transfered there. These are interim changes only, mostly reflecting field experience and selected state-of-the-art.

There are no changes in the following: N.J.A.C. 8:40-7.4, patient compartment dimensions, 7.5, Certification to manufacturer/FAA standards and 7.16 (recodifed as 7.15), Obstetrical kit. N.J.A.C. 8:40-7.14, Spine boards, orthopedic litter and splints, former 7.21, Special staff required, and former 7.24, Written agreements required, have been eliminated.

Minor editing changes were made in N.J.A.C. 8:40-7.10, Resuscitation devices, and 7.11, Aspirator/suction devices. These contained references to other sections of the rules which have been recodified.

N.J.A.C. 8:40-7.1, Patient restrictions, has been modified in subsection (a) to include the words "aeromedical" and "helicopter ambulance." This was necessary for identification in case the section might be quoted elsewhere.

N.J.A.C. 8:40-7.2, General helicopter requirements, now says helicopters must comply with "applicable portions of the" Federal Aviation Regulations (FAR). Various types of aeromedical providers, operating under different FAR parts, now exist. Subsection (d) was rewritten for clarity.

N.J.A.C. 8:40-7.3, Patient compartment requirements, requires seating for at least two attendants, in line with current practice. Velcro®-type "seatbelts" are prohibited. They could come loose in an emergency and endanger patient safety.

N.J.A.C. 8:40-7.6, Special lighting required, now requires all helicopters to be flood light equipped since all perform "scene work."

N.J.A.C. 8:40-7.7, General equipment and supplies requirement, has been simplified.

N.J.A.C. 8:40-7.8, Standard patient transport devices, has two changes: (1) the requirement for a mattress and bedding on the litter has been eliminated because of safety considerations (such items could blow around in the turbulence caused by the rotor as patients were being loaded or unloaded); and (2) Velcro®-type litter restraints are prohibited.

N.J.A.C. 8:40-7.9, Oxygen administration devices, has been simplified in subsection (a).

N.J.A.C. 8:40-7.12, Airway maintenance supplies, has been simplified as to the numbers and types of airways required.

N.J.A.C. 8:40-7.13, External cardiac compression support, has been simplified and now calls for a rigid surface, rather than a special board, on which to perform cardiopulmonary resuscitation.

Former sections N.J.A.C. 8:40-7.15 through 7.20 and N.J.A.C. 8:40-7.22, 7.23 and 7.25 have been recodified, since sections N.J.A.C. 8:40-7.14, Spine boards, orthopedic litter and splints, 7.21, Special staff required, and 7.24, Written agreements required, were deleted. The references to these sections in the following paragraphs incorporate this recodification.

N.J.A.C. 8:40-7.14, Wound dressing and burn treatment supplies, has been modified to simplify information and to add alternative supply choices.

N.J.A.C. 8:40-7.15, Obstetrical kit, was not changed.

N.J.A.C. 8:40-7.16, Other patient care equipment, has been modified to add both an adult and pediatric sized cuff to the manometer. The requirement for blankets (which can cause a safety hazard) has been eliminated, as has subsection (b) on other equipment.

N.J.A.C. 8:40-7.17, Required staff, has been simpified. This is consistent with current practice.

N.J.A.C. 8:40-7.18, Required training of staff, has also been changed to reflect the advanced life support level of current aeromedical and specialty staff.

N.J.A.C. 8:40-7.19, Duties of staff, now prohibits smoking at all times. This recognizes current safety practices in the aeromedical environment.

N.J.A.C. 8:40-7.20, Call report, has been modified to acknowledge that the form must be approved by the Department.

In N.J.A.C. 8:40-7.21, Radio communications, the reference to the JEMS Communications Plan (used by ground EMS services) has been eliminated.

N.J.A.C. 8:40-7.22, Special prohibitions, has been modified to remove restrictions on free swinging intravenous containers (usually plastic bags) and transportation of patients on balloon pumps.

**Social Impact**

Amendment and readoption of these rules would continue to ensure that any care given to invalid coach and ambulance patients is of high quality and that value is received for the money spent. The rules would also continue to provide a fair marketplace by insuring that all like services meet the same standards.

**Economic Impact**

There should be no significant economic impact, except upon services which seek licensure in the future. Currently licensed services will need to continue to assure that their invalid coach or ambulance equipment is properly maintained in order to insure the health and safety of their patients. The items which have been added to the required equipment or supplies lists are minimal, even on emergency ambulances. The items which may cost the most to acquire are those needed to take "universal precautions" to prevent the transmission of infection; services should have acquired these items on their own for the protection of patients and personnel. Conversely, options for meeting many equipment and supplies requirements have been expanded. Services may choose among the options, based on economics and/or special service needs. As operating expenses, such as insurance and gasoline, rise, there will be a corresponding increase in cost to the patients. These costs would be borne by the services regardless of the existence of rules. Since the original adoption of the rules in 1985, many marginal and poor quality invalid coach and ambulance service providers have ceased operation. This has provided an improved economic climate in which the good quality providers can operate.

**Regulatory Flexibility Analysis**

Although many of the services covered by these rules are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., lesser requirements or exemptions for such businesses cannot be provided. The Department considers the requirements of these rules to be necessary for the protection of the public health, safety and welfare.

However, these rules allow each provider of service to design its own patient care forms, billing systems, staff policy and procedure manuals, personnel records and other reporting forms. The forms and staff manuals need only contain certain key data, but can be organized in any way. Providers have the flexibility to use either computer or manual recordkeeping systems. Further, there are various options in some of the types of medical equipment and supplies which are required on licensed vehicles. This flexibility allows each provider to run its company in its own fashion, to find the system that provides the greatest cost benefit, and to operate with the least amount of government interference.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:40.

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

CHAPTER 40

MANUAL OF STANDARDS FOR LICENSURE OF INVALID COACH AND AMBULANCE SERVICES

SUBCHAPTER 1. DEFINITIONS

8:40-1.1 Definitions

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

**"Advanced life support" means an advanced level of prehospital, interhospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care and other techniques and procedures authorized in writing by the Commissioner, as governed by N.J.S.A. 26:2K-7 et seq. and N.J.A.C. 8:41.**

. . .

["A.N.S.I. Standard" means the standard(s) promulgated by the American National Standards Institute Inc. Copies of the cited

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standard(s) may be purchased from that Institute at 1430 Broadway, New York, NY 10018.]

...

**"Basic life support" means a basic level of prehospital care which includes patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization, and other techniques and procedures authorized by the Commissioner.**

**"Certificate of need" means a State authorized permit to construct or expand a health care facility or to institute a new health care service, in accordance with requirements at N.J.A.C. 8:33.**

...

**"Conditional vehicle permit" means a 45-day permit given to a vehicle which does not meet all licensure criteria to allow time for correction of specific non-lifethreatening deficiencies and to allow the vehicle to be used during that period.**

...

**"Emergency medical technician—Ambulance (EMT-A)" means an individual trained and currently certified by the Commissioner, in accordance with the United States Department of Transportation EMT-A training course, as outlined in the standards established by the Federal Highway Safety Act of 1966, 23 U.S.C. 401 et. seq. (amended), to deliver basic life support services, and who has completed the national standard curriculum, as published by the United States Department of Transportation for Emergency Medical Technician-Ambulance and who is affiliated with an emergency medical services organization.**

...

"Federal Specification KKK-A-1822" means the specification and amendments thereto in force at the time of vehicle manufacture and entitled "Federal Specification, Ambulance, Emergency Medical Care Surface Vehicle KKK-A-1822" as published by the Federal Supply Service of the U.S. General Services Administration. [Single copies of the specification are available, at no charge, from EmHS, CN 363, Trenton NJ 08625.] **Copies of the specification may be obtained by contacting:**

**General Services Administration**
**Specification Section (3FBP-W), Room 6654**
**7th and D Streets, SW**
**Washington, D.C. 20407**

...

"Helicopter [Ambulance Service] **ambulance service**" means those services which provide aeromedical emergency care and transportation by rotowing aircraft and which are either provided to patients located in New Jersey by [currently existing] out-of-[state] **State** providers or are provided by the New Jersey State Police.

["JEMS Communication Plan" means the State of New Jersey Emergency Medical Services Communication Plan published by the Department. Single copies of the plan are available, at no charge, from EmHS, CN 363, Trenton, NJ 08625.]

**"Impervious" means not allowing liquids or dirt to penetrate the surface of the material.**

**"In-service" means the presence of the vehicle at a health care facility or other place of medical care or picking up, transporting, or discharging any patient.**

**"Inter-hospital care" means those emergency medical services rendered by emergency or transport ambulances and their crews to patients before and during transportation between emergency treatment facilities, and upon arrival within those facilities.**

"International symbol of access for the handicapped" means the outline form of a person in a wheelchair [as illustrated in Appendix A].

...

**"JEMS communication plan" means the State of New Jersey Emergency Medical Services Communication Plan published by the Department. Single copies of the plan are available, at no charge, from EMS, CN 364, Trenton, NJ 08625-0364.**

...

**"Paramedic" means a person who is trained in advanced life support services and who is certified as a mobile intensive care paramedic by the commissioner (under N.J.S.A. 26:2K-7 et seq.) to render advanced life support services as part of a mobile intensive care unit.**

"Patient" means any person utilizing services licensed under this chapter[.], **including an individual who is sick, injured, wounded, diseased, or otherwise incapacitated or helpless, and excluding deceased individuals being transported from or between private or public institutions, homes or cemeteries, and individuals declared dead prior to the time an ambulance is called for assistance.**

**"Payment for services" means monies received for providing, or promising to provide, patient care, including, but not limited to, fee-for-service, subscription plans, contracts, or salaries for staff members, but excluding receipt of funds which may be donated to a volunteer first aid or rescue squad by a municipality in the amount of or less than the donation limit prescribed by law.**

"Pneumatic Testing [Manual"] **Guide"** means the Pneumatic Testing [Manual] **Guide** (for Pre-Hospital Respiratory Equipment) published by the Department. Single copies are available, at no charge, from [EmHS, CN 363,] **EMS, CN 364**, Trenton, NJ 08625.

...

**"Staff" means anyone working on the vehicle, including the medical crew and the driver, who is providing care to the patient or operating the vehicle.**

"Star of Life" means the symbol described in certification of registration number 1,058,022 which the United States Commissioner of Patents and Trademarks has issued to the National Highway Traffic Safety Administration. [The Star of Life symbol is illustrated in Appendix B.]

...

**"Volunteer first aid, rescue or ambulance squad" means a first aid, rescue or ambulance squad which provides emergency medical services without receiving payment for those services.**

SUBCHAPTER 2. AUTHORITY AND LICENSURE PROCEDURES

8:40-2.2 Application of regulations

**(a) This chapter shall apply to all Ambulance and Invalid Coach companies providing service in New Jersey, unless exempted under N.J.A.C. 8:40-2.5**

Recodify (a)-(d) as **(b)-(e)** (No change in text.)

8:40-2.3 Certificate of need required

(a) (No change.)

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

[Review and Comment Program]
**Certificate of Need Program**
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-**0360**

**(c) Licensed services and municipalities providing emergency ambulance services ("street EMS") cannot discontinue services without sending written notification to the Department at least 90 days prior to the planned closure date and receiving certificate of need approval.**

8:40-2.4 Licensing requirements

(a) (No change.)

(b) Provider licensing shall consist of two types of licenses:

1. A **six-month** temporary provider permit issued by the Department which authorizes the licensee to provide one or both of the following:

i.-ii. (No change.)

2. (No change.)

(c) Vehicle licensing shall consist of a [decal] **45-day conditional permit** or a license issued by the Department for a specific vehicle which authorizes the licensee to utilize the vehicle to provide:

1.-4. (No change.)

(d) (No change.)

(e) Vehicles licensed to provide Transport Ambulance Service may be utilized to provide Invalid Coach Service provided:

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1. (No change.)

2. The vehicle, equipment, supplies and staffing **continue to** comply with the requirements for Transport Ambulance Service.

(f) Vehicles licensed to provide Emergency Ambulance Service may be utilized to provide Invalid Coach Service provided:

1. (No change.)

2. The vehicle, equipment, supplies and staffing **continue to** comply with the requirements for Emergency Ambulance Service.

(g) Vehicles licensed to provide Emergency Ambulance Service may be utilized to provide Transport Ambulance Service provided the vehicle, equipment, supplies and staffing **continue to** comply with the requirements for Emergency Ambulance Service, **as set forth in N.J.A.C. 8:40-1, 2, 3 and 6.**

(h) (No change.)

**(i) At the discretion of the authorized representative of the Department, a 45-day conditional permit may be issued to vehicles which do not meet full licensure criteria, but whose deficiencies do not constitute a threat to patient or staff safety. A conditional permit may be considered only for a vehicle upon initial presentation for licensure; vehicles undergoing relicensure are ineligible for a conditional permit.**

8:40-2.5 Exemptions from licensing requirements

(a) In accordance with the provisions of N.J.S.A. 30:4D-6.2 et seq. and N.J.S.A. 26:2H-1 et seq., this chapter shall not apply to Invalid Coach Services or Ambulance Services provided by volunteer first aid, rescue and ambulance squads as defined in the "New Jersey Highway Safety Act of [1971] **1987"** (N.J.S.A. 27:5F-[1]**18** et seq.).

(b) This chapter shall not apply to providers which are based in other states and which provide service in New Jersey when the provider is:

1. Transporting a patient through New Jersey from an out-of-[state] **State** location to [an] **another** out-of-[state] **State** location; or

2. Transporting a patient from an out-of-[state] **State** location to a New Jersey location and returning that same patient to an out-of-[state] **State** location **on the same calendar day**; or

3. Transporting a patient **on a one-way trip** from an out-of-[state] **State** location to a New Jersey location.

(c) The provisions of this chapter will not apply to services provided **directly** by an agency of the government of the United States. **Providers holding government contracts do not meet this criterion and are not exempt from licensure.**

(d) (No change.)

8:40-2.6 Surveys

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

(c) In recognition of the necessity to determine compliance with all sections of this chapter, authorized representatives of the Department may survey a vehicle whenever it is in-service provided that no representative of the Department shall stop any vehicle when it is traveling on a public road. [For the purpose of such a survey, in-service shall mean:

1. The presence of the vehicle at a health care facility or other place of medical care, or

2. Picking up, transporting or discharging any patient.]

(d)-(f) (No change.)

**(g) The Department shall notify the licensee in writing of any survey results (positive or negative).**

8:40-2.7 Applications for **provider** licensure and/or vehicle [decals or] licenses

(a) Following acquisition of a Certificate of Need, any person, public or private institution, agency or business concern desiring to be licensed or relicensed to operate Invalid Coach Services and/or Ambulance Services or to secure a vehicle [decal or] license shall apply to the Commissioner on forms prescribed by the Department. Forms are available from:

[Office of Emergency Health Services
New Jersey State Department of Health
CN 363
Trenton, NJ 08625]

**Office of Emergency Medical Services
New Jersey State Department of Health
CN 364
Trenton, NJ 08625-0364**

(b) The Department shall charge [a] **an annual** non-refundable fee of $50.00 for the filing of an application to license, or relicense, a provider. **Services receiving two-year licenses will be charged an amount twice the annual fee.**

(c) The Department shall charge [a] **an annual** non-refundable fee of $20.00 for the filing of an application to license, or relicense, each vehicle. **Vehicles receiving two-year licenses will be charged an amount twice the annual fee.**

**(d) Beginning with licensure year 1992, services with names beginning with the letters A-L will be issued two-year licenses. For licensure year 1992, services with names beginning with the letters M-Z will be issued one-year licenses. Beginning with licensure year 1993, services with names beginning with the letters M-Z will be issued two-year licenses. Subsequent applications for relicensure will be on a two-year cycle by alphabetical grouping, although services may be resurveyed annually for quality assurance purposes. New services which apply for licensure mid-cycle will be issued a license for the appropriate alphabetical timeframe and will be charged the applicable one-year or two-year fee.**

[(d)]**(e)** Each set of application(s) submitted to the Department shall be accompanied by a single check in the correct amount made payable to "Treasurer, State of New Jersey."

**(f) Governmental entities, such as municipalities and State agencies, are exempt from paying the application fees listed in (b) and (c) above, but must file the appropriate applications.**

[(e)]**(g)** Upon receipt of the required **application** forms, authorized representatives of the Department shall survey (or resurvey) the licensee and/or the vehicles to determine compliance with this chapter.

[(f)]**(h)** The Department shall notify the licensee in writing of any deficiencies found during [the survey] **surveys.**

8:40-2.9 Full provider license

**(a) The licensure year extends from January 1 to December 31 of the same calendar year. Beginning in licensure year 1992, two-year licensing will be phased in, as described in N.J.A.C. 8:40-2.7(d).**

[(a)]**(b)** A full license, valid for a period of 12 months or less, **until December 31, 1991, or 24 months or less after January 1, 1992,** shall be issued on expiration of the temporary permit, if periodic surveys by the Department have determined that the licensee is in compliance with this chapter.

[(b)]**(c)** The full license, unless sooner suspended or revoked, shall be renewed [each year on the original licensure date,] **prior to its expiration date, as noted on the license,** contingent upon the licensee:

1.-2. (No change.)

[(c)]**(d)** (No change in text.)

8:40-2.10 Vehicle [decals and] licenses

(a) Upon finding that the vehicle and required equipment [is] **are** in compliance with this chapter, the Department shall issue a [decal or a] license **or permit** for the vehicle. Except as provided in N.J.A.C. 8:40-[6.4(b)] **2.4 (c)**, [the decal] **the license or permit** shall be valid for the same period as the temporary **provider** permit or full license.

(b) The [decal] **original vehicle license or permit** shall be affixed to the lower right corner of the window of the rear (curb side) door into the patient compartment of the vehicle for which the [decal] **license or permit** was issued. [The license shall be displayed within the patient compartment.] **The information on the license or permit shall be readable from outside the vehicle.**

8:40-2.11 Vehicle recognition number

In recognition of the need for the public to be able to identify specific vehicles licensed by the Department and to avoid confusion between firms with similar appearing names, each vehicle shall have a vehicle recognition number. The licensee shall, with the approval of the Department, permanently assign a unique non-duplicated one, two, [or] three **or four**-digit Arabic number, **or a combination of**

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**letters and Arabic numbers not to exceed four characters,** to each vehicle.

8:40-2.12 Waiver

(a) (No change.)

(b) A licensee seeking a waiver of part(s) of this chapter [(such as to provide specialized transport)] shall apply in writing to:

[Office of Emergency Health Services
New Jersey State Department of Health
CN 363
Trenton, NJ 08625]

**Office of Emergency Medical Services**
**New Jersey State Department of Health**
**CN 364**
**Trenton, NJ 08625-0364**

8:40-2.13 Non-transferability

No permit[,] **or** license [or decal] issued by the Department under this chapter is assignable or transferable. Any permit[,] **or** license [decal] shall be immediately void if the ownership of the agency and/or vehicle changes.

8:40-2.14 Return of vehicle [decal or] license

(a) The licensee shall return to the Department the [scrapings of the vehicle decal(s) or the license] **vehicle license**:

1. Concurrent with the surrender or termination of its **provider** license; or

2. When the vehicle is sold or becomes unusable.

8:40-2.15 Discontinuance of vehicle use

(a) In order to protect the public health, safety and welfare, an authorized representative of the Department is empowered to place an "Out-of-Service" [sticker] **notice** on any vehicle licensed under this chapter when a survey has determined that the vehicle, equipment, or staffing poses an imminent threat to the health, safety or welfare of the public or to patients using the service.

(b) (No change.)

(c) The licensee shall immediately cease to utilize the vehicle to provide any services authorized under this chapter if an "Out-of-Service" [sticker] **notice** is placed on the vehicle. The licensee shall ensure that the "Out-of-Service" [sticker] **notice** is not removed from the vehicle, except as provided in (d) [or (e)] below. The licensee shall have the right to appeal to the Commissioner for a hearing concerning the placement of the "Out-of-Service" [sticker] **notice**.

(d) [Except as provided in (e) and (f) below, an] **An** "Out-of-Service" [sticker] **notice** shall only be removed by an authorized representative of the Department upon a finding that the applicable deficiencies have been corrected. Correction of deficiencies could include, but is not limited to:

1.-2. (No change.)

[(e) The administrator of the licensee may request the on-duty station supervisor, or acting supervisor, of a New Jersey Division of Motor Vehicles Inspection Station (operated and staffed by employees of the New Jersey Division of Motor Vehicles) to remove an "Out-of-Service" sticker when:

1. The sticker was placed upon the vehicle solely because of apparent automotive defects; and

2. The vehicle has successfully passed all tests conducted by the N.J. Division of Motor Vehicles; provided

3. The licensee advises the Department by telegram or hand-delivered written notice within 12 hours of the removal of the sticker.

(f) For purposes of (e) above, the on-duty station supervisor, or acting supervisor of a New Jersey Division of Motor Vehicles Inspection Station operated and staffed by employees of the New Jersey Division of Motor Vehicles, is authorized to but need not remove such an "Out-of-Service" sticker.]

**(e) The licensee shall notify the Office of Emergency Medical Services by telephone when it believes that a deficiency has been corrected. The Office of Emergency Medical Services will make arrangements to reinspect the vehicle in the field within five business days or at the Office of Emergency Medical Services within two business days. The "Out-of-Service" notice will only be removed upon a finding that the applicable deficiencies have been corrected, as in (d) above.**

8:40-2.16 Action against a licensee

(a) Violation of any of the provisions of this chapter may result in action to impose a fine **or to revoke the license of the provider**. (See N.J.S.A. 26:2H-13 and 26:2H-14 for authority and maximum fines.)

[(b) Violation of N.J.A.C. 8:40-3.15 (Required insurance coverage) shall result in action to revoke the license of the provider.]

Recodify existing (c)-(e) as **(b)-(d)** (No change in text.)

8:40-2.17 Hearings

Except as provided in N.J.A.C. 8:40-2.15, no permit[, license or vehicle decal] **or license** shall be suspended or revoked and no fine shall be imposed without affording the licensee an opportunity for a hearing. In the event an [out-of-service sticker] **Out-of-Service notice** has been placed on the vehicle pursuant to N.J.A.C. 8:40-2.15, the hearing shall be held within 10 days unless an adjournment is requested by the licensee. The procedures governing all hearings shall be in accordance with the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 26:2H-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1[-1 et seq.].

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:40-3.1 Agency ownership

(a) The ownership of the institution, agency or business concern applying for licensing and the ownership of the vehicle(s) shall be disclosed to the Department. Proof of this ownership shall be made available to representatives of the Department. [Any proposed change in ownership shall be reported to the department in writing 30 days prior to the change.]

**(b) Any company which proposes a redistribution of stock, a transfer of ownership or a change in the scope of its service must contact the Department to ascertain if Certificate of Need approval and/or new provider and vehicle permits will be needed before starting to provide service with the new name and/or new owners, and/or changing the type of service it provides.**

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

**(d) No person who was a principal or owner in a company which was licensed under this chapter and which had its license revoked, following the opportunity for a hearing as provided under N.J.A.C. 8:40-2.17, shall be eligible to be a principal or owner of a subsequent service licensable under this chapter.**

[(c)]**(e)** (No change in text.)

8:40-3.2 Administrator required

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

**(d) Either the licensee, the administrator, or an alternate shall be designated as principal contact and shall be available for consultation with the Department during business hours.**

[8:40-3.3 Written policies, procedures and task outlines

(a) The licensee shall develop written policies, procedures and task outlines to ensure compliance with the requirements of this chapter.

(b) The policies, procedures and task outlines shall be utilized by all staff of the licensee.]

**8:40-3.3 Standard operating procedures**

**(a) The licensee shall develop written standard operating procedures to ensure compliance with the requirements of this chapter.**

**(b) The procedures shall be contained in a manual which is readily available to all staff of the licensee.**

**(c) In addition to addressing the employees' responsibilities under this chapter, such as operating with surveys, the rules governing "out-of-service" vehicles, the possibility of incurring fines in case of licensure violations, having training credentials immediately available and performing duties in a professional manner, the manual should address sanitation requirements, vehicle cleanliness, communicable disease guidelines, placing patients into physical be-**

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**havioral restraints, patients' rights and confidentiality, vehicle breakdowns and other areas of concern to the licensee or the Department. The manual shall also contain a nondiscrimination statement, outlining the service's willingness to transport and treat patients with AIDS. As appendices, the manual shall include a copy of the EMS Annex and the HAZMAT Annex of the State disaster plan, if the service provides "street EMS." A copy of these rules (N.J.A.C. 8:40) shall be included in the manual, but, by itself, is not sufficient to totally meet the requirements of this section.**

8:40-3.4 Business locations

(a) (No change.)

**(b) The Department shall also be informed of the location of any satellite offices and vehicle storage sites maintained by the licensee. The Department shall be notified at least 30 days prior to commencement of business at any proposed satellite location.**

[(b)]**(c)** The licensee may park or store its vehicles at location(s) not under the licensee's control (such as at employees' homes or upon public streets), consistent with local ordinances. [Upon request, the licensee shall inform the Department of all such locations where its vehicles are parked or stored.]

8:40-3.5 Report of unusual occurrences

(a) The licensee shall immediately notify the Department by telephone, followed by a written confirmation within 72 hours, of:

1. Any death or any injury requiring hospitalization **or treatment in an emergency department,** which occurred to patients being transported by the licensee's Invalid Coach or Transport Ambulance.

**2. Any injury requiring hospitalization or treatment in an emergency department, which occurred while a patient was being treated by the licensee's staff or transported by the licensee's Emergency Ambulance.**

**3. Any motor vehicle accident involving the licensee's vehicle which occurred on a public roadway.**

[2.]**4.** Any death, or any injury requiring hospitalization **or treatment in an emergency department,** which occurred to any on-duty personnel of the licensee.

[3.]**5.** Any fire on or within the licensee's vehicle(s) or business location(s) resulting in any damage to **premises, vehicles, or** records.

[4.]**6.** Any removal of a vehicle from service for a period greater than 30 days.

(b) (No change.)

8:40-3.6 Advertising restrictions

(a) (No change.)

**(b) Any provider which responds to a bid to provide service must hold a Certificate of Need and a license which allows operation in that locale and at that level of service, unless the provider was already providing that level of service in that locale at the time N.J.A.C. 8:40 was initially adopted in 1985 and was "grandfathered" without a Certificate of Need.**

Recodify existing (b)-(d) as **(c)-(e)** (No change in text.)

[(e)]**(f)** The words "Paramedic," "Mobile Intensive Care," "Intensive Care," **"MICU", "Critical Care Transport Unit", "CCTU",** "Coronary Care" or "Special Care," or abbreviations of such words, shall only appear in advertisements when the provider is authorized to provide Mobile Intensive Care Unit Services in accordance with N.J.S.A. 26:2K-2 et seq. **or has been granted a Certificate of Need for such services under N.J.A.C. 8:33N.**

[(f)]**(g)** (No change in text.)

8:40-3.7 Minimum personnel requirements

(a) Each person who operates a motor vehicle licensed under this chapter shall possess **and have readily available for inspection** a valid driver's license, as required under N.J.S.A. 39:3-10 (Title 39, Motor Vehicle and Traffic Regulations).

(b) Each person who staffs or operates a vehicle licensed under the chapter:

1. Shall be at least [18] **17** years old;

2. Shall dress in clothing, including any outerwear, [of a similar uniform appearance] **which presents a professional appearance;**

3. Shall wear the following identification:

i. His or her first and/or last name [above the left breast]; **and**

ii. [Name] **The name** of **the** licensee.

4. (No change.)

5. Shall [carry upon his or her person] **have readily available for inspection, either on his or her person or in the vehicle,** valid documentation, or other proof thereof, of his or her training as may be required in this chapter.

(c) (No change.)

(d) No person shall be allowed to staff a vehicle licensed under this chapter while displaying any patch or other symbol indicating a level of training he or she has not attained or is not eligible to provide **on that service.**

(e) No person shall be allowed to staff or operate a vehicle licensed under this chapter:

1. While under the influence of intoxicating liquor or narcotic or habit forming drugs; or

2. In a reckless manner; or

3. At excessive speed[.]**; or**

**4. While engaging in any unprofessional or illegal conduct.**

8:40-3.8 Personnel files required

A personnel file shall be maintained for each employee. The file shall include the employee's name, home address, documentation of training and expiration date of current training certification or licensure **and a copy of the employee's current driver's license, if the employee is a licensed motor vehicle operator.**

8:40-3.9 Maintenance of records

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

(c) The licensee shall retain and safely store all required medical records for at least [ten] **10** years and all other required records for at least five years. In the event the licensee ceases operation for any reason, the licensee shall arrange for the safe storage of required records at a place, and in a manner, acceptable to the Department.

8:40-3.10 General vehicle requirements

(a) Motor vehicles licensed under this chapter shall be registered**, maintained** and operated in accordance with Title 39 Motor Vehicle and Traffic Regulations of the State of New Jersey.

(b) Vehicles registered as motor vehicles in New Jersey shall display a valid motor vehicle inspection decal issued by the New Jersey Division of Motor Vehicles. The vehicle shall only be used to provide service after it has successfully passed all motor vehicle tests conducted by the New Jersey Division of Motor Vehicles, or by an authorized Reinspection Station. **No vehicle shall provide services under this chapter while it bears a "reject sticker" issued by the New Jersey Division of Motor Vehicles.**

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

(e) The interior of the vehicle shall be designed for the safety of patients and staff and the patient compartment shall have the following safety and sanitary features:

1.-3. (No change.)

4. The floor shall have a [flat even] **flat, even, unbroken** surface and be covered with a slip resistant material.

5. (No change.)

**6. Any seats with underseat storage shall have a latch(es) which will hold the seat closed. Magnetic latches or friction latches are prohibited.**

**7. Any cabinet door, except a sliding door, shall have a positive latching mechanism which will hold the door securely closed and will prevent the contents of the cabinet from pushing the door open from the inside. Magnetic latches or friction latches are prohibited.**

**8. Any items (stored outside of closed cabinets) shall be stored in a crashworthy manner. Use of rubber "shock cords" and Velcro®-type closures are prohibited.**

[(f) The speedometer and odometer shall accurately display the vehicle's speed and distance traveled in accordance with the accuracy standard contained in SAE Recommended Practice Standard J678 e—Speedometers and Tachometers.]

**(f) Once a vehicle is licensed by the Department, there shall be no further changes to the vehicle's interior configuration.**

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8:40-3.11 Motor vehicle chassis, body and components

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

(c) Tires shall [comply with FMVSS 120 and shall] be appropriate for the Gross Vehicle Weight of the vehicle. Radial and non-radial tires shall not be "mixed" on the vehicle.

(d) The vehicle exhaust system shall [be in accordance with Federal Motor Carrier Safety Regulation, Part 393:83. The exhaust shall] discharge beyond the side(s) of the vehicle and away from fuel tank filler pipe(s) and away from door(s) to minimize the amount of fumes and contaminants entering the vehicle. **The exhaust system shall be free of leaks.**

(e)-(h) (No change.)

8:40-3.13 Restrictions on carbon monoxide concentrations

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

(c) The vehicle exterior, doors, windows and related gaskets shall be in good condition in order to limit the entrance of carbon monoxide and other toxic gases and fumes into the vehicle. [Carbon monoxide shall not enter the vehicle at rates greater than 10 ppm above the general ambient carbon monoxide concentration.]

(d) The vehicle shall be tested for interior carbon monoxide, in a manner acceptable to the Department, [at least once every 12 months] **whenever a situation arises in which carbon monoxide intrusion is suspected or as an optional part of an official Department inspection of the vehicle.**

8:40-3.14 Sanitation requirements

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

(d) When the vehicle has been utilized to transport a patient known or suspected to have a communicable disease, [other than a common cold,] the vehicle shall be cleaned and all contact surfaces, equipment and blankets shall be disinfected prior to transportation of another patient, **according to current guidelines of the Federal Centers for Disease Control, Atlanta, Georgia, as amended and supplemented, incorporated herein by reference.**

(e)-(i) (No change.)

**(j) Single use latex gloves shall be available for staff use. They should be properly maintained and stored and should be properly disposed of after use.**

8:40-3.15 Required insurance coverage

(a) Each licensee shall maintain the required minimum insurance as outlined [in (b)-(d)] **in (a)1 through 4** below plus such additional insurance as the licensee may deem necessary in order to be eligible to provide services under this chapter. The licensee shall discontinue any and all services licensed under this chapter in the event any portion of the required insurance is cancelled or becomes void.

[(b) The licensee shall have and maintain at least $300,000 of single limit coverage of "premises and operations" type general liability insurance.

(c) The licensee shall have and maintain at least $100,000 of single limit bodily injury coverage, with at least $300,000 coverage per occurrence, of "mal-practice" type professional liability insurance.

(d) The licensee shall have and maintain at least $100,000 of single limit bodily injury coverage, with at least $300,000 per occurrence, and at least $50,000 property damage coverage for each vehicle licensed under this chapter.]

**1. The licensee shall have and maintain at least $500,000 per occurrence of combined bodily injury/property damage coverage for each vehicle licensed under this chapter; and**

**2. The licensee shall have and maintain at least $300,000 of single limit coverage of "premises and operations" type general liability insurance; and**

**3. The licensee shall have and maintain at least $300,000 per occurrence coverage of "malpractice" type professional liability insurance; or**

**4. The general liability and malpractice insurance required in (a)2 and 3 above may be combined in a single policy of at least $500,000 per occurrence.**

**(b) The licensee will be required to submit an official "certificate of insurance" form, covering all three types of insurance mentioned above and issued by the insurance carrier(s), at the time of initial licensure. This form or forms shall show that the required insurance has been purchased and is in force. If vehicles are insured as "scheduled autos" the Vehicle Identification Number (VIN) of each vehicle must be listed on the certificate of insurance. The tradename of the licensee must be listed as an insured.**

**(c) Upon application for relicensure, the licensee shall supply the Department with the following information as part of the relicensure form: name of the policyholder (which must include the licensee's tradename), name of the insurance company or companies issuing each policy, each applicable policy number, the expiration date of each policy, and the types and limits of coverage for each policy.**

**(d) Department staff may ask to see vehicle insurance cards during vehicle spot checks or to see copies of the service's insurance policies during inspection visits to the provider's place of business to verify that the required insurance is in force.**

**(e) Should the examined documents during spot checks or site visits or the information supplied during relicensing appear questionable as to whether the required insurance is in force, the licensee shall be required to have its insurance carrier(s) submit another official "Certificate of Insurance" to the Department.**

[8:40-3.16 Provision of certificate of insurance

(a) The agency shall arrange for the firm providing the insurance to send a certificate of insurance and any ten-day notice of cancellation to the Department.

(b) The certificate of insurance shall:

1. Identify the insurance company(ies) policy number(s), type and amount of coverage;

2. Certify that the insurance is in force and;

3. Provide that the Department shall be sent a copy of any ten-day notice cancellation.]

8:40-[3.17]**3.16** Pneumatic testing required

(a) All respiratory equipment used to provide services licensed under this chapter shall be pneumatically tested **at least** every six months[,] and, if required by the manufacturer, at more frequent intervals[, if necessary]. At a minimum, the tests shall measure the:

1. Flow rate and vacuum pressure delivered by each aspirator required in N.J.A.C. 8:40-[5.13]**5.14** and 8:40-6.15.

2. Flow rate and inspiratory pressure delivered by each oxygen-powered resuscitator required in N.J.A.C. 8:40-[5.12] **5.13** and 8:40-6.14.

3. Flow rate, inspiratory pressure and deflating/refilling time cycles of each bag-valve-mask resuscitator required in N.J.A.C. 8:40-[5.12]**5.13** and 8:40-6.14.

4. Flow rate delivered by each oxygen flowmeter required in N.J.A.C. 8:40-[5.11]**5.12** and 8:40-6.13 and permitted in **N.J.A.C.** 8:40-4.9.

5. Pressure delivered by each oxygen system regulator required in N.J.A.C. 8:40-[5.11]**5.12** and 8:40-6.13 and permitted in **N.J.A.C.** 8:40-4.9.

(b) [The required pneumatic test] **Periodic pneumatic testing** may be conducted by staff of the licensee or by an outside agency. All tests shall be conducted in accordance with the Pneumatic Testing [Manual] **Guide** as published by and from the Department.

(c) The results of the pneumatic test shall be kept on file at the licensee's principal place of business.

**(d) At the discretion of the Department, pneumatic testing done by approved outside agencies may be accepted for the purpose of vehicle licensure.**

8:40-[3.18]**3.17** Biomedical equipment testing required

(a) In recognition that licensees may provide biomedical patient care equipment for hospital staff to use, any biomedical patient care equipment used to provide services licensed under this chapter shall be inspected and tested every six months[,] and, if required by the manufacturer, at more frequent intervals[, if necessary].

(b) For the purposes of this section, biomedical patient care equipment includes, but is not limited to:

1. Cardiac resuscitators (that is, Thumpers®);

2. Cardiac defibrillators and/or monitors;

3. Incubators;

4. Specialized respirators[.]**; and**

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**5. Automatic ventilators.**

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

8:40-[3.19]**3.18** Physical behavioral restraints

(a) No patient shall be placed in, or transported in, physical behavioral restraints unless:

1. A physician or court has authorized the placement of the restraints[,]; [or]

2. The patient is in the custody of a [police or corrections officer] **law enforcement officer**[,]; or

3. The medical condition of the patient mandates transportation to, and treatment at, a health care facility, and the patient manifests such a degree of behavior that he or she:

i. Poses serious physical danger to himself or herself or to others[,]; or

ii. Causes serious disruption to ongoing medical treatment which is necessary to sustain his or her life or to prevent disability.

(b) No patient shall be kept in physical behavioral restraints for a period greater than one hour unless:

1. A physician or court has authorized the use of the restraints for longer than one hour[,]; or

2. The patient is [in the custody of a police or corrections officer] **accompanied in the rear of the vehicle by a law enforcement officer.**

(c) No physical behavioral restraint shall be of a type, or used in a manner, that causes undue physical discomfort, harm or pain to a patient. Hard restraints, such as handcuffs, are specifically prohibited unless the patient is [in the custody of a police or corrections officer] **accompanied by the law enforcement officer who applied the hard restraints or handcuffs.**

(d)-(f) (No change.)

SUBCHAPTER 4. SPECIFIC INVALID COACH REQUIREMENTS

8:40-4.1 Patient restrictions

(a) Except as prohibited in (b) below, non-emergency health care transportation by Invalid Coach Vehicles shall be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory[,]; or

2. Are wheelchair bound.

(b) Service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

1.-4. (No change.)

**5. An automatic ventilator or whose breathing is ventilator-assisted; or**

Recodify existing 5.-8. as **6.-9.** (No change in text.)

8:40-4.2 General vehicle requirements

(a) (No change.)

(b) Each vehicle used by a licensee to provide Invalid Coach Service shall have and display a valid Invalid Coach license [decal] issued by the Department.

8:40-4.3 Patient compartment requirements and dimensions

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

(c) The patient compartment shall have at least two exterior doorways:

1.-2. (No change.)

3. [The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-4.4(a).] **The wheelchair access to any doorway shall not be obstructed by any immovable objects, such as, but not limited to, bench seats, spare tires, and storage compartments, except as permitted in N.J.A.C. 8:40-4.4(a).**

4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle, **using a standard automotive industry door handle.**

5. (No change.)

(d) (No change.)

(e) There shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair [and/or stairchair] transported in the vehicle. [When in use, each wheelchair restraint position shall secure and immobilize one wheelchair and/or stairchair in a crashworthy manner and so that movement of the occupied wheelchair and/or stairchair does not exceed one inch.]

**1. Any wheelchair restraint system shall secure and immobilize the frame of the wheelchair in a crashworthy manner and so that movement of the occupied wheelchair does not exceed one inch in any direction. The restraint system shall not be attached to the wheels of the wheelchair.**

**2. Each wheelchair shall have a patient seatbelt which secures the patient into the wheelchair in a configuration similar to an automotive lapbelt. Velcro® type closures are prohibited. The seatbelt shall attach only to the wheelchair, not to the vehicle, and shall not be part of the wheelchair restraint system.**

8:40-4.4 Ramp or lift required

(a) There shall be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. [While in use, the device shall be securely] **The device shall be permanently** fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.

(b) (No change.)

(c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device. **The manual backup device shall be capable of both lifting and lowering the patient and shall perform either function within five minutes.**

8:50-4.5 Vehicle markings

(a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than [three] **six** inches high on the two exterior sides of the vehicle, **for any vehicle licensed after March 1, 1992.**

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

(d) Signs shall appear in the patient compartment which state "Smoking Prohibited." [: Violator Subject to Fine."]

(e) (No change.)

(f) To avoid the appearance of an emergency vehicle, the following shall not appear on the vehicle:

1. Symbol(s) consisting of or resembling the "Star of Life," a Greek cross or a Maltese cross, **or any symbol implying provision of advanced life support.**

2. Words, or abbreviations of [such] words, such as "Emergency," "Emergency Medical Technician," "Paramedic," "Mobile Intensive Care," "Coronary Care" [or], "Intensive Care[.]," **"Advanced," "Trauma," or "Critical."**

(g) (No change.)

8:40-4.6 Emergency warning devices prohibited

No Invalid Coach vehicle shall be equipped with, or appear to be equipped with, audible or visible emergency vehicle warning devices, such as flashing or rotating lights, sirens or airhorns. [No licensee shall apply for, or possess, an emergency vehicle light and siren permit (as authorized under N.J.S.A. 39:3-50) for any vehicle licensed solely as an Invalid Coach.]

8:40-4.8 General equipment and supplies requirement

(a) (No change.)

(b) All equipment and supplies, **including unoccupied wheelchairs,** shall be stored in a safe, crashworthy manner, **as outlined in N.J.A.C. 8:40-3.10(e).**

8:40-4.9 Oxygen administration devices

(a) Oxygen administration devices may, but need not, be carried in the vehicle. If carried, the oxygen and related equipment shall comply with the requirements of this section and the vehicle shall be staffed in accordance with the requirements of **N.J.A.C.** 8:40-4.12[(a)]**(b).**

(b) (No change.)

(c) Any portable oxygen system shall be capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder opening handles/wrenches shall be chained to the regulator or affixed to the

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cylinder. **All oxygen storage arrangements shall comply with applicable provisions of Federal specification KKK-A-1822.**

(d) (No change.)

(e) Any oxygen system shall have an oxygen flowmeter. The oxygen flowmeter shall have a gauge or dial with a range of **at least** 0 to 15 liters per minute **(1pm)** in calibrated increments. The flowmeter on any portable oxygen system shall be non-gravity dependent. **Flowmeters shall be accurate to within one lpm when at a setting equal to or less than 10 1pm and within 1.5 lpm when set equal to or greater than 11 1pm. Non-dial type flowmeters must take at least one full turn to go from 0 to 15 1pm. Indicators on dial-type flowmeters must be securely seated at each flow rate position.**

(f) If oxygen administration equipment is carried, there shall be **at least** three clear adult size simple inhalation masks of the single service type and two single service cannulas.

(g)-(h) (No change.)

8:40-4.10 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles, **or three battery-operated flashers, or six flares**;

2. One flashlight, two D cell size or larger; **and**

3. One or two fire extinguishers, U.L. rated at least 1A 10BC in total. **The extinguisher(s) shall have either a gauge indicating it is fully charged, or a** [with] current inspection tag.

8:40-4.11 Required staff

While in service, each Invalid Coach vehicle shall be staffed by at least one person who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. [Any additional staff persons shall meet the requirements of N.J.A.C. 8:40-3.7.] **A second invalid coach staff member, also meeting the same requirements, shall be required if a patient in a wheelchair must be moved up or down five or more steps or if a patient in a wheelchair weighs 200 or more pounds.**

8:40-4.12 Required training of staff

[(a) If oxygen administration devices are carried in the vehicle, the required staff person shall possess valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

(b) If oxygen administration devices are not carried in the vehicle, the required staff person shall possess valid certification as:

i. An Emergency Medical Technician-Ambulance, issued by the Department; or

ii. An Invalid Coach Attendant, issued by the Department.

(c) In recognition of the necessity for staff to be trained, the required person may, for 24 full calendar months after the operative date of this chapter (that is, until April 30, 1987), possess valid documentation of "Advanced First Aid and Emergency Care" training, issued by the American Red Cross, or "CIM/First Responder" training, issued by the Department, in lieu of Department certification as an Invalid Coach Attendant.]

**(a) If oxygen administration devices are not carried in the vehicle, the required staff person(s) shall possess valid certification in Passenger Assistance Techniques (P.A.T.) issued by Transportation Management Associates, Ft. Worth, Texas, and one of the following:**

**1. BLS-A: Heartsaver, issued by the American Heart Association; or**

**2. Adult CPR, issued by the American National Red Cross.**

**(b) If oxygen administration devices are carried in the vehicle, the required staff person(s) shall possess valid certification as an Emergency Medical Technician-Ambulance, issued by the Department, in addition to the training required in (a) above.**

8:40-4.13 Duties of staff

(a) The collective duties of each person who staffs an Invalid Coach vehicle shall include, but are not limited to:

1. Assisting patients to enter and to leave the vehicle, supervising the well being of patients while in the vehicle and ensuring the privacy [and comfort of patients], **comfort, and appropriate care of patients**;

2. Assuring that all wheelchairs are **properly** restrained in the required restraints [and requiring that the driver and all vehicle occupants wear automotive safety belts] **and that all wheelchair patients are restrained in the wheelchair in accordance with N.J.A.C. 8:40-4.3(e)2;**

**3. Assuring that the driver and all other vehicle occupants wear automobile safety belts;**

[3.]**4.** (No change in text.)

[4.]**5.** Reporting verbally to the appropriate personnel when a patient is brought to a health care facility or other place of medical care; **and**

[5.]**6.** Prohibiting smoking within [the patient compartment and, if there is no solid bulkhead between the driver's compartment and patient compartment, within the driver's compartment] **the vehicle at all times.**

8:40-4.14 Call report

(a) A call report **approved by the Department** shall be completed each time a patient is transported. [The call report need not be prepared by the staff assigned to the vehicle.] One call report will suffice for both legs of a round trip. The call report, which may be combined with another report or form, shall contain the following information typed or printed in ink:

1. Patient's name and home address;

2. [Succinct] **A** description, including any observed changes, if the patient's condition worsens; **and**

3. Vehicle recognition number, **full** name(s) of driver and any other staff, and date.

8:40-4.15 Radio communications

(a) (No change.)

[(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and

2. Invalid Coach Service is elective and non-emergent and does not involve the rendition of medical services; and

3. Use of certain radio frequencies by Invalid Coach Services could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by other types of health care providers (such as Emergency Ambulance Services and Mobile Intensive Care Services);]

[4.]**(b)** Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department **or in the appropriate table of any future revision of the JEMS plan**. The vehicle does not have to be equipped with a "JEMS radio." Specifically, the following radio frequencies shall not be used in radio communications to, or from, Invalid Coach vehicles:

[i.]**1.** Any of the UHF radio frequencies known as "Med 1" through "Med 10[.]";

[ii.]**2.** Any of the VHF radio frequencies listed in Appendix [C] **A** of this chapter[.]; **and**

[iii.]**3.** Any of the following radio frequencies: 155.280 MHz, 155.340 MHz, 153.785 MHz.

[5.]**(c)** The provisions of [(b)4]**(b)** [(]above[)] shall not apply if:

[i.]**1.** The Federal Communications Commission determines that Invalid Coach vehicles are eligible to use "Special Emergency Radio Frequencies"; and

[ii.]**2.** The provider was issued a Federal Communications Commission license before January 1, 1978 to use one (or more) of the cited frequencies; and

[iii.]**3.** The provider is using that same frequency(ies); and

[iv.]**4.** Use of that frequency(ies) does not cause harmful interference to other health care providers operating in accordance with the JEMS Plan.

[6.]**(d)** For the purpose of this section, harmful interference is defined as:

[i.]**1.** A written complaint alleging radio interference from a health care provider(s) operating in accordance with the JEMS Plan; and

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[ii.]**2.** A finding by the New Jersey Office of Frequency Coordination (or, if their services are not available, the Department) that the provider's radio operations are causing harmful interference.

SUBCHAPTER 5. SPECIFIC TRANSPORT AMBULANCE REQUIREMENTS

**8:40-5.1 Restrictions on future licensing**

**(a) As of one year from the operative date of these amended rules, no transport ambulances, other than those which meet the criteria in (b) below, shall be licensed to any provider.**

**(b) Vehicles which meet the following criteria may continue to be licensed to the provider of record on (one year after the operative date of these amended rules) as transport ambulances for the life of the vehicle:**

**1. The vehicle must possess valid licensure as a transport ambulance within one year from the operative date of these amended rules;**

**2. The vehicle must continue to meet all criteria for licensure as a transport ambulance, as listed in the balance of this subchapter; and**

**3. The vehicle cannot be out-of-service for more than three consecutive months.**

**(c) Sale of the vehicle, or transfer to another owner, invalidates the vehicle's eligibility for continued licensure as a transport ambulance.**

8:40-[5.1]**5.2** Patient restrictions

(a) Except as prohibited in (b) below, non-emergency health care transportation by Transport Ambulance vehicles shall be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory[,]; or

2. Are wheelchair bound[,]; or

3. Require transportation in a prone or supine position or who are bed or stretcher bound[,]; or

4. Require constant attendance due to a medical and/or mental condition.

(b) Service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

1. Aspiration; or

2. Management or observation of intravenous fluids and/or intravenous medications[,]; or

3. Emergency medical services or other emergency services, such as emergency inter-hospital transfer[,]; or

4. Treatment in the Emergency Department of a hospital (for other than routine, non-emergency, follow-up care of a previously diagnosed **and treated** condition)[,]; or

5. Treatment in, or admission to:

i. The Obstetrical Unit (Labor and Delivery Suite) of a hospital[,]; or

ii. The Intensive and/or Coronary Care Unit of a hospital[,]; or

iii. The neonatal or newborn unit of a hospital [, however].

6. If a patient suddenly and unexpectedly requires Emergency Department treatment after transportation has begun, that patient shall be transported to an Emergency Department of a hospital.]

**(c) The requirements in (a) and (b) above mean that nearly every trip to an acute care medical facility will be beyond the scope of this vehicle; however, if a patient suddenly and unexpectedly requires emergency department treatment after transportation has begun, that patient shall be transported to an emergency department of a hospital.**

8:40-[5.2]**5.3** General vehicle requirements

(a) (No change.)

(b) Each vehicle used by the licensee to provide Transport Ambulance Service shall have and display a valid Transport Ambulance license [decal], issued by the Department.

8:40-[5.3]**5.4** Patient compartment requirements

(a) (No change.)

(b) The patient compartment shall have at least two exterior doorways.

1.-2. (No change.)

3. The doorways shall not be obstructed except as permitted in N.J.A.C. 8:40-[5.5(a)]**5.6(a)**.

4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle, **using a standard automotive industry door handle**.

5. (No change.)

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

(f) Occupied wheelchairs [and/or stairchairs] may, but need not, be transported in the vehicle. If transported in the vehicle, there shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair [or stairchair. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair or stairchair in a crashworthy manner and so that movement of the occupied wheelchair or stairchair does not exceed one inch while the vehicle is in motion].

**1. Any wheelchair, restraint system shall secure and immobilize the frame of the wheelchair in a crashworthy manner and so that movement of the occupied wheelchair does not exceed one inch in any direction. The restraint system shall not be attached to the wheels of the wheelchair.**

**2. Each wheelchair shall have a patient seatbelt which secures the patient into the wheelchair in a configuration similar to an automotive lapbelt. Velcro® type closures are prohibited. The seatbelt shall attach only to the wheelchair, not to the vehicle, and shall not be part of the wheelchair restraint system.**

(g) There shall be sufficient crashworthy cabinets and other storage spaces to safely accomodate all equipment and supplies, **as per N.J.A.C. 8:40-3.10(e).**

**8:40-[5.4]5.5** (No change in text.)

8:40-[5.5]**5.6** Ramp or lift

(a) There may, but need not, be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. [While in use, any] **Any** such device shall be [securely] **permanently** fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.

(b) (No change.)

(c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device. **The manual backup device shall be capable of both lifting and lowering the patient and shall perform either function within five minutes.**

8:40-[5.6]**5.7** Vehicle markings

(a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than [three] **six** inches high on the two exterior sides of the vehicle **for any vehicle licensed after March 1, 1992.**

(b) The vehicle recognition number shall appear in a size not less than [four] **three** inches high on the rear and the two exterior sides of the vehicle.

(c) (No change.)

(d) A sign shall appear in the patient compartment which states: "Smoking Prohibited[: Violator Subject to Fine]."

(e) (No change.)

(f) The following shall not appear on the vehicle:

1. Symbol(s) consisting of a:

i. "Star of Life[,]"; or

ii. Greek Cross, **unless the vehicle is operated by or associated with a volunteer first aid or rescue squad;** or

iii. Maltese Cross, unless the vehicle is operated by a Fire Department.

2. The following words, or abbreviations of such words: "Coronary Care," "Special Care," "Intensive Care," "Mobile Intensive Care," or "Paramedic," **or any other wording which would imply the provision of advanced life support**.

(g) (No change.)

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(h) The word "ambulance," or an abbreviation of the word, may only appear when:

1. It is accompanied by the word "Transport" and appears as "Transport Ambulance[,]"; or

[2. It is part of the lawful incorporated name of the licensee, and

3. The words "Transport Ambulance" appear on the vehicle in characters the same size as the word "ambulance."]

**2. It is part of the lawful incorporated name of the licensee and the words "Transport Ambulance" appear on the vehicle in letters the same size as the word "Ambulance."**

(i) (No change.)

8:40-[5.7]**5.8** Emergency warning devices

(a) [When authorized by a permit issued in accordance with N.J.S.A. 39:3-50, the] **The** vehicle shall be equipped with:

1. Emergency warning lights which provide 360 degrees of visibility during emergency [missions and are installed in accordance with SAE Standard J595b and/or SAE Recommended Practice J845,] **calls and which comply with applicable portions of the emergency lighting standards promulgated by the New Jersey Division of Motor Vehicles at N.J.A.C. 13:24;** and [an]

[2. Emergency] **An emergency** warning siren.

[(b) The following warning devices are prohibited:

1. Emergency warning lights which are not red in color. As clarification, either the bulb or the lens shall be red; the other may be clear.

2. Flashing headlight devices.]

**(b) Warning lights or audible signals which are not specifically approved by the Division of Motor Vehicles for use on New Jersey registered emergency vehicles shall not be used.**

8:40-[5.8]**5.9** Use of emergency warning devices

(a) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing prehospital service when:

1. (No change.)

2. Transporting a patient and:

i. The patient's condition, suddenly and unexpectedly, worsens to constitute a medical emergency[,]; and

ii. The use of emergency warning devices is necessary to expedite travel to a hospital in the judgment of the staff person caring for the patient, provided **that the use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.**

[iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.

(b) Any airhorn shall not be used:

1. Between 11:00 PM and 7:00 AM.

2. Any time a patient is being transported. This prohibition shall not apply when a test made by a qualified agency in accordance with AMD Standard 006 determines that the airhorn sound level within the patient compartment does not exceed 86 decibels (A scale).]

8:40-[5.9]**5.10** General equipment and supplies requirement

(a) When in-service, the vehicle shall be equipped with all the required equipment and supplies at the start of each work shift. Expended supplies and/or damaged equipment shall be replaced whenever the vehicle is returned to its normal storage location. Equipment may be temporarily left on/with a patient, when medically necessary[, without being replaced on the vehicle]. **This equipment must be replaced as soon as the vehicle returns to the location where backup equipment is stored.** A record shall be made on the call report (required in N.J.A.C. 8:40-5.25) of any equipment left on/with a patient **for followup and equipment retrieval purposes.**

(b) All equipment and supplies shall be stored within the vehicle in a safe, crashworthy manner, **as outlined in N.J.A.C. 8:40-3.10(e).** [The storage location shall be dictated by the relative importance of the material.] **Supplies which are stored shall be clearly visible through the door of the cabinet, or** [A] **a** [succinct] list of contents shall appear on the door of any interior storage compartment **which does not have "see through" doors.**

8:40-[5.10]**5.11** Standard patient transport devices

(a) There shall be a wheeled litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least two inches thick. The litter and mattress shall be adjustable from a flat to a semi-sitting position. The litter shall be adjustable from a minimum height of [9] **nine** to 18 inches to a maximum height of 33 to 40 inches (measured to the top of the mattress). There shall be a pillow, pillowcase and sheet on the litter.

(b) (No change.)

(c) There shall be a portable stairchair for the safe transport of patients up and down flights of stairs. [The stairchair may be of the combination stretcher/stairchair type and also satisfy the requirements of N.J.A.C. 8:40-5.10(b).] **A combination stretcher/stairchair device will meet the requirements of both (b) above and this subsection.**

(d) Each litter and portable stretcher shall have three sets of two inch wide patient restraints with quick release buckles (positioned at the chest, waist and knees.) The quick release buckles may be of the "slide through" or "metal to metal" type. ("Reeves" type stretchers may have other types of buckles.) Each stairchair shall have two sets of two-inch wide safety restraints with quick release metal buckles. **Velcro®-type closures are prohibited.**

**(e) Any children, age five or under, who are transported as patients must be properly restrained in a Federally-approved child restraint system specifically designed for ambulance use, such as the Carrie® Life Seat™ (provided the child does not have spinal injuries), or on the ambulance stretcher. When not in use, the child restraint system may be, but need not be, stored on the vehicle. If not stored on the vehicle, the system must be immediately accessible on the provider's premises.**

[(e)]**(f)** (No change in text.)

8:40-[5.11]**5.12** Oxygen administration devices

(a) (No change.)

(b) There shall be a portable oxygen system capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder handles/wrenches shall be chained to the regulator or affixed to the cylinder. **All oxygen storage arrangements shall comply with applicable provisions of Federal specification KKK-A-1822.** There shall be at least one spare cylinder of at least 300-liter capacity.

(c) (No change.)

(d) Each required oxygen system shall have an oxygen flowmeter. Each oxygen flowmeter shall have a gauge or dial with a range of **at least** 0 to 15 liters per minute **(lpm)** in calibrated increments. The flowmeter on the portable oxygen system shall be non-gravity dependent. **Flowmeters shall be accurate to within one lpm when at a setting equal to or less than 10 lpm and within 1.5 lpm when at a setting equal to or greater than 11 lpm. Non-dial-type flowmeters must take at least one full turn to go from 0 to 15 lpm. Indicators on dial-type flowmeters must be securely seated at each flow rate position.**

(e) There shall be [six] **four** clear simple inhalation masks ([three] **two** each in adult and child sizes) of the single service **semi-open, non-rebreathing** type and two single service type cannulas.

(f)-(g) (No change.)

8:40-[5.12]**5.13** Resuscitation devices

(a) The vehicle shall be equipped with an oxygen-powered resuscitator or with an adult size bag-valve-mask resuscitator. **Carrying child-size or infant-size bag-valve-mask units is optional.**

(b) Any oxygen-powered resuscitator shall provide:

1. 100 percent oxygen;

2. [an] **An** instantaneous flow rate [of at least 100] **between 35 and 45** liters per minute;

3. Inspiratory pressure between [35 and 55] **55 to 65** cm water pressure; and

4. 15/22 mm fittings.

(c) Any bag-valve-mask resuscitator shall meet the following criteria:

1. Have a self-refilling bag without sponge rubber inside;

[2. Bag volume shall be:

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i. About 1,700cc for adults.
ii. 700 to 750cc for infants.]

[3.]**2.** Any adult-size bags shall be capable of deflating/refilling at least [25] **20** times per minute at room temperature. **Any child-size bags shall be capable of deflating/refilling at least 30 times per minute at room temperature.** Any infant-size bag(s) shall be capable of deflating/refilling at least 40 times per minute at room temperature;

[4.]**3.** Valve shall be a true non-rebreathing valve and have 15/22 mm fittings.

(d) There shall be at least [three] **two** transparent domed resuscitation face masks (one each in [large adult, medium] adult and child size) with 22 mm fittings.

(e) (No change.)

8:40-[5.13] **5.14** Aspirator/suction devices

(a) [There shall be an installed aspirator powered by the vehicle. (A 12 volt dc (vdc) powered vacuum supply pump is recommended.] **There shall be an installed aspirator (installed suction unit) powered by the vehicle's electrical system.** The device shall be securely mounted and located to permit aspiration of a stretcher bound patient. The device shall meet the criteria contained in (b) below during the entire normal range of vehicle operation.

(b) Any suction device shall provide:

1. A flow rate of at least 30 liters per minute at the end of the suction tube[,]**;** and

2. (No change.)

(c) Any suction device shall be equipped with a non-breakable collection bottle[, a suction rinsing water bottle,] and at least three feet of transparent or translucent **non-collapsible** suction tubing with an interior bore of at least one quarter inch. (Three-eights of an inch bore is recommended.) There shall be one semi-rigid pharyngeal suction [tip] **adapter** and at least eight suction catheters [for each device (two each in 8 French, 10 French, 12 French and 14 French sizes)] **in not less than four assorted adult and child sizes.**

**(d) Any portable suction device (optional) must meet the standards in (c) above, be powered by an integral battery, and meet the criteria in (b) above for at least 20 minutes.**

[(d)]**(e)** No suction device shall be carried in the vehicle unless it is suitable for use by an Emergency Medical Technician and meets the criteria contained in (b) above [or in N.J.A.C. 8:40-5.18(a)4].

8:40-[5.14]**5.15** Airway maintenance supplies

(a) There shall be at least the following airway maintenance supplies:

1. Two [mouth gags (bite sticks)] **bite sticks** single service type; **and**

[2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single service type. There shall be two of each of the following (in A.N.S.I. Z 79.3 sizes):

i. 11 cm size (large adult).
ii. 9 cm size (medium adult).
iii. 7 cm size (child).
iv. 5.5 cm size (infant).]

2. **At least one airway kit containing seven or more different sized airways.**

8:40-[5.15]**5.16** External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board"®) shall be immediately available within the patient compartment. **It shall not be stored under the benchseat.**

8:40-[5.16]**5.17** Spine boards[, orthopedic litter and splints]

(a) The following spine boards[, orthopedic litters and splints] shall be carried in the vehicle:

1. One long spine board made of wood at least three-quarters of an inch thick, or of equivalent **inflexible** material, 72 inches long by 18 inches wide with associated strap holes and full length three quarter inch runners[;]**, or another configuration which protects the staff's hands from injury during patient movement; and**

2. [One short spine board made of wood at least one half of an inch thick, or of equivalent material, measuring 32 inches to 34 inches high. Body section 16 to 18 inches wide by 20 inches to 22 inches high with associated strap holes;] **Three straps, two inches wide by nine feet long with quick release type metal buckles. Velcro®-type closures are prohibited.**

[3. Four straps, 2 inches wide by 9 feet long with quick release type metal buckles ("slide through" type strongly recommended);

4. The following padded board splints, each three inches wide with base material at least three eighths inch thick:

i. Two 15 inches long;
ii. Two 36 inches long;
iii. Two 54 inches long;

5. One adult size, lower extremity traction splint either half ring or padded ischial support type. Half ring or ischial support about nine inches in diameter; overall length, when in use, at least 43 inches. Complete with all associated straps, heel stand and accessories.]

8:40-[5.17]**5.18** Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the vehicle:

1. Six conforming roller bandages, [four or six inches wide by five yards long] **at least three inches wide;**

2. Twelve triangular bandages (cravats) measuring 36 inches by 36 inches by 51 inches when unfolded;

3. [Six] **Two** sterile, individually packed universal (or multi trauma) dressings measuring at least nine inches by 30 inches when unfolded;

4. Twelve sterile, individually packed gauze pads at least four inches by four inches;

5. One roll [three-inch wide] adhesive type tape;

6. Two sterile, individually packed occlusive dressings [(such as Vaseline® impregnated dressings)] **or one sterile roll of aluminum foil;**

7. One sterile, individually wrapped burn sheet[s]**, or other burn care product approved by the Commissioner; and**

8. One liter sterile saline solution in a plastic container(s) (for flushing injury sites). **Saline solution shall be current (not expired).**

[8:40-5.18 Obstetrical kit

(a) An obstetrical kit shall be carried in the vehicle. The items shall be sterile and may be individually wrapped or be contained in a "pack." Any pack shall have an exterior itemized list of contents. Items shall include the following:

1. Four towels;
2. Twelve gauze compresses, four inches by four inches;
3. Four cord clamps;
4. One ear syringe, soft rubber (for newborn aspiration);
5. One receiving blanket;
6. Three pairs surgeons' type gloves;
7. One pair scissors.]

8:40-5.19 Poison treatment supplies

(a) The following poison treatment supplies shall be carried in the vehicle:

1. Four liquid ounces of Syrup of Ipecac; **and**

2. [One packet activated charcoal] **Four, three- to four-ounce bottles prepackaged liquid activated charcoal.**

8:40-5.20 Other patient care equipment.

(a) There shall be the following other minimum patient care equipment:

1. Diaphragm type stethoscope;

2. Aneroid type blood pressure manometer and adult size cuff **(an additional cuff in a child size is optional)**;

3. Glucose in form easily ingested by mouth (four sugar packets or one fluid ounce);

4. Four cloth blankets at least 60 inches by 80 inches in size **from September 15 to May 1 and two blankets the rest of the year;**

**5. Two penlights suitable for patient examination;**

**6. Twelve pairs surgeon's type gloves; and**

**7. Two sets of personnel protection isolation garments, including gowns and masks.**

(b) (No change.)

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8:40-5.21 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles **or three battery-operated flashers, or six flares;**

2. One flashlight, two D cell size or larger[.]; **and**

3. One or two fire extinguisher(s) U.L. rated at least 1A 10BC in total. **The fire extinguisher(s) shall have either a gauge indicating it is fully charged or a** [with] current inspection tag.

8:40-5.22 Required staff

(a) [When in-service, each Transport Ambulance vehicle shall be staffed by at least two persons (including any time the vehicle is used as an invalid coach)] **When in-service, including any time the vehicle is used as an invalid coach, each Transport Ambulance shall be staffed by at least two persons** who shall meet the requirements of N.J.A.C. 8:40-3.7 and this subchapter. All additional staff persons of the licensee shall meet the requirements of N.J.A.C. 8:40-3.7.

(b) (No change.)

8:40-5.23 Required training of staff

(a) [Except as permitted in (b) below each] **Each** of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

[(b) The second required person may possess the following training in lieu of Department certification:

1. Valid documentation of "Advanced First Aid and Emergency Care" training issued by the American Red Cross, and

2. Valid documentation of "Cardiopulmonary Resuscitation" training issued by the American Heart Association or the American Red Cross, or

3. Valid documentation of "CIM/First Responder" training issued by the Department, provided

4. The person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.]

**(b) Each of the required Emergency Medical Technicians-Ambulance shall possess valid current certification in cardiopulmonary resuscitation (CPR) for emergency services personnel issued by the American Heart Association (BLS-C: CPR for Healthcare Providers) or the equivalent American Red Cross course.**

8:40-5.24 Duties of staff

(a) The collective duties of the persons who staff a Transport Ambulance vehicle shall include, but are not limited to:

1. Providing prompt, efficient and effective emergency medical care to the patient(s);

2.-3. (No change.)

4. Assuring that any stretcher, wheelchair or other patient transport device is safely **and properly** restrained, patients are restrained and all vehicle occupants wear automotive safety belts. **Any child passengers must be properly restrained in a Federally-approved child safety seat. All wheelchair patients msut be properly restrained in the wheelchair in accordance with N.J.A.C. 8:40-5.4(f)1 and 2.** The staff person(s) caring for the patient need not wear a safety belt when providing essential life support such as CPR;

5.-7. (No change.)

8. Prohibiting smoking within the [patient compartment] **vehicle at all times**[.]; **and**

**9. Entering data into and signing the required call report, when applicable.**

8:40-5.25 Call report

(a) A call report **approved by the Department** shall be completed each time a patient is transported. The call report need not be prepared by the staff assigned to the vehicle. The call report, which may be combined with another report or form, shall contain the following information typed or printed in ink:

1. [Patient's] **The patient's** name, age, sex and home address;

2. [Succinct] **A** description of the patient's condition and any observed changes;

3. [Succinct] **A** description of any care given to the patient;

4. [Time] **The time** when, and location where, patient was picked up and was discharged;

5. [Vehicle] **The vehicle** recognition number, date, **and full** names of staff;

[6. Whether or not emergency warning devices were used:

i. At the scene; or

ii. In transit to the medical facility.]

**6. Whether or not emergency warning devices were used at the scene or in transit to the medical facility; and**

7. Any required equipment left on/with a patient.

8:40-5.26 Radio communications

(a) (No change.)

[(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and

2. Normally, Transport Ambulance Service is elective and non-emergent and does not involve the rendition of medical services; and

3. Use of certain radio frequencies by Transport Ambulance Services could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by other types of health care providers (such as Emergency Ambulance Services and Mobile Intensive Care Services);]

[4.]**(b)** Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department **or the appropriate table in any future revision of the JEMS plan**. (The vehicle does not have to be equipped with a "JEMS radio.") Specifically, the following radio frequencies shall not be used in radio communications to, or from, Transport Ambulance vehicles:

[i.]**1.** Any of the UHF radio frequencies known as "Med 1" through "Med 10[.];"

[ii.]**2.** Any of the VHF radio frequencies listed in Appendix [C] **A** of this chapter[.]; **and**

[iii.]**3.** Any of the following radio frequencies: 155.280 MHz, 155.340 MHz, 153.785 MHz.

[5.]**(c)** The provisions of [(b)4] **(b)** [(]above[)] shall not apply if:

[i.]**1.** The provider was issued a Federal Communications Commission license before January 1, 1978 to use one (or more) of the cited frequencies; and

[ii.]**2.** The provider using that same frequency(ies); and

[iii.]**3.** Use of that frequency(ies) does not cause harmful interference to other health care providers operating in accordance with the JEMS Plan.

[6.]**(d)** For the purpose of this section, harmful interference is defined as:

[i.]**1.** A written complaint alleging radio interference from a health care provider(s) operating in accordance with the JEMS Plan; and

[ii.]**2.** A finding by the New Jersey Office of Frequency Coordination (or, if their services are not available, the Department) that the provider's radio operations are causing harmful interference.

SUBCHAPTER 6. SPECIFIC EMERGENCY AMBULANCE REQUIREMENTS

8:40-6.1 Patient restrictions

(a) Emergency medical care and transportation shall be provided to a patient who:

1. Requires, or may require, pre-hospital emergency medical services[,]; or

2. Requires, or may require, emergency inter-hospital transfer[, or].

[3. Requires, or may require, aspiration or observation of intravenous fluids and/or medications.]

(b) Health care transportation may be provided to patients who are under the supervision and care of a physician and who:

1. Are ambulatory[,]; or

2. Are wheelchair bound[,]; or

3. Are bed or stretcher bound or who require transportation in a prone or supine position[,]; or

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4. Require constant attendance due to a medical and/or mental condition.

8:40-6.2 General vehicle requirements

(a) (No change.)

(b) Each vehicle used by the licensee to provide Emergency Ambulance Service shall have and display a valid Emergency Ambulance license [decal], issued by the Department.

8:40-6.3 Patient compartment requirements

(a) (No change.)

(b) The patient compartment shall have at least two exterior doorways:

1.-3. (No change.)

4. The door(s) to each patient compartment doorway shall be capable of being opened and being used from inside the patient compartment and from the exterior of the vehicle, **using a standard automotive industry door handle; and**

5. (No change.)

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

(f) Occupied wheelchairs [and/or stairchairs] may, but need not, be transported in the vehicle. If transported in the vehicle, there shall be wheelchair restraint positions to secure and immobilize each occupied wheelchair [or stairchair. When in use, each wheelchair restraint position shall secure and immobilize one wheelchair or stairchair in a crashworthy manner and so that movement of the occupied wheelchair or stairchair does not exceed one inch while the vehicle is in motion].

**1. Any wheelchair restraint system shall secure and immobilize the frame of the wheelchair in a crashworthy manner and so that movement of the occupied wheelchair does not exceed one inch in any direction. The restraint system shall not be attached to the wheels of the wheelchair.**

**2. Each wheelchair shall have a patient seatbelt which secures the patient into the wheelchair in a configuration similar to an automotive lapbelt. Velcro®-type closures are prohibited. The seatbelt shall attach only to the wheelchair, not to the vehicle, and shall not be part of the wheelchair restraint system.**

(g) There shall be sufficient crashworthy cabinets and other storage spaces to safely accommodate all equipment and supplies, **as per N.J.A.C. 8:40-3.10(e).**

8:40-6.4 Patient compartment dimensions

(a) Vehicles [manufactured up to 12 full calendar months after the operative date of this chapter (that is, until April 30, 1986),] with the following **minimum** patient compartment dimensions[,] shall be eligible for licensing and use as an ambulance as long as they comply with this chapter.

1.-3. (No change.)

[(b) Vehicles which do not meet the requirements of (a) above, but which have the minimum patient compartment dimensions required in (c) below shall be eligible for "grandfather" licensing and use as an Emergency Ambulance vehicle for 24 full calendar months after the operative date of this chapter (that is, after April 30, 1987) if:

1. The vehicle has been regularly used to provide ambulance service in the state prior to the operative date of these regulations (that is, before April 15, 1985), and

2. The vehicle is "grandfather" licensed by the Department prior to the end of the fourth full calendar month after the operative date of these regulations (that is, before September 1, 1985).

(c) The patient compartment of a vehicle eligible for "grandfather" licensing under (b) above shall have the following minimum interior dimensions:

1. Height: At least 52 inches between the floor and ceiling when measured at, or near, the center of the patient compartment.

2. Width: At least 54 inches between the vehicle interior sides when measured at any point 22 inches above the floor and at least 47 inches between the sides when measured at any point 46 inches above the floor. (The width of cabinets, etc. will be included when measurements are made.)

3. Length: At least 105 inches between the interior surface of the rear door and the surface of the bulkhead or partition, when measured at floor level.]

8:40-6.5 Certification to Federal specifications

[(a) Any vehicle manufactured 12 full calendar months after the operative date of this chapter (that is, after April 30, 1986) shall be certified to meet Federal Specification KKK-A-1822.

(b) The certification shall be made by the vehicle manufacturer in accordance with KKK paragraph 1.1.3 and KKK paragraph 3.19 of Federal Specification KKK-A-1822.

(c) The licensee may permit the following exceptions and/or substitutions to Federal Specification KKK-A-1822:]

**(a) Any vehicle presented for licensure shall be certified to meet the version of Federal Specification KKK-A-1822 which was current at the time the vehicle was manufactured for use as an emergency ambulance. The certification shall be made by the vehicle manufacturer or converter in accordance with applicable paragraphs of the Federal KKK-A-1822 specifications.**

**(b) The following exceptions to the Federal KKK-A-1822 specifications are permitted. Inclusions of these items on a New Jersey licensed emergency ambulance is optional:**

1. Spare Tire and Storage [(KKK paragraph 3.6.10)—optional.];

2. Tools (tire changing) [(KKK paragraph 3.6.13)—optional.];

3. 115 volt AC utility power [(KKK paragraph 3.7.8.)—optional.];

4. Utility power connector [(KKK paragraph 3.7.8.1)—optional.];

5. Electrical 115 volt VAC receptacles [(KKK paragraph 3.7.8.2.)—optional.];

6. Solid state inverter [(KKK paragraph 3.7.8.3.)—optional.];

[7. Ambulance Emergency Lighting (KKK paragraph 3.8.2.). The licensee may specify emergency lights other than those required. The "one clear light" shall be red instead of "clear."]

[8.]**7.** Spotlight [(KKK paragraph 3.8.4.)—optional.];

[9. Interior storage accommodations [(KKK paragraph 3.11.1.)—trash receptacle optional.];

[10.]**8.** Exterior storage accommodation [(KKK paragraph 3.11.2.)—optional.];

[11.]**9.** Extrication equipment and storage [(KKK paragraph 3.11.2.1.)—optional.];

[12. Suction Aspirators (KKK paragraphs 3.12.3 and 3.12.4)—The installed and portable aspirators shall provide a free airflow of 30 lpm (rather than 20 lpm). A 12-vdc powered vacuum supply pump is recommended for the installed aspirator system.]

[13.]**10.** Color, Paint and Finish [(KKK paragraph 3.16.2.)—optional, but recommended.];

[14.]**11.** Color standards and tolerances [(KKK paragraph 3.16.2.1.)—optional, but recommended.];

[15. Emblems and markings (KKK paragraph 3.16.4 B and C). Location of additional lettering and markings (required by the purchaser) is optional.]

**(c) The following exceptions to the Federal KKK-A-1822 specifications are permitted, within the parameters noted:**

**1. Ambulance emergency lighting. The licensee may specify emergency lights other than those required in the Federal specifications, but all exterior lighting must be in accordance with standards contained in the New Jersey motor vehicle regulations, N.J.A.C. 13:24;**

**2. Interior storage accommodations. A trash receptacle is optional. All other items are required;**

**3. Suction aspirators. The installed and portable aspirators (suction units) shall provide a free airflow of 30 lpm (rather than the 20 lpm specified in KKK-A-1822); and**

**4. Emblems and markings. The purchaser of the vehicle may specify the location of any additional lettering and markings which may be desired, beyond those required under the federal specifications.**

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8:40-6.6 Ramp or lift

(a) There may, but need not, be a ramp, lift or other device for the safe exit/entry of occupied standard size wheelchairs. [While in use, any] **Any** such device shall be [securely] **permanently** fastened to the vehicle and be capable of accommodating a load of at least 500 pounds. When in transit, the device shall be secured in a crashworthy manner and shall be positioned so as not to obstruct both of the required doorways.

(b) (No change.)

(c) Any device which relies on electric, hydraulic or other power for its operation shall be capable of manual operation by an unassisted person or there shall be a manually operated backup device. **The manual backup device shall be capable of both lifting and lowering the patient and shall perform either function within five minutes.**

8:40-6.7 Vehicle markings

(a) The trade name which appears on the license, issued by the Department, shall appear in a size not less than [three] **six** inches high on the two exterior sides of the vehicle **for any vehicle licensed after March 1, 1992.**

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

(d) A sign shall appear in the patient compartment which states: "Smoking Prohibited[: Violator Subject to Fine]."

(e) (No change.)

(f) The following shall not appear on the vehicle:

1. Symbol(s) consisting of a

i. Greek Cross**, unless the vehicle is operated by or associated with a volunteer first aid or rescue squad;** or

ii. Maltese Cross, unless the vehicle is operated by a Fire Department.

2. The following words, or abbreviations of such words: "Coronary Care," "Special Care" or "Intensive Care[.]," **"Mobile Intensive Care," or "Paramedic," or any other wording which would imply the provision of advanced life support, unless the service qualifies under (g) below.**

(g) The words "Paramedic" or "Mobile Intensive Care," or abbreviations of such words, shall only appear when the licensee is authorized to provide Mobile Intensive Care Unit Service in accordance with N.J.S.A. 26:2K-[2 et seq.] **7 et seq.**

(h) (No change.)

8:40-6.8 Emergency warning devices

(a) [When authorized by a permit issued in accordance with N.J.S.A. 39:3-50, the] **The** vehicle shall be equipped with:

1. Emergency warning lights which provide 360 degrees of visibility during emergency [missions and are installed in accordance with SAE Standard J595b and/or SAE Recommended Practice J845,] **calls and which comply with applicable portions of the emergency lighting standards promulgated by the New Jersey Division of Motor Vehicles in N.J.A.C. 13:24**[,]; and [an]

2. [Emergency] **An emergency** warning siren.

[(b) The following warning devices are prohibited:

1. Emergency warning lights which are not red in color. As clarification, either the bulb or the lens shall be red; the other may be clear; and

2. Flashing headlight devices.]

**(b) Warning lights or audible signals which are not specifically approved by the Division of Motor Vehicles for uses on New Jersey registered emergency vehicles shall not be used.**

8:40-6.9 Use of emergency warning devices

(a) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing pre-hospital service when:

1. Responding to the location of a patient and:

i. There are reasonable grounds to believe that the patient's condition is serious enough to constitute a medical emergency; and

ii. The use of emergency warning devices is necessary to expedite travel to the patient's location[.];

2. At the scene of the call, and the use of emergency warning lights is necessary for safety reasons;

3. Transporting a patient to a hospital; and[:]

i. The patient's condition is serious enough to constitute a medical emergency; and

ii. The use of emergency warning devices is necessary to expedite travel to the receiving hospital in the judgment of the staff person caring for the patient, provided **that the use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.**

[iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.]

(b) Emergency Warning Devices ("lights and/or siren") shall only be utilized in providing inter-hospital transfer when:

1. Responding to the "sending" hospital, and

i. The "sending" or "receiving" physician, or his/her designee, clearly states that "emergency response" to the hospital is necessary[,]; and

ii. The use of emergency warning devices is necessary to expedite travel to the "sending" hospital[.];

2. Transporting a patient to the "receiving" hospital, and

i. The "sending" or "receiving" physician, or his/her designee, clearly states that "emergency transportation" to the "receiving" hospital is necessary[,]; and

ii. The use of emergency warning devices is necessary to expedite travel to the "receiving" hospital[.];

3. Transporting a patient to another hospital and:

i. The patient's condition, suddenly and unexpectedly, worsens to constitute a medical emergency[,]; and

ii. The use of emergency warning devices is necessary to expedite travel to a hospital in the judgment of the staff person caring for the patient, provided **that the use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.**

[iii. Use of emergency warning lights and/or siren does not contribute to a worsening of the patient's condition.

(c) Any airhorn shall not be used:

1. Between 11 P.M. and 7 A.M.

2. Any time a patient is being transported. This prohibition shall not apply when a test made by a qualified agency in accordance with AMD Standard 006 determines that the airhorn sound level within the patient compartment does not exceed 86 decibels (A scale).]

8:40-6.10 General equipment and supplies requirements

(a) When in-service, the vehicle shall be equipped with all the required equipment and supplies at the start of each work shift. Expended supplies and/or damaged equipment shall be replaced whenever the vehicle is returned to its normal storage location. Equipment may be temporarily left on/with a patient, when medically necessary[, without being replaced on the vehicle]. **This equipment must be replaced as soon as the vehicle returns to the location where backup equipment is stored.** A record shall be made on the call report (see N.J.A.C. 8:40-6.29) of any equipment left on/with a patient **for followup and equipment retrieval purposes.**

(b) All equipment and supplies shall be stored within the vehicle in a safe, crashworthy manner**, as outlined in N.J.A.C. 8:40-3.10(e).** [The storage location shall be dictated by the relative importance of the material.] **Supplies which are stored shall be clearly visible through the door of the cabinet, or** [A] **a** [succinct] list of contents shall appear on the door of any interior storage compartment **which does not have "see through" doors.**

8:40-6.11 Standard patient transport devices

(a) There shall be a wheeled litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. The litter shall have a mattress at least two inches thick. The litter and mattress shall be adjustable from a flat to a semi-sitting position. The litter shall be adjustable from a minium height of [9] **nine** to 18 inches to a maximum height of 33 to 40 inches measured to the top of the mattress. There shall be a pillow, pillowcase and sheet on the litter.

(b) (No change.)

(c) There shall be a portable stairchair for the safe transport of [wheelchair bound] patients up and down flights of stairs. [The stairchair may be of the combination stretcher/stairchair type and also satisfy the requirements of (b) above.] **A combination stretcher/**

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**stairchair device will meet the requirements of both (b) above and this subsection.**

(d) Each litter and portable stretcher shall have three sets of two-inch wide patient restraints with quick release buckles positioned at the chest, waist and knees. The quick release buckles may be of the "slide through" or "metal to metal" type. ("Reeves" type stretchers may have other types of buckles.) Each stairchair shall have two sets of two-inch wide safety restraints with quick release metal buckles. **Velcro®-type closures are prohibited.**

**(e) Any children, age five or under, who are transported as patients must be properly restrained in a Federally-approved child restraint system specifically designed for ambulance use, such as the Carrie® Life Seat™ (provided the child does not have spinal injuries), or on the ambulance stretcher. When not in use, the child restraint system may be, but need not be, stored on the vehicle. If not stored on the vehicle, the system must be immediately accessible on the provider's premises.**

[(e)]**(f)** (No change in text.)

8:40-6.13 Oxygen administration devices

(a) (No change.)

(b) There shall be a portable oxygen system capable of safely storing and supplying at least 300 liters of medical oxygen. Cylinder handles/wrenches shall be chained to the regulator or affixed to the cylinder. **All oxygen storage arrangements shall comply with applicable provisions of Federal specification KKK-A-1822.** There shall be at least one spare cylinder of at least 300-liter capacity.

(c) (No change.)

(d) Each required oxygen system shall have an oxygen flowmeter. Each oxygen flowmeter shall have a gauge or dial with a range of **at least** 0 to 15 liters per minute in calibrated increments. The flowmeter on the portable oxygen system shall be non-gravity dependent. **Flowmeters shall be accurate to within one lpm when at a setting equal to or less than 10 lpm and within 1.5 lpm when at a setting equal to or greater than 11 lpm. Non-dial-type flowmeters must take at least one full turn to go from 0 to 15 lpm. Indicators on dial-type flowmeters must be securely seated at each flow rate position.**

(e) There shall be at least [six] **four** clear inhalation masks ([three] **two** each in adult and child sizes) of the single service, semi-open, non-rebreathing type and two single service type cannulas.

(f) (No change.)

(g) Each oxygen cylinder shall:

1. Contain only medical grade oxygen;
2. Be color coded green;
3. Have a current hydrostatic test date; **and**
4. Be tagged (Full, In Use, Empty).

8:40-6.14 Resuscitation devices

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

(c) The vehicle shall be equipped with an adult size, **a child size,** and an infant size bag-valve-mask resuscitator.

(d) Any oxygen-powered resuscitator shall provide:

1. 100 percent oxygen;
2. An instantaneous flow rate [of at least 100] **between 35 and 45** liters per minute;
3. Temporary pressure between [35 and 55] **55 and 65** on water pressure; **and**
4. 15/22mm fittings.

(e) Any bag-valve-mask resuscitator shall meet the following criteria:

1. Have a self-refilling bag without sponge rubber inside;

[2. Bag volume shall be:

i. About 1,700cc for adults;

ii. 700 to 750cc for infants.]

[3.]**2.** Adult size bags shall be capable of deflating/refilling at least [25] **20** times per minute at room temperature. **Child-size bags shall be capable of deflating/refilling at least 30 times per minute at room temperature.** Infant size bag(s) shall be capable of deflating/refilling at least 40 times per minute at room temperature; **and**

[4.]**3.** Valve shall be a true non-rebreathing valve and have 15/22-mm fittings.

(f) There shall be at least [nine] **six** resuscitation face masks:

1. At least three transparent domed resuscitation face masks (one each in large adult, medium adult and child size) with 22mm fittings for [each of the two] **the** required oxygen-powered resuscitators[.];
2. Two transparent domed resuscitation face masks (one each in large adult and medium adult size) with 22mm fittings for the required adult size bag-valve-mask resuscitator[.]; **and**
3. One transparent domed infant size mask with 22mm fittings for the required infant sized bag-valve-mask resuscitator.

(g) No resuscitation device shall be carried in the vehicle unless it:

1. Is suitable for use by an Emergency Medical Technician and meets the criteria in (d) and/or (e) above[,]; or
2. Is prescribed by a physician for a patient being transported and is operated by a physician, nurse, respiratory therapist or inhalation therapist.

8:40-6.15 Aspirator/suction devices

(a) [There shall be an installed aspirator powered by the vehicle. A 12-volt dc (vdc) powered vacuum supply pump is recommended.] **There shall be an installed aspirator (installed suction unit) powered by the vehicle's electrical system.** The device shall be securely mounted and located to permit aspiration of a stretcher bound patient. The device shall meet the criteria contained in (c) below during the entire normal range of vehicle operation.

(b) There shall be a portable aspirator **(portable suction unit)** powered by an integral battery or by gas, such as oxygen. (Battery powered is recommended.) The device shall meet the criteria contained in (c) below for at least 20 minutes.

(c) Any suction device shall provide:

1. A flow rate of at least 30 liters per minute at the end of the suction tube[,]; and
2. A vaccuum pressure of at least 300 mm mercury suction within four seconds and a maximum vacuum pressure of at least 400 mm.

(d) Each suction device shall be equipped with a non-breakable collection bottle, [a suction rinsing water bottle,] and at least three feet of transparent or translucent **non-collapsible** suction tubing with an interior bore of at least one quarter inch. Three-eighths of an inch bore is recommended. There shall be one semi-rigid pharyngeal suction [tip] **adapter** and at least eight suction catheters for each device [(two each in 8 French, 10 French, 12 French and 14 French sizes).] **in not less than four assorted adult and child sizes. At least one catheter shall be a size 8 and one shall be a size 18. An infant bulb syringe and one wide-bore, semi-rigid suction tip shall also be carried.**

(e) No suction device shall be carried in the vehicle unless it:

1. Is suitable for use by an Emergency Medical Technician and meets the criteria contained in (c) above or in **N.J.A.C.** 8:40-6.20(a)4[,]; or
2. Is prescribed by a physician for a patient being transported and is operated by a physician, nurse, respiratory therapist or inhalation therapist.

8:40-6.16 Airway maintenance supplies

(a) There shall be at least **the following airway maintenance supplies:**

1. Two [mouth gags (bite sticks)] **bite sticks,** single-service type; **and**

[2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be six of each of the following (in A.N.S.I. Z 79.3 sizes):

i. 11 cm size (large adult);

ii. 9 cm size (medium adult);

iii. 7 cm size (child);

iv. 5.5 cm size (infant).]

**2. Fourteen airways in at least four different adult and child sizes.**

8:40-6.17 External cardiac compression support

A short spine board or a specially designed rigid board (such as a "CPR Board"®) shall be immediately available within the patient compartment. **It shall not be stored under the benchseat.**

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8:40-6.18 Spine boards, orthopedic litter and splints

(a) The following spine boards, orthopedic litter and splints shall be carried in the vehicle:

1. One long spine board made of wood at least three quarters of an inch thick, or of equivalent **inflexible** material, 72 inches long by 18 inches wide with associated strap holes and full length three-quarter inch runners**, or another configuration which protects the staff's hands from injury during patient movement**[.]**;**

2. One short spine board made of wood at least one half of an inch thick, or of equivalent material, measuring 32 inches to 34 inches high. Body section 16 to 18 inches wide by 20 inches to 22 inches high with associated strap holes. **Another commercially available spinal immobilization device (for example, K.E.D.®), approved by the Commissioner, may be substituted;**

3. Four straps, [2] **two** inches wide by [9] **nine** feet long with quick release type metal buckles. ("Slide-through" type strongly recommended.) **Velcro®-type closures are prohibited;**

4. [Orthopedic] **One orthopedic** litter at least 78 inches long (when extended) by at least 16 inches wide. It shall open/close (separate/rejoin) along its long axis into two halves, and be fitted with three sets of two-inch wide restraining straps with quick release (slide through or metal to metal type) metal buckles. **Velcro®-type closures are prohibited;**

[5. Two filled sand bags at least three inches in diameter by 12 inches long.]

**5. Six rigid cervical collars of a type approved by the Commissioner (for example, StifNeck® or Philadelphia-type) in at least three different sizes;**

**6. One head restraint system, used to immobilize a patient's head while the patient is restrained on a backboard, of a type approved by the Commissioner. Sandbags are prohibited;**

[6. The following padded board splints, each three inches wide with base material at least three-eighths inch thick:

i. Two 15 inches long;

ii. Two 36 inches long;

iii. Two 54 inches long.]

**7. A minimum of six splinting devices, of the types approved by the Commissioner (for example, padded board splints, selected commercial fracture products), in a variety of sizes suitable for splinting arms and/or legs; and**

[7. One adult size, lower extremity traction splint either half-ring or padded ischial support type. Half-ring or ischial support about nine inches in diameter; overall length, when in use, at least 43 inches. Complete with all associated straps, heel stand, and accessories.]

**8. One adult size, lower extremity traction splint, either half-ring or padded ischial support type, complete with all associated straps, heel stand windlass, and accessories, or other devices approved by the Commissioner.**

8:40-6.19 Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the vehicle:

1. Twelve conforming roller bandages, [four or six] **at least three** inches wide by [5] **five** yards long;

2. [Twenty-four] **Twelve** triangular bandages (cravats) measuring 36 inches by 36 inches by 51 inches when unfolded. **Vehicles with wooden short spine boards should carry 24 triangular bandages;**

3. [Twelve]**Six** sterile, individually packed universal (or multi-trauma) dressings measuring at least nine inches by 30 inches when unfolded;

4. Twenty-four sterile, individually packed gauze pads at least four inches by four inches;

5. Two rolls [three-inch wide] adhesive type tape;

6. Four sterile, individually packed occlusive dressings [(such as Vaseline® impregnated dressings)] **or one sterilized roll of aluminum foil;**

7. Two sterile, individually wrapped burn sheets**, or other burn care products approved by the Commissioner; and**

8. Two liters sterile saline solution in a plastic container(s) (for flushing injury sites). **Saline solution shall be current (not expired).**

8:40-6.20 Obstetrical kit

(a) An obstetrical kit shall be carried in the vehicle. The items [shall be sterile and] may be individually wrapped or be contained in a "pack." Any pack shall have an exterior itemized list of contents. Items shall include the following:

1. [Four] **Five** towels:

2. Twelve **sterile** gauze compresses, four inches by four inches;

3. Four **sterile** cord clamps;

4. One [ear] **sterile bulb** syringe, soft rubber (for newborn aspiration);

5. One receiving blanket;

6. [Three] **Four** pairs **sterile** surgeons' type gloves;

7. One pair **sterile** scissors [.] **or a sterile scalpel;**

**8. One set of eye protection or goggles; and**

**9. One box (12) sanitary pads.**

8:40-6.21 Poison treatment supplies

(a) The following poison treatment supplies shall be carried in the vehicle:

1. Four liquid ounces Syrup of Ipecac; **and**

2. [One packet activated charcoal] **Four, three- to four-ounce bottles prepackaged liquid activated charcoal.**

8:40-6.22 Other patient care equipment

(a) There shall be the following other minimum patient care equipment:

1. Diaphragm-type stethoscope;

2. Aneroid-type blood pressure manometer and adult size cuff, **obese adult size cuff and pediatric cuff;**

3. Four sugar packets or one fluid ounce of glucose in form easily ingested by mouth.

4. Four cloth blankets at least 60 inches by 80 inches in size **from September 15 to May 1 and two blankets the rest of the year;**

**5. Two penlights suitable for patient examination;**

**6. Four "cold packs" and two "hot packs";**

**7. Four towels;**

**8. At least six plastic bags in assorted sizes;**

**9. Twelve pairs surgeons' type gloves; and**

**10. Two sets of personnel protection isolation garments, including gowns and masks.**

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq. (Practice of Medicine and Surgery Act). **Equipment which would permit staff to render care at the Emergency Medical Technician-Intermediate level or the Emergency Medical Technician-Defibrillator level may be carried, if the vehicle is approved to operate as part of an approved program authorized by the Commissioner.**

8:40-6.23 Extrication equipment

(a) Except as permitted in (b) below, the following minimum extrication and related equipment shall be carried on the vehicle:

1.-7. (No change.)

8. One wrecking bar, at least 24-inch length[;] (Items 6, 7 and 8 can be combined as one tool.)**;**

9. One crow bar, at least [51-inch] **36-inch** length with pinch point;

10. One bolt cutter with at least one and a quarter inch jaw opening;

11. One portable hydraulic set consisting of at least one hand operated [4] **four**-ton or greater capacity hydraulic pump and one ton capacity spreading jaws and at least one spare pint of hydraulic fluid;

12. One shovel, pointed blade, at least 49 inches long when open (either folding or non-folding type acceptable);

[13. Tin snips, double action hand operated with handles at least eight inches long.

14. Two manila ropes three quarters of an inch in diameter or equivalent. 50 feet long;]

**13. Two manila, polypropylene, or equivalent material ropes with at least 5400 pounds tensile strength, at least 50 feet long;**

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[15.]**14.** One set hand-operated ratchet hoist set ("come along"® type) two-ton capacity with separate 15-foot long, two-ton capacity chain (one end with grab hook, other end with running hook);

**15. A heavy rescue hydraulic tool (for example, "Jaws of Life"®, Hurst Tool®) with associated attachments may be substituted for items 11 and 14 above;**

16. Sheet metal cutting tool [(such as a rotary type lawn mower blade)];

17. Two pairs safety goggles, clear;

18. Two hard hats. Bump-type or heavier;

19. Two pairs gloves, leather palm with wrist gauntlets[.]**; and**

**20. Two sets protective outer garments (for example, "turnout" coats and trousers).**

(b) The extrication and related equipment required in (a) above need not be carried when:

1. The Ambulance does not respond to automobile, industrial or other accidents. However, Ambulances which do not carry extrication equipment may stop and render emergency medical care at an accident scene which they pass by chance; or[,]

2. A rescue vehicle is available and:

[i. Can respond to an accident location within six minutes and;

ii. The rescue vehicle carries all of the equipment and related material required (a) above and;

iii. Operators of the rescue vehicle agree, in writing, to provide extrication services for patients under the licensee's care under the direction of the licensee].

**i. Operators of the rescue vehicle agree, in writing, to provide extrication services for patients under the licensee's care;**

**ii. Can respond to an accident location within six minutes; and**

**iii. The rescue vehicle carries all of the equipment and related material required in (a) above.**

8:40-6.24 Safety equipment

(a) The vehicle shall have the following minimum safety equipment:

1. Three portable red emergency reflective safety triangles **or three battery-operated flashers, to be used in cases of onscene assistance or vehicle breakdown;**

**2. Six flares for use in assisting in aeromedical transports;**

[2.]**3.** One flashlight, two D cell size or larger; **and**

[**3.**]**4.** One or two fire extinguisher(s), U.L. rated at least 1A 10BC in total. **The fire extinguisher(s) shall have either a gauge indicating it is fully charged or a** [with] current inspection tag.

**(b) All vehicles which provide "street EMS" or which routinely respond to motor vehicle accidents shall be equipped with a current U.S. Department of Transportation guidebook for initial response to hazardous materials incidents, as well as a copy of the applicable local emergency operations plan (EMS Annex).**

8:40-6.26 Required training of staff

(a) [Except as permitted in (b) below and in N.J.A.C. 8:40-6.28, each] **Each** of the required staff persons shall possess current valid certification as an Emergency Medical Technician-Ambulance, issued by the Department.

[(b) In recognition of the necessity for staff to be trained, the second required person may, for 12 full calendar months after the operative date of this chapter (that is until April 30, 1986), possess the following training in lieu of Department certification:

1. Valid documentation of "Advanced First Aid and Emergency Care" training issued by the American Red Cross[;] and

2. Valid documentation of "Cardiopulmonary Resuscitation" training issued by the American Heart Association or the American Red Cross, or

3. Valid documentation of "CIM/First Responder" training issued by the Department, provided

4. The person certified as an Emergency Medical Technician-Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.]

**(b) (Reserved)**

**(c) Each of the required Emergency Medical Technicians-Ambulance shall possess valid current certification in cardiopulmonary resuscitation for emergency services personnel, issued by the American Heart Association (BLS-C: CPR for Healthcare Providers) or the equivalent American Red Cross course.**

8:40-6.27 Duties of staff

(a) The collective duties of the persons who staff an Emergency Ambulance vehicle shall include, but are not limited to:

1. Providing prompt, efficient and effective emergency medical care to the patient(s);

2.-4. (No change.)

5. Assuring that any stretcher, wheelchair or other patient transport device is safely **and properly** restrained, patients are restrained and all vehicle occupants wear automotive safety belts. **Any child passenger must be properly restrained in a Federally-approved child safety seat.** The staff person(s) caring for the patient need not wear a safety belt when providing essential life support such as CPR;

6.-7. (No change.)

8. For [serious] **seriously ill or injured** patients, notifying the medical facility, prior to arrival, that special professional services and assistance will be needed;

9. Complying with [N.J.S.A. 52:17B-78 et seq.] **applicable laws and regulations** on the handling of the deceased;

10. Entering data into and signing the required call report; **and**

11. Prohibiting smoking within the [patient compartment] **vehicle at all times.**

8:40-6.28 Special staff required

(a) When the Emergency Ambulance is utilized to provide an inter-hospital transfer of a neonatal patient, the vehicle shall be staffed by:

1. The two persons required in N.J.A.C. 8:40-6.25; and

[2. A physician or a nurse who has been specially trained to care for neonatal patients.]

**2. Specialist staff consisting of a physician and either a nurse or a respiratory therapist, all of whom have been specially trained to care for neonatal patients.**

(b) When the Emergency Ambulance is utilized to transport a patient receiving intravenous fluids and/or medications, the vehicle shall be staffed by:

1. The two persons required in N.J.A.C. 8:40-6.25; and

[2. A physician or a registered nurse, or

3. A licensed Mobile Intensive Care Unit Paramedic providing medical care as part of a designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-2 et seq., or

4. An employee of the "sending" or "receiving" hospital, specifically assigned by the hospital, to care for the patient who is receiving intravenous therapy. It is the hospital's responsibility to ensure that any assigned employee is certified, or otherwise qualified, to oversee intravenous therapy.]

**2. One of the following:**

**i. A physician;**

**ii. A registered professional nurse;**

**iii. A licensed Mobile Intensive Care Unit Paramedic providing medical care as part of a designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-7 et seq.; or**

**iv. An employee of the "sending" or "receiving" hospital who has been specifically assigned by the hospital to care for the patient who is receiving intravenous therapy. It is the hospital's responsibility to ensure that any assigned employee is certified, or otherwise qualified, to oversee intravenous therapy.**

**(c) All provisions of this section shall become null and void upon adoption of critical care transport unit regulations, which shall include reference to these situations.**

8:40-6.29 Call report

(a) A call report **approved by the Department** shall be completed each time a patient is transported. One call report will suffice for both legs of a round trip. The call report shall be prepared by the staff assigned to the vehicle and shall contain the following information printed in ink:

1. [Patient's] **The patient's** name, age, sex and home address;

2. [Succinct] **A** description of the patient's condition at the scene and in transit;

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3. [Succint] **A** description of care given to the patient at the scene and in transit;

4. Time when, and location where, patient was picked up and was discharged;

5. [Vehicle] **The vehicle** recognition number, date, **full** names of staff, **including special staff and their affiliation**;

[6. Whether or not emergency warning devices were used:

i. Responding to the scene;

ii. At the scene;

iii. In transit to the medical facility;]

**6. Whether or not emergency warning devices were used responding to the scene, at the scene, or in transit to the medical facility; and**

7. Any required equipment left on/with a patient.

(b) (No change.)

8:40-6.30 Radio communications

(a) (No change.)

[(b) In recognition that:

1. Radio frequencies are a limited natural resource which cannot meet the needs of all health care providers (and the patients that they serve); and

2. Normally, Emergency Ambulance Services which do not routinely serve a political subdivision and/or do not respond to accidents and/or do not do "street work" do not involve the rendition of essential emergency medical services; and

3. Use of certain radio frequencies by Emergency Ambulance Services which do not serve a political subdivision could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by Emergency Ambulance Services which serve a political subdivision and by Mobile Intensive Care Services; and

4. Use of certain radio frequencies by any Emergency Ambulance Service could cause harmful radio interference to, and delay the provision of, essential and emergent medical services to patients served by Mobile Intensive Care Services;]

[5.]**(b)** Any radio communications shall comply with the radio frequency allocation cited in Table 4 of the JEMS Communications Plan published by the Department, **or the appropriate table in any future revision of the JEMS plan.** Specifically:

[i.]**1.** None of the UHF radio frequencies known as "Med 1" through "Med 10" shall be used in radio communications to, or from, any Emergency Ambulance vehicle;

[ii.]**2.** None of the VHF radio frequencies listed in Appendix [C] **A** of this chapter shall be used in radio communications to, or from, any Emergency Ambulance vehicle [which does not routinely serve a political subdivision] **unless the vehicle is operated by a municipality or operated under contract to a municipality to provide emergency medical services to a political subdivision (that is, the vehicle does "street work"), and/or the vehicle responds to motor vehicle accidents, and/or the vehicle responds to nursing homes;**

[iii.]**3.** The radio frequency 155.340 MHz shall only be used for essential communications between an emergency ambulance and a hospital Emergency Department[.]; **and**

[iv.]**4.** The radio frequency 155.280 MHz shall only be used for essential communications between cooperating emergency ambulances and as a "back-up" dispatch channel for Emergency Ambulance vehicles which serve a political subdivision.

[6.]**(c)** The provisions of [(b)5 (above)] **(b) above** shall not apply if:

[i.]**1.** The provider was issued a Federal Communications Commission license before January 1, 1978 to use one (or more) of the cited frequencies; and

[ii.]**2.** The provider is using that same frequency(ies); and

[iii.]**3.** Use of that frequency(ies) does not cause harmful interference to other health care providers operating in accordance with the JEMS Plan.

[7.]**(d)** For the purpose of this section, harmful interference is defined as:

[i.]**1.** A written complaint alleging radio interference from a health care provider(s) operating in accordance with the JEMS Plan; and

[ii.]**2.** A finding by the New Jersey Office of Frequency Coordination (or, if their services are not available, the Department) that the provider's radio operations are causing harmful interference.

[(c)]**(e)** Each Emergency Ambulance shall be equipped with a mobile radio(s) with the following minimum capabilities:

1. Two-way, VHF high-band with Effective Radiated Power (ERP) as approved by the New Jersey Office of Frequency Coordination;

2. Able to select, and to transmit and receive on, each of the required radio frequencies from the driver's compartment;

3. Able to transmit and receive on the selected radio frequency from the patient compartment by suitable means (such as a handset-type microphone); **and**

4. Functional, dual-tone, multi-frequency ("Touch-tone"® type) encoder in either the driver's or patient compartment [;].

[5. Four operating radio frequencies and functional continuous tone coded squelch system (CTCSS) as follows when installed in an ambulance used to provide service to a political subdivision:]

**(f) Each Emergency Ambulance which is used to provide emergency medical services to a political subdivision (whether it is operated directly by a municipality or under contract with a municipality to do "street work"), and/or which responds to motor vehicle accidents, and/or which responds to nursing homes shall have the following four operating radio frequencies and functional continuous tone coded squelch system (CTCSS) in its mobile radio, in addition to the mobile radio capabilities listed in (e) above:**

[i.]**1.** 155.xxx MHz (local EMS frequency and CTCSS as listed in Appendix [C] **A**);

[ii.]**2.** 155.340 MHz (ambulance-to-hospital Emergency Department);

[iii.]**3.** 155.280 MHz (statewide EMS coordination); **and**

[iv.]**4.** 153.785 MHz (statewide public safety coordination for police, fire and EMS), or];

[6. Two operating radio frequencies and functional continuous tone coded squelch (CTCSS) as follows when installed in other ambulances:]

**(g) All other Emergency Ambulances (that is, those which do not provide any of the services listed in (f) above) shall have at least the two following operating radio frequencies and functional continuous tone coded squelch (CTCSS) in their mobile radios, in addition to the other mobile radio capabilities listed in (e) above:**

[i.]**1.** 155.340 MHz (ambulance-to-hospital Emergency Department); and

[ii.]**2.** 155.280 MHz [statewide] **Statewide** EMS coordination.

[(d) In recognition of the need to budget funds, licensees are granted the following time periods to install the mobile radio(s) required in (c) above:

1. Each Emergency Ambulance used to provide service to a political subdivision(s) shall be so equipped within 18 full calendar months of the operative date of this chapter (that is, by October 31, 1986).

2. At least fifty percent of the licensee's Emergency Ambulances shall be so equipped within 18 full calendar months of the operative date of this chapter (that is, by October 31, 1986).

3. All Emergency Ambulances shall be so equipped within 30 full calendar months of the operative date of this chapter (that is, by October 31, 1987).

(e) Each in-service Emergency Ambulance used to provide service to a political subdivision shall be equipped with at least one portable radio with the following minimum capabilities:]

**(h) Each in-service Emergency Ambulance which provides service to a political subdivision ("street EMS") either directly or under contract, and/or which responds to motor vehicle accidents, and/or which responds to nursing homes shall be equipped with at least one portable radio with the following minimum capabilities:**

1. Two-way, four-frequency, VHF high-band;

2. Able to select, and to transmit and receive on, each of the four required radio frequencies; **and**

3. The same four operating radio frequencies and CTCSS as required in [(c)5]**(f)** above.

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[(f) In recognition of the need to budget funds, licensees are granted 24 full calendar months after the operative date of this chapter (that is, by April 30, 1987) to equip the affected ambulances with the portable radio(s) required in (e) above.]

**(i) A licensee which is part of a local, county, or regional disaster plan must have the appropriate radio communications elements which would enable it to carry out its role under the plan.**

8:40-6.31 Disaster planning required

[(a) Each licensee which provides service to a political subdivision shall develop and maintain a current up-to-date written disaster plan. The disaster plan shall be reviewed and tested at least twice a year. The method of testing the plan shall be at the discretion of the licensee. Each employee of the licensee shall be informed of his/her role and responsibilities under the disaster plan at least twice a year.

(b) The plan shall define the licensee's role in providing immediate emergency medical care as part of a community response. The plan shall be based on scenarios which can be reasonably expected to occur in the licensee's service area such as train/bus/aircraft accident, tornado or other weather induced accidents, fire or structural collapse or off-shore sinking.

(c) The plan shall describe the specific means as to how:

1. Off-duty personnel of the licensee would be summoned including specific telephone numbers and/or paging/tone alerting instructions;

2. Mutual aid ambulances would be summoned including specific telephone numbers and/or radio frequencies and encoding means.

(d) The plan shall specify when or whether the licensee's ambulance(s) and when or whether mutual aid ambulance(s) will be used to provide service to the unaffected portion of the licensee's service area. If mutual aid ambulances are to be used, the plan shall specify what means (guide, map, police escort, etc.) will be provided to enable the mutual aid ambulances to locate sites of any calls.]

**(a) Each licensee which provides service to a political subdivision or a government installation shall participate, in conjunction with the applicable office of emergency management, in the development of an emergency medical services plan or an annex to a basic disaster plan. The emergency medical services plan/annex shall be reviewed and tested at least once a year. Employees shall be informed of their responsibilities under the plan at least twice a year. The licensee shall conduct an analysis of equipment and personnel at least twice a year to determine its capabilities to respond to emergencies which can reasonably be expected to occur in its service area.**

**(b) The licensee shall describe in the plan/annex the specific means that will be used to summon off-duty personnel and mutual aid ambulances.**

SUBCHAPTER 7. SPECIFIC HELICOPTER AMBULANCE REQUIREMENTS

8:40-7.1 Patient restrictions

(a) Emergency [medical] **aeromedical** care and transportation **in a helicopter ambulance** shall be provided to a patient who:

1.-2. (No change.)

8:40-7.2 General helicopter requirements

(a) (No change.)

(b) Each helicopter [licensed] **approved** under this chapter shall be licensed and operated in accordance with **applicable portions of the** Federal Aviation Regulations (FAR) [Part 135].

(c) (No change.)

[(d) Each helicopter used by the licensee to provide helicopter air ambulance service shall have and display a valid Helicopter Ambulance License, issued by the Department.]

**(d) Each helicopter used to provide helicopter aeromedical ambulance service shall be approved by the Department.**

8:40-7.3 Patient compartment requirements

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

(d) There shall be space and seating for [an attendant] **at least two attendants** within the patient compartment. [The] **Each** seat shall be equipped with a safety belt. **Velcro®-type closures are prohibited.**

(e) (No change.)

8:40-7.6 Special lighting required

[Each helicopter used to provide pre-hospital emergency medical services (that is "street work" or "on-scene care") shall be equipped with an exterior high-powered floodlight ("Sun Light"™ or equivalent) remotely controlled by the pilot.]

**Each helicopter licensed under this chapter shall be equipped with a forward-facing, exterior, high-powered floodlight.**

8:40-7.7 General equipment and supplies requirement

[(a) Each helicopter used to provide pre-hospital emergency medical services (that is "street work" or "on-scene care") shall be equipped with all the equipment and supplies required in this chapter at the start of each mission.

(b) Each helicopter used to provide interhospital patient transfer service shall be equipped with all the equipment and supplies required in this chapter at the start of each transfer.]

[(c)] All equipment and supplies shall be stowed within the aircraft in a safe, crashworthy manner. [The stowage location shall be dictated by the relative importance of the material. A succinct list of contents shall appear on the door of any interior stowage compartment.]

8:40-7.8 Standard patient transport devices

(a) There shall be a litter for the transport of stretcher bound patients. The litter shall be at least 72 inches long (when flat) and at least 20 inches wide. [The litter shall have a mattress at least one inch thick. The litter shall be adjustable from a flat to a semi-sitting position. There shall be a pillow, pillow case and sheet on the litter.]

(b) The litter shall have three sets of two-inch wide patient restraints with quick release buckles positioned at the chest, waist and knees. The quick release buckles may be of the "slide-through" or "metal to metal" type. **Velcro®-type closures are prohibited.**

(c) (No change.)

8:40-7.9 Oxygen administration devices

[(a) The aircraft shall have an oxygen system capable of safely storing and supplying a minimum of 600 liters of medical oxygen. Aviation oxygen is not acceptable. For flights longer than twenty minutes, additional oxygen supplies shall be carried to permit administration of oxygen to the patient at a rate of at least 15 liters per minute during the entire period the patient is aboard the aircraft.]

**(a) The aircraft shall have a medical oxygen system which is capable of delivering oxygen to the patient at a rate of at least 15 liters per minute during the entire time the patient is aboard the aircraft.**

(b) The oxygen cylinder controls shall be accessible from the required attendant's seat. Cylinder opening wrench(es) or handles shall be affixed to or chained and clipped [with] **to** the oxygen cylinder(s).

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

8:40-7.10 Resuscitation devices

(a) (No change.)

(b) The aircraft shall be equipped with resuscitation devices in accordance with N.J.A.C. 8:40-6.14(c) through [(g)]**(f)**.

8:40-7.11 Aspirator/suction devices

(a) There shall be an installed suction device powered by the aircraft's electrical system. The device shall be securely mounted and located to permit aspiration of any stretcher bound patient. The device shall meet the criteria contained in N.J.A.C. 8:40-6.15(c) [through (e)] **and (d)** during the entire normal range of aircraft operation.

(b) There shall be a portable device powered by an integral battery. The device shall meet the criteria contained in N.J.A.C. 8:40-6.15 (c) [through (e)]**and (d)** for at least 20 minutes. In recognition of aircraft weight limitations, the portable suction device may

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also be used as the installed device provided it meets the requirements of (a) above.

8:40-7.12 Airway maintenance supplies

(a) There shall be at least **the following airway maintenance supplies:**

1. Two [mouth gags (bite sticks)] **bite sticks** single-service type[.]; **and**

[2. Oropharyngeal Airways which meet A.N.S.I. Standard Z 79.3 (Oropharyngeal and Nasopharyngeal Airways), single-service type. There shall be two of each of the following (in A.N.S.I. Z 79.3 sizes):

i. 11 cm size (large adult);

ii. 9 cm size (medium adult);

iii. 7 cm size (child);

iv. 5.5 cm size (infant).]

**2. At least 14 airways in at least four different adult and child sizes.**

8:40-7.13 External cardiac compression support

[A short spine board or a specially designed rigid board (such as a "CPR Board"®) shall be immediately available within the patient compartment.]

**A rigid surface shall be immediately available to facilitate external cardiac compressions on a patient requiring cardiopulmonary resuscitation.**

[8:40-7.14 Spine boards, orthopedic litter and splints

(a) The equipment required in N.J.A.C. 8:40-6.18 shall be available when Helicopter Ambulance Service is being provided at the scene of an accident. In recognition of the aircraft weight limitations, the equipment may be carried to the accident scene either by the aircraft or by a cooperating ground ambulance or Mobile Intensive Care Unit.

(b) In recognition of the airborne environment, splints or similar devices which rely on inflation or vacuum to provide stabilization of possible fractures are specifically prohibited.]

8:40-[7.15]**7.14** Wound dressing and burn treatment supplies

(a) The following wound dressing and burn treatment supplies shall be carried in the aircraft:

1. Four conforming roller bandages, [four or six inches wide by five yards long.] **at least three inches wide;**

2. Four triangular bandages (cravats) measuring 36 inches by 36 inches by 51 inches when unfolded[.];

3. Four sterile, individually packed universal dressings measuring at least nine inches by 30 inches when unfolded[.];

4. Twenty-four sterile, individually packed gauze pads at least four inches by four inches[.];

5. One roll [of three-inch wide] adhesive type tape[.];

6. Two sterile, individually packed occlusive dressings [(such as Vaseline® impregnated dressings)] **or one sterilized roll of aluminum foil;**

7. Two sterile, individually wrapped burn sheets, **or other burn care products approved by the Commissioner**[.]; **and**

8. One liter sterile saline solution in a plastic container(s) (for flushing injury sites). **Saline solution shall be current (not expired).**

8:40-[7.16]**7.15** (No change in text.)

8:40-[7.17]**7.16** Other patient care equipment

(a) There shall be the following other minimum patient care equipment:

1. (No change.)

2. Aneroid type blood pressure manometer and [cuff] **adult and pediatric sized cuffs; and**

3. Four sugar packets or one fluid ounce of glucose in a form easily ingested by mouth[;].

[4. Two cloth blankets at least 60 inches by 80 inches in size.

(b) The licensee shall provide such other equipment and supplies as may be necessary, provided no equipment or supplies shall be carried which would permit rendering of care contrary to N.J.S.A. 45:9-1 et seq. (Practice of Medicine and Surgery Act.)]

8:40-[7.18]**7.17** Required staff

[(a) When in service, each Helicopter Ambulance shall be staffed by at least two persons, one of whom may be the pilot, who shall meet the requirements of N.J.A.C. 8:40-3.7 and of this subchapter. All additional staff persons of the licensee shall meet the requirements of N.J.A.C. 8:40-3.7.

(b) The pilot shall:

1. Hold a current Rotocraft Helicopter Commercial License with a current F.A.A. Class II Medical Certificate.

2. Have at least 2,000 hours experience as pilot in command; 1,500 of which must be in rotowing aircraft.]

**When in service, each Helicopter Ambulance shall be staffed by at least two persons, not including the pilot.**

8:40-[7.19]**7.18** Required training of staff

[(a) Except as permitted in (b) below and in N.J.A.C. 8:40-7.21, each of the required staff persons shall possess current valid certification as an Emergency Medical Technician Ambulance issued by the Department.

(b) In recognition of the need for staff to be trained, the second required person need not possess the required Emergency Medical Technician Ambulance certification for six full months after the operative date of this chapter (that is, until October 3, 1985) provided the person certified as an Emergency Medical Technician Ambulance is in charge of patient care and accompanies patients being transported in the patient compartment.]

**(a) Each of the required aeromedical staff persons shall be either a registered professional nurse or a certified paramedic who has received additional specialized training in aeromedical care and has successfully passed an examination administered by the New Jersey State Department of Health and has been approved by the Commissioner.**

**(b) Additional specialty staff, such as physicians, nurses or respiratory therapists, may be part of the aeromedical crew. If these persons are employees of the "sending" or "receiving" hospital or of the designated aeromedical provider, the hospital or provider shall ensure that the person(s) is certified, or otherwise qualified, to care for the specialty patient being transported.**

8:40-[7.20]**7.19** Duties of staff

(a) The collective duties of the persons who staff a helicopter ambulance shall include, but are not limited to:

1. The duties cited in N.J.A.C. 8:40-6.27 (excluding **N.J.A.C.** 8:40-6.27(a)6[.]**;**

2. Assuring that all ground personnel who may help load/unload the aircraft observe appropriate safety procedures[.]**; and**

3. Prohibiting smoking within 100 feet of the aircraft [when refueling is being done with a patient aboard the aircraft] **at all times.**

[8:40-7.21 Special staff required

(a) When the Helicopter Ambulance is used to provide an inter-hospital transfer of a neonatal patient, the aircraft shall be staffed by:

1. The pilot; and

2. A physician or a nurse who has been specially trained to care for neonatal patients.

(b) When the Helicopter Ambulance is utilized to transport a patient receiving intravenous fluids and/or medications, the aircraft shall be staffed by:

1. The pilot; and

2. A physician or a registered nurse; or

3. A licensed Mobile Intensive Care Paramedic providing medical care as part of a designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-2.]

8:40-[7.22]**7.20** Call report

(a) A call report **approved by the Department** shall be completed each time a patient is transported. The call report shall be prepared by the medical staff who provided in-flight patient care and shall contain the information required in N.J.A.C. 8:40-6.29 printed in ink.

(b) (No change.)

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8:40-[7.23]**7.21** Radio communications

(a) All radio communications shall comply with rules and regulations of the Federal Communications Commission [and shall comply with the JEMS Communications Plan]. The Department shall be provided with a copy of any FCC license(s) issued to the licensee.

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

[8:40-7.24 Written agreements required

(a) Licensees which provide pre-hospital emergency medical services (that is, "street work" or "on-scene care") shall have a written agreement to provide Helicopter Ambulance Service with:

1. The "receiving hospital(s)" which routinely provide hospital care to the patients transported by the licensee, and

2. The designated Mobile Intensive Care Program operated in accordance with N.J.S.A. 26:2K-2 which provides service to the geographic area, or

3. If there is no designated Mobile Intensive Care Program, the Emergency Ambulance Service which provides service to the geographic area.

(b) Licensees which provide inter-hospital patient transfers shall have a written agreement to provide Helicopter Ambulance Service with:

1. The "sending hospital(s)" which routinely utilize the licensee's services to transport patients, and

2. The "receiving hospital(s)" which routinely provide hospital care to the patients transported by the licensee.]

8:40-[7.25]**7.22** Special prohibitions

(a) In recognition of the potential hazards of the aircraft environment, the following are specifically prohibited:

1.-2. (No change.)

3. Free swinging traction weights [or intravenous containers];

4. Glass or rigid plastic intravenous containers; **and**

5. Any patient care or other equipment which causes electromagnetic interference to the aircraft equipment[;].

[6. Transport of a patient with an indwelling, air filled, balloon type device.]

[APPENDIX A
(RESERVED)
APPENDIX B
RESERVED)]

Appendix [C]**A** (No change in text.)

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# (a)

## DIVISION OF HEALTH FACILITIES EVALUATION

## Hospital Licensing Standards

## Proposed New Rules: N.J.A.C. 8:43G-7.28, 7.40, 18.4 and 18.6

## Proposed Repeals and New Rules: N.J.A.C. 8:43G-7.16 and 7.33

## Proposed Amendments: N.J.A.C. 8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.34, 7.37, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.5, 18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6 and 35.2

Authorized By: Frances J. Dunston, 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 1991-440.

Submit comments by October 3, 1991 to:

Robert J. Fogg
Director, Standards and Quality Assurance
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

**Summary**

The Department of Health is proposing to amend the Hospital Licensing Standards, N.J.A.C. 8:43G, which became operational in July 1990. The proposed amendments reflect an accumulation of changes, corrections, and clarifications intended to address concerns brought to the Department's attention, over the past year, by practicing health care professionals, departmental surveyors, and advisory committees.

N.J.A.C. 8:43G represents the culmination of a joint effort by the Department and hospital industry to replace the former hospital licensing standards, which were scheduled to expire in January 1991, with standards more responsive to quality of care issues in acute care hospitals. It was believed that the former standards had come to represent an assemblage of vague, outdated standards and highly detailed prescriptive standards recently adopted in selected areas.

The Department designated the process of developing the new licensing standards as the "Licensure Reform Project" and committed itself to actively involving the regulated community, health care professionals and surveyors in all stages of the process. Following implementation of the rules in 1990, the Department's focus has been on monitoring and evaluating the validity of the standards in assessing the quality of patient care. Since the adoption of N.J.A.C. 8:43G, the Department has convened an Advisory Committee on Hospital Quality, comprised of representatives of hospital administration, medical and nursing professionals, and departmental surveyors, to meet on an on-going basis and assist in this effort. Throughout the past year, the Department also formed and met with several technical advisory groups for guidance in addressing several areas in the regulations which were found to need further attention.

Through the proposed amendments, the Department is also addressing several issues originally raised during the public comment prior to the adoption of N.J.A.C. 8:43G in 1989-90. At the time of the adoption, the Department was precluded from making any substantive or extensive changes to rules, but it agreed to consider several issues for future action, such as physical plant standards for designated smoking rooms, and pediatric emergency care.

The Department also agreed to defer taking action on the "advisory standards" which were proposed simultaneously with the current mandatory rules. Following a decision to withdraw the advisory concept in full from the hospital rules, the Department examined and identified those standards that were appropriate for proposal as mandatory standards. While the Department was led to ultimately reject the advisory standard concept, it has incorporated several of the former advisory standards in these amendments which were agreed to be excellent criteria against which to measure the quality of care.

The following sections summarize the proposed amendments by subchapter:

**N.J.A.C. 8:43G-4 Patient Rights**

Several changes have been made to N.J.A.C. 8:43G-4.1(a)27. The current requirement for a complete statement of patient rights to be posted conspicuously in the patient's room and in public places within the hospital has been changed so as to allow posting of a summary approved by the Department rather than posting of a complete statement. The Department has provided each licensed hospital with an acceptable model summary. This change is based on consideration of the length of the full statement and on the fact that State law regarding the rights of hospital patients allows the posting of a summary. The proposed amendment, however, does require that complete copies of subchapter 4 be available at nurse stations and at other patient care registration areas. Although the current rule requires that the complete statement be distributed to hospital staff members, this provision has been deleted from the proposed amended rule. In its place, the Department is proposing another amendment at N.J.A.C. 8:43G-5.7(a) which would preserve the objective that hospital staff understand the rights of patients. Finally, on the recommendation of the Advisory Committee for Hospital Quality, a sentence has been added which requires that the patient rights summary be provided in the patient's native language if

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10 percent or more of the population in the hospital's service area speak that language. A similar, but stronger, requirement had been proposed as an advisory standard at the time of initial proposal of the hospital licensing standards. The newly proposed amendment is consistent with the Department's intent that patients be presented with a statement of their rights in a form which is understandable to them—an intent which accords with that of the State law regarding patient rights in that this law addresses the right to request the services of an interpreter. Several hospitals have already expressed an intention to develop a version of the summary in Spanish.

**N.J.A.C. 8:43G-5 Administrative and Hospital Wide**

The Department is making numerous technical corrections to N.J.A.C. 8:43G-5 Administrative And Hospital-Wide Services. The cross reference to medical records found in N.J.A.C. 8:43G-5.2(b)5 has been corrected to reference N.J.A.C. 8:43G-15.2 "(e)" rather than 15.2 "(f)". At the request of the Organ Transplantation Program, N.J.A.C. 8:43G-5.3(d) has been amended to reference the National Organ Procurement and Transplantation Network (OPTN), rather than a private professional organization. Reference to the National Network is more appropriate as it was established by the National Organ Transplant Act (P.L. 98-507), and sets national criteria which hospitals must abide by in order to participate in Medicare and Medicaid. The Department was also requested to amend N.J.A.C. 8:43G-5.5(e)2 to include the words "or tissue" to ensure that the rule is consistent with the Assured Option Law which includes donation of tissue (eyes, bone, skin, heart valves) as well as vascular organs. The documents cited in N.J.A.C. 8:43G-5.12(c)1 through 3 have been updated to reflect the most current guidelines relating to protection of health care workers who may be exposed to infectious bloodborne diseases. A correction has been made to N.J.A.C. 8:43G-5.18(b) through the deletion of the word "whole," as it was not the Department's intent to preclude use of packed red cells. This rule has also been amended to ensure that hospitals have access to additional supplies of blood as needed.

The Department is proposing to add three subsections to N.J.A.C. 8:43G-5.2, Administrative and hospital-wide policies and procedures. The first subsection (f), establishes a definition of "reasonable length of time," as it relates to the length of time a patient may be expected to wait for a scheduled service. The Department seeks to prevent patients from being subjected to unnecessarily long waiting times, and therefore, specifies that a patient's treatment be initiated within 30 minutes of the patient's arrival at the service location; the patient must also be returned to his or her room, within 30 minutes of completion of treatment. Existing subsections (f) through (1) have been recodified as (g) through (m).

The other two subsections pertain to physical plant requirements for designated smoking rooms. The licensing rules adopted in January 1990 mandate that all acute-care hospitals in New Jersey become smoke-free by January 1, 1992. The hospital may choose, however, to grant an exception to patients who meet the conditions set forth in N.J.A.C. 8:43G-5.2(1). Any smoking by these patients, if within the hospital, must be restricted to a designated area which has outside ventilation. After adoption of the rules, the Department was requested by the Commission On Smoking OR Health to establish physical plant standards specific to the indoor air quality required for designated smoking rooms. As the Department seeks to protect patients from the harmful effects of involuntary exposure to exhaled smoke, it recognized the necessity of ensuring that air from designated smoking rooms could not recirculate throughout the hospital. An Advisory Committee was convened to assist the Department in the development of standards. Reference materials used in the process included guidelines relative to indoor air quality developed by the American Society of Heating Refrigerating And Air-Conditioning Engineers, Inc. (ASHRAE) and the Environmental Protection Agency. Two subsections have been added at N.J.A.C. 8:43G-5.2(n) and (o). In these two new subsections, the Department has defined acceptable indoor air quality standards for designated smoking rooms, and has proposed a requirement for a written policy limiting the number of patients permitted in a designated smoking room, at the same time, to no more than five smokers per 100 square feet.

Amendments to the sections addressing staff education and department education programs, N.J.A.C. 8:43G-5.7 and 5.9, have been proposed. The content of the formal orientation program for all new permanent staff at N.J.A.C. 8:43G-5.7(a) is expanded to also include training in patient rights. N.J.A.C. 8:43G-5.9(a) is clarified to ensure that education programs are conducted at least annually, and an example of education on statutory requirements if provided in paragraph (b)5.

Two new subsections pertaining to the responsibilities of staff have been added. N.J.A.C. 8:43G-5.5(i) requires the presence of a health care professional, capable of initiating cardiopulmonary resuscitation, in each department whenever a patient is present. N.J.A.C. 8:43G-5.16(f), found in the Disaster planning section, has been added to encourage disaster planners to communicate with those facilities to which evacuated patients would be sent.

**N.J.A.C. 8:43G-7 Cardiac**

Several changes have been made to the cardiac services subchapter of N.J.A.C. 8:43G. All of the proposed amendments have been reviewed by and carry the recommendation of both the Hospital Advisory Quality Task Force and the Commissioner's Cardiac Services Committee (CCSC). The proposed amendments constitute changes made to accommodate those physicians who are graduates of accredited training programs who have demonstrated exceptional skill and experience but who have not yet been certified; to effect reductions in staffing requirements for designated cardiac diagnostic and therapeutic services; and to remove the requirements for a dedicated pediatric cardiac surgical intensive care service and a dedicated pediatric cardiac catheterization laboratory. In addition, a staff qualification waiver standard has been proposed.

Proposed N.J.A.C. 8:43G-7.5(c) would allow anesthesia residents and fellows who emerge from training programs, and who maintain a board eligible status, to provide anesthesia care during cardiac surgery as long as examination for certification will take place within two years of initial anesthesia board eligibility. N.J.A.C. 8:43G-7.3(b) allows the surgeon in charge of a cardiac operation to be board certified or board eligible. Adoption of proposed N.J.A.C. 8:43G-7.5(c) would demonstrate consistency regarding credentialing requirements within this subchapter while protecting against the delivery of compromised cardiac care.

Proposed changes to N.J.A.C. 8:43G-7.15(b) permit alternate credentialing requirements for the physician performing cardiac catheterization as the primary operator. The Department recognizes that the physician who satisfactorily completes the required training program and practical component of a cardiac residency should be permitted to continue performing cardiac catheterizations during the board eligibility period while awaiting the opportunity to sit for the written and oral parts of the cardiovascular certifying examination.

N.J.A.C. 8:43G-7.16 has been proposed for repeal and the requirements contained therein, with modifications, would be reestablished at the same cite. N.J.A.C. 8:43G-7.16(a) would provide for a reduction in the staff required to be present for a cardiac catheterization and would allow the hospital more flexibility in making the staffing assignments. N.J.A.C. 8:43G-7.16(b) would be deleted as this becomes a duplication of proposed N.J.A.C. 8:43G-7.16(a).

N.J.A.C. 8:43G-7.22(a) would be amended by deletion of the phrase "as an elective basis" as to ensure that all percutaneous transluminal coronary angioplasty procedures (PTCA) are to perform only in cardiac surgical centers approved by the Department.

Proposed N.J.A.C. 8:43G-7.23(a) would modify the credentialing requirements for any physician performing PTCA as the primary operator. These amendments would allow the formally trained physician to continue performing PTCA's while achieving certification. In addition, by mandating that the physician additionally meet the requirements of being a catheterizing physician who has actively participated in at least 200 PTCA's under supervision, the Department evidences support for the industry held belief that professional volume positively affects both the quality and the cost effectiveness of the delivery of invasive cardiac services and consequently, is in the best interests of the patient. N.J.A.C. 8:43G-7.23(b) has been proposed for deletion based on recommendations of the CCSC. This practice is considered to be unnecessary at this point in the advanced development of the procedure, is an unwarranted high cost item and will not negatively impact the delivery of safe and quality cardiac care.

Proposed N.J.A.C. 8:43G-7.24(a), which mandates the staff required during all PTCA procedures, would now parallel the staffing requirements for other invasive cardiac diagnostic and therapeutic procedures within this subchapter. Proposed N.J.A.C. 8:43G-7.26(a) clarifies the credentialing requirements under which a physician may perform electrophysiology studies (EPS) as the primary operator. N.J.A.C. 8:43G-7.26(c) is proposed for deletion based on recommendations of the CCSC.

N.J.A.C. 8:43G-7.28(a) has been recodified at N.J.A.C. 8:43G-7.27(a). Proposed N.J.A.C. 8:43G-7.27(a), which mandates the staff required during all EPS procedures, would now parallel the staffing requirements

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for other invasive cardiac diagnostic and therapeutic procedures within this subchapter. Proposed N.J.A.C. 8:43G-7.28 would require that board eligibility status in cardiovascular disease be of limited duration as defined by the American Board of Internal Medicine.

N.J.A.C. 8:43G-7.32(a) through (f) have been recodified as N.J.A.C. 8:43G-7.32(b) through (g) with no substantive change proposed. Proposed N.J.A.C. 8:43G-7.32(a) would be added to insure that pediatric trained personnel and pediatric specific monitoring and treatment equipment be available for the pediatric patient.

N.J.A.C. 8:43G-7.33 would be repealed and replaced with a standard that allows the sharing of the surgical intensive care service for postoperative pediatric cardiac surgical patients with other postoperative pediatric patients. The Department agrees with the recommendations of the CCSC and individual pediatric practitioners that it is not necessary to require a specifically dedicated pediatric cardiac surgical intensive care service to insure the delivery of optimal care to the pediatric patient as long as appropriately trained staff and pediatric specific equipment is available.

N.J.A.C. 8:43G-7.34 would be amended to eliminate individually identified monitoring and treatment procedures for the pediatric cardiac surgical patient. A generic standard that would require monitoring and treatment equipment appropriate to the pediatric patient be available is added in its place.

N.J.A.C. 8:43G-7.37(b) would be deleted and replaced with a standard that allows the sharing of the cardiac catheterization laboratory for pediatric and adult patients. The Department agrees with the recommendations of the CCSC and individual pediatric practitioners that it is not necessary to require a specifically dedicated pediatric cardiac catheterization laboratory to insure the delivery of optimal care to the pediatric patient as long as appropriately trained staff and pediatric specific cardiac catheterization is used.

N.J.A.C. 8:43G-7.40, addressing waiver criteria for staff credentials, is a proposed new rule. Recognizing the complexity of the specialty of cardiovascular disease, the alternate training requirements and pathways to certification that are available to the individual practitioner and accepted by the American Board of Internal Medicine, and the time that must elapse before a fully trained practitioner can sit for the certification boards, the Department has proposed this waiver standard which would identify objective guidelines to aid Department staff in issuing waivers to qualified physicians.

**N.J.A.C. 8:43G-8 Central Supply**

N.J.A.C. 8:43G-8.4(e) identifies the guidelines for sterilization policies and procedures noted in the standard by including the name of the document. N.J.A.C. 8:43G-8.7(b) has been amended to permit the sterilization of accessories to be addressed in a new subsection at N.J.A.C. 8:43G-8.7(d). Since there are numerous types of accessories, many requiring specific handling, the Department will not attempt to list all the types and the appropriate sterilization methods for each type in the hospital licensing manual. Instead, the Department's Environmental Services Program has issued a guidance document for Endoscopy based upon the recommendations of a Statewide Endoscopy Committee.

A new subsection is added at N.J.A.C. 8:43G-8.7(c) which addresses the disinfection of scopes and channels that enter non-sterile areas of the body, thereby removing the requirement that these instruments undergo sterilization and permitting high-level disinfection. The remainder of the rule is recodified. Lastly, an additional document is identified at N.J.A.C. 8:43G-8.11(f)3 regarding methods for processing reusable medical devices. The addition of this document permits the rule to address all current methods. Since a third document is named, the word "both" is deleted from the text.

**N.J.A.C. 8:43G-9 Critical and Intermediate Care**

N.J.A.C. 8:43G-9.7(d) is amended to require that nursing students render care to patients in the critical care service only when qualified supervision, as defined by both the hospital and the nursing school, is available in the unit.

The proposed amendment to N.J.A.C. 8:43G-9.9(b) is proposed for deletion. N.J.A.C. 8:43G-9.9(b) requires that critical care service have access to comprehensive laboratory services that include at least: measurement of cardiac enzymes; renal function studies; microbiological studies; blood bank services; blood type and cross-match; and fluoroscopy and other radiologic studies. The Department recognizes that the need for delineating these specific lab services no longer exists. The identified services are available today in all hospitals with critical care services and no cause for concern appears to be present regarding the accessibility of these services.

Proposed N.J.A.C. 8:43G-9.13(b) requires that emergency supplies be accessible for all patients in the critical care unit rather than available at the bedside. The proposed change would allow the unit staff to determine the appropriate location for emergency supplies based on the particular needs of the unit while in no way compromising quality patient care or safety.

Effective January 1, 1992, hospital licensing standards require that intermediate care services be provided in all hospitals that provide critical care services. An amendment is proposed to N.J.A.C. 8:43G-9.19(b) that would clarify the physical requirements for this intermediate care unit. The Department believes the presence of a dedicated unit with a concentration of staff and equipment appropriate for the care of the intermediate patient, while freeing up staff and resources that better serves the critically ill patient, is essential to assure the delivery of care that is both cost and quality efficient. Clarification is felt necessary at this time to eliminate any confusion occuring within the industry as to the exact physical setting requirements necessary to effectively comply with the rule.

**N.J.A.C. 8:43G-10 Dietary**

Within N.J.A.C. 8:43G-10 Dietary, a requirement for annual review of the diet manual and nutrient analysis of menus has been added at N.J.A.C. 8:43G-10.1(b). Additionally, the list of locations at which a copy of the diet manual is to be available has been amended to eliminate the need to retain a copy in administration. Two corrections have also been made to this rule to reflect that it is not necessary to incorporate the nutrient analysis as part of the diet manual, and to clarify that the maintenance of a medical library is a mandated service, and thus not optional on the part of hospitals. Comments received on N.J.A.C. 8:43G-10.4(b) have indicated that the intent of this standard is unclear; amended language is being proposed to more directly relate the standard to dietary staff members' prescribed job responsibilities.

**N.J.A.C. 8:43G-11 Discharge Planning**

Two standards in subchapter 11, Discharge Planning, have been modified. At N.J.A.C. 8:43G-11.5(b), the rule has been changed to underscore the effort required of the hospital to search for an appropriate placement for a patient needing after-discharge care. N.J.A.C. 8:43G-11.5(g) is reworded to clarify the requirement that discharge planning shall be documented in the patient's record during his or her hospital stay, and that a summary of the discharge plan shall be prepared at the time of discharge or within 30 days of discharge.

**N.J.A.C. 8:43G-12 Emergency Department**

The Department is proposing amendments at N.J.A.C. 8:43G-12, Emergency Department to clarify policies and procedures, staff qualifications, transfer and services for certain at-risk populations. The most frequent reasons that patients would be unable to communicate, such as language, disability, age, or level of consciousness, are added at N.J.A.C. 8:43G-12.2(d), which requires the emergency department to have protocols to address these eventualities.

The requirements within the staff qualifications rule at N.J.A.C. 8:43G-12.3(a)3 have been modified to require physicians practicing in the emergency department to have three years of full time clinical experience in emergency medicine within the past five years. This requirement, which was included in the originally proposed hospital licensing standards and then modified, would become effective on July 1, 1994 to allow additional time for physicians to gain the necessary experience. A requirement for certification in Advanced Pediatric Life Support has been added to the ACLS certification required of emergency room physicians at N.J.A.C. 8:43G-12.3(c). The need for special training in pediatric emergency care has been noted by various practitioners, and the Department received public comment regarding this issue when the hospital licensing manual was adopted. The amendment would require this certification within 12 months of initial assignment to the emergency department.

N.J.A.C. 8:43G-12.7(m) states that a patient shall only be transferred from the facility for a valid medical reason or by patient choice. The word "hospital" has been replaced to broaden the category of health care facilities to which a patient may be transferred but the standard retains the requirement of either valid medical reason or patient choice. The rule now requires that documentation for the transfer shall be sent with the patient with a copy or summary maintained by the transferring hospital.

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New language at N.J.A.C. 8:43G-12.7(q) clarifies the use of policies and procedures for complying with applicable statutes and protocols, where no statutes exist, for the reporting of child abuse and sexual abuse. "Elder abuse" has been expanded to "abuse of elderly or disabled adults" to encompass all adults who are eligible for the Adult Protective Services Program of the Division of Youth and Family Services. N.J.A.C. 8:43G-12.10(b) addresses staff training requirements in the emergency department. The amendment clarifies that the hospital shall provide training specifically in identification and reporting, and it adds domestic violence to the types of sociomedical problems to be included in the educational programs.

**N.J.A.C. 8:43G-13 Housekeeping and Laundry**

There are two modifications in subchapter 13, Housekeeping and Laundry. The first change occurs at N.J.A.C. 8:43G-13.4(o), where the phrase "or in patient care areas" is added to the locations where fly strips shall not be used. The second change is a correction which deletes "and bacterial monitoring" from the rule at N.J.A.C. 8:43G-13.13(c) which requires pH monitoring by the laundry service.

**N.J.A.C. 8:43G-14 Infection Control and Sanitation**

Subchapter 14, Infection Control and Sanitation, has incorporated three changes. The first, at N.J.A.C. 8:43G-14.1(a), adds the respiratory care service to the list of representatives to be included in the hospital infection control committee. The second, at N.J.A.C. 8:43G-14.1(b)1, gives the correct reference for the CDC document defining nosocomial infections. Finally, the lower limit for hot water temperature at N.J.A.C. 8:43G-14.9(b) has been raised to 95 degrees Fahrenheit, as 90 degrees was found to be uncomfortably low. The temperature range in this standard is specified for patient care areas.

**N.J.A.C. 8:43G-15 Medical Records**

Amendments to subchapter 15, Medical Records, are being proposed at N.J.A.C. 8:43G-15.2 and 15.3. As a result of increasing use of computerized medical records systems and facsimile communications systems by hospitals, the Department has received questions concerning permitted usage of such systems. Therefore, N.J.A.C. 8:43G-15.2(b) has been amended to include paragraph (b)1, requiring the hospital to develop procedures to ensure confidentiality of physician's electronic signatures and to prohibit the improper or unauthorized use of computer generated signatures, and paragraph (b)2, which specifies procedures to be followed if a facsimile communications system (FAX) is used.

N.J.A.C. 8:43G-15.2(c) has been amended to include outpatient records. N.J.A.C. 8:43G-15.2(1), requiring organization of medical records in a uniform format, has been deleted as this requirement is addressed sufficiently in subsection (c).

The current N.J.A.C. 8:43G-5.3(d) sets a cap of actual costs on the copying charges which may be assessed to a patient or his or her authorized representative: the total charge may not exceed $1.00 per page or $100.00 per record. Subsequent to adoption of this rule, it became evident due to the many requests for interpretation that further specificity was needed. The focus of most of these inquiries was whether a "search fee" could be assessed above and beyond the $1.00 per page or $100.00 total record cap. In a December, 1990 interpretation issued by this Department, a search fee was deemed reasonable where the total charge did not exceed $100.00 and was based upon the actual fixed costs associated with processing a medical records copy request.

Following further analysis of current medical records practices and in consideration of the public policy concerns related to reasonable access, cost, and efficiency of services, a formal revision to the language of this rule was prepared. This revised language was sent to all Hospital Chief Executive Officers, Medical Records Directors and interested parties, as Advisory Bulletin H-1-91. Advisory Bullentin H-1-91 has served as the Department's official interpretation of the rule and as the enforcement policy from February 15, 1991 to the present time. The views of the Medical Records Association of New Jersey, attorneys involved with malpractice and personal injury litigation, and the Department's Advisory Committee for Hospital Quality were considered in preparing the amended language contained in Advisory Bullentin H-1-91. The Advisory Bulletin expanded the current N.J.A.C. 8:43G-15.3(d) to define a "legally authorized representative" as a spouse, immediate next of kin, legal guardian, patient's attorney, or third party insuror where permitted by law. The Advisory Bulletin also allowed for a search fee of no more than $10.00 per patient per request if the total did not exceed $100.00. The advisory bullentin also required the hospital to establish a policy assuring access to copies of records for patients who do not have the ability to pay, as well as a policy providing an incentive for use of summaries and abstracts of medical records.

Based upon additional data submitted by the Medical Records Association which indicated that greater than 65 percent of medical record copying volume was related to records in excess of 100 pages, the Department is proposing an increase in the upper payment of $100.00, to permit an additional copying fee of no more than $0.25 per page for pages in excess of the first 100 pages, up to a maximum of $200.00 for the entire record. The proposed amendments permit a search fee of no more than $10.00 to be assessed for each request. Sales tax may be charged if required by law, and postage charges of the actual costs for mailing, not to exceed $5.00 are permitted. The revised language from Advisory Bullentin H-1-91 is also being proposed as amendments to N.J.A.C. 8:43g-15.3(d) and (e). The caps on fees included in these proposed amendments are intended to apply to a single request for a copy of a medical record. All subsequent requests must be charged at a reasonable rate according to patient rights, as specified at N.J.A.C. 8:43G-4.1(a)25. The Department will periodically reevaluate the reasonableness of the fee scale contained in N.J.A.C. 8:43G-15.3(d), and to report to the Health Care Administration Board on or before July 1, 1993 on the need for amendment as a result of inflation or increases in costs associated with copying of medical records.

Proposed N.J.A.C. 8:43G-15.3(f) includes parts of the current subsection (d) and (e) which require that access to the medical record be limited only to the extent necessary to protect the patient, that the patient or legal guardian be given a verbal explanation for any denial of access to the medical record, and that the medical record be made available to a legally authorized representative or the patient's physician if direct access to a copy by the patient is medically contraindicated. The remaining standards of the section have been recodified.

**N.J.A.C. 8:43G-16 Medical Staff**

Amendments proposed to subchapter 16, Medical Staff, at N.J.A.C. 8:43G-16.1 are intended to make the rules consistent with the language of the State Board of Medical Examiners notification and reporting requirements which are specified in the Medical Conduct Reform Act, P.L. 1989, Chapter 300. This law imposes reporting requirements on health care entities and practitioners in the State of New Jersey.

At N.J.A.C. 8:43G-16.1(k), the word "physician" has been deleted and replaced by the word "practitioner," as the term is used in the above law to indicate that the rules apply to a category of professionals which includes licensed M.D.'s and D.O.'s, licensed podiatrists and residents.

An amendment to N.J.A.C. 8:43G-16.1(l) requires notifications to the Board of Medical Examiners to be forwarded on forms approved by the Department. Current rules specify that notifications are to be made on forms provided by the Department, but the rules have not been enforced in that the Department did not provide such forms. This change in wording is also consistent with the Act, which requires hospitals to use a form which has been prescribed by the Commissioner of Health. In October, 1989, regulations were published by the Federal Government that established reporting requirements for health care entities to a National Practitioner Data Bank. Many reporting requirements from the State Law and Federal Regulations overlap. Therefore, in order to simplify paperwork requirements, the Commissioner has authorized use of the National Practitioner Data Bank's Adverse Action Report; this form is mandated for use by the Federal Government as its own initial reporting form. This form will be used in all instances: when the report must be forwarded to the National Practitioner Data Bank and when it will remain only with the State Board of Medical Examiners. According to the Medical Conduct Reform Act, adverse actions are to be reported to the Medical Practitioner Review Panel of the Board within seven days of the action. The Federal Regulations would allow a hospital to submit information 15 days from the date the action was taken, but for purposes of uniformity in the State of New Jersey, all actions will be reported within seven days of the action. Therefore, an amendment has been made at N.J.A.C. 8:43G-16.1(l), deleting the current 30 day notification requirement and adding a requirement that notifications shall be provided within seven days of the reported event.

An amendment has been made to N.J.A.C. 8:43G-16.1(n), specifying that the hospital shall provide copies of all reports regarding physician hospital privileges to the Department only upon request.

N.J.A.C. 8:43G-16.2(b) currently requires that all orders for restraints be made in accordance with N.J.A.C. 30:4-24.2(d)3. Amendments are being proposed at N.J.A.C. 43G-8:18.4(c) through (e) and (i) which specifically delineate the procedures and physician responsibilities re-

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garding use of physical restraints. Therefore, N.J.A.C. 8:43G-16.2(b) has been amended and the cross-reference to the statute has been deleted to reflect these changes.

N.J.A.C. 8:43G-16.6(b) has been amended by deletion of the word "complete" from the requirement for a medical history and physical examination for each patient upon admission to the hospital, and the timeframe for completion of the test and physical has been changed from 14 days to seven days.

N.J.A.C. 8:43G-16.7 has been amended to require the medical staff to comply only with N.J.A.C. 8:43G-5.9(a) and (b).

**N.J.A.C. 8:43G-18 Nursing Care**

In subchapter 18, Nursing Care, N.J.A.C. 8:43G-18.5(i) has been deleted and the remainder of the subsections recodified; in its place, a new rule entitled "Nursing Care; use of restraints" has been inserted at N.J.A.C. 8:43G-18.4. When the licensing manual was adopted, references to the use of restraints occurred in four subchapters, Patient Rights, Medical Staff, Nursing Care, and Psychiatry. The Department has indicated since the time of adoption that these were essentially interim standards that were to be revised, with the intent of developing more specific requirements that are applicable to both the psychiatric population and medical-surgical patients. The standards at N.J.A.C. 8:43G-18.4 were developed with the assistance of an advisory group consisting of practitioners and administrators, a representative of the Office of the Public Advocate, and Department personnel. The proposed rules were derived from sources including Title 30, N.J.S.A., the American Psychiatric Association Task Force Report on Seclusion and Restraint, proposed psychiatric rights legislation developed by a broad-based coalition of agencies and interest groups, and the literature on restraints and general nursing care.

The statement of scope for the rule, in subsection (a), indicates that the standards apply to the use of physical restraints in all patient care areas of the hospital, and defines physical restraints.

N.J.A.C. 8:43G-18.4(b)1 through 7, requires the hospital to develop written policies and procedures, beginning with the use of alternatives to restraints whenever possible, moving to a progressive range of restraining procedures from least to most restrictive, indications and contraindications for use, identification of permitted restraining devices, protocols for notifying family or guardian and informing or requesting consent from the patient, and removal of restraints when goals have been accomplished. N.J.A.C. 8:43G-18.4(c) indicates that, except in an emergency, a patient must be seen and evaluated by a physician, who must write an order, before restraints can be used. N.J.A.C. 8:43G-18.4(d) addresses emergency procedures and the responsibilities of medical and nursing staff. N.J.A.C. 8:43G-18.4(e) requires that the restrained patient be observed and evaluated by a physician at least every 24 hours and that written physician orders be renewed at the same time interval.

Nursing interventions by licensed personnel are indicated at N.J.A.C. 8:43G-18.4(f) and by licensed or non-licensed personnel at N.J.A.C. 8:43G-18.4(g). Interventions by nursing personnel for patients wearing restraints for overnight sleeping are indicated at N.J.A.C. 8:43G-18.4(h). The use of psychotropic medications is addressed at N.J.A.C. 8:43G-18.4(i), including the responsibilities of nursing staff, the administration of these medications only upon written physician orders, and the requirement that the medications be used only as part of the patient's treatment plan and not as a method of restraint, discipline, or for the convenience of staff. N.J.A.C. 8:43G-18.7, Nursing care staff education and training, has been amended to include requirements for orientation and annual training for all nursing staff regarding the use of restraints.

Prior to July 1, 1990, the hospital licensing standards contained a section specifically addressing nursing care services related to pharmaceutical services. Although some of the rules in several of the subchapters which became operative on July 1, 1990, are similar to some of those nursing/pharmacy rules which were repealed as of that date, it has become clear that there is a need to restore a number of others which were not incorporated into the current manual of standards. In order to rectify this omission, N.J.A.C. 8:43G-18.6, which is currently reserved, is proposed as a new rule of 11 subsections which focus upon the role of the nurse in drug storage and administration. Proposal of N.J.A.C. 8:43G-18.6 follows comparison of the repealed rules with the current rules by the Department, identification of those areas which need to be addressed by amending the rules, and subsequent discussion with, and approval by, the Advisory Committee for Hospital Quality. The ensemble of proposed N.J.A.C. 8:43G-18.6(a) through (e) is intended to ensure that medications are administered to the proper patients, in accordance with prescriber orders, medical staff policy, and Federal and State laws and regulations. Proposed N.J.A.C. 8:43G-18.6(f) complements proposed N.J.A.C. 8:43G-23.2(a)13, which requires the pharmacy and therapeutics committee to address self-administration of drugs in its policies and procedures. Similarly, proposed N.J.A.C. 8:43G-18.6(g) through (k) link certain nursing activities with rules currently found in other subchapters of the manual, particular subchapter 23, Pharmacy. More specifically, proposed N.J.A.C. 8:43G-18.6(g) through (k) complement, respectively, N.J.A.C. 8:43G-23.2(a)7, 23.8(a), 23.8(b), 23.6(i), and 14.12(b).

**N.J.A.C. 8:43G-19 Obstetrics**

Numerous amendments have been made to subchapter 19, Obstetrics. N.J.A.C. 8:43G-19.2(a)5 has been clarified to ensure that obstetric patients are assessed by a physician before the use of oxytoxics. The role of the physician in the administration of oxytoxics is again emphasized in an amendment to N.J.A.C. 8:43G-19.13(d), which replaces the nonspecific term "obstetrical staff" with "a physician with obstetrical privileges". N.J.A.C. 8:43G-19.2(b) has been clarified to ensure that obstetric staff have access to information that is current. A new provision requiring submission of a copy of the patient's prenatal record has been proposed at N.J.A.C. 8:43G-19.2(f) at the request of the Division of Family and Child Health. Withen N.J.A.C. 8:43G-19.5, a new subsection (f) has been added to ensure the indecision of dietary assessment and counseling as a standard part of treatment for obstetric patients at nutritional risk. The requirement for certification in pediatric advanced life support (PALS) found at N.J.A.C. 8:43G-19.13(f) and 19.18(e) has been changed to require certification in neonatal resuscitation. This change is recommended by obstetrical staff who notified the Department that training specific to resuscitation of neonates should be required in the obstetrical area.

The scope of services addressed in N.J.A.C. 8:43G-19.14, Labor and delivery patient services; mandatory, has been expanded to include anesthesia services and the recovery phase of delivery. The need for rules to govern the administration, supervision and monitoring of anesthesia in all labor, delivery and recovery areas became apparent after the obstetrical standards became operational in July 1990. It was found, at that time, that the anesthesia and postanesthesia standards, N.J.A.C. 8:43G-6 and N.J.A.C. 8:43G-35 respectively, were not universally applicable to all obstetric cases, particularly non-surgical deliveries. In keeping with the Licensure Reform process, the Department convened an advisory committee, composed of obstetricians, obstetric nurses and anesthesiologists, to assist in developing anesthesia standards directly applicable to the practice of obstetrics.

A medical practice found to be fairly unique to labor and delivery is the widespread use of anesthetic agents for pain management. The Department has addressed this practice in N.J.A.C. 8:43G-19.14(b)2 and 3. N.J.A.C. 8:43G-19.14(b)3 would require the obstetric service, in consultation with the anesthesia service, to develop protocols specific to use of anesthetic agents for pain management. The obstetric and anesthesia services would be required to jointly decide upon the qualifications and responsibilities of the individuals who administer anesthetic agents for this purpose. N.J.A.C. 8:43G-19.14(b)2 goes on to require that these individuals be credentialed, in accordance with medical staff policies, and the physician director of anesthesia would be required to actively participate in the credentialing process and delineation of privileges.

While the Department acknowledges the varying uses of anesthetic agents in the practice of obstetrics, it is obligated to ensure each patient a level of care appropriate to the treatment being rendered. For this reason, the Department requires in N.J.A.C. 8:43G-19.14(b)4 that each obstetric patient be evaluated and classified for her risk to anesthesia in accordance with the American Society of Anesthesiologists (ASA) Physical Status system. The patient's ASA classification would dictate the anesthesia administration and monitoring practices to be followed. The rule stipulates, however, that the obstetric service adhere to the standards set forth in N.J.A.C. 8:43G-6, Anesthesia Services, when administering anesthetic or pain control agents to patients undergoing surgical deliveries, including cesarean sections, and/or patients classified for anesthesia risk as an ASA Class III, IV, V or Emergency.

Prior to July 1, 1990, the hospital licensing standards contained a section addressing the care of obstetric patients during the recovery phase of delivery. This area had been omitted from the current manual of standards. Over time, however, the need for standards specific to recovery became clear. The advisory committee, identified above, assisted the Department in the development of new rules for recovery. The addition of these rules is found at N.J.A.C. 8:43G-19.14(c)1 through 8. The first paragraph, N.J.A.C. 8:43G-19.14(c), would require the hospital

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to establish policies and procedures specific to the care of patients during recovery. At a minimum, the policies must address delineation of primary medical responsibility for the patient, the monitoring needs of each patient and protocols to be followed in the event of an emergency. Additionally, the universal use of an objective scoring system to determine when the patient has recovered from anesthesia would be required (see N.J.A.C. 8:43G-19.14(c)1 through 5). Because many obstetrical patients will be recovering from anesthesia, administered prior to and during delivery, the proposed provisions setting forth the qualifications and availability of the staff assigned responsibility for the care of patients during recovery, found at N.J.A.C. 8:43G-19.14(c)6, are comparable to those found in N.J.A.C. 8:43G-35, Postanesthesia Care. For the protection of patients, registered professional nurses, providing care to patients in recovery, would be required to be trained in basic cardiac life support. A registered professional nurse with critical care training would be required to be present whenever a patient recovering from a cesarean section and/or classified as ASA Class III, IV, V, or Emergency is present. Under N.J.A.C. 8:43G-19.14(c)7, a staffing ratio of at least one registered professional nurse for every three patients would be required to ensure patient safety, and at least two health care personnel would be required to be present whenever a patient is present. N.J.A.C. 8:43G-19.14(c)8, addressing the monitoring and evaluation of patients, stipulates that the rules found in N.J.A.C. 8:43G-35.4, Postanesthesia care patient services, specifically subections (a) through (i), must be followed for patients recovering from a cesarean section and/or classified as ASA Class III, IV, V or Emergency.

The Department has also amended N.J.A.C. 8:43G-19.15, Post partum policies and procedures, to include the establishment of policies and procedures to be followed for post partum patients. The areas delineated in the rules pertain to the clinical care of post partum patients, and had been included in the previous licensing standards.

N.J.A.C. 8:43G-19.17(a) has been clarified to include the availability of a copy of the specific pediatric privileges of physicians, at each nursing unit in newborn. The procedures for reporting an outbreak of disease in the newborn nursery, (N.J.A.C. 8:43G-19.17(e)), and documentation of eye prophylaxis (N.J.A.C. 8:43G-19.17(i)14) have been clarified. The standard pertaining to the checks of equipment settings in the nursery, N.J.A.C. 8:43G-19.22(g), has been deleted as it was found to be lacking in specificity. The scope statement for nurse-midwifery services, N.J.A.C. 8:43G-19.23, has been changed for the purpose of clarity, as has N.J.A.C. 8:43G-19.33(b) which ensures beds are made available for obstetric patients, in those obstetric units which are approved to mix obstetric/non-obstetric patients.

**N.J.A.C. 8:43G-20 Employee Health**

N.J.A.C. 8:43G-20, Employee Health sets forth specific requirements to prevent the transmission of communicable diseases within the hospital. Currently the rules mandate screening of hospital employees for tuberculosis and rubella. In response to the alarming outbreak of measles which recently occurred throughout the state of New Jersey, the Department is also including measles (rubeola) among the communicable diseases for which hospital employees must be screened. Proposed N.J.A.C. 8:43G-20.2(g) mandates that hospital employees be given a measles (rubeola) test by March 1, 1992; the categories of employees who fall within the scope of this requirement are identified within the rule. The Department has also added subsection (f) to encompass new employees, and to ensure that they are screened upon employment. A similar requirement, specific to rubella, has been added at subsection (f). As a further measure, the Department is proposing subsection (i) to encourage and facilitate vaccination of employees who are found to be seropositive for rubella and/or rubeola. At the request of the Advisory Committee for Hospital Quality, a new paragraph (a)5 has been included in N.J.A.C. 8:43G-20.1, Employee health policies and procedures, to require hospitals to establish a policy regarding clinical restrictions applicable to employees exposed to rubella or rubeola who are seronegative and unvaccinated. The Department is making only one amendment to Employee Health unrelated to the issue of communicable disease transmission. In N.J.A.C. 8:43G-20.2, the Department will no longer be prescribing the qualifications of the individual who performs a physical examination of new employees.

**N.J.A.C. 8:43G-22 Pediatrics**

The Department is making several amendments to N.J.A.C. 8:43G-22, Pediatrics. N.J.A.C. 8:43G-22.12(d) is being deleted as the reference to electrical beds is incorrect. The intent of the standard, which is to ensure that there are safety measures on pediatric units to prevent physical injury to patients, is being preserved via proposed new N.J.A.C. 8:43G-22.2(a)9, requires hospitals to establish a formal policy on safety measures for the purpose of preventing electrical and bodily injury to patients. N.J.A.C. 8:43G-22.3(e) is being amended to clarify that a child's guardian may participate in the development of the nursing patient plan of care; the existing language of the standard refers only to the "parents" of pediatric patients. N.J.A.C. 8:43G-22.12(c) is also being clarified through the deletion of the phrase "at all times". While the Department maintains the need for adult supervision of children under seven years of age in the play room, it is not necessary for this adult to be continuously physically present in the room.

Within the area of pediatric intensive care, a new provision requiring the hospital to establish a policy addressing optional overnight stays for parents or guardians of pediatric intensive care patients has been added as N.J.A.C. 8:43G-22.17(c). The intent of this standard had originally been proposed in the form of an advisory standard. However, since advisory standards were not adopted, the Department is proposing this modified version as a mandatory standard.

A grammatical correction to N.J.A.C. 8:43G-22.20, separating equipment items inappropriately grouped with physiological variables, resulted in the codification of an additional standard at subsection (b).

**N.J.A.C. 8:43G-23 Pharmacy**

A number of the proposed amendments concern N.J.A.C. 8:43G-23, Pharmacy. Some of these amendments are being proposed in order to clarify the meanings of some of the rules by rendering them more precise. The "pharmacy representative" to which the current N.J.A.C. 8:43G-23.1(b) refers, for example, has been changed to a licensed pharmacist, and the phrase "four times a year" has been replaced by the word "quarterly." Although it has been understood that required pharmaceutical reference materials and the formulary must be "up-to-date," addition of this adjective to N.J.A.C. 8:43G-23.2(a)9 and 11 should eliminate any possibility of misinterpretation. Similarly, N.J.A.C. 8:43G-23.6(f) has been revised so as to specify the means by which information about medications is to be communicated to those who administer the drugs. Communication of the information is already required by the rule.

A new item has been added to the list of areas which need to be addressed by the pharmacy and therapeutics committee. Proposed N.J.A.C. 8:43G-23.2(a)13 requires policies and procedures concerning self-administration of drugs, if permitted by the hospital. The Department believes that current N.J.A.C. 8:43G-23.2(a)2, which refers simply to "administration of drugs," is too general to be useful in ensuring that the provisions of this amendment, which were all included in a similar rule which existed prior to July 1, 1990, are satisfied.

**N.J.A.C. 8:43G-24 Plant Maintenance and Emergency Preparedness**

A technical correction has been made to the time period specified in N.J.A.C. 8:43G-24.9 within Plant Maintenance and Emergency Preparedness. The date July 1, 1971 had inadvertently been listed rather than the correct date of July 1, 1979. An amendment to N.J.A.C. 8:43G-24.13(h) has been made to clarify that written reports of the last two inspections must be kept on file. N.J.A.C. 8:43G-24.13(k) has been amended to include a phone number to use to reach the Department of Health after business hours, in the event it is necessary to report a fire during a weekend or after the close of business.

**N.J.A.C. 8:43G-25 Post Mortem**

A proposed change to N.J.A.C. 8:43G-25.1(a)6 would strengthen the current rule by referencing an existing 1988 State law which requires the notification of funeral directors whenever the attending physician, registered nurse, or medical examiner who makes the determination and pronouncement of death determines or has knowledge that the deceased person was infected with HIV or hepatitis B virus or that the person suffered from any of a number of other communicable diseases as determined by the Commissioner of the Department of Health. Other changes to the subchapter are editorial in nature (see proposed N.J.A.C. 8:43G-25.1(a), (a)5, (a)6, and (a)7). Finally, the proposed change to N.J.A.C. 8:43G-25.1(a)10 is intended to clarify the current rule by identifying the persons to whom, and the place in which, the autopsy reports are to be available.

**N.J.A.C. 8:43G-26 Psychiatry**

In subchapter 26, Psychiatry, the list of policies and procedures has been amended to delete "criteria for and process of discharge from the

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unit" at N.J.A.C. 8:43G-26.2(a)10, as discharge criteria have been addressed at N.J.A.C. 8:43G-26.2(a)1.

Additional provisions regarding the use of seclusion have been incorporated into the policies and procedures subsection at N.J.A.C. 8:43G-26.2(a)13 through 15. The proposed amendments would require that seclusion be used in accordance with the American Psychiatric Association Task Force Report on Seclusion and Restraint. The amendments would also mandate a review by the physician director or designee if seclusion or restraints are used in excess of 72 consecutive hours. Finally the amendments would require the hospital to develop criteria for physician monitoring of patients in restraints more frequently than the 24-hour interval required at N.J.A.C. 8:43G-18.4(d) if such monitoring is warranted by patient acuity.

N.J.A.C. 8:43G-26.2(b) has specified that written policies and procedures for the use of restraints shall be developed in accordance with N.J.A.C. 8:43G-18.4, the subsection which contains hospital-wide standards for the use of restraints. N.J.A.C. 8:43G-26.2(c) has been deleted since policies and procedures for the use of seclusion have been addressed at N.J.A.C. 8:43G-26.2(a)13 and for the use of restraints at N.J.A.C. 8:43G-26.2(b).

A more current source document for the use of electroconvulsive therapy (ECT) has been substituted at N.J.A.C. 8:43G-26.2(c), which has been recodified from subsection (d).

The date of the board certification or equivalency requirement for a newly appointed physician director of psychiatry has been specified at N.J.A.C. 8:43G-26.3(b). This specification clarifies the intent of the standard as originally written. A standard has been added at N.J.A.C. 8:43G-26.9(f) to require the hospital to provide for patients in the psychiatry service the opportunity to participate in structured physical exercise programs. This was an advisory standard which has been made mandatory.

**N.J.A.C. 8:43G-28 Radiology**

The scope of service statement at the beginning of N.J.A.C. 8:43G-28.1, Radiology structural organization, has been clarified and made more specific by identifying approval through the Certificate of Need process for off-site regional locations.

N.J.A.C. 8:43G-28.8 has been amended to include the requirement that a currently licensed radiologic technologist be present in the hospital or on-call at all times. The Department has ascertained that this requirement reflects current practice in New Jersey hospitals.

At N.J.A.C. 8:43G-28.10(d), the phrase limiting ultrasound services to hospitals which have obstetrics services has been deleted, as all hospitals must provide ultrasound services for emergency diagnostic procedures.

**N.J.A.C. 8:43G-29 Physical and Occupational Therapy**

Subchapter 29 encompasses two amendments, one at N.J.A.C. 8:43G-29.13(h), which specifies that if a hospital supplies occupational therapy services on a contract basis, the services shall comply with all standards which apply to a hospital-based service. The second change, at N.J.A.C. 8:43G-29.17(b), mandates that the occupational therapy service shall "have the capacity to" offer services five days a week, and clarifies that services must be provided when required by physician order.

**N.J.A.C. 8:43G-30 Renal Dialysis**

The proposed amendment to N.J.A.C. 8:43G-30.1 more accurately reflects the Department's intent to have the rules in this subchapter apply only to hospitals that have on-site, renal dialysis services.

Amended N.J.A.C. 8:43G-30.2(c) is a technical change deleting the specific document reference and replacing it with the phrase, "as amended and supplemented."

Amended N.J.A.C. 8:43G-30.3(d) would reflect the elimination of specific credentialing requirements for the social worker assigned to the renal dialysis service. The generic wording of the amended rule would be consistent with that of similar rules appearing in other subchapters of the Hospital Licensing Manual. Proposed N.J.A.C. 8:43G-30.5(a) has been added to clearly represent that a registered professional nurse is responsible for all nursing care in the dialysis service. Additionally, N.J.A.C. 8:43G-30.5(a) through (c) have been recodified at N.J.A.C. 8:43G-30.5(c) through (d) with no change made. N.J.A.C. 8:43G-30.5(d) has been recodified as subsection (e) and amended to require that training in renal dialysis techniques for nurses on the renal dialysis staff be on site and be determined by the hospital.

The proposed amendment to N.J.A.C. 8:43G-30.6(d) would require that multidisciplinary committee meetings be held on a periodic basis. In addition, a technical change is proposed to correct a grammatical error in the wording of the standard. A proposed addition to N.J.A.C. 8:43G-30.6(f) would require that a patient who refuses to consent to dialyzer reuse receive single-use treatment in the unit where the patient has been receiving treatment. The Department hopes to protect the patient from feeling compelled to accept a treatment modality the patient may not wish to accept, simply to remain in a particular treatment facility. The Department proposes the addition of N.J.A.C. 8:43G-30.6(1) through (m) to rectify an omission in the adoption of the current hospital licensing standards. Proposed N.J.A.C. 8:43G-30.6(l) through (m) addresses the home care training program for renal dialysis patients and was an integral part of the repealed licensing standards for hospitals prior to July, 1990. The rules defined services the hospital, either directly, or through agreement with another health care facility, had to afford the patient receiving home dialysis and ensures that the patient is participating in a safe and effective home dialysis program.

N.J.A.C. 8:43G-30.8(c) is proposed for deletion. The standard is a duplication of subsection (b) and as such is unnecessary at this point. Proposed N.J.A.C. 8:43G-30.8(c) would be added to require that routine monitoring of water treatment equipment be performed. This practice is essential to assure the effective performance of the equipment and insure that acceptable water quality is delivered. Dialysate sampling was not specifically addressed in the current standards. Additionally, sampling protocols must be established by the institution to insure that the entire system meets AMMI standards for microbiological quality. AAMI standards cross referenced in the proposed revision include analytical tests for chemicals and microbiological testing procedures. N.J.A.C. 8:43G-30.8(d) is proposed for deletion. Proposed N.J.A.C. 8:43G-30.8(d) is based on a safety alert issued by the Food and Drug Administration after a number of patients experienced hemolysis following chloramine contamination of the water used to prepare dialysate. Experience has shown a need for daily monitoring by the facility. The test kit is inexpensive and the test itself can be easily performed by hospital staff.

A proposed addition to N.J.A.C. 8:43G-30.11 would require that monitoring of home dialysis patients be included as one of the indicators in the renal dialysis quality assurance program.

N.J.A.C. 8:43G-32 Same-Day Stay

Amendments to N.J.A.C. 8:43G-32, Same-Day Stay, have been made to clarify three rules. The phrase "excluding minor local blocks" has been added to N.J.A.C. 8:43G-32.3(a)8, as it is not necessary to prohibit patients from driving if they received only a minor local block. N.J.A.C. 8:43G-32.5(e)4 has been clarified by the addition of the phrase "within seven days prior to the procedure," with respect to the time-frame for completion of a patient's history and physical examination prior to the procedure. The phrase "medical day care" has been changed to "same-day medical" in N.J.A.C. 8:43G-32.12(b) as the original phrase was found to be confusing.

The Department has also added several provisions which were inadvertently omitted from the same-day surgery section, but appears in the same-day medical services. The first addition, N.J.A.C. 8:43G-32.3(a)6 pertains to the handling of medical and non-medical emergencies. N.J.A.C. 8:43G-32.3(a)6 through 8 have been recodified as paragraphs (a)7 through 9. Two additional documentation requirements have been added at N.J.A.C. 8:43G-32.5(e)7 and 8. A perioperative nurses' note and the patient's medication record must also be contained within the medical record. Lastly, a provision specific to monitoring infection control practices has been added to quality assurance methods at N.J.A.C. 8:43G-32.9(b).

N.J.A.C. 8:43G-33 Social Work

There are two changes in N.J.A.C. 8:43G-33.6, Social work patient services. The first change, at subsection (d) includes guardians as appropriate individuals to be included in social work services where indicated by patient need. The second change, at N.J.A.C. 8:43G-33.6(f), gives the citation for the State statute governing reporting and follow-up services for child abuse.

N.J.A.C. 8:43G-35 Postanesthesia Care

In subchapter 35, Postanesthesia Care, one change was made at N.J.A.C. 8:43G-35.2(c), addressing the requirement that all registered professional nurses assigned to the unit shall receive training in postanesthesia care. The language which has been substituted more clearly identifies the respiratory functions in which nursing staff must be trained.

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**Social Impact**

The chapter amendments being proposed generally fall into three categories. The majority are being made to clarify existing standards and thus have no substantial social impact because they do not affect the implementation of the standard. Another category is comprised of standards which, prior to July 1, 1990, had been included in the previous licensure manual, but were subsequently omitted from the current manual. It is reasonable to believe that the addition of these standards would have no substantial operational impact since they recently existed as minimal standards in the areas of obstetrics, renal and pharmacy. The amendments also include new rules which have been developed since the operational date of the current standards and which are expected to further enhance the quality of patient care. Because of the diversified nature of the new rules, the social impact of the new rules is best understood by organizing the assessment on a departmental basis, as is done below. No social impact is anticipated in the areas of Critical and Intermediate Care, Dietary, Discharge Planning, Infection Control and Sanitation, Pediatrics, Pharmacy, Plant Maintenance, Physical and Occupational Therapy, Radiology, Renal, Post Mortem, Same Day Stay, Social Work and Postanesthesia.

Patient Rights

N.J.A.C. 8:43G-4.1(a)27, which would require that a summary of patient rights be provided to each patient in the patient's native language if 10 percent or more of the population in the hospital's service area speak that language, would assist non-English-speaking patients in deriving the same benefit from receiving a copy of the summary as patients who are English-speaking.

Administrative and Hospital-wide

Proposed new subsection N.J.A.C. 8:43G-5.2(n) and (o) serve to further protect the rights and safety of patients. The establishment of indoor air quality standards for designated smoking areas is undertaken for the purpose of minimizing the exposure of patients to the harmful agents in tobacco smoke. These provisions would function to prevent the recirculation of contaminated air within the facility. Reports and studies in the literature continue to demonstrate that the involuntary inhalation of cigarette smoke by nonsmokers causes disease, most notably lung cancer. While the Department offers the flexibility to these patients, who, in the opinion of their physician, would be harmed by a ban on smoking; the Department must ensure that the activity of these patients does not adversely impact upon others.

Emergency Department

The rule that addresses the needs of patients who are unable to communicate is clarified. Within the staff qualifications subsection, an amendment is proposed which will restore an experience requirement that was proposed but was reduced at the time of adoption of the licensing standards in 1990. This rule will ensure a higher quality of care by requiring the physician to have additional clinical experience in emergency medicine as one of the possible qualifications for practicing in the emergency department. A new requirement that will ensure specially-trained response to pediatric emergencies is mandated by requiring emergency department physicians to be certified in Advanced Pediatric Life Support. This rule is expected to be of clear benefit to children who require emergency department care. Finally, additional client populations, specifically abused elderly or disabled adults and victims of domestic violence, have been defined in the proposed rules, thereby ensuring specialized attention and a higher level of care from emergency department staff. It is expected that these proposed standards will ensure a higher, and in some cases more clearly defined, level of care for patients using the services of the emergency department.

Medical Staff

There should be a limited social impact as a result of the amendments to the Medical Staff rules. The amendments consist of changes in wording which make the rules consistent with current laws and Federal regulations, changes in reporting forms which are used to provide notifications to the State Board of Medical Examiners, and a change in the timeframe for forwarding such notifications. The use of a single uniform reporting form for both State and Federal reports should increase the efficiency of the notification process and may make the shortened timeframe for reporting less burdensome for hospitals. Changes in frequency and content of staff education programs reflect current practices and will have no adverse social impact. Greater specificity in these rules may result in more effective staff training.

The proposed amendments will have no adverse impacts upon the health and safety of patients. Specificity regarding physicians orders for the use of physical restraints are intended to provide additional protection to patients who require restrains.

Obstetrics

The primary social impact of these rules as amended is to extend to obstetric patients the assurance of being adequately protected while receiving and recovering from anesthesia administered during labor and delivery.

Employee Health

Since adoption of the current rules, there have been several unanticipated outbreaks of measles throughout the State. Naturally, the spread of communicable diseases, such as measles, is of concern to the general public. However, the possibility of transmission within a health care setting can be even more threatening because of the affect of the disease on patients who are already in a compromised medical condition. The Department would be remiss in meeting its obligation to protect the health and safety of patients, if it did not require that measures, recognized as being effective in preventing the transmission of communicable disease, be taken in the face of a communicable disease outbreak. The proposed requirement for measles screening, of hospital employees, demonstrates the Department's responsiveness to public health concerns and correspondingly, has a beneficial social impact.

Nursing Care

New rules in subchapter 18 regulating the use of physical restraints in hospitals are expected to have a significant positive social impact. The issue of restraints has received a great deal of attention at many levels throughout the State and the nation, including Federal regulations promulgated as a result of statutory requirements in OBRA 1987 for long term care facilities, as well as policies adopted by the American Psychiatric Association, many practitioners in long term care and psychiatric communities, legislators, and the Office of the Public Advocate in New Jersey. The proposed rules, while not mandating a restraint-free environment, requires hospitals to use alternatives to restraints whenever possible and use a "least-restrictive environment" as the framework for policies, procedures, and practices. Some of the major issues involved in the use of restraints that have been considered and incorporated into the standards are patient rights, the medical and emotional consequences of immobility, and ethical considerations regarding patient safety; implementation of the proposed rules will ensure a significantly higher level of patient care in New Jersey hospitals.

Psychiatry

The proposed rules in subchapter 26 cross-reference the rules in subchapter 18 regarding the use of restraints, incorporating them into the requirements for the psychiatric services. The social impact is expected to be analogous to that in the general hospital population in regards to the use of restraints. The proposed rules in psychiatry also addresses the issue of seclusion more specifically than before, and require review by the physician director if either seclusion or restraints are used in excess of 72 consecutive hours. Finally, the rules require the hospital to provide opportunities for physical exercise for psychiatric patients. Improved patient care is an expected outcome of these proposed rules.

**Economic Impact**

The proposed chapter amendments, primarily representing technical clarifications to existing standards or the addition of rules from the prior hospital manual, generally are not viewed as having a significant economic impact. However, new rules which are being introduced for the first time as part of this proposal, may have some cost impact on hospitals. No economic impact to the Department is anticipated other than altering hospital survey forms and standards manual used in implementing the licensure requirements. A discussion of the potential financial implication of particular rules is presented below:

Patient Rights

The economic impact of proposed N.J.A.C. 8:43G-4.1(a)27 on the facility would not be excessive. The hospital could experience an initial cost by having to arrange for translation of the summary of patient rights into one or more languages. The Department contends that the resultant benefit to patients, however, would justify the initial cost. Moreover, deletion of the requirement that complete statements of the rights be distributed to hospital staff members would result in financial savings

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for the facility. A spanish version of the summary is being prepared currently by the New Jersey Hospital Association which would mitigate some of the initial cost impact of this standard.

Administrative and hospital-wide

Achieving compliance with the indoor air quality standards being imposed for designated smoking rooms is likely to result in costs related to physical modification of the room and alteration of the ventilation system. The Department emphasizes, however, that the hospital is not obligated to offer patients who meet the conditions set forth in N.J.A.C. 8:43G-5.2(l) the option of smoking, and in no case does the Department mandate the provision of designated smoking rooms. The proposed standard reflects efforts by the Department to minimize costs that would have been incurred by adoption of a guideline on smoking rooms issued by the U.S. Environmental Protection Agency.

Cardiac

The Department does not anticipate that any substantial increased costs associated with adopting the proposed cardiac staff credentialing amendments will be incurred by hospitals, and in fact anticipates cost reductions from the amendments.

Adoption of the proposed amendments at N.J.A.C. 8:43G-7.5 and 7.15(b) would eliminate the need for hospitals to obtain waivers for board-eligible cardiac physicians in the majority of cases and would allow the physician at un-interrupted period of practice while achieving board certification.

Proposed N.J.A.C. 8:43G-7.16(a), 7.23(b), 7.24(a), 7.26(c), and 7.27 (a) reflect reductions in staffing requirements for various cardiac diagnostic and therapeutic procedures and would significantly reduce the labor costs associated with providing cardiac services.

In the area of pediatric cardiac services, specifically N.J.A.C. 8:43G-7.33 and 7.37(b), the Department also anticipates a reduction in costs to hospitals. The current rules require a dedicated pediatric cardiac surgical intensive care unit and a dedicated pediatric cardiac catheterization laboratory. The proposed rules would permit the sharing of the physical facilities for the pediatric cardiac patients with those for the pediatric patient undergoing general surgery and the adult patient undergoing cardiac catheterization. The requirement for costly, dedicated facilities would be eliminated as long as the facilities could be adapted to meet the needs of the pediatric cardiac patient and as long as the facilities would be staffed by personnel trained in the care of the pediatric cardiac patient.

Medical Records

Adoption of the proposed medical records amendments should have only limited economic impact upon patients seeking copies of medical records. Medical records departments of hospitals or contracted copying services which provide records for hospitals should not incur any economic losses as a result of these amendments, since both the current rules and the amendments are written to require changes to be based upon actual costs. The amendments clarify specific allowable charges and should benefit patients by helping to ensure prompt access to medical records copies at reasonable cost. Hospital medical records departments may experience savings as a result of improved efficiency and safety through use of the procedures specified in the amendments for computer generated orders and facsimile communications systems.

Medical Staff

The amendments should have beneficial economic impacts on hospitals. The amendments are intended to ensure that licensure requirements are consistent with State laws and Federal regulations. Facilities will only need to complete a single form to comply with both the federal and state requirements. Copies must be sent to the Department only when requested. Simplified paperwork should result in a savings of the costs associated with reporting. Costs to patients will not increase as a result of these amendments.

Nursing

The proposed standards at N.J.A.C. 8:43G-18.5(i) concerning restraints may impose some initial costs to hospitals for development of new policies, procedures, and medical record charting forms. Personnel costs in implementing the standards fully may be effected in two ways. Nursing and medical interventions for restrained patients are mandated at certain intervals, which will require additional staff resources in hospitals not meeting these standards of care presently. However, the standards also promote least-restrictive alternatives to physical restraint and it is anticipated that a reduction in use of these devices will occur. This decrease in the use of restraints was evidenced in long term care facilities as new OBRA requirements on their use went into effect in 1990. LTC facilities which are restraint-free have indicated lower nursing costs. Thus, it is believed that the reduction in inappropriate use of restraint devices will offset the increase in staffing which may be necessitated by the proposed standards.

Obstetrics

The potential cost impact of the proposed standards related to anesthesia care for obstetric patients, will largely depend on each hospital's current staffing practices for the labor and delivery area. The Department believes the staffing requirements being imposed represent the minimal level for patient safety.

Employee Health

The Department does not anticipate the costs associated with the screening of hospital employees for measles to be excessive. Information obtained by the Department, indicates that many hospitals have already begun measles screening programs, or have plans to do so in the near future.

Physical and Occupational Therapy

The proposed amendments in this subchapter are intended to clarify that the existing rules do not require full-time provision of an occupational therapy service department at a hospital. The economic impact will be a reduction in costs in facilities fully complying with the language of the current standards.

Renal

The Department believes the adoption of proposed N.J.A.C. 8:43G-30.6(l) would not have any significant costs impact to hospitals. In practice, renal dialysis units have continued to monitor home dialysis programs under their responsibility even though adoption of the current rules in 1990 did not address the issue. The proposed rules are intended to simply recognize this existing industry wide practice.

**Regulatory Flexibility Statement**

The proposed amendments and new rules would not affect small businesses, as the term is defined in the Regulatory Flexibility Act, 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 (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 4. PATIENT RIGHTS

8:43G-4.1 Patient rights; mandatory

(a) Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The hospital administrator shall be responsible for developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. These rights shall include at least the following:

1.-26. (No change.)

27. To be given a summary of these patient rights, as approved by the New Jersey State Department of Health, and any additional policies and procedures established by the hospital involving patient rights and responsibilities. This summary shall also include the name and phone number of the hospital staff member to whom patients can complain about possible patient rights violations. **This summary shall be provided in the patient's native language if 10 percent or more of the population in the hospital's service area speak that language.** In addition, a [complete statement] **summary** of these patient rights**, as approved by the New Jersey State Department of Health,** shall be posted conspicuously in the patient's room and in public places throughout the hospital. Complete copies **of this subchapter** shall [also be distributed to hospital staff members] **be available at nurse stations and other patient care registration areas in the hospital for review by patients and their families or guardians**;

28.-29. (No change.)

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SUBCHAPTER 5. ADMINISTRATIVE AND HOSPITAL-WIDE SERVICES

8:43G-5.2 Administrative and hospital-wide policies and procedures; mandatory

(a) (No change.)

(b) A patient shall be transferred to another hospital only for a valid medical reason, or in order to comply with other standards and rules, or by clearly expressed and documented patient choice. The hospital's inability to care for the patient shall be considered a valid medical reason. The sending hospital shall receive approval from a physician and the receiving hospital before transferring the patient. Documentation for the transfer shall be sent with the patient, with a copy or summary maintained by the transferring hospital. This documentation shall include, at least:

1.-4. (No change.)

5. Patient information collected by the sending hospital, as specified in N.J.A.C. 8:43G-15.2[(f)]**(e)**;

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

(f) Upon arrival at a service location, an inpatient's treatment shall be initiated within 30 minutes. Following completion of treatment, the patient shall be returned to his or her hospital room within a reasonable length of time not to exceed 30 minutes.

Recodify existing (f)-(l) as **(g)-(m)**. (No change in text.)

**(n) If the hospital permits controlled smoking by patients, any room designated for smoking shall meet the following ventilation requirements for acceptable indoor air quality:**

**1. A ventilation system which prevents contaminated air from recirculating through the hospital;**

**2. The number of air changes per hour within the designated smoking room shall be equivalent to the number necessary to achieve 60 cubic feet per minute per smoker, based on an occupancy of no greater than five smokers per 100 square feet; and**

**3. Negatively pressurized air to prevent backstreaming of smoke into nonsmoking areas of the facility.**

**(o) The hospital shall have a written policy establishing the maximum number of patients permitted in a designated smoking room at the same time, and procedures for monitoring patients while in the smoking room. The maximum number of patients permitted in a designated smoking room at the same time shall not exceed five smokers per 100 square feet.**

Recodify existing (m) as **(p)**. (No change in text.)

8:43G-5.3 Administrative and hospital-wide staff qualifications; mandatory

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

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

8:43G-5.5 Administrative and hospital-wide patient services; mandatory

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

(e) The hospital shall have developed a system for organ donation in accordance with N.J.S.A. 26:6-57 et seq.

1. (No change.)

2. The hospital shall provide counseling regarding anatomical gifts for families of those patients suitable for organ **or tissue** donation in which death appears to be imminent.

3. (No change.)

(f)-(h) (No change.)

**(i) Each department in the hospital providing direct patient care shall have a health care professional capable of initiating cardiopulmonary resuscitation on duty at all times when patients are present.**

8:43G-5.7 Administrative and hospital-wide staff education; mandatory

(a) There shall be a formal orientation program for all new permanent staff that includes at least **training in patient rights as found at N.J.A.C. 8:43G-4,** a tour of the hospital, orientation to the hospital's security system and disaster plan, and review of procedures to follow in case of an emergency.

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

8:43G-5.9 Department education programs; mandatory

(a) Each department in the hospital shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted **at least annually** in the service, in other areas of the hospital, or off-site.

(b) The plan shall include education programs that address at least the following:

1.-4. (No change.)

5. Education on statutory requirements relevant to the specific service**, such as identification and reporting of victims of abuse;** and

6. (No change.)

(c) (No change.)

8:43G-5.12 Occupational health policies and procedures; mandatory

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

(c) The hospital shall have available and shall comply with the most current version of [Centers for Disease Control (CDC) guidelines to protect health care workers who may be exposed to infectious blood-borne diseases, such as AIDS and hepatitis-B, as outlined in "CDC Guidelines for Universal Precautions in Hospitals" and "CDC Guideline for Infection Control in Hospital Personnel."] **the following guidelines, incorporated herein by reference, to protect health care workers who may be exposed to infectious blood-borne diseases, such as AIDS and hepatitis-B:**

**1."Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HBV) and Human Immunodeficiency Virus (HIV)", OSHA Instruction CPL-2-2.44B, August 15; February, 1990;**

**2. "Recommendations for Prevention of HIV Transmission in Health-Care Settings," CDC, Morbidity and Mortality Weekly Report (MMWR) 1987; Volume 36 (supplement 2S); and**

**3. "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings," CDC Morbidity and Mortality Weekly Report (MMWR) 1988; Volume 37.**

Note: (No change.)

(d) (No change.)

8:43G-5.16 Disaster planning; mandatory

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

**(f) While developing the hospital's plan for evacuating patients, the disaster planner shall communicate with the facility or facilities designated to receive relocated patients.**

Recodify existing (f)-(j) as **(g)-(k)**. (No change in text.)

8:43G-5.18 Blood bank; mandatory

(a) (No change.)

(b) The hospital shall maintain an emergency supply of [whole] blood **and shall have access to additional supplies as needed.**

(c) (No change.)

SUBCHAPTER 7. CARDIAC

8:43G-7.5 Cardiac surgery staff time and availability; mandatory

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

(c) An anesthesiologist [who is board certified in anesthesiology, with additional training or experience in cardiac surgery and with hospital privileges for providing anesthesia care during cardiac surgery, shall be responsible for anesthetic management of each cardiac surgical procedure] **responsible for providing anesthesia care during cardiac surgery shall meet one of the following qualifications:**

**1. Is board certified in anesthesiology, and has completed additional training in providing anesthesia care during cardiac surgery; or**

**2. Is board eligible in anesthesiology, has completed additional training in providing anesthesia care during cardiac surgery, and**

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**is examined for certification within two years of initial anesthesia board eligibility.**

(d)-(i) (No change.)

8:43G-7.15 Cardiac catheterization staff qualifications; mandatory

(a) (No change.)

(b) Any physician performing cardiac catheterization **as primary operator** in the cardiac catheterization laboratory [shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who has completed at least one year additional training or experience in cardiac catheterization.] **shall meet one of the following qualifications:**

**1. Is board certified in internal medicine and the subspecialty of cardiovascular disease and has completed the current training and experience requirement in cardiac catheterization, including twelve months experience in the cardiac catheterization laboratory, as required by the American Board of Internal Medicine; or**

**2. Is board eligible in the subspecialty of cardiovascular disease, has completed the current training and experience requirement in cardiac catheterization, including 12 months experience in the cardiac catheterization laboratory, as required by the American Board of Internal Medicine, and is examined for certification within two years of initial cardiac board eligibility.**

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

8:43G-7.16 Cardiac catherization staff time and availability; mandatory

[(a) The cardiac catherization laboratory shall be staffed for each procedure by at least:

1. One registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse;

2. A scrub nurse, who is either a registered professional nurse, a licensed practical nurse or a scrub technician who has been trained in assisting in cardiac catheterization procedures; and

3. One technician, trained and experienced in cardiac catheterization procedures.]

**(a) The following staff shall be present for all cardiac catheterization procedures:**

**1. A physician who meets the requirements in N.J.A.C. 8:43G-7.15(b);**

**2. A registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse; and**

**3. One of the following:**

**i. A scrub nurse, who is either a registered professional nurse or a licensed practical nurse; or**

**ii. A technician, who has been trained in assisting in cardiac catheterization procedures.**

[(b)For emergency procedures, the cardiac catheterization laboratory shall be staffed by at least:

1. One registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse; and

2. One technician, trained and experienced in cardiac catheterization procedures.]

8:43G-7.22 Percutaneous transluminal coronary angioplasty policies and procedures; mandatory

(a) Percutaneous transluminal coronary angioplasty (PTCA) shall be performed [on an elective basis] only in cardiac surgical centers approved by the New Jersey State Department of Health.

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

8:43G-7.23 PTCA staff qualifications; mandatory

(a) Any physician performing PTCA [shall be board certified in internal medicine in the subspecialty of cardiovascular disease, who fulfills the criteria of being a catheterizing physician and has one year of training in interventional catheterization in an accredited program, during which the physician performed more than 100 PTCAs under supervision, or has performed more than 50 PTCAs per year as the primary operator for each of the past two years.] **as primary operator shall meet one of the following qualifications:**

**1. Is board certified in both internal medicine and the subspecialty of cardiovascular disease, or is board eligible in the subspecialty of cardiovascular disease and shall be examined within two years of initial cardiac eligibility. Physicians meeting either of these qualifications must additionally complete the training and experience requirement in cardiac catheterization including 24 months in the cardiac catheterization laboratory during which time the individual actively participated in at least 200 PTCA's under the supervision of primary operators provided by no more than two separate institutions; or**

**2. Is board certified in internal medicine and the subspecialty of cardiovascular disease as of July 1, 1990 and has performed at least 50 PTCA's per year as the primary operator for each of the past two years.**

[(b) Any physician assisting in performing PTCA procedures shall have completed an approved fellowship training program in cardiology, or shall be currently undergoing training in an approved fellowship training program in cardiology.]

Recodify existing (c) as **(b)**. (No change in text.)

8:43G-7.24 PTCA staff time and availability; mandatory

(a) The following staff shall be present for all PTCA procedures:

**1. A physician who meets the requirements in N.J.A.C. 8:43G-7.23(a);**

[1.]**2.** A registered professional nurse certified in basic cardiac life support, and trained and experienced in cardiac catheterization [,] and PTCA **who acts as the circulating nurse**; and

**3. One of the following individuals:**

**i. A scrub nurse who is either a registered professional nurse or a licensed practical nurse; or**

[2.]**ii.** A technician **who has been** trained [and experienced] **in** assisting with cardiac catheterization and PTCA.

8:43G-7.26 Electrophysiology studies staff qualifications; mandatory

(a) The physician performing electrophysiology studies (EPS) [shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who has an additional year of training in an accredited program] **as primary operator shall meet at least one of the following qualifications:**

**1. Fulfills the criteria of being a catheterizing physician as defined in N.J.A.C. 8:43G-7.15(b)1 or 2; or**

**2. Is board eligible in the subspecialty of cardiovascular disease and has performed 25 complex cases per year as primary operator for each of the past five years.**

(b) (No change.)

[(c) The physician performing EPS shall be assisted by another physician who has successfully completed or is currently undergoing training in an approved fellowship training program in cardiology.]

[8:43G-7.27 EPS staff qualifications; advisory (Reserved)]

8:43G-[7.28]**7.27** EPS staff time and availability; mandatory

(a) The following staff shall be present during all EPS procedures:

**1. A physician who meets the requirements in N.J.A.C. 8:43G-7.26(a) and (b);**

[1.]**2.** A registered professional nurse certified in basic cardiac life support **and trained and experienced in** cardiac catheterization and EPS **who acts as the circulating nurse; and**

**3. One of the following individuals:**

**i. A scrub nurse who is either a registered professional nurse or a licensed practical nurse; or**

[2.]ii. A technician **who has been** trained [and experienced] in assisting with cardiac catheterization and EPS.

**8:43G-7.28 Board eligibility status**

**Board eligibility status in the subspecialty of cardiovascular disease shall be of limited duration as defined by the American Board of Internal Medicine.**

8:43G-7.32 Pediatric cardiac surgery staff time and availability; mandatory

(a) **All staff providing clinical services to the pediatric cardiac surgical patient shall be trained and experienced in pediatric cardiac surgical care.**

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Recodify existing (a)-(f) as **(b)-(g).** (No change in text.)

8:43G-7.33 Pediatric cardiac surgery space and environment; mandatory

[There shall be a pediatric cardiac surgical intensive care service specifically dedicated to patients from the pediatric cardiac surgical service.]

**The hospital shall designate beds in the cardiac surgical intensive care service, the pediatric surgical intensive care service or the pediatric medical intensive care service for patients from the pediatric cardiac surgical service.**

8:43G-7.34 Pediatric cardiac surgery supplies and equipment; mandatory

**(a) There shall be monitoring and treatment equipment available that is appropriate for the pediatric cardiac surgical patient.**

Recodify existing (a) as **(b).** (No change in text.)

8:43G-7.37 Pediatric cardiac catheterization policies and procedures; mandatory

(a) (No change.)

(b) [There shall be a cardiac catheterization laboratory dedicated to pediatrics.] **The pediatric cardiac catheterization service may share the catheterization laboratory with the adult cardiac catheterization program. However, the staff who participates in the pediatric catheterization shall be trained and experienced in the care of the pediatric cardiac patient and the equipment used shall be appropriate to meet the needs of the pediatric patient.**

(c) (No change.)

**8:43G-7.40 Staff qualifications waiver**

**Exceptions for physicians with hospital privileges to these minimum board certification and training requirements may be granted by the Commissioner or his or her designee upon application by an institution providing acceptable documentation which assures that the physician's qualifications are at a level assuring the level of patient safety intended by the requirements of these rules. As part of the waiver request, the hospital shall provide documentation of the practitioner's qualifications that at a minimum addresses the following:**

**1. A curriculum vitae which describes the practitioner's academic training and professional experience;**

**2. Documentation of the volume of procedures that the practitioner has completed on an annual basis;**

**3. Length of experience in performance of procedure;**

**4. Current status and future intention to meet the requirements for board-certification; and**

**5. Documentation of the practitioner's complication rates in performing the procedure for which a waiver is sought.**

**(b) Additional information may be requested from the hospital by the Department in making a determination or it may obtain the recommendations from the Commissioner's Cardiac Services Advisory Committee.**

**(c) Waivers may be granted for periods not to exceed three years and are renewable at the discretion of the Commissioner.**

SUBCHAPTER 8. CENTRAL SUPPLY

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

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

(e) Shelf life of packaged sterile items shall be determined and indicated on the items according to central supply sterilization policies and procedures which follow guidelines recommended by the Association for the Advancement of Medical Instrumentation (AAMI) **as outlined in "Good Hospital Practice: Steam Sterilization and Sterility Assurance," incorporated herein by reference.**

8:43G-8.7 Central supply space and environment; mandatory

(a) (No change.)

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

**(c) Scopes and all channels that enter non-sterile areas of the body shall be given high level disinfection after each use according to the manufacturers' recommendations or according to hospital policy.**

**(d) Accessories to scopes shall be sterilized after each use.**

Recodify existing (c)-(d) as **(e)-(f).** (No change in text.)

8:43G-8.11 Sterilizer patient services; mandatory

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

(f) Methods for processing reusable medical devices shall conform with [both] the following or revised or later editions, if in effect, **incorporated herein by reference**:

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 and Sterility Assurance[."]; **" and**

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

(g) (No change.)

SUBCHAPTER 9. CRITICAL AND INTERMEDIATE CARE

8:43G-9.7 Critical care staff time and availability; mandatory

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

(d) Nursing students shall render care to patients in the critical care service **only** when qualified supervision, **as defined by the hospital and the nursing school,** is available in the unit.

8:43G-9.9 Critical care patient service; mandatory

[(a)] Information and explanation shall be provided to the patient and the patient's family and documented in the patient's record, regarding the patient's condition, equipment, and specific procedures.

[(b) The critical care service shall have access to comprehensive laboratory services, including at least:

1. Measurement of cardiac enzymes;
2. Renal function studies;
3. Microbiological studies;
4. Blood bank services;
5. Blood type and cross-match; and
6. Fluoroscopy and other radiologic studies.]

8:43G-9.13 Critical care supplies and equipment; mandatory

(a) (No change.)

(b) Emergency supplies, as defined by the policies and procedures of the critical care unit, shall be [available at the bedside] **accessible** for all patients.

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

8:43G-9.19 Intermediate care structural organization; mandatory

(a) (No change.)

(b) [If the intermediate care unit is part of another patient care unit or service, there] **Dedicated intermediate care beds shall be provided within an identifiable patient care nursing unit. There** shall be a separate physical area devoted to nursing management for the care of the intermediate patient. This separate area may be designated within an existing nursing station located on the intermediate nursing care unit.

SUBCHAPTER 10. DIETARY

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

(a) (No change.)

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

(c) (No change.)

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

(a) (No change.)

(b) [Trained dietary service staff members shall be responsible for checking menus, supervising food production, and performing clerical tasks.] **Dietary service members shall be assigned duties based upon their education, training and competencies and in accordance with their job descriptions.**

SUBCHAPTER 11. DISCHARGE PLANNING

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

(a) (No change.)

(b) The hospital shall make [every attempt] **a diligent effort** to find and effect an appropriate placement for any patient ready for discharge but requiring further care. **Documentation shall be included in the patient's medical record.**

(c)-(f) (No change.)

(g) For all patients who receive discharge planning, **the patient's medical record shall include on-going documentation and** a summary or summaries of the patient's discharge plan prepared by a member of the discharge planning team **at the time of discharge,** [shall be included in the medical record during the hospital stay] or within 30 days of discharge.

SUBCHAPTER 12. EMERGENCY DEPARTMENT

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

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

(d) The emergency department shall have a written protocol that addresses the ability of family members and significant others to remain with patients during treatment. The protocol shall also address the special needs of patients who are unable to communicate **for reasons of language, disability, age, or level of consciousness.**

(e) (No change.)

8:43G-12.3 Emergency department staff qualifications; mandatory

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

1.-2. (No change.)

3. Within the past five years has at least one year of full-time clinical experience in emergency medicine. **Effective July 1, 1994, the physician shall have three years of full-time clinical experience in emergency medicine within the past five years.**

(b) (No change in text.)

(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 **and Advanced Pediatric Life Support** within 12 months of initial assignment. Physicians who are board certified or currently eligible to be certified in emergency medicine shall be exempt from this requirement.

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

8:43G-12.7 Emergency department patient services; mandatory

(a)-(l) (No change.)

(m) A patient shall be transferred to another [hospital] **health care facility** only for a valid medical reason or by patient choice. The sending emergency department shall receive approval from a physician and the receiving [hospital] **health care facility** 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.-6. (No change.)

(n)-(p) (No change.)

(q) The emergency department staff shall conform with hospital [protocols] **policies and procedures** for complying with applicable statutes **and protocols** to report child **abuse**, sexual **abuse**, and [elder] abuse **of elderly or disabled adults**, specified communicable disease, rabies, poisonings, and unattended or suspicious deaths.

(r)-(w) (No change.)

8:43G-12.10 Emergency department staff education and training; mandatory

(a) (No change.)

(b) Regularly assigned emergency department staff shall attend training or educational programs [in] **related to the identification and reporting of** child abuse and/or neglect in [compliance] **accordance** with N.J.S.A. 9:6-1 et seq.; sexual abuse; **domestic violence;** and abuse of the elderly **or disabled adult.**

SUBCHAPTER 13. HOUSEKEEPING AND LAUNDRY

8:43G-13.4 Housekeeping patient services; mandatory

(a)-(n) (No change.)

(o) Fly strips shall not be located over food preparation and service areas **or in patient care areas.**

(p) (No change.)

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

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

(c) The laundry service shall monitor at least the following:

1. pH [and bacterial monitoring];

2.-4. (No change.)

(d) (No change.)

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, **respiratory care service**, surgery, and the employee health service. The committee shall receive formal advice from all other services upon its request.

(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"] **"Definitions for Nosocomial Infections, 1988", PB88-187117, and CDC Guidelines for Isolation Precautions in Hospitals incorporated herein by reference.**

2.-6. (No change.)

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

8:43G-14.9 Sanitation patient services; mandatory

(a) (No change.)

(b) Hot running water (between [90]**95** and 110 degrees Fahrenheit) and cold running water shall be provided **in patient care areas.**

SUBCHAPTER 15. MEDICAL RECORDS

8:43G-15.2 Medical records policies and procedures; mandatory

(a) (No change.)

(b) All entries in the patient's medical record shall be written legibly in ink, dated, and signed by the recording person or, if a computerized medical records system is used, authenticated.

**1. If computer generated orders with an electronic physician's signature are used, the hospital shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of computer generated signature.**

**2. If a facsimile communications system (FAX) is used, entries into the medical record shall be in accordance with the following procedures:**

**i. The physician shall sign the original order, history and/or examination at an off-site location;**

**ii. The original shall be Faxed to the hospital for inclusion into the medical record;**

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**iii. The physician shall submit the original for inclusion into the medical record within 72 hours; and**

**iv. The Faxed copy shall be replaced by the original.**

(c) Medical records, **including outpatient records,** shall be organized in a uniform format within each clinical service.

(d)-(k) (No change.)

[(l) All medical records, including outpatient medical records, shall be organized in a uniform format within each clinical service.]

8:43G-15.3 Medical record patient services; mandatory

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

(d) If a patient **or the patient's legally authorized representative** requests, **in writing** a copy of his or her medical record, [the request shall be in writing, and shall be furnished at a fee based on actual costs, and in no case shall exceed $1.00 per page or $100.00 per record, whichever is less, to the patient within 30 days of request following discharge. In the event that direct access to a copy by the patient is medically contraindicated (as documented by a physician in the patient's medical record), the medical record shall be made available to a legally authorized representative of the patient or the patient's physician.] **a legible, written copy of the record shall be furnished at a fee based on actual costs. ("Legally authorized representative" means spouse, immediate next of kin, legal guardian, patient's attorney, or third party insurer where permitted by law.) One copy of the medical record from an individual admission shall be provided to the patient or the patient's legally authorized representative within 30 days of request, in accordance with the following:**

**1. The fee for copying records shall not exceed $1.00 per page or $100.00 per record for the first 100 pages. For records which contain more than 100 pages, a copying fee of no more than $0.25 per page may be charged for pages in excess of the first 100 pages, up to a maximum of $200.00 for the entire record;**

**2. In addition to per page costs, the following charges are permitted:**

**i. A search fee of no more than $10.00 per patient per request;**

**ii. Where required by law, sales tax; and**

**iii. A postage charge of actual costs for mailing, not to exceed $5.00. No charges shall be assessed other than those permitted in (d)1 and 2 above.**

**3. The hospital shall establish a policy assuring access to copies of medical records for patients who do not have the ability to pay; and**

**4. The hospital shall establish a fee policy providing an incentive for use of abstracts or summaries of medical records. The patient or his or her representative, however, has a right to receive a full or certified copy of the medical record.**

**(e) The Department shall periodically reevaluate the reasonableness of the fee scale contained in (d) above, and shall report to the Health Care Administration Board on or before July 1, 1993 on the need for amendment.**

[(e)]**(f)** [A denial of access] **Access** to the medical record shall be limited only to the extent necessary to protect the patient. A verbal explanation for [the] **any** denial **of access** shall be given to the patient or legal guardian by the physician and there shall be documentation of this in the medical record. **In the event that direct access to a copy by the patient is medically contraindicated (as documented by a physician in the patient's medical record), the medical record shall be made available to a legally authorized representative of the patient or the patient's physician.**

Recodify existing (f)-(g) as **(g)-(h)** (No change in text.)

SUBCHAPTER 16. MEDICAL STAFF

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

(a)-(j) (No change.)

(k) The hospital shall notify the New Jersey State Board of Medical Examiners, or a medical practitioner review panel created by legislation and subordinate to the Board, if a [physician] **practitioner** 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] **practitioner'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] **practitioner's** conduct or patient care or has, through any member of the medical or administrative staff, expressed an intention to do so;

3. Has fully 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] **practitioner's** incompetency, misconduct or impairment;

4. (No change.)

5. Is granted a leave of absence pursuant to which he or she may 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] **practitioner's** ability to practice with reasonable skill and safety;

6.-7. (No change.)

(l) Notifications required by (k) above shall be provided within [30] **seven** days of the reported event and shall be submitted on forms [provided] **approved** by the Department of Health for that purpose.

(m) (No change.)

(n) The hospital shall provide, **upon request,** to the following:

Office of the Assistant Commissioner
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 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) (No change.)

(b) All physician orders for medication, treatment, and restraints shall be in writing. All orders for restraints shall be made in accordance with requirements at [N.J.S.A. 30:4-24.2(d)3.] **N.J.A.C. 8:43G-18.4(c) through (e) and (i).**

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

(a) (No change.)

(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 [14] **seven** days prior to the admission or within 24 hours after admission. If the history and physical were performed within [14] **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)-(f) (No change.)

8:43G-16.7 Medical staff education; mandatory

Requirements for the medical staff education program shall be as provided in N.J.A.C. 8:43G-5.9**(a) and (b).**

SUBCHAPTER 18. NURSING CARE

8:43G-18.4 [Nursing care staff qualifications; advisory (Reserved)]
**Nursing care; use of restraints**

**(a) The standards in this section shall apply to the use of physical restraints in all patient care areas of the hospital. Physical restraints are defined as devices, materials, or equipment that are attached or adjacent to a person and that prevent free bodily movement to a position of choice.**

**(b) The hospital shall have written policies and procedures regarding the use of physical restraints that are reviewed annually,**

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**revised as needed, and implemented. They shall include at least the following:**

**1. Protocol for the use of alternatives to physical restraints, such as staff or environmental interventions, structured activities, or behavior management. Alternatives shall be utilized whenever possible to avoid the use of restraints;**

**2. Protocol for the use and documentation of a progressive range of restraining procedures from the least restrictive to the most restrictive;**

**3. A delineation of indications for use, which shall be limited to:**

**i. Prevention of imminent harm to the patient or other persons when other means of control are not effective or appropriate; or**

**ii. Prevention of serious disruption of treatment or significant damage to the physical environment;**

**4. Contraindications for use, including at least clinical contraindications, convenience of staff, or discipline of the patient;**

**5. Identification of restraints which may be used in the hospital, which shall be limited to methods and mechanical devices that are specifically manufactured for the purpose of physical restraint;**

**6. Protocols for notifying the family or guardian of reasons for use of restraints, and for informing the patient and requesting consent when clinically feasible; and**

**7. Protocol for removal of restraints when goals have been accomplished.**

**(c) Except in an emergency, a patient shall be physically restrained only after the attending physician or another designated physician has personally seen and evaluated the patient and has executed a written order for restraint.**

**(d) An emergency restraint procedure, beginning with the least restrictive alternative that is clinically feasible, shall be initiated by licensed nursing staff only when the safety of the patient or others is endangered or the patient has caused substantial property damage. The attending physician or another designated physician shall be notified immediately and shall respond within one hour. A physician order shall be given if the use of restraints is to continue beyond one hour. The physical and mental condition of the patient shall be evaluated and documented by medical or licensed nursing personnel at least once every two hours. The attending or designated physician shall personally observe and evaluate the patient within 24 hours, and continuation of restraints shall occur only upon written physician orders.**

**(e) In all cases, the attending or designated physician shall observe the restrained patient at least once every 24 hours to evaluate any changes in the patient's physical or mental status. The need for continued restraint shall be documented in the patient's record and implemented only by written physician orders, which must be renewed every 24 hours.**

**(f) Interventions by licensed nursing personnel while a patient is restrained, except as indicated at (h) below, shall include at least the following and shall be documented:**

**1. Assessment for physical and mental status and reevaluation of need for restraints at least every two hours;**

**2. Toileting at least every two hours with assistance if needed;**

**3. Monitoring of vital signs in accordance with nursing care policy; and**

**4. Release of restraints at least once every two hours in order to:**

**i. Assess circulation and skin integrity;**

**ii. Perform skin care; and**

**iii. Provide an opportunity for exercise or perform range of motion procedures for a minimum of five minutes per limb.**

**(g) Interventions by nursing personnel while a patient is restrained, except as indicated at (h) below, shall include at least the following and shall be documented:**

**1. Periodic visual observation which is performed with the following frequency:**

**i. Continuously if clinically indicated by the patient's condition; or**

**ii. At least every 15 minutes while the patient's condition is unstable; and**

**iii. Thereafter at least every 30 to 60 minutes based upon an evaluation of the patient's acuity;**

**2. Administration and monitoring of adequate fluid intake;**

**3. Adequate nutrition through meals at regular intervals, snacks, and assistance with feeding if needed;**

**4. Assistance with bathing as required, occurring at least once every 24 hours; and**

**5. Ambulation at least once every four hours if clinically feasible.**

**(h) Interventions by nursing personnel for patients wearing vest or similar restraints for overnight sleeping shall include at least the following and shall be documented:**

**1. Periodic visual observation based on patient acuity occurring at least once every hour;**

**2. Administration of fluids as required;**

**3. Toileting as required; and**

**4. Release of restraints by licensed nursing personnel at least once every two hours for repositioning and skin care, unless clinically contraindicated.**

**(i) Registered professional nursing staff shall evaluate and ensure appropriate monitoring and documentation of the effects of all psychotropic medications. These medications shall be administered only upon written physician orders as part of the patient's treatment plan and shall not be used as a method of restraint, discipline, or for the convenience of staff.**

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

(a)-(h) (No change.)

[(i)] The hospital shall have in place policies and procedures regarding management of patients under physical restraint. These policies shall be consistent with the provisions of N.J.S.A. 30:4-24.2(d)(3), of the New Jersey Patients' Bill of Rights of 1965 and all rules and regulations promulgated pursuant to the aforementioned Act and shall include at least documentation of requirements regarding observation of physically restrained patients and the role of nursing staff in initiating restraints and notifying the physician.]

Recodify existing (j)-(l) as **(i)-(k)** (No change in text.)

8:43G-18.6 [Nursing care patient services; advisory (Reserved)]
**Nursing care services related to pharmaceutical services**

**(a) All medications administered by nursing personnel shall be administered in accordance with prescriber orders, medical staff policy, and all Federal and State laws and regulations.**

**(b) Medications for individual patients shall not be removed from their original prescription containers by nursing personnel until the time of drug administration.**

**(c) Drugs packaged in unit dose containers shall not be removed from the containers by nursing personnel until the time of drug administration. Such drugs shall be administered immediately after the dose has been removed from the container, and by the individual who prepared the dose for administration.**

**(d) Each patient shall be identified prior to drug administration.**

**(e) Drugs dispensed for one patient shall not be administered to another patient.**

**(f) If the facility permits self-administration of drugs, nursing personnel shall implement policies and procedures approved by the pharmacy and therapeutics committee regarding self-administration of drugs.**

**(g) Nursing personnel shall report drug errors and adverse drug reactions immediately to the nurse in charge of the unit and to the prescriber. By the end of the shift, an entry shall be made in the patient's medical record. The incident shall be reported in accordance with policies and procedures concerning quality assurance and risk management. The incident shall be reported to the pharmacy, in accordance with policies and procedures approved by the pharmacy and therapeutics committee, within 24 hours.**

**(h) Drugs in patient care areas shall be maintained under proper conditons, as indicated by the United States Pharmacopoeia, product labeling, and/or package inserts.**

**(i) All drugs, needles, and syringes in patient care areas shall be kept in locked storage areas, except those drugs exempted by the pharmacy and therapeutics committee or equivalent under**

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**specified conditions. Drugs for external use shall be kept separate from drugs for internal use.**

**(j) Nursing personnel shall return drugs to the pharmacy for disposal in accordance with N.J.A.C. 8:43G-23.6(i).**

**(k) Nursing personnel shall store, use, and dispose of needles and syringes in accordance with all applicable Federal and State laws and rules, including those specified at N.J.A.C. 8:43G-14.12(b).**

8:43G-18.7 Nursing care staff education and training; mandatory

**(a)** Requirements for the nursing care edcuation program shall be as provided in N.J.A.C. 8:43G-5.9.

**(b) All nursing staff shall receive orientation and annual training regarding the use of restraints, including at least:**

**1. Policies and procedures in accordance with N.J.A.C. 8:43G-18.4(a);**

**2. Emergency and nonemergency procedures; and**

**3. Interventions by licensed and non-licensed nursing personnel.**

SUBCHAPTER 19. OBSTETRICS

8:43G-19.2 Obstetric policies and procedures; mandatory

(a) The obstetric service shall have written policies and procedures that govern and are available in all areas of the obstetric service and are reviewed annually, revised as needed, and implemented. These policies and procedures shall include at least:

1.-4. (No change.)

5. A protocol for the use of oxytoxics for induction and stimulation of labor, including **physician** assessment of the patient before the drug's use, monitoring of the patient and fetus during its use, indications for discontinuance of the drug, and educating staff in the use of oxytocin;

6.-10. (No change.)

(b) A **current** list of physicians and nurse-midwives, their specific obstetric service privileges, and an on-call schedule shall be available in the department to professional staff.

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

**(f) The hospital shall require submission of a copy of the prenatal record for all patients registered to deliver at the hospital once the patient reaches 34 weeks gestation. These prenatal records shall be accessible to the obstetrical unit at all times.**

8:43G-19.5 Obstetrics patient services; mandatory

(a)-(f) (No change.)

**(g) Criteria shall be developed in consultation with the dietary department for identifying patients at nutritional risk. Patients determined to be at nutritional risk shall receive dietary counseling.**

8:43G-19.13 Labor and delivery staff time and availability; mandatory

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

(d) Oxytoxics shall be administered only after [obstetrical staff] **a physician with obstetrical privileges** has examined the patient and electronic fetal monitoring initiated.

(e) (No change.)

(f) Effective January 1, 1992, there shall be a health professional certified in [pediatric advanced life support] **neonatal resuscitation immediately** available [within the unit at all times] **to the newborn service whenever an infant is present.**

(g) (No change.)

8:43G-19.14 Labor, [and] delivery, **anesthesia and recovery** patient services; mandatory

**(a)** A registry of all births or maternity log books shall be maintained in the labor and delivery room and shall include the minimum data set required by the Maternal and Child Care Committee of the New Jersey Medical Society as accepted by the Department of Health.

**(b) Obstetrics anesthesia services policies and procedures shall include at least:**

**1. The obstetric service in consultation with the anesthesia service shall develop and implement written policies and procedures that govern anesthesia services in all labor, delivery and recovery areas. The policies and procedures shall be reviewed annually, revised and implemented.**

**2. All individuals who administer anesthetic agents to obstetric patients shall be credentialed in accordance with medical staff policies. The physician director of anesthesia services shall participate in the credentialing process and delineation of privileges of all personnel who administer anesthetic agents.**

**3. The obstetric service, in consultation with the anesthesia service, shall establish protocols governing the use of anesthetic agents for pain management. These shall include the qualifications and responsibilities of persons who administer the use of anesthetic agents for pain management. Policies and procedures shall address the use of patient monitoring equipment and identify the types and levels of agents which may be used for pain management.**

**4. A preanesthesia note, reflecting evaluation and classification of the patient according to American Society of Anesthesiologists (ASA) Physical Status system, shall be made or certified by the physician administering or supervising the administration of anesthesia and entered into the medical record of each patient who will be administered an anesthetic agent.**

**5. Anesthetic or pain control agents administered to non-surgical obstetric patients classified for anesthesia risk as an ASA Class I or II shall be administered and monitored in accordance with obstetric service policies and procedures governing anesthesia care.**

**6. Anesthetic or pain control agents administered to non-surgical obstetric patients classified for anesthesia risk as an ASA Class III, IV, V or Emergency shall be in accordance with the following sections of N.J.A.C. 8:43G-6, Anesthesia Services, as amended:**

**i. N.J.A.C. 8:43G-6.1, Definitions;**

**ii. N.J.A.C. 8:43G-6.3(d) through (k), Anesthesia qualifications for administering anesthesia;**

**iii. N.J.A.C. 8:43G-6.5(b), Anesthesia patient services;**

**iv. N.J.A.C. 8:43G-6.6, Anesthesia supplies and equipment; safety systems;**

**v. N.J.A.C. 8:43G-6.7, Anesthesia supplies and equipment; maintenance and inspection; and**

**vi. N.J.A.C. 8:43G-6.8, Anesthesia supplies and equipment; patient monitoring.**

**7. For patients undergoing surgical deliveries, including cesarean sections, anesthesia care shall be in accordance with all applicable sections of N.J.A.C. 8:43G-6, Anesthesia Services.**

**8. There shall be a program of quality assurance for anesthesia care provided in obstetric services that is integrated into the hospital and the anesthesia service quality assurance programs.**

**(c) There shall be written policies and procedures for the care of patients during the recovery phase of delivery. The policies and procedures shall be reviewed annually, revised as needed, and implemented. These policies and procedures shall include at least:**

**1. Delineation of the primary medical responsibility for postanesthesia care of the patient;**

**2. Monitoring of patients, including availability of monitoring equipment, and use of an objective scoring system to determine when the patient has recovered from anesthesia;**

**3. Requirements for documentation of patient status;**

**4. Protocol for patient emergencies;**

**5. Criteria and responsibility for discharge from recovery;**

**6. Recovery staff qualifications, which shall be as follows:**

**i. All registered professional nurses assigned to recovery services shall have training in basic cardiac life support.**

**ii. Recovery services shall be staffed at all times by at least one registered professional nurse with critical care training, as defined by the hospital, whenever a patient recovering from a cesarean section and/or classified as ASA Class III, IV, V or Emergency is present;**

**7. Recovery staff time and availability, which shall be as follows:**

**i. There shall be at least two health care personnel, one of whom is a registered professional nurse and the other of whom is either a registered professional nurse or a licensed practical nurse, present in recovery services whenever a patient in the recovery phase of delivery is present. The nurse identified in (c)6ii above may function as the registered professional nurse required herein.**

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**ii. There shall be a ratio of at least one registered professional nurse present in the recovery service area for every three patients in the recovery phase of delivery; and**

**8. Recovery patient services, which shall be as follows:**

**i. Postanesthesia notes shall be entered into the patient's medical record by a member of the hospital's anesthesia team early in the postoperative period.**

**ii. The condition of each patient shall be continually evaluated, with an objective scoring system used to track the patient until she has recovered from anesthesia.**

**iii. The patient's vital signs shall be monitored and recorded at least every 15 minutes during recovery.**

**iv. Postanesthesia care for patients recovering from a cesarean section and/or classified as ASA Class III, IV, V or Emergency shall also follow 8:43G-35.4(a) through (i).**

8:43G-19.15 Postpartum **policies and procedures and** staff time and availability; mandatory

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

**(c) There shall be written policies and procedures for the care of postpartum patients. The policies and procedures shall be reviewed annually, and revised as needed, and shall include at least the following:**

**1. Monitoring and documentation of patient's vital signs, condition of uterus, and rate of bleeding.**

**2. Identification and management of postpartum complications; and**

**3. Physical care, including care of the perineum and breasts, and ambulation.**

8:43G-19.17 Newborn care policies and procedures; mandatory

(a) A current roster [and on-call schedule] of physicians, [who have pediatric privileges] **their specific pediatric privileges, and an on-call schedule** shall be kept in each nursing unit in newborn care.

(b)-(d) (No change.)

(e) [The hospital shall notify the State Department of Health, Division of Epidemiology by telephone immediately in the event of an epidemic in the newborn nursery. An epidemic is an occurrence or outbreak which represents a significant or distinct departure from normal incidence as determined by the infection control practitioner.] **The newborn nursery shall identify and report any outbreak of disease, or any single case of a disease as specified in N.J.A.C. 8:57-1.1 through 1.5 also known as Chapter II of the State Sanitary Code.**

(f) The hospital shall comply with State laws for screening infants for high risk factors associated with hearing impairment (N.J.S.A. 26:2-101 et seq.), [reporting blood group and Rh determination,] early detection of biochemical disorders in newborns (N.J.S.A. 26:2-110 through 112), reporting congenital defects (N.J.S.A. 26:8-40.20 et seq.), and completing birth certificates (N.J.S.A. 26:8-28) and death certificates.

(g)-(h) (No change.)

(i) The newborn's medical record shall include at least:

1.-13. (No change.)

14. Documentation of eye prophylaxis, **as recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists for ophthalmia neonatorum,** administration of any other medication or treatment and response, and performance of inborn error and hearing screenings.

8:43G-19.18 Newborn care staff qualifications; mandatory

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

(e) Effective January 1, 1992, there shall be a health professional certified in [advanced pediatric life support] **neonatal resuscitation immediately** available [within the unit at all times] **to the newborn service whenever an infant is present.**

8:43G-19.22 Newborn care supplies and equipment; mandatory

(a)-(f) (No change.)

[(g) Checks of equipment settings in the newborn nursery by nursing staff at least once during each shift shall be documented.]

Recodify existing (h) as **(g)** (No change in text.)

8:43G-19.23 Scope of nurse midwifery standards

The standards in N.J.A.C. 8:43G-19.24 through 19.29 shall apply only to hospitals that have a separate, designated service or unit for nurse-midwifery. Hospitals which do not have a separate, designated service or unit for nurse-midwifery but grant obstetrical privileges to nurse-midwifes [shall follow N.J.A.C. 8:43G-19.25(b) and (c)] **are not required to follow N.J.A.C. 8:43G-19.26(a) and 19.27.**

8:43G-19.33 Obstetric/non-obstetric mix patient services; mandatory

(a) (No change.)

(b) No obstetric patient shall be excluded from the obstetric [unit] **service.** [if a] A bed [can] **shall** be made available, **when needed by obstetric patients,** by the transfer of a non-obstetric patient.

(c)-(h) (No change.)

SUBCHAPTER 20. EMPLOYEE HEALTH

8:43G-20.1 Employee health policies and procedures

(a) Employee health service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available for employees to review and include at least the following:

1.-2. (No change.)

3. Precautionary measures to prevent the transmission of communicable diseases from employees to patients; [and]

4. Requirements for a physician note approving an employee's return to work after an absence due to a communicable disease[.]; **and**

**5. Clinical restrictions for employees exposed to rubella or rubeola who are seronegative and unvaccinated.**

8:43G-20.2 Employee health services

(a) Each new employee shall receive an initial health evaluation, which includes at least a documented history, which may be performed by a registered professional nurse or physician, and a physical examination [performed by a physician].

(b)-(e) (No change.)

**(f) Each new employee, including members of the medical staff employed by the hospital shall be given a rubella screening test upon employment in accordance with (e) above.**

**(g) Each employee, including members of the medical staff employed by the hospital, born in 1957 or later shall be given a measles (rubeola) screening test using the Hemagglutination inhibition test or other rubeola screening test by March 1, 1992. The only exceptions are employees who can document receipt of live measles vaccine on or after their first birthday, physician-diagnosed measles, or serologic evidence of immunity.**

**(h) Each new employee, including members of the medical staff employed by the hospital, born in 1957 or later shall be given a rubeola screening test, upon employment, in accordance with (g) above.**

**(i) The hospital shall offer rubella and rubeola vaccination to all employees and medical staff.**

Recodify existing (f)-(j) as **(j)-(n)** (No change.)

SUBCHAPTER 22. PEDIATRICS

8:43G-22.2 Pediatrics and pediatric intensive care policies and procedures; mandatory

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

1.-6. (No change.)

7. Protocols for specific types of patient emergencies; [and]

8. An emergency transfer policy which specifies mechanisms for transport of pediatric patients requiring specialized or intensive care services to facilities providing such care[.]; **and**

**9. Safety measures for the purpose of preventing electrical and bodily injury to patients.**

(b)-(d) (No change.)

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8:43G-22.3 Pediatrics and pediatric intensive care patient services; mandatory

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

(e) The parents **or guardians** of pediatric patients shall be included in the development of the nursing patient plan of care.

8:43G-22.12 Pediatrics space and environment; mandatory

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

(c) There shall be an adult supervising [at all times] when children under seven years of age are present in the recreation room or playroom.

[(d) There shall be safety measures in place on the pediatric unit to prevent electrical and bodily injury to patients. Electrical beds shall be used only if they are equipped with manual hydraulic control, a minimum low setting, and a maximum high setting.]

8:43G-22.17 Pediatric intensive care patient services; mandatory

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

**(c) There shall be a policy that addresses optional overnight stays in the hospital or adjacent buildings for parents or guardians of pediatric intensive care patients.**

8:43G-22.20 Pediatric intensive care supplies and equipment

(a) The pediatric intensive care unit shall have immediate access to equipment that has the capability for continuous monitoring of **at least**:

1.-7. (No change.)

8. Temperature; **and**

9. Three simultaneous pressure capability[;].

[10. Defibrillator;

11. Intravenous fluid warmer;

12. Metabolic bed scale; and

13. Pulse oximeter.]

**(b) The pediatric intensive care unit shall have immediate access to the following equipment:**

**1. Defibrillator;**

**2. Intravenous fluid warmer;**

**3. Metabolic bed scale; and**

**4. Pulse oximeter.**

Recodify existing (b)-(c) as **(c)-(d)** (No change in text.)

SUBCHAPTER 23. PHARMACY

8:43G-23.1 Pharmacy structural organization; mandatory

(a) (No change.)

(b) A multidisciplinary pharmacy and therapeutics committee, or an equivalent multidisciplinary body which includes a [pharmacy representative] **pharmacist licensed to practice pharmacy in New Jersey**, shall meet at least [four times a year] **quarterly**[,] 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 ensure implementation of policies and procedures addressing at least the following areas:

1.-8. (No change.)

9. [Reference] **Up-to-date reference** materials kept at drug distribution stations and in the pharmacy, and made available to medical and nursing staff;

10. (No change.)

11. Approval and maintenance of [a] **an up-to-date** formulary; [and]

12. Pharmacists' clarifications of physician orders[.]**; and**

**13. Self-administration of drugs, if permitted by the hospital, including a requirement for written prescriber orders, storage of drugs, labeling of drugs, documentation of self-administration in the patient medical record, patient training and education, and precautions to ensure that a patient does not take the drugs of another patient.**

8:43G-23.6 Pharmacy patient services; mandatory

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

(f) Cautionary instructions and ancillary information about medication shall be communicated**, in writing,** to the personnel responsible for administering medications.

(g)-(m) (No change.)

SUBCHAPTER 24. PLANT MAINTENANCE AND FIRE AND EMERGENCY PREPAREDNESS

8:43G-24.9 Physical plant general compliance for construction, alteration or renovation completed during the period of July 1, [1971] **1979** through May 7, 1981 or May 8, 1981 through October 1, 1987; mandatory

For construction, alteration or renovation completed during the period of July 1, [1971] **1979** through May 7, 1981 or May 8, 1981 through October 1, 1987, the hospital shall comply with the New Jersey Uniform Construction Code, standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs, and the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS) Publication No. (HRA) 79-14500. In order to avoid conflict, sections 502 (except as it pertains to area limitations), 1702.7, 1716.0, article 7 except sections 712.0, 716.0 and 717.0, and article 8 except sections 818.6 through 818.7.6 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The HHS (HRA) 79-14500 shall serve as the Uniform Code for the matters regulated by these sections.

8:43G-24.13 Fire and emergency preparedness; mandatory

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

(h) Fire detectors and alarm systems shall be inspected and tested at least twice a year by a certified testing agency. Written reports of [at least] **the last** two inspections shall be kept on file.

(i)-(j) (No change.)

(k) There shall be a procedure for investigating and reporting fires. All fires that result in a patient or patients being moved shall be reported to the New Jersey State Department of Health immediately by telephone at (609) 588-7725 **or (609) 392-2020 after business hours**) and followed up in writing within 72 hours. In addition, a written report of the investigation shall be forwarded to the Department of Health as soon as it becomes available.

(l) (No change.)

SUBCHAPTER 25. POST MORTEM

8:43G-25.1 Policies and procedures; mandatory

(a) The morgue shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies shall delineate the responsibilities of the medical staff, nursing, and morgue staff, and shall include procedures for at least the following [functions]:

1.-4. (No change.)

5. Infection control [policies], including disinfection of equipment;

6. [Practices for handling] **Handling** infectious bodies, in accordance with Centers for Disease Control guidelines**, and in compliance with N.J.S.A. 26:6-8**;

7. [Criteria for] **Identifying and handling** high-risk or potentially high-risk cases, such as AIDS or hepatitis B;

8.-9. (No change.)

10. Availability of [microscopic] autopsy reports**, including reports of microscopic autopsy findings, to physicians and in medical records,** within specified time frames; and

11. (No change.)

SUBCHAPTER 26. PSYCHIATRY

8:43G-26.2 Psychiatry policies and procedures; mandatory

(a) The psychiatric service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available on the inpatient unit and include at least the following:

1.-9. (No change.)

[10. Criteria for and process of discharge from the unit;]

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Recodify existing 11-12 renumbered as **10-11** (No change in text.)

[13.]**12.** Patient grievance procedures; [and]

[14.]**13.** Criteria for use of seclusion [rooms] **in accordance with procedures delineated in the current or revised or later edition, if in effect, of the American Psychiatric Association Task Force Report No. 22 on Restraint and Seclusion, incorporated herein by reference, available from the American Psychiatric Association, 1400 K Street NW, Washington, D.C. 20005;**

**14. Review by physician director or designee of restraints or seclusion used in excess of 72 consecutive hours for a patient; and**

**15. Criteria for physician monitoring of patients in restraints more frequently than every 24 hours based on patient acuity.**

(b) The psychiatric service shall develop and implement written policies and procedures for use of restraints **in accordance with N.J.A.C. 8:43G-18.4**.

[(c) The hospital shall comply with the provisions of N.J.S.A. 30:4-24.2(d)(3), the New Jersey Patients' Bill of Rights of 1965 and all rules and regulations promulgated pursuant to the aforementioned Act and all procedures delineated in the American Psychiatric Task Force Report No. 22 on Restraint and Seclusion of 1984, available from the American Psychiatric Association, 1400 K Street NW, Washington, D.C. 20005.]

[(d)]**(c)** The psychiatric service shall develop and implement written policies and procedures for use of electroconvulsive therapy (ECT), in accordance with the recommendations of the [National Institutes of Health Consensus Development Conference Statement: Electroconvulsive Therapy (1985 or later edition, if current)] **current or revised or later edition, if in effect, of the American Psychiatric Task Force on ECT: "The Practice of ECT: Recommendations for Treatment, Training, and Privileging"** and the New Jersey Patient's Bill of Rights at N.J.S.A. 30:4-24.2(d)(2), incorporated herein by reference, including at least:

1.-6. (No change.)

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

8:43G-26.3 Psychiatry staff qualifications; mandatory

(a) (No change.)

(b) Any physician currently holding the position of director shall have completed a residence in psychiatry or neurology and shall be able to demonstrate the skills and experience at least equivalent to certification by the American Board of Psychiatry and Neurology. [Any] **Effective July 1, 1990 any** newly appointed physician director shall be board certified or shall meet the training and experience requirements for examination by the Board and shall be examined within two years of eligibility.

8:43G-26.9 Psychiatry space and environment; mandatory

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

**(f) Opportunities to participate in structured physical exercise programs shall be made available to patients.**

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

SUBCHAPTER 28. RADIOLOGY

8:43G-28.1 Radiology structural organization

Radiological services shall be provided on-site, except for specialized services that have been [designated] **approved** through the [public planning] **Certificate of Need** process to be provided on [a] **an off-site** regional basis.

8:43G-28.8 Diagnostic services staff time and availability; mandatory

(a) (No change.)

**(b) A currently licensed radiologic technologist shall be present in the hospital or on call at all times; if on call, the technologist shall be able to arrive, and shall arrive, at the hospital within 30 minutes of being summoned, under normal transportation conditions.**

[(b)]**(c)** A registered professional nurse shall be available in the radiology service [to be present at special radiologic diagnostic procedures] when needed, in the physician's judgment, to administer medications and perform other tasks.

8:43G-28.10 Diagnostic services patient services; mandatory

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

(d) [If provided by the hospital in obstetrics, ultrasound] **Ultrasound** shall be available within one hour at all times, unless the machinery is temporarily disabled or in use.

(e)-(h) (No change.)

SUBCHAPTER 29. PHYSICAL AND OCCUPATIONAL THERAPY

8:43G-29.13 Occupational therapy policies and procedures; mandatory

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

**(h) Hospitals that contract with an occupational therapy service shall ensure compliance with N.J.A.C. 8:43G-29.13 through 29.23.**

8:43G-29.17 Occupational therapy patient services; mandatory

(a) (No change.)

(b) The occupational therapy service shall **have the capacity to** offer services**, when required by a physician's order,** at least five days a week, excluding holidays.

SUBCHAPTER 30. RENAL DIALYSIS

8:43G-30.1 Scope of renal dialysis standards**; mandatory**

The standards in this subchapter shall apply only to hospitals that have [a] **an on-site** separate, designated unit or service for renal dialysis. If a hospital has a renal dialysis unit or service, the standards shall apply to both hemodialysis and peritoneal dialysis units, and to both chronic and acute treatment.

8:43G-30.2 Renal dialysis policies and procedures; mandatory

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

(c) All staff members of the renal dialysis service shall be screened for hepatitis in accordance with the current edition of the Centers for Disease Control publication "Hepatitis Surveillance", [Centers for Disease Control Report Number 50, published March 1986] **as amended and supplemented**, available from the Centers for Disease Control, Atlanta, Georgia 30333.

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

8:43G-30.3 Renal dialysis staff qualifications; mandatory

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

(d) [The social worker] **A professional member of the social work department shall be** assigned to the renal dialysis unit **to meet the psychosocial needs of renal dialysis patients and families**. [shall have at least:

1. A master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

2. A bachelor's degree from an accredited social work program and one uear of experience in social work.]

8:43G-30.5 Renal dialysis staff time and availability; mandatory

**(a) There shall be a registered professional nurse with administrative or clinical responsibility for all nursing care in the dialysis service.**

Recodify existing (a)-(c) as **(b)-(d)** (No change in text.)

[(d)](e) Nurses on the renal dialysis staff shall receive [formal] **on-site** training **in renal dialysis techniques as determined by the hospital** before they are permitted to work unsupervised with patients.

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

8:43G-30.6 Renal dialysis patient services; mandatory

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

(d) There shall be [a] multidisciplinary committee **meetings** that **take place on a periodic basis** [includes at least representatives from nursing, the medical staff, dietary services, and social work services that schedules meetings periodically] to discuss multidisciplinary communication, management, and issues about the care of patients treated in the dialysis unit. **The committee shall include representatives from at least nursing, the medical staff, dietary services, and social work services.**

(e) (No change.)

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(f) The hospital's policy on dialyzer reuse shall be explained to all renal dialysis patients. Patients who consent to reuse shall sign an informed consent form. If the patient declines reuse, arrangements shall be made for the patient to receive single-use treatment **in the unit**.

(g)-(k) (No change.)

**(l) The home (self) care training program shall have a written outline of course material for persons undergoing training which shall include didactic and practical sessions to prepare trained helpers to perform unsupervised dialysis treatments.**

**(m) If a hospital has a home (self) care training program, the hospital shall provide, either directly or through agreement with another health care facility, the following services;**

**1. Surveillance of the patient's home adaption, including provisions for visits by a staff member to the home and by the patient to the hospital;**

**2. Documentation in the patient's medical record of the number and content of surveillance visits;**

**3. Ensurances that patient teaching materials are available for patient use during and after home (self) care dialysis training and at times other than during the dialysis procedure;**

**4. Consultation for the patient with a social worker and a dietician;**

**5. A recordkeeping system which ensures continuity of care;**

**6. Installation and maintenance of equipment in the home;**

**7. Testing and treatment of the water in the home, according to current industry wide practices for home dialysis; and**

**8. Ordering of supplies for the home on an on-going basis.**

8:43G-30.8 Renal dialysis supplies and equipment; mandatory

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

(c) [When formaldehyde is used as the germicide for reuse of dialyzers and/or for disinfection of the dialysate system, the guidelines in the AAMI publication "Recommended Practice for Reuse of Hemodialyzers" shall be followed.] **Water treatment equipment, water and dialysate shall conform with the requirements in the AAMI publication "American National Standard for Hemodialysis Systems", as amended and supplemented, incorporated herein by reference. Water and dialysate shall be microbiologically analyzed monthly. Water samples shall be taken immediately following the last water treatment device and at locations in the treatment area which will assure the water throughout the distribution lines conforms with AAMI standards. Chemical analysis of the water shall be performed every six months.**

(d) [Water analysis shall conform with AAMI requirements. Water shall be microbiologically analyzed monthly and analyzed for trace elements every six months. Analysis shall be performed by a laboratory certified by the New Jersey State Department of Environmental Protection or licensed by the New Jersey State Department of Health. Written records shall be maintained of analysis procedures and results.] **A DPD test kit or similar method shall be used daily to detect chloramine break through and chloramine levels in water used to prepare dialysate and shall not exceed the AAMI standard of 0.1 ppm.**

Note: (No change.)

8:43G-30.11 Renal dialysis quality assurance methods; mandatory

There shall be a program of quality assurance for the renal dialysis service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. The program monitors those indicators required by the Trans-Atlantic Renal Council **and shall include monitoring of home dialysis patients**.

SUBCHAPTER 32. SAME-DAY STAY

8:43G-32.3 Same-day surgery services policies and procedures; mandatory

(a) The same-day surgery service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1.-5. (No change.)

**6. A system for handling medical and non-medical emergencies.**

Recodify existing 6. and 7. as **7. and 8.** (No change in text.)

[8.]**9.** A requirement that patients who receive anesthesia, **excluding minor local blocks**, not drive themselves home after discharge and are accompanied home by another person. If the patient fails to comply with the requirement, the circumstances shall be documented in the patient's medical record.

(b)-(d) (No change.)

8:43G-32.5 Same-day surgery services patient services; mandatory

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

(e) The medical record for same-day surgery patients shall include at least:

1.-3. (No change.)

4. Documentation of the history and physical examination performed by physician **within seven days prior to the procedure**;

5.-6. (No change.)

**7. A perioperative nurses' note that describes the patient's condition during the procedure;**

**8. A medication record reflecting the drug given, date, time, dosage, route of administration, and signature and status of individual administering the drug;**

Recodify existing 7.-10. as **9.-12.** (No change in text.)

8:43G-32.9 Same-day surgery service quality assurance methods; mandatory

(a) (No change.)

**(b) The infection control program shall monitor infection control practices and outcomes for same-day surgery services. If same-day surgery patients are treated on inpatient units, the infection control program for those units shall fulfill this requirement.**

8:43G-32.12 Same-day medical services policies and procedures; mandatory

(a) (No change.)

(b) When a same-day medical patient is admitted to the hospital as an inpatient, a statement shall be made in his or her [medical day care] **same-day medical record** giving the reason for admission.

SUBCHAPTER 33. SOCIAL WORK

8:43G-33.6 Social work patient services; mandatory

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

(d) Families **or guardians** shall be included in services provided by the social work department, where indicated.

(e) (No change.)

(f) The social work department shall coordinate child-abuse reporting and follow-up services with appropriate follow-up agencies **in accordance with N.J.S.A. 9:6-1 et seq.** The department shall participate in reporting and follow-up sevices for other victims of abuse.

(g)-(i) (No change.)

SUBCHAPTER 35. POSTANESTHESIA CARE

8:43G-35.2 Postanesthesia care staff qualifications; mandatory

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

(c) All registered professional nurses assigned to the postanesthesia care unit shall be trained in postanesthesia care, including at least:

1. [Airway management and respiratory equipment] **The management of airway and ventilatory functions**;

2.-8. (No change.)

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

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# (a)

## DRUG UTILIZATION REVIEW COUNCIL
## List of Interchangeable Drug Products
## Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council,
Robert Kowalski, Chairman.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1991-443.

A **public hearing** concerning these proposed amendments will be held on September 24, 1991, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by October 3, 1991 to:

Henry T. Kozek, R.Ph.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, New Jersey 08625-0360
609-984-1304

The agency proposal follows:

### Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed Atenolol tablets could then be used as a less expensive substitute for Tenormin, a branded prescription medicine. Similarly the proposed Clemastine fumarate tablets substitute could be substituted for the more costly branded product, Tavist.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

### Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

### Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

### Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq: specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

**Full text** of the proposed amendments follows:

| | |
|---|---|
| Albuterol tabs 2, 4 mg | Mylan |
| Albuterol tabs 2, 4 mg | Purepac |
| Amoxapine tabs 25, 50, 100, 150 mg | Cord |
| Aspirin ER tabs 800 mg | Able |
| Atenolol tabs 50, 100 mg | IPR |
| Atenolol tabs 25, 50, 100 mg | Cord |
| Atenolol tabs 50, 100 mg | W-C |
| Atropine ophth oint 1% | Adv. Remedies |
| Atropine ophth soln 1% | Adv. Remedies |
| Carisoprodol tabs 350 mg | Mutual |
| Cephalexin 250, 500 mg | Yoshitomi |
| Chlorthalidone tabs 25, 50, 100 mg | Zenith |
| Clemastine fumarate tabs 1.34, 2.68 mg | Lemmon |
| Clindamycin Caps 75, 150 mg | Danbury |
| Cyclobenzaprine HCL tabs 10 mg | Mylan |
| Cyclobenzaprine tabs 10 mg | Cord |
| Entex liquid substitute | Tri-Med |
| Ergoloid mesylates tabs 1 mg | Mutual |
| Ethinyl estradiol .035, Norethindrone .5 mg | Syntex |
| Fenoprofen caps 200, 300 mg | Danbury |
| Flurazepam caps 15, 30 mg | Cord |
| Haloperidol tabs 10, 20 mg | Danbury |
| Hydrocortisone suppos. 25 mg | G&W |
| Hydroxyzine pamoate caps 25, 50, 100 mg | Cord |
| Ibuprofen tabs 200, 400, 600, 800 mg | Invamed |
| Iodinated glycerol tabs 30 mg | Anabolic |
| Lincomycin inj 300 mg/ml | Steris |
| Loperamide HCL caps 2 mg | Lemmon |
| Methenamine mandelate 1.0 gm 1000's tabs | Able |
| Methenamine mandelate tabs 0.5, 1.0 g | Able |
| Methocarbamol tabs 500, 750 mg | Mutual |
| Minoxidil tabs 2.5, 10 mg | Mutual |
| Phenylephrine/PPA/Guaifenesin liquid | LuChem |
| Pilocarpine ophth soln 1%, 2%, 4% | Adv. Remedies |
| Piroxicam caps 10, 20 mg | Mutual |
| Propoxyphene caps/APAP 50/325, 100/650 | Mutual |
| Rondec drops substitute | Tri-Med |
| Rynatan Ped. susp substitute | Duramed |
| Sodium fluoride 0.275 mg/drop | Hi-Tech |
| Sodium fluoride drops 0.275 mg/drop | Tri-Med |
| Sodium fluoride tabs 1.1, 2.2 mg | Able |
| Stuartnatal 1+1 substitute | J. Stevens |
| Sulindac tabs 150, 200 mg | Cord |
| Sulindac tabs 150, 200 mg | Purepac |
| Theophylline ER tabs 100, 200 mg | Inwood |
| Tolmetin caps 400 mg | Cord |
| Tolmetin tabs 200 mg and caps 400 mg | Mutual |
| Trazodone tabs 50, 100 mg | Mylan |
| Trazondone tabs 50, 100, 150 mg | Mutual |
| Triamterene/HCTZ tabs 37.5/25 | Cord |
| Verapamil tabs 40 mg | Cord |
| Verapamil tabs 40 mg | Purepac |

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# LABOR

## (a)

## DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

## 1992 Maximum Weekly Benefit Rates
## 1992 Taxable Wage Base Under the Unemployment Compensation Law
## 1992 Contribution Rate of Governmental Entities and Instrumentalities
## 1992 Base Week
## 1992 Alternative Earnings Test
## Proposed Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6 and 1.7

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.

Proposal Number: PRN 1991-450.

Submit comments by October 3, 1991 to:
Linda Flores
Special Assistant for External & Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

### Summary

The proposed amendment to N.J.A.C. 12:15-1.3 establishes the 1992 maximum weekly benefit rate for benefits under the Unemployment Compensation Law and for State Plan benefits under the Temporary Disability Benefits Law.

The proposed amendment to N.J.A.C. 12:15-1.4 establishes the 1992 taxable wage base for the purpose of contributions under the Unemployment Compensation Law in accordance with N.J.S.A. 43:21-7(b)(3).

The proposed amendment to N.J.A.C. 12:15-1.5 establishes the 1992 contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law.

The proposed amendment to N.J.A.C. 12:15-1.6 raises the amount of earnings required in 1992 to establish a base week for an individual's claim for unemployment compensation and State Plan temporary disability benefits.

Finally, the proposed amendment to N.J.A.C. 12:15-1.7 raises the amount of base year earnings required to establish an individual's eligibility for unemployment compensation and State Plan temporary disability benefits, in those instances in which the individual has not established 20 base weeks.

### Social Impact

The proposed amendment to N.J.A.C. 12:15-1.3 will ensure that payments to unemployment and disability insurance recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

The proposed amendment to N.J.A.C. 12:15-1.4 will generate increased revenues for the Unemployment Insurance and Disability Insurance Trust Funds needed to offset the increased level of benefits for these programs, which are statutorily indexed to the upward trend of wages in the State's economy.

The proposed amendment to N.J.A.C. 12:15-1.5 will lower the contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law, and will have no social impact on the public.

The proposed amendments to N.J.A.C. 12:15-1.6 and 12:15-1.7 provide for the base week amount and the amount of earnings to establish eligibility, respectively, to be indexed to wage increases as benefit payments have been indexed since 1969. Some claimants who work temporarily or intermittently may not qualify for benefits under these tightened eligibility standards.

### Economic Impact

The proposed amendment to N.J.A.C. 12:15-1.3 will increase the weekly benefit rates received by individuals eligible for the maximum weekly benefit rate under the Unemployment Compensation Law and under the Temporary Disability Benefits Law beginning January 1, 1992, in compliance with statutory provisions which automatically adjust these benefit rates each year in accordance with changes in the Statewide average weekly wage. The maximum weekly benefit for Unemployment Compensation is computed as 56⅔ percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1992, the maximum weekly benefit will increase from $291.00 to $308.00.

The maximum weekly benefit for State Plan Temporary Disability is computed as 53 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1992, the maximum weekly benefit will increase from $272.00 to $288.00.

The proposed amendment to N.J.A.C. 12:15-1.4 will increase from $14,400 to $15,300 the wages of an individual employee of an employer that are subject to employer and worker contributions under the Unemployment Compensation Law, beginning January 1, 1992. The taxable wage base is computed as 28 times the Statewide average weekly wage in the second preceding calendar year.

The proposed amendment to N.J.A.C. 12:15-1.5, which will lower the contribution rate for governmental entities to 0.4 percent of taxable wages for 1992 from 0.6 percent for 1991, will result in lower costs to State and local government units that choose this financing option, provided that all other factors that might influence the level of contributions remain the same.

The proposed amendment to N.J.A.C. 12:15-1.6 will increase the amount an individual must earn to establish a base week under the Unemployment Compensation and Temporary Disability Benefits Laws. The amount is computed as 20 percent of the Statewide average weekly wage in the second preceding calendar year and will increase from $103.00 to $110.00 for benefit years and periods of disability commencing January 1, 1992.

The proposed amendment to N.J.A.C. 12:15-1.7 increases the alternative earnings eligibility standard under the law in those situations where the individual has not established 20 base weeks in the base year period. The amount will increase from $6,200 to $6,600 in 1992. The alternative earnings test is indexed each year at 12 times the Statewide average weekly wage in the second preceding calendar year.

The Department does not expect to experience any economic impact as a result of the proposed amendments.

### Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect benefit and contribution levels under the Unemployment Compensation and Temporary Disability Benefits Laws. Thus, a regulatory flexibility analysis is not required.

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

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being [291.00] **$308.00** per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being [$272.00] **$288.00** per week.

(c) These maximum benefits shall be effective for the calendar year [1991] **1992** on benefit years and periods of disability commencing on or after January 1, [1991]**1992**.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first [$14,400] **$15,300** during the calendar year [1991] **1992**.

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12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being [six-tenths of one percent (0.6 percent)] **four-tenths of one percent (0.4 percent)** for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year [1991] **1992**.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being [$103.00] **$110.00** per week for benefit years and period of disability commencing on or after January 1, [1991] **1992**.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and N.J.S.A. 43:21-41, in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being [$6,200] **$6,600** for benefit years and period of disability commencing on or after January 1, [1991] **1992**.

## (a)

## DIVISION OF WORKERS' COMPENSATION

### 1992 Maximum Workers' Compensation Benefit Rates

### Proposed Amendment: N.J.A.C. 12:235-1.6

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e) and 34:15-12a.

Proposal Number: PRN 1991-449.

Submit comments by October 3, 1991 to:
Linda Flores
Special Assistant for External & Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

**Summary**

The proposed amendment establishes the 1992 maximum workers' compensation benefit rates for temporary disability, permanent total disability, permanent partial disability, and dependency.

**Social Impact**

The proposed amendment will ensure that payments to workers' compensation recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

**Economic Impact**

The proposed amendment will increase from $385.00 to $409.00 the weekly benefit rate received by individuals eligible for the maximum weekly benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency under the Worker's Compensation Law.

The effect of this change will be to raise the employer's workers' compensation insurance costs, provided that all other factors that might influence workers' compensation insurance costs remain the same.

The Department does not expect to experience any economic impact as a result of the proposed amendment.

**Regulatory Flexibility Statement**

The proposed amendment does not impose any reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment increases benefit rates to individuals. Thus, a regulatory flexibility analysis is not required.

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

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being [$385.00] **$409.00** per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year [1991] **1992**.

# TREASURY-GENERAL

## (b)

## DIVISION OF PENSIONS

### State Health Benefits Program Appointive Officer Definition

### Proposed Amendment: N.J.A.C. 17:9-4.1 and 4.5

Authorized By: State Health Benefits Commission, Patricia Chiacchio, Secretary.

Authority: N.J.S.A. 52:14-17.27 et seq.

Proposal Number: PRN 1991-433.

Submit comments by October 3, 1991, to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments clarify the definition of "appointive officer" for both State and local employers and the requirements for such individuals to qualify for health benefits coverage. The amendments require that such appointive officer must be appointed to an office specifically established by law, ordinance or other official action required by law for the establishment of a public office by an appointing authority. A person appointed under a general authorization whose function is merely to appoint other officers is not eligible for health benefits coverage. All eligible appointive officers must also qualify as a full time employee for such coverage.

**Social Impact**

The proposed amendments may affect present and future appointive officers of public agencies participating in the State Health Benefits Program who seek health benefits coverage but are not appointed to an office established by law, ordinance, resolution or comparable official action. Such appointive officers would have to qualify for benefits under the program as "full-time employees."

**Economic Impact**

The proposed amendments may adversely affect some individual appointive officers who do not qualify for health benefits coverage. The taxpaying public may benefit from these amendments since public employers will not be required to pay for health benefits coverage regarding certain of their appointive officers who do not meet the requirements for such coverage.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements upon small businesses. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, the amendments will not have any adverse effect upon small business or private industry in general.

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

17:9-4.1 State employee defined

(a) (No change.)

**(b) To qualify for coverage as an appointive officer, a person must be appointed to an office specifically established by law, ordinance,**

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**resolution, or such other official action required by law for establishment of a public office by an appointing authority. A person appointed under a general authorization, such as, "to appoint officer," or "to appoint such other officers," or similar language, is not eligible to participate in the program as an appointive officer. An officer appointed under a general authorization must qualify for participation as a "full-time employee."**

17:9-4.5 Local; employee defined

(a) For purposes of local coverage, "employee" shall mean an appointive or [elected] **elective** officer or full-time employee of the local employer, including an employee who is compensated on a fee basis as a convenient method of payment of wages or salary, but who is not a self-employed, independent contractor compensated in a like manner.

**(b) To qualify for coverage as an appointive officer, a person must be appointed to an office specifically established by law, ordinance, resolution, or such other official action required by law for establishment of a public office by an appointing authority. A person appointed under a general authorization, such as, "to appoint officers," or "to appoint such other officers," or similar language, is not eligible to participate in the program as an appointive officer. An officer appointed under a general authorization must qualify for participation as a "full-time employee."**

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# (a)

## CASINO CONTROL COMMISSION

### Rules of the Games
### Minimum and Maximum Wagers
### Reproposed Amendment: N.J.A.C. 19:47-8.2
### Reproposed New Rule: N.J.A.C. 19:47-8.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69, 5:12-70(f) and 5:12-100(e).

Proposal Number: PRN 1991-442.

Submit written comments by October 3, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

**Summary**

The Casino Control Commission recently proposed at 23 N.J.R. 1784(b), a new rule, N.J.A.C. 19:47-8.3, to establish uniform notice requirements for casino licensees which intend to offer any authorized variation in the rules of the table games. The proposal which included that rule also included proposed amendments to the rules concerning wagers in each of the authorized table games (N.J.A.C. 19:47-1.3, 2.3, 3.2, 4.2, 5.1, 5.6 and 7.2), and in the general rule concerning minimum and maximum wagers (N.J.A.C. 19:47-8.2), to delete the separate notice requirements in these sections and substitute a cross-reference to the general notice provision. Such a notice provision was also included in recently proposed new rules of the game of red dog, at proposed N.J.A.C. 19:47-6.6 (23 N.J.R. 2231(a)). As the Commission noted (see Summary Statement, 23 N.J.R. 1784(b)), such amendments were not included to substantively modify the notice currently required by the wager rules.

The Commission has subsequently determined that the previously proposed language in the amendment to N.J.A.C. 19:47-8.2 and the new rule at N.J.A.C. 19:47-8.3 should be revised to clarify that decreases in the minimum wager and any changes in the maximum wager at a table game are not subject to the one-half hour prior notice requirement. This proposal supersedes the previously proposed amendments to N.J.A.C. 19:47-8.2 and the proposed new rule text of N.J.A.C. 19:47-8.3. The amendment and new rule proposed herein are consistent with the Commission's current practice, which is to require one-half hour prior notice of increases in the minimum wage only.

**Social Impact**

By ensuring that the Commission and gaming patrons are given adequate notice of any optional variation in the rules of the games, the proposed new rule protects the gaming public and promotes trust and confidence in the integrity of casino gaming and the regulatory process, in accordance with the goals of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The newly proposed amendment is a technical modification, which is not expected to have any significant social impact.

**Economic Impact**

The proposed new rule is not anticipated to have any significant economic impact, since it affects only the notice requirements for rules of the games otherwise authorized by the Commission. The newly proposed amendment to N.J.A.C. 19:47-8.2 is a technical modification and is also not expected to have any significant economic impact.

**Regulatory Flexibility Statement**

The proposed amendments affect the operations of casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-8.2 Minimum and maximum wagers

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

(c) A casino licensee shall [give adequate] **provide** notice of changes in the permissible minimum **and maximum** wagers at table games [to patrons. Such adequate notice shall include the posting and announcing of such change to casino patrons. In no event shall a casino licensee raise the permissible minimum wager at a table game unless the casino licensee has first given the casino patrons at that table game at least one-half hour advance notice of such change] **in accordance with N.J.A.C. 19:47-8.3.**

**19:47-8.3 Rules of the games; notice**

**(a) Whenever a casino licensee is required by rule to provide notice of the rules pursuant to which a particular table game will be operated, the casino licensee shall post a sign at the gaming table advising patrons of the rules in effect at that table.**

**(b) Except as provided in (c) below, no casino licensee shall change the rules pursuant to which a particular table game is being operated unless, at least one-half hour in advance of such change, the casino licensee:**

**1. Posts a sign at the gaming table advising patrons of the rule change and the time that it will go into effect;**

**2. Announces the rule change to patrons who are at the table; and**

**3. Notifies the Commission of the rule change, the gaming table where it will be implemented and the time that it will become effective.**

**(c) Notwithstanding (b) above, a casino licensee may at any time lower the permissible minimum wager or change the permissible maximum wager at a table game upon posting a sign at the gaming table advising patrons of the change in the permissible minimum or maximum wager and announcing the change to patrons who are at the table.**

**(d) The location, size and language of each sign required by this section shall be submitted to and approved by the Commission prior to its use.**

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# BANKING

# (b)

## OFFICE OF REGULATORY AFFAIRS

### Mortgage Loans, Fees, Obligations
### Proposed Amendments: N.J.A.C. 3:1-16

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1, 17:11B-5 and 13.

Proposal Number: PRN 1991-448.

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Submit comments by October 3, 1991 to:
Robert M. Jaworski, Assistant Commissioner
Office of Regulatory Affairs
Department of Banking, CN-040
20 W. State Street
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments to the mortgage processing rules are primarily for the purpose of clarification. The Department proposes the changes after observing the rules in practice and consulting interested parties.

N.J.A.C. 3:1-16.1:

A definition of "application" is added.

The definition of "borrower" is expanded to provide for co-borrowers and for the borrower's attorney to be considered a "borrower" under certain circumstances.

The definition of "commitment" is amended to exclude promises to make a loan which are contingent on basic underwriting analysis (for example, on a satisfactory appraisal or a satisfactory credit analysis) or on approval by a person who is not the lender (for example, a third party investor who intends to take the loan on assignment). As a result of the amendment, a lender may not collect a commitment fee upon tendering such contingent documents to a borrower.

The definition of "lender" is amended to specify that the rules apply to both State- and Federally-chartered depository institutions.

The term "lock-in" agreement is amended to require lenders to specify the date on which the lock-in agreement ends. The amendments would also exclude from the definition any agreement to fix a date which is executed three or fewer days before closing.

The amendments to the definition of "substantial fault of the borrower" clarify that lenders may require borrowers in the commitment or closing instructions to submit documentation in a shorter period of time than seven calendar days.

N.J.A.C. 3:1-16.2:

Subsection (a) is amended to clarify that specific authorization is required before a lender may charge a fee which is not specified in the rules. The amendments also provide that the authorization may be in any official form, such as staff commentary, regulatory bulletins, or memoranda.

The definition of "application fee" is amended to provide that the fee is collectible only at the time of application.

The definitions of "credit report fee" and "appraisal fee" are amended to provide that they may not exceed the amount paid to the party performing the service.

The definition of "lock-in fee" is amended to provide that the lock-in fee may comprise all of the commitment fee.

The definition of "warehouse fee" is amended to specify the basis for computing the fee.

The provision regarding third party fees is amended to specify permissible as well as certain impermissible fees. It also provides guidance for securing departmental approval for fees which are not among those explicitly permitted.

Subsection (b) is added to provide that lenders or brokers may use different names for fees than those set forth in the rules, but that the lender or broker has the responsibility to document that the fee functions like a defined fee.

Subsection (c) is added to clarify that, in accordance with the scope of the statute, the rules do not restrict post-closing fees.

N.J.A.C. 3:1-16.3:

Paragraph (a)3 is amended to provide that the disclosures required by this section may be made by reference to the rules with appropriate citation.

Paragraph (a)4 is amended to provide that, if the estimate of time to issue a commitment proves unrealistic, the lender may return the application and fees and invite the borrower to reapply pursuant to the new estimate.

Paragraph (c) is added to express the obligation of lenders to process the applications which are submitted to them.

Paragraph (d)3 is added to provide that good faith estimate disclosures satisfy the disclosure requirements of this section.

Subsection (e) is amended to provide that a lender or broker is to return all fees if the realistic estimate of time expires through no substantial fault of the borrower and the borrower withdraws his application.

N.J.A.C. 3:1-16.5:

Paragraph (a)2 is amended to provide that "amount financed" shall have the same meaning as in Regulation Z.

Subparagraph (a)4iii is amended to clarify that if the interest rate disclosed in the commitment may increase before expiration of the commitment and the lender has not disclosed an index or method by which the new rate can be computed, the lender must provide a specific cautionary statement or equivalent in the commitment which may be placed either immediately above or immediately below the disclosed figures.

Paragraph (a)5 is amended to provide that the disclosure regarding refundability may be made by reference to the applicable sections of those rules.

Paragraph (a)6 is amended to provide that fees previously disclosed by the lender need not be redisclosed.

Paragraph (a)10 is added to provide that the information required to be disclosed, or part of that information, may be included in Regulation Z disclosure forms. This eliminates the need for double disclosure of the same information.

Subsection (c) is amended to provide that the borrower may not modify or waive his right to have the terms of the loan set no later than midnight of the third day before the closing, except on the basis of a bona fide personal financial emergency supported by a dated written statement.

Subsection (d) is deleted because the amendments to the definition of "commitment" eliminate commitments which are contingent on the approval of investors for the reasons set forth in this subsection.

N.J.A.C. 3:1-16.6:

Paragraph (a)2 is amended to codify the previous policy of the lender's two options in the case where the borrower elects to extend the lock-in period: (1) close the loan at the lock-in rate and keep the lock-in fee, or (2) close it at a wholesale rate yielding no profit and return the lock-in fee.

N.J.A.C. 3:1-16.10:

The text of the existing N.J.A.C. 3:1-16.10 is deleted because specific authorizations for substituting Federally required documents are provided throughout at the appropriate places. The N.J.A.C. 3:1-16.11 is being recodified as N.J.A.C. 3:1-16.10.

Subsection (a) is amended to provide that a broker may collect a fee on behalf of a lender provided that the entire amount of the fee is transmitted to the lender.

Paragraph (b)5 is amended to provide that fees payable to brokers are refundable if the broker does not perform the services which the broker was paid to perform.

The other amendments to these rules were for the purpose of grammatical or technical language and recodification to N.J.A.C. 3:1-16.11.

**Social Impact**

The amendments improve the clarity of the rules and will therefore make it easier for licensees to comply with the regulatory requirements. It will also make it easier for the Department to administer the rules. Consumers will benefit as a result of more widespread compliance with the rules.

**Economic Impact**

By clarifying the rules, the amendments will help achieve a "level playing field" in mortgage lending so that all lenders compete on the same terms. This should increase effective competition in the industry and will enable consumers to better determine their best deal for mortgage products.

**Regulatory Flexibility Analysis**

Virtually all mortgage lenders are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no additional recordkeeping or reporting requirements on licensees. A compliance requirement imposed upon brokers to provide a statement that all fees which are payable to the broker will be refunded if the broker does not perform the services indicated is not viewed as overly burdensome. Indeed, the amendments reduce the burden on licensees by eliminating certain redundant disclosures. Therefore, no further regulatory flexibility analysis is required.

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

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SUBCHAPTER 16. MORTGAGE LOANS, FEES, [CHARGES,] OBLIGATIONS

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.

**"Application" means the document(s) or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the loan document(s) to determine whether to grant or deny a mortgage loan.**

"Borrower" means a natural person or persons **who applies for credit or** to whom credit is offered or extended primarily for personal, family or household purposes, **and shall mean all co-borrowers, except that the lender may require the co-borrowers to designate one of the co-borrowers as the borrower for the purposes of these rules or, at the election of such natural person or persons, shall mean the attorney for the natural person or persons, but shall not mean other agents of the borrower.**

. . .

**"Commitment" means a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, except that any document indicating approval of a loan application which is contingent on a satisfactory appraisal, a satisfactory credit analysis, or the approval of a party which is not the lender shall not be deemed a commitment.**

. . .

3. Lender means a **State- or Federally-chartered** bank, savings bank, savings and loan association, credit union, or **a** mortgage banker as defined in N.J.S.A. 17:11B-1c.

["Loan commitment" or "commitment" means a signed statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.]

"Lock-in agreement" means an agreement between the lender and the borrower, executed at any time prior to issuance of a commitment, whereby the lender guarantees [for a specified number of days or] until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest will be determined and/or specific number of discount points, provided the loan is approved and closed [within that stated period of time] **by the specified date**. The term "lock-in agreement" does not include an agreement to fix the rate [on a prevailing rate loan 12] **executed three or fewer calendar** days before closing where appropriate disclosures have been made under the provisions of this subchapter.

. . .

"Receipt" (or "received") means

1. (No change.)

2. In the case of a borrower, actual receipt (or actually received) where the document or correspondence is personally delivered to the borrower or sent to the borrower by registered or certified mail or by means of a commercial delivery service, or [three days] **the third calendar day** following deposit in the regular U.S. mail.

"Substantial fault of the borrower" means that the borrower or the borrower's agent:

1.-2. (No change.)

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, **which date may be less than seven calendar days following the date of receipt of the commitment or closing instructions**; or

4. Failed to be ready, willing and able to close the loan or before the date specified by the lender.

5. For purposes of this [definition] **section**:

i.-ii. (No change.)

. . .

3:1-16.2 Fees [and charges]

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise [permitted] **authorized** by State [and] **or** federal law, **either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda**.

1. Application fee: Defined as [any] **a** fee imposed by a lender or broker for accepting or processing a mortgage loan application. The application fee shall **be collectible only at the time of application and shall** not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Credit report fee, **which may not exceed the amount paid, or to be paid, to the party providing the credit report**;

3. Appraisal fee, **which may not exceed the amount paid, or to be paid, to the party providing the appraisal, provided that if the appraisal is done in-house, the fee shall not exceed the going charge for such appraisals by third parties**;

4. Commitment fee: Defined as a fee, exclusive of third-party [charges] **fees**, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment, except a lock-in fee charged pursuant to (a)5 below. The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed;

5. Lock-in fee: Defined as that portion of the commitment fee charged by a lender as the consideration for execution and fulfillment of the terms of the lock-in agreement. **A lock-in fee may comprise all of the commitment fee.** No lock-in fee shall be received by a lender prior to inception of the lock-in period;

6. Warehouse fee: Defined as a fee charged by a lender [for] **not to exceed** the **average** cost associated with holding [the] mortgage [loan] **loans** pending [its] sale to a permanent investor and payable at closing. **The fee shall be based on the average holding period and warehouse rate and the initial coupon rate on the mortgage loan. No profit shall accrue to the lender from the fee over any calendar or fiscal year**;

7. [Reimbursement for third party charges] **Third party fees: Limited to the following fees** paid or actually incurred by a lender on behalf of a borrower [incident to the processing of a mortgage loan application or the closing of the loan. Reimbursable third-party fees shall not include costs associated with the lender's overhead, charges incurred by a person or entity other than the lender, or charges for activities to be undertaken or events to occur after the loan closing; and]**:**

**i. Overnight delivery, messenger, fax, and other special delivery fees, provided that the type of service is authorized by the borrower in advance in writing or the specific service is authorized by the borrower in writing;**

**ii. Flood certification fees;**

**iii. Pest inspection or certification fees;**

**iv. Final inspection fee, not to exceed the amount of the fee paid or actually incurred to a third party or, if the final inspection is done in-house, not to exceed the going charge for such inspections by third parties;**

**v. Outside counsels' document and title review fees, provided that they are for document review services only, and are properly designated and documented as being a fee of outside counsel;**

**vi. Certified check fees, not to exceed the amount of the fee paid or actually incurred by the lender to the issuer of the certified check or, if the lender issues the certified check, not to exceed its usual fee for providing this service to its customers;**

**vii. Update fees to update the borrower's credit report and appraisal, not to exceed the amount of the fee paid or actually incurred by the lender to the credit reporting agency or appraiser or, if the appraisal is done in-house, not to exceed the going charge for such updates by third parties;**

**viii. One-time mortgage insurance premiums;**

**ix. Survey fees;**

**x. Recording fees which shall not exceed the statutory amount for recording the deed, mortage, and note, and which shall not include any amount for recording an assignment of the mortgage;**

**xi. Title and title search fees, including title insurance premiums;**

**xii. Taxes;**

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**xiii. Tax service fees;**

**xiv. Radon test fees; and**

**xv. Fees not included among the above third party fees may be charged provided that prior written approval is obtained from the Department. The Department will only approve third party fees which are of benefit to the borrower and represent a cost not associated with the lender's overhead. Accordingly, the Department will not approve fees for document preparation, processing, underwriting, file updates, lender reviews, copying, funding, and miscellaneous.**

8. (No change.)

**(b) If a lender or broker uses a term for a fee which is different than a term listed in (a) above, the lender or broker shall be able to document to the Department that the fee fits the definition and description of a permissible fee listed above, and that the fee functions accordingly.**

**(c) This section does not restrict the imposition of fees after the closing of a mortgage loan, such as late fees and variable-to-fixed rate conversion fees.**

3:1-16.3 Application process

(a) Before [accepting] **a lender or broker accepts** any application fee in whole or in part, any credit report fee, appraisal fee or any fee charged as reimbursement for third party [charges] **fees**, [a] **the** lender **or broker** shall make written disclosure to the borrower (which disclosure may be contained in the application) **as required by this section or N.J.A.C. 3:1-16.10, respectively,** setting forth:

1. [An identification of the type, nature] **A description** and **the** amount of each such fee [or charge];

2. Whether all or any part of such fees [or charges] are refundable;

3. The terms and conditions for the refund, if all or any part of the fees [or charges] are refundable**, provided that, where applicable, the terms and conditions may be disclosed by making reference to these rules with proper citation**;

4. A realistic estimate of the number of **calendar** days required to issue a commitment following receipt of [the application] the terms **such fees** by the lender**. If the lender subsequently determines that the estimate is unrealistic, it may return the application and all fees paid and offer the borrower the opportunity to reapply subject to a new estimate**; and

5. (No change.)

(b) The disclosures required in (a) above shall be acknowledged in writing by the borrower and maintained by the lender **or broker** and a copy of such acknowledgment shall be given to the borrower.

**(c) Except where explicitly authorized to return an application, or for other reasons consistent with due diligence, a lender is obligated to process an application submitted to it and to exert conscientious effort to either grant or deny the application within the realistic estimate disclosed as required in (a) above.**

[(c)]**(d)** Not later than three business days after the lender receives the borrower's application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each [charge] **fee** for a settlement service which the borrower is likely to incur.

1. For the purpose of this subsection, "settlement service" shall mean a [charge] **service related to the origination, processing, or closing of a mortgage loan, and for** which the lender anticipates the borrower will pay **a fee** at or before settlement based upon the lender's general experience.

2. With respect to the settlement [charges] **service fees** imposed on a borrower by the lender (and not by third parties), the lender shall indicate which, if any, of such fees are refundable in whole or in part and the terms and conditions for such refund.

**3. Good faith estimates of fees for settlement services which are made pursuant to, and conform to, Federal Regulation Z shall satisfy the disclosure requirement of this subsection.**

[(d)]**(e)** The borrower may, without penalty or responsibility to pay additional fees [or charges], withdraw an application at any time prior to acceptance of a commitment. Upon such withdrawal, the lender **or broker** shall be responsible to refund to the borrower only those fees [and charges] to which the borrower may be entitled pursuant to the terms set forth in the written disclosure required by (a) above, except that:

1. Where the lender **or broker** has failed to provide the borrower with the written disclosure required by (a) above, the lender **or broker** shall promptly refund to the borrower all funds paid to the lender **or broker**;

2. Where the lender has failed to issue a commitment or justifiable credit denial and its realistic estimate of the time needed to do so has expired through no substantial fault of the borrower and the borrower has withdrawn his or her application as a result, the lender shall promptly refund to the borrower all funds paid to the lender [except appraisal fees and fees paid or actually incurred by the lender to third parties];

3. (No change).

3:1-16.5 Commitment process

(a) At or before issuance of a commitment, the lender shall disclose in writing the following:

1. (No change.)

2. The amount financed, which shall [mean the amount of credit provided to the borrower or in his or her behalf] **have the same meaning as that term is defined in Federal Regulation Z;**

3. In the event the interest rate is not subject to [change] **increase** before expiration of the commitment[,]:

i.-iii. (No change.)

4. In the event the interest rate is subject to [change] **increase** before expiration of the commitment[,]:

i. (No change.)

ii. A statement in at least 10-point bold type that "The interest rate will be [the] **a** rate established by the lender in its discretion [as its prevailing rate]" followed by a statement in the same type indicating when the rate would be set and advising the borrower of his or her right to demand disclosure of the rate and points pursuant to subsection (c) below once they are so set; and

iii. In addition to the requirements of (a)4i or ii above, the finance charge, annual percentage rate and payment schedule [assuming] **based on** the [prevailing] rate **at which a lender is closing or committing loans** on the date the [commitment issued, prefaced by] **disclosure is made, together with** a statement **in at least the same size type as the disclosure, either immediately above or immediately below the disclosure, to other effect** that:

"[The] **These** figures [set forth below] are for illustrative purposes only. They reflect the rate now in effect, NOT necessarily the rate you will pay at closing, which will be established as indicated in this commitment."

5. The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee shall be refundable**, provided that, where applicable, the latter disclosure may be made by referencing N.J.A.C. 3:1-16.5(d) and either N.J.A.C. 3:1-16.6(a) or N.J.A.C. 3:1-16.6(b) of these rules**;

6. All other [charges] **fees yet** to be paid by the borrower, including, but not limited to, [warehousing] **warehouse** fees and discount points**, except that fees previously disclosed by the lender need not be redisclosed**;

7.-8. (No change.)

9. Whether any fees or discount points **charged by the lender and** set forth in the commitment are subject to change before closing and, if so, the circumstances under which such fees or discount points may change.

**(b) The information required to be disclosed in this section may be contained in one or more documents, for example, in a Federal Regulation Z form disclosure and a supplement containing the information required under this section but not required by Regulation Z.**

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

[(c)]**(d)** If the interest rate (or initial interest rate in the case of a variable rate loan), discount points or fees **charged by the lender and** set forth in the commitment are subject to [change] **increase** before closing, such terms shall be fixed no later than [three] **midnight of the third** business [days] **day** before the **date the** loan closes. The borrower may demand that the lender advise him or her, either orally or in writing, of such terms once they are so fixed and the

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lender shall promptly comply with any such demand. **The right conferred by this subsection is not permitted to be modified or waived by the borrower except for a bona fide personal financial emergency. To modify or waive the right, the borrower shall give the lender a dated written statement that describes the emergency, specifically modifies or waives this right, and bears the signatures of all borrowers. Printed forms for this purpose are prohibited.**

[(d) (A commitment fee shall be refundable when the following occur:

1. The commitment is contingent upon approval by parties to whom the lender seeks to sell the loan; and

2. The loan purchaser's requirements are not met; and

3. The borrower is willing but unable to attain compliance with those requirements.]

3:1-16.6 Expiration of lock-in or commitment

(a) In the event a lock-in agreement has been executed, and the loan does not close before the expiration date of either the lock-in agreement or any commitment issued consistent therewith through no substantial fault of the borrower, the borrower may:

1. (No change.)

2. Have the lock-in agreement extended for no more than 14 **calendar** days following expiration of the commitment or, where no commitment issued before expiration of the lock-in, for no more than 14 **calendar** days following issuance of the commitment. **If the borrower elects to extend the lock-in agreement, the lender may elect either to close the loan at or below the lock-in rate, in which case the lender may keep the lock-in fee, or may elect to close the loan above the lock-in rate but** [, and modified so that the loan is closed at a rate and points which are] no higher than that which would provide a current market yield but no gross profit or "spread" to the lender**, in which case the lender shall refund the lock-in fee to the borrower**. [The borrower shall be responsible for the lock-in fee only if the loan is closed at or below the lock-in rate and points.] All other terms and conditions of the loan shall be as specified in the commitment, regardless whether the loan closes before or after the expiration date of the commitment.

(b) In the event a lock-in agreement has not been executed and a commitment has been issued, and the loan does not close before the expiration date of the commitment through no substantial fault of the borrower, the borrower may:

1. (No change.)

2. Have the commitment extended for a reasonable period of time, not to exceed 14 **calendar** days, to permit closing.

[3:1-16.10 Compliance with Federal law

Where any disclosure is required pursuant to this subchapter which is also required by any Federal law or regulation, compliance with such Federal law or regulation shall be deemed to be compliance with this subchapter.]

3:1-[16.11]**16.10** Special rules for brokers

(a) No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof. **A broker may collect a fee on behalf of a lender provided that the entire amount of the fee is transmitted to the lender.**

(b) Before accepting any loan application, the broker shall make written disclosure to the borrower in a separate service agreement setting forth:

1.-2. (No change.)

3. The amount of any discount points **which are payable** to [be charged by] the broker for its services;

4. (No change.)

5. A detailed listing of the specific services that will be provided or performed by the broker**, together with a statement that all fees which are payable to the broker will be refunded if the broker does not perform the services indicated**; and

6. (No change.)

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

3:1-[16.12]**16.11** Operative date

This subchapter shall become operative on July 16, 1989**, and shall apply to all applications taken on or after that date.**

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## (a)

## OFFICE OF REGULATORY AFFAIRS

### Consumer Checking Accounts

### Notice of Pre-Proposal: N.J.A.C. 3:1-19

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: The Consumer Checking Act, P.L. 1991, c.210.

Pre-Proposal Number: PPR 1991-10.

**Take notice** that the New Jersey Department of Banking, pursuant to its authority and obligation to promulgate rules in accordance with sections 3(c) and 8 of P.L. 1991, c.210 (the "Consumer Checking Act" or the "Act"), will receive preliminary comments with respect to the features of a New Jersey Consumer Checking Account, as defined in the Act, which the Commissioner is obligated to establish by regulation. Those features must include the following, which may be stated in terms of a range of options rather than a specific number:

(1) The initial deposit amount, if any, necessary to open a New Jersey Consumer Checking Account;

(2) The maximum amount, if any, permitted to be required by a depository institution as a minimum balance necessary to maintain the account;

(3) The number of checks, if any, that may be used within a periodic cycle without charge to withdraw funds from the account;

(4) The number of other withdrawals, if any, that may be made by a method other than check within a periodic cycle without charge;

(5) A maximum amount, if any, that may be charged per periodic cycle for maintaining the account;

(6) The maximum number of deposits, if any, that may be made in a periodic cycle without charge; and

(7) A maximum amount that may be charged per transaction in excess of the number permitted under paragraphs (3), (4) and (6) above.

The Department will also receive preliminary comments with respect to the applicability of the Act to Federally-chartered depositories and Federal preemption concerns regarding implementation of the Act's provisions to federally-chartered depositories, including whether the Department or a federally-chartered depository's primary regulator is the appropriate agency to which the depository may apply for approval to use as its Consumer Checking Account an account whose features differ from the account established pursuant to the Act.

In enacting the Consumer Checking Act, the Legislature found and declared that because of the public benefits enjoyed by depository institutions, including deposit insurance backed by the full faith and credit of the United States Government, these institutions should meet the basic banking needs of the communities in which they operate by assuring the availability of essential financial services to all people in the community. The Legislature also found that increased costs in recent years have made it increasingly difficult for many of the State's consumers, particularly young, low-income and elderly consumers, to afford basic checking services, and that those without access to banking and financial services due to increased costs are forced to operate on a cash-only basis, placing them at greater risk for their personal safety and well-being, and to use relatively high cost check-cashing services to cash social security or welfare benefit checks, thereby undermining the effectiveness of these public assistance programs.

Pursuant to the Act, Consumer Checking Accounts are to be made available to any New Jersey resident who requests one. They are to be used primarily for personal, family or household purposes. No depository institution will be required under the Act to offer a Consumer Checking Account at a cost which is below its actual cost to provide it. Depository institutions, including federally-chartered ones, who wish to use an account the features of which are not consistent with those established by rule of the Commissioner are entitled under the Act to apply to the Commissioner for approval to offer such accounts in lieu of the Consumer Checking Account defined by the rules. The features of the Consumer Checking Account established by the rule should therefore define an account which is likely not to cost depository institutions more than it costs them to provide it.

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Prior to promulgating rules establishing the features of a New Jersey Consumer Checking Account or approving any other account for use in lieu thereof, the Commissioner is obligated under the Act to review the terms and conditions of the low cost checking accounts currently available to consumers in New Jersey and to consider those terms and conditions during the regulatory or approval process. Consistent with this requirement, the Commissioner last summer conducted a survey of all depository institutions in New Jersey to ascertain what types of basic checking accounts they offered and the costs associated with those accounts. The survey was completed in August, 1990. The results showed that roughly three of every four commercial bank offices in New Jersey, representing about 25 percent of the State's individual banks but more than 60 percent of Statewide commercial bank assets, offered a checking account which could be loosely classified as "low cost," defined as any one of the following categories:

- Free checking, with only a charge for the printing of checks (no more than $.05 per check)
- No minimum balance or monthly charge, but with a charge of $.50 per check
- No minimum balance but a monthly charge of $1.00 (or $1.25, or $1.50) and a charge of $.25 (or $.15 or $.20, respectively) per check
- No minimum balance but a monthly charge of $2.00 and per-check fee schedules as follows:
  - —10 free, then $.25/check
  - — 8 free, then $.75/check
  - — 6 free, then $.75/check
  - — 5 free, then $.20-0.50/check
- A monthly charge of $3.00 when the account balance dropped below a specified minimum but without additional per-check charges
- No minimum balance requirement but a monthly charge of $3.00, 10 free checks, then $0.50 per additional check

These fee schedules (excluding the totally free checking accounts) would result in monthly charges, for an account on which five or six checks are written monthly, of between $2.00 and $3.00; for seven checks, between $2.00 and $3.50; for eight checks, between $2.00 and $4.00; for 10 checks, between $2.00 and $5.00; and for 15 checks, between $3.00 and $8.75.

Assuming a $.43 per check cost to the depository, excluding the expense of printing the checks, all of the "low-cost" accounts outlined above would result in at least a marginal profit to the institution based upon five checks per month; roughly half would lose money based on eight checks per month; and most would lose money based upon 15 checks per month. If the $.43 per check cost to depositories is understated and is nearer to $.54 per check, none of these so-called "low cost" accounts would be profitable.

The Department has determined to solicit comments from the public before developing a regulatory proposal as required under the Act. Once it receives these comments and has developed its proposal, the Department anticipates holding a public hearing at which additional comments, directed at the specific proposal offered, will be solicited from the public.

**Interested persons** may submit written comments with respect to the issues raised by this notice of pre-proposal.

Submit comments by October 3, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Office of Regulatory Affairs
New Jersey Department of Banking
20 West State Street, CN 040
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.

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# COMMUNITY AFFAIRS

## (a)

## DIVISION OF HOUSING AND DEVELOPMENT

### Uniform Fire Code

### Identifying Emblems for Structures with Truss Construction

### Proposed New Rule: N.J.A.C. 5:18-2.19

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198; P.L. 1991, c.188.

Proposal Number: PRN 1991-436.

Submit comments by October 3, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
Fax: (609) 633-6729

The agency proposal follows:

**Summary**

P.L. 1991 c.188, signed by Governor Florio on July 2, 1991, requires the Commissioner of Community Affairs to promulgate rules requiring that an identifying emblem be affixed to the front of structures with truss construction. The emblem is required to be of a bright and reflective color, or of reflective material. It is to be in the shape of an isosceles triangle, 12 inches horizontally by six inches vertically. The following letters, of a size and color to make them conspicuous, shall be printed on the emblem: "F" for a floor with truss construction; "R" for a roof with truss construction; and "F/R" for both. The emblem is to be permanently affixed to the left of the main entrance door between four and six feet above the ground and is to be installed and maintained by the owner of the building. Detached one and two family residences that are not part of a planned real estate development are exempt from these requirements unless otherwise provided by municipal ordinance. Individual structures within a planned real estate development may be exempted from these requirements if there is an emblem affixed at each entrance to the development.

**Social Impact**

Since the proposed section is merely a required restatement of the statute, its only social impact is to increase code enforcement officials' awareness of the requirements and thereby facilitate enforcement.

**Economic Impact**

There is no economic impact independent of that already created by the statute that the rule restates.

**Regulatory Flexibility Statement**

The rule can make no distinction between property owners that are "small businesses" for purposes of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and those that are not because the statute that it restates makes no such distinction. In any event, no distinction is warranted in a matter that concerns life safety.

**Full text** of the proposed new rule follows:

5:18-2.19 Identifying emblems for structures with truss construction

(a) Identifying emblems shall be permanently affixed to the front of structures with truss construction.

1. The emblem shall be of a bright and reflective color, or made of reflective material. The shape of the emblem shall be an isosceles triangle and the size shall be 12 inches horizontally by six inches vertically. The following letters, of a size and color to make them conspicuous, shall be printed on the emblem:

i. "F" to signify a floor with truss construction;

ii. "R" to signify a roof with truss construction; or

iii. "F/R" to signify both a floor and roof with truss construction.

2. The emblem shall be permanently affixed to the left of the main entrance door at a height between four and six feet above the ground and shall be installed and maintained by the owner of the building.

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(b) Detached one and two family residential structures with truss construction that are not part of a planned real estate development shall be exempt from the requirements of (a) above, unless otherwise provided by municipal ordinance.

(c) Individual structures and dwelling units with truss construction that are part of a planned real estate development shall not be required to have an identifying emblem if there is an emblem affixed at each entrance to the development.

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# (a)

## DIVISION OF HOUSING AND DEVELOPMENT

## Uniform Construction Code Subcodes

## Proposed Amendments: N.J.A.C. 5:23-3.15 and 3.21

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1991-434.

Submit comments by October 3, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
Fax: (609) 633-6729

The agency proposal follows:

**Summary**

Section 5 of the State Uniform Construction Code Act, N.J.S.A. 52:27D-123, provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." However, it is necessary, when revisions or amendments are made to model codes, for the Department to amend the appropriate sections of N.J.A.C. 5:23 so that cross references will be correct. Accordingly, the Department proposes these rule amendments in order to enable code enforcement officials, builders, and property owners to use the 1991 Supplement to the National Standard Plumbing Code and the 1990-1991 cumulative supplement to the 1989 CABO One and Two Family Dwelling Code.

The 1990 National Standard Plumbing Code and the 1989 CABO One and Two Family Dwelling Code have been adopted by reference as the plumbing code and one and two family dwelling subcodes, respectively, of the State Uniform Construction Code. The National Association of Plumbing, Heating and Cooling Contractors and the Council of American Building Officials, the model code organizations that sponsor these national codes, engage in public code change processes and issue supplements between succeeding editions of the code. This enables the code to respond to rapidly changing building construction technology. Modifications made to the supplements by the proposed amendments relate to the administration and enforcement procedures of the State Uniform Construction Code and do not alter the substantive technical provisions of the national model code. Such changes include a modification to the smoke detector requirement in the CABO One and Two Family Dwelling Code. The modification requires the placement of a smoke detector in each bedroom, and, as with all the other changes being made, was made to preserve the congruency of the BOCA National Building Code and the CABO One and Two Family Dwelling Code. Other proposed changes, all of which are being done to bring the rules of the CABO Code into conformance with the BOCA code and to eliminate inconsistencies, include such things as minimum height of raised sills, handrail standards, deleting exceptions to concrete and masonry standards and to reinforced masonry standards, changes in roof covering material standards and solid fuel burning room heaters. This congruency is necessary to lessen the confusion concerning what fire protective measures are necessary in buildings of use group R-3.

It is anticipated that further modifications to the CABO One and Two Family Dwelling Code will be made that will incorporate methods of flood hazard reduction. These modifications will be made when modifications to the Department of Environmental Protection's Stream Encroachment regulations are made final.

**Social Impact**

Adoption of the appropriate references to the Plumbing and One and Two Family Dwelling Subcode supplements will allow users of the State Uniform Construction Code to avoid confusion about what code provisions are in effect and to benefit from the most recent technical innovations upon which they are based.

**Economic Impact**

These substantive technical changes, which have become effective by operation of law, may decrease construction costs in some instances and increase them in others. Correct cross referencing, to the extent that it results in diminished uncertainty as to what is required, may be expected to reduce the likelihood of work being done in reliance upon obsolete provisions which would then have to be corrected at greater expense.

**Regulatory Flexibility Statement**

Because these proposed amendments, made to ensure that the State Uniform Construction Code remains consistent, merely reflect changes at the national level supplementing the National Standard Plumbing Code and the CABO One and Two Family Dwelling Code, there is no identifiable differential impact on small businesses. All businesses, regardless of size, are subject to the plumbing subcode and must remain so in order to maintain uniform construction standards throughout the State.

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

5:23-3.15 Plumbing subcode

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

**(c) The following amendments are made to the 1991 Supplement to the 1990 National Standard Plumbing Code.**

**1. Chapter 2 entitled "General Regulations" is amended as follows:**

**i. Section 2.16 is amended to insert the number "Forty-two" in the blank space under item (a) and to insert the number "Twenty-four" in the blank space under item (b). Under item (c), delete the words "Section 3.12.1" and substitute in lieu thereof the words "N.J.A.C. 5:23-2.9".**

**2. Chapter 5 entitled "Traps and Cleanouts" is amended as follows:**

**i. Section 5.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 2.**

**3. Chapter 6 entitled "Interceptors" is amended as follows:**

**i. Section 6.3.2(b) is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "required" on line 5.**

**4. Chapter 9 entitled "Indirect Water Piping and Special Waste" is amended as follows:**

**i. Section 9.1.6 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority" on line 4.**

**ii. Section 9.3.2 is amended to add the words "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority" on line 4.**

**5. Chapter 11 entitled "Sanitary Drainage Systems" is amended as follows:**

**i. Section 11.7.6 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority".**

**6. Chapter 13 entitled "Storm Drains" is amended as follows:**

**i. Section 13.1.1 is amended to add the words "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority".**

**ii. Section 13.1.2 is amended to delete the words "Administrative Authority" and substitute in lieu thereof "Authority having jurisdiction".**

**iii. Section 13.1.5 is amended to delete the words on lines 1 and 2 "around the perimeter of all buildings having basements, cellars or crawl spaces or floors below grade" and in lieu thereof, substitute the words "in accordance with Section 1224.5 of the building subcode".**

**7. Chapter 16 entitled "Regulations Governing Individual Sewage Disposal Systems for Homes and Other Establishments Where Public Sewage Systems Are Not Available" is deleted.**

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5:23-3.21 One and two family dwelling subcode

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

**(c) The 1990 and 1991 amendments to "The CABO One and Two Family Dwelling Code/1989" are adopted with the following modifications:**

**1. The following amendments are made to Chapter 2 entitled "Building Planning":**

**i. Table No. R-201.2, page 9. Revise Footnote 2 to delete its last sentence.**

**ii. Sec. R-209.1 Opening protection: To end of paragraph, add sentence: "A raised sill with a minimum height of 4 inches shall also be provided between a garage and adjacent interior spaces."**

**iii. R-214.1 Handrails: Delete paragraph 2 and replace with the following text: "All stairway handrails shall have a circular cross section with an outside diameter of at least 1¼ inches and not greater than 2 inches, or approved rails of equivalent graspability".**

**iv. R-215.1 Smoke detectors required: Delete this section and replace with the following text: "Single- or multiple-station smoke detectors shall be installed and maintained at the following locations:**

**1. In the immediate vicinity of the bedrooms;**

**2. In all bedrooms; and**

**3. In each story including basements.**

**All detectors shall be interconnected such that the actuation of one alarm will actuate all the alarms in the individual unit and shall provide an alarm which will be audible in all sleeping areas. All detectors shall be approved and listed and shall be installed in accordance with the manufacturer's instructions.**

**Exception**

**1. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level."**

**2. The following amendment is made to Chapter 3 entitled: Foundations:**

**i. From section R-304.1 Concrete and masonry: Delete the exception.**

**3. The following amendments are made to Chapter 4 entitled: Wall construction:**

**i. From section R-404.3.1 Unreinforced masonry: Delete the second paragraph of the exception.**

**ii. From section R-404.3.2 Reinforced masonry: Delete the exception.**

**4. The following amendment is made to Chapter 8 entitled: Roof Coverings:**

**i. In section R-801.3 Roof covering materials: On line eight, delete the phrase: "in areas . . . 3 feet" and replace with the phrase: "when the edge of the roof is less than 5 feet from the property line."**

**5. The following amendment is made to Chapter 11 entitled: Equipment, General:**

**i. Sec. M-1112: At the end of the section, add "Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482."**

**6. Part V—Plumbing, is amended as follows:**

**i. Chapters 20 through 24 are deleted in their entirety. All requirements for plumbing shall be provided in accordance with the plumbing subcode listed in N.J.A.C. 5:23-3.15.**

**7. The following amendment is made to Appendix A:**

**i. Wind Probability Map horizontal wind design load values shall be replaced with those at N.J.A.C. 5:23-3.21(b)2.**

**8. The following amendment is made to Appendix F:**

**i. Sec. F-102—Definitions: Residential: In line two, replace the phrase "three stories" with the phrase "two stories".**

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# (a)

## DIVISION OF HOUSING AND DEVELOPMENT

## Uniform Construction Code
## Barrier-free Subcode
## Enforcement

## Proposed New Rule: N.J.A.C. 5:23-7.6A

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1991-437.

Submit comments by October 3, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
Fax: (609) 633-6729

The agency proposal follows:

**Summary**

The State Uniform Construction Code (UCC) as originally written, contains N.J.A.C. 5:23-3.4, Responsibility, which assigns plan review and inspection responsibilities for various code sections to appropriate officials. In addition, the Department sent out advisory Bulletin 87-2, which clarified responsibilities for additional sections of the Code and explained how to proceed where different officials' responsibilities overlap.

Neither N.J.A.C. 5:23-3.4 nor Bulletin 87-2 clarified plan review and inspection responsibilities for the Barrier-free Subcode. This proposed new rule addresses that issue. Every effort has been made to fairly allocate, but not unreasonably duplicate, responsibilities.

**Social Impact**

Efficient enforcement of the Barrier-free Subcode will ensure safe public access to all buildings within the State.

**Economic Impact**

This proposed new rule will eliminate confusion as to responsibility among subcode officials and should lead to unambiguous subcode enforcement which is more cost-effective in the long run.

**Regulatory Flexibility Statement**

This proposed new rule will not directly affect or impose requirements on businesses of varying size. The efficiency gained by clearly spelling out enforcement responsibilities will, however, save time and money for applicants, whether "small businesses" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or not, as well as for officials.

**Full text** of the proposed new rule follows:

5:23-7.6A Enforcement

(a) Enforcement responsibility shall be divided among subcode officials in the following manner:

1. Plan review with regard to compliance with N.J.A.C. 5:23-7.55(a)1, 7.56(a) (first paragraph (a) only) and (a)1, 7.57(a), 7.58(a) and 7.82(a) shall be the joint responsibility of the building and plumbing subcode officials.

2. Plan review with regard to compliance with N.J.A.C. 5:23-7.85 shall be the joint responsibility of the plumbing, fire protection and electrical subcode officials.

3. Plan review and inspection with regard to compliance with N.J.A.C. 5:23-7.55(a)2 and 3, 7.57(a)2 and 3, 7.58(a)1 and 3 through 5, 7.61(a)4 and 5, 7.66, 7.82(c) and (d), 7.91(d), 7.95(a)4ii and vi, 7.96(a)1ii, 3iii and 4iii shall be the responsibility of the plumbing subcode official.

4. Inspection with regard to compliance with N.J.A.C. 5:23-7.55(a)1 and 7.82(a) shall be the responsibility of the building subcode official.

5. Inspection with regard to compliance with N.J.A.C. 5:23-7.56(a) (first paragraph (a) only) and (a)1, 7.57(a), 7.58(a), and 7.85, as modified in (a)7 below, shall be the responsibility of the plumbing subcode official.

6. Enforcement of N.J.A.C. 5:23-7.1 through 7.11, 7.89 and 7.90 shall be the responsibility of all subcode officials.

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7. Inspection of controls of mechanisms referred to in N.J.A.C. 5:23-7.85 regulated by the electrical, fire protection or plumbing subcodes shall be the responsibility of the corresponding subcode officials. Controls of all other mechanisms shall be inspected by the building subcode official.

8. Enforcement of the remaining sections of this subchapter shall be the responsibility of the building subcode official.

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# (a)

## NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

### Investment of Surplus Funds

### Reproposed New Rules: N.J.A.C. 5:80-29

Authorized By: New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.

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

Proposal Number: PRN 1991-446.

Submit comments by October 3, 1991 to:

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

The agency proposal follows:

**Summary**

The New Jersey Housing and Mortgage Finance Agency, pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate income families.

Housing sponsors which own Agency financed housing projects are restricted to a specified return on equity. When a project generates more surplus income than the sponsor, by law, may earn, the money remains in the project's operating accounts and is invested. The so-called "phantom income" which is generated from such investments cannot be distributed to the sponsors and yet, is taxable to them, as present Agency policy does not permit housing sponsors to invest surplus funds in tax free investments.

In response to this problem, the Agency drafted new rules which grant housing sponsors the flexibility to invest surplus funds in allowable tax free or taxable investments. These rules were published in the New Jersey Register for public comment on July 2, 1990 at 22 N.J.R. 1974(a). Due in part to comments received and changes initiated by the Agency, the rules were reproposed for comment on December 17, 1990 at 22 N.J.R. 3670(a). In response to the second publication, several additional comments were received. The comments and the Agency's response are summarized below. Due in part to comments received from the reproposal and changes initiated by Agency staff, the Agency is again proposing these rules for comment. Changes from the proposal at 22 N.J.R. 3670(a) are outlined below within the section summarizing the public comments and Agency response.

COMMENT: National Corporation for Housing Partnerships (NHP) suggests that repurchase agreements be included as one of the permissible investments. They indicate that repurchase agreements "offer equivalent security and yield and greatly increased liquidity."

RESPONSE: Agency staff disagrees with the commenter's assessment of the security of repurchase agreements. Repurchase agreements are not as secure as the permitted investments proposed by Agency staff and present a greater degree of risk. Accordingly, staff does not recommend the inclusion of repurchase agreements to the list of permitted investments. The staff also notes that HUD does not permit repurchase agreements as a permitted investment.

COMMENT: St. Lucy's Development Corporation questioned whether or not certificates of deposit are considered permissible investments.

RESPONSE: The previous version of the proposed rules included bank accounts, insured by the FDIC, as one of the permissible investments. It was intended that this would encompass certificates of deposit. Agency staff has revised the proposed rules to make it clear that certificates of deposit are one of the permitted investments.

COMMENT: First National properties suggested that the Agency specify that the six-month reserve for operating expenses, which must be maintained before surplus is allowed to be made in permitted investments, does not include a reserve for debt service. They also commented that Standard and Poor's and Moody's use different rating designations and that the rules be amended to clarify these differences.

RESPONSE: Agency staff does not agree with the commenter's suggestion that debt service should be excluded from the six-month operating expense requirement. Agency staff believes that debt service should be considered as part of the operating expenses of the project for determining the availability of surplus funds. The staff feels that a six-month operating expenses reserve, which includes debt service payments, is needed. With regard to the comment concerning the different ratings by Standard and Poor's and Moody's, Agency staff recognizes there are differences. The rules provide that the required rating can be from *either* Standard and Poor's or Moody's. Agency staff does not recommend any changes to the rules based on the comments received.

COMMENT: PRD Management suggests that projects which have excess funds, but less than the six-month reserve for operating expenses pursuant to the definition of surplus, be permitted to invest such excess in a non-restrictive time investment (for example, money market account). They also suggest a 14 day time in which the Agency must respond to requests to invest surplus in permitted investments.

RESPONSE: For projects without surplus funds, as defined, the Agency's Management Manual would govern the investment and use of project funds. Pursuant to the manual, money market funds are permissible investments, provided the funds are insured by the FDIC. The staff does not recommend any changes based on this comment. With regard to an Agency review time period, Agency staff has revised the rules to include a 30 day turnaround from receipt of a complete request package.

COMMENT: Parkview Towers suggested that New Jersey-tax free insured municipal bonds be included as one of the permitted investments.

RESPONSE: Agency staff agrees with the suggestion made. Revisions have been made to include municipal bonds within the list of permitted investments, provided the bonds are rated A or higher. Agency staff has also added New Jersey bond funds as a permitted investment, provided 90 percent of the bonds within the fund are rated A or higher.

COMMENT: Orange Senior Citizens questioned whether or not the Nuveen Money Market Tax Fund, a triple-A rated investment, would qualify under the list of permitted investments.

RESPONSE: Agency staff would approve the Nuveen Money Market Tax Free Fund, if it qualifies as an eligible New Jersey bond fund.

In addition to the revisions noted above, Agency staff has made two additional changes. First, United States Treasury Bonds have been added to the list of permissible investments. Secondly, the Agency has reorganized the form of the rules. The former version attempted to incorporate the various applicable HUD rules and to reiterate the investments permitted by HUD.

Agency staff no longer recommends this aproach due to the chronic revision in HUD rules. Instead, Staff recommends that the rules refer to HUD rules for the permitted investments for those projects insured or subsidized by HUD.

**Social Impact**

The proposed new rules will increase the flexibility of housing sponsors to determine the best investment strategy for surplus funds.

**Economic Impact**

The proposed new rules will enable housing sponsors to choose the form of investment that will benefit the project and minimize the sponsor's tax obligations for that income which exceeds the sponsor's return on equity.

**Regulatory Flexibility Analysis**

The proposed new rules allow housing sponsors, most of which are small businesses as that term is defined under the regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., greater flexibility in determining the form of investment for surplus funds. The only reporting or recordkeeping requirement imposed by the proposed rules is that a housing sponsor obtain Agency approval prior to the investment of surplus funds. It shall be the Agency's responsibility, however, at the housing sponsor's written request, to determine the extent and availability of surplus funds. As to compliance requirements, the proposed rules provide greater flexibility for housing sponsors to determine investment strategies for surplus income. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed

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rules. As housing sponsors are predominantly small businesses and because of the minimal nature of the compliance requirements in light of the potential benefits to be derived from the proposed rules, no differentiation in the compliance requirement based upon business size is proposed.

**Full text** of the proposal follows:

SUBCHAPTER 29. INVESTMENT OF SURPLUS FUNDS:

5:80-29.1 Definition of surplus funds

"Surplus funds" means funds available after payment of: debt service and other project expenses, including operating deficits and the full funding of all required reserve accounts; permitted return on equity distributions; any anticipated or proposed capital improvements; a six month reserve for operating expenses for family projects or a three month reserve for senior citizen projects; and any other current obligations of the project.

5:80-29.2 Permitted investments

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), or whose housing projects have executed an Annual Contributions Contract to receive Section 8 subsidies subsequent to February, 1980 may, with prior Agency approval, invest surplus funds in taxable or tax free investments permitted by HUD.

(b) All other projects, with prior Agency approval, may invest surplus funds in the following:

1. State of New Jersey general obligation bonds;
2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher;
3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and whose rating of A or higher has been confirmed within the past 12 months;
4. New Jersey bond funds (consisting of bonds of any of the entities in (b)1 through 3 above) of which at least 90 percent of the bonds within the fund are rated A or higher and whose ratings have been confirmed within the past 12 months;
5. Taxable or tax-free, interest-bearing instruments which are Triple A rated. The Triple A rated instruments are limited to U.S. Treasury Notes, U.S. Treasury Bills, U.S. Treasury Bonds, Federal National Mortgage Association obligations, and Government National Mortgage Association obligations;
6. Certificates of deposit, money market accounts and other bank accounts, provided such accounts are insured in full by the Federal Deposit Insurance Corporation; and
7. Any other investment as permitted under (a) above.

(c) The rating designation in (b) above shall be from either Standard and Poor's or Moody's Investor Services.

(d) Agency staff, at the sponsors' written request, shall determine the extent and the availability of surplus funds and shall respond to a request to invest surplus funds within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

5:80-29.3 General applicability

The rules within this subchapter shall apply to all Agency financed housing projects. In the event the housing project receives HUD Section 8 or Section 236 subsidies or whose mortgage is insured, directly or indirectly, by HUD, any appropriate HUD rules, regulations or requirements (hereafter HUD directives) shall also apply. In the event that there are any inconsistencies between the rules in this subchapter and applicable HUD directives, the HUD directives shall prevail.

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# (a)

## NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

## Attorney Services

## Proposed New Rules: N.J.A.C. 5:80-31

Authorized By: New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Authority: N.J.S.A. 55:14K-5g.
Proposal Number: PRN 1991-447.

Submit comments by October 3, 1991 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

**Summary**

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate-income families.

In connection with receiving Agency financing, housing sponsors enter into mortgage and other contractual documents which outline the terms and conditions of obtaining Agency financing. Part of these terms require sponsors to seek Agency approval for expenditures necessary for operating the project. The proposed new rules govern attorney services needed in connection with the operation of housing projects. The rules outline the permissible scope of services and maximum fees that the Agency will approve. These rules simply codify the existing procedure as outlined in the contractual documents between the Agency and sponsor.

**Social Impact**

The Agency monitors and approves expenditures in order to assure that costs are reasonable and/or necessary to the project operation. Such monitoring helps enable the Agency to minimize rent increases and to maintain the project at rents affordable to low and moderate-income residents.

**Economic Impact**

The proposed rules have been developed in consultation with a task force of sponsors and managing agents of Agency-financed projects. The rules provide increases in the maximum fee allowances over current Agency policies. While the increase in maximum fees will increase project expenditures, it will also provide sponsors with a broader range of attorney services and a broader range in the selection of attorneys, which is intended to provide improved attorney services to the project.

**Regulatory Flexibility Analysis**

The proposed new rules require housing sponsors, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to obtain Agency approval to engage the services of attorneys. The only reporting or recordkeeping requirement imposed by the proposed rules is that housing sponsors must obtain Agency approval for engaging the services of an attorney. As to compliance requirements, the rules codify existing requirements for engaging attorney services, which requirements have been outlined in the contractual documents between the Agency and sponsors and in management manuals adopted by the Agency for use by sponsors. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed rules. Because housing sponsors are predominantly small businesses and due to the minimal nature of the reporting and compliance requirement, no differentiation in the compliance requirement based upon business size is proposed.

**Full text** of the proposal follows:

SUBCHAPTER 31. ATTORNEY SERVICES

5:80-31.1 Applicability

The rules within this subchapter apply to the engagement of the services of an attorney by housing sponsors during the operation

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of their housing project and which services will be paid out of project funds. These rules shall not apply to attorney services paid for out of return on equity funds approved by the Agency for distribution or out of non-project funds.

5:80-31.2 Scope of services

(a) Sponsors may engage the services of an attorney to perform necessary general legal services in connection with and respecting the operation of their project. Such general legal services include, but are not limited to:

1. Advising the sponsor with regard to the rules of the project, the Agency and, if applicable, the Department of Housing and Urban Development;

2. Advising the officers and directors on elections as provided by the by-laws or partnership agreement of the sponsors and supervision of elections of all officers and directors;

3. Preparation and filing of any necessary reports, forms and other documents required by law;

4. Advising the sponsor with regard to legal matters related to project bank accounts, resolutions, duties of officers, directors and employed personnel;

5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossess actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

5:80-31.3 Maximum fees

(a) The maximum fees which can be paid from project funds for Agency approved attorney services are as follows:

1. General legal matters ... up to $125.00/hour;

2. Tenancy actions, as follows:

i. For each of the first two cases (requiring court appearance) on the same day ... up to $100.00;

ii. For each additional case presented on the same day ... up to $75.00;

iii. For each case prepared for trial but resolved prior to actual court appearance ... up to $50.00;

3. General litigation, as follows:

i. Non-trial hours ... up to $175.00/hour;

ii. Trial hours ... up to $200.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

5:80-31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80-31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80-31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

# HUMAN SERVICES

## (a)

## DIVISION OF MEICAL ASSISTANCE AND HEALTH SERVICES

### Increase in Income Eligibility Limits Pharmaceutical Services Manual; Hearing Aid Assistance for the Aged and Disabled; Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual; Lifeline Credit Program/Tenants' Lifeline Assistance Program Manual

### Proposed Amendments: N.J.A.C. 10:51-5.6; 10:69-5.1; 10:69A-1.2, 5.3, 5.6, 6.2, 6.10; and 10:69B-4.2

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-20 through 24, 36 through 42; N.J.S.A. 48:2-29.15, 16, 17, 48:2-29.31, 32; P.L. 1991, c.84 (approved April 3, 1991).

Agency Control Number: 91-P-24.

Proposal Number: PRN 1991-445.

Submit comments by October 3, 1991 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625-0712

The agency proposal follows:

**Summary**

The proposed amendments will increase the income limits for three State-funded programs in accordance with recently enacted legislation, P.L. 1991, c.84, approved April 3, 1991. The three programs are administered by the Division of Medical Assistance and Health Services (Division).

The new income levels are applicable to the Pharmaceutical Assistance to the Aged and Disabled Program (PAAD), the Hearing Aid Assistance to the Aged and Disabled Programs (HAAAD), and the Lifeline Credit Program/Tenants' Lifeline Assistance Program. (The term "lifeline" will be used generically in this summary to refer to both homeowners' and tenants' benefits.) The income limit for single individuals has been increased from $13,650 to $15,700; the income limit for married couples has been increased from $16,750 to $19,250. A brief description of these three programs follows.

The PAAD Program enables eligible persons to receive prescribed legend drugs, insulin, insulin syringes and diabetic testing materials.

The HAAAD Program provides eligible individuals a payment of up to $100.00 in a calendar year in which a hearing aid is purchased.

The intent of the Lifeline Credit Program is to provide a minimum supply of gas and electricity for heating, lighting, cooling, cooking, and other essential household usages, to residential utility customers whose level of income and age or physical disability make it difficult to meet the extraordinary energy costs of recent years. The intent of the Tenants Lifeline Assistance Program is to afford assistance to residents who would be eligible for the Lifeline Credit Program, but who, because their

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utility costs are included as part of their rental, do not receive an individual utility bill.

The applicability of the recent legislation noted above on the proposed amendments to the New Jersey Administrative Code is discussed below.

With respect to PAAD, the proposed amendments indicate that all beneficiaries eligible for PAAD shall be granted eligibility retroactive to January 1, 1991, if their application is submitted to the Division by August 31, 1991. A public notice with this information was prepared for distribution in New Jersey newspapers.

PAAD beneficiaries who apply on or after September 1, 1991, shall have their applications processed and, if found eligible, shall be entitled to PAAD coverage prospectively, but not retroactively.

The proposed amendment also contains a modification to the PAAD renewal policy at N.J.A.C. 10:69A-5.3. The specific dollar figures are being deleted. Instead, the Division will continue its existing policy of requiring PAAD beneficiaries to renew their eligibility for continuing PAAD benefits at least every two years. Some beneficiaries may be subject to annual renewal depending on their income. The Division's policy is to conduct annual renewal on those PAAD beneficiaries whose income approaches the fixed income limits for eligibility as set forth in the New Jersey Statutes and codified at N.J.A.C. 10:69A-6.2. The renewal policy applies equally to single persons and married couples. The renewal policy does not *per se* disqualify a PAAD beneficiary from continued coverage. It is the beneficiary's income that is the basis for approving or denying PAAD coverage.

Regardless of the frequency of renewal, PAAD beneficiaries are notified approximately four months prior to their eligibility expiration date. The Division notifies a beneficiary if his or her application is automatically renewed or if a renewal form must be completed and returned to the Division.

The provisions for biennial renewal are not applicable to HAAAD and Lifeline. Persons who are PAAD-eligible receive a notice reminding them to reapply.

**Social Impact**

The proposed amendments will broaden the scope of PAAD, Lifeline and HAAAD eligibility levels to include individuals of higher income levels. They will also allow new eligibles to be reimbursed for prescriptions purchased since January 1, 1991.

An additional feature in the proposed amendments is that PAAD beneficiaries whose income falls below a certan limit may renew their eligibility every two years rather than annually.

The proposed higher eligibility levels will provide assistance to approximately 36,000 additional beneficiaries who were previously ineligible for the program. The average annual payment per PAAD recipient is approximately $611.31. In addition, the increased eligibility levels in the proposed amendments will allow approximately 22,368 additional eligibles to receive the $225.00 Lifeline benefit, and approximately 3,969 eligible persons will be able to receive a $100.00 Hearing Aid Assistance reimbursement. It is permissible for persons to receive benefits through more than one of these assistance programs, and among the newly eligible persons, it is almost inevitable that many will qualify for benefits through two or even all three of these programs.

**Economic Impact**

The estimated cost of the expansion of the PAAD program is approximately $28 million. The expansion of the Lifeline Program will cost a total of approximately $5,385,000. The increased coverage for hearing aid assistance will amount to a total cost of approximately $396,858. These expenditures are entirely from State funds. PAAD beneficiaries are required by law to pay a $2.00 copayment for each prescription.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required. The persons affected by these amendments are not small businesses, as defined in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-16 et seq. The persons affected are individual applicants and/or beneficiaries of the PAAD, Lifeline or HAAAD programs. Pharmaceutical providers will continue to fill prescriptions for PAAD eligible beneficiaries as they have in the past. The program is administered by the Division of Medical Assistance and Health Services, which is a governmental agency.

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

10:51-5.6 Eligible PAAD beneficiary

(a) An eligible [patient] **beneficiary** is a legal resident of the State of New Jersey, 65 years of age or older or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits with an annual income less than [$13,650] **$15,700** for a single person and less than [16,750] **$19,250** in combined income for a married couple, who possesses a current [valid eligibility identification card see N.J.A.C. 10:51-5.22] **PAAD identification card or the temporary identification card. (See N.J.A.C. 10:51-5.23.)**

1. (No change.)

(b) (No change.)

10:69-5.1 Age and income standards

(a) To be eligible for HAAAD, the applicant must be 65 years of age or older or must be under 65 and over 18 years of age and receive Social Security Title II disability benefits and have an annual income below [$13,650] **$15,700** if single or [$16,750] **$19,250** combined income if married.

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

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1.-6. (No change.)

7. Chapter 221, Laws of 1987 effective July 29, 1987 and retroactive to December 31, 1986; [and]

8. Chapter 16, Laws of 1987, effective February 1, 1989[.]; **and**

**9. Chapter 84, Laws of 1991, effective April 3, 1991 and retroactive to January 1, 1991.**

(b) (No change.)

10:69A-5.3 Eligibility effective date

(a) (No change.)

(b) [A PAAD beneficiary shall renew his/her eligibility every year unless his/her annual income is below $11,000 for single persons or $14,000 for married persons. In that case, he/she would renew every two years. Approximately four months prior to his/her eligibility expiration date, PAAD will advise the beneficiary if he/she is eligible for biennial eligibility, or if he/she will be required to complete a renewal form.] **The Division shall conduct periodic renewals of PAAD beneficiaries to determine continued eligibility. Generally, renewals shall be conducted every two years. Renewals will be conducted annually in those instances when the PAAD beneficiaries' income approaches the eligibility limits for a single person or married couple as defined in N.J.A.C. 10:69A-6.2. Approximately four months prior to his or her eligibility expiration date, PAAD will advise the beneficiary if he or she is eligible for biennial eligibility, or if he or she will be required to complete a renewal form.**

1.-2. (No change.)

**3. All beneficiaries made eligible for PAAD as a result of the enactment of P.L. 1991, c.84 shall be granted eligibility retroactive to January 1, 1991, if their application is submitted on or before August 31, 1991.**

10:69A-5.6 Responsibilities in the application **renewal** process

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

(c) The applicant **or beneficiary** has the responsibility to:

1.-6. (No change.)

(d) (No change.)

10:69A-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than [$13,650] **$15,700** to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than [16,750] **$19,250** to be eligible for PAAD.

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1.-2. (No change.)
(c)-(i) (No change.)

10:69A-6.10 Eligibility period

(a) A PAAD eligibility card is effective for one year. The PAAD beneficiary shall renew his/her eligibility [every year unless his/her income is below $11,000 for single persons or $14,000 for married persons] **in accordance with the provisions of N.J.A.C. 10:69A-5.3(b).** In that case, he or she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years. **Beneficiaries who are subject to the two year renewal provision will have their eligibility card renewed automatically for one additional year.**

(b) (No change.)

10:69B-4.2 Income standards

(a) Any single, permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than [$13,650] **$15,700** to be eligible for Lifeline.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than [$16,750] **$19,250** to be eligible for Lifeline.

1.-2. (No change.)
(c)-(h) (No change.)

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# (a)

## DIVISION OF ECONOMIC ASSISTANCE

## Assistance Standards Handbook
## Resources

## Proposed Amendment: N.J.A.C. 10:82-3.1

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services

Authority: N.J.S.A. 44:10-3

Proposal Number: PRN 1991-441

Submit comments by October 3, 1991, to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment, which adds a new subsection (f) at N.J.A.C. 10:82-3.1, clarifies current policy with respect to "and" and "or" bank accounts, and provides a uniform procedure for evaluation of bank account resources of recipients. Funds in "and" accounts are presumed to be owned in equal proportion by the persons listed on the account. This presumption may be rebutted by evidence that one person listed on the account has contributed more to the account than another. Since all parties listed on an "and" account must sign a withdrawal document to access account funds, the account will be deemed an inaccessible resource if any party refuses to cooperate in the withdrawal.

All funds in "or" accounts are presumed to be available to the owners of the account equally. This resumption may be rebutted by evidence that demonstrates that one owner has contributed a greater proportion of the funds in the account.

The proposed amendment also allows eligible unit members to submit evidence that none of the funds in an account belongs to them despite their being listed as co-owners.

**Social Impact**

The proposed amendment will provide a uniform procedure for evaluation of bank account resources of recipients. By providing a uniform procedure for evaluation, the proposed amendment should enhance the perception that all recipients are to be treated in an equitable manner. Further, the proposed amendment will allow applicants or recipients to explain the origin of contributions made to bank accounts on which their names appear as co-owners. The proposed amendment recognizes that the presumption of equal ownership of "and"/"or" bank accounts may not be factual and may be rebutted.

**Economic Impact**

The proposed amendment should aid the income maintenance worker in making determinations of eligibility in cases where "and"/"or" bank accounts are in question, thereby preventing possible assistance overpayments. Further, it will prevent incorrect findings of resource ineligibility by allowing an in-depth evaluation of bank account ownership.

**Regulatory Flexibility Statement**

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes 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 the Aid to Families with Dependent Children program 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]):

10:82-3.1 General provisions

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

**(f) "And"/"or" bank accounts are to be treated as follows:**

**1. For checking and savings accounts in which the names of the owners are stated in the conjunctive ("and" accounts), the eligible family member shall be presumed to possess the funds in proportion to the number of owners listed on the account. Such presumption is rebuttable and shall not apply if the eligible family member and/or the other owner(s) demonstrate to the CWA that actual ownership (based on the contributions by each of the parties to the sums on deposit) of the funds is in a different proportion. For example, a disabled yet competent sibling sets up an "and" account with his or her healthy sibling. As this type of account usually requires the signatures of both parties for withdrawal purposes, the "and" account would allow the disabled sibling a measure of control and supervision of his or her finances. However, should two or more signatures be required to withdraw monies and another party to the account (that is, a non-client) is uncooperative, the account shall be considered an inaccessible resource. In the event any monies are subsequently withdrawn by the client through the cooperation of the other party, the funds withdrawn shall be treated as an available resource.**

**2. For checking and savings accounts in which the names of the owners are stated in the disjunctive ("or" accounts), the eligible family member shall be presumed to possess all the funds therein regardless of their source. Such presumption is rebuttable and shall not apply if the eligible family member and or the other owner(s) demonstrate to the CWA that ownership of the funds is in a different proportion, predicated on contributions by each party to the sums on deposit. For example, an elderly parent wishing to ensure 100 percent accessibility of his or her funds to a child in case of sudden illness or incapacity may wish to set up an "or" account to allow for prompt payment of debts and expenses if the need arises.**

**3. If it can be demonstrated that funds in either type of account are not legally owned by an eligible family member, such funds shall not be counted toward the resource maximum. In such situations a signed statement attesting to the lack of ownership should be obtained from the eligible family member.**

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# COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

## (a)

## NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

### Direct Loan Program

### Proposed Amendments: N.J.A.C. 12A:31-1
### Proposed Repeal: N.J.A.C. 12A:31-3

Authorized By: New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Daggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).

Proposal Number: PRN 1991-421.

Submit comments by October 3, 1991 to:
Mark L. Quinn
New Jersey Development Authority for
Small Businesses, Minorities' and Women's Enterprise
20 West State Street
CN 836
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Amended rules are being proposed to implement the programs of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

Some key provisions of the proposed amendments include:

1. N.J.A.C. 12A:31-1 is amended to replace all reference to micro-loans with direct loans. In conjunction with the proposed repeal of N.J.A.C. 12A:31-3, the action will result in one type of loan servicing the purposes of both the micro- and direct loan program.

2. N.J.A.C. 12A:31-1.3(d) is proposed to provide loans to certain existing businesses that have an immediate need for funds and are not capable of preparing a complete business plan in a timely manner.

3. N.J.A.C. 12A:31-1.3(e) is an amendment to clarify the requirement for the principals of an applicant to provide current personal financial statements.

4. N.J.A.C. 12A:31-1.4(c) is amended to establish the maximum direct loan at $1,000,000.

5. N.J.A.C. 12A:31-1.4(d) is proposed to state the terms of financing provided to certain businesses which do not submit a business plan.

6. N.J.A.C. 12A:31-1.6(a) is proposed to require minimum collateral standards for applicants which do not submit a business plan.

7. N.J.A.C. 12A:31-1.7(b) is amended to require recipients of a direct loan to submit annual tax returns and annual financial statements prepared on a reviewed basis. Recipients of a direct loan in excess of $500,000 must provide audited financial statements every three years.

**Social Impact**

The social impact of these proposed amendments should be positive in nature. These amendments will standardize the operation of the financing programs of the Authority. These amendments will also facilitate the application requirements of certain prospective borrowers, provide an incentive for prospective borrowers and certain borrowers to receive management and technical assistance for the operation of their business, and enable the Authority to provide financing in larger amounts.

**Economic Impact**

The economic impact of these amendments should be positive in nature. These amendments may reduce the cost to borrowers and prospective borrowers to access Authority funds. Some borrowers may incur costs to comply with the requirement to submit a business plan. The cost to the State and the Authority to implement these amendments will not change.

**Regulatory Flexibility Analysis**

The proposed amendments do impose reporting and compliance requirements on loan applicants and recipients, practically all of whom would be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the compliance requirements at N.J.A.C. 12A:31-1.3(d) and 1.6(a)5 are designed to expand the pool of eligible applicants. The personal financial statement requirement for an applicant's principals at N.J.A.C. 12A:31-1.3(e)4 is reduced from statements for three years to current statements. Revised N.J.A.C. 12A:31-1.7(b) reduces the annual financial reporting requirement from an audit utilizing GAAP to an annual financial statement on a reviewed basis. While recipients of loans of $500,000 or more are required to submit a triennial audit utilizing GAAP, reviewed statements are required in other years. Given the small business nature of those affected by these rules, and the amendments' purpose to facilitate access to Authority funds, no lesser requirements or exemptions are necessary.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12A:31-3.

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

SUBCHAPTER 1. [MICRO-LOAN] **DIRECT LOAN** PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a [micro-loan] **direct** loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

(b) This program provides for the Authority to provide [for] **loans to** eligible businesses[, small term loans with short repayment periods].

(c) (No change.)

12A:31-1.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a [micro-loan] **direct loan**.

. . .

"Eligible business" means a small business, minority business or [women's] **women** business determined to be eligible to receive assistance and participate in programs of the Authority.

. . .

"Loan recipient" means an eligible business which has been approved to receive or has received [an ML] **a direct loan**.

. . .

["Micro-loan" or "ML"] **"Direct loan"** means a [short term] loan or line of credit, or other non-grant financing instrument or structure approved by the Board and advanced by the Authority to an eligible business for the purpose of fixed asset acquisition, working capital or contract financing.

. . .

12A:31-1.3 Application for a [micro-loan] **direct loan**

(a) Each application for [an ML] **a direct loan** shall be accompanied by a non-refundable application fee of $250.00.

(b) Each application for [an ML] **a direct loan** shall be accompanied by written evidence that the applicant has been unable to acquire financing similar to that sought from the Authority.

(c) Each application for [an ML] **a direct loan** shall be accompanied by a business plan, including financial projections, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

**(d) An application for a direct loan from a business which has been operating for a period of more than one year may include financial projections of net income and cash flow for at least one year, provided in a format as determined by the Authority. An eligible business may apply for a direct loan under this section no more than one time.**

[(d)]**(e)** Each application for [an ML] **a direct loan** shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and [the] **current personal** financial statements of the principals of the applicant [business for the past three years].

5.-6. (No change.)

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12A:31-1.4 **Allocation of** [micro-loan] **direct loan** assistance

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

(c) [The Authority may provide micro-loans to an eligible business in the following manners;

1. For the purpose of fixed asset acquisition for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed five years. The maximum amount of the loan shall not exceed $50,000.

2. For the purpose of working capital for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed a period of five years. The maximum amount of the loan shall not exceed $50,000.

3. For the purpose of contract financing for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed a period of one year or the term of the contract whichever is greater. The maximum amount of the loan shall not exceed $50,000.] **The Authority may provide direct loans to an eligible business for the purpose of fixed asset acquisition, working capital, or contract financing at Authority designated rates. The terms of the direct loan shall not exceed 15 years. The maximum amount of the loan shall not exceed $1,000,000.**

**(d) The Authority may provide one direct loan to an eligible business which applies to the Authority pursuant to N.J.A.C. 12A:31-1.3(d) for the purpose of fixed asset acquisition, working capital, or contract financing at Authority designated rates. The terms of the direct loan shall not exceed six months. The maximum amount of the loan shall not exceed $20,000.**

12A:31-1.5 Time of application for a [micro-loan] **direct loan**

An applicant may apply to the Authority at any time for a [micro-loan] **direct loan**. However, the Authority may establish deadlines for receipt and approval of applications, as it deems necessary.

12A:31-1.6 Evaluation of applications for [micro-loans] **direct loans**

(a) The Executive Director shall evaluate each application for a [ML] **direct loan** considering the following factors:

1. The debt to equity ratio of the applicant;

2. The general financial condition of the applicant;

3. The likelihood that the applicant will not default on the [ML] **direct loan**; [and]

4. The length of time that the applicant has been in existence as well as the success and growth potential of the applicant[.]; **and**

**5. For eligible businesses which apply pursuant to N.J.A.C. 12A:31-1.3(d) the quality of the collateral offered such that the value of collateral is a minimum of 150 percent of the amount of the direct loan.**

(b)-(d) (No change.)

(e) No [micro-loan] **direct loan** approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the [micro-loan] **direct loan** which has been approved by the Board or $100.00, whichever is greater, and a closing fee of one-half of one percent of the total amount of the [micro-loan] **direct loan** which has been approved by the Board. In the case of a line of credit, the fees shall be computed based on the maximum amount of the line of credit.

12A:31-1.7 Reporting and compliance

(a) Upon receipt of a [ML] **direct loan** from the Authority, the loan recipient shall be required to submit a report to the Authority every year which shall include the following:

1.-4. (No change.)

(b) Upon receipt of a [ML] **direct loan** from the Authority, the loan recipient shall be required to submit an annual [audit prepared by a public accountant utilizing GAAP] **financial statement prepared on a reviewed basis by a certified public accountant or a public accountant, except that recipients of a direct loan of $500,000 or more shall be required to submit audited financial statements prepared by a certified public accountant or a public accountant utilizing GAAP every third year after closing of the direct loan. Reviewed statements will be required at other times.**

(c) Upon receipt of a [micro-loan] **direct loan**, the [micro-loan] **direct loan** recipient shall inform the Authority of any contemplated substantive changes in the business.

12A:31-1.8 Rescission of a [micro-loan] **direct loan**

(a) The Authority may, at its discretion, rescind all or part of [an ML] **a direct loan** commitment prior to closing when it has become reasonably evident that:

1. Other commitments of financial resources to the loan recipient have been withdrawn or have been amended in such a manner as to undermine the ability of the loan recipient to repay the [ML] **direct loan.**

2. The loan recipient is no longer capable of meeting any financial obligations made to the Authority;

3. The loan recipient has supplied false or incorrect information, or has misrepresented information of a material matter, whether oral or written, upon which the Authority relied when approving the [ML] **direct loan**; or

4. The loan recipient is not of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a [ML] **direct loan** shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing it of the rescission.

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# (a)

## NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

## Loan Guarantee Program

## Financial Statements

## Proposed Amendments: N.J.A.C. 12A:31-2.3 and 2.7

Authorized By: New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).

Proposal Number: PRN 1991-435.

Submit comments by October 3, 1991 to:
Mark L. Quinn
New Jersey Development Authority for
Small Businesses, Minorities' and Women's Enterprises
20 West State Street
CN 836
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Amendments to N.J.A.C. 12A:31-2, Loan Guarantee Program, are being proposed to implement the programs of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

The key provisions of the proposed amendments to the loan guarantee rules are as follows:

1. N.J.A.C. 12A:31-2.3(d)4 is amended to clarify the requirement for the principals of an applicant to provide current personal financial statements.

2. N.J.A.C. 12A:31-2.7(b) is amended to require recipients of a loan guarantee to submit annual financial statements prepared on a reviewed basis by a certified public accountant or public accountant for loan guarantees up to $499,999. Recipients of a Loan Guarantee of $500,000 to $1,000,000 will be required to submit a financial statement which is audited by a certified public accountant or a public accountant utilizing GAAP every third year, commencing from closing of the direct loan.

**Social Impact**

The social impact of these proposed amendments should be positive in nature. These amendments will reduce the number of documents and the preparation costs of the financial statements required from guarantee recipients.

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**Economic Impact**

The economic impact of these amendments should be positive in nature. These amendments reduce the costs incurred by guarantee recipients associated with providing annual financial statements.

**Regulatory Flexibility Statement**

The proposed amendments will have a positive impact on loan guarantee applicants and recipients, practically all of whom are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. An applicant need only provide current personal financial statements for its principals, rather than statements for the prior three years. The cost of annual reporting to the Authority should be reduced for all loan guarantee recipients, since audits utilizing GAAP are no longer required (except every third year for guarantees exceeding $500,000); reviewed financial statements only are required. Given the small business nature of guarantee applicants and recipients and the effects of these amendments, no lesser requirements or exemptions for small businesses are necessary.

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

SUBCHAPTER 2. LOAN GUARANTEES

12A:31-2.3 Applications for loan guarantee

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

(d) Each application for a loan guarantee shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and [the financial statements of the principals of the applicant business for the past three years] **current personal financial statements for the principals of the applicant.**

12A:31-2.7 Reporting and compliance

(a) (No change.)

(b) Upon receipt of a loan guarantee from the Authority, the loan guarantee recipient shall be required to submit an annual [audit prepared by a certified public accountant utilizing GAAP] **financial statement prepared on a reviewed basis by a certified public accountant or a public accountant if the loan guarantee is less than $500,000. Recipients of a loan guarantee of more than $500,000 shall be required to submit audited financial statements prepared by a certified public accountant or a public accountant utilizing GAAP every third year after closing of the loan guarantee. Reviewed statements will be required at other times.**

(c) (No change.)

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# LAW AND PUBLIC SAFETY

## (a)

## DIVISION OF CONSUMER AFFAIRS

## State Board of Real Estate Appraisers

## State Board of Real Estate Appraisers Rules

## Proposed New Rules: N.J.A.C. 13:40A

Authorized By: Jan Gavzy, Acting Director, Division of Consumer Affairs

Authority: P.L. 1991, c.68, specifically section 8n

Proposal Number: PRN 1991-444.

Submit written comments by October 3, 1991 to:
Susan Gartland, Acting Executive Director
Board of Real Estate Appraisers
P.O. Box 45012
Newark, New Jersey 07101

The agency proposal follows:

**Summary**

Subsequent to the recent savings and loan financial crisis, Congress recognized the need to regulate real estate appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (Pub. L. 101-73, 103 Stat. 183 (1989); 12 U.S.C. §§ 3310, 3331-3351), which is the appraisal amendment to the savings and loan bailout bill signed by President Bush, was enacted to provide for state oversight of real estate appraisals utilized in connection with Federally related transactions.

On March 21, 1991, the Real Estate Appraisers Act, P.L. 1991, c. 68 ("the Act"), was signed into law. The Act created the State Real Estate Appraiser Board within the Division of Consumer Affairs and assigned the Board the responsibility of establishing real estate appraiser certification and licensing standards. In order to implement the provisions of the Act, the Board is proposing a new chapter entitled "State Board of Real Estate Appraisers" to be codified at N.J.A.C. 13:40A.

It should be noted first that certification and licensure under the Act are voluntary, although under Federal law certified or licensed appraisers must be used for certain Federally-related transactions starting January 1, 1992. Accordingly, individuals who wish to engage in such transactions beginning January 1, 1992, will be required by Federal law to be state certified or licensed. The Board also points out that as required by the Act, the proposed certification and licensing standards are based upon the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation, a not for profit corporation established on November 30, 1987 by several professional appraisal organizations in order to enhance the quality of professional appraisals.

The proposed rules provide for two classifications of real estate appraisers: State certified and State licensed. The certified classification requires emphasis on non-residential appraisal work and the licensed classification requires emphasis on one-to-four family residential appraisal work. On March 27, 1991, the Appraiser Qualifications Board ("AQB") of the Appraisal Foundation agreed to accept a third classification, that of state certified residential appraiser. This classification would require emphasis on complex one-to-four family residential appraisal work. However, the Board cannot establish this third classification until such time as the Act is amended to include this classification.

A summary of each of the six subchapters of N.J.A.C. 13:40A follows.

The purpose and scope of the proposed new rules, as well as definitions of essential terms, are provided in subchapter 1.

Subchapter 2 sets forth proposed requirements for certification of real estate appraisers. Applicants for certification will be required to successfully complete the Board approved examination. In order to be eligible to take the certification examination, applicants will be required to complete 165 classroom hours of courses in subjects related to real estate appraisal, with particular emphasis on the appraisal of non-residential properties. Listed in this subchapter are 15 topics which must be covered in the 165 classroom hours, which must include coverage of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation subsequent to April 27, 1987.

The applicant will, in addition, be required under the proposed rules to document 2,000 hours of acceptable appraisal experience in no less than two nor more than four years, at least 50 percent of which shall have been in non-residential work. Examples of acceptable appraisal experience are set forth in this subchapter.

Finally, provision is made for the issuance of temporary visiting certificates to individuals who are on temporary assignment in this State. Except for good cause shown, the Board may issue no more than three temporary certificates within one calendar year to individuals who submit satisfactory proof of current valid certification to practice in another state.

Subchapter 3 sets forth proposed requirements for licensing of real estate appraisers. Applicants will be required to successfully complete the Board approved licensing examination. In order to be eligible to take the examination, the applicant must document completion of 75 classroom hours of courses in subjects related to real estate appraisal, with particular emphasis on the appraisal of one-to-four unit residential properties. Applicants for licensure are required to cover in the 75 classroom hours the same specifically enumerated topics which applicants for certification are required to cover, including coverage of Uniform Standards subsequent to April 27, 1987.

Subchapter 3 also provides for temporary licensure. An applicant may be permitted to take the examination prior to completing the 75 classroom hour educational requirement provided the applicant applies to the Board prior to September 21, 1991 and meets all other Board requirements for licensure. Upon successful completion of the examination, the applicant will receive a non-renewable temporary license effective for no more than 420 days. The Board notes parenthetically that it has no similar requirement for temporary certification because Title

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XI requires that the states establish certification criteria that, at a minimum, are consistent with the AQB's certification qualifications. At this time, these qualifications compel persons to complete all educational requirements before they can take a certification examination. Under Title XI, however, states are free to establish meaningful, not overly restrictive qualification criteria for licensed appraisers. New Jersey's recently enacted legislation, P.L. 1991, c.68, permits temporary licensure.

The applicant for licensure will also be required to document 2,000 hours of acceptable appraisal experience in no less than two nor more than four calendar years.

Finally, provision is made for temporary visiting licenses similar to the provision for temporary visiting certificates set forth in subchapter 2.

Subchapter 4 details proposed continuing education requirements, which are the same for both certification and licensure; that is, 20 classroom hours of instruction during each biennial period in courses or seminars approved by the Board. This subchapter lists examples of continuing education courses and activities for which the Board may grant credit.

Subchapter 5 lists proposed standards for appraisals. These standards mirror the standards set forth in the Federal regulations implementing Title XI as set forth at 12 C.F.R. section 225.64. This subchapter also provides that an appraiser's failure to comply with these standards shall be construed to be professional misconduct in violation of N.J.S.A. 45:1-21(e).

Subchapter 6, General Provisions, sets forth a proposed fee schedule for the Board.

**Social Impact**

In proposing these rules, the Board of Real Estate Appraisers, created pursuant to P.L. 1991, c.68, is fulfilling its statutorily mandated duty to provide for the voluntary licensing and certification of real estate appraisers.

The Board anticipates that the establishment of appraisal and competency standards on the State level will have the overall effect of increasing public confidence in the real estate appraisal profession. Individuals who utilize the services of a certified or licensed real estate appraiser will be assured that the appraisal is performed in accordance with uniform standards by a licensee whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Individuals who seek certification or licensure will be required to conform to high standards of professional practice for the protection of the public.

**Economic Impact**

The proposed new rules will have an economic impact on individuals who apply to the Board for certification or licensure. The number of such individuals cannot be estimated with any degree of certainty since certification and licensure are voluntary. Applicants will be required to pay a Federal surcharge and will incur costs in meeting the classroom hour and continuing education requirements, all of which are consistent with existing Federal and State requirements. Applicants will also be responsible for application and examination fees, initial certification or licensure fees, and biennial renewal fees.

The rules also will have an economic impact upon providers of real estate appraiser education and continuing education courses other than colleges and universities and members of the Appraisal Foundation. These providers will be required to pay a biennial registration fee for Board review and approval of course offerings.

Pursuant to N.J.S.A. 45:1-3.2, the Board is required to be self-funding; that is, the amount estimated to be required for the Board's administration must be generated from certification and licensing fees. The sums to be raised have been estimated not to exceed the amount required to defray all proper expenses incurred by the Board. Any excess amounts raised will be carried over for the benefit of the Board.

The Board cannot estimate whether the expenses created by these regulations will be passed on to the consumer of real estate appraisal services. The Board points out, however, that as a business expense the proposed fees are reasonable and that any economic impact upon the consumer should be more than outweighed by the increased consumer protection these rules provide.

**Regulatory Flexibility Analysis**

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed rules will apply. The Act defines a 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." On the assumption that the Act is applicable to individual practicing professionals, the following statements apply:

It is impossible to estimate at this time the number of individuals to whom the rules will apply, as certification and licensure are voluntary. Applicants for certification and licensure will be required to complete and document 165 or 75 classroom hours, respectively, of real estate appraisal courses as well as 2,000 hours of real estate appraisal experience. These individuals must also satisfactorily complete the Board-approved examination for certification or licensure. Biennial certification and license renewal requirements include completion of 20 classroom hours of continuing education courses. Professional instructional services may be required in order to comply with these requirements.

The proposed rules also require adherence to detailed appraisal standards. As stated, these standards are based upon the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation. Inasmuch as these standards are already part of the regular practice of most professionals, the Board does not anticipate that this requirement will create additional economic expense for certified and licensed individuals.

These rules will also apply to providers of real estate appraiser education and continuing education courses other than colleges and universities and members of the Appraisal Foundation. Most if not all of these providers would be considered "small businesses" as that term is defined in the statute. These course providers will be required to apply for Board approval and pay the appropriate biennial registration fees ($500.00 for education course providers and $150.00 for continuing education course providers). The Board is unable to estimate the number of continuing education providers who will register with the Board and estimates that approximately 20 providers of education courses are likely to register. Colleges and universities and Appraisal Foundation members are exempt from payment of the biennial registration fee on the basis that their programs are subject to strict oversight by the State Department of Higher Education and the Appraisal Foundation, thus obviating the need for additional detailed Board review. The course offerings of these providers will, however, be subject to Board review as to content.

Individuals seeking temporary visiting certification or licensure must submit to the Board satisfactory proof of current valid certification or licensure in another state and pay the temporary registration fee.

The initial and continuing costs of compliance with the proposed rules cannot be accurately estimated inasmuch as these costs will vary among the individuals seeking certification and licensure. As stated, these rules reflect existing Federal and State requirements and are considered by the Board to represent the minimum requirements necessary for the protection of the public. Accordingly, the proposed rules must be uniformly applicable to all certified and licensed individuals, without distinction as to the size of a professional practice.

**Full text** of the proposed new rules follows:

## CHAPTER 40A
## STATE BOARD OF REAL ESTATE APPRAISERS

### SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:40A-1.1 Purpose and scope

This chapter, as effective (effective date), is promulgated by the Director, Division of Consumer Affairs. The rules contained in this chapter implement the provisions of the Real Estate Appraisers Act, P.L. 1991, c.68, (N.J.S.A. 45:14F-1 et seq.) and provide for the voluntary licensing and certification of real estate appraisers.

13:40A-1.2 Definitions

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

"Appraisal Foundation" means the Appraisal Foundation incorporated in the State of Illinois as a nonprofit corporation on November 30, 1987, as denominated in Title XI of Publ. L. 101-73 (12 U.S.C. section 3331 et seq.).

"Board" means the State Real Estate Appraiser Board in the Division of Consumer Affairs.

"Classroom hour" means 50- minute out of each 60-minute segment. This definition reflects the traditional educational practice of having 50 minutes of instruction and 10 minutes of break time for each scheduled hour of instruction and shall not be interpreted as

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permitting course providers to decrease the prescribed number of classroom hours. Classroom hours shall be deemed to include time devoted to examinations, which are considered to be part of the course.

"Market value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

"State certified real estate appraiser" ("SCREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid certificate for real estate appraisal.

"State licensed real estate appraiser" ("SLREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid license for real estate appraisal.

"Residential" means one to four residential units.

## SUBCHAPTER 2. CERTIFICATION OF REAL ESTATE APPRAISERS

13:40A-2.1 Eligibility for certification

In order to be eligible for certification, an applicant shall be required to successfully complete the Board approved examination for the certification of real estate appraisers.

13:40A-2.2 Eligibility for admission to examination

(a) An applicant shall present evidence to the satisfaction of the Board that he or she is:

1. More than 18 years of age;
2. Of good moral character, as established by references from individuals, schools and other records acceptable to the Board;
3. Has a high school diploma or its equivalent;
4. Has completed the educational requirements described in N.J.A.C. 13:40A-2.3; and
5. Has real estate appraisal experience as described in N.J.A.C. 13:40A-2.4.

13:40A-2.3 Educational requirements for certification

(a) In order to be eligible to take the Board approved examination for the certification of real estate appraisers, an applicant shall be required to complete 165 classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required 165 classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987. The 75 classroom hours required for the licensed classification may be included within the required 165 classroom hours.

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the educational offering is at least 15 classroom hours and where the individual successfully completes an examination pertinent to that educational offering.

(c) The applicant may obtain credit for the classroom hour requirement from the following: colleges, universities, community colleges or junior colleges accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; proprietary schools as approved by the Board.

(d) The Board may credit various appraisal courses toward the 165 classroom hour educational requirement. Applicants shall demonstrate that their education included coverage of all the topics listed below with particular emphasis on the appraisal of non-residential properties.

1. Influences on Real Estate Value;
2. Legal Considerations in Appraisal;
3. Types of Value;
4. Economic Principles;
5. Real Estate Markets and Analysis;
6. Valuation Process;
7. Property Description;
8. Highest and Best Use Analysis;
9. Appraisal Math and Statistics;
10. Sales Comparison Approach;
11. Site Value;
12. Cost Approach;
13. Income Approach;
14. Valuation of Partial Interests; and
15. Appraisal Standards and Ethics.

(e) Experience may not be substituted for education.

(f) The Board shall not grant credit for correspondence courses or for video and remote television educational offerings.

13:40A-2.4 Experience requirements for certification

(a) Each person applying for certification as a real estate appraiser shall furnish documentation satisfactory to the Board that:

1. He or she has accumulated at least 2,000 hours of appraisal experience in no less than two nor more than four calendar years; and
2. At least 50 percent (1,000 hours) of the required experience was in non-residential appraisal work.

(b) Acceptable appraisal experience includes, but is not limited to, the following: fee and staff appraisal; ad valorem tax appraisal; review appraisal analysis; real estate counseling; highest and best use analysis; feasibility analysis/study; and teaching of appraisal courses.

(c) The Board shall award experience credit to ad valorem tax appraisers/appraisals when the applicant demonstrates to the satisfaction of the Board that he or she is using similar techniques as appraisers to value properties and that he or she effectively utilizes the appraisal process.

(d) Education may not be substituted for experience.

13:40A-2.5 Temporary visiting certificate

(a) Upon application to the Board and payment of a registration fee, an appraiser certified in another state may be issued a temporary visiting certificate for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid certificate to practice in another state.

(b) An appraiser certified by another state may apply for no more than three temporary certificates within one calendar year, except as provided in (c) below.

(c) The Board may, in its discretion, waive the requirements of (b) above for good cause shown.

## SUBCHAPTER 3. LICENSING OF REAL ESTATE APPRAISERS

13:40A-3.1 Eligibility for Licensure

In order to be eligible for licensure, an applicant shall be required to successfully complete the Board-approved examination for the licensure of real estate appraisers.

13:40A-3.2 Eligibility for admission to examination

(a) An applicant shall present evidence to the satisfaction of the Board that he or she is:

1. More than 18 years of age;
2. Of good moral character, as established by references from individuals, schools and other records acceptable to the Board;
3. Has a high school diploma or its equivalent;

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4. Has completed the educational requirements as described in N.J.A.C. 13:40A-3.3, except as provided in N.J.A.C. 13:40A-3.5; and

5. Has real estate appraisal experience as described in N.J.A.C. 13:40A-3.4.

13:40A-3.3 Educational requirements for licensure

(a) Except as provided in N.J.A.C. 13:40A-3.5, in order to be eligible to take the Board approved examination for the licensing of real estate appraisers, an applicant shall be required to complete 75 classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required 75 classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987.

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the educational offering is at least 15 classroom hours and where the applicant successfully completes an examination pertinent to that educational offering.

(c) The applicant may obtain credit for the classroom hour requirement from any of the following: colleges, universities, community colleges or junior colleges accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; and proprietary schools as approved by the Board.

(d) The Board may credit various appraisal courses toward the 75 classroom hour educational requirement. Applicants shall demonstrate that their education involved coverage of all topics listed below, with particular emphasis on the appraisal of one to four unit residential properties.

1. Influences on Real Estate Value;
2. Legal Considerations in Appraisal;
3. Types of Value;
4. Economic Principles;
5. Real Estate Markets and Analysis;
6. Valuation Process;
7. Property Description;
8. Highest and Best use Analysis;
9. Appraisal Statistical Concepts;
10. Sales Comparison Approach;
11. Site Value;
12. Cost Approach;
13. Income Approach;
14. Valuation of Partial Interests; and
15. Appraisal Standards and Ethics.

(e) Experience may not be substituted for education.

(f) The Board shall not grant credit for correspondence courses or for video and remote television educational offerings.

13:40A-3.4 Experience requirements for licensure

(a) In order to be eligible to take the Board approved examination for the licensing of real estate apprisers, an applicant shall furnish documentation satisfactory to the Board that he or she has accumulated at least 2,000 hours of appraisal experience in no less than two nor more than four calendar years.

(b) Acceptable appraisal experience includes, but is not limited to, the following: fee and staff appraisal; ad valorem tax appraisal; review appraisal; appraisal analysis; real estate counseling; highest and best use analysis; feasibility analysis/study; and teaching of appraisal courses.

(c) The Board shall award experience credit to ad valorem tax appraisers/appraisals when the applicant demonstrates to the satisfaction of the Board that he or she is using similar techniques as appraisers to value properties and that he or she effectively utilizes the appraisal process.

(d) Education may not be substituted for experience.

13:40A-3.5 Temporary licenses

(a) An individual who meets the requirements of N.J.A.C. 13:40A-3.2 and who files his or her application with the Board prior to September 17, 1991, shall be permitted to take the examination prior to meeting the educational requirements.

(b) Upon the applicant's successful completion of the examination and payment of the temporary license fee, the Board shall issue a temporary license.

(c) A temporary license shall be effective for no more than 420 days and shall not be renewable.

(d) If, during the temporary license term, the temporary licensee completes the educational requirements as set forth in N.J.A.C. 13:40A-3.3, the Board may issue to the temporary licensee a license as a State licensed real estate appraiser.

13:40A-3.6 Temporary visiting licenses

(a) Upon application to the Board and payment of a registration fee, an appraiser licensed in another state may be issued a temporary visiting license for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid license to practice in another state.

(b) An appraiser licensed by another state may apply for no more than three temporary licenses within one calendar year, except as provided in (c) below.

(c) The Board may, in its discretion, waive the requirements of (b) above for good cause shown.

SUBCHAPTER 4. CONTINUING PROFESSIONAL EDUCATION

13:40A-4.1 Requirements for certification and licensure renewal

(a) The Board shall not issue a certification or license renewal unless the applicant submits with his or her renewal application a detailed outline, acceptable to the Board, confirming that the applicant completed, during the biennial period preceding renewal, the equivalent of 20 classroom hours of instruction in courses or seminars approved by the Board.

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the course is at least two hours.

(c) The licensee may obtain credit for the classroom hour requirement from the following: colleges or universities accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; community or junior colleges accredited by the New Jersey Department of Higher Education; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; and proprietary schools as approved by the Board.

(d) The Board may grant credit for courses which cover residential real estate related appraisal topics such as those listed following and which are consistent with the purpose of continuing education: ad valorem taxation; arbitrations; business courses related to practice of real estate appraisal; construction estimating; ethics and standards of professional practice; land use planning, zoning and taxation; management, leasing, brokerage, timesharing; property development; real estate appraisal (valuations/evaluations); real estate law; real estate litigation; real estate financing and investment; real estate appraisal related computer applications; real estate securities and syndication; and real property exchange.

(e) The Board may also grant credit for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education.

SUBCHAPTER 5. STANDARDS FOR APPRAISALS

13:40A-5.1 General requirements

(a) The appraiser shall ensure that all appraisals shall, at a minimum:

1. Conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation, incorporated herein by reference, except that the Departure Provision of the USPAP shall not apply;

2. Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP;

3. Be based upon the definition of market value as set forth in N.J.A.C. 13:40A-1.2;

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4. Be written and presented in narrative format or on forms that satisfy all the requirements of this section;

5. Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate;

6. Provide detail and depth of analysis that reflect the complexity of the real estate appraised;

7. Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

i. For one to four family residential property, one year preceding the date when the appraisal was prepared; and

ii. For all other property, three years preceding the date when the appraisal was prepared;

8. Analyse and report data on current revenues, expenses, and vacancies for the property if it is and will continue to be income-producing;

9. Analyze and report a reasonable marketing period for the subject property;

10. Analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;

11. Analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased or leased at other than market rents as of the date of the appraisal, or any tract developments with unsold units;

12. Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

13. Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported;

14. Include a legal description of the real estate being appraised, in addition to the description required by the USPAP;

15. Identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion or exclusion on the estimate of market value; and

16. Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.

(b) If information required or deemed pertinent to the completion of an appraisal is unavailable, the appraiser shall disclose and explain that fact in the appraisal.

(c) An appraiser's failure to comply with the provisions of this subchapter may be construed to be professional misconduct in violation of N.J.S.A. 45:1-21(e).

SUBCHAPTER 6. GENERAL PROVISIONS

13:40A-6.1 Fee schedule

(a) Charges for examinations, certification, licensure and other services are as follows:

| | |
|---|---|
| 1. Application fee: | $100.00 |
| 2. Examination fee: | $125.00 |
| 3. Initial certification fee: | |
| i. During the first year of a biennial renewal period: | $240.00 |
| ii. During the second year of a biennial renewal period: | $120.00 |
| 4. Initial license fee: | |
| i. During the first year of a biennial renewal period: | $160.00 |
| ii. During the second year of a biennial renewal period: | $ 80.00 |
| 5. Certification renewal fee, biennial: | $240.00 |
| 6. License renewal fee, biennial: | $160.00 |
| 7. Late renewal fee: | $100.00 |
| 8. Duplicate certification fee: | $120.00 |
| 9. Duplicate license fee: | $100.00 |
| 10. Temporary license fee: | $100.00 |
| 11. Temporary visiting registration fee: | $ 50.00 |
| 12. Endorsement fee: | $ 75.00 |
| 13. Reinstatement fee: | $150.00 |
| 14. Duplicate wall certificate fee: | $ 40.00 |
| 15. Change of address fee: | $ 25.00 |
| 16. Verification of certification/licensure: | $ 40.00 |
| 17. Verification of continuing education credits: | $ 40.00 |
| 18. Federal surcharge, annual: | $ 25.00 |

(b) Charges for registration of providers of real estate appraiser education courses other than colleges and universities and members of the Appraisal Foundation are as follows:

| | |
|---|---|
| 1. Initial registration fee: | |
| i. During the first year of a biennial renewal period: | $500.00 |
| ii. During the second year of a biennial renewal period: | $250.00 |
| 2. Registration renewal fee, biennial: | $500.00 |

(c) Charges for registration of providers of continuing education courses other than colleges and universities and members of the Appraisal Foundation are as follows:

| | |
|---|---|
| 1. Initial registration fee: | |
| i. During the first year of a biennial renewal period: | $150.00 |
| ii. During the second year of a biennial renewal period: | $ 75.00 |
| 2. Registration renewal fee, biennial: | $150.00 |

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# RULE ADOPTIONS

## COMMUNITY AFFAIRS

## (a)

### DIVISION OF HOUSING AND DEVELOPMENT

### Condominium Association Governing Board Meetings

### Adopted New Rules: N.J.A.C. 5:20

Proposed: June 17, 1991 at 23 N.J.R. 1901(a).
Adopted: July 24, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: August 2, 1991 as R.1991 d.455, **without change**.
Authority: N.J.S.A. 46:8B-13.
Effective Date: September 3, 1991.
Expiration Date: September 3, 1996.

**Summary** of Public Comments and Agency Responses:

Comments were submitted by Ritamarie G. Rondum and E. Richard Kennedy, Esq.

COMMENT: A past officer of a condominium association asked that the requirement that all meetings be open to all unit owners "be clarified so as to avoid any interpretation that a facility adequate to accommodate all association owners must be the site of all association board meetings."

RESPONSE: As was indicated in the proposal summary, these guidelines are patterned upon the requirements for municipalities established by the Open Public Meetings Act. With the possible exception of a few places like Tavistock and Teterboro, municipal councils and boards do not hold their meetings in facilities adequate to accommodate the entire local population. The Department is not aware that anyone has ever seriously suggested that this violates the law, so long as a reasonable amount of audience seating is provided. In any event, the requirement that all meetings of a condominium association, other than conference or working sessions at which no binding votes are to be taken, be open to all unit owners is statutory and not subject to modification by rule.

COMMENT: Both this past officer and an attorney who represents various condominium and other community associations object to the requirement that the board make minutes available to the unit owners prior to the next meeting, pointing out that the minutes will not be approved, and will therefore be subject to correction, until that next meeting.

RESPONSE: The statute expressly provides that "at each meeting required . . . to be open to all unit owners, minutes of the proceedings shall be taken and copies of those minutes shall be made available to all unit owners before the next open meeting." N.J.A.C. 5:20-1.1(c) restates this provision only in order to put the notice requirements in context. The statutory requirement is unambiguous and cannot be modified by rule.

COMMENT: The attorney who represents associations also objects to "the requirement of publication in two local newspapers" as being excessive, since the meetings are not open to the general public and the associations can notify owners and residents through on-site postings and notification in the association's newsletters and mailing. Alternatively, he suggests that publication in one official municipal newspaper should be sufficient.

RESPONSE: The rules do not require the association to publish a notice in any newspaper. Rather, what is required, as with municipal councils and boards, is that notice **be given** to at least two newspapers that are likely to inform the greatest number of unit owners. It is up to the newspaper to decide whether notice of the meeting is newsworthy. The association is not required to pay for publication. The burden of sending two copies of a notice or making two telephone calls is, in the judgment of the Department, not excessive. Those members of the public who are not members of the association will presumably disregard any notice that appears, just as they probably would if it were for another municipality's public meeting.

The rule does not require direct mailing of notice to association members because it is intended not to impose any significant costs. However, an association is certainly free to add to the requirements in the rule and make provision for the mailing of notice of all meetings to all members.

**Full text** of the adoption follows.

CHAPTER 20
MEETINGS OF THE GOVERNING BOARD OF A CONDOMINIUM ASSOCIATION

SUBCHAPTER 1. GENERAL GUIDELINES

5:20-1.1 Open meetings

(a) If the by-laws of a condominium association provide that any of the powers and duties of the association be exercised through a governing board elected by the membership of the association, or through officers of the association responsible to and under the direction of such a governing board, all meetings of that governing board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance of all unit owners.

(b) The provisions of (a) above notwithstanding, the governing board may exclude or restrict attendance at those meetings, or portions of meetings, at which any of the following matters are to be discussed.

1. Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

2. Any pending or anticipated litigation or contract negotiations;

3. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or

4. Any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association.

(c) At each meeting required to be open to all unit owners, minutes of the proceedings shall be taken and copies of those minutes shall be made available to all unit owners before the next open meeting.

5:20-1.2 Notice requirements

(a) The by-laws of any condominium association in which any of the powers and duties of the association are exercised through a governing board, or through officers responsible to and under the direction of a governing board, shall provide for the giving of adequate notice to unit owners of the time and place of all meetings required to be open to all unit owners.

(b) The "adequate notice" required by this section shall mean written notice, at least 48 hours in advance, giving the time, date, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting, other than a conference or working session at which no binding votes are to be taken, which notice shall be:

1. Posted prominently in at least one place on the condominium property that is accessible at all times to all unit owners;

2. Mailed, telephoned, telegrammed, or hand delivered to at least two newspapers that have been designated by the governing board or by the association to receive such notices because they have the greatest likelihood of informing the greatest number of unit owners; and

3. Filed with the person responsible for administering the business office of the association.

(c) At least once each year, within 7 days following the annual meeting of the association, the governing body shall post, and maintain posted throughout the year at the place or places at which notices are posted pursuant to (b)1 above, mail to the newspapers to which notices are sent pursuant to (b)2 above, and file with the person responsible for administering the business office of the association, a schedule of the regular meetings of the governing body to be held during the succeeding year.

1. Such schedule shall contain the location of each meeting, if known and the time and date of each meeting. In the event that such schedule is thereafter revised, the governing body, within 7 days following the revision, shall post, mail and submit such revision in the manner set forth in this subsection.

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2. If the location of a meeting is set forth in the schedule, additional notice of the meeting pursuant to (b) above shall not be required.

(d) In the event that a meeting of the governing body is required in order to deal with matters of such urgency and importance that delay for the purpose of providing 48 hours advance notice would be likely to result in substantial harm to the interests of the association, and provided that the meeting is limited to discussion or and acting with respect to such matters of urgency and importance, notice of the meeting shall be deemed to be adequate if it is provided as soon as possible following the calling of the meeting by posting, delivering and filing written notice of the meeting in the manner set forth in (b) above.

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# EDUCATION

## (a)

### STATE BOARD OF EDUCATION

### Business Services

### Adopted Amendments: N.J.A.C. 6:20-2.13, 2.14, 2A.11, 2A.12, 4.1, 5.3, 5.6 and 8.3

### Adopted Repeals: N.J.A.C. 6:20-2.12 and 2A.10

### Adopted New Rules: N.J.A.C. 6:20-2.14 and 2A.12

Proposed: June 3, 1991 at 23 N.J.R. 1733(a).

Adopted: August 7, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: August 12, 1991 as R.1991 d.459, **without change**.

Authority: N.J.S.A. 18A:1-1, 18A:4-14, 18A:14.1, 18A:4-15, 18A:7D-1, 18A:7D-3, 18A:7D-6, 18A:7D-28, 18A:21-2, 18A:21-3, 18A:21-4, 18A:21-5 and 18A:46-21.

Effective Date: September 3, 1991.

Expiration Date: July 16, 1995.

**Summary** of Public Comments and Agency Responses:

**No comments were received,** either written or at the June 19, 1991 public testimony session, a copy of which may be reviewed by contacting the State Board of Education Office at (609) 292-0739.

**Full text** of the adoption follows.

6:20-2.12 Overexpenditure of funds

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

(h) Beginning in the second year following the year in which the deficit occurred the State aid of a district board of education will be reduced by the product of the sum of the deficits in any major account or fund and the percentage of that sum to its maximum foundation budget defined in N.J.S.A. 18A:7D-6.

1. Reductions will be made in the following descending order:

i. Foundation aid;

ii. Transition aid;

iii. Transportation aid;

iv. Aid for at-risk pupils;

v. Bilingual education aid; and

vi. Special education aid.

2. Deficits incurred for special schools, State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds and student activity funds will be applied to the balance or deficit of the major account, current expense of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that major account.

6:20-2.13 Appropriation of free balance

(a) A district board of education requesting to exceed the permissible rate of increase pursuant to N.J.S.A. 18A:7D-28 shall appropriate all available general fund free balance in excess of three percent of the general fund budget for the budget year such request is made.

(b) (No change.)

6:20-2.14 Capital reserve account procedures

(a) A district board of education or board of school estimate in a district having such a board may establish by formal resolution a capital reserve account within the capital outlay major account/fund for the accumulation of funds for capital outlay appropriations/expenditures in subsequent fiscal years pursuant to N.J.S.A. 18A:21-2 and 3. The capital reserve account shall be established, administered and accounted for as follows:

1. A true copy of the establishing resolution shall be filed with the Division of Finance pursuant to N.J.S.A. 18A:21-3. Districts receiving funds from the State Treasurer which were previously on deposit in a school building aid capital reserve fund, pursuant to N.J.S.A. 18A:58-25, need not execute or file a new resolution.

2. A district board of education may establish or increase the balance in the capital reserve account by including in the original annual capital outlay budget which is certified for taxes an appropriation of foundation aid revenue not to exceed the amount of foundation aid for capital outlay pursuant to N.J.S.A. 18A:21-3.

3. The capital reserve account may also be established or increased in the original annual capital outlay budget which is certified for taxes by an amount expressly approved by the voters of the district or the board of school estimate pursuant to N.J.S.A. 18A:21-3.

4. The capital reserve account shall be increased by the earnings attributable to the investment of the account's assets pursuant to N.J.S.A. 18A:21-3. Anticipated investment income shall be included in the original annual capital outlay budget which is certified for taxes as miscellaneous income.

5. Additions to the capital reserve account from foundation aid for capital outlay, amounts approved by the voters or board of school estimate and investment income are included in the annual budget statement's appropriation section in the line item "Increase in Capital Reserve."

6. Funds placed in the capital reserve account are restricted to the capital outlay major account/fund and transfers of such funds to other major accounts/funds are prohibited pursuant to N.J.S.A. 18A:22-8.2.

7. Funds in the capital reserve account may be appropriated as revenue only in the annual budget which is certified for taxes pursuant to N.J.S.A. 18A:21-4 in the line item "Withdrawal from Capital Reserve" subject to the following restrictions:

i. Funds withdrawn from the capital reserve account and included in the annual budget shall not be transferred for current expenses or debt service payments pursuant to N.J.S.A. 18A:21-4. In any year that capital reserve account funds are appropriated in the annual budget along with unrestricted fund sources, no transfers from capital outlay to current expense which are permitted by N.J.S.A. 18A:22-8.2 shall be made which reduce the capital outlay appropriation to an amount less than the appropriated capital reserve account funds;

ii. Funds in the capital reserve account which are not appropriated in the original annual capital outlay budget which is certified for taxes shall not be appropriated during the year;

iii. In any year that capital reserve account funds are appropriated in the annual budget, unexpended capital outlay appropriations up to the amount of capital reserve account funds appropriated shall be restored to the capital reserve account. Expenditures are deemed as being charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last; and

iv. In any year that capital reserve account funds are appropriated in the annual budget, earnings attributable to the investment of unexpended capital outlay funds up to the amount of capital reserve account funds appropriated (lesser of unexpended capital outlay funds or capital reserve account funds appropriated) shall be placed in the capital reserve account along with earnings attributable to the investment of funds remaining in the capital reserve account.

8. A separate fund shall be established in the capital outlay major account/fund for bookkeeping purposes only in order to account for increases to and withdrawals from the capital reserve account and its balance. The capital reserve account shall be reflected on the

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annual audit's balance sheet in the capital outlay major account/fund as follows:

i. Dr: Capital Reserve Account; and

ii. Cr: Reserved Fund Balance—Capital Reserve Account.

6:20-2A.10 Overexpenditure of funds

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

(h) Beginning in the second year following the year in which the deficit occurred the State aid of a district board of education will be reduced by the product of the sum of the deficits in any major account or fund and the percentage of that sum to its maximum foundation budget defined in N.J.S.A. 18A:7D-6.

1. Reductions will be made in the following descending order:

i. Foundation aid;

ii. Transition aid;

iii. Transportation aid;

iv. Aid for at-risk pupils;

v. Bilingual education aid; and

vi. Special education aid.

2. Deficits incurred for special schools, State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds and student activity funds will be applied to the balance or deficit of the major account, current expense of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that major account.

6:20-2A.11 Appropriation of free balance

(a) A district board of education requesting to exceed the permissible rate of increase pursuant to N.J.S.A. 18A:7D-28 shall appropriate all available general fund free balance in excess of three percent of the general fund budget for the budget year such request is made.

(b) (No change.)

6:20-2A.12 Capital reserve account procedures

(a) A district board of education or board of school estimate in a district having such a board may establish by formal resolution a capital reserve account within the capital outlay major account/fund for the accumulation of funds for capital outlay appropriations/expenditures in subsequent fiscal years pursuant to N.J.S.A. 18A:21-2 and 3. The capital reserve account shall be established, administered and accounted for as follows:

1. A true copy of the establishing resolution shall be filed with the Division of Finance pursuant to N.J.S.A. 18A:21-3.

2. A district board of education may establish or increase the balance in the capital reserve account by including in the original annual capital outlay budget, which is certified for taxes, an appropriation of foundation aid revenue not to exceed the amount of foundation aid for capital outlay pursuant to N.J.S.A. 18A:21-3.

3. The capital reserve account may also be established or increased in the original annual capital outlay budget which is certified for taxes by an amount expressly approved by the voters of the district or the board of school estimate pursuant to N.J.S.A. 18A:21-3.

4. The capital reserve account shall be increased by the earnings attributable to the investment of the account's assets pursuant to N.J.S.A. 18A:21-3. Anticipated investment income shall be included in the original annual capital outlay budget which is certified for taxes as miscellaneous income.

5. Additions to the capital reserve account from foundation aid for capital outlay, amounts approved by the voters or board of school estimate and investment income are included in the annual budget statement's appropriation section in the line item "Increase in Capital Reserve."

6. Funds placed in the capital reserve account are restricted to the capital outlay major account/fund and transfers of such funds to other major accounts/funds are prohibited pursuant to N.J.S.A. 18A:22-8.2.

7. Funds in the capital reserve account may be appropriated as revenue only in the annual budget which is certified for taxes pursuant to N.J.S.A. 18A:21-4 in the line item "Withdrawal from Capital Reserve" subject to the following restrictions:

i. Funds withdrawn from the capital reserve account and included in the annual budget shall not be transferred for current expenses or debt service payments pursuant to N.J.S.A. 18A:21-4. In any year that capital reserve account funds are appropriated in the annual budget along with unrestricted fund sources, no transfers from capital outlay to current expense which are permitted by N.J.S.A. 18A:22-8.2 shall be made which reduce the capital outlay appropriation to an amount less than the appropriated capital reserve account funds;

ii. Funds in the capital reserve account which are not appropriated in the original annual capital outlay budget which is certified for taxes shall not be appropriated during the year;

iii. In any year that capital reserve account funds are appropriated in the annual budget, unexpended capital outlay appropriations up to the amount of capital reserve account funds appropriated shall be restored to the capital reserve account. Expenditures are deemed as being charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last; and

iv. In any year that capital reserve account funds are appropriated in the annual budget, earnings attributable to the investment of unexpended capital outlay funds up to the amount of capital reserve account funds appropriated (lesser of unexpended capital outlay funds or capital reserve account funds appropriated) shall be placed in the capital reserve account along with earnings attributable to the investment of funds remaining in the capital reserve account.

8. A separate fund shall be established in the capital outlay major account/fund for bookkeeping purposes only in order to account for increases to and withdrawals from the capital reserve account and its balance. The capital reserve account shall be reflected on the annual audit's balance sheet in the capital outlay major account/fund as follows:

i. Dr: Capital Reserve Account; and

ii. Cr: Reserved Fund Balance—Capital Reserve Account.

6:20-4.1 Tuition rate procedures

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

(f) The Commissioner shall determine the estimated actual cost per pupil for each approved private school for the handicapped for the ensuing school year and its tentative tuition rate no later than January 1 preceding the beginning of the ensuing school year. Upon request, the approved private school for the handicapped shall submit to the sending district board of education a copy of the Commissioner's calculation to determine the estimated actual cost per pupil for the ensuing school year.

1. The estimated actual cost per pupil shall equal the product of the audited actual cost per pupil for the school year prior to the current school year and the sum of 1.0 and twice the PCI as defined and calculated pursuant to N.J.S.A. 18A:7D-3.

2. The tentative tuition rate shall include:

i.-ii. (No change.)

(g)-(l) (No change.)

6:20-5.3 Method of determining the district of residence

(a) The district of residence for school funding purposes shall be determined according to the following criteria:

1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. 18A:7D-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.

2.-3. (No change.)

(b)-(f) (No change.)

(g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one school district to another shall be the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

6:20-5.6 Teaching staff member minimum salary State aid

(a)-(f) (No change.)

(g) For the purpose of (f) above, a district board of education shall determine the amount of funds replaced by State aid as follows:

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1. (No change.)
2. For each newly employed teaching staff member, determine the amount of State aid which is anticipated on the budget form submitted pursuant to N.J.S.A. 18A:7D-27 for the position in which the newly employed teaching staff member is employed;
3. (No change.)
(h)-(i) (No change.)

6:20-8.3 Change orders and open-end contracts
(a)-(b) (No change.)
(c) Professional and EUS contract change orders shall be governed by the following:
1. (No change.)
2. If the change is not within the scope of activities of the original contract:
i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-5a(1) and (2), any change beyond the original scope of activities may be made by amendatory contract;
ii. (No change.)
3.-4. (No change.)
(d)-(h) (No change.)

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# (a)

## STATE BOARD OF EDUCATION

## Pupil Transportation

## Adopted Amendments: N.J.A.C. 6:21-7.2 and 19.1 through 19.5

## Adopted Repeals: N.J.A.C. 6:21-7.1, 7.3 through 7.6

Proposed: June 3, 1991 at 23 N.J.R. 1737(a).
Adopted: August 7, 1991 by the State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: August 12, 1991 as R.1991 d.460, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:39-21 and 18A:7D-18.
Effective Date: September 3, 1991.
Expiration Date: November 22, 1994.

**Summary** of Public Comments and Agency Responses:
Two letters of comment were received during the comment period from Patricia Walsh and John E. Lockwood. No one commented at the public testimony session held on June 19, 1991, a copy of which may be reviewed by contacting the State Board of Education Office at (609) 292-0739.
COMMENT: A commenter suggested N.J.A.C. 6:21-7.1(c) should include transportation from the home of a designated caregiver as an eligible category for transportation.
RESPONSE: The Department agrees with the intent of the comment. However, a revision to the code is not necessary. Local boards of education are permitted to transport students from a location other than the pupil's home according to the local pupil transportation policy. Districts will receive State transportation aid for those students who reside remote from their schools of attendance. Students who reside less than remote from their schools of attendance will not generate aid.
COMMENT: The other commenters suggested N.J.A.C. 6:21-1.3 should be repealed because the language regarding the definition of remote is duplicated in N.J.A.C. 6:21-7.1(b).
RESPONSE: The Department disagrees. N.J.A.C. 6:21-1.3 defines remote for the purpose of identifying students eligible for transportation, while N.J.A.C. 6:21-7.1(b) defines remote for the purpose of State aid allocation.

**Full text** of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

6:21-7.1 General provisions
(a) Each district board of education shall be paid State aid for the transportation of eligible pupils to and from school based on a State-established dollar amount per pupil calculated according to the funding formula contained in N.J.S.A. 18A:7D-18. District boards of education shall submit data through the county superintendent's office for the calculation of State transportation aid on forms prescribed by the Commissioner of Education.
(b) For the purpose of State aid allocation, the words "remote from the school house" shall mean beyond 2½ miles for high school pupils (grades nine through 12) and beyond two miles for elementary pupils (grades kindergarten through eight), except for handicapped pupils. The "miles from home to school" shall be the shortest distance in miles and tenths from the entrance of the pupil's home to the nearest public entrance of the assigned school by a public roadway or public walkway.
(c) State aid for student transportation will be based on the following categories:
1. Public school students—Those resident students who live remote from their assigned school of attendance, as defined in (b) above;
2. Nonpublic school students—Those resident students who live remote from their school of attendance, as defined in (b) above, and meet the requirements of N.J.S.A. 18A:39-1; and
3. Special education students—Those resident students who live remote from their assigned school, as defined in (b) above, or require transportation services in accordance with N.J.A.C. 6:28-3.8.

6:21-19.1 General authority
(a) The Commissioner shall provide for a thorough evaluation of district boards of education pupil transportation operations and fiscal procedures to determine compliance with the provisions of this chapter and N.J.S.A. 18A:39-1 et seq.
(b) The Commissioner may withhold or adjust transportation aid for district boards of education which are noncompliant with the provisions set forth in this chapter. For example, transportation aid may be adjusted or withheld for the improper award of contracts, use of unauthorized vehicles or inaccurate data submitted for State aid.

6:21-19.2 General district procedures
(a) District boards of education shall annually submit pupil transportation contracts to the county superintendent of schools as required by law and regulation for review as to form and compliance with N.J.A.C. 6:21-13 through 17.
(b) (No change.)
(c) District boards of education shall submit reports, through the county superintendent's office, necessary for the calculation of State transportation aid and the analysis of the numerical values (cost factors) contained in the transportation aid formula in accordance with N.J.S.A. 18A:7D-18 and 19.

6:21-19.3 Regulatory review
(a) The county superintendent of schools shall conduct a review of district boards of education transportation operations in accordance with *[N.J.S.A.]* ***N.J.A.C.*** 6:8-4.3(a)10vi.
(b) (No change in text.)
(c) The Bureau of Pupil Transportation field representative shall conduct on site annual reviews of district boards of education pupil transportation procedures, operations and fiscal records as *[indicated]* ***directed*** by the Commissioner and shall notify the district board of education and county superintendent of the findings.
(d) The Bureau of Pupil Transportation shall verify data, required by the Quality Education Act, submitted by district boards of education for State transportation aid.

6:21-19.4 Corrective plan
Any district board of education found to be deficient as a result of the Bureau of Pupil Transportation review shall submit a corrective action plan addressing the specific recommendations to the county superintendent of schools and the Bureau of Pupil Transportation.

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6:21-19.5 Compliance investigation

(a) The Division of Compliance shall conduct a complete inspection of pupil transportation procedures, operations, and costs for any district board of education identified as deficient in the administration of pupil transportation as a result of the Bureau of Pupil Transportation review or State Department of Education monitoring process under any one of the following circumstances:

1.-3. (No change.)

# HUMAN SERVICES

## (a)

## DIVISION OF MENTAL HEALTH AND HOSPITALS

### Patient Supervision at State Psychiatric Hospitals

### Readoption with Amendments: N.J.A.C. 10:36

Proposed: May 20, 1991 at 23 N.J.R. 1652(a).
Adopted: July 30, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: July 31, 1991 as R.1991 d.453, **without change**.
Authority: N.J.S.A. 30:1-12 and 4-27.21a.
Effective Date: July 31, 1991, Readoptions.
September 3, 1991, Amendments.
Expiration Date: June 30, 1992.

**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. 10:36.

**Full text** of the adopted amendments follows.

10:36-3.2 Scope

(a) The rules of this subchapter apply in all instances to involuntarily committed patients who are residing at and being considered for transfer to any of the following facilities specified in N.J.S.A. 30:4-160:

1. Greystone Park Psychiatric Hospital;
2. Trenton Psychiatric Hospital;
3. Marlboro Psychiatric Hospital;
4. Ancora Psychiatric Hospital;
5. The Forensic Psychiatric Hospital; and
6. The Senator Garrett W. Hagedorn Center for Geriatrics.

(b) Prior to a patient's initial commitment hearing, only emergency transfers may be made. Postponement of such hearings beyond 20 days after admission may not be requested by hospital staff due to the emergency transfer of a patient.

10:36-3.3 Factors

(a) Any of the factors described below may serve as a basis for the transfer of a patient from and to any facility cited in N.J.A.C. 10:36-3.2:

1. To place him or her in closer proximity to family members;

i. If a patient and his or her family members disagree on a transfer request based on proximity to family members, a clinical determination shall be made by the hospital staff based solely on the clinical best interest of the patient;

2.-9. (No change.)

(b) A patient's stated preference for treatment at a particular State psychiatric facility shall always be a relevant consideration in transfer decisions. Transfers over the objection of a patient are permitted, however, when a clinical determination has concluded that the transfer is in the transferee's clinical best interest or necessary for the safety of other patients or administratively necessary due to a factor listed in (a) above. A transfer is permitted only when, in the judgment of the treatment team, the transfer's permissible purpose outweight any potential harm to the patient from the transfer.

1. When a transferring facility is capable of meeting the clinical or administrative purpose for a proposed transfer as contained in the factors at (a) above, an objecting patient shall not be transferred.

2. Transfers shall be the least restrictive available treatment alternative necessary to achieve the purposes of the transfer request as contained in the factors at (a) above.

10:36-3.4 General procedures

(a) (No change.)

(b) Transfers occurring as a result of overcrowding, life-safety concerns, natural catastrophes, treatment impasse or consolidation of services shall require the approval of the Director, Division of Mental Health and Hospitals.

(c) (No change.)

(d) The following procedures shall be followed in cases of emergency transfers:

1. Emergency shall be defined, for the purposes of this subchapter, as imminent danger of serious bodily harm to self or others which less restrictive available treatment alternatives other than transfer cannot adequately address. Only these factors in N.J.A.C. 10:36-3.3(a)4 or 8 may serve as the basis for an emergency transfer.

2. The family and attorney of residents being transferred shall be notified by institutional staff of the transfer and the reason for the transfer as soon as possible after the transfer decision has been made.

3. (No change.)

Recodify existing 5.-7. as 4.-6. (No change in text.)

10:36-3.5 Procedures when patients object to transfer

(a) Regarding non-emergency transfers, the following apply:

1. At least seven days prior to the transfer date, patients and their attorneys shall receive notice of proposed non-emergency transfers and their procedural rights in this chapter.

2. If a patient objects to such a transfer, he or she shall be provided an opportunity to state the basis for his or her objection, and present any relevant facts including statements by other individuals, with or through a representative if so desired, before an individual who is not a member of the treatment team seeking transfer. The hospital's Clinical Director shall designate this individual, who may be a member of the office of the hospital's clinical director or other hospital staff member capable of providing an independent review of the need for the proposed transfer.

3. The individual who reviews the proposed transfer shall have the authority to approve or disapprove the proposed transfer.

(b) Regarding emergency transfers, the following apply:

1. In an emergency as defined at N.J.A.C. 10:36-3.4(a)1, a patient may be transferred in accordance with procedures outlined at N.J.A.C. 10:36-3.4.

2. If a patient or a representative of the patient objects to such a transfer, a designee of the Division Director shall review the basis for the transfer, including providing the patient or his or her representative with an opportunity to state the basis for their objection and present any relevant facts or statements. The designee shall not be a member of the patient's treatment team at either the sending or receiving hospital and shall provide an independent review of the need for the proposed transfer.

3. The individual who reviews the proposed transfer shall have the authority to approve or disapprove the proposed transfer.

## (b)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Pharmaceutical Assistance to the Aged and Disabled Fair Automobile Insurance Act

### Adopted Amendments: N.J.A.C. 10:69A-6.11

Proposed: January 7, 1991 at 23 N.J.R. 7(a).
Adopted: July 30, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: July 31, 1991 as R.1991 d.454, **without change**.

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Authority: N.J.S.A. 30:4D-20, 21, 24; P.L. 1990, c.8.
Effective Date: September 3, 1991.
Expiration Date: April 20, 1993.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

10:69A-6.11 Confidentiality and disclosure of information
(a)-(b) (No change.)
(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:
1.-7. (No change.)
8. The release of information or files to the Division of Motor Vehicles in the Department of Law and Public Safety for the implementation of the Fair Automobile Insurance Act of 1990 (P.L. 1990, c.8).

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# INSURANCE

## (a)

## DIVISION OF ADMINISTRATION

### New Jersey Property-Liability Insurance Guaranty Association

### Adopted Repeal and New Rules: N.J.A.C. 11:1-6

Proposed: March 18, 1991 at 23 N.J.R. 823(b).
Adopted: August 12, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: August 12, 1991 as R.1991 d.461, **with substantive and technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:30A-1 et seq.
Effective Date: September 3, 1991.
Expiration Date: January 31, 1996.

**Summary** of Comments and Agency Responses:
The Department of Insurance (Department) received 14 written comments from insurers, an insurance trade organization and a reciprocal insurance exchange, as follows:
1. Allstate Insurance Company;
2. New Jersey Citizens United Reciprocal Exchange;
3. American Insurance Association;
4. Hannoch, Weisman on behalf of The Aetna Casualty and Surety Company;
5. Royal Insurance;
6. MCA Insurance Companies;
7. Chubb Group of Insurance Companies;
8. New Jersey Manufacturers Insurance Company;
9. Selective Insurance Company of America;
10. CNA Insurance Companies;
11. Continental Insurance Company;
12. State Farm Insurance Companies;
13. The Prudential Property and Casualty Insurance Company of New Jersey; and
14. Crum and Forster Corporation.

COMMENT: Several commenters stated that the rules should permit companies to recoup the assessment as well as expenses incurred as a result of the assessment as well as the assessment itself. One commenter stated that companies must have the ability to directly recoup any assessments as well as the total cost of collecting and remitting the funds and reporting necessary transactions. Another commenter suggested that a provision be added to permit insurers to recoup both the assessment and interest or other costs associated with the length of time over which recoupment is ordered.

RESPONSE: The Department disagrees. The Commissioner of Insurance (Commissioner) is required, pursuant to N.J.S.A. 17:30A-16, "to adopt rules permitting insurers to recoup ... a sum reasonably calculated to **recoup assessments** paid ... pursuant to [N.J.S.A. 17:30A-8a(3)]" (emphasis supplied). The Commissioner is thus authorized to permit member insurers to impose a surcharge on policies only to recoup assessments, and not any expenses associated with the recoupment process. It must be noted that the Department believes that any expenses associated with collecting the surcharge should be minimal.

COMMENT: Several commenters stated that N.J.A.C. 11:1-6.3(a), which states that "[u]pon a determination by the Commissioner that a surcharge on premiums is necessary to permit ... insurers to recoup assessments ... he or she shall order that a surcharge be imposed ...", appears to provide the Commissioner with broad discretion about whether to impose a surcharge. The commenter suggested that the rule be modified to reflect clearly that the Commissioner is required to adopt rules permitting member insurers to recoup assessments pursuant to N.J.S.A. 17:30A-16. The commenters further suggested that the Department permit the New Jersey Property-Liability Insurance Guaranty Association (Association) to impose the surcharge, or in the alternative, use objective criteria allowing for the recoupment of assessments.

The commenters also stated that there should be no discretion given to the Commissioner to determine whether a surcharge is necessary. So long as there are assessments, recoupment should be automatic. One commenter further stated that these rules violate the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. since the Commissioner is required to establish the surcharge by regulation pursuant to N.J.S.A. 17:30A-16.

In order to address these concerns, two commenters specifically suggested that N.J.A.C. 11:1-6.3(a) be revised to read: "After an assessment is paid by a member insurer to the Association pursuant to N.J.S.A. 17:30A-8a(3), the Commissioner shall order that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies." The commenters also suggested that N.J.A.C. 11:1-6.3(k) be revised to read: "Upon a finding by the Commissioner that the assessment paid to the Association pursuant to N.J.S.A. 17:30A-8a(3) has been fully recouped, he or she shall order that the imposition of the surcharge be terminated."

Another commenter alternatively suggested that N.J.A.C. 11:1-6.3(a) be revised to read: "To permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3), the Commissioner shall order that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies."

RESPONSE: Upon review of the commenters' suggestions, the Department has determined not to change these provisions. The Department agrees that insurers are statutorily entitled to recoup assessments paid to the Association in full pursuant to N.J.S.A. 17:30A-8a(3). The Department however believes that N.J.A.C. 11:1-6.3(a) and (k) as drafted clearly state that the Commissioner shall issue an order permitting insurers to recoup assessments. Furthermore, adoption of the commenters' suggestion that N.J.A.C. 11:1-6.3(a) be revised to read: "After an assessment is paid by a member insurer ... the Commissioner shall order ...", could arguably require the Commissioner to issue multiple orders, which would be redundant. For example, if the Association continues to assess its members each year, the above-referenced language would require that the Commissioner issue a new order each year. Under the rules as currently drafted, the Commissioner would issue an Order which would simply remain in effect.

The Department similarly believes that the suggestion that N.J.A.C. 11:1-6.3(k) be revised to read: "Upon a finding by the Commissioner that the assessment paid to the Association ... has been fully recouped, he or she shall order that the ... surcharge be terminated" is inappropriate. The suggested language would arguably require that Commissioner to make a separate determination whether each insurer had fully recouped the surcharge, and issue separate termination orders. In the alternative, the language would require the Commissioner to wait until every member insurer had fully recouped the assessment before terminating the surcharge. The Department therefore believes that N.J.A.C. 11:1-6.3(k) as currently drafted appropriately authorizes the Commissioner to terminate the surcharge upon a finding that it is no longer necessary to enable member insurers as a whole to recoup assessments.

The Department further disagrees with the comment that the Association should be permitted to impose the surcharge. N.J.S.A. 17:30A-16 specifically requires the Commissioner to adopt regulations permitting insurers to recoup assessments by way of surcharge on premiums; it does not authorize the Association to take such action.

The Department similarly disagrees with the comment that these rules violate the Administrative Procedure Act in that the Commissioner is required to establish the surcharge by regulation. N.J.S.A. 17:30A-16 requires the Commissioner to adopt rules permitting insurers to recoup

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assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3). The statute does not require, as the commenter asserted, that the Commissioner establish the amount and duration of the surcharge by regulation. In fact, N.J.S.A. 17:30A-16 specifically states that "the amount of any surcharge shall be determined by the Commissioner"; it does not state that he shall determine the amount of the surcharge by regulation. The Department therefore believes that these rules are consistent with N.J.S.A. 17:30A-16, and are not violative of the Administrative Procedure Act. It must also be noted that providing for imposition of the surcharge by order will enable the Commissioner to impose a surcharge, or to revise the amount of existing surcharge, more expeditiously than would be possible through the rulemaking process. This, in turn, actually benefits member insurers which pay assessments to the Association.

COMMENT: One commenter stated that the impact of these rules on small businesses will be substantial. Small businesses have less funds and thus any delay between remittance of an assessment and recoupment of that assessment through a surcharge would be a hardship on a small business. The commenter therefore suggested that the rules be modified to permit any insurer which is a small business to immediately pass on to policyholders surcharges necessary to recoup the amount assessed. The commenter further stated that recoupment could be accomplished through the existing rules until replaced by the adoption of these rules.

RESPONSE: The Department disagrees. N.J.S.A. 17:30-16, which provides for the recoupment of assessments, provides no different compliance requirements with respect to collection of surcharges based on insurer size. Accordingly, the Department believes it is appropriate that these rules similarly provide no differentiation based on insurer size. The Department further believes that the impact of the assessment should be relatively equal among insurers since the assessment amount is based on the premium volume of the insurer.

It must be noted, however, that if the assessment would impose a financial burden on an insurer such that its capital and surplus would fall below the minimum amounts required by this State, or any other jurisdiction in which it is authorized, then it may seek relief from payment of the assessment pursuant to N.J.S.A. 17:30A-8a(3).

With respect to the comment that insurers be permitted to collect surcharges immediately through the existing rules, this issue is now moot. N.J.A.C. 11:1-6 as originally promulgated is repealed effective with the publication of this Notice of Adoption in the New Jersey Register.

COMMENT: Several commenters stated that the rules should provide that the Commissioner will issue an order permitting recoupment of assessments in a timely manner or within a specified period of time after the Association imposes an assessment on its member insurers. One commenter specifically suggested that the Commissioner be required to issue the order within 30 days after the payment of any assessment.

RESPONSE: The Department agrees. However, since the date of "payment" may differ among insurers, the rules are revised upon adoption to provide that the order establishing the surcharge shall be issued within 30 days after the "due date" of any assessment. This provision can apply only prospectively since the effective date of these rules is more than 30 days after the due date of the current assessment. The Department however anticipates that the order establishing the surcharge will be issued within 30 days of the effective date of these rules.

COMMENT: Several commenters stated that the rules should explicitly state that they apply to the most recent Association assessment made on March 1, 1991. Two commenters specifically suggested that N.J.A.C. 11:1-6.1(b) be revised as follows: "This subchapter applies to all assessments paid by member insurers to the Association pursuant to N.J.S.A. 17:30A-8a(3) on or after March 1, 1991.

RESPONSE: The Department believes that it is self-evident that these rules will apply to the most recent assessment. The rules apply to any assessments which have not yet been recouped. At the present time the only such assessment is that which was made on March 1, 1991. In order to avoid any confusion, however, the Department believes it appropriate to revise the rules upon adoption to provide that these rules apply to all assessments paid to the Association which have not been recouped as of the effective date of these rules.

COMMENT: Several commenters objected to the continued prohibition against imposition of a surcharge for assessments and surtaxes imposed pursuant to the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (FAIR Act). The commenters stated that prohibition of the pass-through of assessments to policyholders is unconstitutional in that insurers are entitled to earn an adequate rate of return through the ratemaking process.

RESPONSE: The imposition of a surcharge to recoup assessments imposed by the FAIR Act (N.J.S.A. 17:30A-8a(9)) is specifically prohibited by N.J.S.A. 17:30A-16b. These rules merely reflect the statutory prohibition.

COMMENT: One commenter stated that insurers should be permitted to recoup the current assessment pursuant to N.J.A.C. 11:1-6 as originally promulgated in 1975 since the rules have not been repealed as yet, and the "suspension" of their operation in 1981 did not constitute a repeal of the rules under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

RESPONSE: This issue is now moot since N.J.A.C. 11:1-6 as originally promulgated is repealed effective with the publication of this Notice of Adoption in the New Jersey Register.

COMMENT: One commenter noted that N.J.A.C. 11:1-6.3(f) provides that assessments are to be considered receivables by the insurer for accounting purposes. The commenter stated that since a receivable may not be an admitted asset after the 90th day, the rule should provide that the total amount of the receivable shall be considered an admitted asset for statutory accounting purposes.

RESPONSE: The Department agrees. The rules are changed upon adoption to reflect this clarification.

COMMENT: One commenter stated that the current procedure of permitting companies to surcharge policyholders prior to assessment by the Association is adequate and should not be changed.

RESPONSE: The Department believes that revision to the current procedure is necessary to ensure consistency with manner by which assessments imposed pursuant to N.J.S.A. 17:30A-8a(3) are recouped pursuant to N.J.S.A. 17:30A-16. It must also be noted that the current procedure does not permit insurers to surcharge policyholders prior to assessment. Pursuant to N.J.S.A. 17:30A-16, an insurer may also recoup amounts already paid to the Association pursuant to N.J.S.A. 17:30A-8a(3).

COMMENT: Several commenters suggested that the rules be clarified to provide that payment of the surcharge by the insured is mandatory, and to permit an insurer to cancel the policy for failure to pay a surcharge. Two commenters specifically suggested the following language be added in N.J.A.C. 11:1-6.3(d): "However, nothing contained in this regulation shall be construed to prevent member insurers from cancelling the policy of any insured who fails to pay a surcharge or any portion thereof when due."

RESPONSE: The Department disagrees. With respect to the comments that the rules should provide that payment of the surcharge is mandatory, the Department has no authority to enforce insureds' monetary obligations to their insurers. Providing that payment of the surcharge is mandatory would be meaningless.

The Department also disagrees that the rules should provide that an insurer may cancel a policy for failure to pay a surcharge. With respect to automobile insurance, the permissible grounds upon which an insurer may cancel a policy are set forth in N.J.S.A. 17:29C-7. The Department lacks the authority to enlarge these grounds by regulation. N.J.S.A. 17:29C-7 was specifically amended to specifically provide that an insurer may cancel an automobile policy for nonpayment of a residual market equalization charge. With respect to personal lines coverages other than automobile, an insurer may cancel a policy on the grounds specified in the policy, provided that it complies with the notice requirements set forth in N.J.A.C. 11:1-5.2. With respect to commercial lines coverage, the permissible grounds for cancellation are set forth in N.J.A.C. 11:1-20. Allowing insurers to cancel commercial policies for failure to pay a surcharge imposed pursuant to these rules would require amendment to N.J.A.C. 11:1-20. The Department does not presently believe that failure to pay the surcharge will be a widespread occurrence. It is doubtful that an insured will pay the full amount of the premium **except** for the amount of the surcharge. If the failure to pay a surcharge becomes a problem, the Department will revisit the issue at that time and take appropriate action.

COMMENT: Several commenters suggested that Federal flood insurance be added to the list of coverages exempt from the surcharge set forth in N.J.A.C. 11:1-6.3(c).

Another commenter specifically stated that the Commissioner exempted flood insurance premiums from assessments imposed by the FAIR Act. The Association however included premiums for flood insurance in calculating the amount of the assessment made on or about March 1, 1991. The commenter questioned this apparently inconsistent treatment of premiums for flood insurance and inquired why flood

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insurance premiums were not exempted from the assessment and surcharges.

RESPONSE: The surcharge imposed pursuant to these rules applies to net direct written premiums for the kinds of insurance to which N.J.S.A. 17:30A-1 et seq. applies. Net direct written premiums for certain kinds of insurance are specifically excluded for determining the amount of assessments under N.J.S.A. 17:30A-2b. Although flood insurance generally is not excluded under N.J.S.A. 17:30A-2b, the Commissioners has determined that flood insurance written through the National Flood Insurance Program (Program) shall be excluded for determining the amount of the assessment imposed by the FAIR Act (N.J.S.A. 17:30A—8a(9)). Premiums for flood insurance written through the Program are similarly excluded in determining the amount of assessments imposed pursuant to N.J.S.A. 17:30A-8a(3). Flood insurance written through the Program is not a kind of insurance, but is a statutory mechanism for providing a kind of insurance; and is thus not included with the "kinds of insurance" excluded pursuant to N.J.A.C. 11:1-6.3(c).

COMMENT: One commenter suggested that the rules provide that surcharges should be applied to the same lines of business as the underlying assessments. The commenter believes that varying the recoupment methodology from assessment methodology would prejudice insurers who write the lines of business on which recoupment is permitted.

RESPONSE: The Department believes that the rules as drafted provide that surcharges are to be applied to the same lines of business as the underlying assessments. N.J.A.C. 11:1-6.3(a) provides that the surcharge shall be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies. This is same basis on which assessments are imposed. Accordingly, the recoupment methodology provided by these rules does not vary from the assessment methodology set forth in N.J.S.A. 17:30A-1 et seq..

COMMENT: One commenter suggested that insurers be permitted to round assessments and surcharges in a uniform, non-discriminatory manner.

RESPONSE: The Department agrees that the rules should permit insurers to round surcharge amounts to the nearest dollar. However, since these rules address only the procedures by which assessments may be recouped, and not the imposition of those assessments, providing for the rounding of assessments is outside the scope of these rules. Accordingly, a change cannot be made upon adoption.

COMMENT: One commenter suggested that insurers be permitted to omit remitting any assessments or collecting any surcharges which are less than $5.00.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined that no charge is required. The remittance of assessments is beyond the scope of these rules, which deal solely with the recoupment of assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3). With respect to permitting insurers to omit collecting any surcharge less than $5.00, the rules provide that an insurer may omit collection of a surcharge if the expense of collection exceeds the amount of the surcharge as provided by N.J.S.A. 17:30A-16. It must also be noted that this provision actually provides insurers with greater flexibility in determining whether it is cost effective to collect a surcharge, rather than utilizing a fixed-dollar amount.

COMMENT: One commenter stated that it anticipates that the Commissioner will change the assessment rate over time and suggested that any change be published in the New Jersey Register, and that insureds be given at least 120 days advance notice of the revised rate.

RESPONSE: Assuming that the reference to the "assessment rate" by the commenter is the amount of the surcharge established by Order of the Commissioner, the Department agrees that the surcharge amount and other essential terms of the Order should be published in the New Jersey Register. The rules have been changed upon adoption to reflect this clarification. The Department, however, does not believe that 120 days notice of the surcharge to insureds is necessary since insureds will receive notice of the surcharge in the policy renewal as a separate item on the premium bill.

COMMENT: One commenter suggested that the rules specify that the surcharge be collected at the same time and manner that the premium is collected. This would be consistent with the approach utilized for the Second Injury Fund Surcharge (N.J.S.A. 34:15-94(e)) and Medical Malpractice Reinsurance Recovery Fund (N.J.A.C. 11:18-1.4(e)).

RESPONSE: The Department believes that the rules as drafted provide that the surcharge is to be collected at the same time and manner that premium is collected. N.J.A.C. 11:1-6.3(d) provides that the surcharge amount must be separately identified to the insured and shown as a separate item on the premium bill. If the surcharge amount is listed on the premium bill paid by insureds, it follows that the surcharge is to be collected at the same time and manner as premium.

COMMENT: One commenter noted that N.J.A.C. 11:1-6.3(b)2 states that one of the factors the Commissioner will consider in determining the amount of the surcharge is the amount necessary in the Commissioner's opinion to permit insurers to recoup assessments over a "reasonable" time. The commenter stated that to the extent recoupment is spread over many years, investment income on the assessment already paid is lost and would have to be added to the surcharge or rate base. This is inconsistent with the goal of keeping premiums low and is thus not "reasonable" as that word is intended in N.J.S.A. 17:30A-16(a). The commenter also stated that recoupment should be over one year to ensure that the surcharge is imposed equitably on all policyholders. The commenter thus suggested that a reasonable time be defined as one year, or two years if an assessment is greater than one percent and no other substantial assessment is anticipated. In order to accomplish this, the commenter suggested that N.J.A.C. 11:1-6.3(b)2 be revised to read as follows:

"... over a reasonable time **which is defined as one year or in the event of an Association assessment greater than 1% of premium and no further Association assessments of similar or greater magnitude being anticipated the Commissioner may instead use a two year period adjusting the surcharge further to reflect lost interest;** (language to be added is in boldface).

RESPONSE: The Department agrees that the surcharge period should be **no less** than one year to ensure that the surcharge is spread equally over all policyholders. The rules are revised to reflect this clarification.

The Department however believes, as noted in a response to a previous comment, that insurers may recoup only assessments, and not expenses or lost interest. N.J.S.A. 17:30A-16 provides that insurers may recoup over a reasonable length of time, a sum reasonably calculated to recoup assessments. The statute thus only provides for the recoupment of assessments, and not expenses associated with paying the assessment or the loss of any investment income due to the recoupment mechanism mandated by N.J.S.A. 17:30A-16. Further, the Department believes that the "reasonable time" over which assessments may be recouped may vary depending upon the amount of the assessment. The Department thus believes that defining "reasonable time" as suggested by the commenters would inappropriately narrow the Commissioner's discretion to determine the reasonable time over which assessments may be recouped as provided in N.J.S.A. 17:30A-16.

COMMENT: One commenter stated that N.J.A.C. 11:1-6.3(d), which provides that the surcharge amount shall not be treated as premium for accounting purposes, should be revised to clarify the treatment of the surcharge for purposes of calculating commissions. The commenter suggested that N.J.A.C. 11:1-6.3(d) be revised as follows: "The surcharge amount shall not be treated as premium for accounting purposes **or for commissions,** but must be coded and reported in accordance with instructions issued by statistical agents under the direction of the Commissioner."

RESPONSE: The Department agrees. The rules are revised upon adoption to reflect this clarification. As commissions are based on premiums, and surcharge amounts are not considered premiums, commissions are not to include surcharge amounts.

COMMENT: One commenter objected to the language in the first sentence of N.J.A.C. 11:1-6.3(k) which states: "[u]pon a finding by the Commissioner that the surcharge is no longer necessary to permit ... insurers to recoup assessments ..., he or she shall order that imposition of the surcharge be terminated." The commenter stated that the Commissioner has no statutory authority to order termination of the surcharge because it is not necessary, but only has the authority to terminate the surcharge when the "reasonable time" for the surcharge set forth in N.J.A.C. 11:1-6.3(b)2 has elapsed. Further, the commenter stated that the order establishing the surcharge will include the termination date of the surcharge pursuant to N.J.A.C. 11:1-6.3(b)2. The commenter thus believes that N.J.A.C. 11:1-6.3(k) at best requires the Commissioner to issue a redundant order and at worst is contrary to statutory authority. Accordingly, the commenter suggested that the first sentence in N.J.A.C. 11:1-6.3(k) be deleted.

RESPONSE: As stated in a response to a previous comment, the Department agrees that insurers are statutorily entitled to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8a(3).

The Department however disagrees that N.J.A.C. 11:1-6.3(k) is unnecessary or contrary to statutory authority. The order establishing the

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surcharge may not set forth the date of its termination since it may not be known at the time the Commissioner issues the order whether the Association will continue to assess its members. The Association may continue to assess its members for a number of consecutive years. The surcharge established to recoup the first year's assessment could therefore not be terminated until all assessments had been recouped. N.J.A.C. 11:1-6.3(k) appropriately provides for the termination of the surcharge by order at such time as the surcharge is no longer necessary to enable insurers to recoup assessments.

COMMENT: One commenter objected to the language in the second sentence of N.J.A.C. 11:1-6.3(k), which states: "Upon termination of the surcharge, any debit or credit balance shown on that year's reconciliation form shall remain on the insurer's books to be applied in the annual reconciliation form filed the following year and each year thereafter." The commenter stated that the provision appears to require that debts or credits be carried forward and reported annually forever, which is inappropriate. The commenter believes that it would be more appropriate for the insurer to pay to the Association any amount collected which is in excess of the amount of the assessment with the Association crediting the insurer against future assessments. Alternatively, any amount by which the surcharge collected was short of the assessment would be an expense item for the insurer. The commenter also stated that the insurer could file a report with the Commissioner and the Association after the termination of a particular surcharge.

The commenter suggested that the second sentence of N.J.A.C. 11:1-6.3(k) be deleted entirely and the following be substituted: "Upon termination of the surcharge pursuant to the terms of the Commissioner's Order promulgating the surcharge, the insurer shall determine whether the amount of surcharge it collected was greater than or less than the corresponding Association assessment that the insurer paid and shall report the amount to the Commissioner and the Association. If the insurer collected an amount that was greater than the Association assessment, then the amount by which the collection exceeded the Association assessment shall be paid to the Association by the insurer and the Association shall credit this amount against the next assessments the Association makes of the insurer until the credit is exhausted. If the amount collected by the insurer was less than the Association assessment, then the difference between the Association assessment and the amount collected shall be an expense of the insurer."

RESPONSE: As noted in the response to a previous comment, these rules do not address payment of assessments. Accordingly, changes to the rules with respect to the crediting of future assessments against amounts recouped cannot be made upon adoption. The Department however will review this matter and may, if it is deemed necessary, propose amendments to these rules to permit insurers to settle or "true-up" outstanding credit or debit balances in an appropriate manner.

COMMENT: One commenter stated that the wording of N.J.A.C. 11:1-6.3(f), which provides for the treatment of assessments and surcharges for accounting purposes, raises concerns with respect to Federal income taxes. The commenter believes that, for income tax purposes, it is preferable to deduct assessments from taxable income when paid and include recoupments in taxable income when collected. The commenter stated that the rule as currently worded may result in the Internal Revenue Service challenging the deduction of assessments when paid. The commenter recognized that some insurers may wish to utilize the accounting treatment set forth in rules and suggested that insurers be provided the option to either set up the receivable for recoupment or expense the payments and include recoupments as income. The commenter thus suggested that N.J.A.C. 11:1-6.3(k) be revised to read as follows: "[A]ll assessments imposed on member insurers by the Association ... may be considered a receivable by the insurer for accounting purposes. If a member insurer elects to treat its assessment as a receivable, any surcharges on policies as established by this subchapter shall be considered an offset to the receivable by the insurer for accounting purposes. If an electing insurer ceases to write all lines of business to which N.J.A.C. 17:30 et seq. applies ..."

RESPONSE: The Department disagrees. The assessment imposed is not an expense in that insurers will recoup the assessed amounts. Further, allowing insurers to treat the item as an expense could result in the assessment being subject to retaliation by other states, and would thus be inconsistent with N.J.A.C. 11:1-6.3(j), which states that the assessment is not to be considered an obligation for retaliatory purposes.

COMMENT: One commenter expressed concern with N.J.A.C. 11:1-6.3(j) which states that assessments imposed pursuant to N.J.S.A. 17:30A-8a(3) "shall not be considered obligations within the context of the retaliatory provisions set forth in N.J.S.A. 17:32-15." The commenter believes that the statement may be read to include assessments imposed pursuant to N.J.S.A. 17:30A-8a(9) (FAIR Act assessments) as obligations for retaliatory tax purposes. The commenter believes that it is the Department's position that assessments imposed by the FAIR Act are not tax obligations. The commenter thus suggested that N.J.A.C. 11:1-6.3(j) be revised to clarify that both assessments made pursuant to N.J.S.A. 17:30A-8a(3) and 17:30A-8a(9) are not obligations within the context of the retaliatory tax provisions of N.J.S.A. 17:32-15.

RESPONSE: These rules provide a mechanism by which insurers may recoup assessments imposed pursuant to N.J.S.A. 17:30A-8a(3) as required by N.J.S.A. 17:30A-16. The Department therefore believes it would be inappropriate to set forth any policy with respect to the treatment of assessments imposed by N.J.S.A. 17:30A-8a(9) in these rules. It must be noted however that nothing in these rules should be presumed to indicate a Department policy with respect to the treatment assessments imposed by the FAIR Act as obligations within the context of the retaliatory provisions of N.J.S.A. 17:32-15.

**Summary** of Agency-Initiated Changes

The citation of N.J.S.A. 17:30A-8(3) and 17:30A-9(a) are corrected to 17:30A-8a(3) and 17:30A-8a(9) as a matter of form in the following sections: N.J.A.C. 11:1-6.1(a) and (b), 11:1-6.3(a), (b)1 and 2, (f), (j), and (k).

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 6. NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION ASSESSMENT PREMIUM SURCHARGE

11:1-6.1 Purpose and scope

(a) This subchapter provides for the recoupment by member insurers of the Association of assessments paid pursuant to N.J.S.A. 17:30A-*[8(3)]* ***8a(3)***.

(b) This subchapter applies to all *[member insurers which have paid an assessment to the Association]* ***assessments imposed on member insurers*** pursuant to N.J.S.A. 17:30A-*[8(3)]****8a(3) and which have not been recouped as of September 3, 1991***. This subchapter does not apply to any assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-*[8(9)]****8a(9)***.

11:1-6.2 Definitions

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

"Association" means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Member insurer" is as defined in N.J.S.A. 17:30A-5f.

11:1-6.3 Establishment of Association assessment premium surcharge

(a) Upon a determination by the Commissioner that a surcharge on premiums is necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-*[8(3)]****8a(3)***, he or she shall order ***within 30 days of the due date of an assessment*** that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies. ***The essential terms of the Order shall be published in the New Jersey Register.***

(b) The amount of a surcharge shall be established by the Commissioner by Order. In determining the amount of a surcharge the Commissioner shall consider:

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-*[8(3)]****8a(3)***;

2. The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-*[8(3)]****8a(3)*** over a reasonable time ***which shall not be less than one year***; and

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3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.

(c) A surcharge imposed pursuant to this subchapter shall apply to all policies for all kinds of insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

(d) A surcharge imposed pursuant to this subchapter and by applicable Orders of the Commissioner shall be identified to the insured as "New Jersey Property-Liability Insurance Guaranty Association Surcharge" and ***the amount of the surcharge*** shall be shown as a separate item on the premium bill *[in dollars and cents]* ***rounded to the nearest dollar***. The surcharge amount shall not be treated as premium for accounting purposes ***or for commissions***, but must be coded and reported in accordance with instructions issued by the statistical agents under the direction of the Commissioner.

(e) Any change in premium by endorsement subsequent to the effective date of the policy shall reflect the appropriate change in the surcharge. In the case of flat cancellations, the entire surcharge amount shall be returned to the policyholder.

(f) All assessments imposed on member insurers by the Association pursuant to N.J.S.A. 17:30A-*[8(3)]****8a(3)*** shall be considered a receivable by the insurer for accounting purposes. ***The receivable shall also be considered an admitted asset for statutory accounting purposes.*** Any surcharges on policies as established by this subchapter shall be considered an offset to the receivable by the insurer for accounting purposes. If an insurer ceases to write all lines of business to which N.J.S.A. 17:30A-1 et seq. applies for any reason, the receivable shall be cancelled to the extent it has not been offset by any surcharges collected and the assessment shall be treated as an expense by the insurer for accounting purposes.

(g) Surcharges on premiums for multi-year policies, including perpetual insurance policies, shall be billed annually pursuant to the procedures established by this subchapter and applicable Orders of the Commissioner.

(h) Surcharges collected by an insurer pursuant to this subchapter are not taxable premiums for the purposes of determining the insurer's tax liability pursuant to N.J.S.A. 54:18A-1 et seq.

(i) An insurer shall not be required to collect a surcharge if the expense of collecting the surcharge exceeds the amount of the surcharge.

(j) A surcharge established pursuant to this subchapter shall provide recoupment to insurers for any assessment imposed pursuant to N.J.S.A. 17:30A-8(3). Such assessments shall not be considered obligations within the context of the retaliatory provisions set forth in N.J.S.A. 17:32-15.

(k) Upon a finding by the Commissioner that the surcharge is no longer necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8(3), he or she shall order that imposition of the surcharge be terminated. Upon termination of the surcharge, any debit or credit balance shown on that year's reconciliation form shall remain on the insurer's books to be applied in the annual reconciliation form filed the following year and each year thereafter.

11:1-6.4 Reporting requirements

(a) All insurers collecting a surcharge established pursuant to this subchapter shall file by March 1 of each year a reconciliation form on a form to be provided by the Commissioner. The form shall show the assessments paid to the Association and the surcharges collected by the insurer, if any, during the calendar year immediately preceding.

11:1-6.5 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties set forth in N.J.S.A. 17:33-2.

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# LABOR

## (a)

## DIVISION OF WORKERS' COMPENSATION

### Rules of the Division of Workers' Compensation

### Adopted Amendments: N.J.A.C. 12:235

Proposed: June 3, 1991 at 23 N.J.R. 1759(a).

Adopted: August 12, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: August 13, 1991 as R.1991 d.466 **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c), and 34:15-64.

Effective Date: September 3, 1991.

Expiration Date: May 3, 1996.

**Summary** of Public Comments and Agency Responses:

Three public comments were received by the Department during the comment period. The comments were received from Kenneth Wind, Esq., Honorable William Boyan, Judge of Compensation, and Michael J. Greenwood, Esq. Additionally, the Division noted typographical errors and has corrected same upon adoption.

COMMENT: With regard to N.J.A.C. 12:235-5.6(f), the commenter states that if parties are going to be allowed "for good cause shown" to submit interrogatories the Workers' Compensation Bar will become bogged down with a practice which will be as cumbersome as the Civil Practice. We are required to proceed in an expeditious manner. Unfortunately too many of my fellow practitoners will take advantage of this section to inundate the Court with repeated motions and tie up an already overburdened system. Expansion of the discovery process will only further delay the resolution of cases.

RESPONSE: It is not the intention of the rule to make the practice in the Workers' Compensation Court as cumbersome as the Civil Practice. The intent of this rule is to provide a less-cumbersome practice. An application to submit interrogatories may quite readily be made at the pretrial level. It is further the intent of this rule to limit, rather than protract, litigation by limiting the number of witnesses required for trial.

COMMENT: One commenter had concerns with N.J.A.C. 12:235-14.3(a). Specifically, the commenter notes that since private insurance plans generally exclude responsibility for medical conditions which are related to a work incurred injury, it is of no consequence as to the existence of a policy. Neither the Fund nor the petitioner will benefit from its existence.

RESPONSE: While the commenter is correct in that third party insurers do not "generally" pay for work-related injuries, frequently plans do pay for part or all of the treatment when no workers' compensation insurance is available. The rule is not intended to delay or deny benefits to injured workers, but is designed to protect the integrity of the Fund.

COMMENT: In N.J.A.C. 12:235-3.11(a)1, concerning the Commission on Judicial Performance, one commenter stated that the consistency of the members of the Commission is confusing. Do the two members who are retired Judges also fulfill the requirements of three members of the Bar? Will the terms of the members be staggered so that the others will always be members with experience to carry on any pending investigations?

RESPONSE: It is the intent of the rule to appoint two retired Judges in addition to three members of the Bar. The terms of the members will not be staggered.

COMMENT: At N.J.A.C. 12:235-3.11(a)2, requiring a majority of the members to constitute a quorum is insufficient. Two-thirds of the members should be present at all times. At least six members should vote in the affirmative to recommend formal proceedings and all should have been present for any hearing.

RESPONSE: These rules have been taken from Pressler, N.J. Court Rules—Rules Governing Appellate Practice, 2:15-1 et seq., which rules have been developed for regulating judicial conduct for Superior Court Judges, and have been tested by time for their sufficiency. The Department, while not required to use these rules, has determined that they are reasonable and proper for use by the Commission of Judicial Performance.

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COMMENT: Pursuant to N.J.A.C. 12:235-3.11(a)3, all hearings and investigations should be done by the full Commission and not by any subpanel. The Commission should act as a committee of the whole rather than appoint members to conduct independent investigations. Control will be lost and conflicts will arise where independent or three-member panels can conduct their own investigations or hearings.

RESPONSE: Having the entire Commission investigate every complaint is impractical. Additionally, these rules have proven to be sufficient for the Superior Court Judges, and the Department believes that they will suffice for the Division of Workers' Compensation as well.

COMMENT: The commenter, in referring to N.J.A.C. 12:235-3.11(c) through (f), states that if the function of the Commission is to give opinions and recommendations to the Director then it is the Director's job to make all final decisions as well as notify the parties of the Commission's findings. The Commission as set forth in this rule appears to have independent authority to advise the parties of the outcome of its investigation. Also the Commission appears to have independent authority to dismiss the charges. Only the Director should have the authority to dismiss the charges since the Commission can only recommend or advise.

RESPONSE: The Commission does have certain authority to deal with matters that come before it preliminarily, until such time as the Commission concludes that the circumstances may call for the censure, suspension or removal of a Judge. Regarding the commenter's final concern, since the Commission has the authority to review complaints and to investigate such complaints, it follows that the Commission has the right to dismiss a complaint when it determines that no further agency action is required.

COMMENT: At N.J.A.C. 12:235-3.16, subpoena power cannot be granted by rule of the Division.

RESPONSE: It is the intent of the rule to provide as fair and complete a hearing as possible. If compulsory process to compel the attendance of witnesses and the production of evidence is invalid, that determination shall be made by a court of competent jurisdiction.

COMMENT: Pursuant to N.J.A.C. 12:235-3.18, an informal hearing before the Commission appears to duplicate the process previously set forth by the organization of a Commission of Judicial Performance. This rule appears to require two hearings for the same charges and implies that if the Commission takes no action then the Commissioner may disregard the Commission and take whatever action he may personally see fit. The Commissioner and the Director may certainly dispute the findings and recommendations of the Commission but should not be allowed to conduct their own hearings or investigations and call it an informal hearing.

RESPONSE: This rule provides for an informal hearing, rather than a formal hearing, after the Commission that some form of censure is called for. This will result in either a written or oral reprimand, as opposed to removal or suspension from office, which may be dispensed after a formal hearing. In response to the final issue raised by the commenter, a formal or informal hearing by the Commissioner or Director can only be instituted by the recommendation of the Commission. A formal hearing is conducted after a preliminary investigation of the Commission, as is an informal hearing by the Director. The Commission does not conduct hearings; it conducts investigations. Upon recommendation, when needed, formal or informal hearings may be scheduled.

COMMENT: N.J.A.C. 12:235-3.19 sets forth five forms of discipline available to the Commissioner. The commenter feels that the Commissioner should not be given a choice of five types of discipline but should be really allowed to take whatever appropriate action or discipline he sees fit based upon the recommendations of the Commission. Also, the Commissioner may see fit to combine different forms of discipline, whether written or oral, and should not be bound by one or the other.

RESPONSE: A choice of discipline is deemed appropriate and allows the Commissioner to deal with inappropriate conduct by a Judge by way of various means commensurate with the severity of the offense.

COMMENT: In N.J.A.C. 12:235-3.20, confidentiality should not be interpreted as meaning that the Judge charged will not have access to the charges made against him or to any records, statements or other evidence presented to the Commissioner by the complainant.

RESPONSE: The Division has instituted a confidentiality provision to prohibit outside parties from accessing Commission material. Any Judge who has been investigated will have access to all Commission documents upon request.

COMMENT: At N.J.A.C. 12:235-5.1, providing for a reduction in counsel fee for the filing of an inaccurate statement should be left to the discretion of the Judge as to the amount and/or percentage.

RESPONSE: Since the Workers' Compensation statute provides that a Judge of Compensation may award a counsel fee, then clearly the reduction provided by this rule shall be at the discretion of the Judge.

COMMENT: With regard to N.J.A.C. 12:235-5.2, requiring what amounts to a prima facie case establishing the need for medical treatment and/or temporary disability is a needed revision. The requirement that the petitioner certify that he needs treatment is of little value. More important would be the report of the treating physician setting forth an exact diagnosis and the specific type of treatment recommended. Establishing a rule to expedite the handling of these matters is appropriate.

RESPONSE: The Department agrees that the report of a treating physician, setting forth the need for treatment, would be more persuasive. In the absence thereof, the injured worker should be able to certify or swear to the need for treatment. The ultimate determination of the need for treatment, of course, lies with the Judge of Compensation.

COMMENT: In N.J.A.C. 12:235-5.6, providing for the deposition of witnesses is an entirely new rule. No guidelines are set forth in the rule other than for good cause shown. Nor does the rule set forth whether the depositions are confined to fact witnesses or to expert witnesses. Allowing depositions of witnesses except in emergency situations prevents the trier of the facts to observe and assess the credibility of the witness. It also allows one of the parties to pose questions or present evidence which the Judge would normally not accept at a hearing. The taking of depositions will also prevent the appearance in the Division by regular petitioners and add to the burdensome court schedule.

RESPONSE: The guideline that depositions will be allowed "for good cause shown" clearly indicates that a Judge of Compensation must approve the taking of the deposition. If the Judge deems it necessary to observe and assess the credibility of a witness, then the request will be denied. Any questions of admissibility of matters in the depositions may be addressed at trial. It is not the intention of the rule to allow the deposition of petitioners, except in extraordinary circumstances. This rule is viewed as reducing rather than adding to the time to complete trials before the Division.

COMMENT: At N.J.A.C. 12:235-5.9, a rule that requires that the parties agree on the type of examination required is inappropriate. Many times additional examinations obtained by the petitioner are unnecessary and are not required by the respondent. Particularly, psychiatric examinations obtained by the petitioner may be unnecessary. Many times petitioner's evaluator will recommend additional examinations whereas respondent's evaluator will not. The decision of which exams to obtain should be at the discretion of the attorneys representing the clients. The Judge should not play any part in choosing the medical examinations that the parties will obtain. N.J.A.C. 12:235-5.9(b) is confusing in that it makes no mention of a situation wherein medical examinations have not been requested. The rule would lead one to believe that adjournments can only be granted where examination dates have been determined and cannot be granted if no such exam has even been requested.

RESPONSE: This rule was designed to eliminate unnecessary examinations, as suggested by the commenter. It will serve no useful purpose if the parties do not address the same medical issues. In order to provide a reasonable forum to address the concerns of the injured worker, the Judge should ascertain that each party has obtained the same medical examinations in order that a meaningful trial ensue. Where examinations have not been requested, the situation will be treated as though there are incomplete examinations. Upon advising the Court of the date of the examinations, and the names of the physicians, an adjournment may be granted, in order that examinations be completed and a meaningful pretrial conference be conducted. Also, regarding the granting of adjournments, adjournments will be granted when the party requesting an adjournment has a date and the physician's name for an examination. If a party has not requested an examination, the matter may be adjourned for reason of incomplete medicals, which will allow the party who needs an examination to schedule one.

COMMENT: Pursuant to N.J.A.C. 12:235-5.10(e), the commenter writes that trials should certainly commence and continue in a timely fashion. However, scheduling or acceleration of the trial should be at the order of the Director of the Supervising Judge of the vicinage and not of the Judge to whom the case has been assigned. Allowing each individual to schedule his own trials on days which conflict with the

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Division's own scheduling can only lead to disaster. Only the Supervising Judge can coordinate the scheduling of specific cases with the availability of the parties.

RESPONSE: It is the intent of the rule to allow the Judge to whom a case has been assigned to arrange for an accelerated trial consistent with the Director's continuous trial policy. This will lead not to disaster, but to quicker resolution of a litigated case.

COMMENT: At N.J.A.C. 12:235-5.1(j), requiring post-trial briefs to be submitted within 15 days without allowing the trial Judge to modify the time limits would appear to be inappropriate.

RESPONSE: A time certain within which to file briefs is necessary to ensure a speedy resolution of a litigated matter. Given the volume of cases pending before the Division, it would be inappropriate to allow any extension of time for filing of post-trial briefs as a time extension would serve only to delay the award of benefits to injured workers.

COMMENT: At N.J.A.C. 12:235-5.10(k), providing for a written curriculum vitae prior to the testimony of any expert witness would not expedite the examination of the witnesses' credentials. If anything, it may prolong the examination since a written curriculum vitae will provide more avenues for examination of the expert's credentials. Also many expert witnesses do not testify in court on a regular basis and therefore cannot provide a written curriculum vitae.

RESPONSE: The use of curriculum vitae by expert witnesses is designed to expedite, rather than prolong, the examination of the witness. If this proves false, the rule may be amended in the future.

COMMENT: Pursuant to N.J.A.C. 12:235-5.10(m), requiring that medical witnesses who regularly testify in the Division take vacations and adhere to the Division's schedule appears to be unenforceable and impractical. Establishing that a physician becomes a medical expert when he performs 25 Workers' Compensation examinations per year is inappropriate. A determination as to whether a witness is an expert is based upon the discretion of the Judge.

RESPONSE: Expert witnesses who regularly appear and testify in the Division have an obligation to be available when court is in session. This rule will ensure the speedy resolution of litigated matters by avoiding undue delays occasioned by the absence of said physicians. The rule does not define "medical expert" but rather "medical expert who regularly examines" as a physician who is subject to the vacation schedule.

COMMENT: One commenter writes with regard to N.J.A.C. 12:235-7.1 that the procedures for Second Injury Fund cases appear to eliminate the requirement that the Fund be joined as a party and all verified petitions require a settlement conference notwithstanding joinder. The setting forth of the statutory requirements for Fund eligibility without reference to the statute appears inappropriate. The rule does not require the Judge to advise, in writing, of his determination of Fund eligibility at the settlement conference. Some record of the Judge's opinion should be made.

RESPONSE: It is not the intent of the rule to eliminate the joinder requirement or the rule that a verified petition be filed. These requirements remain intact. There is no intent to circumvent or to ignore the statutory requirements for Fund eligibility. The rules are not designed to reiterate the statute, but are designed to clarify the intent of the statute. There is no requirement that the Judge make a determination of Fund eligibility at the settlement conference. That determination can and shall be made only after the trial of the issues.

COMMENT: One commenter states "I repeat all the comments I made to the rules when promulgated and then withdrawn earlier this year. None of the published comments satisfactorily address my comments."

RESPONSE: The Department believes that it more than adequately addressed this commenter's concerns when the rules were originally published for readoption. For the Departmental responses to the commenter's concerns, see adoption notice at 23 N.J.R. 1819(a). Specifically, the commenter's initial comments were addressed at 23 N.J.R. 1825 (middle of left column) through the first column of 23 N.J.R. 1827.

COMMENT: The Commissioner is not able to suspend Judges of Compensation for a day at a time, since N.J.S.A. 23:15-49 grants Judges tenure during good behavior.

RESPONSE: The right to discipline carries with it the inherent right to suspend upon good cause shown. This is in no way to be viewed as affecting a Judge's tenure, since a one-day suspension is not compatible with loss of tenure. It should be borne in mind that this form of discipline is only applicable after the Commission on Judicial Performance has determined that the Judge's conduct warranted a formal hearing addressing the Judge's alleged misconduct.

**Full text** of the adoption follows (additions to the proposal shown in **brackets** with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

12:235-1.1 Purpose; scope

(a) The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.

(b) This chapter shall apply to all persons subject to the Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.

12:235-1.2 (No change in text.)

12:235-2.1 Definitions

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

. . .

"Chief Judge" means the Chief Judge of the Division.

"Commissioner" means the Commissioner of Labor or his or her designee.

. . .

12:235-3.1 Promptness

(a) Judges of Compensation shall be prompt in the performance of all duties, including, but not limited to:

1. Convening hearings at the time and in the manner established by the Director.

2. (No change.)

3. Completing and forwarding to the Director at regular intervals performance records and other data relating to judicial performance in a manner established by the Director.

12:235-3.2 Courtesy and civility

(a) Judges of Compensation shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) Judges of Compensation shall require, so far as their power extends, that those individuals assisting the Judge in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a Judge of Compensation shall be free from impropriety and the appearance of impropriety. Their personal demeanor, not only on the bench and in the performance of their judicial duties, but also in their everyday life, shall be beyond reproach. Judges shall be temperate, attentive, patient, and impartial.

12:235-3.3 Conduct of attorneys

(a) Attorneys shall conduct themselves in a professional manner at all times, as defined by the Rules of Professional Conduct.

(b) Judges of Compensation shall report to the Supervising Judge and Director all instances of attorney conduct in contravention of the Rules of Professional Conduct.

12:235-3.4 Conduct of witnesses and others having business before the court

(a) Witnesses and others having business before the court shall conduct themselves in a proper manner.

(b) Judges of Compensation shall report to the Supervising Judge and Director all instances of improper, unethical or illegal practices by any expert witness, interpreter, court reporter, or party before the Judge.

12:235-3.5 Kinship or influence: disqualification

(a) Judges of Compensation shall not act upon or hear a controversy, or a portion thereof where a relative of the Judge or the Judge's spouse within the third degree of relationship to either is a party before the Judge.

(b) If a relative of the Judge or the Judge's spouse within the third degree of relationship to either, former partner, business associate, or personal friend is scheduled to appear before a Judge of Compensation, the Judge shall disqualify himself or herself from hearing the matter and promptly notify the Supervising Judge and the Director for rescheduling of the matter.

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(c) Judges of Compensation shall disqualify themselves from all other matters in which they are unable to conduct a fair and unbiased hearing.

12:235-3.6 Conflict of interest

(a) Judges of Compensation shall not:

1. Engage in any activity which requires the performance of duties inconsistent with their position of authority; or

2. Incur any obligation, pecuniary or otherwise, which would in any way interfere or appear to interfere with their duty to effectuate the proper administration of their official functions.

12:235-3.7 Partisan politics

(a) Judges of Compensation shall be entitled to entertain personal views of political questions, and while they are not required to surrender their rights or opinions as citizens, it is inevitable that suspicions of being influenced by political bias will attach to an individual who becomes an active promoter of the interests of a political party.

(b) Judges of Compensation shall not:

1.-7. (No change.)

12:235-3.8 Self-interest

Judges of Compensation shall abstain from performing or taking part in an official act by which their personal interests would be affected.

12:235-3.9 Gifts and favors

(a) Judges of Compensation shall not solicit or accept any gifts, favors, or gratuities of any form or pecuniary value from:

1. Litigants, attorneys, physicians, or witnesses regularly appearing before the Division; or

2. (No change.)

12:235-3.10 Medical reports

Any Judge of Compensation who has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured shall notify the Director.

12:235-3.11 Commission on Judicial Performance

(a) Pursuant to this subchapter, a Commission of Judicial Performance (Commission) is established.

1. The Commission shall consist of nine members. The Director shall designate one member to serve as Chairman and another member to serve as Vice Chairman. At least two members shall be retired Judges of Compensation, not less than three members shall be members of the Bar, and not more than four members shall be laymen who do not hold public office of any nature. The members shall be appointed by the Director for terms of two years and may be reappointed for such additional term or terms as the Director shall determine. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

2. A quorum shall consist of five members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership; provided, however, that if the Commission finds sufficient cause therefore, and recommends to the Director the institution of formal proceedings which may lead to censure, suspension, or removal of the Judge of Compensation, such recommendation shall be made only on the affirmative vote of five members of the Commission who have considered the record and at least three of whom were present at any hearing at which oral testimony was produced.

3. Whenever in the judgment of the Commission it shall appear necessary or expedient to do so, the Chairman of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion thereof, the panel shall make a report or recommendation to the Commission, which shall review the report or recommendation in accordance with (a)2 above.

4. The function of the Commission shall be to give advisory opinions, recommendations and reports to the Director.

(b) The Commission shall make a preliminary investigation to determine what, if any, action should be taken, upon receiving a written statement or criticism or complaint, not obviously unfounded or frivolous, or relating to a matter solely subject to an appeal from the criticized conduct or action, alleging facts indicating that a Judge of Compensation is guilty of:

1. Misconduct in office;

2. Willful failure to perform judicial duties;

3. Incompetence;

4. Habitual intemperance;

5. Engagement in partisan politics;

6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or

7. May be suffering from a mental or physical disability which is disabling the Judge and may continue to disable the Judge indefinitely or permanently from the performance of judicial duties.

(c) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified.

1. If the Judge of Compensation involved is aware of the statement, criticism or complaint, he or she should be notified of the Commission's findings and action;

2. If the Judge has not been made aware of the statement, criticism or complaint, the Commission, in the exercise of its discretion in the particular circumstances, may furnish information to the Judge or withhold information from the Judge as to the action taken.

(d) If the preliminary investigation indicates that further inquiry into the matter is necessary, the Commission shall:

1. Require the complainant to file a verified complaint against the Judge unless the circumstances render it unnecessary;

2. Notify the Judge of the nature of the charge, the name of the person making it, and that the Judge has the opportunity to present within such reasonable time as the Commission shall fix, such matters as he or she may choose with respect to it, including, on his or her request, the right to appear before the Commission, on notice to the complaining party, and to make such statement under oath as he or she deems appropriate. If the Judge does make a statement before the Commission, on request, the complainant shall be permitted to make further statement as he or she deems material. Such statements may be taken stenographically or by a sound recording device.

i. The notice to the Judge referred to in *[(e)]**(d)*2 above shall specify in ordinary and concise language the charges against the Judge and the alleged facts upon which they are based.

(e) All Department personnel shall cooperate fully with the investigation and shall provide all such information to the Commission as may be deemed necessary by the Director.

(f) Upon completion of the preliminary investigation, the Commission may:

1. Dismiss the charges and notify the parties of the action taken if it finds that the charges are without merit. If the matter has been made public, the Commission may, at the request of the Judge involved, issue a short statement of clarification and correction;

2. Issue a short explanatory statement, if a Judge is publicly charged with having engaged in grievous reprehensible conduct or having committed a serious offense, and if after the preliminary investigation it is decided that there is no basis for further proceedings or recommendation respecting the issuance of a formal complaint;

3. Request a Judge to appear at a time and place designated for an informal discussion of the matter if the investigation reveals some departures by the Judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys and the like, or other conduct or demeanor which would reflect unfavorably upon the functions of the Division and administration of justice if persisted in or were to become habitual or more substantial in character. After making the Judge aware of the objectionable conduct, and becoming satisfied that it was temporary in

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nature and not likely to become habitual, the Commission may dismiss the complaint, and advise the parties of the action taken, and the reasons for the dismissal of the complaint.

i. Conferences shall be recorded by a qualified reporter or by a sound recording device and a transcribed record and all papers in the proceeding shall be filed with the Commission.

(g) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for censure, suspension or removal of the Judge, and that formal proceedings to that end should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission with the Director. The Commission shall issue also without delay and serve upon the Judge a notice advising him or her that it has filed such a recommendation with the Director.

1. After the Director has received reports and recommendations from the Commission, the Director shall recommend such action as is deemed appropriate to the Commissioner, who shall render a final agency determination.

12:235-3.12 Removal from office

(a) Judges of Compensation may be removed from office if it is found beyond a reasonable doubt that:

1. They have been convicted of an indictable offense;

2. They have been found to be incapable of executing the duties of their office; or

3. They have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2, which details the circumstances for forfeiture of public office.

12:235-3.13 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the Commissioner by the Director.

12:235-3.14 Prosecution of removal proceedings

The Attorney General or a designated representative shall prosecute the removal proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.

12:235-3.15 Suspension pending resolution of the proceeding

The Commissioner may suspend Judges of Compensation from office or from performing their regular duties, with pay, prior to the resolution of the proceeding.

12:235-3.16 Right to counsel

(a) The accused in a formal hearing for removal, suspension or censure shall be given a reasonable time to prepare a defense and shall be entitled to counsel retained and paid for by the accused.

(b) The prosecuting attorney and the accused shall have the right to compulsory process to compel the attendance of witnesses and the production of evidence deemed necessary for the hearing.

12:235-3.17 Formal proceedings for removal, suspension or censure

(a) Upon receipt of a recommendation from the Commission that formal proceedings for removal, suspension or censure should be instituted, the Director shall schedule such proceedings before the Commissioner or a representative designated by the Commissioner.

(b) The hearing shall commence within 30 days of the receipt of the Commission's recommendation by the Director and shall be tried on a continuous basis to a conclusion.

12:235-3.18 Informal hearings

(a) Upon receipt of a recommendation from the Commission that the circumstances may call for censure, but that formal proceedings to that end should not be instituted, the Director shall schedule an informal hearing before the Commissioner or a designated representative within 30 days of receipt of the recommendation.

(b) The informal hearing shall be conducted in a summary manner after the Judge has been advised of the charges in writing and has been afforded a reasonable time to prepare a defense.

(c) The Director, on his or her own motion, may require a Judge to respond to a charge that a provision of this subchapter or a directive of the Director has been violated. This response may be in person, in writing or by telephone. Such a proceeding shall be considered an informal hearing.

(d) The decision of the Commissioner, his or her designated representative or the Director, following an informal hearing, shall be final.

12:235-3.19 Forms of discipline

(a) The Commissioner may dispense the following discipline after any formal hearing:

1. Removal from office;

2. Suspension;

3. Written reprimand; or

4. Oral reprimand.

(b) The Commissioner or a designated representative may dispense the following discipline after any informal hearing conducted by the Commissioner or his or her designee:

1. Written reprimand; or

2. Oral reprimand.

(c) The Director may dispense the following discipline after any informal hearing conducted by the Director:

1. Written reprimand; or

2. Oral reprimand.

12:235-3.20 Confidentiality

All disciplinary proceedings concerning Judges of Compensation shall be conducted in a confidential manner. The Director shall have the sole responsibility for releasing information concerning disciplinary matters.

12:235-4.1 Assignment to supervisory positions

(a) It shall be within the power of the Director to ascertain the need to assign Judges to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts the Director may designate.

(b) In the discretion of the Director, the Director may:

1. Determine the number of Judges needed to provide the necessary supervision; and

2. Appoint Judges of Compensation to supervisory positions in which the Judges shall serve at the pleasure of the Director.

12:235-4.2 Personnel functions

(a) The Supervising Judge of a particular district shall be directly responsible for the general conduct and performance of each Judge of Compensation in that district. The Supervising Judge shall be prepared to give a periodic performance evaluation of each Judge at the request of the Director.

(b) The Supervising Judge of a particular district shall be responsible for the orderly and prompt flow of work in that district.

(c) Subject to the approval of the Director, the Supervising Judge shall determine the composition of the daily calendar and shall designate the Judge of Compensation to be responsible for each calendar list. The Supervising Judge shall be responsible for all daily changes of scheduling for all hearing personnel within each district and be available to discuss particular scheduling problems with attorneys.

(d) Each Supervising Judge shall furnish statistical reports as required by the Director.

12:235-5.1 Initial pleadings

(a) Claim petitions shall be subject to the following:

1. The formal hearing process shall be initiated by the filing of a verified claim petition in duplicate with the central office of the Division within the time frame prescribed by law on a form prescribed by the Division.

2. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition any fee that may be awarded, may be reduced by 15 percent or $200.00, whichever is greater.

(b) Answers to a claim petition shall be subject to the following:

1. The answer of the respondent to a claim petition shall be on a form prescribed by the Division. It shall be filed with the assignment clerk at the office to which the claim is assigned within 30 days of the date of service of the petition. A copy of the answer shall be served on the petitioner's attorney simultaneously. The filing and service of the answer may be made by first-class mail or its equivalent. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief and shall

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be regarded as his or her certification of its contents without the necessity of an affidavit.

2. If the answer is not filed as specified in (b)1 above, the Judge of Compensation to whom the case is assigned may, on motion, either suppress the defenses and permit the petitioner to prove his or her case, or permit the filing of the answer on such terms as may be fixed in the discretion of the Judge of Compensation.

3. (No change.)

12:235-5.2 Motions for temporary disability and/or medical benefits

(a) (No change.)

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the Division and shall contain:

1. (No change.)

2. Affidavits or certifications made in personal knowledge by the petitioner, petitioner's attorney and/or reports of the treating physicians stating the medical diagnosis and the specific type of treatment being sought, and, if available, an itemized bill and report of the treating physicians, or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability and/or medical treatment.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability and/or medical benefits, the attorney may be assessed a penalty not to exceed $200.00 which shall be deducted from any fee which may be awarded for services.

(d) When the Division has received a notice of motion for temporary disability and/or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a Judge of Compensation peremptorily within 30 days. Motions for medical and/or temporary benefits shall commence and continue in a timely manner subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage, or the Judge of Compensation to whom the case is assigned.

(e) Affidavits, certifications and/or medical reports in support of the motion shall constitute a prima facie case, and unless rebutted by reports or testimony or affidavits or certifications by the respondent or respondent's attorney setting forth the factual or legal basis of the denial, shall be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought.

(f) (No change.)

(g) On conclusion of the hearing on the motion for temporary and/or medical benefits, the Judge of Compensation shall, within 15 days, render a final decision on the motion and notify the respective counsel of the decision via first-class mail. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the Judge, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

12:235-5.3 Other motions

(a) (No change.)

(b) If the notice of motion or responsive pleading relies on facts not of record, it shall be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence to which the affiant is competent to testify. The notice of motion shall be considered uncontested unless responsive papers are filed and served within 14 days of the service of the notice of motion.

(c) Motions to dismiss for lack of prosecution pursuant to N.J.S.A. 34:15-54 shall be listed for hearing. All other motions shall be disposed of on the papers, unless a Judge of Compensation directs oral argument or further proceedings, in which event a hearing shall be scheduled within 30 days from the filing of the last papers contemplated by this section. At the conclusion of any such hearing the Judge of Compensation shall render a decision and enter an appropriate order within 30 days.

12:235-5.4 Third party joinder by respondent

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

(c) Such motion shall be granted only where the moving party has satisfied the Judge of Compensation that there exists a substantial likelihood that the party to be joined is or may be liable for compensation benefits to the petitioner.

(d) (No change.)

(e) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the Judge of Compensation may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.

(f) If a respondent knowingly files an incomplete, inaccurate or frivolous motion for third party joinder, such circumstances may be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed $200.00 to each opposing counsel of each party sought to be joined.

12:235-5.6 Discovery

(a) (No change.)

(b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where medical information is not available to the worker. The employer shall be required to furnish or make available for inspection and copying of all records of medical treatment, examinations and diagnostic studies authorized by the respondent. The respondent shall have the same right when the worker is treated by his or her own physician.

(c) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish the adversary party with a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.

(d) (No change.)

(e) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A Judge of Compensation upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(f) Interrogatories may be allowed in other cases, upon motion, for good cause shown.

(g) Depositions of witnesses may be allowed, upon motion, for good cause shown.

12:235-5.7 Testimony of injured or ill petitioner by depositions

(a) A petitioner seeking compensation who is in such a physical condition that it is imperative that his or her testimony be taken by deposition, in order to preserve the person's rights or those of his or her estate or dependents, may give a deposition.

(b) The deposition may be ordered by a Judge of Compensation upon notice to the adverse party and taken before a certified shorthand reporter.

(c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier.

(d) (No change.)

(e) A deposition for this purpose may also be taken by consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

12:235-5.8 Certification of pre-existing conditions

(a) In all cases in which the petitioner claims total and permanent disability, the petitioner or petitioner's attorney shall, prior to the first hearing date, furnish to all other parties a written certification as to the existence of any condition pre-existing the last claimed compensable episode.

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

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(d) Copies of all records and reports so obtained by the respondent shall be furnished to the petitioner or petitioner's attorney within 10 days of receipt.

12:235-5.9 Pre-trial conference

(a) In any formal proceeding, the Division shall schedule a pre-trial conference where the following shall be accomplished:

1. All medical reports shall be exchanged;

2. The Judge and the attorneys shall agree upon the type of examination(s) required by each party;

3. The Judge and the attorneys shall make a sincere effort to limit issues; and

4. A pre-trial memorandum on a form prescribed by the Division shall be executed; or

5. There shall be an adjournment upon good cause shown.

(b) Incomplete medical examinations by either party shall be considered good cause for the adjournment of a pre-trial conference; provided, however, that no such adjournment shall be granted unless each party requesting the adjournment shall supply to the Judge the name(s) of the examining physician(s) and the date(s) of the examination(s).

(c) (No change in text.)

(d) Any case listed pre-emptorily, in which no appearance is made on behalf of the petitioner and which is not adjourned for good cause, shall be marked "not moved" and administratively discontinued. The case shall not be restored to the calendar except on notice of motion, provided however, the Judge of Compensation may for good cause and on the Judge's own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the official presiding for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit to a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees at the discretion of the official presiding.

12:235-5.10 Conduct of formal hearings

(a) (No change.)

(b) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record, or appear and prosecute or defend any action in any formal hearing.

(c) Hearings shall be scheduled by the Director or a designated representative of the Director.

(d) The Judge of Compensation shall, at the commencement of the day, call the list of cases in open court. No adjournment shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.

(e) Trials shall commence and continue in a timely manner subject to scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage or the Judge of Compensation to whom the case has been assigned.

(f) All formal hearings or applications shall be conducted in open court, except when the Supervising Judge of the district deems the matter to be so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a stenographic record shall be made.

1. Bifurcation of any trial may be permitted by the Judge of Compensation. The order of proof shall be determined by the Judge of Compensation to whom the case is assigned.

(g) All formal hearings including motions where a record is required shall be recorded stenographically by a certified shorthand reporter subject to such limitation as may be provided by statute.

1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter shall be assessed by the Judge of Compensation. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.

(h) When there are pending in the Division two or more formal proceedings involving a common question of law or fact arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures, to causes of occupational disease, the Judge of Compensation or the Director may, on motion, or on the Judge's own initiative, order a joint hearing of any or all matters in issue. The Director may order all such proceedings consolidated, and have such orders concerning proceedings designed to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.

(i) Upon the commencement of a formal hearing, counsel may make opening statements on behalf of their respective clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearing.

(j) Counsel may make closing statements or file post-trial briefs. Post-trial briefs, if ordered or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or ordered.

(k) Prior to the testimony of an expert witness, the producing party shall provide the Judge of Compensation and opposing counsel with a written curriculum vitae of the witness.

(l) Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the Judge of Compensation in the Judge's discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the Judge of Compensation, opposing counsel, the witness and the stenographer, and the hypothetical question may be marked as an exhibit in the proceedings in lieu of reading it to the witness.

(m) All medical experts for both parties who regularly examine petitioners to determine the nature and extent of their disability shall adhere to the vacation schedules established annually by the Director. If such medical expert is not available to testify because of an unexcused absence at any other time, the Judge of Compensation may require the party for whom such medical witness is to appear, to arrange for an examination and appearance at trial by another medical expert.

1. A medical expert who regularly examines petitioners means a medical expert who performs a minimum of 25 workers' compensation examinations per year.

(n) All exhibits shall be marked with an identifying number, the date of submission and initials of the court reporter.

1. An exhibit list shall be prepared by the Judge to be retained in the file and forwarded to the Division for microfilming and storage.

2. At the conclusion of the hearing, the Judge shall determine which exhibits are to be retained in the file and forwarded to the Division for microfilming and storage.

3. All other exhibits shall be returned to respective counsel for retention until the expiration of time for appeal or 20 years as determined by the Judge.

(o) (No change in text.)

(p) Judges of Compensation may refer the petitioner to the Division of Vocational Rehabilitation when warranted.

(q) Prior to testifying, a witness shall be administered an oath by the Judge of Compensation or by a certified shorthand reporter qualified to administer oaths. Because of religious beliefs, a witness may affirm in place of an oath.

(r) Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. An attorney-at-law of New Jersey may prepare a subpoena and authorize its service, in accordance with the Rules of Civil Practice of New Jersey, in the name of the Judge of Compensation assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production.

(s) All reserved decisions shall be rendered by the Judge of Compensation within 30 days from completion of the last day of hearing, or within 30 days from the date of filing of briefs. Additional time to render reserved decision may be allowed only on approval of a written application to the Director.

(t) The Judge of Compensation shall notify all parties by letter of the decision, detailing its terms and the name of: the reporter

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and the certified shorthand reporting firm to which it has been dictated; centralized word processing center; or other method by which the opinion is produced.

(u) A final judgment shall be deemed entered as of the date the judgment is signed by the Judge.

12:235-6.1 Purpose of informal hearings

(a) The informal hearing process is a service provided by the Division to effectuate the amicable adjustment of controversies between injured workers and their employers involving their respective rights under the Act.

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

12:235-6.2 Filing of an application for an informal hearing

(a) The informal process is initiated by the filing of an application in duplicate with the Division.

(b) The filing for informal hearing may be made by any party of interest including the injured worker, petitioner's attorney, the employer, the employer's representative or insurance carrier, or the Division.

(c) (No change.)

12:235-6.4 Scheduling of informal hearings

(a) Upon receipt of the completed application, the Division shall schedule the matter as soon as practicable.

(b) The Division shall give written notice of the time, place and name of the assigned Judge of Compensation to all parties involved in the controversy.

12:235-6.6 Representative of employer or carrier

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the Judge of Compensation at the time of the hearing.

12:235-6.7 Registration of representatives for employers or carriers

(a) Each employer, carrier, or self-insured shall submit to the Director for distribution to all Judges of Compensation a list of each individual who will represent them at informal hearings.

(b) (No change.)

12:235-6.8 Representation of claimant

(a) (No change.)

(b) Deviation from (a) above shall only be permitted by consent of the Director.

12:235-6.9 Solicitation of compensation claims

No attorney nor any other person at the instance of an attorney shall solicit or cause to be solicited any compensation claim, nor shall any referral fee be paid to anyone not an attorney.

12:235-6.10 Procedure where employer has no insurance

Where it is brought to the attention of the Judge of Compensation that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the Director for appropriate action.

12:235-6.11 Allowance of attorney fees

(a) *A* Judge of Compensation conducting informal hearings may allow a counsel fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.

(b) (No change.)

12:235-6.12 Commencement of informal hearings

(a) Hearings shall be conducted by a Judge of Compensation designated by the Director.

(b) (No change.)

(c) Upon completion of the daily call, the Judge of Compensation shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments the Judge feels are warranted.

12:235-6.13 Determination of issues

(a) Upon a review of the application for the informal hearing and any supporting documents, the Judge of Compensation shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy as to unpaid temporary disability benefits and/or medical expenses.

(b) After a review of medical records or evaluation reports or both submitted by the parties and having personally inquired of the worker as to all present complaints, the Judge of Compensation shall make recommendations regarding permanent disability.

(c) In cases where there is insufficient factual or medical information upon which a recommendation can be made, the Judge of Compensation shall require either to provide such information and shall adjourn the hearing until such time as the information is available.

12:235-6.14 Acceptance of settlement recommendations and entry of informal award

(a) When agreement has been reached by all parties and approved by the Judge of Compensation, the terms of such settlement shall be entered in the "Statement of Award," on a form prescribed by the Division.

(b) The claimant shall be fully advised of all rights under the Act.

(c) The "Statement of Award" shall be signed by the claimant, the employer or the employer's representative, and by the Judge of Compensation.

12:235-6.15 Fee for service of physician

A Judge of Compensation conducting an informal hearing may allow a fee to a physician for medical services rendered to a claimant for the term of a compensable injury, unless such treatment was not ordered or authorized by the employer or carrier.

12:235-6.16 Denial of compensability or refusal to accept findings of informal hearings

In cases where the employer or the representative denies compensability under the Act or where either party refuses to accept the recommendations made by the Judge of Compensation, the claimant shall be made aware of all statutory rights, including the right to obtain counsel, to file a formal claim petition, and the applicable time period within which a claim petition must be filed.

12:235-6.17 Failure of employer or carrier to appear

(a) If a worker is present and the employer or its carrier fails to appear, the Judge of Compensation shall inform the worker of:

1.-2. (No change.)

3. The worker's statutory rights as stated at N.J.A.C. 12:235-6.16.

12:235-6.18 Adjournment

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the Judge of Compensation shall be promptly informed so that the Judge may have an opportunity to notify the parties and arrange for rescheduling.

12:235-7.1 General procedure

(a) Upon the filing of a verified petition for Second Injury Fund (Fund) benefits a settlement conference shall be scheduled before a Judge of Compensation where representatives of the employee, employer(s) and the Fund are noticed to attend.

1. The settlement conference may be adjourned by a Judge of Compensation for good cause.

(b) If a settlement cannot be effectuated at the settlement conference, the matter shall be listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.

i. The Judge of Compensation, when determining the probable responsible respondent, shall be guided by the principles stated in *Bond v. Rose Ribbon,* 78 N.J. Super. 505 (App. Div. 1963) *aff'd* 42 N.J. 308 (1964).

(c) If the Judge of Compensation finds that the petitioner is not totally and permanently disabled, the Fund petition shall be dismissed.

(d) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident, the Fund application shall be dismissed.

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(e) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the effects of the last compensable accident and subsequent conditions, the Fund application shall be dismissed.

(f) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident together with pre-existing conditions, the Judge of Compensation shall schedule a hearing upon the application for Fund benefits on a day when the Deputy Attorney General representing the Fund regularly appears.

12:235-7.2 Hearing

(a) The hearing to determine whether the petitioner is entitled to Fund benefits shall be upon the transcript of the hearing for benefits previously heard, supplemented by oral and documentary evidence as may be required in the discretion of the Judge of Compensation for a full and true disclosure of the facts as to Fund responsibility and where applicable, as to an apportionment of the responsibility of the Fund.

12:235-7.3 Payment of benefits

(a) Pending determination of the application for Fund benefits, the employer previously found liable shall commence payments at the applicable rate for permanent total disability.

(b) Upon approval of an application for benefits from the Fund, the Judge of Compensation shall enter an order requiring payment from the Fund from the date when the final payment of compensation by the employer is or was payable for the last compensable injury following which the employee became totally and permanently disabled. No payment from the Fund shall be made for any period prior to the date of filing the verified petition for Fund benefits.

1. If the employer has paid in excess of the amount for which it is responsible, the employer shall be reimbursed by the Fund.

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

12:235-7.4 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges eligibility for Fund benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or the applicant's attorney.

(b) (No change.)

12:235-8.1 Application for commutation

(a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the Director.

(b) (No change.)

12:235-8.2 Application form for commutation

(a) The application for commutation shall be made on a form prescribed by the Division which shall include:

1.-4. (No change.)

5. The Judge of Compensation and the place wherein the award was rendered;

6.-8. (No change.)

9. Such other information as prescribed by the Director.

(b) (No change.)

(c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in the application.

12:235-8.3 Approval or disapproval of application for commutation

(a) Upon receipt of the application for commutation, the matter shall be forwarded for hearing to the Judge of Compensation who entered the award which is sought to be commuted.

1. If that Judge is not available, then any Judge in the vicinage may hear the application.

(b) After hearing the application, the Judge of Compensation shall enter an order either granting or denying the application and shall state the reasons therefor, pursuant to N.J.S.A. 34:15-25.

(c) The disbursement of all funds commuted shall be under the supervision of the Director.

12:235-9.1 Filing discrimination complaints

All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the Director.

12:235-9.2 Contents of discrimination complaints

(a) The complaint alleging discrimination shall be under the oath or affirmation of the complainant, and shall be on a form prescribed by the Division.

(b) The complaint alleging discrimination shall include the following:

1. Complainant's name, address, Social Security number, and claim petition number, if a claim for formal hearing has been filed;

2.-8. (No change.)

9. Such other information as requested by the Director.

12:235-9.3 Attachments to discrimination complaints

The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in the application.

12:235-9.4 Investigation of discrimination complaints

Upon receipt of a complaint for discrimination, the Division shall conduct an investigation and forward the complaint and results of investigation to the Director within 90 days.

12:235-9.5 Action by the Commissioner

Upon receipt of the complaint and results of investigation from the Division, the Commissioner may take such action pursuant to N.J.S.A. 34:15-39.1 as the Commissioner deems appropriate.

12:235-10.1 Employer's first report of accidental injury or occupational disease

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

(c) The first report of accident or occupational disease shall be filed with the Division, with the first copy being forwarded to the insurance carrier and the second copy being retained by the employer.

(d) (No change.)

12:235-10.2 Employer's first report of accidental injury or occupational disease

(a) The employer shall report to the Division all accidental injuries causing disability beyond seven days or permanent injury or occupational disease. The form for this report shall be as prescribed by the Division.

(b) The employer's report to the Division of an accidental injury or occupational disease shall be filed with the Division, with a copy being forwarded to the insurance carrier and a copy retained by the employer, as soon as it is reasonably known or expected that such disability, permanent injury, or occupational disease has occurred.

12:235-10.3 Insurer's initial notice of accident

(a) (No change.)

(b) The notice shall be *[as]* as prescribed by the Division. The original of the insurer's initial notice of accident shall be filed via first-class mail with the Division, with a copy retained by the carrier.

12:235-10.4 Insurer's final report of accident

(a) (No change).

(b) The final report of accident shall be filed with the Division, with a copy to be sent to the employer, employee, and a copy retained by the insurance carrier or self-insured.

12:235-10.5 Report of death

In the event that death results due to an accidental injury subsequent to the filing of a final report of accident, a report of death shall be filed with the Division and a copy sent to those recipients as named in N.J.A.C. 12:235-10.4.

12:235-13.2 Definitions

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

. . .

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"Director" means the Director of the Division of Workers' Compensation.

. . .

12:235-14.1 Purpose; scope

(a) The uninsured employers' fund ("Fund") has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards of medical and temporary benefits entered against uninsured defaulting employers. This subchapter sets forth the procedures by which the Fund will be operated.

(b) Benefits for temporary disability and medical costs shall be provided in accordance with N.J.S.A. 34:15-120.1 et seq.

(c) No judgment or order for the payment of benefits shall be entered against the Fund.

12:235-14.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third-party joinder

(a) The petitioner's attorney shall notify the Fund that benefits will be sought from the Fund within 45 days of the date either petitioner or his or her attorney knows or should have known that the employer is uninsured. This time period may be extended for good cause shown.

1. Petitioner's attorney shall notify the Fund by the filing of a motion to join the Fund.

2. The motion to join the Fund shall be filed in the vicinage in which the case is assigned.

3. A copy of the motion to join the Fund shall be served upon the Fund in the Office of Special Compensation Funds, CN-399, Trenton, New Jersey 08625-0399.

(b) Petitioner's attorney shall contact the Compensation Rating and Inspection Bureau in writing to receive confirmation that the employer is uninsured. A copy of the Rating Bureau's response shall be included in the motion to join the Fund.

(c) Petitioner's attorney may make personal service of the claim petition and the motion to join the Fund on respondent.

1. Proof of service shall be filed with the Division and with the attorney representing the Fund.

2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Director for substituted service pursuant to Civil Practice Rule 4:4-4(e). The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

(d) The Fund shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is or may be liable for the benefits sought.

12:235-14.3 Certification

(a) Petitioner's attorney shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information:

1.-7. (No change in text.)

8. A statement of facts which establish the employer-employee relationship;

9.-15. (No change in text.)

16. Medical insurance coverage for employee and/or spouse, and, if available, the name and address of the company and the policy number;

17. If medical expenses have been paid;

18. Who paid the medical expenses; and

19. Whether the petitioner is receiving Social Security benefits.

12:235-14.4 Medical bills; physician's examination

(a) The Fund shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.

(b) The Fund may order an independent medical examination of a petitioner by a physician at any time when the Fund is involved or when it appears the Fund may become involved in a case. The examining physician will be asked to offer an opinion on:

1. The appropriateness of petitioner's current medical treatment;

2. The prognosis for the petitioner;

3. Whether petitioner is able to return to work; and

4. Whether petitioner requires further treatment.

(c) Fees for the independent medical evaluation shall be paid by the Fund.

(d) If it appears that the petitioner may be entitled to benefits from the Fund, then the Fund may direct the petitioner to the appropriate authorized treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one authorized by the Fund shall be deemed to be unauthorized treatment, and costs for such treatment shall not be chargeable to the Fund.

12:235-14.5 Assignment of cases; schedules

(a) The Director shall assign the Fund cases for hearing.

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

12:235-14.6 Payments from the Fund

Payments from the Fund shall be made only in accordance with N.J.S.A. 34:15-120.4.

12:235-14.7 Attorney fees

(a) An attorney fee may be payable from the Fund to the petitioner's attorney when the petitioner is found eligible for Fund benefits by the Commissioner.

(b) An attorney shall make an application to the Commissioner for payment ofthe attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

1. The application shall be supported by an affidavit of services in a form and manner as prescribed by the Director.

# LAW AND PUBLIC SAFETY

## (a)

### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS HEARING AID DISPENSERS EXAMINING COMMITTEE

### Fee Schedule; Reinstatement Fee

### Adopted Amendments: N.J.A.C. 13:35-8.9 and 8.17

Proposed: June 17, 1991 at 23 N.J.R. 1895(a).

Adopted: July 26, 1991, by the Hearing Aid Dispensers Examining Committee, Granville Brady, Jr., President.

Filed: August 9, 1991 as R.1991 d.458, **without change.**

Authority: N.J.S.A. 45:9A-7.

Effective Date: September 3, 1991.

Expiration Date: September 21, 1994.

**Summary** of Public Comments and Agency Responses:
**No comments received.**

**Full text** of the adoption follows.

13:35-8.9 Notification to the Committee; failure to renew

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

(c) Every licensee who does not respond to the computerized notice for renewal of his or her registration prior to the renewal deadline but who files a renewal application within 60 days after the expiration of the biennial registration period shall be assessed a late fee of $25.00. Thereafter, licensees who seek to renew their registrations shall be assessed a reinstatement fee of $100.00.

1.-3. (No change.)

(d) (No change.)

13:35-8.17 Fee schedule

(a) The fee schedule for the Hearing Aid Dispensers Examining Committee of the State Board of Medical Examiners, in the Division of Consumer Affairs of the Department of Law and Public Safety, shall be as follows:

1. Application fee: $20.00 (non-refundable)

2. Temporary licenses: $50.00

3. Training permits: $50.00

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4. Examination:
i. Written: $50.00
ii. Practical: $25.00
5. Initial Registration Fee:
i. During the first year of a biennial renewal period: $110.00
ii. During the second year of a biennial renewal period: $55.00
6. Endorsement:
i. Review of credentials: $30.00
ii. Endorsement fee:
During the first year of a biennial renewal period: $110.00
During the second year of a biennial renewal period: $55.00
7. Biennial registration renewal: $110.00
8. Renewal or Extension of Temporary License and Training Permit: $20.00
9. Late fee: $25.00
10. Reinstatement, Biennial Registration: $100.00
11. Duplicate or replacement of biennial registration certificate: $25.00
12. Preparation of certification papers for applicants to other states: $25.00

(b) The Committee will refund the examination fee only if the application is rejected by the Committee or withdrawn by the applicant within 14 days after the Committee's receipt of the application.

(c) An applicant who fails to sit for an examination for which payment has been submitted may, one time only, have the fee credited toward the next scheduled examination. If the applicant fails to sit for such next scheduled examination, the fee will be forfeited.

# PUBLIC UTILITIES

## (a)

## BOARD OF PUBLIC UTILITIES

### Gas Service

### Adopted New Rules: N.J.A.C. 14:6

Proposed: April 1, 1991 at 23 N.J.R. 944(a).
Adopted: July 31, 1991 by the Board of Public Utilities, Dr. Edward H. Salmon, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.
Filed: August 5, 1991 as R.1991 d.456, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 48:2-13.
BPU Docket Numbers GX90121360 and GX91020252.
Effective Date: September 3, 1991.
Expiration Date: September 3, 1996.

**Summary** of Public Comments and Agency Responses:

COMMENT: Public Service Electric and Gas Company (PSE&G) suggests that N.J.A.C. 14:6-1.1(e) be amended to include a reference to the BOCA (Building Officials and Code Administrators) Basic Mechanical Code in addition to the Natural Fuel Gas Code for application to the construction and maintenance of gas utility plant facilities beyond the scope of the Federal Code.

RESPONSE: The Board is of the opinion that it is not necessary to expand the scope of this section. If a gas utility believes that it is useful to adopt the BOCA Code, it is free to reference the Code in its own operations and construction manuals.

COMMENT: PSE&G suggests that N.J.A.C. 14:6-2.1, which includes an illustrative example for the calculation of service connection costs which uses the figure of $4.00 per foot, be changed to more accurately reflect current cost experience such as $10.00 per foot.

RESPONSE: The Board agrees that the use of a $10.00 per foot cost for the calculation of service connection costs more accurately reflects current cost experience. As the sample calculation set forth in N.J.A.C. 14:6-2.1 is merely an example, the Board does not consider this and other modifications upon adoption to be substantive.

COMMENT: PSE&G suggests that N.J.A.C. 14:6-2.3(c) and 14:6-2.3(d) be amended by changing the term "calorimeter" to "heating value measurement device".

RESPONSE: The Board concurs with the recommendation as "heating value measurement device" is a more generic term. The Board would further note that the National Bureau of Standards referred to in N.J.A.C. 14:6-2.3(c) is currently designated as the National Institute of Standards and Technology.

COMMENT: PSE&G suggests that the language contained in N.J.A.C. 14:6-2.9, which PSE&G argues sets forth without specific detail the requirements for notifying customers of the distinct odor of gas and its characteristics, is too cumbersome and should be replaced with the following:

"Each gas company shall take steps to inform its customers of the odor of gas and its hazard along with the curent procedures to follow if gas is detected".

RESPONSE: The Board does not agree with PSE&G that the language contained in N.J.A.C. 14:6-2.9 is either cumbersome or nonspecific. On the contrary, the Board is of the opinion that the language contained in that section is more specific and will provide more information to customers than will the language recommended by PSE&G.

COMMENT: PSE&G suggests that N.J.A.C. 14:6-2.15, which incorporates the requirements of the United States Department of Transportation for drug testing, should include the complete citation to the Federal Code as Title 49, Code of Federal Regulations, Part 199.

RESPONSE: The Board concurs with PSE&G's comment.

**Full text** of the rules adoptd as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:6.

**Full text** of the adopted new rules which are effectively amended expired rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

14:6-1.1 Plant Construction

(a) (No change.)

(b) As a portion of this subchapter on utility plant, and all aspects of construction and operation thereof, and as a portion of all other subchapters under N.J.A.C. 14:6, Gas, the Board hereby adopts, by reference, as though set out in full, the following:

1. The current edition (and amendments as issued) of Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Part 192, Title 49 of the Code of Federal Regulations (Federal Code).

2. The current edition (and amendments as issued) of Liquefied Natural Gas Facilities: Federal Safety Standards: Part 193, Title 49 of the Code of Federal Regulations (Federal Code).

(c) Any such plant and its facilities which were designed and constructed prior to March 3, 1986 shall be subject to all the provisions of the Federal Code herein adopted by reference, including effective dates set forth in the Federal Code. When existing facilities are replaced, relocated or significantly altered, the siting, design and construction requirements of the Federal Code sections cited above in (b)1 and 2 shall apply.

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

14:6-1.2 Tests on service installations

Each gas utility shall perform a leak test on each service installation.

14:6-1.3 Inspection of property

Prompt investigation of gas leaks shall be made by each gas utility and such corrective action taken as is required by the facts and circumstances disclosed. A sufficient number of reliable portable devices for detecting the presence of combustible gas in the atmosphere shall be maintained as well as sufficient number of reliable devices which assure a substantially accurate knowledge at all times of the pressure existing in the system. Regulator stations shall be inspected for gas leaks with a combustible gas indicating device. These regulators shall be inspected at least once a year and repaired as necessary. Individual district regulators shall be inspected in such manner and with such frequency as may be necessary to maintain these regulators in condition to render safe and adequate service. A complete record shall be kept for two years of all such inspections, tests, conditions found and the corrective measures taken, in accordance with N.J.A.C. 14:3-6.2, Plant and operating.

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14:6-1.4 Service line valves

Each gas utility shall install an outside shutoff valve on every new and every renewed service line.

14:6-1.6 Gas detectors

(a) Combustible gas detecting instruments shall be assigned to all service and other personnel who may be involved in the detection of gas leaks. The instruments shall be properly maintained and periodically calibrated in accordance with the manufacturer's reasonable specifications. Records shall be kept of such calibrations.

(b) (No change.)

14:6-2.1 Service connections; regular customers

Each gas utility shall furnish and place, at no cost to the customer, up to 50 feet of service connection, measured at right angles from the nearest curb line to the customer's building, at the point of service entrance designated by the utility. Where the distance is in excess of 50 feet, the service pipe will be installed subject to a charge equal to the amount by which the cost of the service connection exceeds the greater of either ½ of the customer's annual revenue as estimated by the utility or the cost of the first 50 feet of service connection which otherwise would be furnished without charge as provided above. Should the customer request a service entrance at a location other than that designated by the utility, the customer shall pay the additional cost associated with said change in point of service entrance provided that the customer shall not be required to pay for the first 50 feet of service connection in any case and, provided further, that the customer shall not be required to pay for any portion of the cost of the service connection if the cost thereof does not exceed ½ of the estimated annual revenue. The utility will waive the charge to the customer when the amount is $5.00 or less.

EXAMPLE

| | 1st case | 2nd case | 3rd case |
|---|---|---|---|
| Length of Service Connection | 75 feet | 75 feet | 75 feet |
| Cost per foot | *[$4.00]* **$10.00*** | *[$4.00]* **$10.00*** | *[$4.00]* **$10.00*** |
| Cost of Service Connection | *[$300.00]* **$750.00*** | *[$300.00]* **$750.00*** | *[$300.00]* **$750.00*** |
| Cost of 50 feet of Service Connection, Free 50 feet × *[$4.00]* **$10.00*** | *[$200.00]* **$500.00*** | *[$200.00]* **$500.00*** | *[$200.00]* **$500.00*** |
| ½ of Customer's Annual Revenue | *[$60.00]* **$150.00*** | *[$250.00]* **$625.00*** | *[$300.00]* **$750.00*** |
| Cost to Customer | *[$100.00]* **$250.00*** | *[$50.00]* **$125.00*** | $ 0 |

14:6-2.3 Heating value

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

(c) Each gas utility shall provide itself with a standard *[calorimeter]* ***heating value measurement device*** outfit constructed and calibrated as approved by the *[National Bureau of Standards]* ***National Institute of Standards and Technology*** with which periodic tests of the gas shall be made. The utility may use a recording *[calorimeter]* ***heating value measurement device*** which shall be maintained in proper working order and checked periodically with a standard *[calorimeter]* ***heating value measurement device*** or against a standard gas. Such equipment shall be available, at all reasonable times, for the inspection by and the use of any authorized representative of the Board.

(d) The average heating value for any one day may be determined from the record of a recording *[calorimeter]* ***heating value measurement device*** or it shall be taken as the average of all individual tests made that day using a standard *[calorimeter]* ***heating value measurement device***. The average of all such daily averages shall be taken as the monthly average. If the monthly average heating value is below the standard specified in the tariff, customers' bills shall be adjusted accordingly.

(e)-(h) (No change.)

14:6-2.15 Drug testing; incorporation by reference of Federal regulations

(a) The Board hereby adopts, by reference, as though set out in full, the current edition (and amendments as issued) of Drug Testing, *[Part 199 of the Code of Federal Regulations]* ***Title 49, Code of Federal Regulations, Part 199*** (Federal Code).

(b) Each gas company employee *[(as defined in Part 199 of the Code of Federal Regulations)]****, as defined in Title 49, Code of Federal Regulations, Part 199,*** shall be tested for the presence of prohibited drugs and shall be provided with an employee assistance program as required by *[Part 199 of the Code of Federal Regulations]* ***Title 49, Code of Federal Regulations, Part 199***.

14:6-3.1 Testing of gas meters

Each gas utility shall provide itself with equipment necessary for testing meters, such equipment to consist of, as a minimum, a standard meter prover with suitable accessories. Utilities may cooperate in arranging for such facilities. Bell type provers will be set up permanently in the location where they are to be used. All provers will be calibrated according to ANSI B109. Calibration will be witnessed and approved by the Board. Each prover will be furnished an inspection and approval tag by the Board.

14:6-3.2 Periodic meter testing

No gas utility shall allow a gas meter to remain in service for a period longer than 10 years, except where a sampling program has been established in accordance with ANSI B109 and approved by the Board. Meters shall neither remain in service after testing nor be placed in service if the meters are outside the adjustment limits in accordance with ANSI B109. For any group of meters in a sampling program to remain in service, at least 80 percent of the meters in the sample tested must be within the accuracy limits of 98 percent (two percent error slow) to 102 percent (two percent error fast) at the low flow (check) rate, with no more than 10 percent of the meters exceeding 102 percent (two percent error fast). If a group of meters does not meet the performance standard, then corrective action shall be taken.

14:6-3.3 Determination of gas meter accuracy

A gas meter shall be considered correct if it, when passing gas at the flow rates of 20 to 35 percent of its rated capacity, shows in comparison with a standard gas prover, an error which is not greater than two percent.

14:6-4.1 Adoption by reference of the Uniform System of Accounts

The Board adopts by reference the Uniform System of Accounts for Classes A and B Gas Utilities that have been promulgated by the Federal Energy Regulatory Commission as well as all present and subsequent amendments, revisions, deletions and corrections which the Federal Energy Regulatory Commission may adopt insofar as they relate to gas utilities subject to the jurisdiction of the Board and are in accordance with the Board's policies and procedures.

14:6-4.2 Adoption by reference of rules concerning preservation of records; Gas utilities

(a) On September 14, 1972, the then Board of Public Utility Commissioners in the Department of Public Utilities, pursuant to authority of N.J.S.A. 48:2-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted by reference the "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities" originally proposed to various states for adoption by the National Association of Regulatory Utility Commissioners as promulgated and published in April, 1972, for use by the electric, gas and water utilities.

(b) The Board of Public Utilities adopts these rules as its modified regulations governing the preservation and destruction of records for all classes of electric, gas and water utilities subject to its jurisdiction and as a supplement to its uniform system of accounts for all classes of electric, gas and water utilities.

(c) Copies of the full text of these rules are available for examination in the Board's offices at Two Gateway Center, Newark, New Jersey 07102, and are included in the case files in these dockets. Copies of these rules may be purchased from the New Jersey Board of Public Utilities, Attention Secretary Office.

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# TREASURY-GENERAL

## (a)

## STATE PLANNING COMMISSION

### Municipal and County Cross-Acceptance of State Development and Redevelopment Plan

### Adopted New Amendment: N.J.A.C. 17:32-4.7
### Adopted New Rules: N.J.A.C. 17:32-5

Proposed: June 3, 1991 at 23 N.J.R. 1778(b).

Adopted: August 2, 1991 by State Planning Commission, James G. Gilbert, Chairman.

Filed: August 8, 1991 as R.1991 d.457, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:18A-203.

Effective Date: September 3, 1991.

Expiration Date: March 21, 1993.

**Summary** of Public Comments and Agency Responses:

In addition to the notice of the proposed amendment and new rules which was published on June 3, 1991 at 23 N.J.R. 1778(b), the Commission sent a copy of the text to each county planning board, with comments to be submitted by July 3, 1991. Additionally, discussion of the rules was on the published agenda of the Commission on several occasions throughout the past year.

Comments are available for inspection at the offices of the State Planning Commission, 150 West State Street, Trenton, N.J. 08625. The following individuals submitted comments:

Charles E. Romick, Assistant Director, Gloucester County Planning Department; Stephen L. Kehs, Executive Director, Cumberland County Planning Department; Peter Buchsbaum, Esq., representing both himself and the Corporate Alliance for Intelligent Growth; Himanshu P. Shukla, Chairman, Hudson County Planning Board; Robert H. Karen, President, New Jersey Builders Association; Robert F. Ferguson, Jr., Executive Vice President, New Jersey Association of Realtors; Edmond V. Lawlor, Jr., President, New Jersey Savings League; Christy Van Horn, Executive Director, New Jersey Future; Sally Dudley, Executive Director, Association of New Jersey Environmental Commissions; and J. Creigh Rahenkamp, South Jersey Land Plan Coalition.

The comments and responses regarding each subchapter follow.

Subchapter 4. Procedures for Conducting the Negotiation Phase of Cross-Acceptance

COMMENT: Several comments expressed concern regarding representation of the State Planning Commission at negotiation sessions. The general feeling was that the Commission should continue to be represented by three of its members rather than by one, as proposed in the amendment.

RESPONSE: The Commission agrees and has revised N.J.A.C. 17:32-4.7(c) accordingly. The Commission has also revised N.J.A.C. 17:32-4.7(c) upon adoption to include the 150 day negotiation period proposed in subsection (d), and to provide a reasonable negotiation commencement date of 30 days after receipt by each county and municipality of a copy of the Interim State Development and Redevelopment Plan.

COMMENT: Several comments questioned the effect that the extension of the negotiation phase would have on the Impact Assessment of the Interim Plan. While there was agreement with the need for the 150 day extension of negotiations, there was concern that the Impact Assessment would be conducted on an Interim Plan that was still subject to change, based on the results of the extended negotiation phase.

RESPONSE: The Impact Assessment is scheduled for release soon after completion of negotiations, but no sooner than December 1991. The contractor for the Impact Assessment has verbally agreed to review the results of the negotiations and to describe the effects of any additional negotiations on the conclusions of the Impact Assessment.

COMMENT: One county requested that negotiations conducted during the 150 day extension period not be limited to issues that were deferred from previous negotiation sessions. Their contention is that the Interim Plan has changed so dramatically from the Preliminary Plan that many new questions and issues have arisen.

RESPONSE: The purpose of the 150 day extension is to provide adequate time to properly close-out the second phase of the cross-acceptance process, that is, negotiations. The extended time period is not meant to serve as a period for in-depth review and comment on the Interim Plan. Adequate opportunity will be provided for comments and recommendations regarding the Interim Plan during the third phase of cross-acceptance—issue resolution.

COMMENT: One commenter suggested that all written comments received by the Commission should be responded to by the Commission, in writing.

RESPONSE: Neither the State Planning Commission or the Office of State Planning have a legal obligation to provide a written response to each comment received from the public. Further, due to the large number of comments the Commission receives regarding the Plan and the planning process, it has not always been feasible to respond directly to each and every one. The Commission and the Office of State Planning have considered and will continue to consider all comments received from the public and will continue to provide responses whenever feasible and appropriate. Moreover, the Commission's responses to Plan comments are reflected in the various versions of the Plan and supporting documents that are published by the Commission.

Subchapter 5. Procedures for Conducting the Issue Resolution Phase of Cross-Acceptance

COMMENT: One county commented that the commencement of the issue resolution phase upon the "approval of any amendments" was too vague. Their suggestion was to commence the issue resolution phase with a "determination of approval or disapproval of all proposed amendments and the approval of an Interim Plan."

RESPONSE: The Commission considers the current rule language appropriate and sufficiently clear. The Commission also wishes to maintain the flexibility of considering "any" proposed amendments to the Interim Plan before commencing the Issue Resolution phase.

COMMENT: Two comments were related to the distribution of the Interim Plan and its accompanying documents prior to the required public hearings. Both comments recommended that these materials should be made available at least 30 days prior to the hearing.

RESPONSE: The State Planning Act requires that the Impact Assessment of the Interim Plan be released at least 45 days before the first public hearing is held. This requirement is addressed in N.J.A.C. 17:32-5.2(a). There is no such requirement regarding the Interim Plan, Interim Implementation Report, Interim Infrastructure Needs Assessment, or Interim Statement of Agreements and Disagreements. It is the Commission's intention, however, to provide these documents as soon as possible before the public hearings and in any case, no less than 14 days prior to the hearings. The Commission believes that a 14 day period will be adequate, since the documents in question will be revisions of documents that have been available for public review and consideration for as long as five months prior to the first public hearing. N.J.A.C. 17:32-5.2(c) has been revised to reflect this change.

COMMENT: Two comments were received regarding the time frame for adopting the final Plan. One commenter suggested changing the rule from "shall adopt" to "shall consider adoption" within the specified time frame. The other comment recommended a gap be established between the last day for public comment (30 days after the last public hearing) and the first possible day for adopting the final Plan (also 30 days after the final hearing).

RESPONSE: The State Planning Act requires the State Planning Commission to adopt a State Plan no sooner than 30 days, and no later than 60 days after the final public hearing. N.J.A.C. 17:32-5.5 incorporates those requirements.

COMMENT: Three commenters expressed a concern that six public hearings on the Interim Plan would be inadequate.

RESPONSE: The Commission agrees and has revised N.J.A.C. 17:32-5.2 to provide for one hearing in each county. The amendment also provides that the Commission may, upon the request of two or more counties, conduct a multi-county meeting in lieu of a separate hearing in each such county.

COMMENT: One commenter recommended that the rule establish a process for addressing "site specific" disputes. The commenter further recommended that the Commission establish a special review board to handle such disputes.

RESPONSE: Although the Commission recognizes the importance of resolving site specific disputes, it does not consider this comment germane to the proposed rule amendments. The Commission will,

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however, give further consideration to this issue and respond in the near future.

**Summary** of Agency-Initiated Changes:

In revising proposed N.J.A.C. 17:32-5.2(c) to respond to the comments received about transmitting materials to the county and municipal planning boards prior to the public hearings, the Commission decided to provide 14 days for the amended Interim State Development and Redevelopment Plan, Interim Implementation Report and Interim Statement of Agreements, Disagreements and Concerns. The Commission could not provide this time period for the Impact Assessment of the Interim Plan because N.J.S.A. 52:18A-202.2(d) requires that the Assessment be provided 45 days prior to the first public hearing.

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

17:32-4.7 Completion of the negotiation phase of cross-acceptance

(a) When the State Planning Commission's negotiating committee believes that the county and municipal negotiations have produced the highest degree of agreement among the negotiating parties, the Committee shall submit a summary of its findings, including a list of agreements and disagreements resulting from each negotiation session, to the State Planning Commission, the subject county and each county's respective municipalities.

(b) The Committee shall forward to the State Planning Commission, for its consideration and approval, an Interim State Development and Redevelopment Plan reflecting recommended changes to the Preliminary State Development and Redevelopment Plan resulting from the comparison phase, any negotiations conducted to that point, and any other relevant information and materials. The Committee shall also forward to the Commission for its consideration and approval, an ***Interim*** Implementation Report, ***Interim*** Infrastructure Needs Assessment, and an Interim List of Agreements and Disagreements.

(c) Subsequent to the approval of the Interim State Development and Redevelopment Plan, *[Interim Implementation Report, Interim Infrastructure Needs Assessment, and Interim Statement of Agreements and Disagreements]* by the State Planning Commission, the Commission shall provide counties and municipalities an opportunity to negotiate any issues that were deferred in that county or municipality. *[For the purposes of negotiating any such deferred issues, the Commission may be represented by one member of the Commission's negotiating committee and an appropriate member of the Office of State Planning.]* ***Any such additional negotiations shall commence 30 days after receipt by each county and municipality of a copy of the Interim State Development and Redevelopment Plan and shall continue for a period not to exceed 150 days.***

(d) The negotiation phase of cross-acceptance shall end *[150 days after the approval of the Interim State Development and Redevelopment Plan]* ***at the conclusion of the negotiation sessions cited in (c) above***.

SUBCHAPTER 5. PROCEDURES FOR CONDUCTING THE ISSUE RESOLUTION PHASE OF CROSS-ACCEPTANCE

17:32-5.1 Commencement of the issue resolution phase of cross-acceptance

(a) The purpose of the issue resolution phase is to allow review of, and accept comment on, the amended Interim Plan, Interim Implementation Report, Interim Infrastructure Needs Assessment, Interim Statement of Agreements and Disagreements, and the Impact Assessment of the Interim Plan, with the goal of formulating a final State Development and Redevelopment Plan.

(b) The issue resolution phase shall commence with the State Planning Commission's approval of any amendments to the Interim State Development and Redevelopment Plan reflecting the resolution of the deferred issues that were negotiated in accordance with N.J.A.C. 17:32-4.7(c). The amended Interim Plan may also reflect changes made by the Commission based on their consideration of the Impact Assessment of the Interim Plan prepared pursuant to N.J.S.A. 52:18A-196 et seq., and as amended January 12, 1990 by P.L. 1989, c.332. Concurrent with the release of the amended Interim Plan, the Commission shall also release, with appropriate amendments, the Interim Implementation Report, Interim Infrastructure Needs Assessment, and the Interim Statement of Agreements and Disagreements.

17:32-5.2 Required public hearings

(a) ***There shall be one public hearing on the amended Interim State Development and Redevelopment Plan in each of the 21 counties. The State Planning Commission may, upon the request of two or more counties, conduct a multi-county hearing in lieu of a separate hearing in each such county.*** Pursuant to N.J.S.A. 52:18A-196 et seq., and as amended January 12, 1990 by P.L. 1989, c.332, *[there shall be six public hearings on the amended Interim State Development and Redevelopment Plan,]* ***the public hearings are*** to be held no sooner than 45 days after the release of the Impact Assessment of the Interim Plan.

(b) Pursuant to N.J.S.A. 52:18A-202c, the State Planning Commission shall give at least 30 days public notice of each hearing in advertisements in at least two newspapers which circulate in the area served by the hearing and at least 30 days notice to the governing body and planning board of each county and municipality in the area served by the hearing.

(c) The amended Interim State Development and Redevelopment Plan, Interim Implementation Report, Interim Infrastructure Needs Assessment, Interim Statement of Agreements and Disagreements, *[and the Impact Assessment of the Interim Plan,]* shall be distributed to county and municipal planning boards and other interested parties ***not less than 14 days*** prior to the public hearings.

(d) The public hearings shall be convened by the State Planning Commission, or by a committee of the Commission designated for that purpose, whereupon comments will be taken on the amended Interim State Development and Redevelopment Plan and the accompanying documents cited in (c) above.

17:32-5.3 County and municipal review and comment during the issue resolution phase of cross-acceptance

(a) Counties and municipalities may submit written comments to the State Planning Commission regarding the effect of the amended Interim State Development and Redevelopment Plan, Interim Implementation Report, or Interim Infrastructure Needs Assessment on the agreements and disagreements reached during the negotiation phase of cross-acceptance, at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

(b) Counties and municipalities may submit written comments to the State Planning Commission regarding the Impact Assessment of the Interim State Development and Redevelopment Plan at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

17:32-5.4 Public participation during the issue resolution phase of cross-acceptance

(a) The public may participate in the issue resolution phase of cross-acceptance through the following means:

1. Comments presented at public hearings conducted pursuant to N.J.A.C. 17:32-5.2;

2. Written or verbal communication with municipal and/or county officials involved in cross-acceptance;

3. Submission of written comments to the State Planning Commission at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2;

4. Comments presented during the public comment period at monthly meetings of the State Planning Commission;

5. Comments presented at meetings of the various committees of the State Planning Commission as they relate to the work of that committee; and

6. Recommendations of State Planning Advisory Committees.

17:32-5.5 Completion of the issue resolution phase of cross-acceptance

(a) The issue resolution phase shall end 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

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(b) Pursuant to N.J.S.A. 52:18A-196 et seq., and as amended on January 12, 1990 by P.L. 1989, c.332, the State Planning Commission shall adopt a final State Development and Redevelopment Plan no sooner than 30 days and no later than 60 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

# ENVIRONMENTAL PROTECTION

## (a)

## DIVISION OF ENVIRONMENTAL QUALITY

### Discharges of Petroleum and Other Hazardous Substances

### Adopted Repeal and New Rules: N.J.A.C. 7:1E

Proposed: May 6, 1991 at 23 N.J.R. 1335(a).

Adopted: August 12, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: August 12, 1991 as R.1991 d.465, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:10-23.11, 58:10-23.11-1, 58:10-46 to 50 and 13:1K, specifically 13:1K-18, 58:10-23.11 d6, d14 and f6 and 58:10-47.

DEP Docket Number: 019-91-04.

Effective Date: September 3, 1991.

Operative Date: September 11, 1991.

Expiration Date: September 3, 1996.

**Summary** of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (Department) is adopting rules to implement the July 1990 Legislature enacted amendments to the Spill Compensation and Control Act (Spill Act or Act) (N.J.S.A. 58:10-23.11 et seq.) which provided stringent standards for discharge prevention and emergency response requirements for facilities storing or handling hazardous substances. The amendments strengthened the authority of the Department to require improvements in discharge prevention and safety measures, and added other provisions which strengthened the preventive character of the State's spill control program.

To implement these legislative amendments, the Department is adopting the repeal of the existing subchapters of N.J.A.C. 7:1E and is replacing them with a comprehensive revision. The first four subchapters of N.J.A.C. 7:1E were originally adopted in 1979. Repealed N.J.A.C. 7:1E-5 was originally proposed as N.J.A.C. 7:1-7 in 1986 and was moved to N.J.A.C. 7:1E-5 in 1990. The revision of N.J.A.C. 7:1E adopted herein is better organized and updated, and incorporates legislative amendments to the Spill Act and provisions from the newly enacted Transportation of Hazardous Liquids Act (N.J.S.A. 58:10-46 to 50). These legislative amendments include those enacted in 1986 as well as those that were signed into law by Governor Florio as P.L. 1990, c.75 through 80, on July 21, 1990 that affect these administrative rules. The legislation expands the list of hazardous substances and subjects more facilities to the standards applicable to equipment used in the storage, transfer, processing or use of hazardous substances. The requirements applicable to the preparation and submission of registrations, discharge prevention, containment and countermeasure (DPCC) plans, and discharge cleanup and removal (DCR) plans have been revised by the new legislation. This adoption is part of the Department's continuing effort to prevent and mitigate discharges of substances harmful to human health and welfare and the environment, and to keep its administrative rules up to date.

The proposed new rule and repeal was published in the New Jersey Register at 23 N.J.R. 1335(a) on May 6, 1991. Secondary notice was given by publishing notices in 21 newspapers of general circulation and by direct mailing the full text of the proposal to 1,200 potentially affected facilities and other interested parties. Forty-six written comments were received during the public comment period which closed on June 12, 1991. A public hearing was held on June 6, 1991 at the Lewis Herman Labor Education Center, New Brunswick, New Jersey.

Fourteen persons presented comment at the public hearing. The following persons submitted written comments or made oral comments at the public hearing.

(A) George Lowry, Director of Regulatory Affairs, Mona Industry
(B) G. Oliver Papps, Associate Director, New Jersey Petroleum Council
(C) Thomas S. Gordon, Vice President, Gordon Terminal Service Company of New Jersey
(D) John Sandstedt, Director of Regulatory Compliance, Sybron Chemicals/CIC-NJ
(E) Wm. Edward McCracken, President, Institute of Hazardous Materials Management of New Jersey
(F) Andrew Willner, Baykeeper NY/NJ Harbor, American Littoral Society
(G) Edward J. Dolan, Legislative Agent, New Jersey Manufactured Housing Association
(H) Peter Spinney, Principal, Peter R. Spinney Inc.
(I) James W. Scialabba, Environmental Specialist, BP Oil, BP America
(J) Curt Macysyn, Associate Director, Fuel Merchants of New Jersey
(K) Robert L. Frazier, Vice President of Operations, Spartan Oil Company
(L) Mark Donatiello, Plant Manager, W.R. Grace and Co.
(M) Morgan M. Bruck, District Manager, BP Oil Pipeline
(N) William Jibilian, Manager of Regulatory Affairs, Kramer Chemicals Inc.

The following persons submitted written comments:
(1) Mark Epstein, President, Alden Leeds, Inc.
(2) Robert J. Cash, Goldshore, Wolf & Lewis
(3) Anthony J. Zarillo, Executive Officer, New Jersey Board of Public Utilities
(4) Ed Carway, Director of Operations, Honig Chemical & Processing Corp.
(5) W.O. Green III, Staff Counsel, Kerr-McGee Corporation
(6) Edwards J. Dolan, Legislative Agent, New Jersey Manufactured Housing Association
(7) David L. Cronin, P.E., Birdsall Engineering, Inc.
(8) James W. Scialabba, Environmental Specialist, BP Oil, BP America
(9) Thomas S. Nasife, Plant Manager, Occidental Chemical Corporation
(10) Daniel E. Chesire, Vice President, Engineering Chemical Services, Inc.
(11) James Knubel, Director, Licensing and Regulatory Affairs, GPU Nuclear Corporation
(12) Robert Grad, Britannia Steam Ship Insurance Association Limited
(13) Patrick B. Henretty, Environmental Advisor, Mobil Oil Corporation
(14) Robert L. Frazier, Vice President-Operations, Spartan Oil Company
(15) William Donardski Jr., Manufacturing Manager, Drew Chemical, Division of Ashland Chemical, Inc.
(16) James L. Henry, President, Transportation Institute
(17) John P. Sandstedt, Chairman, Ad Hoc Committee, Chemical Industry Council of New Jersey
(18) Ed R. Schober, President, Cookson Pigments
(19) Wm. Edward McCracken, President, Institute of Hazardous Materials Management—NJ
(20) American Zinc Asso. & Asturmet, Inc., International Copper Asso., Ltd., The Silver Institute
(21) Peter R. Spinney, Consulting Environmental Manager, Peter R. Spinney, Inc.
(22) Jon W. Hughes, President, DAS/GIS, Inc.
(23) Robert F. Ortego, Environmental Compliance Officer, Office of Legal Services, Princeton University
(24) Joseph R. Davison, Esquire, Attorney for National Refrigerants, Inc.
(25) Gerald E. Klein, Environmental Counsel, Union Carbide Chemicals and Plastics Company, Inc.
(26) James A. Shissias, General Manager of Environmental Affairs, Public Service Electric and Gas Company
(27) D.D. Esch, Government and Industry Relations Manager, Exxon Company, U.S.A.
(28) E.G. Roome, Jersey Central Power and Light Company
(29) R.E. Elegante, Director of Environmental Affairs, Wheaton Industries
(30) J.A. Rowe, Jr., Operations Manager, CPS Chemical Company, Inc.

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(31) Andrew J. Willner, Baykeeper NY/NJ Harbor, American Littoral Society
(32) Dr. Andrew Fono, Technical Director, Royce Associates
(34) Martin M. Gurvitch, Manager, Environmental Control Department, FMC Corporation
(35) G. Oliver Papps, Associate Director, New Jersey Petroleum Council
(36) Carole P. Sims, Senior Attorney, Colonial Pipeline Company
(37) Michael McGuinness, Director of Environmental Affairs, New Jersey Builders Association
(38) J.L. Dalgetty, North America Manufacturing Manager, Exxon Chemical Company
(39) William Healey, New Jersey State Chamber of Commerce
(40) D.M. Lucas, Manager, Perth Amboy Refinery, Chevron U.S.A., Inc.
(41) John Yavorsky, Ambient Engineering
(42) Marilyn Booth, Senior Biologist, Environmental Affairs, Atlantic Electric
(43) John C. Newcomb, Vice President and General Counsel, Maritrans
(44) Jose C. Garcia, Environmental Affairs, Hoffman-La Roche
(45) Thomas J. Detweiler, Associate Director, Regulatory Affairs, Chemical Industry Council of New Jersey
(46) Jay M. Burrill, Environmental Coordinator, Grace
(47) Jim Sinclair, First Vice President, New Jersey Business and Industry Association

The comments and the Department's responses follow, with the appropriate commenters' letters and/or numbers assigned above after each comment:

**General Comments**

COMMENT: Several commenters request an extension of at least two months in the comment period so that more specific comments on the workability and economic impact of the proposed rules and suggestions can be prepared in an attempt to make the rules more workable and less burdensome and still comply with the true intent of the law. Another commenter requests an additional 15 to 30 days. A third commenter requests an extension so that additional public interest and environmental groups as well as individual citizens will have an opportunity to comment. Fewer than 25 working days were allowed between the release of the current version of the proposed rules and the deadline for submission of written comments. The rules are certainly important enough to all facets of the community to warrant the extra input that the Department would receive. (8, 15, 17, 19, 28, 31, 38, 40, A, E, F, L, M)

RESPONSE: The Department believes that there has been sufficient opportunity for interested parties to participate in the development of these rules and has elected not to extend the comment period. A working group, consisting of industry, environmental and governmental representatives, was convened in September 1990, and held five meetings over three months to discuss the development of the rules. An interested party draft of N.J.A.C. 7:1E that reflected many of the issues raised in the working group was sent to over 70 interested persons in January 1991 for review and comment. After evaluating the comments presented during two days of meetings with the interested parties on February 4 and 14, 1991, plus those comments submitted in writing, the Department made appropriate modifications to the rules.

The rule proposal was published in the New Jersey Register. Notice of that publication was published in a newspaper in every county in the State, and copies were sent to over 1,200 potentially affected facilities, as well as other interested parties such as trade organizations and environmental groups. All forms of notification included the time and location of the public hearing. The Department is confident that there was sufficient opportunity for input from all interested and affected parties into the development of these rules. Also, these rules are subject to the normal on-going review of the Department, utilizing experience and information from regulated and other interested parties.

COMMENT: The rules set forth by the Department make no distinction as to the applicability of the rules as a function of container size or the percentage of hazardous materials contained therein. It treats a million gallon petroleum storage tank the same as one ounce sample container containing only 10 parts per million (ppm) of a hazardous substance. Clearly, the potential impact of a discharge from the latter is less than that for the former even if there were 1,000 discharges from the sample containers. That the Department makes no such distinction dilutes its and the regulated community's efforts to prevent discharges. A rational basis for compliance based on potential volume of the container and percent of hazardous substance present would avoid make work and nuisance reports while affording the environment an equal level of protection. The Toxic Catastrophe Prevention Act (TCPA) recognizes the concept of registration quantity and release potential for establishing its applicability. Surely, if such an approach can be taken for the protection of humans from a catastrophic release, the same standard can be applied to the protection of flora and fauna. The Department's lack of bounds for applying its rules is not stipulated by the underlying legislation. Per the enabling legislation (N.J.S.A. 58:10-23.11b1(2)), such a limitation may be established. That the Department has chosen not to will impose an undue and unnecessary burden on the regulation of small containers and cause the Department to expend precious resources regulating same. (35, 38, 40, 47)

RESPONSE: The legislation has no distinction as to the size of a container when considering storage capacity. In fact, in N.J.S.A. 58:10-23.11b1, the use of the phrase "total combined capacity which is dedicated to, used for or intended to be used for storage of hazardous substances of all kinds" and the inclusion of the intended or actual use of open land on enclosed space, emphasizes that all storage capacity is to be considered. Therefore, under these rules, all storage containers apply toward determining major facility status. Once a facility is deemed a major facility, all equipment containing any amount of a hazardous substance in any concentration is subject to these rules.

However, the Department agrees that different size containers represent different risks, and the rules do establish different standards for different equipment. Secondary containment, integrity testing and inspection standards are different for a million gallon storage tank and a sample container. The only time these two types of containers are treated in the exact same way is when a discharge occurs. Therefore, under these rules, all discharges are subject to the same reporting standards, regardless of the size container they originated from.

COMMENT: As in other rules, the Department has totally ignored the need for confidentiality, which is required for certain proprietary operations in various facilities throughout the State. Where are the safeguards? (9, 40, 47)

RESPONSE: It was always the Department's intention to treat confidential information as such. In order to make this explicit, a provision has been added to N.J.A.C. 7:1E-1.9 stating that the general confidentiality standards of N.J.S.A. 13:1D-9d will be used to ensure confidentiality until a proposed confidentiality provision specific to N.J.A.C. 7:1E, which will appear in the next issue of New Jersey Register, is adopted.

COMMENT: The statutes upon which these proposed rules are based are some of the most onerous environmental laws to come out of the legislature in some time. The Department has taken these already stringent requirements and has written proposed rules that are even more stringent. It appears that the Department has embarked on a course of establishing rules without bounds that are well beyond the intent of the enabling legislation and, in many instances, are more severe than those for TCPA. Such rules will serve to overburden the Department and industry and dilute their efforts for achieving a true improvement in performance (9, 17, 26, 27, 38, 40, B)

RESPONSE: The Legislature was acting in response to the frequent discharges, some of which were quite severe, that resulted in significant environmental impact and heightened concern by New Jersey citizens. The Legislature acted to protect the environment and the health and welfare of the citizens of this State. The proposed rules, which the Department recognizes as far reaching and necessary, will establish what standards are expected to be achieved by the regulated community and will serve to increase the level of care associated with the handling of petroleum and other hazardous substances in New Jersey.

The Department disagrees that these rules are more stringent than the Spill Act and beyond the authority given to the Department by the Act. Many of the provisions, such as for marine transfer operations, come directly from the Act. Other provisions, such as for security, housekeeping and maintenance, and flood hazard areas, have been in existence since 1979. Those provisions which are new or modified have been promulgated pursuant to the Commissioner's authority to adopt rules and regulations necessary to accomplish the Department's purposes and responsibilities under the Spill Act (N.J.S.A. 58:10-23.11t). The Department has determined that these rules as adopted are what is necessary to accomplish the intent of the Legislature.

COMMENT: One commenter feels these rules will have a profound negative impact on the petroleum industry in the State. While the

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package of bills signed by Governor Florio last year were a direct response to a number of environmental incidents which took place on New Jersey waterways, these rules address a number of issues outside the scope. For example, the main trust of the rules is to more stringently manage major facilities as redefined in the proposal. (J)

RESPONSE: The Legislature's intent was to insure discharge prevention, and the language incorporated into the bills was sufficiently broad to allow the Department flexibility in determining the best manner in which to ensure discharge prevention and adequate cleanup capability at major facilities (N.J.S.A. 58:10-23.11d2, d3 and d6). The definition of "major facility" was revised by the Legislature several years ago (P.L. 1984, c.142), but had not yet been incorporated into the administrative rules. The bills signed by Governor Florio mandate the more stringent management of major facilities. These rules implement that mandate.

COMMENT: The Department asked representatives of affected industries through their trade groups, major cleanup cooperatives, the U.S. Coast Guard (USCG) and public interest organizations to provide input into this rulemaking. The meetings were deemed working sessions, the attendees described as a work group. Over the course of almost 40 hours, Department personnel listened to comments from these invitees on conceptual ideas for inclusion or revision. Although the current proposal should reflect the concerns and/or expertise of the invitees, one commenter reports deep regret that the Department has rejected much of this technical input. While the Department may have listened, it is obvious that it chose not to hear.

Another commenter was pleased to be asked to participate in the Department's work group, and applauds this new approach and urges that it continue and expand in future rulemakings. In time, he would hope that this process will return to that used in the late 1970's and early 1980's. The work group used by the Department proved to be the departure from a terrible period that began in 1983, wherein communication between the Department and the affected community became virtually non-existent. The work group effort should be recognized as a stepping stone; however, the process must still be improved, as many of the industry's comments and suggestions were rejected out of hand.

Private conversation with work group members on all sides (regulated community, public interests and regulators) suggests that some Department staff personnel supported industry's recommendations. Comments by senior Department personnel at the hearing signalled a new beginning. Thus, it would appear that middle level staff may be the impediment to effective communication and response to legitimate concerns.

A third commenter states that he believed some of the requirements he was concerned about when the interested party draft was circulated, would be clarified or modified. That does not seem to have happened. (17, B, D)

RESPONSE: The Department received many helpful comments and suggestions during the interested party process. The Department incorporated much of that public input into the rules as actually proposed, and believes that the process resulted in a much better proposal. However, some of the suggestions were inconsistent with the statutory text or legislative intent behind the Act. Other suggestions pertained to subjects which were outside the scope of these rules, such as the determination of liability for damages due to discharges. The Department did not incorporate these suggestions into the proposal. In addition, while the Department reevaluated its policies in light of the input received during the interested party process, some of the suggestions received were still inconsistent with those policies and were not incorporated into the proposal. The Department is confident that those individuals who read the earlier version and the final rules will conclude that substantial changes have been made which address interested party concerns.

The Department plans to continue to use the interested party process in rule development. However, it is impossible to return to the rulemaking process of the 1970's and 1980's because the Administrative Procedure Act has placed some restraints on the process since that time.

COMMENT: Two commenters recognize the desire of the State of New Jersey and the Department to protect the environment by preventing discharges of oil and to promulgate rules to achieve this goal. However, these rules must be reasonable, realistic, and must not impinge upon the primary jurisdiction of the USCG. More importantly, the Department must recognize the distinct characteristics of vessels, especially those engaged in interstate commerce, and must not impose unnecessary and duplicative regulatory requirements on these vessels.

Any legislation (Federal or state) on shipowner liability for oil pollution should be workable. With a Federal law in place and some 15 to 20 odd state oil pollution laws already on the books, with more likely to follow, it is vital that the requirements imposed on shipowners are consistent. The two areas of most immediate concern in this respect relate to requirements for certification of financial responsibility and the preparation and submission of contingency plans. If a realistic approach to these issues cannot be developed quickly, there is no doubt that a serious breakdown of the system could occur. (12, 43)

RESPONSE: The Department is confident that the proposed rules do not impinge on the primary jurisdiction of the USCG and do not duplicate regulatory requirements on vessels. N.J.A.C. 7:1E-4.5(e) states that "the owner or operator of any major facility which demonstrates financial responsibility pursuant to the requirements of the Federal Oil Pollution Act of 1990 (P.L. 101, c. 380) shall be deemed to have demonstrated financial responsibility in accordance with this chapter and the Act." Furthermore, the Oil Pollution Act of 1990 (OPA90) does not preempt states from having or establishing their own pollution prevention, liability or response laws, whether statutory or by common law. The proposed rules define only those vessles that engage in vessel to vessel transfers as major facilities and only those vessels will be required to comply with all provisions concerning major facilities.

COMMENT: It appears, from the proposed new rules, that the Department is attempting to enter into an expanded enterprise which, at least in its original form, the Department was unable to properly administer and serve the regulated community. In light of the current economic situation, the question arises, what program will the Department give up to fill the narrow time-frame needs, as outlined in the proposed rules? Or, can the regulated community expect years of delays as it experienced in, for example, the issuance of New Jersey Pollutant Discharge Elimination System (NJPDES) Permits? (9)

RESPONSE: The Department acknowledges that the former discharge prevention program was handicapped by lack of resources. Thus, the Department recognized the need for dedicated funds and staff for the program. Those monies collected via the increased spill fund tax are dedicated to the discharge prevention program and the Department has received an increase in staff allotment for the program. The Department will not have to divert staff or money from other programs in order to properly administer this program. The rules establish deadlines for industry submissions as well as for the Department's review process.

COMMENT: Members of the work group were furnished with a copy of a document prepared by the Department which collated the five laws and the former Spill Act in one document. Many commenters, who were not privy to that document, were unable to adequately comment on issues which have already been addressed by virtue of their adoption into the law. In extending the comment period, the Department should advise the public of the availability of this document to aid their assessment of the proposal. (17, D)

RESPONSE: The Department provided the consolidated Spill Act to people upon request. This law also was cited in the proposal and is widely available at N.J.S.A. 58:10-23.11 and 58:10-46 to 50.

COMMENT: Two commenters are concerned that the proposed rules direct large resources to low risk areas and impose severe penalties beyond any reasonable relationship to potential environmental harm. In the preamble, the Department has suggested that the current rules were difficult to understand; yet the affected community utilized these rules successfully for over 11 years. Recodification, etc., seems to be an interesting exercise for the Department which will in no way assist a company to repond to an emergency situation. One commenter states there seems to be an avoidance of any specifics regarding the safety issues; this is particularly important when considered with respect to concerns over the interrelationship of the rules, with its list of hazardous substances, and requirements under TCPA for extraordinarily hazardous substances (EHSs). (17, 27)

RESPONSE: The Legislature's intent was to prevent, or at least minimize, all discharges regardless of size or relative impact on the environment. The frequency and magnitude of recent spills indicates that the discharge prevention program needed to be enhanced and expanded to include facilities not covered by the former rules. Incident notification data gathered by the Department's Communications Center indicate that a significant number of discharges are occurring at facilities not covered by the former rules. The intent of the Legislature was to prevent discharges and to insure that should a spill occur that the facility operator or owner would have the capability to contain the discharge and thus minimize impacts on the environment.

The previous rules made it difficult to determine what items needed to be included in DPCC and DCR plans. Definitions appeared in various sections throughout the chapter, making it difficult to locate some of

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them. To complicate this, the recodification of N.J.A.C. 7:1-7 as 7:1E-5 resulted in some terms being defined twice in two different ways. This recodification now places all the definitions in one section, all the requirements for DPCC plans in one section, and all the requirements for DCR plans in one section. These and the other changes made will make it easier to locate the applicable requirements, and thus easier to come into compliance.

COMMENT: The rules are overlapping, redundant and unnecessary at least to a portion of the chemical industry. Also, the administrative and paperwork burdens of this ominous rule added on to that of other Federal, State and local requirements greatly affect the total cost of doing business and along with the diversion of efforts of the limited number of experts on staff would severely affect profitability and the ability to compete with out-of-State companies. The rule duplicates recordkeeping and training programs required by other regulations, such as those set forth by the Federal Occupational Safety and Health Agency (OSHA), and established by the Resource Conservation and Recovery Act (RCRA). (40, A)

RESPONSE: The Department agrees that the possibility of redundancy exists. In order to avoid this, provisions in the rules minimize duplication. Requirements in the rules that are satisfied by existing State or Federal regulations will be considered satisfied under these rules. Only those items required by these rules and not covered by existing State or Federal regulations will have to be instituted. This should alleviate duplication and additional costs. The rules allow for a phrase-in period for compliance, pursuant to N.J.A.C. 7:1E-1.11(b), so that limited facility resources can be most effectively allocated.

COMMENT: One commenter is very concerned with the burdensome nature of many sections of the proposed rules. The need to balance economy with any real environmental benefit has not been fully performed at this time. There's been little attempt to associate degree of actual risk to the cost to reduce the risk. The new rules must decide each time if the cost incurred for compliance could make operations within the State economy impractical. The rules will impose operating costs that do not apply a reasonable benefit. These rules will have a chilling affect on industry jobs in the economic recovery of New Jersey. A careful review of written and oral comments should be made before finalizing the rules. (B)

RESPONSE: The rules allow the individual facilities to balance their costs and risks in gaining compliance. Each owner or operator of a major facility can propose a schedule for upgrading his or her equipment to the standards in these rules (N.J.A.C. 7:1E-1.11(b)). One of the factors that can be used in determining this schedule is economic feasibility.

The Legislature's intent was to prevent, or at least minimize, all discharges onto the lands and waters of the State. This was a direct result of the frequency and magnitude of discharges in recent years and an increased awareness and concern by New Jersey citizens. The intent is not to drive industry out of New Jersey but rather to raise the standard of care in handling petroleum and hazardous substances. By handling hazardous substances, facilities assume responsibility for ensuring the safe use and handling of these substances. These rules establish the standards of responsibility that must be met to protect the citizens and environment of New Jersey.

COMMENT: It is not regulation of chlorofluorocarbons (CFCs) which is objectionable. One commenter fully supports the imposition of reasonable regulatory controls to: (1) prevent unwarranted venting of CFCs into the atmosphere; (2) encourage safe and efficient reclamation and recycling processes; and, (3) to guide a gradual phase-down, coupled with aggressive incentives to develop environmentally acceptable replacements. Rather, what is objected to is unbridled regulation, without a clear casual relationship to the enabling statutory objective, that places unnecessary burdens on the CFC producing and using industry. (24)

RESPONSE: The Spill Act requires the Department to apply regulatory controls to "hazardous substances." These hazardous substances are defined by their inclusion in certain lists (N.J.S.A. 58:10-23.11bk) which have been consolidated into Appendix A. There are three CFCs included in Appendix A. All of them are on Federal lists of hazardous substances which are included in the definition of "hazardous substance" in the Spill Act. The consolidated list in Appendix A represents all compounds on the lists enumerated at N.J.A.C. 7:1E-1.7(a), including any qualifiers or stipulations. One of the CFCs, trichlorotrifluoromethane, is listed in 40 Code of Federal Regulations (CFR) 372, the Superfund Amendment and Reauthorization Act (SARA) 313 list, with no qualifiers. Therefore, it is subject to the rules in all forms. The two others, dichlorodifluoromethane and trichlorofluoromethane, are listed in CERCLA, 40 CFR 302.4, pursuant to the RCRA list at 40 CRF 261.33, which includes qualifiers. These two CFCs are covered in any form only when they are to be disposed. That same qualifer is applicable to inclusion of the compounds in Appendix A. As the use of CFCs is reduced, fewer and fewer facilities should be subject to these rules because of the storage of CFCs. In the meantime, discharge prevention complements attempts by industry to reduce venting to the atmosphere and encourage recycling and reclamation.

COMMENT: Three commenters are concerned that their small companies, which never endangered human health or the environment, are forced to share this Industry's undeserved reputation of not caring about the environment. This is not the case. They have always and will always endeavor to comply with every ordinance, statute and regulation enacted and/or promulgated at the local, State and Federal level in the course of conducting business. The health and safety of their employees and of the community in which they operate are of the highest concern. They agree that violators should be prosecuted and financially penalized. (17, A, C)

RESPONSE: For those smaller facilities which have always demonstrated concern for the environment, compliance with these rules should not be difficult. Many of the standards simply codify good management practices for the prevention of discharges. The Department appreciates the efforts made by smaller facilities over the years.

The incident notification data collected by the Department's Communications Center indicate that a significant number of discharges are occurring at smaller facilities not covered by the former rules. Smaller facilities present special concerns in that they may not have the expertise and equipment necessary to prevent discharges or the ability to respond adequately to a release should one occur. Such problems in the past have led to contamination at smaller facilities which now places those facilities on the National Priorities (Superfund) List. Everyone must be held to the same standard in order to effectively protect the people and environment of New Jersey.

COMMENT: If the Federal Spill Prevention, Control and Countermeasure (SPCC) rules are rewritten, there could be two different sets of rules for New Jersey major facilities to follow which is unduly burdensome. (25)

RESPONSE: The Department will take appropriate action to make the State and Federal spill prevention programs consistent should the Federal government revise existing SPCC rules. The Department has successfully done this with the Federal and State Community Right to Know Programs. The Department is monitoring national developments in discharge prevention, and will make any revisions found to be appropriate based on rules promulgated by the Federal government.

COMMENT: One commenter states that his major facility has recently upgraded its SPCC/DPCC plans. Should these new rules be adopted as stipulated, then the cost of upgrading these plans will have been in vain. Facilities that have upgraded the required DPCC plans should be grandfathered for the duration of the plan upgrade. (14)

RESPONSE: Those facilities that have recently upgraded plans will have a majority of the plan requirements already completed and will only have to complete the additional requirements not in the revised plan. There are no provisions to grandfather facilities that have recently upgraded their SPCC/DPCC plans. The Spill Act requires all major facilities, regardless of the existence of an approved plan, to submit a new plan in compliance with these rules within three years (N.J.S.A. 58:10-23.11d8). No exemption process for those facilities with recently updated plans has been provided by the rules.

COMMENT: One factor outside but related to this proposal is one initiated by Governors Florio and Cuomo over a year ago which has a measured effect on the standard of care devoted to the movement of the barrels of petroleum in the harbor. Hundreds of hours already have and will continue to be spent on improving the safe handling of petroleum especially on or near the waters of New Jersey and New York. (B)

RESPONSE: The Department is participating in the joint effort with New York, and believes these rules are consistent with that effort. The Department recognizes the commitment to the joint New York/New Jersey harbor-wide effort shown by many facilities to raise the standard in the handling of petroleum in the harbor. However, this is purely a voluntary effort and does not provide the Department with the ability to ensure that all the appropriate facilities participate. In fact, not all facilities subject to these rules are participating. Smaller petroleum facilities and chemical facilities are not covered by this voluntary effort.

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Therefore, the bi-state effort is one facet of industrial and governmental concern for preventing pollution of the environment. These rules are another, complementary facet.

COMMENT: Presently, each major facility has been reviewing its procedures and equipment and has made improvements that are directed to discharge detection and response. During these reviews, a facility will assign a priority to an improvement based on the potential risk involved. The facility will set about making the appropriate changes. These rules will work contrary to meaningful environmental benefit. They require a large effort in labor and recordkeeping that will reduce funds for each facilities spent on discharge locations or designs. (B)

RESPONSE: The Department believes that the rules will work in concert with recent efforts, and not in a manner contrary to meaningful environmental benefit. The rules will focus the efforts of the facility owner or operator on those areas that need to be upgraded or enhanced at the facility to ensure that appropriate discharge prevention mechanisms are in place and that the facility has an adequate capability to contain and cleanup a discharge should one occur. The assignment of priorities being performed at facilities can be used to develop the schedule for upgrading permitted pursuant to N.J.A.C. 7:1E-1.11(b). These priorities would include labor and recordkeeping and their costs.

COMMENT: The whole issue is one of adequacy. If the current plan is adequate and working, why put a prohibitive cost of compliance with the new plan on industry? (C)

RESPONSE: Recent events and reports to the Department's hotline indicate that the present plans are not adequate. In 1990 nearly one million gallons of petroleum were discharged into the New York/New Jersey harbor area. The volume of discharges in the harbor has gone down in 1991, but the number of discharges is up. Nearly 1,000 reports of discharges Statewide were made to the environmental hotline in June, 1991. A greater standard of care needs to be established.

COMMENT: The USCG has indicated that historically more than a spill a day occurs within the confines of the New York/New Jersey harbors. Oil companies have not been responsible for the environmentally sensitive areas in which they have chosen to locate their plants and facilities. It is one commenter's hope that OPA90 will get this industry to comply with these rules and become better environmental neighbors. (F)

RESPONSE: The Department agrees that companies that handle petroleum and other hazardous substances must be more responsible for ensuring the protection of the environment. OPA90 works toward this goal; however, it covers only deepwater ports and vessels, not other types of major facilities. These rules complement OPA90 by providing for enforcement at the State level and expanding the scope of affected facilities. OPA90 does not preempt states from implementing their own pollution prevention, liability and response laws.

COMMENT: The entire industry is being held directly and financially liable for the acts of omission and commission of two or three companies. (C)

RESPONSE: While the larger spills which have occurred recently are the most notable, the incident notifications received by the Department indicate that many discharges are occurring at a wide variety of facilities. The Legislature's intent was to eliminate or at least minimize all discharges, regardless of the size of the facility or the magnitude of the discharge. All facilities covered by the rules will have to meet the same standard of care.

COMMENT: One commenter believes small facilities support the basic intent of the law to provide safe and sound storage of hazardous materials. Every company regardless of size must adhere to the same high standard of control. But small operators can maintain the high standard with less reliance upon the physical engineering approaches mandated in the proposed rules. However, the commenter objects to the proposed rules that do not take into account the inherent safety in operations at small facilities. As an example, the operator responsible for filling a tank at a large facility may be as much as a mile away from the tank. In some small facilities, the operator is never more than 20 feet away from the tank. Furthermore, some tanks are fiberglass and the operator can visually observe the level in the tank as it is being filled, affording a much greater protection against overfill than the mechanical protection being prescribed in the proposed rules. (10)

RESPONSE: While the Department recognizes that some facilities, both large and small, have already instituted measures to prevent discharges, it does not agree that small facilities have inherently safer operations than large facilities. In some cases, smaller facilities do not have the technical or engineering expertise to properly ensure discharge prevention or the full range of in-house expertise to deal with discharge containment and response. The Department does recognize the economic burden on small facilities. In recognition of this burden, there is an exemption both from the financial responsibility section and the mapping section available to small businesses. The Department has modified the rules to provide additional alternatives for smaller facilities. For example, the rules have been modified to exempt 2,000 gallon tanks from integrity testing and high level alarm requirements. However, exempted tanks must be continually attended during loading operations, in order to ensure an equivalent level of protection, and secondary containment will still be required.

COMMENT: One commenter believes that good health, safety, and environmental performance is an integral part of efficient and profitable business management. This commenter supports the goals of the Spill Act amendments—those goals being "to provide standards for discharge prevention and emergency response requirements for facilities storing or handling hazardous substances." Industry compliance with many of the provisions of the proposed rules should result in a marked reduction in the frequency and severity of hazardous materials discharges in New Jersey. (8)

RESPONSE: The Department agrees with the commenter.

COMMENT: Aside from an incident of environmental terrorism which took place in the Persian Gulf and referred to in the executive summary, there have been no incidents of someone willfully discharging petroleum on land or sea. The cleanup costs attached to environmental incidents are large and it is agreed that the Department should do everything possible to ensure proper remediation. However, the Department should also be aware that overly burdensome rules and fines will have negative effects on industry in the State. It will drive good citizens out of business. (J, N)

RESPONSE: The Legislature's intent was to ensure that appropriate discharge prevention and containment measures are in place so that there will not be a discharge to the environment that results in a negative environmental impact or that requires costly cleanup. The primary focus of the discharge prevention program is on prevention not remediation. The Department analyzed the burden the rules would place on industry prior to proposal, and found it reasonable for the protection the rules afford. Those provisions which may prove most diffcult to comply with such as financial responsibility, have means of alternate or waived compliance. The reduction in discharges engendered by these rules should have a positive effect on industry by reducing hazardous waste disposal and cleanup costs, reducing the cost of insurance, better protecting workers, and limiting losses of raw materials and products through discharges.

COMMENT: Implementation timing in general is terrible. The chemical industry, like many other employer groups in the State, is suffering the effects of the current economic recession. To burden this segment of industry at this time with a major new environmental initiative will further exasperate unemployment as already limited funds are diverted to fund this program. This appears particularly unwise when the bulk of the problem appears limited to the petroleum industry. (18)

RESPONSE: The Legislature established the framework of the timing by requiring that all plans be submitted within three years from adoption of the rules (N.J.S.A. 58:10-23.11d8). The Department has established an implementation schedule which provides facilities likely to have fewer resources with more time to prepare their plans. Larger facilities which should have existing DPCC and DCR plans that only need to be amended are required to submit their plans within the first year and a half. Smaller facilities which have no existing plans and fewer resources will have up to three years to prepare their DPCC and DCR plans. When considered along with the ability to schedule upgrades for compliance, pursuant to N.J.A.C 7:1E-1.11(b), the Department believes the timing is reasonable.

Of the nearly 1,000 reports of discharges in June 1991 to the environmental hotline, very few were from the petroleum industry. Therefore, while the petroleum industry may account for a large volume of the hazardous substances discharged via only a few discharges, there is a cumulative effect of all the other smaller discharges attributable to other industries. The Department cannot agree that most of the problem of discharges of hazardous substances is limited to the petroleum industry. All sectors of industry, petroleum and otherwise, must do what is necessary to prevent future discharges.

COMMENT: Because of changes in the major facility definition and additions to the hazardous substance list, one commenter feels caught in the middle by a law and subsequent rules that have been written to

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control a specific industry without enough consideration for the impact on small and medium chemical manufacturers. (A)

RESPONSE: The intent of the Legislature was to minimize or eliminate discharges at all facilities regardless of size. The Department has considered the effect on small businesses of all types and has built flexibility for small businesses into several areas of the rules. Small businesses can obtain a reduction or waiver of responsibilities in regard to financial responsibility and mapping. The schedule for plan submission provides smaller facilities with up to three years to submit plans, while larger facilities will be required to submit plans within the first year and a half. In addition, the adopted rules have been revised to exempt tanks of 2,000 gallons or less from the integrity testing, internal inspection, and high level alarm requirements.

COMMENT: The summary to the rule proposal states "The existing 1979 rule is revised to require that the boom be deployed prior to the transfer for materials with a flashpoint of less than 100 degrees." This appears to be incorrect. Proposed N.J.A.C. 7:1E-2.7(d) states the requirement for deploying a boom for materials with flashpoint greater than 100 degrees F. (13)

RESPONSE: The Department thanks the commenter for bringing this inconsistency to its attention. The rule language concerning flashpoints greater than 100 degrees Fahrenheit is correct, not the section in the summary.

**Social Impact**

COMMENT: The social impact of the rule proposal does not draw any definite conclusions. Instead, it addresses only the possibility of a positive social impact with words and phrases like "is expected" and "may be to increase." (C)

RESPONSE: The Department acknowledges that the social impact is addressed in a qualitative way. Social benefits are difficult to quantify, but that does not make them any less tangible or important. The Department believes that through the implementation of the proposed rules, future discharges of hazardous substances will occur less frequently and those that do occur will be less severe and have less of an impact on the quality of life of the citizens and environment of the State. The response, containment and cleanup of these discharges which do occur will be performed more efficiently and effectively than they have been in the past. This will lead to benefits such as less contamination of beaches and fish and shellfish, which in turn can lead to increased tourism, increased enjoyment of the beach and fish that are safer to eat. These social benefits cannot be accurately quantified, but the Legislature in its findings and declaration (N.J.S.A. 58:10-23.11a) has determined that they are important.

COMMENT: One commenter seriously questions the accuracy of the social and economic impact of the proposal as detailed in the May 6, 1991 New Jersey Register. Specifically, has the Department considered the social and economic impacts of lost revenue and jobs resulting from those busineses that will choose to move their operations out of New Jersey if the proposed rules are promulgated? The Department also describes several incidents involving discharges of hazardous substance. While the commenter does not question the serious potential for environmental impact resulting from such a discharge, he does question the relevancy of many of the examples (that is, Exxon Valdez and the Persian Gulf spills) to this proposal. How many of these incidents would have been averted even if the proposed revisions were in place? It is suggested that the existing rules, if adequately enforced, would provide the necessary protection for our State's environment. It appears that all businesses within the State are being "punished" for the wrongdoing of a few violators. This is not appropriate. (42)

RESPONSE: The Department expects responsible businesses which are concerned with the environment to welcome specific standards to protect the environment. Businesses which comply with these rules are expected to expand to fill any void created by the closing of an obsolete or noncomplying facility. Increased tourism, improved water quality, fewer impacts on the State's fishing industry, increased confidence of the public in the chemical industry, and many other factors will offset much of the lost revenue. Cleanup costs alone associated with major discharges can be many times more expensive than the cost of the necessary changes to prevent discharges required by these rules. The discharge incidents recounted in the environmental impact statement, specifically the Exxon Valdez and Persian Gulf discharge events, were used to demonstrate the serious effects that discharges can have on the environment and a world-wide pattern of unnecessary oil spills, not to represent typical incidents in New Jersey.

The rules should result in a significant decrease in the number of discharges, but even in cases where the provisions in the rules would not actually prevent a discharge, the facility will be better prepared to respond to any discharge incident that may occur and to lessen the severity of the impact.

**Economic Impact**

COMMENT: The implementation costs will far exceed those listed in the proposed rules. A significant percentage of the costs will be associated with issues not directly related to discharges or potential discharges of hazardous substances. The economic cost versus environmental benefit is not properly balanced and appears not to have been considered. The economic benefits received from implementing these rules at a major facility will never equal, let alone, exceed, the cost of implementation. The Department needs to review its analysis of economic impact with costs that are realistic.

These rules will probably have a severe economic impact on smaller business. Small business will be at a disadvantage because they do not have the deepest pockets in terms of meeting the cost of compliance. If the absolute cost is $1.5 million, it means something more to a mom and pop operation than it does to a huge megacorporation. An increasing proportion of retained earnings has been spent on environmental protection.

Perhaps a small business exemption should be available. A small business with five to 10 million dollars in sales, or even less, is unlikely to have the financial resources of a multi-million or billion dollar corporation. The rules do not distinguish between these two businesses. An alternative exists even if a small business exemption were not possible.

The Department states that it may allow a reasonable length of time for compliance with the rules. Perhaps this could be defined by the expenditure of a percentage of pre-tax profits towards compliance. It will take longer for complete compliance, but it would spread the economic burden over a longer time period and would allow the company to stay in business. It is not in the best interest of the State to drive business away.

It is possible to have the most environmentally safe state in the nation and still have unhappy residents. The loss of businesses, especially in these economic times, would not benefit the State or its residents. The rules should be tempered. They would still allow for a safe environment. They would lighten the economic impact on small business. They would help to maintain desperately needed jobs in the State. (4, 35, B, D)

RESPONSE: The Department recognizes that implementation costs are facility specific, and may in some cases exceed the estimates given in the summary. However, those standards established in the rules are all directly related to the prevention or minimization of discharges. The Department has taken into consideration the economic burdens that will be placed upon small business to comply with the rules. Provisions have been provided for a schedule of compliance for a facility in N.J.A.C. 7:1E-1.11(b). In addition, small businesses may be exempt from the mapping criteria pursuant to N.J.A.C. 7:1E-4.10(e) and financial responsibility pursuant to N.J.A.C. 7:1E-4.5(q) depending on their financial status. However, the definition of a small business depends upon the number of employees and not the quantity of hazardous substances on site or the company's balance sheet. The potential for a discharge may be just as great or greater for a small business than a larger facility in that a small business may have little or no discharge prevention measures in place. Pre-tax profits also have no bearing on the risk of a discharge and expenditure of some percentage of such profits is not an appropriate means of establishing deadlines.

Cost savings can be realized by small businesses through lower insurance premiums, reduction of material losses, and avoiding the cost of a major cleanup, which can be many times more than the cost for compliance. Also, the cost of liability and third party liability in the event of an explosion and fire can also be included in the savings. These costs can and have in the past exceeded 10 to 20 million dollars for a single facility, not including the loss of production facilities and consumer response in the aftermath of such incidents.

COMMENTS: It is to the environment's and everyone's advantage to see to it that spills and discharges are eliminated. To do so will take a concerted effort on the part of industry and the Department. Within the framework of the enabling legislation, the rules should be written so as to give priority to dealing with the areas of operation with the greatest potential for environmental harm. Given the extreme State budgetary constraints, and the general State of New Jersey's economy, neither the Department nor industry have unlimited resources to deal

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with unlimited issues. If the approach taken does not consider levels of risk and the resultant benefit, then neither the Department nor industry will properly address the issues and the environmental protection we both seek will be wanting. Some customers will not be willing to accept the additional cost of compliance with these rules and will probably elect to take their business elsewhere. (38, 39, C)

RESPONSE: The Department agrees that it is to everyone's advantage that discharges be minimized. The Department does believe that the rules address the areas of operation with the greatest potential for discharges and resultant damage to the environment and the fact of limited resources by allowing for a reasonable period of time for implementation of the provisions of these rules, in accordance with N.J.A.C. 7:1E-1.11(b). The owner or operator of a facility can prioritize the risks for that particular facility as part of the schedule development. The area with the potential for the greatest environmental harm will vary from facility to facility, making a Statewide priority difficult to establish, so the owner or operator can make this determination when developing his or her schedule of compliance. As to the loss of customers because of increased costs, the percentage of the costs of compliance that the facility chooses to pass through to their customers and estimating the subsequent economic effect of that decision, must be determined by that facility.

COMMENT: The proposed rules would extend severe and costly requirements to the entire hazardous substance list, suggesting that all of these materials have the same risk as the legislatively designated EHSs. This was not the Legislature's intent under TCPA; it is not the Legislature's intent, based on a reading of the Spill Act, which specifically addresses discharge response. (D)

RESPONSE: N.J.S.A. 58:10-2311d2b(8) addresses the requirements of discharge prevention plans. The Spill Act is not concerned only with discharge response. The list of hazardous substances is established by the definition of "hazardous substances" in the Spill Act (N.J.S.A. 58:10-23.11bk). There is a risk associated with each of the substances, although in most cases not as great as the EHSs.

COMMENT: The section which addresses economic impact does not differentiate affected facilities in terms of their ability to pay. Some of these facilities are owned by megacorporations whose assets and income are greater than over two-thirds of the countries on earth. No distinction is made between these megacorporations and closely held corporations in terms of the relative economic impact of the cost of compliance. No distinctions are made with respect to the spill or discharge histories of facilities. It would be logical and just that the economic impact be greater upon facilities with poor spill records. An attempt should have been made to define the real economic impact in terms of a facility's cash flow instead of its cash expenditures. (C)

RESPONSE: The Department estimates that approximately 900 facilities will be affected by these rules. Although the Department has determined that the cost of compliance for these facilitites will vary greatly, it would be nearly impossible to calculate the cost of compliance for each of these facilities prior to the preparation of DPCC and DCR plans. These costs of compliance and the facility's ability to pay will be taken into account in the facility's schedule of compliance pursuant to N.J.A.C. 7:1-1.11(e). Also, certain considerations have been given to small businesses, such as a reduction in the mapping and financial responsibility requirements.

Regarding the commenter's statement that "the economic impact should be greater upon facilities with poor spill records," the Department agrees and believes that the penalty provisions of N.J.A.C. 7:1E-6 will directly result in facilities with poor discharge history records being severely penalized. However, the risk of a discharge has no correlation to a facility's cash flow, except in cases where poor cash flow is an indication of a poorly run facility whose management may cut corners, increasing the risk of a discharge.

COMMENT: The proposal states the costs to facilities with existing plans will be limited primarily to upgrading equipment and procedures. This significantly underestimates the magnitude of the impact caused by many of the proposed changes. A significant increase in the number of containments, alarms, training programs, records, and inspections will be required. An accurate estimate of the costs to the entire petroleum industry cannot be made in the short timeframe allowed but is known to exceed hundreds of millions of dollars. (35)

RESPONSE: The Department has stated that the costs involved in complying with these rules, including secondary containment, alarms, training programs, records, and inspections, will depend directly on the number and types of these discharge prevention measures already in place at the facility. Costs will vary widely on a site-by-site basis. Attempting to measure such facility-dependent costs would be nearly impossible. However, many of the large petroleum facilities should already have secondary containment for all their storage tanks, and some high level alarms. The training program involves training employees in how to do their job, which is simply good business. Overall, for a facility that has been in compliance with the previous discharge prevention rules, compliance with these rules should not be very difficult.

COMMENT: These rules will have a tremendous economic impact on a significant number of businesses in New Jersey because the universe of hazardous substances has been vastly increased and dry solids storage has been included. (29, 47)

RESPONSE: The list of hazardous substances has been expanded as required by amendments to the Spill Act. Furthermore, the hazardous substance list has always included gases, liquids, and solids.

COMMENT: The Department's economic impact statement fails to acknowledge costs to non-major facilities, which are still responsible for various notification and reporting requirements. Also, it fails to adequately consider the costs of the administrative systems required to comply with these rules. In particular, the Department has not estimated the cost of establishing and maintaining the extensive recordkeeping systems which the proposed rules would require. (47)

RESPONSE: All persons, including non-major facilities, have been required to notify the Department about discharges of hazardous substances since the enactment of the Spill Act in 1979. That requirement was codified in N.J.A.C 7:1-7, which was moved to N.J.A.C. 7:1E-5. There should be no new costs incurred for this reporting. As for recordkeeping, many of the necessary records should already be generated, and in some cases retained. Those that already existed now need to be kept longer. The Department has kept the type and quantity of records to be retained to the minimum necessary to determine compliance with the Spill Act and these rules.

COMMENT: Several commenters gave preliminary estimates of overall compliance costs. These costs range from $50,000 to develop a plan, not including mapping, to $20 to $100 million for initial compliance. One commenter states compliance for his company will exceed $50 million over an initial five years. Another commenter gives annual compliance costs of $10 million, with the majority of these costs accounted for by excessive and redundant inspections and recordkeeping requirements. (17, 26, 27, 40, D)

RESPONSE: Although the Department realizes that the costs of complying with these rules will vary greatly and be facility dependent, these rules are necessary to implement the requirements of the Spill Act. In recognition of the economic impact, N.J.A.C. 7:1E-1.11(b) allows a facility to propose a schedule of compliance for upgrading to the standards in the rules. Alternate methods, which may be less expensive, can be recommended by the owner or operator of a facility, pursuant to N.J.A.C. 7:1E-1.11(e). Required inspections have been clarified, and the total number has been reduced. Any standard in these rules which can be fulfilled by something already done at the facility to demonstrate compliance with any other Federal or State regulations, can be used to show compliance with these rules. This should eliminate redundancy. Also, the cost of implementing the standards in these rules would be more than offset by avoiding one catastrophic event which could cost a facility $10 to $20 million in cleanup, liability and lost-time costs.

COMMENT: One commenter estimates that, in addition to a capital cost for new equipment such as high level alarms, pump cut off switches, and secondary containment facilities of between $150,000 and $250,000, his facility would also have an initial cost of approximately $300,000 to comply with training, integrity testing, mapping, and insurance requirements. Annual compliance costs thereafter would be at least $75,000. For a relatively small business trying to remain competitive in a worldwide market these costs are difficult to bear and cannot be easily passed on to customers when other suppliers are not facing similar cost penalties. (18)

RESPONSE: The Department has stated that the costs involved in complying with these rules will depend directly on the number and types of the discharge prevention measures already in place at the facility. The standards for impermeable secondary containment may not apply to existing aboveground storage tanks if certain other criteria are met pursuant to N.J.A.C. 7:1E-2.6(c)3. Thus, the expense of retrofitting impermeable secondary containment would not be incurred. As adopted, storage tanks which hold 2,000 gallons or less are exempt from the requirement for having high level alarms if the tank is continually attended during fill operations in accordance with N.J.A.C. 7:1E-2.2(d).

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Furthermore, the requirement that these devices be "fail-safe" has been deleted.

Consideration was given to the burden the mapping criteria would place on industry. The Department agrees that the mapping requirements, as proposed, were duplicative, and has revised the mapping requirements in order to minimize this burden. The Department does not presently have the types of base maps (N.J.S.A. 58:10-23.11d3c) which identify environmentally sensitive areas throughout the State. In recognition of the fact that it would be extraordinarily wasteful to require duplicative mapping of environmentally sensitive areas, the Department has decided to return to the Legislature and ask it to seek an industry-generated source of funding to allow the Department to gather and delineate the necessary base map information. The Department will share this information with the facilities when it is available, so that the DPCC/DCR plans can be updated.

The employee training and standard operating procedures (SOPs) only apply to job functions involving the handling of hazardous substances. By implementing the discharge prevention procedures required in those rules, insurance costs will often be reduced due to the decreased discharge risk at the facility. The Department recognizes that the cost of meeting these standards will vary by facility. However, the Department believes that, consistent with the Spill Act, these requirements are important and necessary discharge prevention measures to protect the public health, welfare and natural resources of the State and are not overly burdensome.

COMMENT: One commenter states the economic impact of meeting the aboveground storage tank standards of N.J.A.C. 7:1E-2.2(a)2, (a)3 and (d) is approximately $175,000 per/tank (plus or minus $50,000 depending on tank diameter). The total cost of the upgrades will be approximately $35,000,000 combined for two of the commenter's facilities. (8)

RESPONSE: The Department recognizes that the cost of meeting these standards will vary by facility. However, the Department believes that these requirements are important and necessary discharge prevention measures to protect the public health, welfare, and the natural resources of New Jersey and are not overly burdensome. A portion of the costs to upgrade to meet the required standards will not be incurred immediately. The standards for impermeable bases under aboveground storage tanks must be met by new or substantially reconstructed tanks. Regarding pipes leading to and from aboveground storage tanks which enter the tank below the liquid level, the facility has the option of equipping the valves with remotely activated devices or insuring that the valves are readily accessible in the event of a leak or discharge. To be readily accessible, the valve may simply need a long stem, making the valve only fractionally more expensive than a regular valve. As adopted, storage tanks which hold 2,000 gallons or less are exempt from the requirement for having high level alarms if the tank is continually attended during filling operations in accordance with N.J.A.C. 7:1E-2.2(d). Furthermore, the requirement that these devices be "fail-safe" has been deleted. Therefore, the cost estimates by the commenter are somewhat high.

COMMENT: Estimates on the cost of initial integrity testing of storage tanks run from $3,000 to $110,000 per tank, with total costs for specific facilities given in the range of $222,000 to $3 million. (8, 29, 25, 40, 47)

RESPONSE: The initial integrity test requirement is only for a static head product test which is much less stringent than a full integrity test. Estimates on the cost of this type of test were obtained from an actual tank testing firm. Cost will of course vary depending on the size of tank involved, the number of tanks to be tested, and whether further testing needs to be done based on the initial results. The Legislature has determined that the testing of storage tanks is important, but that an exemption based on size could be implemented by the Department (N.J.S.A. 58:10-23.11d11). The Department has included an exemption for tanks of 2,000 gallons capacity or less.

COMMENT: The economic impact of meeting the secondary containment standard at a design parameter of $10^{-7}$ cm/sec, per the definition of impermeable, would approach $100 million for some facilities. (8)

RESPONSE: The impermeability standards for secondary containment may not apply to existing aboveground storage tanks if certain other criteria are met pursuant to N.J.A.C. 7:1E-2.6(c)3. In those cases, the $10^{-7}$ cm/sec standard does not have to be met until the secondary containment area or the storage tank is replaced. Thus, retrofitting is not always necessary, and the cost for meeting the standard for impermeability will be spread over a very long time period. The Department recognizes that the costs of meeting this standard will vary by facility. However, the Department feels that this is an important and necessary discharge prevention measure to protect the public health, welfare, and the natural resources of New Jersey.

COMMENT: Other compliance costs were estimated by one commenter. The training programs, at the Department's lowest estimate of a "few hundred dollars per employee ($200 × 1000 = $200,000) to a "few thousand dollars per employee," could result in a cost of $2 million for his facility. The preparation of SOPs for even half of those employees dealing with hazardous substances are conservatively estimated at a minimum of four hours per employee (4 × 100 × $10/hr = $40,000). The recordkeeping and documentation for the above are another $40,000. For a facility located near a stream, creek or river the mapping and other informational requirements are estimated at $255,000. (29)

RESPONSE: The employee training and standard operating procedures program only apply to job functions involving the handling of hazardous substances. A well run facility should have a training program and SOPs to ensure consistency and safety. A separate SOP is not needed for each employee if more than one employee performs a given task. There only needs to be one SOP for the task, distributed or available to each employee performing that task. Thus, four hours does not need to be utilized for each employee, but only for each task, lowering the estimated cost. Even though the cost of writing SOPs and implementation of training programs for a large facility may be initially substantial, the potential savings from the reduction of discharges will be even more substantial.

Regarding mapping and recordkeeping, the Department acknowledges that these costs are site specific. Consideration was given to the burden the mapping criteria would place on industry. The Department agrees that the mapping requirements, as proposed, were duplicative, and has revised the mapping requirements in order to minimize this burden. The Department does not presently have the types of base maps (N.J.S.A. 58:10-23.11d3c) which identify environmentally sensitive areas throughout the State. In recognition of the fact that it would be extraordinarily wasteful to require duplicative mapping of environmentally sensitive areas, the Department has decided to return to the Legislature and ask it to seek an industry-generated source of funding to allow the Department to gather and delineate the necessary base map information. The Department will share this information with the facilities when it is available, so that the DPCC/DCR plans can be updated.

COMMENT: The plan preparation for the additional DPCC/DCR requirements are estimated at $100,000. For a single facility, not counting the re-engineering, drainage revisions, (catchment basins and potential impoundments) and assuming permitting takes less than three years, all of which could cost several millions. The paperwork requirements will run from $900,000 to $3 million. The mandated instrumentation and maintenance of same has not been included in the economic report. (29)

RESPONSE: The Department has acknowledged in the economic impact statement that the costs involved in complying with these rules, including re-engineering, drainage revisions, and the instrumentation and maintenance thereof, will depend directly on the number and types of discharge prevention measures already in place at the facility. Costs will vary widely on a site-by-site basis and attempting to measure such facility dependent costs would be nearly impossible.

**ENVIRONMENTAL IMPACT**

COMMENT: It is gratifying to see that prevention of discharges is a primary goal of these rules, but without a sensible national and state energy policy, and a commitment to conservation and alternatives to petroleum technology, prevention of discharges will be nearly impossible. A commitment to mass transportation, solar and renewable energy sources will result in less hazardous materials transported, therefore, less spilled. (31)

RESPONSE: The Department agrees that a reduction in the transportation of petroleum will result in a decreased risk of discharges. However, it is not within the scope of these rules to address the mass transportation and energy alternatives advocated by this commenter.

COMMENT: The Department has extended unfairly, rules originally designed to control releases of petroleum products to other substances without sufficient evidence of need. In the Environmental Impact section of its own Summary, the Department has cited as reasons justifying these proposed changes a number of worldwide incidents. It is interesting to note that nine of the 10 cited involve spills of petroleum products totaling approximately 242,044,000 gallons, while the sole release of any hazardous substance, other than a petroleum product cited, was a spill

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of 400 to 500 gallons of bleach. If this is, by the Department's own summation, an indication of the relative magnitude of the difference in spill potential between petroleum products and other substances, why regulate both identically. (18)

RESPONSE: The Act clearly states at N.J.S.A. 57:10-23.11bk that the list of hazardous substances included many hundreds of substances other than petroleum products and does not differentiate in regulating petroleum products from non-petroleum hazardous substances. The regulation of hazardous substances is supported by the existence of numerous Superfund sites around the State that have been contaminated with such substances. Discharges of hazardous substances other than petroleum or petroleum products may not be as catastrophic as petroleum discharges, but they do have long term negative effects on the environment.

COMMENT: The environmental impact of the new rules does not distinguish any relative benefit of the new rules over the existing ones. However, the section does make clear that most of the major incidents in the first half of 1990 in the Arthur Kill and Kill Van Kull should have been mitigated by proper enforcement of existing rules which already require that DPCC plans contain descriptions of discharge events, and the corrective and preventative action taken as a result of them in the event that a facility has more than one discharge event in any 12 month period. The Department has the authority to revoke DPCC plans as inadequate and could have taken enforcement action in each specific incident. (C)

RESPONSE: The repeal of the existing subchapters as a whole is necessary for several reasons. In the years since these standards were proposed in 1979, changes in technology have occurred. Some of the 1979 standards are no longer appropriate. The existing 1979 rules are confusing and it is difficult for an owner or operator to determine what requirements are being placed on their facility and what items should be in their DPCC and DCR plans. The notification requirements in existing subchapter 5 are in conflict with those in existing subchapter 2. Also, amendments to the Act signed into laws prior to 1990 had not been incorporated into the administrative rules. All of the changes entailed by these deficiencies are easier to follow and understand with proposed new rules rather than amendments to the existing rules.

**REGULATORY FLEXIBILITY ANALYSIS**

COMMENT: The summary states, "In order to comply with the proposed rules, the small businesses (elsewhere defined) will have to prepare and present to the Department for review a copy of their facility's DPCC and DCR plans." It is not clear why only "small businesses" will have to submit their plans for review, and not all of the regulated facilities. (21, H)

RESPONSE: The purpose of the Regulatory Flexibility Analysis is to explain the effect of these rules on small businesses specifically and to delineate any exemptions, waivers or reductions in standards that may be granted for small businesses. All major facilities must submit their DPCC/DCR plans to the Department for review pursuant to N.J.A.C. 7:1E-4.6(b).

COMMENT: The section on regulatory flexibility analysis identifies only one exception that might be possible to make for small businesses. However, this same analysis, while purporting to balance the need to protect the environment against the economic impact of the rules, says nothing definitive about what benefit to the environment will result from the new rules. Operations that have been well run and free of discharge events in recent years have already fulfilled the need to protect the environment and should not be required to expend upward of the Department's estimate of $70,000 or our estimate of $1.5 million to fix what is not broken. Conversely, responsible parties should be required to pay reparations and fines. (C)

RESPONSE: It is not the purpose of the Regulatory Flexibility Analysis to outline the anticipated environmental impact of these rules; that is specifically delineated in the Environmental Impact Statement. Though the Department had granted a reduction in mapping requirements for small businesses pursuant to N.J.A.C. 7:1E-4.10(e), it has determined that any additional reduction in the standards contained in these rules would endanger the environment, public health, and public safety, and therefore no additional exemption from coverage is provided.

The Department recognizes and thanks those owners or operators of facilities of all sizes who have conducted their operations in such a way as to prevent discharges. A good track record can be used in support of a schedule for upgrading, pursuant to N.J.A.C. 7:1E-1.11(b). Operations which have functioned for an appreciable period of time without a discharge would be given more time in which to upgrade. For example, a facility at which no discharges have occurred may be given three years to install a secondary containment system around a tank instead of one year. Any discharges between approval of the schedule and completion of upgrades could result in the schedule being shortened.

COMMENT: The statement was made at the hearing that a 1,000 gallon spill is the same as a 100,000 gallon spill. Are not the risks associated with 1,000 different from 100,000 and the cost has to be substantially less with somebody with a smaller facility. They can't be asked to implement the same standards that the large facility is. The money to prevent the risk has got to be put in the area where the risks are greater. That's not what's being done. The rules are strict. They apply to every possibility that could happen in a facility and without prioritizing you are going to force industry out of New Jersey and people who have lived here all their lives will be forced to live in a different state. (C)

RESPONSE: The potential for a discharge can be just as great or greater for a small business as for a larger facility, in that a small business may have few or no discharge prevention measures in place. The Department believes that the rules address the areas of operation with the greatest potential for impact on the evironment. The Department recognized that industry does not have unlimited resources and will allow for a reasonable period of time for the implementation of the provisions of these rules in accordance with N.J.A.C. 7:1E-1.11(b). Even if a small number of businesses choose to move out of the State rather than comply with these rules, the overall social, economic and environmental impacts will greatly overshadow these losses.

As to the risk from different sized discharges, the impact of a discharge is dependent upon the substance and the circumstances under which it is discharged. In California recently, 20,000 gallons of a herbicide was discharged into a river. As a result, 45 miles of that river have been denuded of life. The fish, plants and microorganisms in and adjacent to the river have been killed. Other wildlife dependent on these fish and plants will be affected. Tourism in the area has been adversely affected. A similar quantity of oil discharged in the same river, while constituting a disaster, would not have caused such complete and utter devastation. So, in some cases, a 1,000 gallon spill can be the same or worse than a 100,000 gallon spill.

**SUBCHAPTER 1. GENERAL PROVISIONS**

**N.J.A.C. 7:1E-1.1 Scope**

COMMENT: Two commenters state that the registration, design and maintenance requirements go beyond the provisions provided for in the law. No need has been demonstrated for the inclusion of dry, solid substances listed; nor for gases, in particular those in sealed, pressurized tanks and containers. In any event, pressurized gases would not be liquid spills, but air discharges or releases which are already regulated. (29, 47)

RESPONSE: The Department disagrees and believes the registration, design and maintenance requirements are necessary to implement the Spill Act. The Federal lists of hazardous substances specifically required to be considered (N.J.S.A. 58:10-23.11bk) contain solids and gases as well as liquids. Substances which are gases or solids at ambient conditions when released can impact public health, the environment and the natural resources of the State. Additionally, these hazardous substances may be stored in the liquid state. Because of these concerns, the State Legislature and the Department have chosen not to differentiate between physical states of hazardous substances, and all hazardous substances, regardless of physical state, are subject to the rules.

**N.J.A.C. 7:1E-1.4 Relationship to Federal and State Law**

COMMENT: Conformance to these rules will cause conflict with existing rules, that is, solid waste, and could not be done without having other permits revised first. This places the regulated community in a non-compliance status for two to three years at best. It furthermore, and without notice, initiates the institution of permits for alarms and shutoff devices never before included for aboveground tanks and for which no criteria nor guidelines exist. (29)

RESPONSE: The Department recognizes that Departmental permits may have to be revised because of new requirements established by this rule. This anticipated permitting time may be built into a schedule for upgrading pursuant to N.J.A.C. 7:1E-1.11(b). If the permitting times are built into a schedule that is a part of an approved DPCC/DCR plan there will be no periods of non-compliance for the facility. The Department is not requiring permits for alarms and shutoff devices by the adoption of this rule.

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**N.J.A.C. 7:1E-1.5 State non-liability**

COMMENT: There is no statutory basis in the Spill Act or the Spill Act Amendments for N.J.A.C. 7:1E-1.5, State non-liability. Further, the Department's liability is determined pursuant to the New Jersey Torts Claim Act and applicable court decisions. The Department lacks the requisite authority to propose such a provision, and therefore this section should be deleted in its entirety. (26)

RESPONSE: Legislation has placed the responsibility for discharges and their consequences on persons that handle hazardous substances. N.J.S.A. 58:10-23.11gc specifically states that "any person who has discharged a hazardous substance or is any way responsible for any hazardous substance" is strictly liable, without regard to fault and jointly and severably, for all cleanup and removal costs. The Spill Act goes on to state the persons performing cleanup or mitigation services are not liable unless negligence can be proved by a preponderance of the evidence. Clearly, it is the intent that the liability remain with those persons responsible for the hazardous substance and its discharge.

COMMENT: Since the State claims non-liability "of any cleanup and removal activities," the Department does not have the right to interfere in cleanup efforts, as implied in N.J.A.C. 7:1E-5.7(d). To order cessation of cleanup and removal activities, the Department should be required to consult with the facility operator and the response coordinator. Furthermore, since the State approves individual DCR plans and licenses the cleanup firms, there should be no need to cease operations on a unilateral basis. Safety to the surrounding community, as well as the plant, must take precedence above all other considerations. (9)

RESPONSE: The Department has no intention of interfering or ordering the cessation of cleanup operations that are being conducted in a proper manner. However, if a cleanup operation is not properly containing the discharge or is failing to expeditiously clean up the discharge, the Department must be able to take actions necessary to end the threat the discharge poses to the environment. The Department's approval of a DCR plan cannot prevent such a situation from ever arising, because the owner or operator of a facility may fail to properly carry out the plan when a discharge occurs, or the specific circumstances of the discharge may present a scenario which was not contemplated in the plan. Furthermore, only major facilities are required to have DCR plans; therefore, if the discharge occurs at a non-major facility, it is unlikely that there will be such a plan in effect. In making the decision to order cessation of cleanup and removal activities, the Department will consult with all involved parties, including individuals from the facility. While the Department registers discharge cleanup organizations for the purpose of ensuring the availability of necessary information about such firms, the Department does not license such firms and cannot ensure the quality of the services they perform.

COMMENT: The Department has absolved itself of any liability with regard to its errors or omissions in its review and approval of plans and procedures. The laws require certification by professional engineers and other scientists; it is suggested that, under other New Jersey laws, Department representatives themselves may not be professionally or legally qualified to review these plans. If these personnel are not legally and professionally qualified, then the State must bear the liability of their decisions. No simple paragraph in the proposal should be sufficient to absolve any person (New Jersey is included in the definition) of liability. (17)

RESPONSE: The Spill Act clearly states that the person or persons responsible for the hazardous substance and its discharge are the persons liable for the discharge. N.J.S.A. 58:10-12.11gc provides that all persons responsible for the hazardous substance are liable jointly and severably, without regard to fault. Any person involved in the cleanup or mitigation of a discharge is shielded from liability unless negligence can be proved by a preponderance of the evidence. The State cannot assume the liability of the facility's owner or operator. The Department will use properly trained and qualified employees in the review and approval of the plans. Staff members are already assigned to the responsible program and will complete the training necessary by the time the first plans are submitted in February 1992. It also should be noted that the rules do not contain a requirement for certification by a professional engineer.

**N.J.A.C. 7:1E-1.6 Definitions**

COMMENT: All definitions should be specified in these rules. The practice of referring to another existing rule should be eliminated. If the definition in the referenced rule is changed at some future time, the impact on rules that refer to it may not be apparent. (35)

RESPONSE: The Department has defined several terms in these rules by reference to definitions in other rules, to ensure consistency among such rules. Incorporating the definitions by reference avoids the risk that a definition in one rule could change while the definition in another rule remains the same; such a change could result in inconsistent or duplicative application of regulatory requirements, adding an unnecessary and unintended burden to the regulated community.

Those definitions which cite other administrative rules, such as the ones for NJPDES permits or the UST program, cannot simply repeat the definitions given by those programs because there is a whole regulatory framework associated with those definitions. In these cases, the Department is not requiring additional standards be met, but simply informing affected parties that these rules are applicable.

The other place were administrative rules are cited is in N.J.A.C. 7:1E-1.8, Environmentally sensitive areas. These cites are to be used to identify those areas to be mapped. The Department is compiling all of these cites and will have the definitions available as a guidance document that will be updated. The only time changes to any of these referenced definitions will change anything pursuant to N.J.A.C. 7:1E is when maps are being prepared or updated. At that time, the impact of such changes will be apparent.

COMMENT: It is unclear which tanks are included in the definition of "aboveground storage tank." For example, what is the status of tanks which are excluded from the Federal definition of underground storage tanks? (25)

RESPONSE: The definition of "aboveground storage tank" references the New Jersey definition, not the Federal definition. If a tank does not meet the definition of an underground tank as defined in N.J.A.C. 7:14B-1.1, it is an aboveground tank.

COMMENT: Many aboveground storage tanks are used in a process. These tanks should be exempt from these rules as underground process tanks are exempt from sections of the UST rules. (35)

RESPONSE: The definition of "storage tanks" specifies that the tank must be used primarily for bulk storage. Process tanks, either aboveground or belowground, would not fall into this definition. Process tanks are not exempt from the rules, but different sections apply to them, such as N.J.A.C. 7:1E-2.5, Process areas, than apply to storage tanks.

COMMENT: The definition of an "aboveground storage tank" is overbroad because it includes any object which may contain a liquid, from five gallon pails and 55 gallon drums to million gallon storage tanks. This is inconsistent with TCPA rules which recognize a de minimus level of concern below which off-site impacts are considered negligible. This overbroad definition will cause unnecessary procedures and equipment to be installed on incidental tanks. An exemption for small tanks is recommended by several commenters, with "small" ranging from 550 to 2,000 gallons. The 2,000 gallon minimum is stated to be consistent with New Jersey air pollution control rules. (9, 13, 17, 35)

RESPONSE: The Act at N.J.S.A. 58:10-23.11b1 defines a major facility by storage capacity, and includes all capacity for storage in the determination. While TCPA has registration quantities for the chemicals covered by the program, the Spill Act establishes levels of 20,000 and 200,000 gallons for application of the rules. Thus, it would be inappropriate for the Department to exempt a category of "small" tanks from the calculation of total storage capacity and the determination of major facility status. However, the Department has made changes to N.J.A.C. 7:1E-2.2(a)4, 2.2(d) and 2.10(a)5 that establish different regulatory standards for or exempt 2,000 gallon and smaller tanks from these specific requirements. Other requirements, such as that for secondary containment, remain the same.

COMMENT: In the definition of "Act," after "N.J.S.A. 58:10-23.11" insert "et seq., as amended." (26)

RESPONSE: The Department agrees, and the words "et seq., as amended" have been added to the definition of "Act."

COMMENT: The definition of "agent(s) or officer(s) of the municipality" should be amended to ensure that owners or operators of facilities have adequate notice as to which local official has been designated as the municipality's representative for purposes of these proposed rules. This can be done by changing the language as follows: after "means" delete "a" and insert "the;" after "or local board of health," insert "whose names or titles have been provided to each facility regulated pursuant to this subchapter" and after "including" delete "but not limited to." (26)

RESPONSE: The language in the definition of "agent(s) or officer(s) of the municipality" has been adopted with one minor change to replace an article that was left out, but it does not incorporate the suggested

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language. The Department, pursuant to N.J.S.A. 13:1K-17, has the authority to authorize an agent or officer in a municipality to represent the Department. There is no requirement to provide the name or title of this person to a facility in advance. The time and circumstances of a given discharge event will determine which individuals are available for authorization to investigate a discharge. The commenter's recommended changes would limit the Department's choice to one individual from only those agencies listed. To maintain flexibility, the Department will not specify names or titles prior to any discharge event. Normally, the agent or officer would be the representative as designated by the agreement between the Department and the County Environmental Health Act implementing agency. The "but not limited to" is necessary in cases where none of the listed agencies is available in a given municipality, or the municipality has an agency they wish designated which is not listed in the definition.

COMMENT: The term "appurtenant piping" is used in N.J.A.C. 7:1E-2.2(a)4 and should be defined to address concerns such as the nature of the piping included and the termination point at which the piping becomes "in-facility piping." (44)

RESPONSE: "Appurtenant piping" does not need to be defined. The meaning of "appurtenant" is that in general usage, and applies to all piping associated with a tank. However, in the case of integrity testing, language has been added to N.J.A.C. 7:1E-2.2(a)4 to indicate that the piping needs to be tested only to the first valve.

COMMENT: Please define "bulk storage." (11)

RESPONSE: The Department believes that "bulk storage" is a term commonly used in the industry to mean storage of large quantities of a substance. This is the meaning of the term that has been added as a definition in N.J.A.C. 7:1E-1.6.

COMMENT: The definition of "cleanup and removal activities" includes "or to chemically neutralize the discharge." In N.J.A.C. 7:1E-5.7(b), it states "No person shall apply chemicals to a discharge . . ." In the case of an acidic or alkaline release, it is very important that chemical treatment be applied immediately. The Department must clarify the prohibition to apply chemicals, regardless of prior approval requirements or not, particularly if this type of operation is described in the DCR. (9)

RESPONSE: The Department's approval of a DCR plan providing for application of neutralizing chemicals pursuant to N.J.A.C. 7:E-5.7(b) provides for the pre-approval of the application of chemicals. For facilities without an approved DCR plan, verbal approval may be obtained from the Department at the time of the incident, pursuant to that same provision.

COMMENT: "Cleanup and removal costs" incurred by a "person" should not be limited by written approval of the Department, but should include all costs associated with a discharge cleanup, which is particularly important in the case of a third party action. (19)

RESPONSE: The Department disagrees. The Act at N.J.S.A. 58:10-23.11bd provides for the written approval requirement. Only those persons that the Department has authorized to be involved in the cleanup activity can apply to the Department for reimbursement or other payment. Third party actions must follow other standards in the Spill Act, such as N.J.S.A. 58:10-23.11k.

COMMENT: Should the definition of "containment or containment activities" include the statement "of suitable size to contain the volume of the largest container within?" (11)

RESPONSE: Reference to a size in this definition is not appropriate. The definition of "containment or containment activities" refers to actions or equipment in addition to or separate from secondary containment or diversion systems. This term covers activities like booming, the use of sorbent materials, and the construction of temporary dikes.

COMMENT: The Department should consider use of the definition for "controlling interest" which is used in the Environmental Cleanup Responsibility Act (ECRA) program. This is an established definition and by using an established definition the Department will be promoting consistency between rules. (11)

RESPONSE: The Department has endeavored to promote consistency of these rules with other rules administered by this agency. In the case of "controlling interest," consistency with the ECRA program is not possible. The term is used for different purposes by the two programs. The definition of "controlling interest" under the ECRA rules applies only to controlling interests of corporations, because those rules contain specific provisions governing transfers of partnership interests. No such distinction is necessary under these rules. Therefore, the rules contain a definition of "controlling interest" sufficiently broad to cover partnerships as well as corporations.

COMMENT: The definition of "diligent inquiry" is extremely broad and overly burdensome in that it sets a single standard for inquiries into all matters regardless of need for such an inquiry to ascertain the relevant facts. To satisfy this standard would require in all instances interviewing "current and former employees and agents whose duties include or included any responsibility for hazardous substances. . ." As proposed, this could be interpreted to mean that any employee who handled any hazardous substances, regardless of its relevance to a particular incident must be interviewed. There should be limits on the obligation to reach former employees/agents and certainly a reasonable temporal cap. Also, the owner's inquiry should be limited to the period of time of ownership. One commenter proposes amending this definition as follows: after "inquiries of current" insert, "if necessary to obtain information not otherwise available;" after "include or included," delete "any" and insert "relevant" after "hazardous substances" insert "related to a possible discharge." (26)

RESPONSE: The Department believes that the definition of "diligent inquiry," as proposed, addresses the commenters' concerns without the need for the specific language which the commenters recommend. The definition does not set a single standard for such an inquiry; instead, the definition stresses that inquiries which are reasonable under specific circumstances are sufficient to be considered "diligent." In addition, the requirement to perform a diligent inquiry only applies to investigations of discharges which occurred prior to 1980. The obligation to make inquiries of former employees and agents is subject to the same requirement of reasonableness. A temporal cap would not be appropriate, as there is no single time span suitable in all cases. As to limiting the inquiry to the time period of the owner's ownership, that is implied in the definition because the inquiry is limited to documents and employees that that person has access to.

COMMENT: The definition of "discharge" should include some de minimus level reflecting an adverse impact to the environment. This is extremely important for consistency with other Federal and State regulations which include "reportable quantities." Because of the widely varying toxicity and hazards associated with substances included under this rule, it may be appropriate to set de minimus volumes for classes of substances. Additionally, the volume should be based on the pure material rather than diluted mixture. These changes would place these rules in line with CERCLA.

This new definition will dramatically increase the number of reportable discharges and this excessive reporting will have no rational environmental benefit. The notification and confirmation reporting that will follow will require a huge increase in staff for all companies and for the Department and will dilute the ability of both to respond to significant discharges. It is suggested that the wording of the definition be changed to clarify that the phrase "when damage may result to the lands, waters or natural resources" applies to all discharges not just those outside the jurisdiction of the State. (17, 19, 23, 26, 28, 35, 39)

RESPONSE: A de minimus quantity or concentration is not appropriate for these rules. The Spill Act prohibits all unauthorized discharges, and requires the immediate reporting of any prohibited discharge without establishing a de minimus standard. De minimus quantities would have to be different for every substance under every circumstance. This would become unwieldy and confusing. The Department believes requiring all discharges to be reported, and exempting all leaks, is the most efficient and most useful way to require reporting.

The definition of "discharge" in N.J.A.C. 7:1E-1.6 is consistent with the one in N.J.S.A. 58:10-23.11bh. At present, there exists no de minimus quantities for reporting discharges, only a vague definition of a "reportable discharge." In some cases, a few grams of material can have a significant effect on the environment.

The Department does not foresee any unmanageable increase in the number of notifications reported, and welcomes the possibility of increased reporting with the resultant increase in information the Department needs to develop strategies to protect the environment of the State. The cumulative environmental effect of discharges across the State can be better assessed if all discharges are reported. In addition, discharges should decrease overall, as major facilities come into compliance with the prevention standards in these rules.

COMMENT: Regarding the definition of "discharge," discharges pursuant to a valid NJPDES permit or permit-by-rule should not be included in this definition. This could be accomplished by using the

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following wording "jurisdiction of the State, when in such quantity or concentration as may result in damage to the lands, water or natural resources within the jurisdiction of the State, excepting discharges pursuant, to and in compliance with the conditions of a valid Federal or State permit or permit-by-rule. This term does not include 'leak'." (26, 35, 39, 44)

RESPONSE: The Department agrees that discharges in compliance with a NJPDES permit are not subject to these rules. As reflected in proposed N.J.A.C. 7:1E-1.11(a), it is the intent of the Department to exempt discharges pursuant to and in compliance with a valid and effective Federal or State permit. However, as this qualifying phrase does not appear everywhere the term discharge is used, this intent is lost. Therefore, the definition of "discharge" has been revised to reflect the proper intent, and N.J.A.C. 7:1E-1.11(a) has been revised to avoid redundancy.

COMMENT: The following definition of "discharge monitoring device" is recommended: "any equipment or instrumentation that is used by a facility to detect and prevent discharges from the facility." (44)

RESPONSE: The Department has added a definition of "discharge detection device" which indicates that such a device is used to detect, not prevent, discharges.

COMMENT: Does "facility" include areas that are not contiguous, such as areas separated by roadways or several distinct buildings owned by a common owner? (23)

RESPONSE: A facility is any area used to refine, produce, store, hold, handle, transfer or transport hazardous substances. Areas that are not contiguous are separate facilities. To clarify that all facilities under common ownership or operation are to be considered one major facility, the defintion of "major facility" has been revised to include that stipulation.

COMMENT: "Facility" is defined too broadly as both a place (without bounds) and various equipment. A more practical approach would be the concept used in the Clean Air Act (N.J.A.C. 7:27-16.1) to cover only specific equipment. (19)

RESPONSE: The rules cover facilities which are both places and equipment, so the definition is not too broad. The definition of "facility" does apply to specific equipment, in that only that equipment used to refine, produce, store, handle, transfer, process or transport hazardous substances is considered a facility pursuant to this definition, and consistant with the definition of "major facility" in the Spill Act (N.J.S.A. 58:10-23.11bl). The Department has determined that this recommendation to define "facility" is appropriate for air pollution but not appropriate for discharge prevention because the air program regulates point sources of atmospheric emissions on a continuing basis, while discharge prevention is concerned with potential discharges that could occur anywhere on the facility.

COMMENT: The definition of "facility" is problematic. Facilities are defined to mean "any place or equipment that is used to refine, produce, store, hold, handle, transfer, process or transport hazardous substances." This language is broad enough to lead to the conclusion that the term includes vessels. Since vessels may transport hazardous substance in New Jersey, these vessels could become subject to every facility requirement in rules. Read literally, if the word "vessel" is substituted for the word "facility" each place it occurs in the proposed rules, one begins to discern the implausibility of requiring vessels to comply with all facility obligations.

Because of the design and operational differences between a vessel and facility, it is difficult, if not impossible, to regulate them as one entity and still appropriately take into consideration their unique characteristics. For instance, the need for secondary containment or diversion systems to accommodate six inches of rainwater, for catchment basins and lagoons, to avoid flood hazard areas, or illumination to detect intruders, clearly are not appropriate for a vessel. These are only a few of the many instances in which the proposed rules currently apply to vessels as "major facilities." There should be an explicit attempt to distinguish between the requirements as they apply to vessels.

Although N.J.A.C. 7:1E-1.11(e) allows an owner or operator of a "major facility" to substitute an alternate method of discharge prevention if the method mandated is inappropriate, this substitution is contingent upon the operator demonstrating to the Department that such an alternate method will provide protection that is at least equivalent to the method it is inteded to replace. This places undue burden upon the vessel operator who is faced with requirements that are inappropriate to his or her operations but, nevertheless, is required to seek Department approval for substitute means of discharge prevention. (16, 43)

RESPONSE: The Department disagrees that the definition of "facility" is problematic. A vessel may be considered a facility, but it is a major facility only when a transfer between vessels occurs. Only major facilities are subject to the requirements of N.J.A.C. 7:1E-2 and 4. This requirement remains unchanged from the enactment of the original Spill Act and the adoption of N.J.A.C. 7:1E in 1979. The definition has not been a problem during the past 12 years. N.J.A.C. 7:1E-1.11(e) allows the vessel to tailor the DPCC/DCR to its requirements should it become a major facility.

COMMENT: The definition of "impermeable" as $10^{-7}$ centimeters per second (cm/sec) is excessive for secondary containment purposes. Landfills and leachate containment devices require only $10^{-6}$ cm/sec. The definition should be modified to allow normal materials of construction, such as concrete or asphalt, to be allowed. Defining "impermeable" as $10^{-6}$ cm/sec instead of $10^{-7}$ would allow the use of concrete-type containment. (35, 40, 41)

RESPONSE: The Department is using $10^{-7}$ cm/sec to be consistent with other Departmental rules affecting hazardous waste, such as the standards for secondary containment for storage tanks containing RCRA wastes, and solid waste, such as for landfill caps. Properly designed and installed concrete (portland concrete or bituminous), which is a standard material of construction, will meet the $10^{-7}$ cm/sec requirement for many hazardous substances.

COMMENT: The definition of "impermeable" included in the original DPCC/DCR rules should be readopted. At the time Commissioner Ricci's Task Force agreed on the original definition, it was fully recognized that cleanup would be required under the rules. Mandating a "thirty year containment requirement" for a spill cleanup scenario is overkill. For smaller facilities, meeting just this requirement has been estimated at almost 20 percent of annual profits.

An impermeability of $10^{-7}$ cm/sec is a performance criteria for impermeable barriers that are in constant contact with the hazardous materials. The containment areas in question for this proposal are meant to be exposed for a limited period. Therefore, the performance criteria should reflect the limited duration of the exposure, and let the designer select the most cost effective means for meeting the criteria, such as fast pumps, low permeability materials, or a combination of the two. The alternate would be a proven ability to prevent the penetration of the hazardous material through no more than 10 percent of the impermeable barrier by whatever combination of reaction time and materials are selected, and that the impermeable barrier would not suffer performance degradation by exposure to any retained hazardous substance, nor would any retained hazardous substance be re-released to the environment in any measurable quantity. (17, 21)

RESPONSE: The Department believes that $10^{-7}$ cm/sec is an appropriate standard for impermeability. The purpose of this standard is to protect ground water from being contaminated by leaks that become discharges. Numerous small drips and leaks that go unnoticed can be in contact with secondary containment for a long period of time and may over time contaminate the ground water. In some cases, cleanup and removal may not be performed for an appreciable time because of unforeseen circumstances, and the hazardous substance would be in contact with secondary containment for a period longer than that planned for. By requiring $10^{-7}$ cm/sec, the Department believes that chronic contamination can be prevented. The worst case, which is contact with secondary containment for a long period of time, should be used as the design criterion. This standard is not overly burdensome and can be met for existing aboveground storage tanks by using the performance criteria stated in N.J.A.C. 7:1E-2.6(c)3. This exemption for existing storage tanks is in keeping with the recommendations of Commissioner Ricci's Task Force on the prior definition of impermeable.

COMMENT: The design standard for "impermeable" at $10^{-4}$ cm/sec is impossibly burdensome and excessive. The cost to industry must be weighed against the benefits to society. Flexibility should be built into N.J.A.C. 7:1E-2.6, allowing design standards to vary from 10 cm/sec based on weighted risk factors, such as the likelihood of a leak or spill going undetected, the proximity of sensitive receptors of the discharge, the risk of an actual leak or spill occurring, and the history of leaks or spills. For instance, the base underlying an aboveground storage tank is an extremely difficult area to monitor for discharges. A design parameter of $10^{-7}$ would be appropriate here. Transfer points where flexible hoses are connected and disconnected are another "high risk" area that might warrant the $10^{-7}$ cm/sec design parameter. On the other hand, aboveground storage tank dikes would have a minimal risk of receiving a leak or spill if the tanks have received the initial integrity test. These dikes

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should be allowed a design criteria of $10^{-4}$ cm/sec. Many other examples could be cited that would support $10^{-5}$ cm/sec or $10^{-6}$ cm/sec for other forms of secondary containment or diversion structures. The flexible performance based standards determined by a risk analysis would yield equal protection to an across the board $10^{-7}$ cm/sec standard and prevent unproductive use of business capital. This flexibility could save one commenter approximately $65 million. (8)

RESPONSE: The Department agrees that $10^{-7}$ cm/sec is appropriate for use under a storage tank and at transfer points. With respect to storage areas, the Department recognizes the cost of retrofitting existing storage tanks with secondary containment which is impermeable to $10^{-7}$ cm/sec, and thus provides for existing containment to meet the performance criteria at N.J.A.C 7:1E-2.6(c)3. The Department believes that $10^{-7}$ cm/sec is appropriate at the time of new construction or substantial modification of existing systems. If the owner or operator of a facility wishes to perform a risk analysis in support of a different standard to prove equivalent protection pursuant to N.J.A.C. 7:1E-1.11(e), he or she may do so. That flexibility in the rules coupled with the fact that existing systems need not be replaced until they undergo substantial reconstruction should keep the commenter's costs well below $65 million. Those costs associated with the eventual upgrading will be spread over a long period of time, causing a much smaller effect on the balance sheet of the facility.

COMMENT: The definition of "integrity testing" needs to include the word "either" between the words "where" and "hydrostatic" and should, therefore, read: "... testing structures where either hydrostatic testing... " (9)

RESPONSE: The Department agrees. The definition of integrity testing has been revised to include the word "either" between the words "where" and "hydrostatic" to make it clear that either a hydrostatic or other liquid or pneumatic testing must be done in conjunction with the nondestructive test.

COMMENT: In the definition of "integrity testing," hydrostatic and non-destructive integrity testing should be recommended procedures, rather than mandatory. A procedure for approving other test methods should be included. (25)

RESPONSE: Although hydrostatic and non-destructive integrity testing is mandatory, the owner or operator of a facility may substitute an alternate method, pursuant to N.J.A.C. 7:1E-1.11(e), if it can be demonstrated to the satisfaction of the Department that such alternate method will provide at least equivalent results to the method it is intended to replace.

COMMENT: The "integrity testing" definition should have its language corrected to match its use elsewhere in the rules. The correct language should be "means a method of testing structure where static testing using water or other liquid or pneumatic testing is done or a system of." The integrity test required by August 1, 1993, should not require non-destructive testing which includes shell thickness testing. There is no need to perform the non-destructive testing since these tests are performed during regularly scheduled inspections which meet the guidelines of the American Petroleums Council's (API) Standard 653. Additional non-destructive testing will make these out-of-sequence tests more costly and burdensome during this period. Non-destructive testing should only be performed during scheduled tank inspections per API 653. A systematic non-destructive testing program such as specified in API 653 can provide more precise and reliable test data, not only of existing tank conditions, but also of predicted future potential for leaks. Thus, static testing would be redundant without benefit, but with significant cost to idle tanks to conduct repetitive testing. (35, 40)

RESPONSE: The Department believes that integrity testing should include both hydrostatic and non-destructive testing procedures because they are complementary and together will locate more problems with a tank than either alone. However, integrity testing is not required every five years if the tank has an inspection and maintenance program that is in compliance with API 653, as stated in N.J.A.C. 7:1E-2.2(a)4. Furthermore, as also indicated in that provision, the initial integrity test required by August 1, 1993, does not require non-destructive testing. Testing methods such as hydrostatic testing or static product head testing are acceptable as initial integrity tests.

COMMENT: The definition of "leak" or "leakage" should state that this term replaces "spill" or "spillage." (11)

RESPONSE: The term "leak" or "leakage" does not replace the term "spill" or "spillage" because the definitions are not equivalent. Because "spill" or "spillage" is not defined in these rules, using the term here would only serve to confuse people. Also, the Federal regulations use the term "spill" with a meaning very different from "leak" as defined here. Stating that "leak" replaces "spill" could cause confusion in regard to both the Federal and State programs.

COMMENT: By limiting the definition of "leak" to an "escape of hazardous substance... into a secondary containment or diversion system," the Department seems to be proposing that any other escape of a hazardous substance is a discharge which must be reported. This would place a tremendous burden on both Department and the regulated community and would not enhance environmental protection. (26)

RESPONSE: The Department believes that the definitions of "leak" or "leakage" and "discharge" will eliminate any misinterpretations of the two. The Department agrees that any other escape of a hazardous substance which the definition of leak does not cover is considered a discharge. The definition of "leak" or "leakage" has been modified by adding the phrase "or onto a surface area from which it is cleaned up or removed prior to its escape into the waters or onto the lands of the State." The Department does not believe that this definition will place an unreasonable burden on the State or industry, and does believe that it clearly expresses the intent of the Legislature.

COMMENT: Since the intent of defining "leak" or "leakage" is to require a report of discharges which could have an adverse environmental impact, not incidental drops, one commenter proposes language similar to that in Florida. That is, spills greater than 25 gallons on pervious surface, 100 gallons on impervious surfaces other than secondary containment, and 500 gallons on impervious surface inside secondary containment must be reported within one day. (13)

RESPONSE: The Spill Act prohibits all discharges and requires the reporting of all discharges that occur. The use of the term "leak" will allow facilities that prevent leaks from being discharges to avoid reporting these incidents to the Department. The Department believes that it is inappropriate to set any further limits on the reporting of such incidents. Florida has instituted its reporting requirements under its own legislation. The Spill Act establishes more stringent requirements for New Jersey. In New Jersey, leaks into secondary containment or onto impervious surfaces which are cleaned up do not need to be reported, no matter what their size. A spill onto a pervious surface has the potential for a deleterious effect on the environment or natural resources of the State and must be reported.

COMMENT: A definition of leak detection system should clarify the phrase "fail-safe devices" and include examples. (44)

RESPONSE: The phase "fail-safe devices" was only used in N.J.A.C. 7:1E-2.2(d) which discusses the use of high liquid level alarms, not in connection with leak detection systems. The phrase has been removed because the requirement for redundant systems negates the meaning of "fail-safe," making it unnecessary.

COMMENT: In the definition of "major facility" the word "or" should be included between 1 and 2. (11)

RESPONSE: The rule proposal submitted for publication to the Office of Administrative Law (OAL) contained an "or" between items 1 and 2. When OAL edited the proposal for publication in the New Jersey Register, it correctly removed that "or." The meaning of the definition was not changed, and the "or" has not been reinserted.

COMMENT: Several commenters state that with regard to the definition of "major facility," the term "an appropriate equivalent measure" should be defined. (1, 35, A)

RESPONSE: The Act provides that the "appropriate equivalent measure" is to be established by the Director of the Division of Taxation, Department of Treasury (N.J.S.A. 58:10-23.11bb), and it is so stated in the definition in the rules.

COMMENT: In the definition of "major facility," delete the first sentence of item 3 in its entirety in that the Department has exceeded its statutory authority by including this provision. (26)

RESPONSE: There are solid and gaseous substances in Appendix A. An equivalent measure to determine major facility status must be established in the rules. The most logical means is the equivalent measure established by the Director of Taxation, Department of Treasury, for spill fund tax purposes.

COMMENT: Two commenters feel a threshold of 20,000 gallons or more of a hazardous substance is too low to define a major facility. This equates a small business with a few tanks on an acre or two of land with a large terminal having millions of gallons of storage on many acres. A threshold of 200,000 gallons would be more appropriate. This would certainly ease the regulatory burden on the smaller business. However, one commenter states that if the enabling legislation dictates this low

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level he still believes the rules should be relaxed for small operators. (4, 10)

RESPONSE: The basis for the Department's threshold of 20,000 gallons is the definition of "major facility" in the Act (N.J.S.A. 58:10-23.11bl). The legislation places responsibility on all persons that handle that threshold of hazardous substances.

The Department agrees that small businesses should receive some consideration, and has built such consideration into the rules. Owners or operators of the smallest facilities regulated pursuant to these rules (20,000 to 39,999 gallons) have until August, 1994, to prepare and submit plans. N.J.A.C. 7:1E-1.11(b) provides that schedules for compliance, taking into consideration economic feasibility, can be proposed. The financial responsibility and mapping provisions can be waived or altered to fit the circumstances of a small business.

COMMENT: Based upon the legislative history of the Spill Act and the language of the statutory definition of "major facility," it appears that the mere presence of equipment containing more than 200,000 gallons of petroleum products should not subject a research and development operation to regulation as a "major facility." Because the proposed regulatory definition of "facility" includes the word "hold" and the definition of "storage capacity" includes the word "reservoir," it raises the question as to whether the mere presence of oil-filled electrical or other equipment can cause a facility to be considered a "major facility" under the Spill Act. (2)

RESPONSE: For the purpose of the determination of storage capacity, one may exclude transformers that are solely used for the processing of electricity. The definition of a "storage tank" indicates that such a tank must be primarily used for bulk storage. Items such as transformers do not have bulk storage as their primary use.

COMMENT: The proposed rules inappropriately lump all vessels engaged in lightering activities (a vessel-to-vessel transfer) together with all major facilities for purposes of regulatory requirements. The commenter recognizes that a vessel engaged in lightering is defined in the statute as a "major facility." However, there has been no attempt made in the proposed rules to distinguish the distinct attributes of vessels that are mobile from facilities that are stationary. From the standpoint of a vessel owner operating in State waters, it is extremely difficult to comply with rules intended to apply to landside facilities while at the same time comply with all rules pertaining to vessels. The multitude of new Federal and State laws and rules facing vessel owners engaged in the petroleum transportation business these days is staggering already. Requiring vessel owners to comply with rules clearly designed to apply to landside or fixed site facilities, in addition to the multitude of vessel laws and regulations, is inappropriate and effectively amounts to regulatory overkill. (43)

RESPONSE: The Legislature has determined that lightering activities constitute a sufficient threat to the environment and natural resources to be regulated (N.J.S.A. 58:10-23.11bl). The Department believes that the rules are clear. When a transfer occurs between vessels, the vessels become subject to the rules. Transfer operations which occur at a land-based facility, including vessel-to-vessel transfers, should be covered by the facility's DPCC and DCR plans. Only for a vessel-to-vessel transfer which does not occur at a land-based facility must a vessel have its own DPCC and DCR plans.

Any provisions of N.J.A.C. 7:1E which are inappropriate for vessels can be substituted with standards which are appropriate, pursuant to N.J.A.C 7:1E-1.11(e). Plans developed by vessels to show compliance with OPA90 can be used as DPCC and DCR plans required by these rules if they fulfill the standards established in these rules.

COMMENT: A vessel should be considered a major facility not only when substances are transferred between vessels, but when hazardous substances are transferred between a vessel and a major facility and a facility and a vessel. (31, F)

RESPONSE: The Department shares the commenter's concern and requires that the owners or operators of all land-side facilities include discharge prevention from vessels as an integral part of the facility's DPCC/DCR plan. When a transfer occurs at a land-based facility, the vessel is considered part of the land-based facility for planning and protection purposes. When a transfer occurs at a point not at a land-based facility, a vessel must have its own DPCC and DCR plans.

COMMENT: The rules discriminate against low and moderate and senior citizen housing. The Department should reconsider the present requirement for registration of home heating oil storage tanks and the possible classification of large manufactured housing communities as major facilities.

Presently, the manufactured housing, leased land community is considered, for regulatory purposes, on a total gallonage basis. This means that all individually owned mobile home heating oil storage tanks are added together to achieve total gallonage, triggering specific reporting and monitoring criteria. This is markedly different from individually sited single family structures. Single family homes are not required to register, unless their storage tank capacity exceeds 2,000 gallons.

Without reservation, these rules, if applied to our industry, will have a severe economic effect on the residents of the manufactured housing communities that are classified as major storage facilities. This industry has, for decades, supplied least cost housing to many low and moderate income residents of our State, including senior citizens on fixed incomes. The economic impact of these rules, if applied to the manufactured housing industry will be disastrous.

The Department can give clarity to these rules by specifically exempting the manufactured housing industry from the proposed new rules N.J.A.C. 7:1E. This exemption would be only for those communities that do not have a central oil distribution system exceeding the 200,000 gallon threshold established in the rules. (6)

RESPONSE: The Department agrees with the intent of the commenter. The regulation of home heating oil tanks in any community was not intended. The definition of storage capacity has been amended to include the sentence "this term shall not include the capacity of a heating oil tank servicing only the individual private residence at which it is located". The addition of this sentence should make that clear, without exempting central oil distribution systems which are large enough to be regulated.

COMMENT: The definition of "natural resources" should be changed to "and all lands privately held which fall under the definition of environmentally sensitive or seasonally sensitive definitions in these rules." (31)

RESPONSE: The definition of "natural resources" is identical to that in the Spill Act (N.J.S.A. 58:10-23.11bm). All natural resources "held in trust" by the State, whether in private hands or not, are covered by the definition.

COMMENT: In the definition of "owner or operator," item 3 should read: "Abandoned or derelict facilities, owned or operated such facility immediately prior to such abandonment, or the owner or operator at the time of the discharge." (16)

RESPONSE: Because an "abandoned" facility would not have an operator at the time of a discharge, the Department believes there is no need to make the suggested change. In addition, the language in this definition is the same as the definition in the Act (N.J.S.A. 58:23.11bn).

COMMENT: The definition of a "person responsible for a discharge" is so broad and diffuse that it is not practical or useful. It includes both persons close to an incident and those far removed, and assigns responsibility and liability to many people for the same discharge. This definition would cause confusion in case of an incident on issues such as who should report the discharge. At the very least, a priority or clear order of responsibility should be assigned. (19, 25)

RESPONSE: The Department intends the definition of "person responsible for a discharge" to be broad. Both the Spill Act (N.J.S.A. 58:10-23.11gc) and case law interpreting the Act (*State, Dept. of Environmental Protection v. Ventron Corp.*, 94 *N.J.* 473, 468 *A.2d* 150 (1983), *Tree Realty, Inc. v. Department of Treasury*, 203 *N.J. Super.* 346, 500 *A.2d* 1075 (App. Div. 1985) and *State, Dept. of Environmental Protection v. Arky's Auto Sales*, 224 *N.J. Super.* 200, 539 *A.2d* 1280 (App. Div. 1988)) support this definition. Liability for a discharge will often be shared among several parties. The Department believes that this definition, as presently worded, will act as an incentive to anyone who handles a hazardous substance to consider those persons he or she deals with and the level of discharge prevention achieved by such persons, thus promoting additional discharge prevention efforts. The definition will allow the Department to identify all the persons who may have been involved in causing a discharge and then determine whose act or emission most directly resulted in the discharge.

COMMENT: In the definition of "person responsible for a discharge," item 1, the Department must consider that companies employing workers represented by a bargaining unit may be limited by contract to make notification to the Department. Item 1 should be changed to read: "Any person or classification of persons as identified in the DPCC/DCR Plans or other Emergency Operating Procedures (EOP) as attached to the Plan." (9)

RESPONSE: The worker's employer is responsible for instructing the worker in standard operating procedures about the plant and its notifica-

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tion procedures. It is recommended that discharge notification be part of employee training. The notification procedure for the facility can spell out, in whatever detail the owner or operator wishes, who is responsible for what. That procedure can incorporate any management-labor agreements.

COMMENT: "Person responsible for a discharge" does not seem to differentiate between a physical person and a facility corporate person in terms of reporting a release. (N)

RESPONSE: The terms "person responsible for a discharge" and "person" as defined in the rules do cover individuals and corporate persons. An employer is responsible for the acts of omission and commission of its employees in the performance of their jobs. The corporation must ensure that reporting and other requirements of these rules are met. However, the definition of "person" does allow the Department to hold both the corporation and the individual responsible.

COMMENT: If a facility has a gasoline release, who is responsible: the supplier, the manufacturer, or the broker? Where does liability end? Who notifies the Department and submits the report? (H)

RESPONSE: Notification, confirmation reports, and liability are separate but related items. N.J.A.C. 7:1E-5.3 provides for notification within 15 minutes of the time a person knew or reasonably should have known of the discharge. Any person who knew or reasonably should have known must notify the Department (N.J.S.A. 58:10-23.11e). Only those persons who make the initial notification are required to submit a confirmation report (N.J.A.C. 7:1E-5.8(a)), which can be a joint effort if more than one person made a notification. Liability will be determined pursuant to the Spill Act (N.J.S.A. 58:10-23.11g), not on the sole basis of a notification or confirmation report.

COMMENT: There are no pressure, temperature, viscosity, or other criteria for classifying a substance as a petroleum product. If there is a temperature range, must the substance remain liquid throughout said range? (25)

RESPONSE: The Department has provided for temperature, pressure and viscosity in its definition of "liquid" in N.J.A.C. 7:1E-1.6. If the material in question is a liquid at any point in the specified temperature range, it is classified as petroleum. It does not have to remain a liquid throughout the entire temperature range to be classified petroleum.

COMMENT: The definition of "petroleum" should clearly indicate that it applies only to liquids as defined by the Department. The term "purified hydrocarbons" has not been defined. Does the Department intend to regulate substances such as hexane and heptane which are not petroleum or petroleum products? (40, 47)

RESPONSE: The definition of "petroleum" states that bituminous liquids are the compounds covered, and liquid is defined in N.J.A.C. 7:1E-1.6. The definition of "petroleum" has been revised, and the term "purified hydrocarbons" has been removed. The intent is that compounds listed by specific chemical name in Appendix A are petroleum products only when they are used as blending stocks. Compounds other than purified hydrocarbons contained in Appendix A may be used as blending stocks, therefore broader language has been incorporated into the definition. If hexane and heptane are not liquids pursuant to the definition in the rules, are not used as petroleum blending stocks, and are not listed in Appendix A to this chapter, then they are not regulated by N.J.A.C. 7:1E. If any of these three criteria are met by heptane or hexane, then they are covered by these rules.

COMMENT: A citation to the relevant section of New Jersey Statutes Annotated and/or the New Jersey Administrative Code should be added to the defination of "potable water supply." (26)

RESPONSE: The definition of "potable water supply" has been removed from the rule as the term is no longer used in the chapter.

COMMENT: The boundaries of a "process area" should be better defined. (25)

RESPONSE: Process areas are to be described in the DPCC/DCR plan. Because facilities differ, this determination can be made only on a case-by-case basis for each process at a facility.

COMMENT: The term "process area" is unclear. While it is understood to imply an area such as where chemical processing is performed to produce a given material, would it apply to an area within a given plant site (for example, power plant), where chemical neutralization or other treatment is required of the plant's water system? The definition of "process area" should be amended to "process area for hazardous substances" since this is in keeping with the intent of the Spill Act and Spill Act Amendments. In the second sentence, after "methods or forms" deleted, "but are not limited to,". (11, 26)

RESPONSE: The Department has clarified the definition of "process area" in N.J.A.C. 7:1E-1.6 by adding the phrase "employed in production" after "area" and adding "utilizing hazardous substances" after "out." This should clearly delineate those areas to be considered as "process areas" subject to these rules. The phrase "but are not limited to" has remained because the list is illustrative and not exhaustive.

COMMENT: In the definition of "response coordinator" after "execution of the DPCC and DCR plan" insert "in the event of a discharge." (26)

RESPONSE: The Department disagrees. The addition suggested by the commenter would limit the authority and technical background required of the response coordinator. The response coordinator has many responsibilities involving the prevention of a discharge which must be executed prior to, not in the event of, a discharge.

COMMENT: A definition should be added for "responsible manager," which differs from "response coordinator." (25)

RESPONSE: The term "responsible manager" is not used in the rules and therefore does not need defining in N.J.A.C. 7:1E-1.6.

COMMENT: What is the definition of a small business? (C)

RESPONSE: The adopted definition of a "small business" is any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and employs fewer than 100 full time employees. These are the criteria set forth for a small business in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

COMMENT: The definition of "spill" states, "which does not enter the water." Should this read "does enter"? What quantity constitutes a spill? Does "spill" include parking lot runoff as a result of rain? (23)

RESPONSE: The commenter must be referring to the interested party draft. The term "spill" was not used in the rule proposal.

COMMENT: In the definition of "standard operating procedure" after "used at the facility" insert "and could reasonably be expected to result in the discharge of hazardous substances." (26)

RESPONSE: The Department has not made the suggested changes. It is the Department's position that any storage, handling or use of a hazardous substance could reasonably be expected to result in a discharge. Including the addition suggested by the commenter would imply otherwise.

COMMENT: Two commenters state that the definition of SOP states that covering "all" the details should at a minimum be "relevant." However, these SOPs involve confidential information and formulations and cannot be allowed out of secure company control. (29, 47)

RESPONSE: The Department disagrees. An SOP is created so that the employee knows the proper way to operate the process, which makes all details relevant. As for confidential information, N.J.A.C. 7:1E-1.9(e) has been added to the rule to explicitly state how the Department will keep confidential information confidential.

COMMENT: One commenter is concerned with the statement in the summary that says that "best practical technology" has been replaced by the term "state of the art technology." "State of the art" may imply a technology that is very costly and unnecessary. The commenter would prefer to see the term "practicable" remain in this context. (37)

RESPONSE: The Department believes the definition of "state of the art technology" in N.J.A.C. 7:1E-1.6 addresses the commenter's concern. This definition states "the technology shall be in the public domain at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved, or otherwise available at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved." This is more definitive than the term "practicable" and addresses the issue of cost. Therefore, no change in the rule has been made.

COMMENT: The term "static head product testing" is used in N.J.A.C. 7:1E-2.2(a)4 as an alternative to integrity testing. A definition of the term would aid a facility in understanding what procedures must be used to conduct this test. (44)

RESPONSE: The Department has added the definition. The term "static haed product testing" refers to a common industry practice that involves the filling of a tank, not under pressure, to determine if there are any leaks, over a definite period of time.

COMMENT: The status of railroad cars which pass through a facility should be addressed in the definition of "storage capacity." (25)

RESPONSE: Railroad cars are considered to have "storage capacity" only if they are used for bulk storage on a facility. This is addressed by the definition of "storage tank."

COMMENT: In the definition of "storage capacity", does the Department consider an active piece of electrical equipment (that is, trans-

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former) as a storage container? Should one consider secondary containment for large outdoor in-use transformers? One commenter has interpreted the definition of "storage tank" to not apply to electric transformers or other electrical equipment that contain dielectric fluid, or flow through process tanks and requests that the Department verify this interpretation. (11)

RESPONSE: Transformers are considered to be process equipment, not storage tanks. Therefore, transformers are not included as storage capacity. However, if located at a "major facility" they will be included in the definition of process areas, and should meet all applicable requirements for such areas.

COMMENT: One commenter interprets the term "storage capacity" as including all passive storage devices of any kind, but not including equipment which contains hazardous substances as an integral part of a process, or for cooling or lubrication. For example, the commenter does not believe that the Department intends to include equipment such as engine crankcases holding lubricating oil, or active or passive closed-loop cooling systems employing coolants which qualify as hazardous substances, except for separate reservoir tanks storing such coolant. If the Department intends to require that the amount of hazardous substances contained in such equipment be included as "storage capacity," it should specifically express that intent. (26)

RESPONSE: The Department agrees with the commenter. Hazardous substances which are stored in equipment and used for the operation of the equipment are not considered to be storage capacity. However, separate reservoir tanks for storing coolant, as in ammonia refrigeration systems, are included in the term storage capacity.

COMMENT: The definition of "storage capacity" and "major facility" need to be clarified by inserting provisions regarding how total capacity for drum storage is to be calculated and how liquids that contain only a certain percentage of petroleum or hazardous substances are to be classified. For example, a 55 gallon drum may contain a liquid which is composed of only 10 percent of a material which is a hazardous substance. Must the entire 55 gallons be included in the calculations of capacity? (15)

RESPONSE: The Department does not specify a percent concentration. Under the Spill Act, storage capacity includes the intended use of storage areas. Because capacity which is storing a mixture may be intended to store the pure hazardous substance, it must be included as storage capacity. In addition, there is no concentration or percentage limit in the definition of "hazardous substance" in the Spill Act (N.J.S.A. 58:10-23.11bk). Therefore, the total capacity of the container is included in the calculation of storage capacity. The total capacity of drum storage areas is the dedicated or intended design capacity of the space used for drum storage. This is consistent with the definitions in the Spill Act (N.J.S.A. 58:10-23.11bl).

COMMENT: Several commenters believe the definition of "storage tank" needs to be clarified by defining "bulk" or establishing a de minimus storage size. Without such definition, any storage device, even a can of paint, could be construed to require full secondary containment and integrity testing. This was not the legislature or Department's intent. Suggestions range from 2,000 to 10,000 gallons. (25, 39, 42)

RESPONSE: The Department agrees with this concern about integrity testing, but disagrees that small storage tanks should be exempt from the definition of "storage tank." A definition of "bulk storage" has been added to the rules. The Department is exempting storage tanks from compliance with N.J.A.C. 7:1E-2.2(a)4, integrity testing, N.J.A.C. 7:1E-2.10(a)5, internal inspection, and the installation of a high level alarm, if they have a storage capacity of 2,000 gallons or less. If a high level alarm is not installed on these exempted tanks, they must be monitored during all filling operations. The exemption of storage tanks of 2,000 gallons or less from integrity testing exempts cans, pails and drums from that requirement.

COMMENT: In the definition of "storage tank" the status of sumps and impoundments is unclear. The definition of "reservoir" should be added. (25)

RESPONSE: The Department has defined a reservoir in N.J.A.C. 7:1E-1.6 as a receptacle or chamber storing a fluid. If the sumps or impoundments are primarily used for bulk storage, they are to be considered storage tanks.

COMMENT: Define "storage tank" as the following: any tank or reservoir which is a container for hazardous substance(s) primarily used for bulk storage and wherein no process other than emptying or filling takes place. This term shall not include tanks of less than 5,000 gallons storage capacity, or decommissioned storage tanks that are drained to the maximum extent practicable, and which are rendered inoperable. A tank may be rendered inoperable by blanking all fill and discharge lines, marking or tagging the tank to prohibit use, opening manways if so equipped, or other methods approved by the Department. (26)

RESPONSE: The recommended definition is inconsistent with the intent of the Spill Act. If a blending or mixing operation sometimes takes place and the major function of the tanks is for storage then they are considered storage tanks and not process tanks. A tank shall be deemed decommissioned and excluded from the determination of total storage capacity if it can be proven to the Department that it is not used or intended to be used for the storage of hazardous substances because it then would not meet the definition of "storage capacity."

COMMENT: The definition of "storage tank" should be modified to exclude storage vessel within "process areas" since these are covered under the requirements in N.J.A.C. 7:1E-2.5(a). (44)

RESPONSE: If the primary function of the tank is for storage it is a storage tank. All others will be considered process tanks subject to N.J.A.C. 7:1E-2.5(a).

COMMENT: Storage and bulk storage should be clarified to apply only to liquids not solids.

RESPONSE: The Department disagrees. Because the Spill Act includes lists which contain gases, liquids and solids in its definition of the term "hazardous substances," to implement the Legislature's intent the definition of "storage capacity" must represent the capacity to store all hazardous substances, whether they are gases, liquids or solids.

COMMENT: Several commenters state that the term "substantial reconstruction" is unclear. The meaning of the phrase "which impairs the physical integrity of the equipment or its monitoring system" is unclear. This definition should include some objective standards that can be readily identified that aid the regulated community in determining what the term means in relation to their facilities. (11, 25, 13)

RESPONSE: The Department believes that the definition of substantial reconstruction meaning "50 percent or more of the replacement value of the equipment" to be clear. The criteria for "impairment of physical integrity" are very specific to a given tank and given situation. Different things will impair the integrity of a rivetted tank versus a welded tank. However, any change that could impair the integrity is covered, not just major repairs or changes.

COMMENT: Two commenters state that in the definition of "substantial reconstruction," given all of the requirements for monitoring, testing and reporting in these rules, the 50 percent cost basis is far too low a figure. A cutoff level of 75 percent would be closer to economic reality. (40, 47)

RESPONSE: Discussions with industry representatives during the working group and interested party process indicated they preferred a definitive standard for the definition of "substantial reconstruction." Industry representatives recommended 50 percent as an appropriate level and the Department agrees.

COMMENT: It is suggesting that the term "tertiary containment system" be added, and defined as: "means any structure, devices or combination thereof supplementary to secondary containment, designed and operated to prevent leaks from becoming discharges in case of secondary containment failure." An example would be a spill control dike (secondary containment) located in an area that is graded to a spill diversion basin. (44)

RESPONSE: The Department has modified N.J.A.C. 7:1E-4.10(c)2i to include after "consideration of" the phrase "containment measures in addition to secondary containment," and deleted "tertiary containment," rather than define "tertiary containment." This prevents limiting what can be considered under this provision, which a definition would do.

COMMENT: A definition of "transfer" should be included in the rules since this term is used in N.J.A.C. 7:1E-2.10(a)1. N.J.S.A. 58:10-23.11 provides such a definition and reads:

"Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading or offloading from a major facility. (26, 39)

RESPONSE: The Department agrees that a definition of "transfer" is needed to clarify the intent of these rules under the authority of the Spill Act. The definition from the Act has been added to N.J.A.C. 7:1E-1.6.

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COMMENT: The throughput capacity specified in the definition of "transmission pipeline" is unrealistically low. (25)

RESPONSE: The Department disagrees. A rupture of a pipeline with this throughput capacity would result in 1,400 gallons of product discharged if the pipeline could be shut down within 10 minutes of the rupture. It is not unreasonable to assume that in some cases the shutdown will take greater than 10 minutes as these pipelines are off-facility piping. A discharge of this size is substantial and therefore pipelines with this throughput capacity should be subject to the rules.

COMMENT: Two commenters state that for consistency, the last sentence of the definition of "transmission pipeline" should be amended to read: "Any pipe used or intended for use in the transportation of a hazardous substance which is not a transmission pipeline will be considered an in-facility pipe." (26, 39)

RESPONSE: The Department agrees and has reworded the last sentence to read, "Any pipe used or intended to be used in the transportation of a hazardous substance which is not a transmission pipeline will be considered an in-facility pipe." This should remove any ambiguity about which pipes are transmission pipelines and which are in-facility pipes.

COMMENT: The definition of "transmission pipeline" is not clear. It appears that the concept defined involves transport of product between non-contiguous sites, not transport of substances through "in-facility pipe" on a single site. For example, heating oil and utility water lines (cooling water, hot water, steam or steam condensate) that form closed loops on non-manufacturing sites certainly could not be considered transmission pipelines. Due to the large number of office complexes, hospitals, schools and research sites in the State, this distinction should be clarified. (19)

RESPONSE: In-facility piping and pipelines that carry non-hazardous materials are not subject to these rules. A pipeline such as one described by the commenter which carry hazardous substances may be either a transmission pipeline or an in-facility pipe, but the owner or operator must ensure compliance with the applicable standards in the rules.

COMMENT: Several times there are references to "well head protection areas" yet there is no definition of this term. While recognizing that there is a proposed definition in another rule, either the proposed definition should be included here, or the adoption of those sections referencing "wellhead protection areas" in this rule should be suspended until the other rule is adopted. (21)

RESPONSE: The Department agrees that "well head protection areas" cannot be mapped until they are designated. Therefore, in N.J.A.C. 7:1E-4.10(b)3 the phrase "designated by the Department" has been added after "areas". Only those areas which have been designated need to be included. Until the Department designates the well head protection areas, they do not have to be mapped.

**N.J.A.C. 7:1E-17 Hazardous substances**

COMMENT: Consolidation of the numerous substances designated under the various statutes into Appendix A is a good idea. (11)

RESPONSE: The Department has tried to make the list of substances as easy to understand as possible and thanks the commenter for his support.

COMMENT: There are no limits set on the concentration of "hazardous substances." If baby shampoo has two percent ethanol in it, would the entire amount of shampoo be a hazardous substance? Once a facility qualifies as a major facility, should it and the Department devote the same attention to storage facilities containing parts per million concentrations of "hazardous substances" as they would to significant concentration levels? Under TCPA, if the facility cannot contain or generate the registration quantity, it does not come under the authority of TCPA. The Department should not be adopting rules for the protection of flora and fauna that are significantly more stringent than those in force for the protection of humans. (38)

RESPONSE: Unless specified in Appendix A, the Department has not specified a percent concentration below which a mixture is not a hazardous substance. A discharge of 10,000 gallons of baby shampoo would be detrimental to the environment. The concentration is only one factor in determining the effect on the environment and the natural resources of the State. These rules are designed to protect more than flora and fauna. The Legislature has determined that the natural resources of New Jersey, such as its beaches, are important to the economic well being of the State and must be protected.

COMMENT: The Department has included a listing of substances taken from several other State and Federal environmental rules. The legislation does not require such an extensive listing. What is the Department's justification for this extensive listing? (35)

RESPONSE: The hazardous substance list is a compilation of the hazardous substances that comprise the lists referenced in the Act at N.J.S.A. 58:10-23.11bk plus the extremely hazardous substance list and the toxic chemical lists promulgated by USEPA pursuant to SARA section 302 and 313. Appendix A is comprised of hazardous substances from the following lists:

a. Pesticides designated as prohibited or restricted use, pursuant to N.J.A.C. 7:30, which includes by reference the restricted use pesticides under the Federal Insecticide, Rodenticide, Fungicide Act (FIFRA), 40 CFR 162.31;

b. Environmental hazardous substances, included in N.J.A.C. 7:1G-2.1, which was adopted pursuant to section 4 of P.L. 1983, c.315 (c.34:5A-4);

c. Hazardous substances, contained in 40 CFR 116.4, adopted pursuant to section 311 of the Federal Water Pollution Control Act Amendments;

d. Toxic pollutants, contained in 40 CFR 401.15, adopted pursuant to section 307 of the Clean Waer Act;

e. Hazardous substances, contained in 40 CFR 302.4, adopted pursuant to section 101 of CERCLA;

f. Extremely hazardous substances, pursuant to 40 CFR 355, Appendices A and B; and

g. Toxic chemicals, pursuant to 40 CFR 372.

All of the substances on these lists have been found to be either hazardous or toxic by the agency promulgating the list. By compiling the consolidated list at Appendix A, the Department and the regulated community will have one list to work from. It is also the intent of the Department to use this list for its various State and Federally delegated programs so that there is consistency within the Department from program to program as to what is a hazardous substance.

COMMENT: In N.J.A.C. 7:1E-1.7 the references are unclear and need to be listed and consolidated. Also, if Appendix A supersedes, then Appendix A is the list and the other references unneeded. (29)

RESPONSE: The Department has given the citations for the source lists N.J.A.C. 7:1E-1.7(a) for informational purposes. Appendix A is the hazardous substance list. No change is needed.

COMMENT: Two commenters state that in N.J.A.C. 7:1E-1.7(c), after "sewage and sewage sludge", "and sludges regulated pursuant to N.J.A.C. 7:14-4.1 et seq." should be inserted. (26, 39)

RESPONSE: N.J.A.C. 7:1E-1.7(c) has been worded as it appears in N.J.S.A. 58:10-23.11bk and no further additions are appropriate.

**N.J.A.C. 7:1E-1.8 Environmentally sensitive areas**

COMMENT: The listing of all areas in N.J.A.C. 7:1E-1.8 which can be considered environmentally sensitive areas is far too broad and includes virtually the entire State of New Jersey. The breadth of the rules dilutes the potential for addressing the real needs for truly sensitive areas in the State. This broad and all-encompassing definition will not serve its intended purpose of ensuring that lands or waters of particular sensitivity are recognized as such and afforded the care and protection such areas require and deserve. What is not considered to be an environmentally sensitive area? (11, 25, 26)

RESPONSE: The Department does not believe the criteria for environmentally sensitive areas is too broad. The process undertaken by the Department to define these areas included a literature search and phone calls to other states and to other levels of government to determine existing criteria for defining environmentally sensitive areas. After this information was assembled a task force was convened, consisting of professionals from various programs within the Department, to review existing criteria and definitions. This effort included examining other New Jersey laws to identify consistent criteria for environmentally sensitive areas. Consideration was given to the burden the scope of the definition would place on industry. The task force met over several months to discuss and refine the criteria. These criteria were then mailed out to an external work group, which included representatives of the affected industry, for their review and comment before being incorporated into the proposed rules. The final choice of which areas should be considered for protection under these rules was based on all the information gathered during this process. These areas are to be prioritized during planning, so lands or waters of particular sensitivity will be afforded the greatest care and protection.

COMMENT: There are several definitions in N.J.A.C. 7:1E-1.8 that need to be further defined, particularly Item 7 (breeding areas for forest area nesting species, colonial waterbirds or aquatic furbearers), Item 8

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(migratory stopover areas for migrant shorebirds, raptors or passerines), Item 9 (wintering areas, including coastal tidal marshes and water areas, waterfowl concentration area and Atlantic white cedar stands) and Item 14 (forest areas, including prime forestland and unique forestland). By definition, any forested area in the State of New Jersey would be considered environmentally sensitive. Furthermore, there is no criteria to define elements such as Atlantic white cedar stand. What constitutes a stand? The lack of definition and the general nature of the above referenced items allow for enormous problems in the characterization of environmentally sensitive areas. (17, 42)

RESPONSE: Breeding areas for forest area nesting species include large tracts of contiguous forest with populations of one or more of neotropical migrant species. Breeding areas for colonial waterbirds are areas occupied by one or more of 15 species of colonially nesting birds (from one of the last five census counts). Breeding areas for aquatic furbearers include those areas which provide food, water, or cover, or sites to rear young, for any of the following species: otter, muskrat, beaver, or mink.

Prime forestland is land capable of growing 85 cubic feet of timber per acre per year. Unique forestland is land not qualifying as prime on the basis of cubic foot growth but that is growing sustained yields of specific high value species. The U.S. Forest Service general classification of forestland includes prime forestland, forestland of Statewide importance, unique forestland and forestland of local importance.

The owner or operator of a major facility is responsible for determining whether these areas would be affected by a discharge from their facility. The State maintains Heritage program and NINJA data bases which can identify potential plant and animal species locations. The State also maintains some maps and site listings, especially for endangered species. However, for the most part, this would be determined on a site-by-site basis.

A stand is a contiguous group of trees sufficiently uniform in species composition, arrangement of age classes, and condition to be a homogeneous and distinguishable unit.

COMMENT: In the summary of the proposed rule, those areas which would be most likely to be adversely affected by the discharge of a hazardous substance are described. The Department concluded that those areas included in the proposed definition of "environmentally sensitive areas" are those that should be most protected from discharges in New Jersey. Unfortunately, the areas in the definition are so called "high quality waters." It is a mistake to make the assumption because waters are considered degraded, that they do not maintain high ecological function. It further degrades the perception of high quality function when some waters are excluded from protection. The same bluefish that is caught in the Atlantic Ocean most likely spent some time in the waters of the Arthur Kill. Striped Bass caught off Montauk more than likely spent time in Newark Bay. The largest colonial nesting bird rookeries in New York State are located on three islands in the Arthur Kill and Kill Van Kull contiguous to New Jersey waters. (31, F)

RESPONSE: The category of surface waters described in N.J.A.C. 7:1E-1.8(a)1 does not include only "high quality waters." It expressly includes all rivers, ponds, lakes, lands, bays and other waters as defined by various programs in the Department. Certain high quality waters, such as trout production waters, are also included, but the definition is not exclusionary.

COMMENT: Wherever definitions include words like "pristine," they should also include a phrase such as "and other productive aquatic or terrestrial communities," or "including but not limited to . . ." Wherever waters are described as supporting commercial or recreational fishing resources, subsistence fishing must be included. It is well documented that many of the residents of the urban areas most impact by oil and chemical pollution eat their catch despite State advisories. Any place where areas are described as supporting special habitat areas, additional language indicating historical support and potential support must be included. These are significant fisheries though not in pristine areas. Any areas described as supporting shellfish areas must also include language indicating potential shellfish habitat areas. Newark Bay for example has all the attributes of oyster habitat and still supports extensive shellfish beds, but because of historical impacts from oil and chemical pollution the finfish and shellfish are not now harvestable. In a short period of time with more enforcement of the environmental laws and oversight they could be harvestable. Therefore, all shellfish beds must be protected from discharges which could endanger their use by future generations. (31, F)

RESPONSE: The Department agrees that the areas described by the commenter are worthy of protection and believes the language in N.J.A.C. 7:1E-1.8(a) is sufficient to identify these areas while enabling the facility to prioritize those areas for protection in the event of a discharge. The term "pristine" does not appear in N.J.A.C. 7:1E-1.8. A DPCC/DCR plan must be reviewed every three years, thus any change in the quality of a given environmentally sensitive area can be identified and prioritization adjusted accordingly.

COMMENT: At N.J.A.C. 7:1E-1.8(a)2, the present wording implies that distribution piping associated with potable water systems would constitute enviromentally sensitive areas. An exemption should be added to exclude all positive pressure pipes. (35)

RESPONSE: The primary intent of N.J.A.C. 7:1E-1.8(a)2 is to identify the source of water supplying these systems so they can be prioritized pursuant to N.J.A.C. 7:1E-4.4(a)5. The secondary intent is to identify those portions of the system that need special protection; obviously, positive pressure piping would rank considerably lower than the water supply intake.

COMMENT: Two commenters state that this definition of environmentally sensitive areas would include virtually all of Southern New Jersey if aquifers underlying facilities even 100 to 500 feet down are meant to be included. If not, it should be stated that they are not to be included. (29, 47)

RESPONSE: The Department did not include aquifers within the definition of environmentally sensitive areas. The wells penetrating into an aquifer do become an area of priority protection for the facility.

COMMENT: Two commenters suggest that only sources of potable water supply, rather than all sources of water supply, should be included in the definition of "environmentally sensitive areas" under N.J.A.C. 7:1E-1.8(a)2. (26, 39)

RESPONSE: The Department disagrees. All sources of water supply need to be identified and prioritized. A potable water intake would take priority over a cooling water intake. However, the industrial or electric utility may very well be seriously affected by a discharge that interrupts its cooling processes.

COMMENT: In the description of wetlands and wetland transition areas in the rule summary, Phragmities communis, or reed grass, is omitted from the list of vegetation. Although considered by some to indicate a disturbed area or less productive habitat, many urban wetlands support a diverse habitat and wildlife with phragmites as the predominate saltmarsh plant. (31, F)

RESPONSE: The Department agrees that phragmities communis, or reed grass, is another type of vegetation that can be used to identify a wetlands area. However, the citations given in N.J.A.C. 7:1E-1.8(a)6 do not specifically list reed grass. They do state that all areas that are regularly inundated with water are wetlands, which is not a standard based on vegetative present and would include areas containing reed grass.

COMMENT: The description of wetlands and wetland transition areas in the summary should include the Arthur Kill, Kill Van Kull estuary, New Jersey Bay, New York, Hackensack, Meadowlands, and Raritan River. (F)

RESPONSE: The wetlands and wetland transition areas referenced in the summary were meant to be illustrative of the type of areas in question and was never intended to be a comprehensive listing of these areas.

COMMENT: One commenter's primary concern here is the precedent that may be set by codifying certain features as environmentally sensitive that either have not been defined by the Legislature or are inconsistent with other definitions authorized under other statutes. For example, the summary includes reference to 300 foot buffers from wetlands both coastal and freshwater. The Freshwater Wetlands Protection Act of 1987 (FWPA) only provides for maximum buffers of up to 150 feet and not 300 feet. In this instance, the width of the buffer that was finally approved in the Freshwater Wetlands Act was subject to intense debate and a casual reference to a greater buffer may be misued without the proper authority. (37)

RESPONSE: The extent of buffer zones to be included as environmentally sensitive areas will be established by the responsible program, as cited in N.J.A.C. 7:1E-1.8(a). The listing of "environmentally sensitive areas" in these rules serves a different purpose than that of the FWPA. The boundaries mapped for a DCR plan are reference boundaries only and will be used for the planning of emergency response activities, as opposed to the FWPA which places restrictions on "regulated activities" conducted in these areas. The Department does not intend to use these

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boundaries as regulatory boundaries for other programs. For this reason, the definition does not set a dangerous precedent, and there is no danger of it being misused by other programs.

COMMENT: Two commenters state that N.J.A.C. 7:1E-1.8(a)7 through 12 and 14 should be deleted in their entirety. These definitions are much too broad, and will prevent the delineation of high priority areas deserving special protection. In fact, it could be argued that if applied liberally, these paragraphs could result in virtually any area of the State being designated as an environmentally sensitive area. Environmentally sensitive areas are adequately defined in the other paragraphs of this definition. (26, 39)

RESPONSE: The areas in question are environmentally sensitive areas and need to be identified by a facility if they may be in the path of a potential discharge. For purposes of this rule, significant portions of the State are sensitive areas that need to be identified and their protection prioritized. The purpose of N.J.A.C. 7:1E-1.8(a) is to identify all environmentally sensitive areas that could be impacted by a facility's discharge and then prioritize those that require the most protection. It may be that some areas are not protected so that a more sensitive area can be fully protected.

COMMENT: In N.J.A.C. 7:1E-1.8(a)10, what constitutes "prime" fishing areas? (23)

RESPONSE: N.J.A.C. 7:1E-3.4(a), Rules on Coastal Zone Management, which is cited in N.J.A.C. 7:1E-1.8(a)10, delineates prime fishing areas.

COMMENT: When referring to "forest areas" in N.J.A.C. 7:1E-1.8(a)13, another phrase, "remnant forested areas" must be added. Many remnant forest areas in urban areas are "sinks" or sanctuaries for migratory and nesting birds. Their destruction or contamination would be catastrophic. (31, F)

RESPONSE: The U.S. Forest Service has a general classification of forest land: prime forestland, forestland of Statewide importance, unique forestland, and forestland of local importance. The Department believes that the addition of remnant forested areas to the definition of environmentally sensitive areas is not necessary. These areas may be unique and would therefore be covered by N.J.A.C. 7:1E-1.8(a)13. Remnant forested areas may be unique simply because they are remnant areas and, as such, would not need to be added separately.

COMMENT: Urban or impacted habitats are like endangered or threatened species of plants or wildlife. Because they are depleted, they serve a more valuable ecological, economic, and recreational function than do more so called pristine areas. An acre of wetlands in the Hackensack Meadowlands or the Arthur Kill Estuary is more valuable than a wetlands acre in a pristine protected area becuase of its scarcity. The rules must address this issue by offering more protection to rare and endangered urban habitat through the language of the rules. (31, F)

RESPONSE: The Department agrees with the commenter on the value of scarce wetland areas in urban and suburban habitats. The DCR plans are facility specific plans and thus the environmentally sensitive area protection plan is facility specific. Under N.J.A.C. 7:1E-4.4, the owner or operator of a facility on the Arthur Kill will be required to identify those areas close to his or her facility and prepare the measures necessary to protect them in the event of a discharge.

COMMENT: In identifying potential habitats, you have to look at historical records as far back as the European colonization of this country. New York Bay and Raritan Bay have the potential to be viable oyster fisheries if the impact of chronic pollution were removed. Potential habitats must be protected. (F)

RESPONSE: If a facility discharge occurs at the present time, these present environmentally sensitive areas must be protected before historical or potential areas. A DCR plan must be reviewed every three years.

**N.J.A.C. 7:1E-1.9 Access**

COMMENT: N.J.A.C. 7:1E-1.9(a) states that the Department has the right to inspect any place at any time. However, the Department at a public hearing on June 6, 1991, stated that this means access pertinent to a discharge. It should be stated that this is not an absolute right of entry, but should apply during working hours, considering potential hazards, or at the time of an incident.

In N.J.A.C. 7:1E-1.9(a), after "or any portion thereof" insert "during normal working hours or," and after "at any time" insert "when a discharge has occurred or appears imminent." The last sentence should be deleted in its entirety. If a spill occurred, the Department should be allowed to come in and investigate. But they should not be allowed in at anytime and interview people who may not be qualified to answer questions. Several commenters state that at N.J.A.C. 7:1E-1.9(a) "at anytime" should be replaced with "at a reasonable time." Another commenter recommended that N.J.A.C. 7:1E-1.9(a) be changed to reflect that access to a facility be done in a reasonable manner and during a reasonable time. As such, it is recommended that the entire paragraph be changed to read as follows:

The Department and its representatives shall have the right to enter and inspect in a reasonable manner any facility, vessel, building or equipment, or any portion thereof, during normal working hours, in order to ascertain compliance or noncompliance with the Act, this chapter, or any order, or consent order or agreement issued or entered into pursuant thereto." (25, 26, 36)

RESPONSE: The Department has modified N.J.A.C. 7:1E-1.9(a) to clarify when the Department will have right of entry into a facility. This modification allows the Department to enter and inspect any facility or equipment to ascertain compliance during normal business hours and at any time during an actual or suspected discharge or violation. It also allows the Department to enter and inspect at any time those portions of the facility actively engaged in the transfer or processing of hazardous substances. Many facilities conduct transfer and process operations on a round-the-clock basis. The Department may conduct unannounced inspections to ensure that these operations are being carried out in accordance with the facility's DPCC plan. The Department will interview facility employees only with respect to each employee's responsibilities and duties for carrying out his or her normally assigned tasks.

COMMENT: The requirements of N.J.A.C. 7:1E-1.9 to allow access for the Department and its representatives to enter and inspect any facility, vessel, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or noncompliance with the Act, exceeds the constitutional rights against unwarranted search and seizure. Such right of access is purported to extend to the real or personal property of any person who may be subject to liability for a discharge. This language places no limitation on the scope or manner of conducting the inspection, and does not provide the certainty and regularity of application necessary to act as a constitutionally adequate substitute for a warrant. There is no properly defined scope or limitation in the discretion of the Department and its representatives. Moreover, the inspection may take place at any time. However, the proposed right of entry and inspection is not carefully limited as to time, place and scope and therefore does not meet the constitutional requirements for a warrantless inspection. Access should be limited to only those portions of the facility covered by the subject rules. (15, 35, 39, 42)

RESPONSE: The Legislature has expressly authorized the Department to conduct inspections of suspected sources of pollution and to ascertain compliance or noncompliance with any Department code, rule, regulation, or order (N.J.S.A. 13:1D-9d). The Department's right of entry and inspection is not absolute. While the Department typically obtains an administrative search warrant when it is denied access to a site or facility, a search warrant is not necessary in either one of the following situations: if the Department obtains the voluntary consent to the search by a person responsible for the property to be entered, or when an emergency threatens the public health and safety which necessitates immediate entry. Therefore, the Department's statutory authority, the referenced regulation, as well as the Department's procedures for gaining access to a site are all consistent with "the constitutional right against unwarranted search and seizure." Without access to the entire facility, the Department is not in a position to identify "only those portions of the facility covered by the subject rules."

The Department has modified N.J.A.C. 7:1E-1.9(a) to clarify when the Department will have right of entry into a facility. This modification allows the Department to enter and inspect any facility or equipment to ascertain compliance during normal business hours and at any time during an actual or suspected discharge or violation. It also allows the Department to enter and inspect at any time those portions of the facility actively engaged in the transfer or processing of hazardous substances.

COMMENT: The access provisions ignores *U.S. v. Barlow,* which limited access and provided that access be at a reasonable time with confidential information protected. Access to any individual or their private property not located at the facility must be accompanied by a properly executed search warrant. (15, 39, 42)

RESPONSE: The Department has asked the Department of Law and Public Safety, Division of Law, to review this provision for consistency with several recent U.S. Supreme Court decisions, including *U.S. v.*

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*Barlow, Burns v. Reed,* 59 U.S.L.W. 4532, (5/30/91) and *V-1 Oil Co. v. Gerber,* U.S. Supreme Court, No. 90-182, and No. 90-351 (10/15/90). In order to adopt these rules as close to the statutory deadline of July 21, 1991, as possible, the Department will reserve this section until the State's legal review is completed. The Department will repropose N.J.A.C. 7:1E-1.9(b) and (c) if the State's legal review determines that these provisions are consistent with the U.S. Supreme Court decisions. This change is expected to have little or no impact on the Department's enforcement of these rules, because as a practical matter virtually all the Department inspections are directed to the facilities themselves, where the records in question are required to be kept by N.J.A.C. 7:1E-2.15.

COMMENT: The right of entry and access the Department proposes far exceeds that required by the Spill Act or the Spill Act Amendments. There is no reference in this provision to conflicts with other Federal or State provisions which may preempt the Department's proposed rules. This would pose particular problems with respect to nuclear generating facilities which are regulated by the Nuclear Regulatory Commission (NRC) pursuant to the Atomic Energy Act. The NRC's rules include strict limitations on access to nuclear facilities and these rules supersede the Department's authority pursuant to the Spill Act or Spill Act Amendments. (26)

RESPONSE: The Department recognizes the NRC's rules and will act in concert with the NRC in implementation of these rules.

COMMENT: One commenter states that for sites doing research and development or conducting proprietary processes there should be an obligation of confidentiality (by agreement with the Department), so as not to compromise trade secrets. Another commenter stated that photographing or videotaping of any facility may reveal sensitive (proprietary) equipment. This rule should include measures which will be taken by the Department to prevent disclosure of a company's proprietary and trade secret information and materials. Additionally, using non-explosion-proof equipment in an explosion-proof area may endanger the safety of plant operations. It should be noted that intrinsically safe equipment is not explosion-proof by definition. Therefore, the use of any equipment utilzing batteries as a power source is prohibited in explosion-proof areas. The use of photographic and audio or videotape recorders must comply with the facilities' safety requirements. In many situations, the use of such devices would be a violation of NFPA Electrical Code requirements and an inherently unsafe act. (9, 17, 19, 44, 47)

RESPONSE: As stated in N.J.A.C. 7:1E-1.9(a), the Department may use equipment to inspect, such as cameras and videotapes, as long as they are in "compliance with appropriate standard safety procedures." In cases where the safety of the plant operations may be endangered, alternate inspection methods will be used. The new provision at N.J.A.C. 7:1E-1.9(e) addresses the treatment of confidential and trade secret information that the Department may become aware of during an inspection or plan submittal.

COMMENT: Two commenters state that the Department's right of entry and inspection should be restricted to specific areas/equipment that are regulated by these rules. The Department should be required to make such entry in compliance with the safety requirements of the site in question. Such a procedure is intended to safeguard Department personnel and facility personnel and equipment testing and sampling should only be done with the knowledge of the owner or operator. (40, 47)

RESPONSE: The Department's right of entry and inspection are already restricted to those instances needed to ascertain compliance or noncompliance with the Act, this chapter, or any order or consent order or agreement. No further restriction is necessary. The last sentence in N.J.A.C. 7:1E-1.9(a) clearly states that the Department will comply with appropriate safety procedures.

The Department would not take samples or perform testing without the knowledge of the owner or operator. Department personnel need information about appropriate safety measures and operating procedures to ensure the safety of themselves and facility personnel. The owner or operator will need to be informed of the specific sampling or testing need in order to supply the proper information.

COMMENT: The Department must recognize that the U.S. Coast Guard (USCG) has primary jurisdiction over vessels in U.S. waters. The supremacy of Federal law dictates that states do not have the complete freedom to inspect a vessel at any time when the USCG has the primary jurisdiction over vessel inspections. The Department, therefore, should attempt to coordinate any State inspection of vessels with those of the Federal government. It is suggested that if the Department is determined to inspect vessel and facilities that it substitute language such as the following:

"A vessel or facility may be subject to an inspection to determine discharge prevention and response capabilities. If the Department finds it necessary to enter property to conduct such an inspection, the Department may enter the vessel or facility after making a reasonable effort to obtain consent to enter the vessel or facility".

Alternately, the first sentence of N.J.A.C. 7:1E-1.9(a) should be amended to include the word "lawfully" before the words "enter and inspect" and the last sentence of N.J.A.C. 7:1E-1.9(a) should be rewritten to read:

"The Department shall present appropriate credentials as requested and shall comply with all applicable safety policies and procedures."

In addition, the state goal of the rules to "create an inherently safer environment" may indeed have the opposite effect by interfering in either the safe navigation or operation of the vessel, or by disrupting the safe loading or unloading of cargo onto or from a vessel. Again, the USCG has primary jurisdiction over a vessel under Federal law; this includes operating and maintenance procedures, training of personnel, and equipment requirements, and states should be careful not to interfere with this jurisdiction. (43)

RESPONSE: The Department recognizes that the USCG has primary jurisdiction over vessels in U.S. waters. However, the Department has the authority to insure that vessels engaged in transfer operations in New Jersey waters do so in accordance with this rule. Attempts will be made to coordinate inspections with the USCG, but many of the inspections the Department will perform will involve vessels at land-based facilities, not vessels out on the waterways.

The Department usually makes a reasonable effort to obtain consent before entering a facility or vessel, but it is not required. Also, the Department has the right to enter and inspect where hazardous substances are stored or handled. This right is inherently "lawful" and need not be designated as such. None of the suggested changes to the language have been incorporated.

It is not likely that the Department will wish to inspect a vessel while it is moving. The primary focus of any inspection would be a transfer operation, when the vessel is stationary either at a land-based facility or at an anchorage. Thus, the navigation or operation of the vessel would not be interfered with. The only disruption of a loading or unloading operation would involve requiring the cessation of such activity because of a discharge or failure to implement necessary measures, such as the deployment of booms. The situation would be evaluated before any cessation was ordered, to ensure that stopping the transfer would not cause a safety problem.

COMMENT: N.J.A.C. 7:1E-1.9(b) should be deleted in its entirety. As drafted, this would authorize the Department to enter an employee's home, if the Department believed that an employee may have records or documents or other information at his or her residence for whatever reason. This section should be changed to read as follow: "Any owner or operator who may be subject to liability for a discharge shall provide the Department with access to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of such owner or operator to the extent such records or properties are pertinent to the discharge for which such owner or operator may be subject to liability." (26, 36)

RESPONSE: N.J.A.C. 7:1E-1.9(b) and (c) are being deleted by the Department until the State's legal review is completed.

COMMENT: The language at N.J.A.C. 7:1E-1.9(b) and (c) seems to say that if there's a spill at facility X and the environmental manager is questioned by the Department and they have reason to believe that he may have records at his home, they would go to his home?

RESPONSE: These sections are being deleted at this time and may be re-proposed by the Department at a later date.

COMMENT: At N.J.A.C. 7:1E-1.9(d) it says, "hinder or delay." There must be allowance for reasonable arrangements or inclusion of a stipulation such as "unless necessary to protect against imminent danger to the health/safety of public or environment." (29)

RESPONSE: The Department believes that the wording used in N.J.A.C. 7:1E-1.9(d) is sufficient. Language concerning health and safety of the public or environment is stated in N.J.A.C. 7:1E-1.9(a), which discusses "compliance with appropriate standard safety procedures."

COMMENT: In N.J.A.C. 7:1E-1.9(d) the word "assist" should be deleted or replaced with "accompany." The Department does not have the legal right to require an individual to "assist" the Department in

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an investigation when it could potentially result in criminal prosecution. In addition, in N.J.A.C. 7:1E-1.9(d) the phrase "and any employees or representatives thereof" should be replaced by "and any qualified employees or representatives thereof." (25, 39, 42)

RESPONSE: The Department believes that assist is the proper word. It will be necessary for an employee to assist the Department in locating a specific piece of equipment or a specific record. Merely accompanying is not sufficient. The addition of the word qualified is not appropriate in this context. It is ambiguous in that what the employee or representative must be qualified to do is not stipulated.

COMMENT: At N.J.A.C. 7:1E-1.9(d), the phrase "shall not hinder or delay" should be replaced with "shall not purposely . . ." (11)

RESPONSE: The Department disagrees and believes that a facility should not hinder or delay an inspection purposely or otherwise.

**N.J.A.C. 7:1E-1.10 Waiver**

COMMENT: Three commenters state that specification of the conditions under which the waiver will be invoked should be added. (11, 25, 29)

RESPONSE: As each major facility and each discharge incident is unique, specific conditions under which a waiver would be considered cannot be provided in advance but must be determined on a case by case basis at the time of the incident. This section has been included because not all conditions can be specified in a rule.

COMMENT: Unless there is an emergency, and the language should be more explicit, no waiver should be granted without public notice and a comment period. (31, F)

RESPONSE: N.J.A.C. 7:1E-1.10 is intended for use during discharge response, that is, during emergency conditions. Therefore, there would not be enough time for public notice and comment.

COMMENT: Two commenters believe the language at N.J.A.C. 7:1E-1.10 goes beyond legislated authority. (29, 47)

RESPONSE: In order to be flexible in attaining the legislative intent in performing efficient and effective cleanups of discharges, the language in N.J.A.C. 7:1E-1.10 is needed. Not all discharge events are identical, and there needs to be some way to respond to unusual circumstances. The waiver provision establishes the necessary flexibility.

**N.J.A.C. 7:1E-1.11 Applicability**

COMMENT: The Department should clarify who specifically is affected by this proposal. Some of the sections imply that individual homeowners may be covered. If this is the case, how does the Department intend to enforce this program? Also, in N.J.A.C. 7:1E-1.11, it appears that the program applies to discharges of hazardous substances regardless of the amount. (37)

RESPONSE: N.J.A.C. 7:1E-1.11(a) applies to any person including homeowners. There is also no de minimus quantity associated with a discharge. Thus, a homeowner could cause a discharge and be in violation of this rule. The program will be enforced by the Department personnel in conjunction with its County Environmental Health Program agents and other appropriate local officials.

COMMENT: Homeowners using a drain cleaner could be considered a discharge because they are not permitted to discharge hazardous substances. (N)

RESPONSE: A drain cleaner used by a homeowner is not discharged directly to the environment. It is discharged to a treatment system which is covered by a Federal or State permit, and thus is not a prohibited discharge.

COMMENT: Regarding N.J.A.C. 7:1E-1.11(b), if one cannot submit a DPCC/DCR unless complete, and any upgrading is required—the rate of upgrading, that is, time table, cannot be proposed except in duration periods (that is, without dates) due to the involvement of other permitting and Departmental delays. Also, there is the six month at maximum which under certain circumstances may not be sufficient time to accomplish facility upgrades. (29)

RESPONSE: The Department recognizes that other Department permitting times can be built into approval schedules per N.J.A.C. 7:1E-4.7, and may be done so on a duration rather than date specific basis. Also, there is no six month cap on the amount of time to perform an upgrade. The only six month limitation in the rule is on the Department for completing reviews of plans.

COMMENT: Two commenters ask how enhanced ability is demonstrated for N.J.A.C. 7:1E-1.11(d). If the Department requires an alternative prevention or detection device under what conditions and what constitutes alternative devices, especially those "acceptable to Department?" The requirement to install alternative prevention and/or detection devices should be required in the context of the Department's own definition of "state of the art" and not to a standard of "minimization" or "enhanced ability" which have no bounds. (25, 29, 35, 40, 47)

RESPONSE: Each major facility is unique. Therefore, specific conditions under which the conditional approval of alternate devices cannot be specified.

COMMENT: One commenter supports the Department's efforts to provide some flexibility in complying with the proposed rules in the recognition that such compliance may require significant lead time and that the general proscriptions contained in the rules may not be feasible or appropriate for all facilities. (26)

RESPONSE: The Department thanks the commenter for their input.

**SUBCHAPTER 2. PREVENTION AND CONTROL OF DISCHARGES AT MAJOR FACILITIES**

**N.J.A.C. 7:1E-2.1 Scope**

COMMENT: The scope should be revised to include only petroleum and other liquid substances. (29)

RESPONSE: The list of hazardous substances in Appendix A is based on lists included by the Legislature in N.J.S.A. 58:10-23.11bk and includes solids, liquid and gases. All the listed substances have some hazard associated with their release. However, if a discharge prevention method outlined in the rules is considered inappropriate by the owner or operator for substances used at a specific facility, which are not liquids, the owner or operator may substitute an alternate method pursuant to N.J.A.C. 7:1E-1.11(e).

**N.J.A.C. 7:1E-2.2 Storage**

COMMENT: Several commenters state that despite the multitude of tank testing and monitoring requirements, the Department is granting itself the total and arbitrary right to require the removal from service of a storage tank if there is a likelihood of a discharge. The Department fails to provide criteria for such a decision and given its inability to recognize de minimus levels, could well apply such a nebulous standard to any situation. It is recommended that the language be changed as follows: after "from service because of" insert "substantial," and after "of a discharge" insert "based on the age of the tank, the results, if any, of its integrity testing, the composition and impermeability of the existing base and its history of leaks from the underlying base." (26, 29, 35, 40, 47)

RESPONSE: Because of the wide variety of facilities and hazardous substances covered by these rules, and the various types of containment available to a facility's owner or operator, any decision on the removal of a tank from service will have to be highly site specific. As stated in N.J.A.C. 7:1E-2.2(a)2, the likelihood of a discharge is the basis for the Department determining that a tank should be removed from service. A tank would not be removed from service unless all facets leading to potential discharge were analyzed, including those items mentioned by the commenters.

COMMENT: One commenter states his support of performance standards related to the anticipated amount of time the product is in contact with secondary containment materials. This commenter would support different standards for impermeability beneath an aboveground storage tank where the product would be in contact for a much longer period of time. (I)

RESPONSE: The Department has proposed several different standards. These different standards are based, in part, on the amount of time the hazardous substance would be in contact with the secondary containment. New secondary containment must meet the definition of "impermeable" for the hazardous substance to be stored or handled. Existing storage tanks' containment standards are performance based pursuant to N.J.A.C. 7:1E-2.6(c)3. The base underlying a new tank or a tank which undergoes substantial reconstruction is to be impermeable, as defined in N.J.A.C. 7:1E-1.6. The base underlying at existing tank is exempt until substantial reconstruction or replacement is required.

COMMENT: N.J.A.C. 7:1E-2.2(a)2 would require that the base underlying an existing storage tank be replaced when the tank requires substantial reconstruction or replacement. There may be instances when an existing tank could require "substantial reconstruction or replacement" within the meaning of the rules without involving the base of the tank. Therefore, after "until such time as" delete "they" and insert "the underlying base." (26)

RESPONSE: The Department, based on industry input during the working group and interested party draft processes, has determined that a tank requiring reconstruction equal to or in excess of 50 percent of

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the replacement cost is a reasonable point at which to require compliance with these rules, whether such reconstruction involves the base of the tank or not. Therefore, the suggested change has not been made.

COMMENT: The phrase "until such time as they may require substantial reconstruction" requires specific definition. (25)

RESPONSE: In N.J.A.C. 7:1E-1.6, the Department has defined "substantial reconstruction" to mean any restoration, refurbishment, renovation, or relocation of existing equipment which incurs costs equal to 50 percent or more of the replacement value of the equipment or which impairs the physical integrity of the equipment or its monitoring systems. The results of integrity testing, inspections and maintenance will alert the owner or operator of the facility when reconstruction is necessary. Because the meanings of the component phrases are clear or defined, a definition of the phrase "until such time as they may require substantial reconstruction" is not needed.

COMMENT: This section should refer to or incorporate the conditions for exemption included in N.J.A.C. 7:1E-2.6(c)3 for existing storage tanks. (11)

RESPONSE: The exemption from the $10^{-7}$ cm/sec standard for impermeability for secondary containment is not appropriate for the base underlying the tank. Leaks from the base of a tank cannot be visually detected during an inspection, nor can they be readily cleaned up. Therefore, no change to the rule has been made.

COMMENT: Several commenters state that since the retroactive installation of impermeable dikes or berms is not required where permeable ones exist, such installation should be allowed to continue to pass pipe through them until such time as they may require substantial reconstruction or replacement if it does not degrade the containment, as opposed to the impermeability of the dike or berm. It is suggested that the last sentence should read "... unless the impermeability or integrity ..." (26, 35, 40, 47)

RESPONSE: The Department agrees that preventing the impairment of impermeability of integrity of containment is sufficient, and therefore, has changed "and" to "or."

COMMENT: All pipelines that enter a tank below the liquid level do not require a remotely operated valve in order to protect a tank or pipeline from a failure outside the secondary containment. Motor-operated valves are typically installed when the valve size requires it. It is important that plant operators make regular tours through tank basins in order to insure tank and pipeline integrity when they manually operate valves within the tank basin. One commenter is not convinced that motor-operated valves will stop a discharge if a line failure occurs. Remote motor-operated valves could lead to an operator using the control mechanism outside the containment without making a visual inspection. This should not be the normal use of the control mechanism, yet it is clear that the temptation to use the device will exist. There are a number of ways to isolate a tank in case of an emergency without the use of remote motor-operated valves. This requirement will result in extensive capital investment with little discharge prevention benefit, and should be dropped from the rule. (40)

RESPONSE: The Department agrees that not all pipelines entering a tank require remotely operated valves. The option is given at N.J.A.C. 7:1E-2.2(a)3 for the pipe to be equipped with valves which are readily accessible and are close enough to the tank to prevent a discharge. Additionally, remotely activated valves are not limited to motor-operated valves. Because of the various options available to comply with this requirement, no change to the rule is needed.

COMMENT: Integrity testing of storage tanks far exceeds existing standards and existing effective operating practices. (C)

RESPONSE: Based on the frequency and magnitude of recent discharge events, the Legislature has determined that existing standards have not sufficiently prevented discharges and that new, more extensive standards must be adopted. These rules reflect the intent of the Legislature.

COMMENT: No minimum size is given for the tank testing requirement in N.J.A.C. 7:1E-2.2. A minimum size of 1,000 gallons is suggested. For small tanks, full secondary containment should be a sufficient safeguard. Also, it should be made clear that integrity testing is not applicable to open tanks, bins, hoppers or containers. Portable containers should also be specifically exempted, so that it is clearly not intended to be applied to drums or other movable containers. (41)

RESPONSE: The Department agrees that it is inappropriate to require the testing on small tanks, so an exemption from tank testing requirements has been added to the rule for storage tanks which have a capacity of 2,000 gallons or less. This change excludes 55 gallon drums and similar small moveable containers from the requirement to be tested. It was never the intention of the Department to require that such containers be tested. The requirement is for fixed aboveground storage tanks, as evidenced by the citation of API 653, and other industry standards for fixed aboveground storage tanks. In addition, if the specified integrity tests are inappropriate for a particular storage tank, the Department allows alternative methods to be used, pursuant to N.J.A.C. 7:1E-1.11(e).

COMMENT: Testing and scheduling of testing should be done per industry standards. In addition, "appurtenant piping" should be defined. The rule states "tanks and all appurtenant piping *shall* be subject to initial *integrity testing*—every five years" (emphasis added). Aboveground in-plant piping is inappropriate to the defined integrity testing. To require removal from service for process piping (which would have to be done in order to attempt testing) would be disruptive to continuous operations and should not be included in this. (25, 29)

RESPONSE: The Legislature has mandated at N.J.S.A. 58:10-23.11d11c that an initial integrity test be conducted within two years of rule adoption. While this cannot be changed, subsequent integrity testing can be performed using industry standards, pursuant to N.J.A.C. 7:1E-2.2(a)4. Not all in-facility pipe is required to be tested. Only piping appurtenant to the tank need be tested and such testing can be done in conjunction with the tank test. The Department has clarified how much of the appurtenant piping must be included in the test by adding "to the first valve" after "appurtenant piping" in N.J.A.C. 7:1E-2.2(a)4.

COMMENT: All aboveground tanks must be tested within two years from the adoption of these rules. The sooner the Department can make these criteria readily available and provide some assurance that these pre-rule test criteria would be acceptable the more likely this mandate will be achieved. (11)

RESPONSE: Prior knowledge of criteria for integrity testing will not appreciably speed up the testing process or schedule. The Spill Act requires that any aboveground storage tank must be tested within two years of the adoption of these standards (N.J.S.A. 58:10-23.11d11c). Therefore, testing performed prior to adoption of these rules will not fulfill this requirement. The proposed testing factors can be used to develop a preliminary testing schedule, with the schedule finalized based on the adopted rules.

COMMENT: The testing frequency of five years is too often considering the requirement for secondary containment and the frequent visual inspection requirements. A 10 year inspection frequency is suggested. Those tanks that have been inspected within the last two or three years should have the initial inspection under these rules delayed until at least five years have elapsed since the last inspection. (28)

RESPONSE: If a tank has an inspection and maintenance program in compliance with API 653, the testing frequency is not bound to the five year schedule, as stated in N.J.A.C. 7:1E-2.2(a)4. For such tanks, the testing frequency can be that determined by following API 653. The Spill Act, at N.J.S.A. 58:10-23.11d11c. requires initial testing to be done in the first two years following rule adoption. It is important to assess the condition of the storage tanks in the State. However, the initial test only requires static head product testing which is much less stringent than doing a full integrity test.

COMMENT: The Federal SPCC rules allows hydraulic integrity testing or non-destructive methods; these rules would require both. The rules should allow either method so that non-destructive methods can be used alone where hydraulic or pneumatic methods are not feasible. (41)

RESPONSE: The Department believes that combining hydraulic and non-destructive methods will identify more problems than either method could separately. The hydraulic test will locate active leaks, whereas non-destructive testing is more likely to identify latent defects. If a particular method is deemed inappropriate the Department allows alternative methods to be substituted pursuant to N.J.A.C. 7:1E-1.11(c).

COMMENT: One commenter has some problems with this particular performance standard being forced on industry. The API is evaluating tank integrity testing, and has found some of these tests inconclusive. It is not fulfilling the purpose of these rules to have people spending money at this point in time. The appropriate technologies do not exist, but one commenter would support them when they became available. (I)

RESPONSE: The Department has listed a number of test methods which may be applicable. These tests are presently used and recommended for and by industry. Alternative methods can be considered under N.J.A.C. 7:1E-1.11(e), if the listed methods are not appropriate

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to the particular tank(s) in question. The Department is very interested in the API study and will review the results when available. If this study shows some test to be inappropriate, the Department will consider amending the rules to reflect this.

COMMENT: One commenter cautions against placing too much reliance on the accuracy of any hydrostatic test on any atmospheric aboveground storage tank. There are no hydrostatic test methods currently recognized as "leak detection tests" that would meet the "state of the art technology" definitions in N.J.A.C. 7:1E-1.6. The types of hydrostatic tests conducted on a newly constructed aboveground storage tank or those having had certain types of repairs, are conducted for the purpose of "pre-stressing" the steel in the tank before returning the tank to service and not as a leak detection method. Language should be inserted that prevents the result of a static head test being the sole criteria to trigger the required installation of an impermeable bottom in an existing aboveground storage tank, pursuant to N.J.A.C. 7:1E-2.2(a). (2, 8)

RESPONSE: Integrity tests are not required to meet the "state of the art technology" definition. Industry standards are sufficient. The types of hydrostatic or pneumatic tests performed pursuant to this section are to be appropriate for leak detection. If the static head product test shows a problem with a tank, the result may, of course, be verified by another test method or visual inspection of the interior. However, structural integrity defects must be corrected. If the tests show that the tank bottom is seriously flawed, then the installation of an impermeable bottom would be required if substantial reconstruction is necessary to correct that flaw.

COMMENT: Two commenters state that the initial period for testing of tank integrity should allow for compliance with the schedule called for in API 653, if previous testing was performed according to that standard. There are an insufficient number of consultants and contractors available throughout the State or even in the Northeast region to deal with the onslaught of testing. The demand on these limited resources will result in higher costs and support only those willing to pay top dollar. The Department's unrealistic and restrictive timetable will, by definition, cause many facilities to be in non-compliance.

In addition, many facilities have large numbers of storage tanks subject to these rules. Most of these tanks per the current rules would require testing by February 1, 1993. Assuming testing starts now, that amounts to testing one tank per week—an impossible and economically unrealistic requirement. Is the Department interested in discharge prevention or penalty generation? (40, 47)

RESPONSE: The focus of these rules is discharge prevention. The initial integrity test only requires static head product testing which is much less stringent than a full integrity test. The initial testing schedule is designed specifically so that the tanks in the State with the highest degree of risk are tested first. Those owners or operators of facilities who believe that they will be unable to meet the required schedule for testing, may apply to the Department for administrative consent orders to facilitate compliance.

COMMENT: Insulated storage tanks should be exempted from non-destructive testing requirements and all storage tanks should be exempted from integrity testing if tertiary containment can be demonstrated to the Department.

RESPONSE: The purpose of integrity testing is primarily preventative in nature. Tertiary containment is not a substitute for the prevention of a discharge, or a leak that may turn into a discharge, that can be detected by integrity testing.

COMMENT: For tanks with internal liners the requirement of "visual inspections" should be substituted with "non-destructive testing." (44)

RESPONSE: N.J.A.C. 7:1E-2.2(a)4 now requires all aboveground storage tanks which are greater than 2,000 gallons in size to receive integrity testing which includes non-destructive testing. Visual inspections must also be done as required pursuant to N.J.A.C. 7:1E-2.10(a). One cannot be substituted for the other. While an integrity test may show that an internal liner has developed a flaw, or failed in some way, it cannot predict the future service of the liner. Direct visual inspection of the liner should turn up any evidence of ongoing deterioration, thus giving an indication of future service life. In addition, an internal liner is of little use if the structural integrity of the outer tank shell has been compromised. An integrity test is the best way to determine the structural integrity of the tank shell.

COMMENT: An exemption from integrity testing for storage tanks which meet all of the following conditions is requested: a leak into secondary containment will not endanger public health or contaminate water; the tank has never leaked; the tank is in dedicated hazardous material storage with composition assays of stored material on file; the tank material or construction/liner material is compatible with the hazardous material being stored and corrosion is not an issue; and the tank meets all secondary containment requirements. (44)

RESPONSE: The purpose of this program is primarily preventative in nature. The Department agrees that the past history as to the integrity of a storage tank is required to fully evaluate tank performance. However, an integrity test will give a much more reliable indication of the present condition and future service life of the tank. The tank material must be compatible with the hazardous substance being stored, pursuant to N.J.A.C. 7:1E-2.11(a). The fact that a tank has not leaked in the past does not mean that a tank will not leak in the future. Being in dedicated service has little bearing on the possibility of a discharge. All tanks are required to have secondary containment, pursuant to N.J.A.C. 7:1E-2.2(a), and while secondary containment is a good and preventive measure, stopping leaks before they start is better. For these reasons, the Department has concluded that an exemption based upon the criteria listed by the commenter would conflict with the goal of preventing discharges from storage tanks.

COMMENT: Four commenters state that Table 1 in this section includes the number of leaks in the past five years as one of the criteria used to determine the initial integrity testing deadline for storage tanks. The statutory basis for this table only allows for consideration of the "discharge record of the structure for the preceding five years". It is suggested that the wording in the table be changed from "leak" to "discharge." (25, 26, 39, 42)

RESPONSE: A leak is a clear indication that a storage tank may be structurally flawed. The number of leaks a tank has experienced is very significant even if the leaks are into secondary containment and no discharge has occurred. A tank which has experienced multiple leaks should be tested promptly for structural integrity. In addition, the use of the term discharge in the Spill Act covers permitted as well as prohibited discharges. Therefore, the use of the term leak is appropriate, and meets the intent of the Act, which is to ensure the structural integrity of aboveground storage tanks in New Jersey. Thus, no change to the rule has been made.

COMMENT: Two commenters asked if potable water supplies refers to surface water, ground water or both. (21, 16)

RESPONSE: The Department intended that for the purpose of the initial integrity testing schedule at N.J.A.C. 7:1E-2.2(a)4, Table 1, only the proximity to surface water used as a source of potable water is to be considered. To clarify this intent "proximity to potable water supplies" has been changed to "proximity to surface water supplies."

COMMENT: The age of the tank should have greater weight within the formula. It should be numerically as important as "number of leaks in past five years." Proximity to potable water should be 25, and an additional category, proximity to environmentally sensitive habitat areas, should be added with a high point value of 25. "Years since integrity test" was downgraded since the publication of the draft rules and should be increased, back to 25. (31)

RESPONSE: The Department has attempted to weigh the various factors for scheduling initial testing on the probability of contributing towards a discharge not necessarily on the possible impact of a discharge. The existing schedule factors, which were established by the Legislature at N.J.S.A. 58:10-23.11d11c, and points are adequate for this purpose. Those factors most likely to contribute to a greater risk, the age of the tank, the number of leaks from the tank, and the number of years since the tank was last tested, have the highest possible points. The environmentally sensitive areas facing the highest risk from a discharge, which are those consisting of or adjacent to surface water which provides the best pathway for a discharge, are considered in the factor for proximity to surface water. There is no need to increase or add any point values.

COMMENT: In Table 1 of N.J.A.C. 7:1E-2.2(a)4, a significant and critical factor not included is the size of the storage tank. Larger volume tanks would certainly have greater impact in the event of a leak and more points should be assigned to larger sizes. Therefore, initial integrity testing should be required sooner for larger tanks. (13)

RESPONSE: The Spill Act at N.J.S.A. 58:10-23.11d11c requires that the sequence of testing be based on the age of the tank, proximity to potable water supplies, discharge record (both permitted and prohibited), and the date of the last structural integrity test. Tank size was not viewed as a critical factor by the Legislature. The degree of risk for a discharge is only marginally higher for a large tank compared to a small tank.

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Although larger tanks have the potential to cause a greater discharge than smaller tanks, larger tanks are more likely to be covered by the previously existing discharge prevention rules and their requirements for a working maintenance program and secondary containment.

COMMENT: The testing deadlines in Table 2 are too aggressive and unrealistic. Several commenters suggest that facilities be allowed to propose an initial integrity test schedule for approval by the Department that will be completed no later than August 1, 1993. This schedule would take into consideration the age of the tank, proximity to potable water supplies, discharge records and the time since the last integrity test. This would allow a schedule based on site specific conditions. An owner-supplied schedule would also allow the testing companies to bid jobs and schedule their possible work load between clients. (25, 26, 35, 39, 42)

RESPONSE: The Department has developed a schedule which addresses the two year testing period as mandated by the Legislature. This schedule takes into account a variety of factors relating to the potential for a discharge. The tanks in the State with the highest degree of risk will be tested first. If many of these high risk tanks are at a small number of facilities, then those facilities have a greater potential for a discharge and should test as many tanks as soon as possible.

COMMENT: For a facility, that by a single revision to statute will go from a minor facility to a major facility and finds itself with 36 tanks that must now be integrity tested, the 15 points assigned as testing schedule factors because none of these has been tested by the new definition in the last five years virtually assures that all will be required to be tested by August 1, 1992. Proper allowance must be given to those many companies with a large number of relatively small aboveground storage tanks that in aggregate exceed 20,000 gallons of storage capacity to be able to phase in this requirement over a manageable period of time without causing undue business interruption and hardship. (18)

RESPONSE: The Department has changed the heading at N.J.A.C. 7:1E-2.2(a)4, Table 1, to read "years since last structural integrity test" to emphasize that the intent here is to count the years since any structural leak or other problem detection test was done, not the years since integrity testing, as now defined in N.J.A.C. 7:1E-1.6, was performed. Structural tests under the previous discharge prevention rules would fit into this category. In addition, the Department has revised the rule to exempt storage tanks which have a capacity of 2,000 gallons or less from the requirement for integrity testing.

COMMENT: Table 1 defines a schedule of tank testing that needs to be adjusted to allow the tank testing to be spread more evenly over the timeframe allotted. The present schedule would result in most tanks being tested during the first two time categories. This allows only 18 months for almost two thirds of the tanks in the state to be tested. This tight testing schedule may cause several companies extreme problems with usable storage capacity during the test period. Additionally, the number of testing companies is relatively small and the methods employed will take a large amount of time to implement. The initial period of testing of tank integrity should allow for compliance with the schedule called for in API 653 if previous testing was performed according to that standard.

RESPONSE: The schedule for testing is designed to distribute the testing over two years, so that approximately three quarters of the tanks in the State will be tested within the first 18 months. The two years testing period is mandated by the legislature and cannot be changed. The testing schedule is designed so that the tanks with the highest potential for discharge in the State are tested first. The initial integrity test may consist of static head product testing, which is much less stringent than full integrity testing and should not seriously impair useable storage capacity during the test period. Also, the static head product test does not require the expertise of a tank testing company, so the number of companies will not be a factor.

COMMENT: The testing schedule factors that have been established do not allow facilities to utilize from February 1, to August 1, 1993, to perform these tests in spite of the fact that many current tank programs incorporate the inspection guidelines in API 653. If the testing schedule factors are not revised, all tanks will have to be tested within 18 months, instead of the 24 months that was intended. The Department should allow facilities using API 653 for tank inspection to test an equal number of tanks every six months per the Department's testing schedule factors. If this is not acceptable, then the factors provided must be reviewed and revised. Several factors within the schedule cause this problem. The point schedule established for the "Years since last integrity test" creates part of the problem. The years since last test should be changed to over ten years, five to 10 years, and one to five years for facilities using API 653 as a guideline. The point total should range from one to 10 for a facility using API 653. This may help spread out the integrity testing over the 24 month period. If a change is not made, facilities will be forced to make uneconomic business decisions in order to meet the current guidelines. One commenter does not believe that this was the intent of the Department and requests that this section be revised or an option to appeal the schedule be provided so that concerns can be presented directly to the Department. (40)

RESPONSE: The Department has changed the heading at N.J.A.C. 7:1E-2.2(a)4, Table 1, to read "Years since last structural integrity test" to emphasize that the intention here was to count the number of years since any structural leak or other problem detection test was done—not years since integrity testing by the new definition was performed. Structural tests under the previous discharge prevention rules would fit this category, thus distributing the testing over a wide time period. It was not the intent to permit a single facility 24 months to complete the testing of all tanks, but to have all storage tanks within the State tested within that time period. The scheduling factors were designed to require the tanks with the overall greatest risk to be tested first.

In addition, the Legislature mandated that the Department establish the schedule for testing (N.J.S.A. 58:10-23.11d11c). Administrative consent orders can be requested by those owners or operators that believe they are unable an inability to meet the requisite schedule for testing their tanks.

COMMENT: Three commenters believe that given the voluminous tank testing requirements, the Department should allow for 60 days to report same. The Department calls for a 30-day submission after integrity testing. It requires that the submission provide information on repairs performed regardless of the fact that such repairs may require more than 30 days (or 60 days). An allowance should be made for a follow-up submission or deletion of the need for such information. Is the Department going to review and approve or disapprove such repairs? If so, on what basis? (35, 40, 47)

RESPONSE: The Department agrees that in many cases it is not possible for any needed repairs to be scheduled and completed within 30 days of performing the testing. Therefore, the phrase "or scheduled to be performed" has been added after "any repairs performed." This will enable the owner or operator to submit the report in the legislatively mandated 30 days (N.J.S.A. 58:10-23.11d11c) and have it deemed complete. The Department will not approve or disapprove any repairs. The manner of repair will be the decision of the owner or operator.

COMMENT: Four commenters rquest clarification on the requirements at N.J.A.C. 7:1E-2.2(a)5 for a report on the initial integrity testing to be submitted to the Department within 30 days of the completion of the test. These commenters want to know if this is 30 days from the completion of the field work or 30 days from receipt and acceptance of the final report, since 30 days from the completion of field work would not allow enough time to obtain a final report from a testing contractor. (25, 26, 39, 42)

RESPONSE: The Spill Act (N.J.S.A. 58:10-23.11d11c.) requires that test results be submitted to the Department within 30 days of completion of testing, this being completion of the field work.

COMMENT: At N.J.A.C. 7:1E-2.2(d)1 the correct wording for the second sentence should be "Ever storage tank shall have a **high** high liquid level pump cut-off . . ." (35)

RESPONSE: The Department agrees. As a result of a typographical error in the New Jersey Register, the second high was inadvertently omitted and has been corrected.

COMMENT: Two commenters pointed out that N.J.A.C. 7:1E-2.2(d)1 and 2 should have the word "or" at the end of each phrase. This is the wording that exists in the interested party draft that was circulated. (13, 35)

RESPONSE: The first "or" at N.J.A.C. 7:1E-2.2(d) was omitted to conform with proper rules of grammar. To clarify that only one of the items must be met, the phrase "one of the following" has been added after "and:" and before (d)1.

COMMENT: At N.J.A.C. 7:1E-2.2(d) reinsert the word "or" at the end of the paragraph. This will exempt smaller tanks which are supervised during loading, from requiring a high level alarm. (13)

RESPONSE: The suggestion by the commenter would not exempt small tanks from the need to have a high level alarm. The Department has revised the rule to exempt storage tanks of 2,000 gallons or less from integrity testing and high level alarm requirements. Exempted tanks must be continually attended during loading operations.

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COMMENT: The facility should be allowed to present to the Department for approval a schedule for installing fail-safe devices on storage tanks, in which all installations are completed by a reasonable date agreed to by the Department. (25)

RESPONSE: The Department agrees and has provided provisions in N.J.A.C. 7:1E-1.11(b) that allow the owner or operator a reasonable amount of time to perform upgrades to meet the standards of the rules. The term "fail-safe" has been deleted from N.J.A.C. 7:1E-2.2(d) as misleading.

COMMENT: Two tanks that have high level alarms under the current rules cost $15,000 a piece. Other tanks are gauged and the free space available is calculated before a transfer begins. That's part of written procedure and those measures have to be taken before a transfer is undertaken. After a major disaster, newspaper articles always seem to refer to broken switches or control overrides in leak detection equipment and high level alarms. This type of equipment is not fail-safe and has been party to many spills. A strict policy to physically gauge each tank before and after each transfer would not be adequate, although it has been effective. (C)

RESPONSE: The Department agrees that any one system is not sufficiently adequate to prevent an overfill. Thus, an audible or visual system in combination with a system specified in N.J.A.C. 7:1E-2.2(d) is required. The term "fail-safe" is misleading and has been deleted. Also, the Department has revised this requirement to allow small tanks of 2,000 gallons or less to use continuous attendance during transfer operations instead of high level alarms, because for small tanks these standards are equivalent.

COMMENT: In the case of a batch plant, a high level alarm is not practical or workable. As such alarms are calibrated for a particular product, the continual changing of products in each tank in a batch operation will render them useless. A more practical approach in a batch plant operation would be to establish manual tank checking procedures to prevent overfills. Such procedures are routinely incorporated into "best management practice" in any event, and are highly effective when properly used. Examples of manual procedures include "sticking" the tank, keeping careful track of inventories, and visual observation during filling operations. (15)

RESPONSE: N.J.A.C. 7:1E-2.2(d) specifies that only storage tank installations need overfill detection devices. Tanks which are used as part of a batch process are process tanks and not storage tanks; therefore, such tanks do not require the installation of high level alarms.

COMMENT: Two commenters state that the requirements at N.J.A.C. 7:1E-2.2(d) for high level alarms and redundant systems are suitable for TCPA chemicals and not the non-TCPA chemicals subject to these rules. Suitable Department approved procedures should be an acceptable alternative. The materials in question do not pose an imminent threat to workers or the public if released and contained in a suitable secondary containment system. (40, 47)

RESPONSE: The intent of the Legislature was to require those measures necessary to prevent contamination of the environment through dischargers and negate the need for remediation later. Pursuant to N.J.S.A. 58:10-23.11d11a, the Department has determined that the installation of high level alarms will minimize the threat of a discharge. The list of hazardous substances subject to these rules is based on the requirements of N.J.S.A. 58:10-23.11bk. While not all substances are extraordinarily hazardous, and may not pose an imminent threat to workers or the public, these substances have a long term impact and are a lasting threat to the environment.

COMMENT: N.J.A.C. 7:1E-2.2(d) lists the devices required for storage tank installations for prevention or detection of overfills. Smaller tanks may be used for the storage of materials which potentially fit the definition of hazardous substances in the proposed new rules. Such devices add a great deal of expense, and are not necessary for small storage tanks when proper operating procedures are followed, and adequate secondary containment and proper contingency plans are in place. The Department should consider a threshold for requiring overfil detection devices, perhaps based on the volume of the storage tank and/or the quantity of hazardous material stored in the tank. (46)

RESPONSE: The Department has revised the rule to allow storage tanks of 2,000 gallons or less to use an alternative to high level alarms. Such tanks may use continual attendance during transfer operations instead. This requirement is equivalent for the purpose of protecting against overfills for small tanks.

COMMENT: In the case of products for which exposure to air or rain is not intrinsically hazardous, sound second containment alone provides virtually 100 percent protection. If secondary containment is provided for all hazardous substance storage tanks as proposed, the possibility of a spill is eliminated entirely in all cases except where a vessel being off-loaded is greater in capacity than the secondary containment area associated with the storage tank being transferred into. High level alarms, pump cut-off switches, etc. should only be required when continued pumping into a storage tank from a large vessel could result in the overflow of the secondary containment area. On this assumption, the high level alarm/cutoff provisions should be eliminated, especially for small operators. Often the site is under contant surveillance. Thus the remote valves and high level alarms are an unnecessary layer of control. In other cases, all affected tanks are equipped with level measuring instruments and the values are recorded during each transfer and at shift change. (10, 18, 30)

RESPONSE: While secondary containment may prevent overfills from becoming discharges, it is not a substitute for good operating practices. High level alarms can prevent overfills, negating the need to clean up a leak or discharge. Pump cutoff devices are not mandatory; direct communication systems and fast response systems are also acceptable. A combination of two systems of overfill protection will virtually eliminate leaks or discharges as a result of tank overfill. Remote valves mentioned at N.J.A.C. 7:1E-2.2(a)3 are also not mandatory. Manual valves which can be closed in the event of a leak or discharge are acceptable. Level measuring instruments with an alarm to alert plant personnel of overfills also are acceptable.

COMMENT: N.J.A.C. 7:1E-2.2(d) refers to equipping storage tank installations with "**fail-safe devices**" and then requires the use of high level alarms for detecting overfills. It has been industry's experience that high level alarms are not necessarily "fail-safe" since they too fail to operate properly at times, making secondary containment necessary. Therefore, it is recommended that high level alarms should not be required if a facility can demonstrate to the Department a proven alternative to prevent overfills such as: close product gauging; or state-of-the-art level instrumentation (that is, ultrasonic level indicator) and closely monitored transfers. (44)

RESPONSE: The term "fail-safe" has been deleted. The Department agrees that high level alarms are not necessarily fail-safe and the rule was not treating such equipment as fail-safe, since redundant systems are required. Therefore the term is misleading and not necessary.

If the owner or operator of a facility wishes to use an alternate method equivalent to one required by these rules, that alternate method can be suggested in the facility's DPCC plan, pursuant to N.J.A.C. 7:1E-1.11(e), subject to approval by the Department.

COMMENT: In N.J.A.C. 7:1E-2.2(f) after "protected by secondary containment" insert "or diversionary systems that prevent a discharge." Allowing a diversionary system in lieu of the secondary containment provides some flexibility in the rules while achieving the same goal of environmental protection. (26)

RESPONSE: The Department agrees. The phrase "or diversion system" has been added, because secondary containment and diversion systems are defined as a unit, not separately, and are used for the same purpose.

COMMENT: Two commenters state that containment built to the specifics of N.J.A.C. 7:1E-2.6 (that is, to hold six inches of rainwater) is an unreasonable and arbitrary value, which may not be possible for existing facilities of specific configurations and finite areas. (29, 47)

RESPONSE: The Department based the six inches of rainwater on a 24 hour, 25 year storm. A 24 hour, 25 year storm has a probability of occurring in a 25 year period of one to two percent. This is a worst case, although not the worst case. This volume will ensure that even under some of the worst predictable conditions, the volume of secondary containment will not be exceeded.

COMMENT: An exemption from secondary containment within a major facility should be available for remote storage areas containing small amounts of hazardous substances (that is, less than five or six drums) when there is little or no chance of a discharge in the event of a leak in one of the drums. (28)

RESPONSE: The Department believes that discharges of hazardous substances stored in remote areas have a greater chance of being overlooked specifically because they are removed from high traffic areas. For this reason, the Department has concluded that such an exemption would substantially increase the risk of a discharge in such remote storage areas, thus increasing the potential for environmental harm.

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**N.J.A.C. 7:1E-2.3 Tank car or tank truck loading/unloading areas**

COMMENT: Please define "paved or surfaced." (11)

RESPONSE: The words "paved or surfaced" as used in these rules have the common meaning ascribed to them in dictionaries, specifically to cover with stones, tiles, concrete, or the like, to create a level, stable surface. In this case, the stones, tiles, concrete, or the like, must be impermeable. A definition containing this meaning has been added to the rules.

COMMENT: Two commenters state that requiring loading areas to be paved or surfaced with impermeable material, and have secondary containment designed and built, is requiring redesign and rebuilding for existing facilities which may be impossible for certain sites. This is inappropriate for dry or solid materials. Redesign and reconstruction of rail facilities will be inordinately expensive and time-consuming, if possible at all. (29, 47)

RESPONSE: The Department recognizes that major facilities differ and that appropriate discharge prevention methods are site-specific. If a particular requirement of this rule is inappropriate, an alternate method of discharge prevention may be substituted pursuant to N.J.A.C. 7:1E-1.11(e). Tank car parking areas are not included in the definition of storage capacity because they are primarily used for transportation and there is a lack of agreement on the period of time a tank car must be at a facility before it is considered a storage tank. Therefore, rail facilities do not need to install secondary containment except at loading/unloading areas.

COMMENT: While the vast majority of terminal loading/unloading occurs on impervious surfaces, routine maintenance items may require that a vacuum truck be loaded on soil. For instance, the cleaning of a water treatment system which contains hazardous waste water is typically hauled off-site by a hazardous waste hauler. This practice, if disallowed as proposed, would not permit facilities to properly haul hazardous waste such as this or tank bottoms off-site for treatment and disposal as required by Federal law. It is recommended that the word "routinely" be inserted after the word "areas" in the first sentence of (a), and "normal" be inserted before the words "truck loading/unloading". By inserting the words proposed, the majority of hazardous materials loaded/unloaded at facilities will be covered. (13, 26)

RESPONSE: Loading or unloading areas occasionally but consistently used have a probability of being affected by a leak or discharge and therefore should be protected. Thus, the Department has concluded that exempting loading/unloading areas which are not "routinely" or "normally" used from the impermeable surface requirement would substantially increase the risk of a discharge in such areas, as well as increasing the potential for environmental harm.

COMMENT: The proposed rule addresses equipment and procedural requirements for tank car and tank truck unloading areas. The objectives would better satisfied through a case by case evaluation, with each facility including information on its procedures in the DPCC/DCR plan. Wording should be incorporated to reflect that "... the Department will consider alternatives to the proposed rules by the owner/operator, submitted as part of the DPCC/DCR plan and justified with regard to reasonable risk, cost effectiveness, materials being handled and other factors." (17)

RESPONSE: If a particular requirement for tank car and tank truck loading/unloading areas is inappropriate for a given facility, the Department will consider alternatives pursuant to N.J.A.C. 7:1E-1.11(e).

COMMENT: Pursuant to N.J.A.C. 7:1E-2.3(b) through (e), who is responsible for ensuring compliance with the requirements for attending and checking transfer operations? The driver or the site representative? For attendance during transfer, should the site representative be present in addition to the truck driver? (11)

RESPONSE: As long as a tank car or tank truck is onsite, the owner or operator of the facility is responsible for compliance with these requirements. As stated in N.J.A.C. 7:1E-2.3(b) through (e), these requirements should have associated SOPs. The site representative and driver may make whatever arrangements they wish for attending the vehicle during transfer operations, and that agreement can be reflected in the SOP.

**N.J.A.C. 7:1E-2.4 In-facility pipes for hazardous substances**

COMMENT: Marked piping in addition to that already in place will increase the cost of compliance by at least $5,000. This additional marking will not improve discharge control at the facility. (30)

RESPONSE: Marking of in-facility pipes will aid in the rapid identification of a hazardous substance contained therein in the case of a leak or discharge. This will improve the cleanup response time and may prevent a leak from becoming a discharge. A capital cost of $5,000 is small, particularly compared to the tens of thousands of dollars that could be saved in reduced cleanup costs.

COMMENT: Several commenters state that allowance should be made for pipe content identification adjacent to but not physically on the pipe in question. (35, 40, 47)

RESPONSE: The Department believes that for the most accurate identification of the pipe contents, the identification should be physically on the pipe and no change to the rule has been made. However, because each facility is different, other types of markings may be appropriate, and the owner or operator can recommend an alternative pursuant to N.J.A.C. 7:1E-1.11(e).

COMMENT: Several commenters stated the marking of in-facility pipes, as required by N.J.A.C. 7:1E-2.4(a), is already required by the New Jersey Worker and Community Right to Know Act and the rules promulgated pursuant thereto. Inclusion in these rules as a separate and distinct requirement is, therefore, not necessary. N.J.A.C. 7:1E-2.4(a) should simply reference the existing "right to know" rules as an acceptable means of identifying the substances transferred through in-facility pipelines. This would avoid establishing a second set of criteria for marking that would be confusing and burdensome to maintain.

If this requirement is not deleted, the following should be added at the end of the first sentence: "If a facility is subject to the labeling requirements of the New Jersey Community and Worker Right to Know Act, compliance with those labeling regulations shall be deemed to satisfy the requirements of this subparagraph." Alternate suggested language is "In-facility pipes should be labeled in accordance with Department of Health Right to Know rules. Where appropriate, lettering, color banding or color coding should be used." (17, 26, 28, 39, 40)

RESPONSE: The existing "right to know" labeling rule, N.J.A.C. 8:59-5.2(a), requires all pipes to be labelled only at the valve or valves at which a substance enters a facility and at normally operated valves, outlets, vents, drains and sample connections designed to allow the release of a substance from the pipe. The Department is requiring only those pipes which contain hazardous substances as defined in N.J.A.C. 7:1E-1.7 to be labelled. This will allow the owner or operator to identify a hazardous substance when it is leaking from anywhere on the pipe, not just at valves or other normal release points. Lettering, color coding or color banding previously completed to be in compliance with the original discharge prevention rules, will be deemed in compliance with this provision because it has not changed since its first adoption in 1979.

COMMENT: Two commenters are concerned about the requirement for product-sensitive leak detection devices for buried pipes. For a large facility, such as a (petroleum) marine transfer facility, pipelines may be fairly dedicated to specific materials. However, in significantly smaller chemical facilities, particularly those which utilize batch processes, there could be a universe of products. Identifying a device which could be product specific may be impossible or, if identifiable, could be impractical with regard to an ability to achieve proper calibration. (17, D)

RESPONSE: According to the definition of "state of the art" in N.J.A.C. 7:1E-1.6, is using a specific device is impractical or impossible, then it is not state of the art, and need not be implemented.

COMMENT: Two commenters state that requiring both secondary containment and a leak detection device is redundant. Double walled piping with secondary containment provides for observation of leaks; therefore, the routine inspection of such piping would satisfy the Department's legitimate interest in controlling spills from such piping (25, 26)

RESPONSE: The double walled piping provision is for buried piping only. Routine inspection is not possible for buried piping, therefore, detection devices are needed to discover leaks.

COMMENT: N.J.A.C. 7:1E-2.4(b) requires that new buried pipe be double walled. This practice, although common in the past, has been highlighted as an accelerating corrosion mechanism by the National Association of Corrosion Engineers. A system design of this type using carbon steel pipe is very difficult and will typically create a higher internal pipe corrosion rate then if the pipe was just exposed to the soil. This should be modified to require new underground lines to be externally wrapped or coated using commercially available products. (40, M)

RESPONSE: N.J.A.C. 7:1E-2.4(b) specifies that new buried piping shall be either double walled or have adequate secondary containment and a product sensitive leak detection system, where such device is state of the art. The owner or operator can determine which of these standards is most appropriate for a particular situation.

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COMMENT: A definition of double walled piping should be included in the rules. (I)

RESPONSE: The Department intends the common meaning to be ascribed to the term, that is one pipe attached inside another with an annular space between. A definition containing this meaning has been added to the rules.

COMMENT: Methods of leak detection besides product sensitive leak detection should be allowed, such as testing of lines. (I)

RESPONSE: If no product sensitive leak detection devices are considered state of the art technology, alternative methods will be considered under N.J.A.C. 7:1E-1.11(e).

COMMENT: Will the Department provide guidance to the regulated community whether and which product-sensitive leak detection devices are state-of-the-art technology? If not, what sources are available for such guidance? (11)

RESPONSE: The Department intends to assemble a data base of devices that potentially can be used for leak detection, and to provide technical assistance to regulated industry by the end of the year and on an on-going basis. This assistance will consist of guidance documents and other information as requested. Although the Department will compile such information, the technology in this area is rapidly changing, and technical information is also available from manufacturers and vendors of leak detection devices, from industry periodicals, and from technical reference manuals.

COMMENT: N.J.A.C. 7:1E-2.4(c) would require the installation of leak detection systems on existing underground piping if such systems were state of the art technology. One commenter notes that according to the proposed definition of state of the art technology, the technology must be capable of significantly reducing the likelihood of discharges, be commercially available and cost effective. As long as the definition of state of the art technology is not substantially modified in the final rules, the commenter does not object to this requirement. (26)

RESPONSE: The definition of "state of the art technology" has not been changed.

COMMENT: With regard to the phrase at N.J.A.C. 7:1E-2.4(c), "Existing lines shall be equipped" this is not possible or feasible on existing facilities. Provision must be made for "when replaced." (29, 47)

RESPONSE: Existing buried pipes at major facilities were covered under the previous rules and were required to have product sensitive leak detection devices which were best practicable technology. Therefore, a significant number of facilities already should have complied. The rule requires product-sensitive leak detection devices only where such devices are state of the art technology. If their use is not possible or feasible, then they are not state of the art and do not have to be installed.

COMMENT: A small repair to existing pipes, for example replacement of even a 20 foot section, should not require the designation of the entire pipe run as "new piping." (17)

RESPONSE: The rule defines "substantial reconstruction" as any restoration, refurbishment, renovation or relocation of existing equipment which incurs cost equal to 50 percent or more of the replacement value of the equipment or which impairs the physical integrity of the equipment or its monitoring systems. For piping systems, the Federal standard of the distance between valves will be considered the existing equipment, not the entire pipe from end to end.

COMMENT: With regard to a requirement to install valves at both sides of a pipeline across a roadway, such a rule should be proposed only if there is sufficient documentation of a problem. It is one commenter's experience that this scenario has not been a concern or a problem in New Jersey. (17)

RESPONSE: This requirement was contained in the earlier interested party draft; however, the present N.J.A.C. 7:1E-2.4 does not require the installation of valves on both sides of a pipeline across a roadway.

**N.J.A.C. 7:1E-2.5 Process areas at major facilities for hazardous substances**

COMMENT: Existing buildings should be grandfathered and exempt from the requirement to be engineered to provide secondary containment or diversion systems. (13)

RESPONSE: Drainage from leaks in existing process buildings have the potential to cause a discharge. Some sites requiring cleanup under Superfund or ECRA were contaminated by hazardous substances from buildings. Therefore, the Department does not believe it is appropriate to exempt these buildings.

COMMENT: N.J.A.C. 7:1E-2.5(a), as currently worded, would literally require that facilities be surrounded by impermeable secondary containment. Several commenters believe it was the Legislature's intent to require that process areas be designed such that leaks would be prevented from becoming discharges to the waters of the State, and not that an entire facility be designed such that all drainage from process areas be directed to secondary containment. (26, 39, 42)

RESPONSE: The facility does not have to be surrounded by secondary containment unless that is the only way to prevent leaks in process areas from becoming discharges. The wording at N.J.A.C. 7:1E-2.5(a) covers only those areas of the facility used in production, and allows for secondary containment or a diversion system; either may be used, as appropriate. These are the two established methods of preventing leaks in process areas from becoming discharges.

COMMENT: The status of existing process areas, storm drains, cooling water systems, etc., needs clarification. (25)

RESPONSE: Existing process areas, storm drains, etc. must be addressed in the DPCC plan along with a schedule for upgrading to meet the standards of this subchapter pursuant to N.J.A.C. 7:1E-1.11(b).

COMMENT: Pursuant to the proposed rule, existing buildings could require retrofitting with secondary containment having an impermeable surface, which may not have been intended by the Department. (25)

RESPONSE: The Department intended that existing buildings be retrofitted with either a secondary containment having an impermeable surface or with a diversion system. Either option will prevent leaked hazardous substances in process areas from becoming discharges.

COMMENT: What constitutes a "production facility?" (23)

RESPONSE: A production facility is synonymons to process areas, and has been added to that definition.

COMMENT: Requiring existing facilities' process areas to be engineered for secondary containment appears to be redundant and incorrect in that the term leakage, which applies to secondary containment, is not the same as a release or discharge. As such, the offense and fine are inappropriate unless, or until, a discharge or release has occurred. Furthermore, this is covered under the Clean Water Act if the hazardous substance is discharged and if the result violates a permit condition. This section should be deleted. (29, 47)

RESPONSE: Discharges of hazardous substances are prohibited by the Spill Act at N.J.S.A. 58:10-23.11c. Providing secondary containment or diversion systems at existing process areas will prevent discharges from occurring from such areas. No change to the rule has been made.

**N.J.A.C. 7:1E-2.6 Facility drainage and secondary containment**

COMMENT: "Transferred" should be defined. Also, the proposed rule is unclear as to whether it means diversion systems are required for pipes at flanges, valves, etc. (25)

RESPONSE: The definition of "transfer capacity" is the maximum quantity of hazardous substances which can be transferred into or out of a facility in a 24 hour period. A definition of "transfer" has been incorporated from the Spill Act into these administrative rules. A secondary containment or diversion system for pipes at flanges and valves could include drip pans in the event of a leak. However, such items do not need to have permanent secondary containment, unless the pipe is a new buried pipe.

COMMENT: As currently written, N.J.A.C. 7:1E-2.6 require that leaks from areas such as "transfer piping" be prevented from becoming a discharge. Based on the expansive definition of "transfer piping" articulated in the June 6, 1991, Public Hearing, facilities have hundreds of miles of aboveground piping that are used in the transfer of petroleum products with the facility. These transfers are performed throughout the day and have had discharges of small quantities of oil only a few times each year. These discharges have been detected quickly, controlled, and cleaned up without causing any measurable environmental impact. The installation of containments below these "transfer pipes" will provide minimal reduction in potential risk to the environment but will require enormous capital resources to accomplish. A definition of "transfer" should be added to the rule that limits its coverage to "transfers" in and out of a facility and excludes within facility transfers, or which applies only to piping immediately adjacent to facility boundaries which transfer material into or out of the major facility. At the very least, existing pipes should be grandfathered as the cost of retrofit cannot be at all justified.

Alternately, in N.J.A.C. 7:1E-2.6(a), before "All portions or areas" insert "To the maximum extent practicable." The economic costs associated with the installation of containment equipment would easily exceed hundreds of millions of dollars in the State. Several commenters believe that the Department did not intend such an economically disastrous effort for areas of the facilities that pose extremely limited environmental risk. The Department will have an opportunity to review

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the proposed extent of secondary containment in the facility's DPCC/DCR plan to ensure its adequacy. (26, 27, 35, 39)

RESPONSE: The Department agrees that the intent for transfer piping should be clarified. The definition of "transfer" used in the Spill Act has been added to the rules. This definition makes it clear that it was the intent of the Spill Act to apply standards for transfers only to transfers into and out of facilities.

COMMENT: Two commenters state that this section directs that "all areas of a facility be secondarily contained" where materials are handled, processed and transferred. This would include roadways, areas where process piping crosses overhead, across buildings, roads, etc. It is impossible to comply within the real world. (29, 47)

RESPONSE: N.J.A.C. 7:1E-2.6(b) gives the option of secondary containment or diversion systems. The added definition of "transfer" clarifies what piping within a facility needs to be included. In-facility piping requires secondary containment or diversion system only when it is buried. This requirement is a necessary part of the overall protection from discharges.

COMMENT: In N.J.A.C. 7:1E-2.6(b), after "Impermeable" insert "or other appropriate." Impermeable secondary containment, as defined in the proposed rules, is not necessary in all portions or areas of a major facility. The quantities of substances that could leak and therefore create risk to the environment does not merit the cost of installing such containments or diversionary systems. (39)

RESPONSE: The Department does not agree and believes that this is appropriate since this requirement is a necessary part of the overall protection from discharges. The quantity of hazardous substance is not the only factor in determining risk to the environment. The permeability of the surface and how long it takes to cleanup and remove a discharge are factors that contribute to the risk. Requiring impermeable secondary containment or diversion systems in those areas covered by these rules reduces this risk. Therefore, no change to the rule has been made.

COMMENT: The proposal that, "... secondary containment or ... will block all probable routes ..." leads to an inescapable extension that the Department expects an entire plant site to be covered with an impermeable material. (17)

RESPONSE: The wording at N.J.A.C. 7:1E-2.6(c)1 is that all probable, not possible, routes by which a leaked hazardous substance could reasonably be expected to become a discharge are blocked. The Department is not requiring the entire site to be covered with impermeable material, as long as this requirement is met.

COMMENT: Building a secondary containment "swimming pool" is very difficult and expensive. One commenter would have to buy buildings, dedicate an area, dig swimming pools, get all the permits and so forth and so on before proceeding with the loading and unloading tank facility. There are alternatives. For example, equipment that could pump out of a tank faster than it leaks would mean that a smaller secondary containment system could be built at a cost savings. (A)

RESPONSE: If a particular method of discharge prevention is inappropriate for a facility, the owner or operator can substitute an alternate method which is comparable in its ability to prevent discharges, pursuant to N.J.A.C. 7:1E-1.11(e).

COMMENT: Redesign and reconstruction of rail facilities will be inordinately expensive and time consuming, if possible at all. Impermeability can be achieved with fiber reinforced concrete built on stainless steel rebar—at a thickness of eight inches costing $96,500 to construct with $8,000 yearly maintenance fee. What that $96 thousand does not take into account is the situation where a facility may have materials stored in rail cars on a rail siding. A facility would be required to build a secondary containment for a rail siding which could include pulling up the rail siding, digging a very large swimming pool and somehow reconstructing the rail siding over this swimming pool. In order to control a spill that related from a hole in any section of a tank, the entire rail site would have to be underlined after pulling up the entire track and that seems awfully expensive. (29, N)

RESPONSE: Tank car sidings are exempt from the secondary containment requirement as they are not considered storage tanks. Therefore, there would be no need to underline the entire rail site. However, secondary containment or diversion systems must be installed in the specific areas of the site used for loading or unloading.

COMMENT: Two commenters state that N.J.A.C. 7:1E-2.6(c)2iii and iv are inappropriate in the context presented, that is, six inches of containment, where rainwater accumulates with reference to buried pipes and process areas and flow drains. (29, 47)

RESPONSE: Under N.J.A.C. 7:1E-2.6(c)2, the requirement for containment of six inches for rainwater only applies if a structure is located so that rainwater could accumulate in it. Secondary containment for buried pipes or process areas that are under a roof or the ground would not be located such that rainwater could accumulate.

COMMENT: The requirement to accommodate six inches of rainwater is unreasonably conservative. Six inches represents a 25-year storm. It incorrectly assumes that a full tank also fails during a 25 year rainfall. In reality, many storage tanks are only filled to the safe fill which incorporates the location of the high level alarms and the rate of receipt. Typically, this safe fill ranges from 80 to 95 percent of the tanks volumetric capacity. During 25 year storms, special measures could be taken to manage the storm water or relocate the hazardous substances, in accordance with N.J.A.C. 7:1E-2.9. Typically, as an industry standard, 110 percent of tank capacity has been successfully used at major facilities for design of spill containment. (13, 26, 39, 42)

RESPONSE: The standard for the volume of secondary containment will not be changed. A 25 year storm was chosen as a worst case, although it is not the worst case. A factor of 110 percent for this volume is dependent upon the volume of the tank and may not provide an equivalent volume to the six inches of rainwater. In parts of southern New Jersey, 25 year storms have occurred several times in the last few years. An important part of discharge prevention and response is being prepared for such contingencies.

COMMENT: At N.J.A.C. 7:1E-2.6(c)2, the phrase "accommodate six inches of rain water" should be replaced with "adequate capacity of rainwater." Existing dikes which are adequate for the previous N.J.A.C. 7:1E rules should either be grandfathered or the facility should be permitted to develop a plan to come into compliance subject to the Department's review and approval. (25)

RESPONSE: The phrase "adequate capacity of rainwater" is too vague a standard to provide guidance to the regulated community. The rule now clearly establishes what is considered "adequate." Existing equipment will be provided a period of time to upgrade to these standards, pursuant to N.J.A.C. 7:1E-1.11(b).

COMMENT: Those portions of a "major facility" which are located remotely from major storage areas and that only store small quantities of hazardous substances (that is, 1,000 gallons or less) should be exempted from secondary containment requirements for delivery vehicles. Delivery times would be short, infrequent and would be attended by a facility employee. (28)

RESPONSE: An exemption is not appropriate. While attendance by a facility employee during a transfer operation is required by these rules, that is not sufficient to prevent a discharge. Secondary containment or a diversion system for the delivery vehicle is necessary to contain any leaks. Short or infrequent deliveries do not reduce the risk of a discharge from a transfer operation.

COMMENT: Regarding the tank car loading/unloading spill containment requirement that it be sufficient to contain the largest compartment of the vehicle, it is rare to find a multi-compartment tank car. As such, the containment systems must be sufficient to contain 10,000 to 42,000 gallon tank cars depending on the size received. Due to Federal Railroad Administration Standards and the AAR Rule 90-3-8 which addresses tank car structural integrity and has set the maximum useful life for tank cars, the likelihood of a catastrophic failure of a stationary tank car is virtually nonexistent. If a discharge is to occur, it will most likely occur during supervised loading/unloading. Based on an extreme unloading rate of 300 gallons per minute and a 10 minute response time, maximum discharge should not exceed 3,000 gallons. (13)

RESPONSE: The requirement is for a secondary containment or diversion system, as appropriate. A system which is capable of diverting the volume of the largest compartment in the tank car or tank truck so that it does not become a discharge is acceptable.

COMMENT: The proposal requires clarification as to what constitutes secondary containment for buried pipes. "Volumetric flow rate through the area" should be replaced with "volumetric flow rate of leaking equipment, largest pipe, etc." (25)

RESPONSE: The Department believes that N.J.A.C. 7:1E-2.6(c)iii addresses the commenter's concern. That provision states that for buried pipes, the capacity of secondary containment must be the maximum volumetric flow rate multiplied by the maximum amount of time between the detection of a leak and the shutdown of the pipe.

COMMENT: Two commenters state that N.J.A.C. 7:1E-2.6(c)2iv should be replaced in its entirety with: "For process areas, the volume

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of the largest piece of equipment in the area, or the largest anticipated spill using best professional judgment." (26, 39)

RESPONSE: The Department believes that N.J.A.C. 7:1E-2.6(c)2iv, as adopted, already addresses the commenter's concern. That provision requires that the capacity of the secondary containment or diversion system for process areas would have to reflect the volume of the largest piece of equipment in the area, or the volumetric flow rate through the area multiplied by the maximum amount of time between the detection of a leak and the shutdown of the system, whichever is greater. This calculation represents the volume of the largest anticipated leak, in the Department's best professional judgement.

COMMENT: In N.J.A.C. 7:1E-2.6(c)3ii, does the visual detection extend to the underside of the field erected tanks, or only to the exterior walls? Would a field erected tank having a false second bottom with ports for collecting leakage satisfy the visual detection of leaks requirement at N.J.A.C. 7:1E-2.6(c)3ii, and if so, can an existing system that does not have a second bottom be upgraded to provide for visual inspection? (21)

RESPONSE: The visual detection of leaks applies to the interior of the secondary containment, not the area beneath the tank. Therefore, there is no need to upgrade existing tanks to allow for visual inspection of the bottom.

COMMENT: Two commenters state that N.J.A.C. 7:1E-2.6(c)7 may not be implementable due to other regulatory constraints such as CWA, NJPDES, SIU, and RCRA. (29, 47)

RESPONSE: N.J.A.C. 7:1E-2.6(c)7 requires that provision be made for promptly removing leaked hazardous substances from a secondary containment or diversion system. If any other rules address this situation for a specific facility, provision can be made to incorporate these additional requirements in the DPCC/DCR plan, if the prompt removal must be in compliance with any of these other rules.

COMMENT: At N.J.A.C. 7:1E-2.6(d) the phrase "reasonably expected to become a discharge" should be replaced with "reasonably expected to become a discharge into a body of surface water." (25)

RESPONSE: The Department does not believe this change is appropriate. The Legislature's intent is to prevent any discharge of petroleum or other hazardous substance to the lands or waters of the State, including groundwater.

**N.J.A.C. 7:1E-2.7 Marine transfer facilities**

COMMENT: In very valuable habitats, there ought to be a complete cessation of all transfers done during certain parts of the year, in particular in the Cape May area where if there was a major oil catastrophe or spill of another sort during the time the horseshoe crabs were using it for breeding or red knots or other migrants were using that area to feed it would be a loss of endangered species. (F)

RESPONSE: The Department agrees that environmentally sensitive areas must be protected and that some areas are more sensitive than others. These areas will be addressed in a facility's DCR plan as part of the environmentally sensitive areas protection plan. Furthermore, certain species or areas, such as the horseshoe crab and its nesting areas, are being considered for additional, specific protection via legislation. However, the information presently available to the Department does not support a regulatory requirement for a complete cessation of all transfers on the Delaware Bay and River during certain parts of the year as reasonable.

COMMENT: N.J.A.C. 7:1E-2.7(a) incorporates by reference the USCG rules and regulations. To the extent that the Department intends its proposed rules to govern in the event of conflict with the USCG regulations, the Department should provide notice of such intent. (26)

RESPONSE: The Department is not aware of any conflicts between these rules and USCG rules. However, if a conflict were to arise, the USCG rules would govern.

COMMENT: N.J.A.C. 7:1E-2.7(c) and (d) are a problem because there is not sufficient space available aboard many vessels, especially barges, to accommodate the length of booming that is contemplated by these rules. Vessels should be permitted to ensure that a sufficient amount of boom is available from a land-based source or sources on a rapid deploy basis before transfer operations commence. (43)

RESPONSE: The boom need not be stored aboard a vessel. Only if the vessel intends to engage in a vessel-to-vessel transfer away from an onshore facility must the vessel be responsible for the boom. If a transfer from a vessel to an onshore facility is occurring, it is the responsibility of the facility to provide the boom. In the case of vessel-to-vessel transfers, the boom can be obtained from a land-based source, as long as it is deployed or ready for rapid deployment as required by N.J.A.C. 7:1E-2.7.

COMMENT: The issue of concern is the wisdom of booming of vessels during the transfer of gasoline. The safety of people and equipment dictates the absence of booming requirements for the transfer of gasoline. Since gasoline is less dense than water and is only slightly soluble in water, it floats on top of the water. With a vapor specific gravity of approximately 3.0 to 4.0, gasoline will form surface vapor clouds. Such vapors are highly flammable. It appears that N.J.A.C. 7:1E-2.7(d) intends to exclude gasoline and such substances with a flash point of less than 100 degrees Fahrenheit (38 degrees centigrade) from booming requirements during transfers. In the interest of safety, to make the matter clear, it is suggested and requested that said paragraph be amended to add as a last sentence the folllowing: Further, this provision expressly intends to exclude the transfer of gasoline from any requirement to boom or to deploy a containment device. (5)

RESPONSE: N.J.A.C. 7:1E-2.7(d), as adopted, addresses the commenter's concern. No additional language is necessary. Gasoline has a flashpoint of less than 100 degrees Fahrenheit. Therefore, no containment device need be deployed prior to transferring gasoline.

COMMENT: N.J.A.C. 7:1E-2.7 describes the deployment of containment boom. The rules are not stringent enough. The gale force winds in N.J.A.C. 7:1E-2.7(i)1 should be changed to 15 knots because experts say that currents of two to three knots along with wind force could overwhelm the boom. If current and wind conditions are such that they do not permit the deployment of boom, then the transfer should be suspended until such time that the conditions are conducive to safe boom deployment. Also, because discharges happen with some frequency during transfer of fuel for ships, or bunkering, booms should also be deployed during transfer of liquid fuels to the vessel from shore or from a lightering vessel. (31, F)

RESPONSE: Booms are often overwhelmed by current or wind conditions. In certain important shipping channels, such as the Arthur Kill, current and wind conditions vary frequently such that the effective use of containment devices is not always possible. Based on information available to the Department, the wind speed in the New York/New Jersey harbor area exceeds 11 knots 40 percent of the time. Requiring the discontinuation of transfer operations during periods of winds over 15 knots would shut down the harbor an appreciable percentage of the time. The Department does not feel that prohibiting such transfers is feasible. As to transfers of fuel, the Spill Act, at N.J.S.A. 58:10.23.11f2b, specifically states that the booming requirements do not apply to the transfer of a hazardous substance to be used solely as fuel to power a vessel. This specific statutory exemption must remain in the rules.

COMMENT: The marine transfer booming requirements will be a boon to the companies that sell booms but they will do little to protect the environment in locations where deployment would be ineffective or would impede navigation. (C)

RESPONSE: The Legislature has determined that the use of booms during all tranfer operations at major facilities will be an environmental benefit (N.J.S.A. 58:10-23.11f2). N.J.A.C. 7:1E-2.7(e) states that if conditions prohibit the immediate deployment of containment device, it must be kept on standby status for rapid deployment if necessary. Conditions that prohibit prior deployment of the boom include booming that would impede navigation, and wind and current conditions that would render the boom ineffective.

COMMENT: The booming requirements of N.J.A.C. 7:1E-2.7 would impede navigation since to get 15 feet away from a ship would be in the middle of the shipping channel in the Kill Van Kull. The deployment not less than 15 feet from the vessel may not be possible if the currents or wind conditions prevent the maintenance of 15 feet. The language should be changed to "... the device shall be deployed not less than 15 feet from the vessel prior to commencement of the transfer operation if conditions allow the 15 feet to be maintained, ..." The reason for this change is the 15 foot requirement would force the installation of anchors and/or bouys out into the navigational channels to fix the booms to. These anchors/bouys could interfere with navigation in the channels and docking of ships or barges. Another problem would be if there were the simultaneous transfer of products that are not allowed to have a boom and products that are required to have a boom. (25, C)

RESPONSE: N.J.A.C. 7:1E-2.7(e) states that if conditions prohibit the immediate deployment of a containment device, such device must be kept on a standby basis for rapid deployment if necessary. This provision expressly includes cases where boom would impede navigation and where one of the products in a simultaneous transfer would prohibit safe

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booming because of flashpoint. N.J.A.C. 7:1E-2.7(h) requires the containment device to be deployed not less than 15 feet from the vessel prior to the commencement of the transfer, but does not require the maintenance of that 15 feet. The Department recognizes that current, wind and other factors can cause the boom to move once it has been deployed. The installation of anchors or bouys is not required. However, this requirement does not state that the 15 feet must be maintained during the transfer operation. Therefore, the language does not need to be changed.

COMMENT: At N.J.A.C. 7:1E-2.7(h) the phrase "required by the Department" should be deleted to match with the intent of N.J.A.C. 7:1E-2.7(d) which allows the containment device to be deployed only if the deployment is not a safety issue or a hazard to navigation. It is unlikely that the Department will have the resources to review each particular deployment to properly judge the requirement. (35)

RESPONSE: The phrase "required by the Department" is needed because N.J.A.C. 7:1E-2.7(h) refers to all of N.J.A.C. 7:1E-2.7. Compliance with all of the standards in N.J.A.C. 7:1E-2.7 is what is required by the Department. As long as these standards are adhered to, there is no need for Departmental approval. There is no need to change the language.

COMMENT: Two commenters recommended that N.J.A.C. 7:1E-2.7(i)2 provide for emergency unloading of a vessel by ending the paragraph with the words, "unless transfer is required as part of the fire response." (26, 35)

RESPONSE: The Department agrees that in some cases the transfer of hazardous substances may be required as part of the response to a fire as well as a discharge. N.J.A.C. 7:1E-2.7(i)2 has been revised to read, "Fire occurs in the vicinity of the transfer operation or nearby portion of the transfer facility, unless such a transfer is required as part of the fire response as summarized in the facility's DCR plan." This makes it clear that the Department does not want transfer operations stopped, if their continuation is the most appropriate action to mitigate the situation.

COMMENT: Regarding N.J.A.C. 7:1E-2.7(i)8, with small spills it is not unusual that no "on-site coordinator" will arrive. This is particularly true when the USCG is involved in other activities. It is recommended that the wording be changed to the effect, "transfers will not begin until approval is given by the USCG or other agency under the National Contingency Plan." (35)

RESPONSE: N.J.A.C. 7:1E-2.7(i)8 allows approval by a Federal or Departmental representative and does not need to be changed. If a discharge occurs during marine transfers, the Federal government agency has primary authority. However, it is not necessarily the USCG. It may be USEPA. Even if no on-scene coordinator arrives, the Department will be in contact with the appropriate agency and will obtain any approvals necessary to resume transfer operations.

COMMENT: The phrase "must be retrieved and disposed of in a proper manner at the expense of the facility or its agent" should be added to N.J.A.C. 7:1E-2.7(k). (F, 31)

RESPONSE: The Department agrees that further clarification is needed here. N.J.A.C. 7:1E-2.7(k) has been revised to read "shall be retrieved and properly cleaned or disposed of by the owner or operator upon completion of the transfer." This clearly states the intent of the Department to ensure that booms do the job of preventing discharges without creating any new problems.

COMMENT: At N.J.A.C. 7:1E-2.7(k) change the wording from "shall be retrieved" to "may be retrieved." If the facility decides to boom a vessel during the entire time it is at the facility it should be allowed to do so. (35)

RESPONSE: The current wording allows the containment device to remain in place during the entire time the vessel is at the facility. There is no requirement to remove the device immediately after the transfer, but rather the option is given to leave it in place until it is no longer needed as a prevention tool.

**N.J.A.C. 7:1E-2.8 Illumination**

COMMENT: The wording of N.J.A.C. 7:1E-2.8(a) should be changed to "transfers using fixed or portable lighting that shall adequately illuminate . . . " (35)

RESPONSE: The Department does not agree that portable lighting is appropriate at a fixed facility. The transfer areas utilized on the shoreside will always be the same. The transfer areas on the vessel will be limited by the types and sizes of vessels the facility can accept. Therefore, it is feasible for all of this lighting to be fixed. The Department believes the only place portable lighting is appropriate is the waterside of the vessel, because constant light could impeded navigation in narrow channels.

COMMENT: Definitions of "transfer connection point" and "transfer work area" would be helpful. (35)

RESPONSE: The phrases used at N.J.A.C. 7:1E-2.8(a)1 and 3 have the same meaning as in the USCG regulations (33 CRF 154) which are cited in N.J.A.C. 7:1E-2.8(c). No definitions have been added to the rule.

**N.J.A.C. 7:1E-2.10 Leak detection and monitoring**

COMMENT: Can these visual inspections be performed by any site personnel as long as they are identified in the SOP? Do any of these inspections, especially N.J.A.C. 7:1E-2.10(a), require special training or certification? (11)

RESPONSE: Visual inspections may be performed by any site personnel identified in the SOP as long as they are trained as to what to look for. The Department has not established standards for what constitutes adequate training or certification of these inspectors, but the owner or operator of a facility may establish such standards if they wish. If OSHA or any other regulatory group has requirements for training, these requirements must, of course, be followed.

COMMENT: Two commenters stated that the inspection requirements are onerous and go beyond the objective of ensuring that no leak has occurred or is occurring. In general, the requirements for any inspection program should be related to the types and quantity of the materials involved, the proximity of that material to the waters of the State, the existence of diversionary systems, secondary containment or leak detection equipment and other similar factors so that there is a rational connection between the rigor of the inspection program and the risk of a discharge to the waters of the State. The proposed inspection rules do not have such a rational connection. (26, 39)

RESPONSE: The Legislature has determined that an inspection schedule of at least once per month for many types of equipment is appropriate (N.J.S.A. 58:10-23.11d12). The inspection frequencies are based on use rather than other factors proximity to water or the existence of secondary containment. Discharges are more likely to occur at points where they are most often handled, which includes transfer areas and equipment. The larger the quantity of hazardous substance that is present in a given area or piece of equipment, the higher the risk of a leak or discharge, as covered by the Act so storage tanks are also frequently inspected. These high risk areas have the highest frequency of inspection.

COMMENT: Four commenters state that this section poses a tremendous burden for unmanned facilities. The owner or operator of the facility should be able to propose an inspection program and schedule for such facilities which could be submitted to the Department for approval. This will ensure that an acceptable level of inspections takes place while taking into account the lack of full time employees at the facility. (25, 26, 42, 39)

RESPONSE: The Department believes that no change can be made in the inspection schedule for unmanned facilities without substantially increasing the risk of environmental harm from a discharge at such facilities. The potential for discharge at unmanned locations is higher than for attended areas, since a leak which otherwise would have been identified promptly would be missed. A tour through the unmanned facility by one employee on the required time schedule will suffice. For unmanned transfer areas, the driver or other person taking delivery can perform the pretransfer inspections. The inspection schedule at N.J.A.C. 7:1E-2.10(a) is necessary to ensure leaks or discharges are promptly identified so that mitigation measures can commence.

COMMENT: One commenter supports the use of API Standards. In general, large, atmospheric-pressure storage tanks used in the chemical industry are built to these Standards. Pressurized vessels, on the other hand, would be built to ASME or ANSI Standards. For this reason, the rules should be broadened to include industry-accepted procedures. For technical reasons, as well as cost-related factors, the rules should allow a facility to propose an inspection frequency. The facility should be permitted to suggest its own inspection schedule, based on its site specific factors. (17)

RESPONSE: Standards for building pressure vessels, such as ASME provides, do not contain frequencies for testing over the lifetime of the equipment. Pressure vessels are subject to harsher service; therefore, inspecting the interiors of such tanks every five years is appropriate. General industry standards were used in setting the inspection schedule for the interior of tanks, and the Department believes a maximum period of five years between inspections is appropriate. If the owner or operator

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of a facility can demonstrate that a different schedule will provide equivalent protection, that schedule can be proposed as part of the DPCC plan, pursuant to N.J.A.C. 7:1E-1.11(e).

COMMENT: Several commenters state that requiring all equipment and portions of the facility to be visually inspected on the proposed schedule is excessive and burdensome without regard to benefit derived. Such inspections will not provide for a measurable reduction in potential discharges. The manpower and documentation for this will require the addition of additional full-time staff (not included in economic impact analysis) as well as causing daily delays and being unfeasible due to process equipment/lines in continuous service. The inspections on a daily basis of piping, valves and other equipment that rarely leak will direct large amounts of resources at low environmental risk areas. For example, at the Bayway Refinery in Linden there are approximately 15,000 valves that are used in the transfer and processing of liquid petroleum products on a continuous, ongoing basis. Each of these valves has between three and seven associated flanges. The proposed rules require that prior to each transfer, or at least weekly, each valve, flange, connection, pump and aboveground pipe be inspected. This equates to a minimum of 45,000 inspections per week alone just for the valves and associated flanges. (27, 47, 29)

RESPONSE: The Department agrees that it was not the intent to require inspection of every pipeline in a facility and has revised the requirements of N.J.A.C. 7:1E-2.10(a) to clarify what equipment is to be inspected. Only valves, pumps, flanges and connections which are aboveground and which will be involved in a given transfer must be inspected prior to that transfer occurring. "Transfer" has been defined as it is in the Spill Act, so it includes only those movements in and out of the facility, and does not include process lines. The quarterly inspection covers aboveground equipment such as valves and pumps, recognizing that below ground equipment is not readily accessible. Additionally, only storage tanks of greater than 2,000 gallons in size need to undergo interior visual inspection. These changes more clearly define which equipment is subject to inspections and should address the commenters' concern as to the amount of equipment involved. In the case of the Bayway Refinery the number of inspections per week would be closer to 3,500 and many of the quarterly inspections can be combined with those required by air pollution control rules (N.J.A.C. 7:27-16.6). This will in turn reduce the amount of recordkeeping, thus greatly reducing the economic impact of this requirement.

COMMENT: One commenter states that the requirement for visual inspections should be dispensed with for systems that are subjected to hydrostatic pressure testing prior to each transfer or that meet the proposed criteria in N.J.A.C. 7:1E-2.2(a)4. For insulated systems, a visual inspection of the insulation surrounding the system for visible evidence of a leak should be allowed in place of visibly inspecting each component beneath the insulation. (44)

RESPONSE: The Department recognizes that the designs of major facilities differ and that appropriate methods of discharge prevention vary, and agrees that visual inspections for systems subjected to hydrostatic pressure testing prior to each transfer may not be required and that such testing would be substituted for usual inspection pursuant to N.J.A.C. 7:1E-1.11(e). Also, visual inspection of insulation surrounding a system would be acceptable because that is the part of the system which is visible. However, tanks that meet the criteria in N.J.A.C. 7:1E-2.2(a)4 cannot be exempted because the past history of a storage tank is not always a reliable indication of the tank's future integrity.

COMMENT: Two commenters state that the inspection requirement in N.J.A.C. 7:1E-2.10(a)1 is excessive and does not differentiate between facilities which may be involved in transfer operations on a continuous basis and those which may receive shipments of oil or other hazardous substances several times a year. If hazardous substances are not received on a daily basis, there should be no requirement for daily inspections of transfer areas. After "not impermeable" delete ";" and insert ". Hazardous substance transfer areas shall only be required to be inspected on those days when such substances are being transferred or when being temporarily stored in any component of the transfer equipment."

Furthermore, unless additional persons whose sole responsibility would be to inspect "pumps, flanges and connections" were employed at each major facility, it would be impossible for major facilities to comply with the requirement for daily inspections of such equipment. (26, 39)

RESPONSE: N.J.A.C. 7:1E-2.10(a)1 requires visual inspections prior to each use of the equipment. This applies to transfer equipment, which, with the definition of transfer incorporated from the Spill Act, only involves movement of hazardous substances into and out of the facility. The inspection is required only just before a transfer, so areas that do not have transfers occurring every day do not have to perform inspections every day.

COMMENT: The requirement that all valves, pumps, flanges and connections be inspected prior to each transfer is a manpower intensive process that is not necessary. This would imply that every piping system in a process plant would have to be inspected every day and a written log be kept of the inspection. When plant operators are required to walk through process plants and monitor operating equipment they are performing the function that the Department intends as a part of their normal routine, and thus an additional inspection is not required. Tank-field operators are also required to make regular inspections in the tank basins where transfers are taking place. (40)

RESPONSE: Visual inspections are to be performed on each valve involved in the transfer, as now defined in the rules, prior to each use, unless they are not readily accessible. Not every valve in a facility needs to be inspected prior to a transfer, only those involved in the transfer.

COMMENT: The proposed requirement that all transfer valves, pumps, flanges and connections be visually inspected "prior to each use" would be virtually impossible to implement in a batch plant. With 20 or 30 products being pumped to 10 to 15 batch tanks several times during each shift over a distance of several hundred feet, the commencement of a "use" is not really identifiable. Therefore, the operation would come to a complete halt if the equipment has to be inspected "prior to each use." Additionally, such inspections are unnecessary. It is recommended that an inspection frequency of once weekly be adopted for batch plant operations. Weekly inspections are well in accordance with established "best management practice." It is also totally unwarranted to require visual inspection of "all transfer valves, pumps, flanges and connections" for all transfers if the area in question is protected by secondary containment. (15, 26, 40)

RESPONSE: Transfer has been defined in N.J.A.C. 7:1E-1.6 as the movement into or out of a facility of a hazardous substance. Thus, transfers between pieces of equipment within the facility are not covered, and batch operations are not subject to the inspection requirements of N.J.A.C. 7:1E-2.10(a)1. The equipment in a batch operation is subject to a quarterly inspection requirement, pursuant to N.J.A.C. 7:1E-2.10(a)4. This is less frequent than recommended by the commenters, but the Department believes it is sufficient and can be combined with quarterly inspections for the air pollution control program, pursuant to N.J.A.C. 7:27-16.6. Also, while secondary containment will hold leaks, unless the leaks are discovered and repaired, secondary containment could overflow, causing a discharge.

COMMENT: With regard to its use at N.J.A.C. 7:1E-2.10(a), "transfer piping" needs to be specifically defined under N.J.A.C. 7:1E-1.6 to exclude the normal transfer operations within the facility. Alternately, define "transfer." Does this mean transfers between tanks or transfers outside of the facility? (35)

RESPONSE: The Act at N.J.S.A. 58:10-23.11bs defines transfer to apply to onloading of or offloading from a major facility. This definition has been added to the rules. The term "transfer piping" is not used in these rules; it need not be defined.

COMMENT: At N.J.A.C. 7:1E-2.10(a)3 the use of the phrase "storage area" is unclear. It should be related to only storage areas that contain hazardous substances. Additionally many parts of the diversion systems and aboveground pipes are not easily accessible for visual observation. A suggested wording is "once weekly, all other storage areas that contain hazardous substances in a quantity sufficient to create a discharge and secondary containment or diversion systems and all aboveground pipes, which are accessible." (35)

RESPONSE: The Department agrees that the phrase "storage area" is unclear and has added the phrase "using hazardous substances" after "equipment and portions of the major facility in service" in N.J.A.C. 7:1E-2.10(a).

COMMENT: The inspections that could be performed and provide the largest potential benefit to the environment would be those related to transfer operations that are not protected by a secondary containment or diversion system. The proposed wording change is as follows: "Once quarterly, valves, pumps, flanges, connections and equipment which are not readily accessible as described in 1. above and all security fences and locks; and". This assumes the adoption of a more restrictive definition of "transfer piping". (26, 35, 39)

RESPONSE: The language in N.J.A.C. 7:1E-2.10(a) has been revised to clarify that the equipment involved in transfers as now defined in the rules is the only equipment to be inspected prior to use. All the

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visual inspections are required regardless of the presence of secondary containment because undetected leaks could result in an overflow of secondary containment and a discharge.

COMMENT: With regard to N.J.A.C. 7:1E-2.10(a)4, underground or subterranean piping is not readily accessible and should be excluded. (25)

RESPONSE: It was not the Department's intent to require the inspection of underground equipment. N.J.A.C. 7:1E-2.10(a)4 has been reworded to read "once quarterly, all other aboveground valves, pumps, flanges, connections and equipment not inspected pursuant to (a)1, and all security fences and locks; and . . ."

COMMENT: Not all tanks can be visually inspected inside. Other nondestructive testing methods should qualify to satisfy the inspection requirement in these cases, such as shell thickness tests. (28)

RESPONSE: The Department agrees that not all tanks can be visually inspected inside; therefore, the term aboveground has been added to (a)5 and tanks of 2,000 gallons or smaller in capacity have been exempted. If visual inspection of any other tank is impossible, the owner or operator may substitute an alternative method pursuant to N.J.A.C. 7:1E-1.11(e).

COMMENT: It is recommended that the visual inspections of transfer piping be changed to once every month and eliminate the documentation of every valve, flange, connection, pipe and pump. Such recordkeeping of all visual inspections is an unreasonable burden and is of no direct benefit to mitigating leaks or discharges. (25, 27, 39)

RESPONSE: Any piping involved in transfers, as defined in the rule, must be inspected prior to a transfer occurring. Any other piping must be inspected quarterly. This should not be a burden and will help in the location and mitigation of leaks and discharges. The records kept of these inspections can be a checklist or other short, standardized form, as deemed appropriate by the facility. These records are necessary and reasonable so that both the owner or operator and the Department can ensure the proper inspections are being performed.

COMMENT: The requirement to retain all records of these visual inspections will create a large drain on the resources at the facility. The retention of these documents will not have a positive effect on lowering the potential for discharges. Each major facility should be allowed to propose a record retention method as part of the DPCC plan. As an example, at some facilities the record retention may be provided by an existing work order/maintenance program that is already in place. (35)

RESPONSE: The records of visual inspections can be very simple; they do not need to be complex. Keeping records will help in establishing useful statistical records; furthermore, the Spill Act requires visual inspections and recordkeeping of these inspections, at N.J.S.A. 58:10-23.11d12 and d13.

COMMENT: Facilities already under an ACO with the Department have an approved groundwater monitoring program and should be exempt from N.J.A.C. 7:1E-2.10(c). (25)

RESPONSE: Because the groundwater monitoring suggested by the commenter does not serve the legislative intent of preventing discharges, the Department has not changed the rule to provide the exemption suggested. The groundwater monitoring program is a last resort and is required only when a leak or discharge is unlikely to be detected by personnel, product gauging or a leak detection system or other means acceptable to the Department. Once the groundwater is contaminated, it is too late for a quick and easy cleanup.

COMMENT: Two commenters state that a separate groundwater monitoring program is not implementable given permitting times of one to two years. (29, 47)

RESPONSE: The groundwater monitoring program is only to be used as a last resort when all other measures of detecting leaks or discharges, such as product gauging or leak detection systems, prove inadequate. If a groundwater monitoring program is necessary this can be included in the schedule proposed by the facility pursuant to N.J.A.C. 7:1E-1.11(b).

COMMENT: Two commenters state that N.J.A.C. 7:1E-2.10(c) would require that a groundwater monitoring program in compliance with N.J.A.C. 7:14A-6 be instituted unless a leak is likely to be detected by inspection, product gauging or detection equipment. The requirements for a groundwater monitoring program pursuant to NJPDES discharge to groundwater program go far beyond that which is necessary to determine whether any equipment is leaking and therefore this requirement is overly broad.

By definition a leak is into an impermeable secondary containment or diversion system. The hazardous substance will not be in contact with the waters of the State or soils. Groundwater monitoring would provide no useful information other than to verify that the leak was not a discharge. The requirement should be rephrased to allow the owner/operator the ability to remove the leaked substance from the secondary containment or diversion system and to evaluate if the substance had escaped out of the device. If no discharge was detected from this inspection the need to perform a groundwater monitoring program would be a wasteful use of resources. A proposed rewording of the requirement would be to change the word "leak" to "discharge with continuing groundwater impact." (26, 35, 39)

RESPONSE: The Department agrees that this requirement needs to be clarified. The words "or discharge" have been added after "unless a leak," at N.J.A.C. 7:1E-2.10(c). The groundwater monitoring program is a last resort, to be used only if a leak or discharge is not likely to be detected by personnel, product gauging, and automatic leak detection system, or any other means acceptable to the Department. Any other reliable suggestions can be presented for approval as part of the facility's DPCC plan.

COMMENT: Two commenters state that the Department provides no basis for requiring groundwater monitoring programs. The Department is blatantly exceeding its authority and attempting to institute a Statewide groundwater monitoring program. (40, 49)

RESPONSE: The Department is not attempting to institute a Statewide groundwater monitoring program. The groundwater monitoring program is required only if as specifically stated in N.J.A.C. 7:1E-2.10(c), a leak or discharge is not likely to be detected by personnel, product gauging, automatic leak detection system, or any other means acceptable to the Department.

**N.J.A.C. 7:1E-2.11 Housekeeping and maintenance**

COMMENT: N.J.A.C. 7:1E-2.11(a) to "protect hazardous substances from the elements and the possibility of leakage" would require, for example, that containers of lube oil be placed under cover from the elements. This requirement is overly burdensome and will not significantly reduce the potential for a discharge. This section should be reworded to require that containers of hazardous substances be stored in such a manner as to reduce the likelihood of leakage, and that any container showing evidence of leakage be immediately removed and handled appropriately. Alternately, a definition of "suitable" containers is required. In addition, "hazardous substances shall be protected from the elements" should be replaced with "hazardous substances shall be adequately contained to prevent discharges." Steel drums with lids should be considered adequate containment. (25, 42)

RESPONSE: The rules, as adopted, already address the commenter's concern. A container that "protects hazardous substances from the elements and the possibility of leakage" is any covered container that is suitable for that particular substance. A container with a secure lid, such as a steel drum, would protect the contents from the elements, and is therefore appropriate.

COMMENT: Leaking equipment does not necessarily pose a threat to the environment. Since the rules are implying that any leak, no matter how small, is a leak and must be repaired promptly, an exemption must be provided to allow for very small leaks to continue to exist provided appropriate controls can be installed. As part of the DPCC plan the facility should be allowed to identify the types of leaks that could occur in the facility and the methods that could be used to control these small leaks which cause no environmental harm. As normal maintenance occurs these small leaks would be repaired. A proposed wording change is "if such provision is made, the leaking item shall be repaired, replaced or taken out of use within 15 days after the leak is detected unless the shutdown of a process unit is necessary or the leak rate is below the amount described in the DPCC plan which can be controlled." (35)

RESPONSE: Leaking equipment does pose a threat to the environment, and as such, must be repaired as stated in N.J.A.C. 7:1E-2.11(b). Provisions are made for the continuation of the process until the process is not in operation or is taken out of service if the leaking hazardous substance is captured or contained in a drip pan or other appropriate containment device. This can be longer than 15 days. A small leak that is not corrected can lead to a discharge. It is preferable to repair a leak as soon as possible. Therefore, no change in wording has been made.

COMMENT: Two commenters say that the Department ignores the fact that packed pumps have to "leak" and the fact that such leaking may be to an impervious containment area and/or to a drip pan. Compliance with a day repair requirement will result in the need to generate useless recordkeeping if not the replacement of such pumps. (40, 47)

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RESPONSE: Pumps that are designed to leak are obsolete and present a constant threat of discharge and should be replaced. Other environmental rules such as N.J.A.C. 7:27-16.6, which require the detection and repair of leaks, will have facilitated the replacement of these types of pumps prior to the adoptoin of these rules. Any pumps that are designed to leak that are still in use should be replaced. A schedule for such replacement could be part of the overall schedule of upgrading developed by the owner or operator pursuant to N.J.A.C. 7:1E-1.11(b). Only records of major repairs, as stated in N.J.A.C. 7:1E-2.15(b), need to be kept, not all maintenance records.

COMMENT: Two commenters state that N.J.A.C. 7:1E-2.11(b) would require that leaking components be repaired or replaced within 15 days. This places an unreasonable burden on industry and would, in reality, require that replacements or replacement parts for all "tanks, pipes, valves, glands, drums or other equipment" be kept in storage. Otherwise, there would be no guarantee that the repair or replacement could be accomplished within the 15 days allowed. Furthermore, this requirement serves no valid regulatory purpose if the leak is contained and is not discharging to the environment. (26, 39)

RESPONSE: N.J.A.C. 7:1E-2.11(b) allows for repairs after 15 days if the leak is contained in a drip pan and longer if measures necessary to repair the leak result in the shutdown of a process unit. The Department recognizes that facilities do not keep replacements or replacement parts for all equipment in inventory and, pursuant to N.J.A.C. 7:1E-11(e), allows for a reasonable time extension for the repair, on a case-by-case basis, for the ordering of parts when such circumstances exist.

COMMENT: Two commenters feel that the requirement that the cleanup of all leaks or discharges of hazardous substances begin promptly upon detection is unreasonable and does not consider the quantity, quality, or location of the leak or spill or the adequacy of the secondary containment or diversionary systems in place to prevent discharges. Cleanup of leaks, which by definition are not being released to the environment, should be conducted in a safe, efficient, and effective manner. If a spilled material is not being released into the environment and is not threatening worker safety, a well thought out plan should be implemented to clean up the spill. Requiring "immediate" cleanup of all leaks will prevent the development of an appropriate plan and may result in the use of less efficient technologies or techniques. When a spill is discovered, the following should be done immediately: identification of the substance and the likelihood of a discharge occurring, cessation of the leak or discharge, communication with response personnel, isolation of the area, and compliance with the notification procedures outlined in these rules and other applicable State and Federal regulations. (26, 39)

RESPONSE: The Department agrees that a leaked hazardous substance should be cleaned up in a safe and proper manner. Cleanup of the hazardous substance shall begin upon detection as per the procedures outlined within the facilities DPCC/DCR plan as specified under N.J.A.C. 7:1E-4.4(a)1. As the commenters state, the beginning of cleanup is the identification of the substance and of the need for cleanup. Implementation of this procedure as outlined in the DPCC plan is a prompt beginning of cleanup. The Department believes that this provision is not unreasonable.

COMMENT: Two commenters said that in N.J.A.C. 7:1E-2.11(g), the requirement for the inspection of flexible hose before use will generate more needless recordkeeping in order to demonstrate compliance. The Department should instead review and approve procedures calling for same. (35, 40, 47)

RESPONSE: The Department believes that flexible hoses pose a more imminent threat for the possibility of a discharge to the environment than piping, due to cracking. The Department has evaluated that threat, in light of the burden of performing the inspection, and concluded that the benefit in preventing discharges far outweighs the relatively minor effort involved in the inspection.

**N.J.A.C. 7:1E-2.12 Employee Training**

COMMENT: This training should include an explanation of the value of, and the reason for, protecting environmentally sensitive areas near the facility. (31, F)

RESPONSE: While the Department believes that "the value of, and the reason for protecting environmentally sensitive areas near the facility" are important, requiring training of all employees in this regard is beyond the scope of these rules. Owners or operators of major facilities are encouraged to explain environmentally sensitive areas and the protection to their employees.

COMMENT: Employees have already received significant training as part of the RCRA Part B and TCPA programs in place, and in conforming with OSHA and other regulatory requirements. The DPCC program could add another $60,000 per year to the training cost for the 60 employees who would be affected. (30)

RESPONSE: Any training that has already taken place that meets the requirements of N.J.A.C. 7:1E-2.12 is adequate and need not be duplicated. Only training required at N.J.A.C. 7:1E-2.12 that is above and beyond training that has already taken place needs to be instituted.

COMMENT: The Department is using the Spill Act to involve people in training who would not normally be involved in emergency response and to control how plants are run. Only emergency response personnel should receive training of this sort. Let a company propose a plant that is specific to that company. (D)

RESPONSE: The Department does not require all employees to receive training as emergency responders, only training in what to do in case of an emergency. This can include, but is not limited to, procedures to evacuate the building and identification of an assembly area. Other training required involves instruction in the standard operating procedures for equipment the employee uses and information about the hazardous substances that employees will be in contact with. Every employee involved with hazardous substances should have some degree of training, since employee error can be the major or a contributing factor in an accident.

COMMENT: The paragraphs on employees training are not adequate for over 650 major facilities Statewide. The labor unions might resist employees being disqualified from certain aspects of work. Facilities would end up having people who could not meet the qualifications still on the payroll because we would not be able to discharge them. (C)

RESPONSE: The training requirements establish opportunities to learn but do not establish any qualifications or require the passing of any test, like that required for TCPA. The Department is not aware of any problems with employee unions regarding the requirements for the TCPA training, which is more stringent, and does not foresee any problem with DPCC/DCR training under N.J.A.C. 7:1E-2.12.

COMMENT: Nowhere does the Act authorize the Department to invade the manufacturing operations of major facilities, specifically, the proposed requirements for non-emergency related issues within N.J.A.C. 7:1E-2.14, Standard operating procedures, and 2.12, Employee training. (D)

RESPONSE: The Spill Act, at N.J.S.A. 58:10-23.11d6, requires the Department to establish minimum performance standards or requirements for any DPCC or contingency plan element. The Department has determined that employee training and SOPs are both necessary and useful in preventing discharges of hazardous substances. N.J.A.C. 7:1E-2.12 and 2.14 establish the minimum requirements for these items.

COMMENT: Two commenters state that the proposed DPCC/DCR rules seek to extend many of TCPA's requirements to a much wider spectrum of substances. The Department's attempt is blatantly outrageous and without statutory authority. The employee training and SOP requirements at N.J.A.C. 7:1E-2.12 and 2.14 are virtually identical to the requirements in the TCPA rules which were enacted for facilities handling extraordinarily hazardous substances. These rules, however, do not afford facilities the opportunity to reduce volumes or concentrations of specific hazardous materials stored on site which would make such compliance unnecessary. In addition, such written standard operating procedure and training for relatively mid size facilities is not necessary. (17, D, N)

RESPONSE: The Spill Act requires the Department to establish minimum performance standards or requirements for any DPCC or DCR plan element. The rules in N.J.A.C. 7:1E-2.12 and 2.14, which establish such minimum standards, are similar but not identical to the TCPA requirements. The requirements under these rules are less stringent than those under TCPA. Human error continues to be a contributing cause to many accidents and discharges and, therefore, operators should be aware of standard operating procedures, along with the safety and hazards associated with the hazardous substances that they come in contact with. If the owner or operator of a facility reduces the total storage capacity below the limits as described in N.J.A.C. 7:1E-1.6 in the definition of "major facility," then the facility no longer has to comply with the requirements of this rule.

COMMENT: What are the minimum qualifications and certifications for the people who are doing the training? Wouldn't qualifications like a Certified Hazardous Materials Manager be appropriate here? If the rule does not specify that these plans be reviewed and under the certified

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overview of such qualified professionals, they will continue to fall short and expected positive affects will not occur. It is widely recognized that such plans and programs are no better than the qualifications of the people who are in charge or involved in preparation, implementation and ongoing viability. (19, E)

RESPONSE: Since each site has unique situations, the Department is not specifying qualifications for the people doing the training, only the information that should be included in the training. If the owner or operator of a facility wants to require certain qualifications for trainers, the Department does not object.

COMMENT: Since the Department recognizes that there are regulatory requirements under OSHA Regulations, the Department should consider including the same regulatory recognition under the training requirements. Training for employees and contractors under various Federal rules and regulations provide sufficient training and awareness for any employee working in a facility covered by this rule. In fact, in some cases, all production employees are trained under such standards. (9)

RESPONSE: If prior training satisfies all of the requirements of N.J.A.C. 7:1E-2.12, then this is adequate and no further training is required. Only those portions of N.J.A.C. 7:1E-2.12 not satisfied by other State or Federal requirements will have to be implemented.

COMMENT: Any proposal the Department makes should be carefully analyzed to ensure that it does not conflict with, unnecessarily duplicate, or overreach the new Process Safety standards scheduled to be promulgated by OSHA next year. It is suggested that since these rules deal with hazardous substances that the required training under OSHA regulations be used without modification by the Department. This is addressed in OSHA regulations at 29 CFR 1910.120, as well as RCRA Prevention and Preparedness and Contingency Planning requirements. However, as far as the requirements at N.J.A.C. 7:1E-2.12, since the legislation and propoed rules permit a facility to provide for emergency response through contract with a Department approved response company, it is possible that no facility personnel would be required to respond. (15, 17, 19, 35, A, E)

RESPONSE: The Department believes that the first line of prevention is in all employees knowing the requirements of their job. If training required by other State or Federal agencies satisfies the requirements of N.J.A.C. 7:1E-2.12, then duplicate training is not needed. If additional training is required to comply, then only that additional training need be done. N.J.A.C. 7:1E-2.12(b)1 has also been reworded to read, "a written job description which includes the duties and responsibilities relating to hazardous substances for each position, and the education experience and training necessary to qualify for the position." The Department is not requiring that every employee be trained as part of an emergency response team.

COMMENT: To be in compliance with a training program like this for 25 people will cost quite a few thousands of dollars. Some facilities will have triple the cost because of three shift operations. (A)

RESPONSE: The training program required for employees pursuant to N.J.A.C. 7:1E-2.12 is to familiarize them with the equipment, processes, hazardous substances, and their individual response to a discharge. Most employees at well run companies should have already received this type of training. It is very important that employees know the proper way to do their job, and by setting a minimum level of training, the Department can ensure that they do.

COMMENT: Other State and Federal environmental regulations require extensive employee training, and each program has its unique format and recordkeeping requirements. Now, these proposed rules greatly increase the spill training requirements, and add another set of records for a faciilty to maintain. It is suggested that the format and recordkeeping requirements be coordinated with other existing programs so that common requirements need not be replicated within each program. The following sentence should be added to N.J.A.C. 7:1E-2.12(a), "Appropriate training provided by other programs such as OSHA Hazcom, fire training, etc. will be acceptable training." (35, 39)

RESPONSE: The Department recognizes that a number of other State and Federal programs require employee training and recordkeeping. As long as the criteria at N.J.A.C. 7:1E-2.12 and 2.15 are met, training and recordkeeping can be coordinated with the requirements of other programs. Duplicate training and recordkeeping are not necessary.

COMMENT: The Department should allow each facility to specify its training program as part of the DPCC/DCR Plan. This will assure that the owner or operator addresses the need for training, while enabling him to create a plan specific to the materials on the site rather than the legislatively adopted EHS list. (17)

RESPONSE: The Department is not requiring a training program for the legislatively adopted EHS list used by the TCPA program pursuant to N.J.A.C. 7:1E-31. The owner or operator of a facility can and must specify his or her training program as part of the facility's DPCC plan. However, at a minimum, this training program must meet the requirements in N.J.A.C. 7:1E-2.12. N.J.A.C. 7:1E-2.12(b) has been reworded to clarify the Department's intent that the written job description is only for those functions relating to hazardous substance usage. These hazardous substances are identified at N.J.A.C. 7:1E-1.7. The Department believes that the first line of discharge prevention is all employees involved with hazardous substances knowing the requirements of their own job.

COMMENT: The timetable for implementation of training programs should be specified. A written job description should only be required to the extent that a position involves a handling of hazardous substances. It may be helpful for the Department to provide examples of persons involved in handling hazardous substances if the rule is intended to apply to maintenance or administrative personnel. Training should be tailored to the types of hazardous substances at the facility (8, 25)

RESPONSE: A timetable for compliance with the training program can be submitted pursuant to the N.J.A.C. 7:1E-1.11(b). In addition, N.J.A.C. 7:1E-2.12(b)1 has been reworded to read, "duties and responsibilities relating to hazardous substances for each position." This clarifies that only those tasks involving hazardous substances need to be included in any job descriptions written pursuant to these rules.

COMMENT: N.J.A.C. 7:1E-2.12 would require that a comprehensive training program for workers be developed in written form, that training be provided on a routine basis, that proficiency levels be determined and achieved, that annual reports of training be provided to the response coordinator and that records of the entire training process be retained at the facility. Many of these requirements would only serve to create needless documentation without enhancing workers preparedness or environmental protection. Similar training is already required under other regulatory programs and should be combined to eliminate needless duplication. To the extent that the DPCC/DCR plan requires knowledge of any matters not covered under other regulatorily-mandated training programs, then such training should be provided. (26)

RESPONSE: The Department recognizes that training and recordkeeping is required by other State and Federal regulationss, and no additional training is required if existing training programs meet the requirements of N.J.A.C. 7:1E-2.12. Only those portions of the required training which are not fulfilled by existing programs must be added. The recordkeeping is required pursuant to the Spill Act (N.J.S.A. 58:10-23.11d13) and has not been specified in detail so that owners or operators can determine the easiest, least burdensome manner of keeping records for their facilities. Those recordkeeping systems should then be described in the DPCC plan.

COMMENT: In N.J.A.C. 7:1E-2.12(a) what constitutes "handling?" How much contact or interaction requires training? (23)

RESPONSE: A definition of "handling" "meaning the manner of treating or dealing with something" has been added to the rules.

COMMENT: N.J.A.C. 7:1E-2.12(b) will require an excessive amount of additional recordkeeping that does not provide any significant reduction to the potential for a discharge. This imposes another set of records and documenting requirements for a facility to maintain which is particularly burdensome for a three shift operation. The Department should coordinate these requirements and records with other existing programs so that common requirements need not be duplicated within each program. The training can be provided to new employees as depicted and an annual refresher given, but the need to document every part of the training, the manuals used, the qualifications, etc. will be resource intensive with little environmental benefit. Most of the leaks within a facility will be controlled by secondary containments or diversion systems. The training for most employees would be to just familiarize them with the system and, more importantly, train them in the proper notification procedures. (28, 35)

RESPONSE: Records of which employees are trained to perform which tasks are important, particularly when there is employee turnover. The owner or operator needs to know what tasks need to be performed, how many employees are trained to perform those tasks, and whether their training is up to date or outdated. Records kept on employee training are to include identification of personnel trained, their job titles, subjects covered and training dates, pursuant to N.J.A.C. 7:1E-2.12(e).

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The Department recognizes that the documentation and recordkeeping requirements may have a significant effect, but also realizes that every shift operation is important and must be properly documented. Facilities can coordinate training and recordkeeping requirements with other applicable State and Federal programs. Items such as training manuals need not be retained.

COMMENT: N.J.A.C. 7:1E-2.12(b)1 must only apply to a written job description detailing the duties involving hazardous waste. The Department does not have the authority to require a job description for duties that do not involve hazardous substances. It is recommended that language be inserted in this section that 1) clarifies that "written job descriptions" are required only for those activities where persons are directly involved in the "storing, transferring, processing, using (of) hazardous substances," and that 2) such written job descriptions are intended solely for the purpose of preventing discharges of hazardous substances and for emergency response to any discharges. The Department shoud also take into account the level of hazard posed by a particular substance when reviewing the facility's training records. For example, the potential hazard posed by handling a hazardous substance such as hydrogen cyanide would require more detailed employee training than handling substances such as petroleum products. (8, 42, I)

RESPONSE: N.J.A.C. 7:1E-2.12(b)1 has been reworded to clarify the intent that the written job description is only for those functions relating to the handling of hazardous substances. Because all handling of hazardous substances can result in a discharge, and knowing the proper procedures to follow in performing a task is the first line of discharge prevention, there is no reason to limit the job descriptions soley to the purpose of discharge prevention.

COMMENT: It would be better if tasks were certified for individuals so a facility can be flexible in who does what. (I)

RESPONSE: The Department does not require the certification of task descriptions. However, employees can be trained to perform specific tasks, with different employees having a different mix of tasks they are trained to perform.

COMMENT: At N.J.A.C. 7:1E-2.2(f), referring to training of employees of outside contractors, add "must also be trained in the definition of environmentally sensitive habitat areas contiguous to the area in which they could be deployed." (31, F)

RESPONSE: The Department requires training for employees of outside contractors utilized by a major facility to prevent any discharges due to lack of information. The Department believes, that while useful, knowledge of environmentally sensitive area locations is not necessary to achieve the goal of preventing discharges. In addition, requiring training of contractor personnel in something that is so site-specific would be burdensome and costly.

COMMENT: It may not be possible to "insure" the adequacy of contractor personnel training pursuant to N.J.A.C. 7:1E-2.2(f). (25)

RESPONSE: Owners or operators of major facilities are liable for any discharges at the facility. Therefore, the owner or operator of a facility must verify and do what is necessary to assure that outside contractor employees have received the appropriate training. This could include language written into a contract requiring specific contractor training.

**N.J.A.C. 7:1E-2.13 Security**

COMMENT: Two commenters state that the Department is suggesting that very large facilities be totally illuminated. The illumination of an entire site so that intruders, leaks, or discharges can be detected is not necessary, redundant and would waste vast amounts of electricity. The new requirements for secondary containments, diversion systems and leak detection make the need for visual observation during hours of darkness redundant. Shouldn't portable lighting (flashlights) be adequate for the purposes of these rules? The prevention of intruders and all related measures are not the province of these rules. (35, 40, 47)

RESPONSE: The Department is requiring that facilities be adequately illuminated to detect intruders, leaks and discharges. In many cases, this will be less than total illumination. Portable lighting (flashlights) may be adequate if sufficient illumination to detect intruders, leaks and discharges is attained. The lighting adequate for a given facility must be determined by the owner or operator, subject to the Department's approval. Intruders have been known to be responsible for discharges of hazardous substances. One recent event involved vandals opening a valve on a tank car containing ammonia. Such incidents must be reduced or eliminated to protect the people and environment of New Jersey.

COMMENT: In N.J.A.C. 7:1E-2.14(a), please define "operating areas." Is a loading dock an "operating area?" (23)

RESPONSE: The term "operating areas" does not appear in N.J.A.C. 7:1E-2.14(a). Therefore, a definition is not required.

COMMENT: N.J.A.C. 7:1E-2.13(b) would require that major facilities be fully fenced on land. Full fencing of the site should not be an absolute requirement. In many facilities there exist rail lines, access roads, stream corridors, etc., that cannot be effectively fenced. The requirement should allow for the use of site security personnel. A proposed change would be to delete the phrased "(full fencing on land)". Possible alternatives to fencing should be available on a site-specific basis. Fencing should not be required for portions of a facility protected by natural barriers. One commenter interprets the fencing requirement to mean that portions of major facilities abutting a shoreline do not require fencing. (25, 26, 35)

RESPONSE: Major facilities do not require fencing along the water's edge, but fencing is required all the way down to the edge of the water at low tide. The option is given for a facility to follow N.J.A.C. 7:1E-2.13(b)2 instead of fencing the facility. N.J.A.C. 7:1E-2.13(b) provides the facility a choice of fencing under (b)1, or all of the requirements under (b)2. If these requirements are not appropriate to a particular facility, an alternative may be submitted to the Department pursuant to N.J.A.C. 7:1E-1.11(e) and reviewed on an individual basis.

COMMENT: At N.J.A.C. 7:1E-2.13(b)2i, the wording implies that a lock must be used in all cases. Since many valves can be secured shut and bolted or screwed shut the need for an actual lock is not required. Instead it is proposed that the wording be changed to "securely locked by an appropriate means in the closed position . . ." (35)

RESPONSE: Anything to effectively ensure that the valve will remain closed, particularly when an unauthorized individual wishes to open it, will be sufficient to be considered locked. The Department believes that the suggested change would not ensure the degree of safety offered by using the term "lock". In addition, other means of preventing the unauthorized opening of valves, such as removing their handles, can be substituted pursuant to N.J.A.C. 7:1E-1.11(e).

COMMENT: At N.J.A.C. 7:1E-2.13(b)2ii, the terms "non-operating" and "stand-by" are not defined by the rules and can be broadly interpreted. Some facilities that occasionally transfer materials keep their tanks in "stand-by" mode. It is suggested that the wording be changed to read "out of service." (35)

RESPONSE: The intent of this requirement is to have starter controls locked in the off position any time they are not in use. In order to make this clear, the wording in N.J.A.C. 7:1E-2.13(b)2 has been revised so that the terms "non-operating" and "stand-by" have been replaced by "not in use."

COMMENT: At N.J.A.C. 7:1E-2.13(b)2iii, change "manifold" to "open end." (35)

RESPONSE: The Department agrees that the intent of the rule is to require all open ends to be capped or blank flanged, not only manifolds. The language in N.J.A.C. 7:1E-2.13(b)2iii has been revised to "open ends of all pipes" to make this intent clear.

**N.J.A.C. 7:1E-2.14 Standard operating procedures**

COMMENT: In general, most procedures classified as SOPs have no relation to controls and countermeasures for spills; rather they reflect normal operating procedures and process conditions. Thus, they are not related to "emergency situations" and should not be subject to scrutiny, especially under a rule which contains no provision for protection of confidentiality. (17)

RESPONSE: The definition of SOP makes clear the intention of the Department that the document involves only procedures covering details of an operation involving a hazardous substance. SOPs ensure the proper operation of a facility to prevent leaks or discharges and for controls and countermeasures. The Department intends to treat confidential information as such and has added a provision to N.J.A.C. 7:1E-1.9 stating what standards will be followed for confidentiality.

COMMENT: Three commenters state that this section requires volumes of operating procedures for every conceivable situation which will be very burdensome to produce and maintain. It goes beyond spill prevention and involves other non-related operations of a facility. The added burden of producing and maintaining those SOPs is not commensurate with any additional reduction in the potential for spills. (26, 28, 39)

RESPONSE: The definition of SOP indicates that the requirement applies only to procedures involving a hazardous substance. The Department believes that properly trained personnel, using these SOPs, will reduce the likelihood of discharges.

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COMMENT: Shouldn't the SOPs for handling hazardous materials and wastes be reviewed and approved by a professional such as a Certified Hazardous Materials Manager? (19, E)

RESPONSE: The Department is not requiring that SOPs be reviewed and approved by any specific person. The Department believes review and approval of SOPs is within the competency of the owner or operator or staff of the facility, who can determine if review by any other person is needed.

COMMENT: No timetable is specified. Also, the requirement that standard operating procedures be written in the language of non-English speaking employees is overly burdensome. Only English and "predominant" languages within the specific employee community should be utilized. As part of the employee training, the person will be trained in the requirement for proper operation, spill response and notification as required. Only certain sections of the standard operating procedures need to be written in another language. Those sections would pertain to spill response and notification requirements. Extending the multilanguage requirements beyond that will provide little or no environmental benefit at an enormous cost. Suggested wording for this subsection would be "... and sections pertaining to spill response and discharge notification shall also be written in the language of fluency of employees not fluent in English." (25, 35)

RESPONSE: N.J.A.C. 7:1E-2.14(a) has been clarified to specify that only those SOPs that are utilized by employees not fluent in English need to be written in those employees' language of fluency. The critical issue is that all employees who have the potential for causing a discharge of hazardous substances understand the information contained in the standard operating procedure. They must be able to read and understand the SOP in order to ensure the safe operation of the facility.

COMMENT: Changes to the language in N.J.A.C. 7:1E-2.13(a) are suggested. One commenter recommends that the sentence end with the words, "major facility." Another states that after "shall be written" delete in "English," after "major facility" insert "." and delete to the end of the sentence. It is the understandability of the SOPs by employees, not their fluency in English, that is critical. (26, 39)

RESPONSE: The Department agrees that the understandability of the SOPs by employees is critical, thus, the provision requires the SOP be written in their language of fluency, whatever it may be, as well as in English.

COMMENT: Three commenters state that N.J.A.C. 7:1E-2.14(c) is not necessary. The availability of material safety data sheets is already required by OSHA/Right to Know regulations. (26, 28, 39)

RESPONSE: N.J.A.C. 7:1E covers hazardous substances which are not covered by the OSHA and Right to Know regulations. Also, not all facilities are covered by the OSHA/Right to Know regulations. Those facilities which are subject to those regulations should already meet the requirement for material safety data sheets or fact sheets to a significant degree.

COMMENT: N.J.A.C. 7:1E-2.14(d)3 would require a description of "abnormal conditions." This is an over burdensome requirement and would never be able to address all potential situations which could occur beyond normal conditions. (26)

RESPONSE: The Department has clarified N.J.A.C. 7:1E-2.14(d)3 so that only a description of the most common abnormal conditions need to be included in the standard operating procedures. It was never the intent of the Department to have every conceivable abnormal event included in the SOPs.

COMMENT: The requirements of N.J.A.C. 7:1E-2.14(d) are not justified by the enabling legislation and far exceed the applicability of these rules. The purpose of the DPCC plan is to detail those activities at a major facility that involve the potential for a discharge of hazardous substance. The Department must recognize that such activities may represent only a fraction of all activities and procedures at any given facility. (42)

RESPONSE: The Department agrees that only a portion of a facility's activities may be subject to these rules, but regulation of that portion is justified by the Spill Act. The definition of "SOP" makes clear the Department's intent that the requirement applies only to procedures covering details of an operation involving a hazardous substance. The Department believes that SOPs ensure the proper operation of a facility to prevent leaks or discharges and appropriate controls and countermeasures.

COMMENT: A generic SOP is allowed when more than one piece of the "same" equipment is located at the facility. What does "same" mean? Is it the same manufacturer of two items of identical equipment or is it two items of equipment of different manufacturers but designed to perform the same function? This should be clarified. (28)

RESPONSE: Equipment which is the "same" does not have to be from the same manufacturer or identical, but rather is designed to perform the same function. The provision in N.J.A.C. 7:1E-2.14(e) has been revised to clarify this.

COMMENT: Modifications to SOPs are required to be incorporated into SOPs prior to implementation. Sometimes a SOP modification occurs as a result of operating experience and therefore might be implemented prior to appearing in a revised SOP. (28)

RESPONSE: Standard operating procedures are for the routine operation of a process or equipment. Unless an emergency occurs, operating experience should not require a change to the SOP. The SOP should be based on the operating experience.

**N.J.A.C. 7:1E-2.15 Recordkeeping**

COMMENT: Two commenters state that N.J.A.C. 7:1E-2.15 requires maintaining records of employees training and drills for a period of 10 years. This seems to be an excessive time period and should be reduced to three years. (13, 35)

RESPONSE: The timeframe for recordkeeping is established in the Spill Act at N.J.S.A. 58:10-23.11d13. The Legislature has determined that these records are important enough to the health and welfare of the people and environment of New Jersey to be kept for 10 years.

COMMENT: Several commenters said that the 10 year recordkeeping requirement is not consistent with the training requirements of OSHA (three years after termination of employment) nor other recordkeeping requirements of other hazardous materials and hazardous wastes programs. Daily records for inspection of piping systems only compound an already complex recordkeeping process. The recordkeeping for training under this program should be made consistent with similar and related programs, which range from three to five years. (11, 21, 40)

RESPONSE: The Legislature has mandated that records be kept for 10 years (N.J.S.A. 58:10-23.11d13). Records that are presently kept for other programs, such as OSHA, will have to be kept longer. These records can be maintained in an electronic form to reduce the space these records would occupy. The number of inspections should be less than anticipated because of the clarification on transfers that delineates which pipes are to be inspected.

COMMENT: The retention of records for at least 10 years and potentially up to the life of the equipment will provide no reduction in potential discharges. Piles of records in a file room can't reduce discharges. Most plants have maintenance procedures that keep track of repairs and equipment. The rules should allow each major facility the option of proposing its own procedure and report retention models which would then have to be approved by the Department. (B)

RESPONSE: The Department does not agree that the retention of records as required provides no reduction in potential discharges. The historical data assists the Department and the owner or operator of the facility in determining trends in plant operations. When accidents occur, historical records will help to understand why the accident occurred and to prevent similar types of incidents. Additionally, the Legislature has determined that some records are important enough to be kept for 10 years. Records do not have to be kept piled in a file room; they can be stored electronically, or on a computer, microfiche, or other retention system.

COMMENT: Regarding N.J.A.C. 7:1E-2.15(b), the requirement to keep records for the "lifetime of the structure, equipment or device" exceeds the wording in the enabling legislation which requires that records be kept for 10 years. The retention of records for longer than 10 years has no effect on the frequency of discharges but will impose a substantial and unwarranted expense on the regulated community. There is no practical reason for going beyond 10 year retention, and certainly not for the life of the equipment. Considering the amount of recordkeeping required by these rules, a lifetime retention requirement is overly burdensome and will not contribute to additional protection against spills. A 10 year retention requirement for all records required under these rules should be established. (26, 39)

RESPONSE: The Spill Act states that records shall be kept for at least 10 years (N.J.S.A. 58:10-23.11d13). In the case of records for equipment maintenance and repair, the history of a storage tank or other equipment can be important in establishing liability or nonliability for a cleanup of contamination. Records that show that equipment at the facility could not be the source of contamination could save the owner or operator from liability for a costly cleanup. It should also be kept

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in mind that some structures can have a lifetime of less than 10 years, at which time those records would no longer need to be retained.

COMMENT: The law requires inspection and maintenance recordkeeping for equipment for 10 years. Why are the rules requiring a lifetime record of maintenance and inspection? What is the definition of "major maintenance or repair" for which records must be kept? (28)

RESPONSE: The major maintenance and repair would include substantial reconstruction or repair. The historical data gathered assists the Department and the facility in determining trends in plant operations and can help in the prevention of accident recurrences. Also, historical data can be important to a facility for establishing liability or nonliability for contamination and cleanup.

COMMENT: In N.J.A.C. 7:1E-2.15(c), after "request of the Department or" delete "appropriate local agencies" and insert "agent or officer of the municipality." (26)

RESPONSE: The wording, "appropriate local agencies" is taken directly from the Spill Act at N.J.S.A. 58:10-23.11d13. An appropriate local agency may or may not be an agent or officer of a given municipality. No change has been made to the language.

COMMENT: Insert the word "authorized" before "local agencies" in N.J.A.C. 7:1E-2.15(c). (25)

RESPONSE: The wording, "appropriate local agencies" is taken directly from the Spill Act at N.J.S.A. 58:10-23.11d13. The Act does not say that the agencies have to be authorized. No change has been made to the rule.

COMMENT: Two commenters state that, in N.J.A.C. 7:1E-2.15(d), the use of microfilming should be allowed in addition to electronic storage as a means of reducing the bulk of the enormous amounts of records that are required to be retained under these rules. The paragraph should read: "Records may be microfilmed, or kept in an electronic or computerized form if they are adequately backed up." (26, 35)

RESPONSE: The Department agrees that microfilm or microfiche can be used to store records and has added these means of record storage to the N.J.A.C. 7:1E-2.5(d). It is the intent of the Department to allow various types of retention systems, so this change establishes additional examples for the regulated community.

## SUBCHAPTER 3. TRANSMISSION PIPELINES

### N.J.A.C. 7:1E-3.2 Registration of transmission pipelines

COMMENT: If a pipeline is not active and has been purged of product, is there a need to register the pipeline? (35)

RESPONSE: If a pipeline has been taken out of service and purged, and the owner or operator has no intention to use it, then it does not have to be registered. Any pipeline which the owner or operator intends to use again must be registered. This is consistent with the definition of "transmissison pipeline" in N.J.A.C. 7:1E-1.6.

COMMENT: How do pipelines which are presently regulated by USDOT fit into this picture? And along with the pipeline, the pumping stations and break out tanks? Presently all of these are regulated by 49 CFR 195. Is it possible to get some kind of clarification as to how far the Department wants to go? (M)

RESPONSE: All transmission pipelines which meet the definition in this chapter must be registered with the department by their owners or operators, irrespective of regulation by the U.S. Department of Transportation (USDOT) under 49 CFR 195. This subchapter does not subject transmission pipelines, which includes pumping stations and breakout tanks pursuant to the definition in N.J.A.C. 7:1E-1.6, to standards more stringent than 49 CFR 195. It requires only a registration with the submission of a given list of information.

COMMENT: In respect to the map required by N.J.A.C. 7:1E-3.2(a)6, what is meant by "accurate" and "surrounding area"? Present maps would go perhaps an eighth of a mile on either side of a pipeline. Also, the pipeline maintains USGS maps which show topographical features. Pipeline facilities typically have alignment sheets that show anything that would be within perhaps 50 to 100 feet because USDOT is asking for those kinds of things for places where the public might assemble. Maps could probably be very accurate, like so many degrees left and so many feet from the foot of the pipeline there's a corner of a building or whatever. These have to be accurately noted although the pipeline might not be at 200 feet or 400 feet away. A definition would help. (M)

RESPONSE: Those maps which are presently maintained pursuant to USDOT regulations are sufficiently accurate to be acceptable to the Department and N.J.A.C. 7:1E-3.2(a)6 now states that fact. The use of alignment sheets or USGS maps are equally acceptable as long as they show the location of the pipeline and appurtenant equipment areas, such as breakout tanks, in relation to surrounding topography and geographic features shown on the same alignment sheets or USGS maps. If existing maps or alignment sheets fulfill these requirements new maps do not have to be prepared.

COMMENT: Restraint should be placed upon the type and amount of historical data required by N.J.A.C. 7:1E-3.2(a)7. Most of the data required as part of the registration, that is, location, materials, major repairs, and leaks, is already available from historical public records on file with such agencies as the Department or the USDOT. Therefore, this requirement in many ways merely creates a wasteful duplication of effort. Furthermore, this provision requires the additional filing of historical data of insignificant importance. Current stringent regulatory requirements create a need for such prospective information; however, there is little need to apply those stringent requirements retrospectively. The most reasonable compromise is to require the registrant to provide only that data which was involved in previous filings or which is not on public record, but is considered to be of special significance. (36)

RESPONSE: The Department agrees that not all historical data is needed and believes that the amount of historical information requested is the minimum necessary to implement the Department's regulatory authority. The Transportation of Hazardous Liquids Act at N.J.S.A. 58:10-47e requires registration information to include an inventory of all types of pipe used in the pipeline facility, along with information on repair, maintenance and leak history at the pipeline facility. In developing the administrative rules, the Department has determined that information on major repairs, maintenance and leaks meets this statutory mandate. In order to make this more explicit, the word "major" has been added before "maintenance" and before "leaks" in N.J.A.C. 7:1E-3.2(a)7, and both terms and major repair have been defined in N.J.A.C. 7:1E-1.6. This should make it clear that only those repairs, maintenance and leaks which required significant effort on the part of the owner or operator, such as substantial reconstruction, are to be included in the registration.

In addition, information in the files of various other State and Federal agencies may not always be readily available to the Department. The Department believes it is more efficient for individual pipelines to supply copies of this information since it is now readily accessible to them.

COMMENT: N.J.A.C. 7:1E-4.11(a) requires any person who submits a registration to include as part of that submission a signed certification by the highest ranking individual with direct knowledge that the information provided therein is "true, accurate and complete." As applicable to registration of transmission pipelines pursuant to N.J.A.C. 7:1E-3.2(a)8, this certification requirement raises two concerns.

First, given the scope of information required to be part of the registration, no one individual exists that has direct knowledge of the information provided therein. For instance, significant historical data relating to the transmission pipeline is required to be included within the registration. Even assuming one person could conceivably have direct knowledge of all current aspects of the transmission pipeline, that person would not possibly have direct knowledge of all the historical data relating to that transmission pipeline, much of which may no longer even exist.

Secondly, without having the benefit of such direct knowledge, it is unreasonable to require a person to certify that the information contained within the registration is "true, accurate and complete."

Because the proposed rules would subject the registrant and/or certifier to civil or criminal penalties, one commenter recommends that the certification requirement be amended to reflect that the individual signing the document has made a diligent inquiry and, based upon such inquiry, believes the information submitted to be true, accurate and complete. (36)

RESPONSE: The certification that was meant to apply to pipeline registrations is N.J.A.C. 7:1E-4.11(b), not (a). The language has been revised to indicate that (b) and not (a) applies. This addresses the problem of one individual being required to certify direct knowledge of the provided information. The certification in N.J.A.C. 7:1E-4.11(b) is based on an inquiry of those individuals immediately responsible for obtaining the information, which the Department believes is more appropriate than a diligent inquiry as defined in N.J.A.C. 7:1E-1.6. However, this certification also contains a "true, accurate and complete" standard which is necessary to ensure a proper and thorough review by the person signing the certification.

COMMENT: The requirement under N.J.A.C. 7:1E-3.2(b) for submitting updated data within 60 days is unreasonably burdensome upon the pipeline industry as well as the Department. The process of discovery,

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initiating action, processing and verifying as-built information, as-built permanent records, and submitting these as-built records to the Department with a high degree of reliability within 60 days is at best at burdensome, if not risky, way of doing business. At most, an annual reporting of as-built data should be adequate to achieve the intent of the rule. It should be further recognized that leaks or discharges are subject to a reporting requirement separate from the transmission pipeline registration; therefore, a requirement that said registration would have to be amended within 60 days of such events is unnecessary. (36)

RESPONSE: Most of the information requested is historical in nature and will be filed with the Department by February 1, 1992. Any changes that would need to be reported, such as a new owner or operator, a new address, or a major repair, would be known in advance of its completion. Thus, filing that information within 60 days of the change being completed is reasonable. In addition, in the case of a discharge, the required information may be needed immediately. An annual update is not sufficient for this purpose. Any amendment to the file information required because of a discharge can be submitted as part of or supplemental to the confirmation report, pursuant to N.J.A.C. 7:1E-5.8, confirmation report.

COMMENT: N.J.A.C. 7:1E-3.4(e) requires information on procedures for recycling hazardous substances. One commenter states this is asking him to play "what if" and guess what might happen and what he might be able to do without knowing what the Department will allow. Could this be better defined? For example, the commenter's DPCC plans and corporate response manuals for the pipelines group have, in each area, identified a major and a minor clean up spill response group which is called if further assistance is needed in identifying hazardous materials. This might cover what the Department is asking for so further clarification would certainly help. (M)

RESPONSE: The procedures required under N.J.A.C. 7:1E-3.4(e) are the decision-making procedures of the owner or operator of the transmission pipeline. This would include how the owner or operator identifies a hazardous substance, what steps are taken to establish recycling possibilities, how the owner or operator ensures that hazardous substances are properly disposed, and what contractors or discharge cleanup and removal organizations are called upon. It is essentially the decision tree, the procedure for making the determinations, which must be submitted as part of the registration of the transmission pipeline. The decision tree or procedure should include which individuals are responsible for gathering data, ensuring compliance, and making the decisions. The governing programs and possible applicable rules, such as the Department's hazardous waste program and N.J.A.C. 7:26-8, should be mentioned so the Department can be certain that the owner or operator is considering all the relevant rules and regulations. Corporate procedures which are so vague, indeterminate or confusing that the Department cannot determine whether the hazardous substances will be properly cleaned up and recycled or disposed would not be acceptable under N.J.A.C. 7:1E-3.4(e).

## SUBCHAPTER 4. PLANS AND REGISTRATION

### N.J.A.C. 7:1E-4.2 Registration of discharge cleanup organizations

COMMENT: One commenter questioned the certification of discharge cleanup organizations, asking what minimum requirements a company must meet to become a certified cleanup company, and who within the Department is qualified to certify cleanup organizations. (17)

RESPONSE: These rules do not provide for certification or licensing of discharge cleanup organizations. N.J.A.C. 7:1E-4.2 requires only that discharge cleanup organizations register with the Department, by providing the Department with information about the organization, its equipment and its personnel. With this information, the Department can determine whether a discharge cleanup organization has the appropriate equipment and trained personnel to respond to a particular discharge. The information also enables the Department to evaluate DCR plans for facilities which state that they have a contract with a registered organization.

COMMENT: Is the Department planning to require a cleanup company to have a specific list of equipment available, either owned or under contract? Does this set the Department in the position of creating monopolies? (17)

RESPONSE: The Department does require cleanup companies to submit a list of the containment and removal equipment owned, leased, contracted or otherwise available for immediate response. The Department does not have specific equipment requirements; the information is used to assess the capability of the company to respond to different types of discharges and as reference for when major facilities indicate that they have a contract with a registered company. The Department is not in the position to create monopolies.

### N.J.A.C. 7:1E-4.3 Discharge prevention, containment and countermeasure plans

COMMENT: One commenter requests that vessels be exempt from the requirements of developing a DPCC plan. Ships are in a very different situation for the simple reason that ships move, and international ocean-going ships may be sent to any port in the world. It is therefore impossible for a ship owner to have the sort of detailed local knowledge of every port his ships may visit, or coast which his ships may pass, necessary to draw up sensible local contingency plans. It is also impossible for him to have a different contingency plan for every port he visits or coast he passes. In addition, in order to make the contingency plan requirement a realistic one, it is important that it should have uniform application as far as the ship owner is concerned. If a ship owner is called upon to have different contingency plans for each state as well as for the Federal government, it will present a virtual impossibility of performance. It was suggested by this commenter that it is best to have shore-based contingency plans for dealing with major spills when and if they occur. These plans are best drawn up on a local basis and then integrated into wider area plans, with access to equipment decided on the basis of the local knowledge of sensitive areas which need protecting, such as water intakes, fish farms, sensitive ecological areas, and marinas, and the tides, currents and topography which will affect the movement of oil. (12)

RESPONSE: The Department believes that the rules address the commenter's concern. A DPCC Plan is required only for a major facility. By definition of a major facility (N.J.A.C. 7:1E-1.6), a vessel is a major facility only when transferring hazardous substances from vessel to vessel. Vessel to vessel transfers at a shore-side facility are covered by that facility's DPCC Plan. In the event a vessel to vessel transfer takes place in New Jersey waters not at a shore-side facility, plans required by the OPA90 may satisfy these requirements.

COMMENT: Two other commenters state that tanker vessels are required under the new OPA90 to prepare and submit for approval with the USCG contingency plans for responding to a worst case discharge. To avoid unnecessary duplication, the proposed rules should reference the Federal requirements for vessels and should explicitly provide that contingency plans submitted to the USCG for approval for each vessel are deemed to satisfy the requirements of the proposed rules. These response plans must (1) identify the qualified indivdual having full authority to implement the removal action, and require immediate communications between appropriate individuals; (2) identify, and ensure by contract or other means the availability of private personnel and equipment necessary to remove a worst case discharge; and (3) describe the training, equipment testing, periodic unannounced drills, and response actions to be carried out.

Moreover, the new Federal regime provides for state participation. Area committees have been established to prepare area contingency plans. These committees are to be comprised of representatives of Federal, state, and local agencies and are tasked to work with state and local officials to enhance planning and to assure preplanning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife. If Federal response plans are not deemed to satisfy this requirement, vessels will be forced to comply with requirements such as for site plans, drainage and land use maps, topographical maps, and environmentally sensitive areas protection plans, which clearly are not appropriate for vessels engaged in lightering. (16, 43)

RESPONSE: In the event that a vessel to vessel transfer takes place in New Jersey waters, not at a shore-side facility, plans prepared pursuant to OPA90 may satisfy the Department's requirements. Plans will have to be reviewed on a case by case basis, to ensure that the plan under OPA90 is sufficient to meet the purposes of these rules. The Department does not believe that it is necessary to explicitly state this in the rules, because not all vessels will be subject to OPA90 and not all plans under the legislation may be sufficient for the purposes of these rules.

COMMENT: N.J.A.C. 7:1E-4.2(a) requires that the response coordinator submit all reports required by this chapter to the Department. Several commenters state that this may not be appropriate in many corporate organizational structures. In most instances, the person with

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final authority with respect to the DPCC/DCR plan is a high-ranking corporate official who would not be assigned to the major facility on a day-to-day basis. This is the case since certain requirements of compliance with these rules and the plan would require the expenditure of significant amounts of money which would normally be beyond the scope of authority of a given facility's highest manager. Likewise, the responsibility for the direct development and implementation of the plan would be with the environmental staff at the facility who would, in all likelihood, be designated as the "response coordinator" for the facility but who would not be the "highest ranking official" with day-to-day responsibility for the facility.

It is suggested by one commenter that, while specific discharge reports would be prepared by the response coordinator at the facility, the responsibility for submitting the report and for preparing the DPCC/DCR reports lies with the Environmental Affairs Department. Another commenter states that the response coordinator should have responsibility for development of the DPCC plan and implementation of the DCR plan, and that the manager or the highest ranking official at the major facility continue to be required to sign all reports being submitted pursuant to the rules and that the owner or operator retain responsibility for the implementation of the DPCC plan. This reflects the actual lines of authority. The response coordinator would have the requisite authority to direct actions in connection with the clean up and removal of a discharge of hazardous substances; the facility manager would have the requisite knowledge and corporate authority to sign all reports. (26, 39, 42)

RESPONSE: The Department agrees that the response coordinator should not necessarily prepare and certify all reports. N.J.A.C. 7:1E-4.3(a) has been changed to indicate that the response coordinator will be responsible for the submittal of all reports. The actual preparation of the report may be by any appropriate member of the staff. Approval of the report may be by the highest ranking individual required to sign the certification statement. Though in most cases, the response coordinator at a major facility is unlikely to be authorized to make capital expenditures for basic compliance, the response coordinator or his or her designee must be able to release funds for cleanup activities.

COMMENT: Should the response coordinator meet any specific qualifications? (11)

RESPONSE: The qualifications required of a response coordinator by the Department are listed in the definition of "response coordinator." This definition in N.J.A.C. 7:1E-1.6 states that the "response coordinator" is an individual at a major facility who is responsible for the management of the DPCC and DCR plans at the facility and who shall possess sufficient corporate authority and technical background to resolve issue relating to the execution of the DPCC and DCR plans based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives.

COMMENT: As part of the facility location, latitude and longitude should be included for major facilities located on navigable waterways. (13)

RESPONSE: The Department believes that the submittal of site plans and other information is sufficient to locate a facility. The DPCC plan must include the facility's address, tax lot and block number, and the coordinate centroid in New Jersey State Plane. No additional information is necessary.

COMMENT: The reference to a name in N.J.A.C. 7:1E-4.3(b)1 should be modified to include only the position or title so that a change in personnel does not place the plan in error or confuse individuals (11)

RESPONSE: The name required pursuant to N.J.A.C. 7:1E-4.3(b)1 is the name of the facility. The Department believes that this is necessary information and any modification to it should be reported to the Department.

COMMENT: Does the general site plan have to show a property line survey? (22)

RESPONSE: The general site plan shall delineate property lines. This is a standard survey practice in development of general site plans.

COMMENT: N.J.A.C. 7:1E-4.3(b)4 requires a general site plan at a scale of one inch equals 30 feet to one inch equals 200 feet, but does not require a contour interval (that is, two foot contours), a level of accuracy, or how a license land surveyor shall certify the map. In order to establish a drainage plan both the on-site and off-site maps need to have contours. For releases of hazardous materials to the air the spill response coordinator needs to know what the existing topography is. It is suggested that the on-site intervals be two feet and the off-site be 10 feet. (22)

RESPONSE: The Department expects the licensed surveyor to use a contour interval appropriate to the scale of the map. The maps need be accurate to industry standards and licensed land surveyors will certify the maps in accordance with the regulations governing licensed land surveyors at N.J.A.C. 13:40.

COMMENT: If a certified surveyor now must be used, many existing maps for other purposes will not be adequate. It is proposed that maps suitable for other regulations be considered as adequate for this plan. (35)

RESPONSE: The Department believes that the use of a licensed surveyor to prepare the site plans will insure that a high degree quality will be obtained in the preparation of the critical site plans. If existing maps are not certified by a land surveyor, then they are not adequate for this plan.

COMMENT: One commenter requests the word "facility" be added before "supply and monitoring wells." Many monitoring wells may be installed in adjacent properties and their existence would not be known to an adjacent facility.

RESPONSE: The Department maintains information on all supply and monitoring wells in New Jersey. The owner or operator of a facility can request this information from the Department for the 1,000 foot area around its plant so that more than just the wells on his or her property can be included on the map.

COMMENT: Certification of the general site plan by a New Jersey registered professional engineer should be permitted. (25)

RESPONSE: A professional engineer may certify the general site plan if said engineer is also a licensed land surveyor.

COMMENT: Two commenters request information on why the plan should include information on standard operating procedures, recordkeeping systems, a schedule for updating process flow and piping and instrumentation diagrams, and housekeeping and maintenance procedures, when they have nothing to do with emergency response or emergency planning or reducing the number of potential discharges. (17, B)

RESPONSE: The DPCC plan is a comprehensive prevention plan, not just an emergency response plan. The Department believes that the information required pursuant to N.J.A.C. 7:1E-4.3 is necessary to allow the Department to determine if sufficient discharge prevention measures have been or will be implemented. SOPs and updating process flow and other diagrams ensure that the most recent and complete information is available so that employees can properly perform their jobs, which is the first line of prevention. Housekeeping and maintenance prevent leaks, and when leaks do happen, prevent them from becoming discharges. Recordkeeping enables the Department to keep track of a facility progress.

COMMENT: The description of flood hazard areas required by N.J.A.C. 7:1E-4.3(d)5 should be applicable only if such areas could be impacted by a facility discharge. (25)

RESPONSE: The Department agrees with the commenter and has changed N.J.A.C. 7:1E-4.3(d)5 to include "within the facilities boundaries".

COMMENT: One commenter states that since SOPs are constantly being developed or discarded, the list required by N.J.A.C. 7:1E-4.3(d)10 would serve no useful purpose since it would be obsolete as soon as it was included in the plan. Therefore, this section should be deleted in its entirety. (26)

RESPONSE: The Department requires a catalog list of standard operating procedures and not a copy of the document itself. Amendments to the standard operating procedures will not change such a list. Additions or deletions of SOPs may be required to be submitted to the Department if the change meets the requirements at N.J.A.C. 7:1E-4.9(b).

COMMENT: Two commenters state that those items in N.J.A.C. 7:1E-2.10, Leak detection and monitoring; 2.11, Housekeeping and maintenace; and 2.14, Standard operating procedures, should be deleted, and thus any reference to those sections in the plan should be deleted. (40, 47)

RESPONSE: The Department has determined that N.J.A.C. 7:1E-2.10, 2.11, and 2.14 are necessary measures to ensure a good discharge prevention plan. Leak detection and monitoring and housekeeping and maintenance help prevent leaks, and when they do happen, enables a facility to quickly detect them and clean them up. The use of SOPs ensures that all employees know their jobs, which is the first line of prevention. The related information required by N.J.A.C.

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7:1E-4.3(d)6, 7, and 10 must be included in the DPCC plan to allow the Department to adequately assess a facility's DPCC plan.

COMMENT: Under N.J.A.C. 7:1E-4.3(e), all major facilities must prepare a schedule for upgrading equipment which must be included in the DPCC Plan. There is no indication when a schedule is needed, under what conditions an upgrade is required or what criteria the Department will use to approve or disapprove a schedule. (11)

RESPONSE: When a major facility does not meet the requirements of N.J.A.C. 7:1E-2, the facility must upgrade to meet these requirements. This may be done on a schedule included in the DPCC plan. This schedule shall indicate when the facility will upgrade equipment or those portions of the facility that do not meet the requirements of said subchapter. The Department will then approve or disapprove the schedule in light of all pertinent circumstances. No standardization set of criteria for approving or disapproving a schedule would treat the regulated community fairly. There are a wide variety of circumstances which must be taken into account, such as economic feasibility, discharge history of the facility, what amount and type of upgrading is necessary, and proximity to environmentally sensitive areas, to name a few.

COMMENT: Two commenters state that the Department has not demonstrated that the recordkeeping requirements under N.J.A.C. 7:1E-4.3(f) are related to spill and discharge prevention. The requirements are excessive, and appear to be an attempt to impose TCPA-type requirements where they are clearly not warranted. (40, 47)

RESPONSE: The Department disagrees. All of the information required at N.J.A.C. 7:1E-4.3(f) is information vital to the operation and discharge prevention aspects of the facility. Records on maintenance and housekeeping are the history of a given piece of equipment and will enable the owner or operator to determine the useful life of the equipment and the likelihood of a discharge. Standard operating procedures and process flow and other diagrams must be current and on file to be useful to employees. The facility inventory is important in determining that no discharges have occurred or if one has, how much was discharged. The facility emergency response plan is necessary in case of a discharge and should be kept updated and available. And finally, job classification and job descriptions ensure that both the owner or operator and employees know what is expected.

COMMENT: In order for the owner or operator to provide information to the Department that pertains to the process flow and piping and instrumentation diagrams, these rules must include a section on confidentiality of information. (35)

RESPONSE: The Department agrees that secret processes concerning methods of manufacture or production are entitled to confidentiality protection pursuant to the legislative directives at, N.J.S.A. 13:1D-9d. Therefore, the Department will receive and process confidentiality claims on a case-by-case basis using that general confidentiality protection until it can adopt confidentiality provisions specific to these rules, which will be proposed shortly. N.J.A.C. 7:1E-1.9(e) has been added to implement this interim measure.

COMMENT: Several commenters express concern with N.J.A.C. 7:1E-4.3(f) and the requirement to make documents available to the Department at either the facility or the Department's offices at the discretion of the Department. This would establish a totally unreasonable burden. An owner or operator should not be required to catalog and identify by number each document retained pursuant to these rules. Further, to allow the possibility that an owner or operator could be required to transport records retained pursuant to these rules is totally without any basis in the statute, is overly burdensome and does not in any way support the purpose of these rules which is the prevention of discharges to the environment. Availability at the facility during business hours is reasonable. Providing copies to the Department could be a massive undertaking which could require the copying of thousands upon thousands of pages of records.

The commenters suggest the following changes be made to N.J.A.C. 7:1E-4.3(f) to reflect these concerns: after "Department review" delete ":" after "at" delete "either"; after "the facility" delete "or the Department's offices at the discretion of the Department," and insert "during normal business hours upon proper notification to the major facility unless such notification is likely to result in the withholding of relevant information"; and after "updated documentation" delete "a catalog list of all such documents showing title, identification number, and date of issue." (25, 26, 39 42)

RESPONSE: The Department believes these documents are necessary for the implementation of a successful discharge prevention plan. The Department plans to inspect these documents at the facility. However, in a specific instance the Department may wish to inspect these documents outside of the facility. Certain documents may require long term, in-depth study, which would be easier to complete at the Department's offices rather than at the facility. In some cases, it may be necessary to submit documents before a facility is built and there would be no facility offices at which to perform the review. A catalog list of these documents is necessary for the Department to adequately review a facility's DPCC plan. The Department has changed the rule at N.J.A.C. 7:1E-1.9(a) to indicate that routine document reviews will be limited to normal business hours.

COMMENT: The document continues adaptation of TCPA regulations. Clarification of the purpose of including safety review of design information in a response plan is requested. (17)

RESPONSE: The rule as proposed and adopted has no requirement for a safety review. The commenter may be referring to an earlier interested party draft of the rule. Also, the rules cover prevention plans as well as response plans.

**N.J.A.C. 7:1E-4.4 Discharge cleanup and removal plan**

COMMENT: As with the DPCC plans, the proposed rules should explicity provide that contingency plans submitted to the USCG for marine vessels are deemed to comply with the State rules. (43)

RESPONSE: In those cases where vessels have contingency plans pursuant to some Federal regulation, they can be submitted as the plans required by these rules if they meet all the requirements expressed therein.

COMMENT: Several commenters state that these rules pertain to discharges to the land and waters of the State. Issues of health, fires and explosions are not germain unless they result in a discharge of a hazardous substance. The term "environmental dangers" is undefined and, as such, can be construed by the Department to mean anything. Accordingly, references to the above issues should be deleted. In addition, the term "minimizing" is vague and can give freedom to the Department to require any action that minimized the risk of a discharge regardless of the degree of risk reduction and independent of the Department's own definition of "state of the art." (35, 40, 47)

RESPONSE: This language is cited directly from the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11d3b(1)). Because fires or explosions can lead to or contribute to discharges, facilities must be prepared for their occurrence in order to prevent discharges. The Department intends to exercise reasonable discretion when determining actions necessary to minimize the risk of a discharge.

COMMENT: One commenter requests that any requirement for drills allow for the satisfaction of the drill requirements under all State regulations. Various Department and Federal regulations require the conduct of drills. These are set forth in a variety of schedules and require the participation of both on-site and off-site personnel, which will tax emergency response resources. (17)

RESPONSE: The Department agrees with the commenter. N.J.A.C. 7:1E-4.4(a)1 specifically allows a facility to combine the emergency response drill required by the DCR plan, with other emergency response drills whenever possible.

COMMENT: Clarification of the Department's requirement that copies of contracts/agreements with emergency response contractors be maintained with the registered agent is requested by one commenter. While this may be appropriate with regard to a transmission pipeline company, it makes little sense for an operating facility. (17)

RESPONSE: The Department agrees with the commenter and has amended N.J.A.C. 7:1E-4.4(a)2 to include the words "as appropriate."

COMMENT: The existing rule delineates that a person must be identified as having authority to authorize expenditures of cleanup dollars in the event of a discharge. The discussion document describes a "responsible manager," reminiscent of the TCPA Responsible Manager. TCPA rules detail a host of requirements for the TCPA Responsible Manager, including submission of periodic reports, planning, and routine recordkeeping. One commenter believes that extension of such a concept is inappropriate; in the case of most chemical companies, the plant is in the care of a shift supervisor who has the delegated authorities required in the current DPCC rules. The addition of a "responsible manager" (new position/title) will do little to prevent discharges. (17)

RESPONSE: Unlike TCPA, the rules utilize the term "response coordinator" not "responsible manager." The response coordinator is responsible for the management of the DPCC and DCR plans at the facility. This individual or an alternate must be available at all times

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and authorized to hire contractors and release funds for discharge response, containment, cleanup and removal. At the time of an incident, it is imperative that the Department be able to contact the individual who is authorized by the facility's owner or operator to release funds and hire contractors as the situation warrants.

COMMENT: The reference to a name in N.J.A.C. 7:1E-4.4(a)4 should be modified to include only the position or title, so that a change in personnel does not place the plan in error or confuse individuals. (11)

RESPONSE: As a facility's response coordinator may not always retain the same title and phone number, the Department believes it is necessary to require the response coordinator's name.

COMMENT: One commenter interprets the requirements for the 24-hour business telephone number of the facility's response coordinator be included in the facility's DCR plan to mean a page number, or a facility number that is manned 24-hours per day and can direct the caller to the number where the coordinator can be reached at that time. (39)

RESPONSE: The Department requires a 24-hour business telephone number whereby a facility's response coordinator or suitable alternate will be available at all times. It is the facility's responsibility to determine a suitable method of compliance, which may include the suggested methods.

COMMENT: If the requirements for a 24-hour business telephone number means a number at the facility where the response coordinator or his designee can be reached, this is reasonable. If the Department intends to require that the response coordinator's home telephone number be included, this is not necessary. The rules would require that the response coordinator or his or her designee always be available. The following clarifying language was offered by one commenter: after "24-hour telephone number" delete "of" and insert "where"; after "the facility's response coordinator" insert "or his or her designee can be reached at the facility at all times." (26)

RESPONSE: The Department does not require the response coordinator's home telephone number. The requirement is for a 24-hour business telephone number whereby the response coordinator or his alternate can be contacted at all times.

COMMENT: How often should the off-site deployment plan and environmentally sensitive areas protection plan be reviewed and upgraded? (11)

RESPONSE: The off-site deployment plan and environmentally sensitive areas protection plans must be reviewed and upgraded at least once every three years, pursuant to N.J.A.C. 7:1E-4.9(e).

COMMENT: Under N.J.A.C. 7:1E-4.4(a)5, the discharge cleanup and removal plan must identify means to "protect" areas against a discharge. Please provide examples of actions which constitute such "protection." (23)

RESPONSE: Building dikes on an emergency basis and the deployment of booms are examples of actions which constitutes such "protection" in N.J.A.C. 7:1E-4.4(a)5.

COMMENT: Several commenters state that the requirement for certification by a marine biologist and ornithologist needs further clarification and modification. Few marine biologists or ornithologists have any experience with cleanup processes, restoration of areas or assessments of damage. Further, it is highly unlikely that experts in these disciplines would possess the requisite qualifications and education to certify to all the requirements of an environmentally sensitive areas protection plan. A marine biologist would not have expertise in freshwater wetlands as an example; nor would an ornithologist have expertise in mammal or invertebrate population dynamics. A more general specification, such as a biologist or an environmental expert, such as a Certified Hazardous Material Manager (CHMM) would be more appropriate. The CHMM would be the better choice since an individual holding this certification has been tested by a nationally recognized organization and has demonstrated his or her expertise in a wide variety of environmental fields and sciences. The requirement to have plans approved by professionals that are not experienced in these efforts will result in plans that are not cost effective or environmentally sound. Prior to the time requirement to submit plans to the Department, a list of qualifications should be published describing the experience needed by the marine biologist or ornithologist.

Further, the qualifications should be broad enough to allow professionals such as limnologist or wetland biologist to meet the requirements. The Department needs to clarify exactly what these professionals are certifying. (11, 17, 21, 22, 23, 25, 26, 35, 40, 47, H).

RESPONSE: The Department requires that an environmentally sensitive areas protection plan developed pursuant to N.J.A.C. 7:1E-9.11 be certified by the appropriate professionals listed above. The Department believes that educational background, organizational affiliation, and experience working with New Jersey ecosystems will determine who will and who will not be acceptable. The marine biologist, or freshwater equivalent, and ornithologist certify only the environmentally sensitive areas protection plan. This plan includes identification of environmentally sensitive areas, identification of the seasonal sensitivity of the areas, assessment of the impact of a discharge on the identified areas, and provide for protection from, and mitigation of, any potentially adverse impact on the identified areas in the event of a discharge. These elements of the plan are within the expertise of the persons required to certify the plan.

In determining whether a marine biologist, or freshwater equivalent, or ornithologist is acceptable for the purpose of certifying the plan, the Department will look to the person's educational background, experience working with New Jersey ecosystems, organizational affiliation and any other information relevant to determining the person's expertise. The Department has not imposed specific criteria concerning the degrees which the person must have earned, or the number of years of experience, because many qualified persons may not satisfy such criteria.

The Spill Act requires that the environmentally sensitive areas and habitats protection plan must be certified by a marine biologist and an ornithologist (N.J.S.A. 58:10-23.11d3b(5)). The Department recognizes that in order to carry out the legislative intent, certain plans must be certified by an expert equivalent to a marine biologist, but having expertise in fresh water. Therefore, the Department has changed N.J.A.C. 7:1E-4.4(a)6 to provide for certification by an ornithologist and by a marine biologist, aquatic ecologist, aquatic biologist or freshwater equivalent. This will ensure that special attention is given to birds and fish and their habitats as indicator of environmental health, as established by the Spill Act.

If the facility wants to use a specialist they deem necessary the Department has no objection, but a marine biologist, aquatic ecologist, or other freshwater equivalent and ornithologist must certify the plan.

COMMENT: N.J.A.C. 7:1E-4.4(a)b states the plan needs to be certified by a marine biologist and/or an ornithologist acceptable to the Department. What determines who will and will not be acceptable? Is the State going to license them? Will there be a professional review board? Either the plan stands by itself or it doesn't. Having the State approve the person beforehand will not always result in an acceptable plan. Also, this section conflicts with N.J.A.C. 7:1E-4.11(e) which does not require prior approval of the marine biologist or ornithologist. (22)

RESPONSE: The Department agrees that the plan needs to be certified by a marine biologist, aquatic ecologist, aquatic biologist, or other fresh water equivalent and an ornithologist; however, the State is not going to license them. The Department believes that educational background, organizational affiliation and experience working with New Jersey ecosystems will determine who will and will not be acceptable. The Department does not require prior approval of the marine biologist or fresh water equivalents, but will provide guidance on who would be considered an acceptable ecological expert.

COMMENT: The proposal and the enabling legislation is overly restrictive and technically short sighted in stating how and who can prepare environmentally sensitive areas protection plans. One commenter recommends that Certified Environmental Professionals (CEP) in the specialty of Assessment, so certified by the National Association of Environmental Professionals, and/or person having certifications for environmental assessment, to be verified by the mandatory inclusion of resumes be permitted to certify plans. (21, H)

RESPONSE: The requirement questioned by the commenter is mandated by the Spill Act, and therefore must be included in these rules. The Spill Act requires that the environmentally sensitive areas and habitats protection plan must be certified by a marine biologist and an ornithologist (N.J.S.A. 58:10-23.11d3b5)). As discussed above, the Department allows this certification to be provided by a freshwater equivalent when appropriate. CEPs may be utilized if they are qualified in one of the requisite disciplines and are acceptable to the Department.

COMMENT: Can the provision of N.J.A.C. 7:1E-4.4(a)6 be more integral to the discharge cleanup and removal plan, instead of separate? (23)

RESPONSE: The rule already addresses the commenter's concern. N.J.A.C. 7:1E-4.4 lists all the essential parts of the discharge cleanup and removal plan, including the environmentally sensitive areas protection plan.

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COMMENT: How is an owner to determine the existence of an "environmentally sensitive area" such that a protection plan specific to that area is warranted? (23)

RESPONSE: An ecological survey of the surrounding area, looking for areas defined in N.J.A.C. 7:1E-1.8, is one way to determine the existence of an "environmentally sensitive area." The Department has information on the location and extent of some environmentally sensitive areas. Reviews of data available from other sources, such as conservation groups, development plans, and low level aerial photography, can be used. All environmentally sensitive areas that are identified must be prioritized and included in the protection plan.

COMMENT: N.J.A.C. 7:1E-4.4(a)6iv would require that the DCR plan provide for the protection from and mitigation of, any potentially adverse impact on the environmentally sensitive areas identified in the DCR plan. One commenter found this provision exceedingly vague, and questioned the intent behind it. The commenter recommends that it is more appropriate for the Department to develop generic rules determining what would constitute adequate protection of environmentally sensitive areas. (26)

RESPONSE: The list of environmentally sensitive areas contained in N.J.A.C. 7:1E-1.8 is diverse, and no single set of generic rules would be adequate to ensure protection of all such areas in all circumstances. Each owner or operator of a facility must outline the specific procedures for protecting identified areas from the specific effects of a given hazardous substance. The most effective form of protection is preventing the hazardous substance from reaching the environmentally sensitive area through the use of containment devices, such as booms.

COMMENT: One commenter questions why the DCR plan must provide for the protection of environmentally sensitive areas from any potentially adverse impact in the event of a discharge. The commenter suggests that the DPCC plan already provides for such protection. (21)

RESPONSE: The DPCC plan does not provide for such protection in the event of a discharge. The DPCC plan is a prevention plan. Therefore, the DCR plan must provide for all protective measures necessary if the DPCC plan fails and a discharge occurs. This includes protecting environmentally sensitive areas.

COMMENT: One commenter asks what performance or environmental criteria the Department would expect the protection plan to satisfy in the mitigation of any potentially adverse impact on an environmentally sensitive area. Specifically, the commenter questions whether this provision requires the plan to state to what levels soils and waters must be treated in the event of a discharge, and further questions whether these criteria are already spelled out by the Department. The commenter also asks whether the plan must contain site-specific plans for resource restoration, or if a simple statement as to commitment to resource restoration would be sufficient. (H)

RESPONSE: The DCR plan must include the procedures for identifying and implementing the measures necessary to mitigate the impact of a discharge on an environmentally sensitive area. The DCR plan need not contain specific cleanup standards. The Department is considering separate administrative rules that would contain cleanup standards.

The plan is required to include provisions for an environmental assessment after a discharge, but not a statement of commitment to resource restoration. The responsibility of the owner or operator of a given facility to restore natural resources will be based, in part, on this environmental assessment as well as assessments by the Department. The limit of this responsibility will be determined by the Spill Act (N.J.S.A. 58:10-23.11ga(2)).

COMMENT: Several commenters suggest that identification of proposed methods for disposal of cleanup materials cannot be accomplished, as it is not possible to detail specific facilities/disposal methods in a period of constantly changing hazardous waste rules. In addition, the requirement for describing procedures for the recycling or disposal of hazardous substances is redundant to the State's Solid Waste Regulations and is restrictive since it requires that only Departmental pre-approved methods under these rules could be utilized. Also given the great number of hazardous chemicals and petroleum products subjected to these rules, the Department is calling for the listing of an almost infinite number of procedures for dealing with the disposal of potentially "contaminated soil, debris, and so forth." (17, 35, 40, 47)

RESPONSE: The Department intends the facility to provide a general procedure or decision making process for disposing of hazardous substances gathered during cleanup and removal operation. To ensure that this clear, N.J.A.C. 7:1E-3.4(a)5 and 4.4(a)7 have been revised to read "Procedures for determining the recycling or disposal options for hazardous substances . . ."

COMMENT: One commenter recommends that the requirement that the facility provide a copy of the agreement with the local emergency planning committee or committees that coordinate the emergency responses of the parties to the agreement be replaced by a requirement that these committees, if they exist, only be provided with a copy of the facility's DPCC/DCR plan which would include any action required on the part of these committees. The Department should also take into consideration the individual facility's potential for experiencing a discharge of hazardous substance of sufficient severity to require the response of local emergency responders. (42)

RESPONSE: An agreement is a requirement of the Act at N.J.S.A. 58:10-23.11d3b(6). The Department believes that an agreement between facilities and their local emergency planning committees is necessary to make emergency response efficient and expeditious. Simply providing the committee with a copy of the facility's DPCC/DCR plan does not ensure the emergency response coordination that is necessary.

**N.J.A.C. 7:1E-4.5 Financial responsibility**

COMMENT: The level of financial responsibility established in N.J.A.C. 7:1E-4.5 is excessive. The Department should not set a level of financial responsibility unless it can guarantee that such insurance is available at reasonable cost. This type of insurance is not widely available at reasonable cost. The Department should coordinate with the Division of Purchase and Property for guidance. As with any kind of insurance, a carrier cannot/will not insure against a loss unless the risk can be evaluated. This requirement will cause severe economic hardships on corporations while providing little tangible benefit to the environment. These rules should not address compensation of third parties, primarily since such third parties will have to prove their claim in a court of law. (17, C)

RESPONSE: The Department understands the commenter's concern regarding the cost of insurance. However, the Department has found through a survey of providers that insurance in the amount stipulated is generally available at reasonable cost. The financial responsibility required by N.J.A.C. 7:1E-4.5, which includes insurance, is necessary to ensure some minimum funding is available to clean up a discharge. If an amount lower than that would be sufficient, the owner or operator can apply to the Department to lower the level of financial responsibility pursuant to N.J.A.C. 7:1E-4.5(b). Also, the Department allows owners or operators of facilities who are unable to demonstrate evidence of financial responsibility by the date of the submission of its DCR plan to apply for suspension of enforcement pursuant to N.J.A.C. 7:1E-4.5(q). These rules do not address third party compensation.

COMMENT: By introducing its own laws at the State level in addition to the Federal law, which itself rejects the international regime for dealing with damages resulting from oil spills, the United States applies a uniquely draconian patchwork of laws the effects of which are at best uncertain. The P and I (Property and Indemnity) Clubs made clear before OPA90 was passed that they would be unwilling to issue certificates of financial responsibility for vessels under such legislation. The position of the P and I Clubs remains unchanged and applies with even more force to any state legislation. Other commercial insurers and reinsurers have taken a similar position. Thus, while the P and I Clubs continue to provide the highest level of insurance cover commercially possible to protect their members' against liability for oil pollution in the United States they are not willing to subject themselves and their members to the risks associated with giving anticipatory guarantees either under OPA90 or individual state acts. Certificates of financial responsibility will therefore not be available from the P and I Clubs either under OPA90 or individual state oil pollution laws.

OPA90 and state legislation impose liability which is far greater in both amount and extent than any previous legislation anywhere in the world and which moreover introduces a very considerable element of uncertainty. It is hardly surprising therefore that the P and I Clubs are unwilling to act as guarantors under the new U.S. law or, to put it another way, to become the party responsible before the U.S. courts for all the oil spills of their shipowner members. Commercial market underwriters, with the possible exception of those underwriting small ships only, are equally reluctant to expose themselves by providing certificates.

The P and I Clubs have always supported the policy of prompt cleanup as evidenced by their willingness to insure the voluntary compensation scheme and to provide Federal insurance certificates in respect to federal costs under the Clean Water Act. In addition they have given active

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support to the International Conventions on oil pollution. Other than the insurance guarantees provided under these regimes, the P and I Clubs have always taken the same position in respect of other liabilities which they insure.

Oil pollution is high risk business and already several of the largest worldwide reinsurers refuse to provide cover; this is particularly true of U.S. and Japanese companies. The Exxon Valdez has brought home to shipowners, P and I Clubs and reinsurers alike that the risk of trading to the United States is much higher than had been realized. The extent of the risk is now beyond the bounds of the insurance cover available and every voyage thus exposes the shipowner to ruin. The insurance market also is questioning its ability to provide shipowners even with the cover they currently have. (12)

RESPONSE: N.J.A.C. 7:1E-4.5 requires major facilities to demonstrate financial responsibility for taking corrective action resulting from the discharge of a hazardous substance. Since, for the purposes of these rules, a vessel is only considered a major facility when hazardous substances are transferred between vessels, and the Department is now aware of any such operations which take place in New Jersey's waters away from land-based facilities, vessels would not be required to obtain financial assurance pursuant to these rules.

For those instances where a vessel would need financial responsibility, N.J.A.C. 7:1E-4.5(e) states that an owner or operator of any major facility who demonstrates financial responsibility pursuant to the requirements of OPA90 shall be deemed to have demonstrated financial responsibility pursuant to this rule and the Spill Act. Therefore, the Department is not imposing any requirements that are additional to Federal requirements.

**N.J.A.C. 7:1E-4.6 Preparation and submission of plans**

COMMENT: The discussion is replete with time schedules which must be met by the owner or operator. There is no comparable requirement being proposed for Department review. One commenter recognized that the Department's resources are limited; yet, there is a dichotomy when an owner or operator faces denial of a plan and/or some form of citation for failure to have an approved plan in place. (17)

RESPONSE: The Department agrees with the commenter that time schedules should apply to both parties involved in the review process. The facility has its time schedules as noted by the commenter, as does the Department at N.J.A.C. 7:1E-4.6(f) and 4.7(a). These photographs require the Department to act upon a plan within 60 days and six months respectively.

COMMENT: Several commenters wish it to be verified that existing DPCC/DCR plans submitted to the Department under the existing rules shall remain valid and in effect until major facilities submit new plans and receive approval from the Department in accordance with the new rules. (26, 25, I)

RESPONSE: Any existing approved plan shall remain valid and in effect until the major facility submits the new plans and receives approval from the Department in accordance with the new rules.

COMMENT: One commenter requests that existing plans not be amended until they are up for renewal, rather than according to the schedule in N.J.A.C. 7:1E-4.6(b). (K)

RESPONSE: The Spill Act requires that owners or operators of major facilities file new plans in accordance with a schedule established by the Department, even if the owner or operator already has a plan on file (N.J.S.A. 58:10-23.11d8). However, if portions of the plans already on file satisfy the requirements of the Spill Act and these rules, those portions need only be resubmitted without change.

COMMENT: One commenter states that the larger facilities can be expected to have the resources and the expertise to complete a DPCC and DCR plan expeditiously. Therefore, there is no reason to have more than two dates. The three largest categories of facilities must have a plan by January 1992, and the three smallest categories of facilities by July 1992. (31, F)

RESPONSE: The Department has carefully considered when the plan for a facility should be submitted and has adopted a schedule which allows for the owners or operators of the facilities to adequately prepare their plans. The owners or operators of small facilities will not have the expertise and resources to prepare plans within one year, and so have been given at least two years. Also, the Department does not have the resources to review all of these plans within the legislatively mandated six months if all of them are submitted on such a short schedule.

COMMENT: The dates should be revised to correspond with the date of promulgation of the rules. (25)

RESPONSE: The dates in the rules for submission of plans are based on an August 1, 1991 adoption date. The adoption date is the date stipulated in the Spill Act (N.J.S.A. 58:10-23.11d8). This date was exceeded by only 12 days, not a sufficient length of time to merit revising all the dates.

COMMENT: If the intent of the proposed rules is to mitigate as much as possible the release of a hazardous substance, the compliance dates should be structured in the order of the largest contribution first on downward to the smallest. The easiest measure of this would be total storage capacity. Thus, those facilities of four million gallons or greater should be required to submit by February 1, 1991, down to those of a least 20,000 but less than 40,000 gallons by August 1, 1994. (18)

RESPONSE: The Department agrees that those facilities with the largest risk should submit plans first. However, the largest facilities will require a reasonable length of time to complete plans for the substantial amount of equipment that is covered by the rules. Thus, the very largest facilities have 18 months to submit their plans.

COMMENT: While the enabling statute mandates that the submission deadlines be staggered to allow the Department time to review and approve same, the statute does not mandate that the first set of plans be submitted by February 1, 1992, which would be six months after the promulgation of the final rules, assuming that the Department meets its July 21, 1991, deadline. These deadlines are highly unreasonable and will not allow adequate time for major facilities to comply. This is especially the case with companies which have numerous facilities in the State which would be required to submit plans at the same time thereby placing a tremendous drain on limited corporate resources. (26)

RESPONSE: The Department recognizes that for some facilities the deadlines may be difficult to meet. If cause is shown, the Department may extend a facility's time period through the administrative consent order process.

COMMENT: Facilities with a storage capacity between 300,000 and 400,000 gallons are not required to have a plan under the existing rules. They are now required to submit a plan by February 1, 1992; this date should be extended accordingly. (25)

RESPONSE: The Department recognizes that for some facilities, the deadlines may be difficult to meet. If cause is shown, the Department may extend an owner or operator's time period by using an administrative consent order.

COMMENT: The preparation of an appropriate plan, particularly by a larger facility, can be expected to take many months to complete. After certification by a licensed professional engineer, the owner/operator will not be anticipating disapproval of his plan. Because of this, one commenter suggests that the proposed requirement for submittal of an acceptable plan within 30 days is impractical. (17)

RESPONSE: The Spill Act requires that if the Department disapproves a plan, the plan renewal or plan amendment, the owner or operator of the major facility must submit the revised plan or plan amendment within 30 days after receipt of the notice of disapproval. At the time of the disapproval, or during the 30 day resubmission period, the Department may extend the period by another 30 days for good cause shown.

COMMENT: Several commenters state that the Department has given itself 60 days to review the DPCC and DCR plan for completeness, but gives applicants only 30 days to provide additional information sought by the Department. Unless the additional information requested is for a minor nature, compiling same within 30 days is not feasible. A 60-day requirement would be more realistic. (35, 40, 47)

RESPONSE: The Act at N.J.S.A. 58:10-23.11d mandates that a facility has 30 days to submit a revised plan upon disapproval of its original plan by the Department. For good cause the Department has the discretion to extend a facility's time period from 30 to 60 days for the submittal of the revised plan.

COMMENT: One commenter recommends that N.J.A.C. 7:1E-4.6(g), which requires the submission of two copies of a DPCC or DCR plan, should be revised to require the submission of two copies of a DPCC and DCR plan. (11)

RESPONSE: The Department has not made the recommended change, because the owner or operator of a facility will not be required to submit both plans in all circumstances. For example, changes at a facility may make it necessary to update a DPCC plan, but not a DCR plan. Both would not need to be submitted.

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**N.J.A.C. 7:1E-4.7 Approval and conditional approval of plans**

COMMENT: It is recommended that in N.J.A.C. 7:1E-4.7(a), the phrase "DPCC or DCR plan" should be replaced with "DPCC and DCR plan". (11)

RESPONSE: The use of the conjunction "and" is not appropriate here. If the owner or operator of a facility must update a DPCC plan but not a DCR plan, he or she would not be submitting both.

COMMENT: Several commenters state that providing only 30 days to resubmit an acceptable plan is not sufficient time. It is suggested that the 30 day period be increased to 60 days in order to allow for a better effort to correct or to amend the plan. (11, 35, 40, 47)

RESPONSE: The Act at N.J.S.A. 58:10-23.11d mandates 30 days to submit a revised plan. If good cause is shown, the Department has the discretion to extend the time period for an additional 30 days.

COMMENT: N.J.A.C. 7:1E-4.7(e) requires implementation of DPCC and DCR plans immediately upon approval of the Department. This does not refer to the owner or operator's right to contest terms or conditions of the plan. Since many of the DPCC plan requirements could involve the expenditure of significant amounts of money, it is not appropriate for the Department to require implementation of those conditions prior to their being resolved through the hearing process. In order to clarify this, after "of the Department's approval" insert "unless the owner or operator seeks an adjudicatory hearing pursuant to N.J.A.C. 7:E-5.1 et seq. The implementation of conditions for which a hearing is sought shall be stayed pending a final determination." (26)

RESPONSE: Upon receiving a request for an adjudicatory hearing, the Department will determine, on a case by case basis, if the implementation of conditions for which a hearing is sought shall be stayed. The decision to stay any condition will be based on factors such as the cost of the condition, the effect of the condition on the risk of discharge, and the time period necessary to implement the condition.

COMMENT: Inspection pursuant to N.J.A.C. 7:1E-4.7(f) may be premature if performed prior to plan approvals, since implementation of both plans would begin upon receipt of Department approval. This should be clarified. (11)

RESPONSE: The inspection prior to approval will give the Department's reviewer an opportunity to become familiar with the facility and thus be able to conduct a higher quality review of the plan than could be accomplished by merely reviewing the documents submitted. This process will also result in considerably less documentation being forwarded to the Department as it can be reviewed on-site during the inspection.

COMMENT: N.J.A.C. 7:1E-4.7(c) does not require the Department to provide notice to the facility of routine inspections nor does it provide that the Department must comply with other regulatory requirements or conduct such inspections during regular business hours. Unless the Department has reason to believe that providing notice would result in the concealing of information, such notice should be provided and inspections should be conducted during normal business hours. This will ensure that the appropriate personnel are available to respond to inquiries or to otherwise assist the Department in its inspection or document review. With respect to nuclear generating facilities, these requirements may not comply with Nuclear Regulatory Commission standards relating to site security. It is recommended that the language be changed as follows: after "inspect major facilities" insert "during normal business hours upon adequate notice to the response coordinator or the owner or operator and in conformance with other applicable Federal or State statutes or regulations unless such notice is reasonably believed to lead to the concealment of relevant information." (26)

RESPONSE: The Department will conduct all inspections pursuant to N.J.A.C. 7:1E-1.9(a). In response to this and other comments, the Department has changed N.J.A.C. 7:1E-1.9(a) upon adoption to provide that inspections will be conducted any time there is an ongoing transfer, suspected violation or discharge, or during normal business hours. The Department may perform inspections at any time under these circumstances. This right of entry and inspection is not dependent upon prior notice.

**N.J.A.C. 7:1E-4.8 Denial or revocation of approval of DPCC or DCR plans or amendments**

COMMENT: The phrase "DPCC or DCR plan" in all sections of N.J.A.C. 7:1E-4.8 should be replaced by the phrase "DPCC and DCR plan". (11)

RESPONSE: The Department recognizes "or" to imply "and." Also, the Department may approve either the DPCC or the DCR plan without approving the other. Therefore, "and" is not appropriate.

COMMENT: N.J.A.C. 7:1E-4.8(c) provides that an owner or operator may request an adjudicatory hearing if aggrieved by the Department's decision to deny or revoke approval of the DPCC plan. It does not specifically provide that the owner or operator has the right to seek a hearing to object to any conditions imposed by the Department in a DPCC plan. The existing rules also provided that seeking a hearing stayed the implementation of the contested conditions. The staying of conditions is appropriate and similar language should be reinserted in the proposed rules: after "aggrieved by" insert "any term or condition imposed in a DPCC or DCR plan" and after "right to a hearing" delete "before the Department." Add a new sentence at the end of the first: "If a hearing is sought pursuant to the provisions of N.J.A.C. 7:1E-6, the implementation of the contested conditions shall be stayed." (26)

RESPONSE: The rules have been amended to make it clear that the provisions of N.J.A.C. 7:1E-6.4 regarding adjudicatory hearings applies to N.J.A.C. 7:1E-4.8(c). If a hearing is sought pursuant to N.J.A.C. 7:1E-6.4, the Department will determine, on a case by case basis, if the implementation of the contested conditions shall be stayed. Such a stay would be determined based on information such as any costs associated with the contested conditions, the time span for implementing the contested conditions, and the effect of staying the conditions on the risk of a discharge.

**N.J.A.C. 7:1E-4.9 Amendments of plans by owners or operators**

COMMENT: In what manner should the notice specified in N.J.A.C. 7:1E-4.9(a) be given to the Department: written or verbal? (11)

RESPONSE: The Department has revised N.J.A.C. 7:1E-4.9(a) upon adoption to make it clear that written notice is required.

COMMENT: In N.J.A.C. 7:1E-4.9, the Department is attempting to go well beyond its own TCPA rules. Whereas the latter attempts to prevent a catastrophic release by approving numerous systems and procedures for each owner or operator, the proposed rules mandate a 60-day pre-construction notification for a host of changes and a 60-day period for Department approval of same. Given the vast number of changes that will be required to be submitted for approval and the Department's general inability to give approval within 60 days, it is apparent that all changes, including safety and discharge prevention improvements, will be impeded by the Department. Indeed, given the broad scope of the changes to be submitted, the only result will be a total paralysis of industry in New Jersey. The Department, instead, should approve a methodology for the owner or operator to review new facilities or changes to facilities per the approach taken by TCPA. (35, 40, 47)

RESPONSE: The Act mandates notification to the Department at least 60 days prior to the commencement of construction, installation, or modification (N.J.S.A. 58:10-23.11d11a). This requirement is one of notification only. No pre-construction approval is given by or required from the Department. The actual amendment to a DPCC plan is not required until 30 days after the change to the facility has occurred. The Department then has 30 days in which to approve or deny the plan amendment.

COMMENT: Clarification is requested by two commenters regarding which "prevention or safety systems or devices" need to be reviewed by the Department. Are all such devices involved in any equipment handling hazardous materials subject to the pre-notification, or just that associated with a storage vessel/container? (40, 47)

RESPONSE: All such equipment or devices involved in any handling of hazardous materials are subject to pre-notification.

COMMENT: One commenter states that a requirement for 60 days notice and a 60 day approval is building the same system the Department is dealing with on air permits. That will bog down the system and should be changed. It is suggested that facilities be allowed to build something into the plans with follow-up documentation, since it is the goal of the plan to ultimately strive for state-of-the-art. Presumably, the changes that facilities would be making are going to be improvements as opposed to negative things and therefore the plans will specify how a facility will institute a program of continuous upgrading. (D)

RESPONSE: The DPCC plan can contain a schedule of future upgrades, pursuant to N.J.A.C. 7:1E-1.11(b), which will be approved by the Department. Any upgrade that is part of an approved DPCC plan does not require a 60 day prior notice (N.J.A.C. 7:1E-4.9(a)), nor does it require an amendment to the plan.

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COMMENT: "Within 30 days of any change" should be replaced by "within 30 days after any change." (25)

RESPONSE: The proposed wording is intended to give the owner or operator of the facility the option to file plan amendments 30 days before or after the change is made.

COMMENT: Does "change" in N.J.A.C. 7:1E-4.9(b) include any building addition(s) as well as any new construction? Per TCPA, criteria are established concerning the change review process and the degree of increased risk that would trigger additional reviews. No such guidance is given here. Can the Department elaborate on "will materially affect the facility's potential for discharges . . ."? The Department needs to give more specific guidance given its penchant for not recognizing the concept of de minimus or of diminishing return. (23, 35, 40, 47)

RESPONSE: A building addition must be reported as a change only if it increases or decreases a facility's potential for discharges. In requiring reporting of only those changes which will materially affect the facility's potential for a discharge, the Department has recognized that de minimus changes need not be reported.

COMMENT: Several commenters state that N.J.A.C. 7:1E-4.9(c) implies Department approval of amendments. Instead, it should be explicitly stated. (35, 40, 47)

RESPONSE: The Department has revised N.J.A.C. 7:1E-4.9(c) to read, "The Department shall act to approve or deny proposed amendments within 60 days."

COMMENT: The Bi-State Harbor Commission is recommending auditing of major facilities in the New York/New Jersey Harbor area. However, this is a suggested and not a mandatory program. Companies should be required to perform an audit every year, not every three years. (E)

RESPONSE: The Department agrees with the Commission that, ideally, auditing should be performed every year. However, the Department has determined that requiring an annual audit would impose too great a burden on the resources of the regulated community and the Department, without additing significantly to the prevention or minimization of discharges. Therefore, the Department has maintained the requirement for plan renewals every three years.

**N.J.A.C. 7:1E-4.10 Mapping criteria**

COMMENT: One commenter strongly recommends that the Department delete the mapping requirements contained in this section. The burden that these requirements would place on the regulated community is far beyond the intent of the enabling legislation. The costs are out of proportion to the benefits compared to alternate mapping criteria. The legislation placed the responsibility for providing the necessary mapping on the Department, not the regulated community. In order to efficiently and accurately produce the mapping at the level of detail and accuracy required by these proposed rules, it is vital that the mapping be done by the Department rather than several hundred different facilities. The intent of N.J.S.A. 58:10-23.11d3c is for the Department to develop base maps ". . . to provide comprehensive, contiguous coverage of land (and) water areas." N.J.A.C. 7:1E-4.10 of the proposed rule is not clear in all areas as to the party responsible for generating these maps. One commenter states it still appears that it is the responsibility of the major facility to do the mapping. Several commenters believe that generation of these maps by major facilities and submission in plans will not meet the best intent of the Act to develop a comprehensive basemap, which is accurate and useful. Successful mapping will be dependent upon the skill and assets of an individual facility. The Department should do the mapping or hire a consultant to do the mapping. More important, the many maps from the plans submitted by major facilities would leave great potential for errors due to inconsistent mapping techniques by different consultants. The commenters feel that the intent of the Act would more properly be addressed by the Departments undertaking the mapping and providing the maps of environmentally sensitive areas to the various facilities subject to this rule. This will assure that all facilities use the same mapping criteria and identify all of the environmentally sensitive areas that may impact. It would be significantly more efficient and cost effective, as well as proving better consistency. (2, 25, 26, 31, j40, 41, 42, 46, B, C, F, H, N)

RESPONSE: N.J.S.A. 58:10-12.11d, sections 2b(6), 2b(7), 3b(5) and 3c of the Act, requires the facilities, in accordance with DEP specifications, to prepare response and contingency plans based on maps of the areas which could be impacted in the event of an accidental discharge from their facility. DEP believes that these maps will be useful to help prepare these plans. Facilities whose area of impact may overlap are strongly encouraged to cooperate in their mapping efforts.

Consideration was given to the burden the mapping criteria would place on industry. The Department agrees that the mapping requirements, as proposed, were duplicative, and has revised the mapping requirements in order to minimize this burden. The Department does not presently have the types of base maps (N.J.S.A. 58:10-23.11d3c) which identify environmentally sensitive areas throughout the State. In recognition of the fact that it would be extraordinarily wasteful to require duplicative mapping of environmentally sensitive areas, the Department has decided to return to the Legislature and ask it to seek an industry-generated source of funding to allow the Department to gather and delineate the necessary base map information. The Department will share this information with the facilities when it is available, so that the DPCC/DCR plans can be updated.

COMMENT: What is the purpose of the mapping criteria relative to the mechanical requirements that the maps be submitted in a digital format consistent with the Department's Geographic Information System (GIS)? The Department has not stated why it needs to have this extraordinary effort and expense. Why are the planning elements of these rules more needful of the GIS type of date that any other Department program that requires maps? In most other regulatory programs, the Department requires owners, operators, applicants or permitees to submit and rely on USGS maps. It is the intent of the Department to make this a universal mapping requirement, this being the first application of that policy? If it is the intent of the Department to make this a universal requirement of all environmental regulatory programs, then something of this magnitude should be put before the regulated public for comment for its own sake, it is that significant. On the other hand, if this is not the intent of the Department, why is this particular segment of the environmentally regulated community being singled out for this extraordinary effort and expense? (21, 26, 40, H)

RESPONSE: N.J.A.C. 7:1E-4.10, as adopted, does not require the maps to be GIS compatible, but the Department encourages submission of maps in digital format if they are available. The Department believes the maps will still provide adequate protection by identifying environmentally sensitive areas in the path of a discharge.

COMMENT: Two commenters state that the mapping requirements of the Department are so detailed as to technique yet vague regarding the areas to be mapped as to render compliance an impossibility. The extreme vagueness of what constitutes an "environmentally sensitive area" alone will cause the cost of this mapping to exceed that Department's estimates. (40, 42, 47)

RESPONSE: By revising the area and the number of classifications to be mapped, and by specifying the types of land uses to be mapped, vagueness as to what is to be mapped has been minimized. These changes should not impair the value of the maps in the preparation of the DPCC/DCR plans. Also because of these changes, Appendix C is no longer referred to and has been deleted.

COMMENT: Several commenters strongly oppose the implementation method of the mapping requirement because it is inefficient, administratively redundant and not cost effective. The requirement for each company to develop separate overlapping maps will do nothing to improve the quality of the final State map, it will only multiply the cost. Two facilities side by side could each spend $500M to $1MM to develop overlapping maps while other facilities may wait until these are a matter of public record, copy them and resubmit them as their maps at a fraction of the cost. Associated with the duplicative map is the concern that the maps will not be equivalent. Facilities will make different assumptions on how land should be classified, as well as leading to differences in size and shape of overlapping areas. The inconsistencies will make the review of the maps very difficult for the Department. Also, with penalties being based on harm to the environmentally sensitive areas, an identical discharge that causes identical harm to the environment will not result in equal penalties being imposed for no other reason than the difference in maps. These commenters recommend that the maps be developed by the Department and be funded through the Spill Fund or other per barrel fees assessed to all hazardous material handlers impacted by the proposed regulation. This method is supported by both industry and environmental groups. Other commenters state that a fee program could be implemented to recoup the cost to the State with the fee based on storage capacity, facility impact on the environment or discharge history. One commenter stated that the State should pay for the work from the Spill Fund, and have the individual facilities reimburse the Fund. The debate over the method of mapping would be moot if the State did the

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work and industry paid for it. Also, it would solve the very real problem associated with the identification of a relatively large number of qualified, accredited marine biologists and ornithologists willing to certify, under penalty of law, that all environmentally sensitive areas have been identified. Alternatively, it is recommended that the legislation be amended to permit the Department discretion in fashioning a more realistic and cost effective mapping approach. (13, 25, 26, 29, 35, 40, 41, 47, B, C, D)

RESPONSE: The intent of the legislation was to use mapped information to enhance discharge response planning, to better protect the environment through awareness, on the part of the facility, of the environmentally sensitive areas which could be affected in the event of an accidental discharge. The purpose of the mapping is to provide facilities and the Department with comprehensive information for planning and response capabilities. The Department has altered the requirements of N.J.A.C. 7:1E-4.10 so as to provide adequate interim protection, while the Department pursues a mechanism to allow development of the base maps. This change on adoption will reduce the amount of unnecessary duplication.

The mapping section which requires the facilities to (1) be aware of the types of areas and land uses which could be affected were there to be an accidental discharge and (2) to use this information in preparing response and contingency plans. Facilities can reduce their individual costs through cooperation with neighboring facilities.

The Department will ask the Legislature to provide a mechanism to conduct a unified mapping effort funded by industry, to prepare the Statewide base maps required under the Act. The recommendation to utilize the Spill Fund as a source of funding for this type of an effort was explored and is not a possibility under current law. It was determined that it would be inappropriate to use Spill Fund monies in such a manner, in the absence of specific Legislative authorization.

With respect to penalties, the penalties as contained in the rule are based on the amount of a discharge that occurs and the factors contained in N.J.A.C. 7:1E-6.8(c)1. The Department has deleted the factor at (c)1 for impact on the environment. A damage assessment undertaken after a discharge occurs may begin by looking at the mapped information, but will require field verification to determine the full extent of any damage and the amount of cleanup required. The Department will assess penalties only for verified actual damage to the environment due to willfully submitting false information. The submitted map information will be public record and thus will become available to another facility.

The Act at N.J.S.A. 58:10-23.11d3(c)(5) establishes the requirement for certification of the facility's plan by a marine biologist and ornithologist. The Department has modified N.J.A.C. 7:1E-4.4(a) to allow for the certification of fresh water area plans by aquatic ecologists, aquatic biologists and other fresh water equivalents. The Department believes that the certifications are necessary to insure that the DPCC/DCR plans have considered how to protect aquatic environments and birds in downstream areas.

COMMENT: The specialized requirements of the section will, in almost all cases, necessitate that major facilities contract this work. Given that there is a limited number of qualified contractors available, the cost is likely to be considerably higher than estimated in the economic impact summary in the rule proposal, and delays in obtaining the final product are inevitable. In terms of cost, the Department has estimated $15 to 35 thousand to conduct these mapping requirements. This $35 thousand which the commenter would use for his facility is only for mapping and does not reflect the cost of hiring a consultant to help prepare the rest of the plans. (39, N)

RESPONSE: The Department recognizes that the mapping effort will probably be done by contractors for the major facilities. The three year phasing of facilities required to submit maps should provide sufficient ample time for the contractors to complete the required mapping, given that the Department has revised the mapping requirements. The Department believes there are a sufficient number of consultants available to undertake and complete the mapping requirements within the required time frames.

There is also a provision in the rule for conditional approval of DPCC/DCR plans pending completion of mapping (N.J.A.C. 7:1E-4.7(c)2. This provision will allow first phase facilities to obtain conditional approval even though their mapping isn't complete within the six or twelve month period that their plans were due to be submitted.

With the adoption of revised N.J.A.C. 7:1E-4.10 the costs associated with mapping have been reduced. However, the cost of a consultant to prepare the remainder of the DPCC/DCR plans and the capital costs and operational costs to comply are not included with the mapping cost and will vary greatly with the size and the pre-existing degree of compliance of the facility with the rule.

COMMENT: One commenter brought up the absurdity of stopping delineations at the New Jersey political boundary. Unfortunately, oil, fish, birds, waters, and wetlands do not respect political boundaries. (31, F)

RESPONSE: The Department agrees with the commenter; however, while mapping beyond the New Jersey state boundary is encouraged for thorough planning, it is outside the Department's jurisdiction to require the mapping of areas outside of New Jersey.

COMMENT: One commenter questions the need for the requirements of this section and the expenditures involved, since to date experience dictates that the mapping requirements in the existing DPCC/DCR rules contain all the information necessary to address areas of concern with respect to adverse effects upon the environment. The new mapping requirements should be removed. (44)

RESPONSE: The Department does agree in that repealed N.J.A.C. 7:1E did not contain any requirements for the mapping of environmentally sensitive areas. The criteria in the rule concerning the mapping of these areas are in response to statutory language which enables the Department to establish the standards for mapped information provided to the Department. The mapping standards are intended to provide consistency.

COMMENT: Several commenters question the cost estimates in the proposal, or state that the increased cost for industry to do it should place the requirement on the Department. Cost estimates of $40,000 to $50,000 for small facilities were given. It was stated that these funds could be better spent in stopping leaks and discharges and in upgrading equipment. Two commenters state that they fail to understand how mapping will act to reduce the incident of petroleum spills and leaks in the future. (14, 30, B, K)

RESPONSE: The Act requires that facilities complete the mapping of environmentally sensitive areas and requires the Department to establish mapping criteria. The mapping requirements, as adopted, will reduce the cost of compliance. The Department recognized the financial burden the mapping will place on a small business and includes an exemption providion if the small business can establish financial hardship pursuant to N.J.A.C. 7:1E-4.10(e). The mapping will identify, among other things, priorities for protection in the event of an accidental discharge and while not preventing a discharge will allow the facility to minimize the effect of its discharge on environmentally sensitive areas. The facility's DPCC plan will reduce the incidents of petroleum discharges in the future.

COMMENT: As indicated in the summary to the proposed rules, the Department seems to have knowledge and has identified environmentally-sensitive areas. In addition, in the summary, it is also indicated that the Department has available basemaps. The summary states: "In many cases cartographic data and digital data may already be available to assist the owner or operator in meeting the mapping tasks. For instance, the Department is in the process of . . ." These statements show that the Department has available information for the regulated community that identifies areas as required in N.J.A.C. 7:2E-4.10. Since the Department states in the summary: "A plan can be conditionally approved without complete mapping . . ." the Department can provide the maps and information to the regulated community as they become available.

The distribution of maps and information by the Department eliminates the need of a review by the Department of individual mapping criteria required and, therefore, reduce the workload for the Department. In fact, N.J.S.A. 58:10-12.11d3c specifically states that the Department must develop basemaps for the benefit of the regulated community. (9)

RESPONSE: The Act requires facilities to undertake mapping for the purpose of discharge response planning. The Department has identified criteria for environmentally sensitive areas. It has not mapped all of these areas within the State. The facilities are encourages to start with the information which the Department has available. The Department has reduced the mapping requirements to reflect that it does not have available at this time the categories of base maps required by the Legislature. The Department will seek Legislative support for an industry-generated source of funding for a unified Department effort to complete these maps, rather than require facilities to individually map this data.

COMMENT: Specific delineation methods should be defined. Does the mapping require metes and bounds descriptions of the various

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elements? Is field verification necessary and, if so, how does one gain access to various other properties? (17)

RESPONSE: Metes and bounds are not required. N.J.S.A. 58:10-23.11d6 and N.J.A.C. 7:1E-4.10(a)4 specify the requirement for state plane feet. Field verification is not required by the rule; however, the Department strongly encourages that it be performed wherever possible. N.J.A.C. 7:1E-4.10(a) has been revised to better define the specific delineation methods to be used. These provisions now specifically state that current commercially available basemaps must be used, with all delineations made using a line width of no greater than 0.05 inches. If a large amount of data is to be mapped, N.J.A.C. 7:1E-4.10(a)2 requires overlays be used. Low altitude aerial photos would be another way to verify the mapped information.

COMMENT: Many of the consultants utilized will overestimate the extent of environmentally sensitive areas. Soils maps are a perfect example of the type of problems industry and their consultants can expect to encounter. SCS soil maps consistently overestimate the amount of land that is considered to contain wet soils. Many of the intermediate soils (for example, Hammonton) can be considered as wet soils but in the proper cotext, can also be dry soils as well. Mapping would likely include such areas as wetlands. The transition area requirements around wetlands can cause the amounts of land delineated as environmentally sensitive to expand expotentially. Similar examples are well documented in defining habitat areas, floodplains, etc.

In previous mapping programs, the established boundary lines are virtually cast in stone. Some boundary changes require notice and amendment through the New Jersey Register, a lengthy procedure that can take from six months to a year (See, for example, New Jersey Water Quality Management Planning). Should an industry encounter a problem with definition of critical areas, the ability to change boundary conditions would require an enormous effort in terms of both time and expense with no guarantees of success. Short term savings may result in long term costs that easily overshadow those initial costs that provide industry with some control over their regulatory future. (17)

RESPONSE: The Department recognizes the concern expressed by the commenter. The environmentally sensitive are delineates mapped by industry will be reference lines for planning purposes in the event of a discharge only. The Department believes that the criteria established at N.J.A.C. 7:1E-1.8 is sufficient for a facility to map the environmentally sensitive areas need to prepare and implement its DPCC and DCR plans. The delineations submitted as a part of the DPCC/DCR plan will be used for the purpose of the DPCC/DCR plan only and will not establish regulatory boundaries to be used by other Departmental programs or agencies.

COMMENT: At the last meeting of the Department working group, a protracted discussion of the difficulties of mapping the environmentally sensitive areas of the state took place. Department personnel offered several options under consideration, pointing out the strengths and shortcomings, and significant costs, associated with each. The Department has rejected the consensus recommendation that it do the mapping and has taken the worst approach. Spelled out in minute detail, the proposed rules require each major facility to address all surrounding area which could be affected by the discharge from the facility, including environmentally sensitive areas. According to the mapping criteria this includes, at least a radius of 15 miles from the facility boundary and includes all flood prone areas around any surface water or wetlands features. Sybron Chemicals is particularly concerned in this regard as it may be the only chemical manufacturer and only major facility located on the North Branch of the Rancocas Creek between Mt. Holly and the Delaware River. Quite possibly, SCI might be responsible for mapping a major portion of Burlington County. (D)

RESPONSE: The Department agrees that the mapping requirements, as proposed, were duplicative, and has revised those requirements. However, the Act requires each facility to develop its own environmentally sensitive area protection plan including mapping. The Department will seek Legislative support to undertake a comprehensive mapping effort Statewide base map.

The Department has clarified the wording of N.J.A.C. 7:1E-4.10(c)2iii to clearly indicate that the intent is to map 15 miles down-gradiant along the path that a facility discharge would follow, not a 15 mile radius of the facility.

COMMENT: The resulting database of valuable information which the Department is compiling should be accessible to others who may have need for such information in preparing site, emergency preparedness, and other applications, as well as to the public. (11, 31, F)

RESPONSE: The Department agrees that such information will be valuable for other purposes than solely DPCC/DCR plan implementations. It will make the mapped information collected under this law available for such uses.

COMMENT: What system does the Geographical Information System use for digitizing and what is the cost of compliance with this selection? (23)

RESPONSE: The Department uses ARC/INFO on a PRIME computer and on a SUN UNIX Workstation. This is compatible for data conversion with many other GIS and CAD software packages. Many consultants producing mapped products use digital processes to do so. However, the rules as adopted do not require digital or GIS-compatible maps be submitted to the Department. The Department does encourage the submittal of information in digital format.

COMMENT: The mapping criteria as defined in the proposed rule was reviewed with a well-known firm which performs complex aerial mapping and topographical work. They questioned such details as scale requirements which do not match GIS standard USGS quadsheets which use a scale of one inch equals 2000 feet. The Department is requiring one inch equals 1000 feet. The degree of accuracy encountered exceeds in many cases the degree of accuracy inherent in resource basemaps which will be used to develop these maps. Another commenter stated that the format prescribed in N.J.A.C. 7:1E-4.10 (1″=1000′, ±33′) conflicts with "which accurately reflects the current facility and surrounding area..." required by N.J.A.C. 7:1E-4.3(b)5. The Department has required delineation of all catch basins, storm sewers, etc., on a site. In order to perform this work, the map scale would have to be less than one inch equals 100 feet. The mapping firm also felt that if the off-site mapping is required, a great deal of ground surveying will be required in order to assure in writing that all environmentaly sensitive areas (waterways, wetlands, etc.) are identified for the area. This work could easily drive the cost of mapping a facility to $1,000,000. (17, 22, 40)

RESPONSE: The Department agrees with the commenter that a scale of one inch equals 1,000 feet or even greater, may be needed to show the features to be mapped, such as catch basins. Field work may be needed; however, ground surveying is not required. If the complexity of the features for a particular facility requires more detailed mapping, that facility may choose a mapping base of a larger (more detailed) scale than one inch equals 1,000 feet.

COMMENT: The term "supply wells" should be replaced by "potable supply wells in the Department's records" in N.J.A.C. 7:1E-4.10(b)3. (25)

RESPONSE: The Department disagrees with this comment, because to adequately plan and respond for an accidental discharge to groundwater, both the facilities and the Department need to know where all supply wells, with the potential to be affected by a discharge, are located.

COMMENT: Why do a one mile radius mapping (particularly, hydraulically upgradient) for low volatility or nonvolatile materials? Range of mapping criteria could be established for radii of mapping (up to one mile) based upon a vapor pressure table similar to that used by the Division of Environmental Quality, Bureau of New Source Review for emissions permitting. (21, H)

RESPONSE: This distance requirement has been reduced to 1,000 feet. The Department believes this will adequate for the purposes of preparing the DPCC/DCR plans, and will satisfy the concerns of the commenter.

COMMENT: The Department needs to define Level II of the Anderson et al. modified classification. Land use mapping according to the Anderson Level II criteria: What are these criteria, and if they are significant, should they not be included in the regulation at least to the level of detail given for the GIS digital mapping criteria? Why can't current land use maps from the communities in question be used, since they are all required to have land use maps by the New Jersey Land Use law, as administered and approved by the Department of Community Affairs? (21, H)

RESPONSE: The Department agrees, and has spelled out the 18 categories of land use which must be mapped, within 1000 feet of a facility. Current land use maps from the communities in question may be used if they meet the requirements of N.J.A.C. 7:1E-4.10. However, the majority of these maps are zoning maps, and do not contain current land use information.

COMMENT: The mapping requirements for the DPCC plans are extremely onerous, especially the topographic map requirement which asks that the facility assume a double failure and no initiation of cleanup activities for at least 48 hours in order to predict and map a projected

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area that could be affected by an uncontrolled discharge. If the intent of this rules is to help prevent environmental damage, then they should at least give credit for some of the containment features required by them to control a potential discharge (for that is, secondary containment or contigency response to contain and/or control a discharge). The topographic mapping up to 15 miles downstream will cost far more than any possible environmental benefit that could result. Also, these requirements will not result in a map that a spill coordinator could use during a spill event because there is no requirement to show contours or the possible paths which the petroleum could travel. The only place the word path is used is N.J.A.C. 7:1E-4.10(c)2 where the words are used to determine the extents of the area to be mapped not the possible spill flow direction. Presentation of projected spill paths is required by USEPA 40 CFR 112. (22, 28)

RESPONSE: The Act requires that a major facility identify the environmentally sensitive areas that its discharges could effect. N.J.A.C. 7:1E-4.10(c)2i defines the parameters of a discharge to be used for mapping purposes. These parameters do not give credit for secondary containment. There have been numerous incidents in New Jersey where secondary containment has been breeched resulting in discharge. Such incidents as the Hess discharge of September, 1990 and the BP Oil discharge of July, 1991 are examples of this type of circumstances where existing secondary containment systems were in place but discharges off the facility still occurred. The rule also requires the mapping extent to be the lesser of 48 hours travel time, dilution to non-impact levels or 15 miles downgradient. Depending on the quantity and quality of discharge, the mapping extent could be significantly less than 15 miles. The mapping will identify these areas to be prioritized for protection in the event of a discharge. While this may be costly, the cost of cleanup and restoration of one environmentally sensitive area that could have been identified and protected via mapping will certainly far exceed the mapping costs. In order to reduce the burden, the Department has revised the mapping requirements and has clarified which environmentally sensitive areas must be mapped at this time.

COMMENT: The wellhead protection areas cannot be mapped until the Department supplies those maps to the public. An exclusion should be added for this condition. (37)

RESPONSE: The Department agrees with the commenter. The rule at N.J.A.C. 7:1E-4.10(b)3 has been changed to indicate that these areas need not be mapped until the Department has delineated them.

COMMENT: Please define the "maximum area of potential impact" as used in N.J.A.C. 7:1E-4.10(c)2. (11)

RESPONSE: The Department believes that the citation in question clearly identifies these methods of determining the area.

COMMENT: In N.J.A.C. 7:1E-4.10(e)2 reference is made to a certified financial statement. Who is to certify it, a CPA? What method of accounting will be acceptable? (22)

RESPONSE: The Department will accept a financial statement certified by a CPA using a standard method of accounting.

COMMENT: N.J.A.C. 7:1E-4.10(e)3 allows for exemptions. No exemptions should be allowed. (31)

RESPONSE: The Department believes that there may be cases where small businesses cannot afford the cost of compliance with the mapping criteria. The facility will still be required to identify the area of impact of a potential discharge and prioritize its response to sensitive areas within the impacted area. Therefore it has retained the hardship exemption provision for small businesses.

**N.J.A.C. 7:1E-4.11 Certifications**

COMMENT: This plan generally requires knowledge of "good engineering practices." SPCC plans pursuant to 40 CFR 112.3(d) require a professional engineer (PE) certification so that the plan complies with good engineering practices. There is an apparent lack of appropriate professional certification requirements in the implementation of these rules. Shouldn't this rule have a similar provision? Without such certification, in the development of these plans, these rules will not be satisfactorily complied with nor will there be an improvement in discharge prevention, containment and response in New Jersey. If appropriate professionals must certify the land survey and environmentally sensitive areas, why doesn't the Department feel that it is equally, if not more important that certifications be required on the overall DPCC/DCR plans, by a PE licensed in New Jersey; on the overall DPCC/DCR plans, by a CHMM; and that trainer minimum qualifications such as CHMM must be included? If the rules do not specify that these plans be reviewed, certified and implemented under the overview and approval of such qualified professionals, these plans will continue to fall short and the expected positive effects will not occur. It is widely recognized that such plans and programs are no better than the qualifications of the people who are in charge of and/or involved in their preparation, implementation and on-going viability. (11, 19, 22, E)

RESPONSE: The Department agrees that such plans and programs are no better that the qualifications of the people who are in charge of/or involved in their preparation, implementation and on-going viability which is why the Department believes it is a management responsibility to certify the plan submittals. By requiring management certification of all submittals the Department ensures that there is a commitment by management to see that the DPCC/DCR plans are properly prepared and implemented. It also insures that management will use the best qualified personnel to prepare these plans. The Department believes that the various certification requirements in the rule are sufficient.

In addition, certification by a PE is not required because the plans will be reviewed and analyzed by Department experts, whose major task is to review DPCC and DCR plans. There is no need to burden the owner or operator with the requirement to obtain a PE certification.

COMMENT: The discussion document and existing rules include the requirement for certification of the plans by a licensed PE. In that regard, what qualifications are being required of the Department's reviewers? In fact, since there are legal aspects to the PE certification, what assurance is the Department willing to offer to the owner or operator or the PE after the plan is reviewed and approved? This is particularly important with regard to the Department's indication that it will accept no liability for its actions (approval). (17)

RESPONSE: The rules contain no requirement for certification of plans by a PE, but rather require certification by management staff of the facility. The Department's reviewers, including its licensed PEs, have a broad background of technical education and experience with various areas of specialty appropriate to review these plans.

COMMENT: N.J.A.C. 7:1E-3.11, Certifications, should be N.J.A.C. 7:1E-3.12. (23)

RESPONSE: While the interested party draft of these rules circulated for review by interested parties contained the provision cited by the commenter, the provision was recodified in the final proposal as N.J.A.C. 7:1E-4.11.

COMMENT: N.J.A.C. 7:1E-4.11(a) would require that the certification accompanying the DPCC be executed by the "highest ranking individual with direct knowledge and overall responsibility for the information." Two commenters believe that this describes the appropriate person to execute such documents and that this is the person who should sign all submittals to the Department. This is inconsistent with other provisions of this chapter which would require that the response coordinator sign all submittals. (26, 39)

RESPONSE: The response coordinator is not required to sign all submittals; his or her responsibility is to insure that all submittals have been made.

COMMENT: Several commenters state that given the numerous submissions required by the Department for significant and trivial matters and that the individual submitting same for a large facility is not the individual that generates the data, it is impossible for him to certify that "the information provided in this document is true, accurate and complete." Instead, consideration should be given for having made a good faith attempt to comply as opposed to a deliberate attempt to not comply or to falsify. The individual signing the submission should be allowed to certify "to the best of my knowledge." (35, 40, 47)

RESPONSE: The certification in N.J.A.C. 7:1E-4.11(a) must be signed by the highest ranking individual with direct knowledge and overall responsibility; therefore, this individual should know if the information submitted is true, accurate and complete. For a given facility, it is expected that a number of personnel will be required to sign the certification at N.J.A.C. 7:1E-4.11(a). Each person will certify that portion of the plan that he knows is true, accurate and complete.

COMMENT: Several commenters state that given the numerous requirements for filing plan amendments, the certification in N.J.A.C. 7:1E-4.11(b) should be restricted to the plan itself or to a class of significant changes that the Department should designate. (35, 40, 47)

RESPONSE: N.J.A.C. 7:1E-4.9 already designates which changes are considered significant by making them subject to the requirements to amend DPCC or DCR plans. All such plan amendments need to be certified.

COMMENT: In N.J.A.C. 7:1E-4.11(b) replace the "or plan amendment" with "or plan renewal." (11)

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RESPONSE: The Department agrees and has amended the wording of N.J.A.C. 7:1E-4.11(b) to "or plan renewal."

COMMENT: The certification in N.J.A.C. 7:1E-4.11(c) is redundant. Why not require a corporate vice president to make the certification in (a) and eliminate (c)? (28)

RESPONSE: The certification requirements under N.J.A.C. 7:1E-4.11(a) and (c) are not redundant. The certification required under subsection (a) is necessary to establish that a person with direct knowledge and overall responsibility for the information contained in the certified document can confirm that it is true, accurate and complete. The certification required under subsection (b), to be signed in accordance with subsection (c), is necessary to establish that a member of high-level corporate management has examined the information in the certified document and discussed it with knowledgeable persons sufficiently to form a belief that the information is true, accurate and complete. Without the additional certification required under subsections (b) and (c), there is a risk that facility personnel could be acting without the knowledge or supervision of corporate management.

The Department recognized that the certification requirements would be redundant if the same person were required to sign both certifications. For this reason, N.J.A.C. 7:1E-4.11(d) provides that only the certification required under subsection (a) is necessary in this circumstance.

COMMENT: Several commenters feel the Department should provide a list of approved biologists and ornithologist and the criteria for their approval. (35, 38, 47)

RESPONSE: The Department has not established a list of approved biologists and ornithologists, because it is likely that many persons qualified to review and analyze an environmentally sensitive areas protection plan would be omitted from such a list. Neither has the Department imposed specific criteria concerning the degrees which the person must have earned, or the number of years of experience; while such criteria are relevant to determining whether a person is qualified, they are not conclusive. Many qualified persons may not satisfy such specific criteria. In determining whether a marine biologist (or freshwater equivalent) or ornithologist is acceptable for the purpose of certifying the plan, the Department will look to the person's educational background, experience working with New Jersey ecosystems, and any other information relevant to determining the person's expertise.

COMMENT: The certifications by the marine biologist and ornithologist are too broad. The use of the wording "any potentially adverse impact" will force the plans to be overly conservative in their response requirements. "Any potentially adverse impact" and "areas that could be affected by a discharge" provides no basis, bounds or de minimus for such an assessment. (35, 38)

RESPONSE: The wording of the certification follows the wording of Spill Act in regard to what the environmentally sensitive areas protection plan must cover (N.J.S.A. 58:10-23.11d3(5)). The Legislative requires these plans to be conservative in order to provide the best possible protection for these important areas.

COMMENT: Because the required ecological specialists may not be fully experienced in spill response methods it is anticipated that the plans may not be realistic. The marine biologist or ornithologist should only be required to certify that the plans properly identify environmentally sensitive areas. It appears that the Department offers no standards either because it has none or wishes to utilize same on a case by case ever changing basis. The Department has an obligation to the regulated community and to the citizens of the State to define what areas are being protected from what. (35, 40, 47)

RESPONSE: The protection plan will be prepared by the facility in conjunction with the environmental specialists so that the final plan submitted to the Department should represent a realistic, implementable plan. New Jersey has a wide range of ecosystems, the definition of environmentally sensitive areas in N.J.A.C. 7:1E-1.8 clearly identifies the areas to be protected from a discharge occurring at the facility. The Department must review each facility's plan on a site-specific basis. Similarly, the review of the qualifications of a specialist certifying a given plan will be performed on a site by site basis because each site will have a different variety of environmentally sensitive areas of concern.

COMMENT: In N.J.A.C. 7:1E-4.11(c)1, add "Or person designated in writing from the vice presient or executive officer" as obtaining signatures from a corporate officer located in another state is time consuming and difficult. (35)

RESPONSE: The Department acknowledges the concern; however, the Department believes that the vice president or executive officer should be fully aware of and fully committed to the discharge prevention activities of his or her facility. By signing the required certifications, he or she is personally acknowledging that he or she and his or her company are fully committed to the prevention activities.

COMMENT: If a professional engineer can determine that a spill at the facility can be contained or adequately prevented from reaching the delineated "environmentally sensitive areas," then the professional engineer also could certify the plan to meet the N.J.A.C. 7:1E-4.11(e) certification requirement. (14)

RESPONSE: The Department disagrees with the commenter. If, as the commenter states, the facility has delineated environmentally sensitive areas pursuant to N.J.A.C. 7:1E-4.10(c) the facility has already determined that a discharge could affect those areas. While the professional engineer may design structures or procedures to contain the discharge on site, the fact remains that there still is a potential for that discharge to travel off-site. The facility must still be prepared to protect those environmentally sensitive areas and that protection plan must be certified pursuant to N.J.A.C. 7:1E-11(e).

COMMENT: The reference to a name in N.J.A.C. 7:1E-4.11(e) should be modified to include only the position or title, so that a change in personnel does not place the plan in error or confuse individuals. (11)

RESPONSE: N.J.A.C. 7:1E-4.11(e) requires the person reviewing the environmentally sensitive area plan to certify the plan. A change in facility personnel will not effect his certification.

COMMENT: Two commenters question whether a marine biologist or ornithologist would be willing to execute the proposed certification that significant liability is attached to the certification and many parts of the environmentally sensitive areas protection plan would be beyond the area of professional expertise of either a marine biologist or an ornithologist. (17, 26, 39, 42)

RESPONSE: The Act mandates certification by a marine biologist and an ornithologist. However, the Department recognized the need for a fresh water equivalent and has changed N.J.A.C. 7:1E-4.11(e) to read "marine biologist aquatic biologist, aquatic ecologist, or freshwater equivalent, and ornithologist." These professionals will be certifying these portions of the plan for which they have the requisite expertise.

**SUBCHAPTER 5 DISCHARGE NOTIFICATION, RESPONSE AND REPORTING**

**N.J.A.C. 7:1E-5.1 Scope**

COMMENT: The definition of "person responsible for a discharge" includes, "any person who brokers, generates or transports the hazardous substance discharged." Aside from the party immediately responsible for the discharge, are any of the other parties listed in the definition cited above responsible in any way for the notifications and other reports listed in N.J.A.C. 7:1E-5? Is there an implicit strict and several liability associated with the definition whereby all persons or parties associated with the hazardous substance that was discharged have a responsibility to respond? (21)

RESPONSE: The Department intends the definition to be broad because liability for a discharge will often be shared among various persons. Any person listed in the definition of "person responsible for a discharge" who knows or should know of the discharge is responsible for immediately notifying the Department pursuant to N.J.A.C. 7:1E-5.3(a). A single telephone call from any one of them will constitute notification. Any person responsible for a discharge who reports a discharge pursuant to N.J.A.C. 7:1E-5.3(a) is responsible for submitting a conformation report pursuant to N.J.A.C. 7:1E-5.8(a). Therefore, the only time when all persons included in the definition of "person responsible for a discharge" would be expected to notify the Department is when they all know or should know of the discharge. In that case, all persons who perform the notification can collaborate on a single confirmation report to the Department.

**N.J.A.C. 7:1E-5.2 Notification of discharges which occurred before the January 1980 amendments to the Act**

COMMENT: The definition of "discharge" in the proposed rule is much different than the definition in the current N.J.A.C. 7:1E, which was in effect before January 23, 1980. Reporting of discharges of substances not defined as hazardous prior to the specified date is also required. This would mean investigating records for any spill and would require an extensive amount of work. While recognizing the Act requires this notification, the environmental benefit derived from such a time consuming inquiry is questioned. (13, 46)

RESPONSE: In order to adequately protect the public health, welfare, and natural resources of New Jersey, the Department and the legislature

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believes notification of discharges which occurred prior to January 23, 1980, is necessary (N.J.S.A. 58:10-23.11e). The definition of "diligent inquiry" is not overly burdensome and allows flexibility on a case by case basis. The Department will exercise reasonable judgement in the enforcement of these requirements.

Discharge of hazardous substances are only required to be reported. The environmental benefits derived from investigating records for spills will enable companies to evaluate the effectiveness of their remediation of prior discharges. The Department believes this is good business practice as well as sound environmental protection. It also meets the expressed intent of the Spill Act to protect and preserve the lands and waters of the State to promote the health, safety and welfare of its people and environment (N.J.S.A. 58:10-23.11a), and to require notification of all discharges, past and present (N.J.S.A. 58:10-23.11e).

The definition of "hazardous substances" has changed over the years as scientific knowledge of different compounds' toxicity has been developed. Substances that were thought to be relatively harmless are now believed to be harmful to human health and the environment. Years ago, measures taken to clean up discharges of these substances may not have been vigorous enough. It is important for the Department to gather this type of information to help guard the health and welfare of New Jersey's citizens.

COMMENT: The phrase "all persons responsible for a discharge" should be replaced with "all persons who may be subject to liability for a discharge." This change would make the rule consistent with N.J.S.A. 58:10-23.11e, "Any person who may be subject to liability for a discharge which occurred prior to or after the effective date of the act of which this act is amendatory shall immediately notify the Department." (35)

RESPONSE: The Department does not believe any change is necessary. The term "person responsible for a discharge" used in these rules is equivalent to the term "all persons who may be subject to liability for a discharge." In an effort to clarify the issue of persons liable for a discharge, the Department has determined that person(s) responsible for a discharge is more appropriate. The question of liability is not one to be answered by rule. A legal determination of liability will be made after the incident. Historically, many discharges went unreported because of the question of who is liable for the discharge. The Department believes that the phrase "all persons responsible for a discharge" will clarify this issue and result in more discharges being reported to the Department.

COMMENT: One commenter believes that language was omitted from N.J.A.C. 7:1E-5.(c). As currently proposed, the commenter is unable to determine what actions, if any, this provision requires the regulated community to undertake once a past discharge is reported. N.J.A.C. 7:1E-5.2(a) requires all persons responsible for a discharge to report a past discharge. N.J.A.C. 7:1E-5.2(c) appears to require any person who was responsible for a past discharge to report the past discharge, which is already required by (a), and then to determine whether a discharge which has already been reported has occurred. This is inconsistent. Therefore, a clarification of the requirement of (c) is requested. In addition, (c) is missing at least one word and needs to be reviewed for completeness. (45, D)

RESPONSE: N.J.A.C. 7:1E-5.2(a) requires all persons responsible for a discharge who have not previously reported a discharge which occurred prior to January 23, 1980, to notify the Department. N.J.A.C. 7:1E-5.2(c) was intended to require all persons who may be responsible to notify the Department of a discharge, to conduct a diligent inquiry when they suspect a discharge may have occurred to determine whether any such discharge actually occurred. The Department has corrected the wording of N.J.A.C. 7:1E-5.2 to make this intent clear. In this effort, (c) has been deleted, so any missing word has become moot.

The Department is requiring all persons to review past operational practices to determine if any discharges occurred which went unreported and unremediated. In an effort to ensure that all past discharges are remediated, the Department expects all persons to conduct a "diligent inquiry" to ensure these discharges were remediated.

COMMENT: The statutory basis of the proposed requirements in N.J.A.C. 7:1E-5.2 is questioned. The requirement to conduct a "diligent inquiry" is too broad and should be deleted. The definition of a diligent inquiry rquires that all former employees, existing employees or persons who may have known of a discharge be questioned. For a major facility this may require that thousands of people be questioned. This is unreasonable and an inefficient use of resources. Further, the environmental benefit to be gained from such an extensive questioning is more than likely limited. This is a specific example of the overly broad regulatory powers that the Department is seeking which are beyond the scope of the enabling legislation. The actions being taken at the major facilities to prevent and detect discharges will provide suitable protection to the environment. (26, 35, 42)

RESPONSE: The Department believes that the definition, as currently drafted, satisfies the commenter's concerns. The definition of "diligent inquiry" requires reasonable inquiries of those former or present employees involved with hazardous substances. For this reason, the definition is sufficiently flexible to avoid the need for a person to make unreasonably burdensome inquiries.

The Department disagrees with the assertion that the requirement of a diligent inquiry is beyond the scope of the enabling legislation. N.J.S.A. 58:10-23.11e requires notification of any discharge which occurred prior to or after the effective date of the 1980 amendment to the Act. A requirement for a diligent inquiry into past discharges is implicit in the statutory reporting requirement, which would be essentially ineffective if no inquiry were required.

COMMENT: The need to provide records of discharges which occurred prior to January 23, 1980, is questioned, since any discharge that took place would have been reported to the State consistent with the rules in effect during that timeframe. Certainly the rules as they exist today were not in place, so past reports will not contain the detail to meet current rules. In addition, existing rules and permits, such as a NJPDES permit, will identify any past discharge, whether reported or not, that has resulted in an impact to the environment. This would be a burdensome process with no benefit toward preventing future discharges. Other concerns center around what the Department intends to do with this form of information. (40)

RESPONSE: The Department believes this information is necessary because it is important to be aware of any discharge that has occurred regardless of the timeframe. While the Department recognizes that many past discharges have been reported in compliance with requirements in permits and in other rules, such reporting is far from comprehensive. The statutory authority requiring the reporting of past discharges has been in the Spill Act since 1980 (N.J.S.A. 58:10-23.11e). It is the Department's intent to ensure that all discharges have been reported and all necessary corrective action has been taken.

The Department disagrees that this would be a burdensome process with no benefit toward preventing future discharges. The definition of "diligent inquiry" allows for reasonable effort, thus precluding an unreasonable and burdensome effort. All nonpermitted discharges must be reported and remediated to prevent an impact to the environment. The reporting of these discharges to the Department will allow the Department to track and follow up on the remediation of the discharge to ensure any impact to the environment is minimal. It will also enable the owner or operator of the facility to establish historical trends to determine what is the highest risk area for that facility. The highest risk areas can then be addressed first.

COMMENT: It is unreasonable and unduly burdensome to require immediate notification of pre-1980 discharges, and is not authorized by the Spill Act. While it is uncertain what the Department will do with the information so generated, the requirement of an "immediate" notification appears wholly unnecessary. It would be far more appropriate to develop a reasonable schedule for submission of such pre-1980 information. What constitutes immediately? What constitutes knowledge of that sort of information? (25, D)

RESPONSE: The Department has deleted "immediate" in N.J.A.C. 7:1E-5.2(a) and replaced it with "promptly upon discovery of the discharge pursuant to the diligent inquiry and". The Spill Act at N.J.S.A. 58:10-23.11e requires immediate notification of pre-Act spills, but the Department recognizes that a discharge which occurred in the past need not be reported as "immediately" as a present discharge. The associated penalty citations in N.J.A.C. 7:1E-6.8(a)5 have also been revised to be consistent with this change. The reporting of these discharges to the Department will allow the Department to track and follow up on the remediation of the discharge to ensure any impact to human health or the environment is addressed.

COMMENT: If a facility discovers contaminated groundwater today, how is it determined when the specific incident occurred? (D)

RESPONSE: If a facility discovers contaminated groundwater they are required to conduct a diligent inquiry pursuant to N.J.A.C. 7:1E-5.1(a). If this inquiry cannot determine when the contamination occurred, reporting that fact will be sufficient.

COMMENT: As currently proposed, N.J.A.C. 7:1E-5.2 is too broad. One commenter is concerned because the rule is silent as to the imposi-

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tion of penalties for past discharges. In *State of New Jersey, DEP v. J.T. Baker Chemical Company,* 234 *N.J. Super.* 234 (Law Div. 1989) *aff'd* No. 3610-89 (App. Div. February 21, 1989), Judge Diana held that a discharger cannot be penalized for discharges occurring before the enactment of the Spill Compensation and Control Act. Thus, the penalty provisions of the Spill Act can be applied prospectively but cannot be given retrospective effect. The Department is urged to include within N.J.A.C. 7:1E-5.2 language which would make clear to the regulated community that it will not be penalized for discharges which occurred prior the enactment of the Spill Act, thereby providing consistency with the *Baker* decision.

In addition, the Department should include within N.J.A.C. 7:1E-5.2 language which clearly states that in addition to not imposing a monetary penalty for past discharges, such information will not be used to elevate the discharge history status of an alleged violator. The Department should also provide for a grace period in which a discharger can report old discharges without fear of penalty for failing to report as required by the Spill Act amendments of 1980. Such a provision would encourage the reporting of pre-Spill Act discharges, thereby furthering the overall aim of the Spill Act. (45)

RESPONSE: Persons responsible for a discharge are not subject to penalty liability for discharges which occurred prior to the enactment of the Spill Act, consistent with *State of New Jersey DEP, v. J.T. Baker Chemical Company.* The discharge history multiplier in N.J.A.C. 7:1E-6.8(c)1 only applies to discharges within the "previous 12 months" and therefore would not apply to historical discharges reported within that 12 months. The *Baker* decision does not restrict the imposition of penalties for failure to report a past discharge, only the imposition of any penalty for the discharge itself.

As to a grace period for reporting past discharges, notification is not required until after a person responsible for a discharge has suspected such discharge had occurred and has determined via a diligent inquiry that is has occurred. However, not reporting a past discharge can subject the person responsible for a discharge to the penalty provisions of the Spill Act. There is no need for a grace period to be written into the rules.

**N.J.A.C. 7:1E-5.3 Discharge notification**

COMMENT: Proposed N.J.A.C. 7:1E-5.3, if adopted as it now exists, will affect nearly every business and a large number of citizens in New Jersey. Anyone, including homeowners, that cause the smallest discharge of any one of the hundreds of chemicals is subject to strict reporting and cleanup requirements. A discharger may also be subject to a penalty. Therefore, these rules are not only requiring additional efforts, but are requiring new efforts by small businesses and individuals who were previously unaffected by most discharge rules. This was not the intent of the legislation. (B)

RESPONSE: The Department believes these provisions do implement the intent of the legislation. The discharge notification process has not changed since the legislature amended the Act. The Department has defined two terms, "leak" and "discharge" in these rules to clarify which releases of hazardous substances must be reported to the State. A discharge is any release of hazardous substances into the waters or onto the lands of the State which is not in compliance with a valid permit. A leak is everything else. Discharges must be reported. Leaks need not be reported. The legislature determined that discharges have sufficient effect on the environment to require everyone, individuals and corporations, to be subject to this law and these rules. Since the potential for damage to the environment from a discharge is affected by the nature and location of the discharge, and not by the identity of the discharger, the Department has not exempted homeowners or small businesses from the discharge reporting requirements. The Department must be able to evaluate the type of response necessary, or determine that the discharger is already responding adequately. By requiring all discharges to be reported, the Department will be able to carry out this responsibility, rather than leaving it in the hands of the discharger.

COMMENT: Several commenters state that in N.J.A.C. 7:1E-5.3(a), the Department uses the phrase "should have known" whereas in (b), the phrase "reasonably should have known" is used. The latter, while still requiring definition, should be the phrase in both cases. One commenter suggests "known/knew or "should know/should have known" be replaced with "becomes aware." Reporting cannot be made until after a discharge is discovered. It is impossible to report certain discharges if no one is present. It is unreasonable to stipulate reporting when a discharge commences, particularly for a slow leak or minor quantity. Another commenter does not understand the meaning intended in the proposed new rule by a person responsible that "should know." This is quite ambiguous and not defined. The Department should reconsider the wording of this provision to more clearly state its intent in the proposed new rule, or to define such terms as "should know." (11, 19, 35, 40, 46, 47)

RESPONSE: The term "should know" applies to operators and managerial staff whose function is to monitor production and to supervise staff. It is the responsibility of the management staff to ensure that sufficient care is taken to prevent discharges, and when they do happen, to report them. If the staff of a major facility complies with the requirements of N.J.A.C. 7:1E, there is a timeframe in which they "should know" of a discharge. The use of discharge detection systems, visual inspections, and other methods establish this timeframe.

The Department agrees that a discharge notification cannot be made until a discharge is discovered. That, in part, defines "know or reasonably should have known." However, by also including "should have known," it establishes a standard of conduct which requires that persons demonstrate proper diligence in discovering discharges.

In an effort to provide consistency between N.J.A.C. 7:1E-5.3(a) and (b), the Department has changed (a) to read: "any person or persons responsible for a discharge who know or reasonably should have known . . ." The Department does not find it necessary to define the phrase "reasonably should have known." This is a common legal standard involving what can be expected of a reasonable person. However, examples of when a person responsible for a discharge "reasonably should have known" of a discharge include: warning by a leak detection system or high level alarm, visual detection, or production gauging that indicates a problem.

COMMENT: The Department should consider whether a plant laborer who may be responsible for a discharge would be able to determine if such a release may result in damage to lands, water, or natural resources in the State of New Jersey. In addition, if a laborer is required to make notification of such a discharge, would the laborer be able to, and would he be subject to a $1,000 fine? (N)

RESPONSE: The company that the plant laborer works for would be held responsible for ensuring proper notification and for any fines or penalties issued as a result. The laborer's employer is responsible for instructing the laborer in standard operating procedures about the plant. Discharge notification should be one of these procedures. How the responsibility to perform that notification is fulfilled will be determined by each owner or operator for his or her operations.

COMMENT: If a homeowner spills gasoline in the refueling of his or her lawn mower, is this a reportable spill? (21)

RESPONSE: A spill of gasoline by a homeowner may be reportable, dependent upon the circumstances of the spill. If the spill is onto the lands or waters of the State, it is a discharge and must be reported. If the gasoline spills onto a surface such as concrete from which it can be cleaned up or removed so it does not enter the lands or waters of the State, it is a leak which need not be reported.

COMMENT: What quantity constitutes a discharge? (13, 23, 26, 39, 42)

RESPONSE: The definition of "discharge" is not linked to the quantity of the hazardous substance released. Any quantity of a hazardous substance released to the lands or waters of the State is a discharge, unless the release is to a surface such as concrete from which it can be and is cleaned up or removed before it enters the land or water of the State. Such a release would be a "leak," which need not be reported.

COMMENT: The revision to the wording in N.J.A.C. 7:1E-5.3 deletes the concept of a reportable discharge. It is suggested that the present wording in N.J.A.C. 7:1E-2.1(a) be retained and used in the proposed N.J.A.C. 7:1E-5.3(a). With this proposed change in reporting every discharge of a hazardous substance, no matter how small or insignificant or how dilute the concentration must be reported immediately and with full information. Thousands of discharges will be occurring each day at major facilities by this rewording. Many examples of the absurd nature of this reporting can be given. Fertilizing the lawn would be a reportable discharge because phosphorus is defined as a hazardous substance and it is an ingredient of fertilizer; a throat lozenge dropped on the ground would be a discharge to the land since it contains phenol in small amounts; drips of oil from a car to the road would also be reportable, because the road drains to the storm sewer. (35, 27)

RESPONSE: The Department wants to be aware of all discharges that are occurring within New Jersey. If as the commenter contends, thousands of discharges occur at major facilities every day, then the discharge

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prevention standards may not be stringent enough. The prevention standards in the rule should reduce the numbers of discharges that occur.

However, in reality, in interpreting that definition, the Department will apply general principals of statutory construction which mandate that statutory interpretations leading to absurd or unreasonable results are to be avoided. *Davis v. Heil*, 132 *N.J. Super.* 283, 293 (App. Div. 1975), *aff'd*, 68 *N.J.* 423. Therefore, the Department will look at the particular facts of the situation and determine if a discharge has occurred. In essence, the Legislature has decided that a reporting requirement is necessary in order to ensure that the Department has information regarding all discharges into the environment so the Department may determine, what, if any, remedial steps are warranted. However, the Legislature did not exact a mandatory enforcement scheme.

Confusion has resulted among the regulated community as to what is a reportable discharge. In the past, the Department never quantified what a reportable discharge was. It is very difficult to determine the environmental effect of release. The Department is in the best position to make that determination. In an effort to resolve this confusion, the Department is requiring all releases of hazardous substance releases to lands or waters of the State to be reported as discharges. A release of a hazardous substance to a surface such as concrete and which is cleaned up before it enters the lands or water of the State is a leak and need not be reported.

COMMENT: It is imperative that the Department develop a practical *de minimus* quantity that does not require full reporting and immediate response action. One commenter suggests a de minimus quantity of 50 gallons, which was the gentleman's agreement of the original rules which was lost over the 11 years since the original adoption of these rules. Another commenter suggests a de minimus quantity of five gallons for petroleum. (19, B, D)

RESPONSE: A de minimus standard is not appropriate for these rules. The Department believes requiring all releases of hazardous substances to the lands or waters of the State, to be reported, and exempting all leaks, which are releases of hazardous substances to surfaces such as concrete and which are cleaned up so that it does not enter the lands or waters of the State, is the most efficient and most useful way to require reporting. The Department can then make a determination as to the magnitude of the effect a reported discharge will have on the environment.

The Department can find no record of any "gentleman's agreement" on 50 gallons. An agreement on one specific quantity is not appropriate when the nature of the risk will vary with the substance and circumstances.

COMMENT: Unless a de minimus quantity is established, below which reporting is not made, telephone lines will be jammed, and personnel occupied, thus making very difficult the reporting of significant discharges where assistance may be needed. The Department will not be able to function if private individuals, schools and small businesses, as well as all of industry, begin to report releases of a few grams of material. This concept is recognized in the air permitting rules (N.J.A.C. 7:27-8 and 17). (19, 26, 39, 42)

RESPONSE: The Department wants to be aware of all discharges that are occurring within New Jersey. At present there exists no de minimus quantities for reporting only a vague definition of a "reporable discharge." In some cases, a few grams of material can have a significant effect on the environment. Facilities may not have the resources or knowledge to determine whether or not a discharge will damage the environment and err on the side of caution by reporting it. The Department wants all releases to lands or waters of the State to be reported. A determination on the magnitude of the effect on the environment can then be made by the Department.

The Department does not foresee any unmanageable increase in the number of notifications reported, and welcomes the possibility of increased reporting. The cumulative effect on the environment of discharges across the State, past and present, can be better assessed if all discharges are reported. The reporting of all discharges will also enable the Department to better formulate responses to various discharges. In addition, discharges should decrease overall, as major facilities come into compliance with the prevention standards in these rules.

COMMENT: N.J.A.C. 7:1E-5.3(b) goes beyond the discretion granted by the Legislature and is a totally unreasonable requirement. It may be prudent to report to other agencies before going to the Department. In fact, a major facility must, through experience, identify which is the appropriate first responder based on its needs and the capabilities of that agency. Local police and fire departments or the National Response Center may be given a higher priority depending on the conditions of the discharge. (N, 26, 36, 17, B)

RESPONSE: The Department does not have to be notified first if there are other, higher priorities such as local police and fire departments or the National Response Center. If the Department is not notified immediately (within 15 minutes), the facility must justify the delay pursuant to N.J.A.C. 7:1E-5.6. Essential immediate response activities may be a valid justification for a delay in notification.

COMMENT: Vessel owners involved in a marine incident or casualty of some type, including discharges of oil, are required under Federal law first to notify the National Response Center. More importantly, in any incident, owners and/or the masters of vessels have a duty to ensure the safety of crew members and other personnel before taking any other action. The proposed rules do not recognize or acknowledge this overriding duty for vessels and thus impose unrealistic expectations on the part of vessel owners and the person responsible for the discharge. (43)

RESPONSE: The Department agrees that the immediate safety of people overrides the need to make any notification. This has been incorporated into N.J.A.C. 7:1E-5.6, Justification of delay, as "essential immediate response activities." It is not the intent of the Department to endanger people's lives.

COMMENT: For a major facility, the rules should specify that the discharge notification should be made by the response coordinator or delegated representative. This assures that the correct information can be given to the Department. (35, B)

RESPONSE: The determination of who should make the discharge notification is left to the discretion of each facility. In the event of a discharge, the response coordinator should promptly implement the facility's DCR plan or other appropriate response. Requiring the response coordinator to also make the discharge notification may be unduly burdensome. That decision is best made by the individual facilities.

COMMENT: Requiring notification of the Department for all discharges of petroleum and hazardous substances within 15 minutes would flood the Department's hotline with calls. The 15 minute notification could lead to a larger number of false alarms and could divert valuable industry, local and State response teams away from discharges which may have impact elsewhere and will at times delay response to the actual situation causing a discharge. (B, 36)

RESPONSE: The Department disagrees. The resources allocated for this task should be sufficient to meet the demands. The environmental hotline is designed to take a large number of calls, many of which are of the type required by this rule. The Department does not anticipate an unmanageable increase in the number of calls received. The additional discharges that will be reported will enable the Department to assess the overall impact of discharges on the environment of New Jersey and to plan protection and remediation measures. The reporting of all discharges will enable the Department to better formulate responses to all discharges. While smaller discharges will now be reported, the overall number of discharges should decrease as major facilities come into compliance with the prevention standards in these rules. Additionally, the Department uses a system of checks and balances and a sorting process to prevent false alarms and wasteful diversions of personnel and resources.

COMMENT: N.J.A.C. 7:1E-5.3 requires discharge notification to the Department within 15 minutes of the time that the person responsible for a discharge knew, or **reasonably should have known,** of the occurrence of a discharge. In light of the rapid response time required, notification should be triggered by **actual** knowledge of a discharge, particularly since the notification must contain all of the specific information set forth in N.J.A.C. 7:1E-5.3(c). The introduction of a negligence standard in terms of when the person responsible for a discharge reasonably should have known of a discharge serves to render the notification requirement somewhat vague and ambiguous. (11, 25, 44)

RESPONSE: The specific information required at N.J.A.C. 7:1E-5.3(c) must be provided at the time of notification, which of course cannot occur until a discharge is discovered. The Department has found that occasionally, due to failure to comply with the standards, the detection of discharge and subsequent notification by the facility has been significantly delayed. In fact, in some cases, non-facility personnel have been aware of the incident before site personnel. The language "reasonably should have known" is used because the standards in this rule establish a minimum standard of reasonableness, which may be modified by the standard of what a reasonable person should know. For example, if a facility fails to perform a daily inspection, and a discharge occurs,

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the time when the facility reasonably should have known is the time when the inspections was to be performed.

COMMENT: The facility should be allowed to provide its "notification protocol" as part of the DPCC/DCR plan and, through implementation, be able to satisfy the notification requirement. (35, 36, 17, D, N)

RESPONSE: The facility must follow the requirements of N.J.A.C. 7:1E-5.3 to determine what type of incident to report, when to report it, and what to include in the report. If a facility wants to include in the DPCC/DCR plan its methods for determining the priorities for notification of various agencies, and for determining who will actually telephone the Department, this is acceptable. However, including a notification protocal is not required, and a protocol which gives the facility more than 15 minutes for the notification cannot be substituted for the requirements of N.J.A.C. 7:1E-5.3.

COMMENT: Fifteen minutes is an insufficient amount of time to ensure the safety of personnel, take immediate steps to initiate action to contain a discharge, notify emergency response personnel, take such actions as are necessary to protect life and property, and to obtain all of the information that the proposed rules specify the person responsible for the discharge must provide to the Department. The need for a 15 minute reporting requirement that includes detailed information is not practical and is counterproductive to an efficient spill response. In certain circumstances, calling the Department within 15 minutes would delay important calls to spill response contractors or other emergency response equipment, which could increase the environmental impact of an event. (40, 35, 36, D, 27, 43, 17, 28, 19, B, 16, 39, 15, 42)

RESPONSE: The Department has determined that a notification within 15 minutes of when a person knows or should have known of a discharge is reasonable. N.J.A.C. 7:1E-5.6 allows a facility to extend this time period if 15 minutes notification is not possible and the delay can be justified for good reasons, such as essential immediate respone activities. The information to be reported in the telephone call is not excessive, because it is needed for the Department to adequately assess the appropriate response. Basically what the Department needs to know is where the discharge occurred, when it happened, who is reporting the discharge, if the discharge went into a body of water, the common name of the substance, the approximate amount, and who was responsible.

The importance of immediate notification of the Department is reinforced by a recent incident in Howell Township, New Jersey. The responsible company knew of the discharge of diesel fuel at approximately 4:30 A.M., but did not notify the Department and took no cleanup action. At 6:30 A.M., the Department received a report from a concerned citizen about diesel fuel in the Point Pleasant Canal. The subsequent investigation determined that approximately 8,000 gallons of diesel fuel had entered various waterways and wetlands miles from the site of the discharge. If the Department had been notified immediately, it could have ensured proper containment and cleanup, thus reducing the area affected by the discharge and the cost and difficulty of cleaning it up.

COMMENT: It is important to realize that many events which would require notification to the Department occur during "off-shirts" or at small facilities where only one supervisory employee is available to undertake all of the many important activities and make the determinations as to what must be done. If a discharge occurs during off-hours the same person who is trying to solve the problem is trying to make the notification. In addition, it is very probable that at remote or unmanned facilities, it would take longer than 15 minutes to verify and investigate the discharge. In the case of a vessel, the limited numbers of persons aboard a vessel would prevent a vessel owner from carrying out his responsibility for crew safety each and every time there is a discharge. A 15 minute notification period is simply not realistic under these circumstances. (15, 40, 42, 43, D)

RESPONSE: The notification must be immediate, pursuant to N.J.S.A. 58:10-23.11e, in order for the Department to make the proper response as quickly as possible. If immediate notification is not possible, notification must be as soon as reasonable pursuant to N.J.A.C. 7:1E-5.6. Delays must be justifiable pursuant to N.J.A.C. 7:1E-5.6, or they will be penalized. Delays due to the circumstances under which the discharge occurred may be justifiable pursuant to N.J.A.C. 7:1E-5.6(a)2.

COMMENT: Several commenters suggest various timeframes for reporting requirements, ranging from 30 minutes to two hours. Specific recommendations are:

A more reasonable reporting period would be at least 30-minutes for a significant discharge and a much longer period for a release with no offsite impact.

Rather than requiring notification of the Department within 15 minutes, the person responsible for a discharge must immediately **initiate** notification procedures prescribed in the facility emergency response plan.

After "pursuant to (a) above within" delete "15 minutes" and insert "not later than one hour unless spill containment measures otherwise prohibit making such notification within that time period." The second sentence establishing the presumption should be deleted in its entirety.

A more reasonable requirement would be to require notice "immediately or as soon as reasonably practicable."

The proposed rules should be aligned with the NJPDES rules which allow a two hour notification for many permit limit excursions. The need for faster reporting should be reserved for discharges that pose a significant threat to the public health or the environment.

The timeframe should be within one hour of the spill response coordinator's knowledge of the discharge.

For vessels, a more reasonable length of time would be two hours. (11, 15, 16, 23, 25, 26, 27, 35, 36, 39, 40, 42, 46)

RESPONSE: The Department believes the 15 minute notification requirement is necessary and reasonable, regardless of the size of the discharge. The person directly responsible for a discharge is not the only one who may notify the Department. Any person who knows, or should have known of the discharge may notify the Department. Valid delays in notification may be justified pursuant to N.J.A.C. 7:1E-5.6.

Any employee selected by the management of the facility as being appropriate may make the notification call; these does not have to be someone who is on a discharge response team. If the immediate notification requirement cannot be met, notifying the Department as soon as possible or reasonable is acceptable if the delay can be justified pursuant to N.J.A.C. 7:1E-5.6.

The Department wants to be aware of all discharges that are occurring within New Jersey in a short period of time. Any discharge has the potential to have an effect on the environment. Administrative law judges' decisions have determined that "immediately" is definitely less than one hour, and falls more in the range of 15 minutes. This is the time period incorporated into the rule.

COMMENT: N.J.A.C. 7:1E-5.3(c) of the proposed rules requires a significant amount of information to be given in the report, most of which is not available within 15 minutes to the person making the phone call. (35, 36)

RESPONSE: The information which must be reported has been identified in the rule. The Department has determined that of all the information generally requested of a caller to the environmental hotline, that listed in the rule is the most critical. This is fairly basic information relating to the discharge, the person making the notification and the person responsible for the discharge. Some of this information can be gathered prior to a discharge and kept ready for an incident, such as the location of the facility, and other information will be readily available, such as the name and title of the person making the notification.

COMMENT: If the Department wishes to direct a non-Departmental "any other person" to the discharge site, it should specify which agency personnel it has in mind unless it is intending to gather a citizen posse. (40, 47)

RESPONSE: The Department has no intention of directing private citizens to a discharge site. Sufficient information as to the location of the discharge must be given so that proper personnel, such as a discharge cleanup organization or the local police department, can find the location of the discharge.

COMMENT: N.J.A.C. 7:1E-5.3(c)2 would establish unreasonable standards with respect to the reporting of the location of a discharge. After "the location of the discharge" delete, "with as much specificity as the Department requests, and in any event." (26)

RESPONSE: The Department does not believe that the wording of N.J.A.C. 7:1E-5.3(c)2 is unreasonable. Information relating to the location of the discharge must be specific enough so that the site can be easily and quickly found. If emergency response and cleanup personnel cannot find the location of the discharge, they cannot help to mitigate the discharge.

COMMENT: Many of the hazardous substances do not have a common name as requested in N.J.A.C. 7:1E-5.3(c)3. The option to provide the chemical name or trade name should be added. (35)

RESPONSE: The Department requests the common name so that people making notifications will not be penalized if they do not know the proper chemical name. The term "common name" means that name

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in common usage for a given chemical. If the name in common usage is the chemical name, it is appropriate to use it for notification.

COMMENT: Given the Department's requirement for 15 minute notification, allowance should be made that it is not always possible to determine within such timeframe the exact cause of or person responsible for the discharge. (40, 47)

RESPONSE: The Department does not require that the cause of a discharge be reported as a part of the discharge notification. That information is required in the confirmation report, which is not due until 30 days later.

The "person responsible for a discharge" and "person" are defined at N.J.A.C. 7:1E-1.6 and do not necessarily require the name of an individual. As there are several people who fall into the definition of "person responsible for a discharge," any one of those persons will do. Not all have to be identified at the time of the initial notification.

COMMENT: N.J.A.C. 7:1E-5.3(c)7 states that any discharge notification include the name and address of any person responsible for the discharge. This requirement may actually be detrimental and in some cases may inhibit the reporting of a discharge. (13)

RESPONSE: The Department will not assign any liability or penalty solely on the basis of the information in the notification. Any information will have to be investigated by the Department and confirmed. In addition, all persons who may be subject to liability may wish to know if a discharge in order to conduct cleanup and removal activities that would limit this liability. In some cases, the discharge is reported by another party totally unconnected to the discharge. For immediate response activities, the Department needs to know who may be willing to conduct cleanup and removal activities. DCR plans require that someone authorized to release funds to pay for response activities be available. Knowing who is responsible for a discharge will enable the Department to go directly to that person to have funds released for immediate response activities.

In addition, the penalty for not reporting a discharge can be substantial and should act as a deterrent to non-reporting. Because each day the person responsible for the discharged fails to report it is a separate and distinct offense the fine could quickly build to hundreds of thousands of dollars, much more than the liability for the discharge itself.

COMMENT: Requiring that copies of notification requirements be displayed at transfer areas of an onshore facility **and** at the operations center of any facility would in some cases be redundant and unnecessary. For example, the transfer areas and operations center are in close proximity at some facilities. One commenter recommends the language be changed to read "... at any transfer area of an onshore facility, **or** at the operations center of any facility." This change would provide adequate display of the notification requirements. (36)

RESPONSE: The Department disagrees. At many facilities, transfer areas and the operations center are not in close proximity. The Department feels that it is both helpful and important for the facility to have copies of the notification requirements displayed at these locations, so as to be immediately available in the event of a discharge. Even when operations center and the transfer areas are in close proximity, they may not both be manned. It is important for the person making the notification to have instant access to the requirements. Therefore, no change has been made to the rule.

**N.J.A.C. 7:1E-5.5 Notification of malfunctions in leak detection systems**

COMMENT: This section should be changed to reference discharge monitoring systems, since leaks do not constitute a reportable discharge. In the definitions and N.J.A.C. 7:1E-5.3, this rule clearly distinguishes between leaks and discharges and very clearly spells out the reporting requirements for discharges. This same analogy should follow through in the requirements of reporting malfunctions in discharge monitoring systems. (44)

RESPONSE: The terms spill, discharge, leak and release have been interchangeable in common use over the years, including use by the legislature. In these administrative rules, the Department has attempted to clear up some of the ambiguity introduced by this lax use of terms. To this end, the terms "leak" and "discharge" have been specifically defined in N.J.A.C. 7:1E-1.6. In the Spill Act, the term "discharge" has been defined, but not "leak". Therefore, when "leak" is used in the Spill Act, an interpretation must be made as to the intent of the Legislature.

In the case of detection or monitoring systems, the intent of the legislature is to regulate those systems for detecting or monitoring discharges. N.J.S.A. 58:10-23.11(d)10b specifically refers to "any malfunction of a leak detection or other discharge monitoring system." Clearly, leak and discharge are being equated here. In the administrative rules, leak and discharge cannot be equated. Because the intent of the legislature is the prohibition and prevention of discharges, the reporting of malfunctions of discharge, and not leak, detection and monitoring systems is required by the administrative rules.

Because leaks are not prohibited, the Department has revised N.J.A.C. 7:1E-5.5(a) to require immediate notification of any malfunction of discharge detection systems, not leak detection systems. This better implements the intent of N.J.S.A. 58:10-23.11(d)10b.

COMMENT: While several commenters agree that leak detection systems should be promptly repaired if found defective, they question the need to notify the Department of such occurrence if the malfunction of the leak detection system did not result in a discharge. It is recommended that N.J.A.C. 7:1E-5.5(a) and (b) be deleted. (25, 39, 42)

RESPONSE: The Department agrees that malfunctioning leak detection systems should be promptly repaired. Notification is required for malfunctions of discharge detection systems and not leak detection systems. However, waiting to make a notification of a malfunction until after a discharge has occurred defeats the purpose of this provision. Discharges should be detected so they can be promptly stopped and mitigated. Malfunctioning equipment will not serve this purpose. The Department wishes to ensure proper diligence in the maintenance and repair of discharge monitoring equipment. The referenced provisions have not been deleted.

COMMENT: One commenter suggests the following exemptions for reporting malfunctions in discharge monitoring systems:

- Malfunctions that are repaired with 24 hours and do not result in a discharge. The facility must maintain records of malfunctions/repairs for Department inspections.
- Downtime for routine discharge maintenance, cleaning, calibration and equipment replacement.
- Malfunction(s) in discharge monitoring systems that do not cause an impairment to secondary containment.
- Malfunction(s) in discharge monitoring devices if the facility has tertiary containment to prevent discharges. (44)

RESPONSE: The Act mandates that any malfunction of discharge detection systems shall be reported to the Department. What may appear to be a simple problem could turn into a large one. There is no need to report downtime for routine maintenance, cleaning, calibration and equipment replacement if the downtime is not the result of a malfunction.

COMMENT: It is unclear as to the scope of equipment the Department is attempting to include in the description of malfunctions that must be reported. The concern is with the language "... or other discharge monitoring, prevention or safety system or device" which is too broad. Safety devices which are required internally by the facility owner or operator but are not required by the Department should be excluded. All major facilities will have many safety systems unrelated to discharge prevention or detection. Does it apply to equipment or devices "required" by other Department rules? The language can be improved by adding the words "designed and used to prevent discharges. For major facilities these systems or devices will be included in the DPCC plan." (25, 35)

RESPONSE: The Department's concern is with systems related to discharge prevention and detection. The language used is intended to mean discharge detection, discharge monitoring, discharge prevention, or discharge safety systems or devices. Safety systems unrelated to hazardous substances are not covered by this provisions. However, if a facility has discharge detection systems in addition to what is required in N.J.A.C. 7:1E-2, malfunctions must still be reported.

The Department thanks the commenters for the suggested language, but believes it is not appropriate. Discharge monitoring systems are designed to detect discharges, not to prevent them. The inclusion of these devices in the facility's DPCC plan is already required by N.J.A.C. 7:1E-4.4.

COMMENT: N.J.A.C. 7:1E-5.5(a) would require immediate notification of any malfunction of a leak detection device or other similar equipment with "immediate" being defined as "within 15 minutes". The requirement for 15 minute reporting of an equipment malfunction assumes such knowledge is inherently known within that time frame for hundreds to thousands of devices in a given facility and that there is a need or benefit to reporting it to the Department, let alone within 15 minutes. While one can recognize the urgency inherent in promptly reporting a discharge, that urgency is non-existent for an equipment malfunction. This is more burdensome than the provision for notification of discharges in that the failure of this equipment does not constitute

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an immediate threat of damage to the environment, if it were to constitute any threat at all. After "pipeline shall" delete "immediately" and after "notify" insert, "as soon as practicable commensurate with the likelihood of any danger to the environment created by the malfunction". N.J.A.C. 7:1E-5.5(b) should be deleted in its entirety and the remaining section should be relettered accordingly. (26, 35, 40, 47)

RESPONSE: The Legislature has determined that malfunctions of discharge detection devices are significant enough to require immediate notification of the Department (N.J.S.A. 58:10-23.11(d)10b). The Department has established 15 minutes as the proper timespan for "immediate." These provisions are intended to help prevent incidents such as the Exxon pipeline discharge, which resulted from the malfunction of a discharge detection system with a history of malfunctions which were ignored. Therefore, adding the suggested wording to this section would not ensure the necessary level of environmental protection.

COMMENT: "Reasonably should have known" in N.J.A.C. 7:1E-5.5(b) is too subjective. (25)

RESPONSE: The Department disagrees that the phrase "reasonably should have known" is vague and subjective. The standard of what a reasonable person would do is often used in legal cases. "Reasonableness" is established, in part, by the standards which facilities must meet pursuant to N.J.A.C. 7:1E-2.

COMMENT: Notification of leak detection system malfunctions will only overload the Department with communications that will not reduce the risk of discharge. Placing the same level of urgency on leak detection malfunction as there is on discharge notification suggests that the two circumstances are equal. A leak detection system malfunction should be repaired as soon as possible, but the Department should not be notified every time leak detection system repairs are made. Instead of immediate notification, a log should be kept documenting malfunctions and corrective actions. This information could be made available to the Department upon request. Additional surveillance of storage facilities or pipelines may be warranted during the period of malfunction to protect against an undetected discharge but, provided no discharge occurs, immediate notification should not be required. (28, 40)

RESPONSE: The Act mandates immediate notification of malfunctioning discharge detection systems (N.J.S.A. 58:10-23.11(d)10b). Such malfunctions result in the potential for immediate discharge and the Department believes that such notification is necessary to ensure discharge prevention. While a discharge may have an immediate impact on the environment, malfunctions of detection systems could lead to discharges and can be an indication of insufficient attention to discharge prevention.

The rule language has been amended to indicate that systems for detecting discharges are the only ones covered by this notification. The Department needs to know of discharge detection equipment malfunctions much sooner than would be possible using a log. Monitoring of facilities' response to malfunctions is an important aspect of ensuring compliance with discharge prevention standards.

COMMENT: While there may be justification for the stringent reporting requirements for certain locations and/or operations, the need for the reporting of all malfunctions is excessive in absolute terms and relative to those required under TCPA. Instead, the Department should review and approve plans to deal with such occurrences. What, in fact, is to be accomplished by such reporting? Furthermore, given the sweeping documentation, procedural and reporting requirements in all areas of hazardous chemical handling (storage, transfer, manufacture and blending), these requirements will result in the reporting of equipment failures totally removed from detecting or preventing a leak or discharge. (40, 47)

RESPONSE: The Department understands this concern. However, the Department believes that these requirements are necessary to ensure discharge prevention. The reporting of malfunctions of equipment directly related to discharge detection will help to prevent incidents such as the discharge from the Exxon pipeline. The Department has changed N.J.A.C. 7:1E-5.5 upon adoption to clarify that reporting is not required for malfunctions of systems unrelated to the detection of discharges, but only for those systems directly involved in detecting or monitoring discharges.

COMMENT: N.J.A.C. 7:1E-5.5(c) would establish extremely onerous requirements. The practical effect of these requirements, as drafted, would be that each leak detection system would be required to be fitted with an auxiliary or backup system. Otherwise, owners or operators would be required to repair the system within two hours, which might be impossible in many instances, or shut down the equipment protected by the leak detection equipment. (26)

RESPONSE: The malfunctioning of a discharge detection system greatly increases the risk of a discharge and shut down of the equipment monitored by the system is appropriate if no alternate discharge detection method can be used. N.J.A.C. 7:1E-5.5 does not require that each discharge detection system be fitted with an auxiliary or backup system. It requires an alternate system, which need not be of the same type as the malfunctioning system. For example, if the discharge detection system for a transfer operation is malfunctioning, visual inspection of the equipment during the transfer operation can be an acceptable interim alternative.

COMMENT: A follow-up, two-hour report should only be required for direct leak detection system failure and not all of the other devices enumerated in N.J.A.C. 7:1E-5.5(a). (35, 40, 47)

RESPONSE: N.J.A.C. 7:1E-5.5(a) has been revised so that only discharge detection system failures shall be reported, which was the original intent. However, any system used to detect discharges is covered. This amendment also applies to the follow-up reports required by N.J.A.C. 7:1E-5.5(c).

**N.J.A.C. 7:1E-5.6 Justification of delay**

COMMENT: The need for N.J.A.C. 7:1E-5.6 is not clear. It requires extensive supporting information to be presented and signed by a person who may have no direct knowledge of the actual circumstances associated with the notification. Its only purpose appears to be in justifying a penalty. A better approach is to require justification only if the notification is provided four hours or greater after the discharge began. (35)

RESPONSE: Judicial and administrative proceedings interpreting other Department rules have suggested that the Department has reasonably interpreted the word "immediately" to mean within 15 minutes. (*DEQ, DEP v. Buitoni Foods Corp.,* OAL Dkt. No. EEQ 883-86 (1987), *Mobil Chemical Co., Chemical Products Division, Edison Plant v. DEP,* OAL Dkt. No. 6161-86 (1988), citing *Bass v. Allstate Ins. Co.,* 77 *N.J. Super* 491, 495 (App. Div. 1962), *DEQ, DEP v. E.I. duPont de Nemous & Co., Inc.* OAL Dkt. No. EEQ 8640-88 (1990)). Since for some discharges of hazardous substances, a delay of minutes can be crucial, the Department believes that this interpretation of "immediately" is applicable in this context. However, the Department recognizes that the meaning of "immediately" may vary, depending upon the circumstances. N.J.A.C. 7:1E-5.6 is intended to provide an opportunity to establish that such different circumstances exist. The rules do not require a person to employ this procedure. The information requested is necessary for the Department to make this determination. The person who is required to sign the certification is required to have direct knowledge of the circumstances, as stated in N.J.A.C. 7:1E-4.11(a).

COMMENT: The justification of delay provision in the proposed rules is unduly burdensome. It does not provided adequate relief considering the many times it may have to be used to avoid being assessed a large penalty for violation of the notification rules. (36)

RESPONSE: The Department has attempted to ensure that notifications occur within 15 minutes to ensure prompt and appropriate response. One facet of this attempt is to require justification of a longer time period. There must be valid, substantial reasons for not adhering to the timeframe requirement. Examples of justification include inability to get to a telephone because of a fire or other health or safety hazard, immediate response activities being instituted by the only individual onsite who cannot simultaneously make the notification, and location of the discharge such that it takes more than 15 minutes to get to a telephone. If a facility finds itself needing to prepare many justifications, it most likely needs to change its notification procedure.

COMMENT: If the Department intends to retain the presumption that any notification beyond 15 minutes is untimely, then the standard of proof for rebutting that presumption should be a preponderance of the evidence standard or a reasonable evidence standard, rather than a clear and convincing evidence standard. This intermediate standard of proof should not be required when the Department's initial requirement is arbitrary. The person or persons in charge of the emergency response should only have to be concerned with the immediately important matter at hand rather than how their actions will appear in hindsight. (15, 26, 39, N)

RESPONSE: The clear and convincing evidence standard of proof is commensurate with the serious nature of the violation, on the one hand, and the State's vital interest in immediate notification of releases of potentially harmful chemicals, on the other. Concerning the reasonableness of this standard in an environmental context, *Trade Waste Management Ass'n. Inc. v. Hughey,* 780 *F. 2d* 221 at 238 (3rd Cir. 1985) established that putting the burden on the person who failed to im-

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mediately notify the Department of the release places that burden on the party most likely to have access to the material information.

**N.J.A.C. 7:1E-5.7 Discharge response**

COMMENT: The second sentence states: "In any such situation of imminent threat to human life, the owner or operator shall make reasonable efforts to secure the approval of the Department or the Federal on-scene coordinator before applying chemicals." The ability to apply chemicals to a discharge should be allowed since many discharges can be reduced in harm by such applications. Fire retarding foam, for example, is often immediately applied to gasoline spills to reduce the likelihood of ignition. There may be no time to obtain the approval of a regulatory agency before applying the foam. The delay that may result in attempting to get agency permission could result in lost lives. Another example is the use of caustic to neutralize an acid spill. Prior approval for this action should be allowed by including the action within the DPCC/DCR plan. When the Department approves the plan it can review the procedures for the neutralizing actions. It is recommended this requirements be removed from the proposed regulations. (35, 36)

RESPONSE: The Department allows facilities and individuals to obtain approval for chemical applications to discharges prior to the occurrence of the discharge. For example, the application of chemicals pursuant to an approved DCR plan shall be deemed to have prior approval, as stated in N.J.A.C. 7:1E-5.7(b). Approval may also be obtained over the telephone from the Department.

COMMENT: In N.J.A.C. 7:1E-5.7(a), a small facility that does not have a DCR plan should be considered. The small facility should be able to apply chemicals to a discharge (for example, neutralization) in taking "all necessary and appropriate measures" to mitigate an incident. (19)

RESPONSE: A small facility without a DCR plan may receive prior approval for application of specific chemicals under specific conditions and circumstances by requesting approval prior to a discharge. If a facility does not have approval prior to a discharge, in a situation of immediate threat to human life the owner or operator shall make a reasonable effort to obtain the required approval. The Department wishes to ensure that the application of chemicals is the most appropriate response. Some chemical reactions could create hazards greater than the original discharge.

COMMENT: If the Department supervises or stops the clean-up action, who will be responsible for the safety, environmental and financial consequences of such action? The Department should be held accountable for subsequent natural resources damages that are determined to have been preventable and should be party to any action for environmental harm that may be incurred by inappropriate or stopped response actions. (35, 36, 40, 47)

RESPONSE: Pursuant to N.J.A.C. 7:1E-1.5(b), the person responsible for the discharge shall be held liable to the extent determined by the Act. The Department will stop cleanup operations only if such operations are not being conducted in a proper and expeditious manner. If the Department takes over a cleanup operation, pursuant to N.J.S.A. 58.10-23.11g1, the Department's liability shall be limited to acts or emissions which can be shown to have been negligent.

COMMENT: N.J.A.C. 7:1E-5.7 proposes that the Department can take over a spill response for any reason and not be liable for any incorrect actions or environmental harm caused by the actions. Further, the Department could cause the discharger to incur substantial costs due to improper actions by the Department. This should be rewritten to allow that a major facility with an approved DPCC/DCR plan will always be allowed to respond to the discharge as described within the plan without the interference of the Department.

RESPONSE: Approved DCR plans may be insufficient in the event of a discharge because of unforeseen circumstances, and in some cases, the owner or operator may not follow the response described in the plan. If the Department does take over a cleanup operation, pursuant to the Act, the Department's liability shall be limited to acts or omission which can be shown to have been negligent (N.J.S.A. 58.10-23.11(g)1).

COMMENT: "The Department may order any person to cease cleanup and removal activities ..." should be replaced with "... the Department may, after consultation with the facility's designee, order any person to cease cleanup and removal activities ..." (25)

RESPONSE: The Department reserves the right to exercise its authority to stop cleanup activities without consulting the facility's response coordinator or alternate. However, the Department will use its discretion, in consultation with the response coordinator, when making such a determination.

COMMENT: The Department should not be able to impose any penalties against the discharger for improper actions taken after the Department takes control. (35)

RESPONSE: Pursuant to N.J.A.C. 7:1E-1.5(b), the person responsible for the discharge shall be held liable to the extent determined by the Act. This would include improper actions taken by the discharger after the Department takes control. Any improper actions by the Department would not be assigned to the discharger for enforcement action.

COMMENT: N.J.A.C. 7:1E-5.7(d) no longer requires the Department to act consistent with the National Contingency Plan, to the extent possible, when cleaning up a discharge. This is a requirement of the existing rules and should remain. At the end of the paragraph, add a new sentence: "All actions of the Department shall, to the greatest extent possible, be consistent with the National Contingency Plan for removal of hazardous substances, 40 CFR 300." (26)

RESPONSE: It is the intent of the Department to be consistent with the National Contingency Plan for removal of hazardous substances when applicable. The Department does not believe it is necessary to explicitly state this. The State contingency plan, which fulfills the requirements of the National Contingency Plan, as well as other legislative requirements, is the document the Department follows during discharge cleanups. The National Contingency Plan is not always applicable. Small discharges and discharges of many substances are not covered by the National Contingency Plan.

**N.J.A.C. 7:1E-5.8 Confirmation report**

COMMENT: N.J.A.C. 7:1E-5.8 requires a person who is responsible for reporting a discharge to provide specific information in confirmation reports regarding the reported discharges. While the information required by the Department is necessary to assess the extent of a discharge, there is concern over the availability of such information with regard to past discharges. For example, many industrial establishments have occupied the same site for decades. If an establishment discovers that its groundwater is contaminated and concludes that the only source of the contamination is a discharge on its property, Subchapter 5 requires the discharge to be reported. Assuming the facility also determines that the discharge occurred decades ago, that is, before January 23, 1980, N.J.A.C. 7:1E-5.2 requires notification of the pre-Spill Act discharge. The rules also appear to require the filing of a confirmation report regarding the pre-Spill Act discharge. However, because the discharge occurred decades ago, the alleged discharger is unable to provide the information required in a confirmation report. One commenter believes that the rules should be clarified on this point and requests guidance on how to report such past discharges when information such as when the discharge occurred, how much was discharged and by whom is unknown. (45)

RESPONSE: The Department agrees that the required information is necessary to evaluate the extent of the discharge. While N.J.A.C. 7:1E-5.2 does not require notification of discharges that occurred before January 23, 1980, it does not require a confirmation report for such discharges. As stated in N.J.A.C. 7:1E-5.8(a), only persons responsible who notified the Department pursuant to N.J.A.C. 7:1E-5.3 or 5.5 are required to submit confirmation reports. All information gathered during the diligent inquiry should be reported to the Department in writing. This information may include what steps were taken to determine facts which proved to be indeterminable.

COMMENT: A written confirmation report within 30 days of notification does not allow sufficient time to obtain laboratory analyses or proof of proper disposal. The process for applying to the Department for an extension is an unnecessary burden. It is suggested that the Department maintain the current requirement for submitting a confirmation letter within 60 days. (11, 19)

RESPONSE: N.J.S.A. 58:10-23d10 has been amended by the Legislature to require submission of confirmation reports within 30 days. The Department does not believe that this requirement is unreasonable or that the process for applying for an extension is unduly burdensome, in light of the importance of obtaining information about discharges to ensure complete and proper remediation.

COMMENT: The detail of the confirmation report is excessive, especially when considering the proposed requirement to report all discharges, no matter how small. The confirmation report should be reduced in scope for discharges that do not cause environmental harm. Those reports should be just an update to the Department of any further action that has to be taken after the initial phone call to the hotline. For discharges that caused environmental harm a more complete report would be justified. (35)

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RESPONSE: The Department disagrees and believes that the information included in a confirmation report is necessary in carrying out provisions of the rules and the Act. The degree of environmental damage in a subjective standard that would create confusion. Different substances will have different effects based on their chemical properties, how and where the discharge occurred, and what was done to mitigate the discharge. Confirmation reports are important in the Department's assessment of the overall impact of discharges on the environment of New Jersey.

COMMENT: N.J.A.C. 7:1E-5.8(b)1 should have the option of naming the response coordinator as described in the DPCC/DCR plan. The sentence should read, "The name, address and telephone number of the response coordinator or individual that reported the discharge or leak detection . . ." (35)

RESPONSE: The name, address and telephone number of the individual who made the notification is information that was submitted as part of the notification. This information is needed as a point of verification and a means to ensure that the confirmation report is coordinated with the proper notification. If the person who made the notification is the response coordinator, that individual's name, address and telephone number can be given. If they are different individuals, information on both should be identified pursuant to N.J.A.C. 7:1E-5.8(b)1 and 2.

COMMENT: The requirement to name each person in any way responsible for the discharge in N.J.A.C. 7:1E-5.8(b)4 is counterproductive to the intent of the Department. Knowing that you will be named in a report to the State that may associate you with a penalty will reduce the number of notifications that are made by individuals. Further, the wording is so vague as it exists that a person who may have performed maintenance on the equipment prior to a discharge or leak detection system malfunction could be named in a report to the Department. Again, this seems counterproductive to the Department's intent. It is suggested that N.J.A.C. 7:1E-5.8(b)4 be deleted since the required information is supplied in N.J.A.C. 7:1E-5.8(b)1, 2 and 3.

RESPONSE: Because liability for a discharge will often be shared, the Department wants to be aware of all persons who may have been responsible for a discharge or who may have information about the discharge event. Liability will not be assigned simply on the basis of a name appearing in a confirmation report. It will have to be established through investigation. The names included in the report give the Department a point from which to begin an investigation.

COMMENT: One commenter requests the requirement for the owner/operator to provide the "tax lot and block" of the discharge location be deleted from the rules. This information is not normally maintained by an operator, and it would serve little, if any, useful purpose. (36)

RESPONSE: The tax lot and block number are required as part of the DPCC plan, and therefore should be available from that plan. This information can be obtained from a tax bill or the municipal tax assessor prior to any discharge and kept on file at the facility for use in a confirmation report, if necessary.

COMMENT: What if a product or mixture is discharged? It is suggested that a product name and associated hazardous components of the product or mixture be provided. (11)

RESPONSE: If a product or mixture is discharged the Department would accept a product name and the associated component hazardous substances of the product or mixture as equivalent to the common name.

COMMENT: A summary of the costs incurred serves no useful purpose and should not have to be submitted by the person responsible for a discharge. The Department has no justification or need to know the cost of cleanup. Such information is privileged and would divulge financial information to competitors. This requirement should be deleted. (35, 36, 40, 47)

RESPONSE: The Department disagrees. The submittal of cleanup cost information will provide the Department with information as to the actual magnitude of the cleanup effort. It will also allow the Department to create a database of remedial costs that may be used in an economic analysis of future rule revisions or penalty assessments. The owner or operator of a facility could request confidential status for this information pursuant to N.J.A.C. 7:1E-1.9(e).

COMMENT: It is unreasonable to require proof of proper disposal within 30 days given the fact that in reality, far more time may be required to dispose of all material and that were it to be RCRA hazardous, 90 days are allowed for storage prior to disposal. Is the Department establishing new waste disposal storage time standards? (35, 40, 47)

RESPONSE: The Department is aware that some of the information required to be included in a confirmation report may not be available at the time of submission of the report. In this case the data can be submitted as part of an amended confirmation report upon unavailability. At the time of submission, the report can include information on how the facility plans to dispose of wastes. Waste disposal storage time standards are not within the scope of these rules, and the Department is not establishing a new storage time standard.

COMMENT: N.J.A.C. 7:1E-5.8(b)16 should be deleted in its entirety. These two items imply that samples are to be taken for each discharge. Since in many discharges the taking of samples will not provide information that will help in the removal actions, sample data should not be required. If the discharger takes samples in order to assist in discharge detection or response, then the samples should not be subjected to the rigors of the detailed quality assurance/quality control stated. In many situations use of unapproved laboratory methods that can be performed in the field or at an on-site laboratory will assist the discharge response by providing the response coordinator with information faster than lengthy approved methods. After the discharge is contained and removal has effectively begun, samples may be taken with approved methods if the response coordinator determines that they will be of assistance. (35)

RESPONSE: These rules do not require that samples be taken nor do they require the application of a particular quality assurance/quality control scheme. The rule does not require that samples be taken, but if taken an explanation of the quality assurance/quality control steps used, be submitted. Though sampling is not required under the scope of these rules, sampling required pursuant to other Departmental rules may apply. The results of analyzing such samples will be useful in assessing the appropriateness and completeness of any mitigating actions, while the quality assurance/quality control information will give an indication of how accurate the results are.

COMMENT: N.J.A.C. 7:1E-5.8(b)16 would require that the analytical results of samples taken be submitted to the Department with the 30 day written notice. This requirement is unreasonable in that the laboratory turn around on analyses frequently takes longer than 30 days. To require persons filing such reports to routinely pay the increased cost for expedited analysis or petition the Department for an extension is unreasonable. It is recommended that the language be changed as follows: after "in (b)15 above" delete, and insert "if available from the laboratory" and start a new sentence with "If the data are unavailable within the 30 days due to laboratory delay" and insert thereafter, "the results shall be submitted as soon as they are available, but in no instance shall they be submitted later than 75 days subsequent to the date of the discharge." (26)

RESPONSE: For cases were data is unavailable in 30 days, N.J.A.C. 7:1E-5.8(b)16 states, "If sampling data are unavailable within 30 days due to laboratory delay any person may apply to the Department for an extension of the deadline, not to exceed an additional 90 days." The Department believes this extension provision addresses the commenter's concern.

COMMENT: Many discharges will result in environmental assessment/remediation activities that will last longer than the allowable time limits for submitting all the required sampling data. There should be no limits on the extension that Department may grant for submittal of sampling data. (36)

RESPONSE: The Department agrees with the commenter that some discharge remediation activities may last longer than 120 days. However, the sampling analysis reports are an integral part of the confirmation report that is due within 30 days pursuant to N.J.S.A. 58:10-23(d)10. The 90 day extension for the sampling analysis report is solely for those instances where it was impossible to obtain laboratory results within the 30 day time period for samples taken as a part of the initial emergency response activity.

Based on the information report and initial sample analysis, the Department may close out the incident or may require the facility to conduct continuing remediation efforts. Any continuing remediation effort would include its own sampling and analysis protocol and would be separate from the confirmation report issue addressed at N.J.A.C. 7:1E-5.8(b)16.

COMMENT: The financial responsibility documents are provided to the Department at the time of the DCR submission. The need to copy those documents for every confirmation report is very redundant and a waste of material. This requirement should be deleted. (35, 40, 47)

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RESPONSE: A certification that the financial responsibility documents included in the DCR plan are still in effect is what is now required by N.J.A.C. 7:1E-5.8(b)17. The documents demonstrating financial responsibility must now be submitted as part of the DCR plan, pursuant to N.J.A.C. 7:1E-4.4(a)9. The Department wants to ensure that the financial responsibility requirements of N.J.A.C. 7:1E-4.5 are being adhered to on continuous basis.

COMMENT: In N.J.A.C. 7:1E-5.8(b)20, why does the Department require copies of a certification it already has? (40, 47)

RESPONSE: The Department believes that certification of a confirmation report is appropriate in order to ensure that the report is true, accurate and complete. Certification of other information required to be submitted to the Department is separate and distinct from this confirmation.

**N.J.A.C. 7:1E-5.9 Reporting responsibilities of the Department**

COMMENT: N.J.A.C. 7:1E-5.9(a) does not use the defined term "agent(s) or officer(s) of a municipality" when identifying those persons to be notified. The language should be changed as follows: after "notify orally the" delete "contact persons for the governing body" and insert "agent(s) or officer(s) of municipality". (26)

RESPONSE: The contact person referred to in N.J.A.C. 7:1E-5.9(a) does not have to be an agent or officer of the municipality as defined in the rule. The contact person need only be designated as such by the governing body of the municipality and the local board of health to receive notification of discharges that occur in that municipality. Agent(s) or officer(s) are authorized by the Department to investigate suspected discharges. These two functions do not have to performed by the same person.

COMMENT: Can the municipality and board provide the Department with a position or title as a 24 hour contact point/alternate to alleviate the problem caused by changes in personnel? (11)

RESPONSE: It does not serve the purpose of having a designated contact person unless that person's name is known. The Department requires the name, address, and telephone number of the 24 hour contact person and an alternate to expedite the reporting process. Designated titles or position could be vacant. Using only a position or title may not be as expeditious and the situation may require immediate action.

COMMENT: N.J.A.C. 7:1E-5.9(d) and (e) would authorize agents or officers of the municipality to investigate the discharge site and to make reports to the Department. One commenter questions whether this is appropriate in that there are no qualifications with respect to which municipal employees can serve as the "agent or officer" for the purposes of these rules. Investigating and reporting on discharge events requires knowledge of the applicable regulatory requirements as well as the relevant physical sciences such as chemistry, geology, hydrogeology, etc. It is not appropriate for untrained persons to be authorized to make such inspections on behalf of the Department. (26)

RESPONSE: The investigation to be performed by agent or officer of the municipality is usually not technical investigation that would require extensive environmental training. The investigation would include a visual assessment of the discharge and contacting any persons potentially responsible for the discharge. The Department must authorize the agent or officer to perform this investigation, and will take care to choose an appropriate individual.

**N.J.A.C. 7:1E-5.10 Discharge reporting requirements of local officials**

COMMENT: The immediate notification of the Department by local officials will lead to confusion. If immediate equals 15 minutes as defined elsewhere, then the Department will be receiving nearly simultaneous phone calls which will result in confusion as to the number of discharges occurring. A better approach is to have the local officials contact the discharger first to assure that the Department has been notified. In any case the local fire department will be notified by the discharger and the board of health or governing body should check with them first. (35)

RESPONSE: The municipality or local board of health is not required to notify the Department of a suspected discharge if the Department has already been notified. Therefore, the municipality may call the discharger first to determine if the Department has been notified.

**SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS**

COMMENT: The number of fines and the associated penalties are extremely excessive and no doubt will have detrimental effects on the business community. Many facilities are part of national corporations. Each facility is evaluated in competition with out-of-state facilities for operating and capital moneys. Will the excessive penalties outlined in these rules for minor violations cause many corporations to question whether it is prudent to extent or continue to operate in the state? (14, B)

RESPONSE: The Department recognizes that the cost of penalties at discharge-prone facilities will probably have a detrimental effect on such facilities. This is but one of many economic considerations for the location of petrochemical facilities. Most facilities will be able to comply with the rules and remain economically viable at their current locations. There will be little economic impact upon a person complying with the Act and the rules promulgated pursuant thereto. The deterrent effect of these rules should provide the regulated community with a strong incentive to conduct compliance with the Department's rules, thereby protecting the public health and welfare, and the natural resources of New Jersey. The Legislature specifically authorized the Department to impose civil administrative penalties of up to $50,000 (N.J.S.A. 58:10-23.11u). Those violations with the potential for the greatest detrimental effect on the natural resources and environment of New Jersey hav the highest penalties. Additionally, and specifically by design, the imposition of penalties upon violators of the rules will have an adverse economic impact on the violators.

COMMENT: The Department has proposed penalties that are both excessively high and poorly defined. The ability to impose multiple fines for one discharge event is not just. A small discharge that causes no environmental harm can easily have fines into the tens of thousands or even over a hundred thousand dollars based on the application of penalties proposed in several subsections. The Department is also either unclear in the definition of the violation, too broad in its language or uses terms differently than those defined earlier in the rules. (35)

RESPONSE: The Department believes that the rules provide clear and concise standards for the imposition of penalties. Penalties are not proposed arbitrarily and without regard for the severity of the violation. The penalty schedule is based on the premise that the most severe violation should receive the highest penalty. Furthermore, the Act clearly states that the Department may assess a civil administrative penalty of not more than $50,000 for each violation of the Act or any rule promulgated pursuant to the Act. Finally, the Department believes that terms are used in this subchapter consistent with their use in the rest of the subchapters. The Department is unaware of any particular inconsistencies.

COMMENT: The Department's penalty schedule is excessive and capricious. The penalty levels set are two to three times what they should be, not taking into account "impact on environment" factors. There are numerous instances where the penalty amount bears little relationship to the nature of the offense. A discharge should carry the highest penalty, followed by infractions related to improper cleanup, improper design, maintenance, and operation of secondary containment, improper design, maintenance, and operation of primary containment, and the peripheral issues of reporting, training, and SOPs. (40, 47)

RESPONSE: The Department agrees that "impact on the environment" must be considered when establishing penalties for discharges. However, the Department does not agree that the penalty levels are excessive and capricious. One of the central goals of these rules is to deter noncompliance with the Act and its implementing rules. In developing the penalty schedules, the Department reviewed all the potential violations of the rules and ranked them, consistent with the commenter's recommendation, based on the seriousness of the infraction. The penalties were then established accordingly. Consequently, paperwork deficiencies and similar violations receive the lowest penalties, whereas violations which have the potential to cause serious environmental damage, such as inadequate secondary containment, have the highest penalties. Multiple violations of the most serious nature result in a penalty of the $50,000 statutory maximum.

COMMENT: The fines which would be established are unreasonable and do not necessarily bear any relationship to the environmental risk presented by the alleged violation or the potential for positive environmental impact. An example of this would be large specific penalties for what are minor or inconsequential recordkeeping requirements. This is just one example of a complex citation structure that does not appear to weigh the costs to implement the rule changes, the degree of environmental impact for violating a specific section or the cause or nature of the discharge.

In addition, the wording of the rules is vague, which could easily lead to capricious judgments. (B, 26, 40, 27)

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RESPONSE: The Department disagrees. As stated above, the Department established the penalty schedules based on the theory that the most severe violations would be assessed the highest penalties, and less severe violations would be assessed lower penalties. For example, the penalties for recordkeeping requirements which the commenter specifically refers to, are the lowest penalties in the schedule. Furthermore, the Department does not believe that the wording of the rules is vague or the citation structure complex. The penalty schedule lists each potential violation, references the citation in the corresponding rule and lists the respective penalty for the violation.

The Department also disagrees that the penalty schedule does not weigh the costs to implement the rule changes, the degree of environmental impact for violating a specific section or the cause of nature of the discharge. The Department is aware of the costs to implement the rule changes and the penalty schedule was developed in order to ensure that the costs of noncompliance are as expensive as the costs of compliance. For example, an initial integrity test for an aboveground storage tank is estimated to cost $4,000 to $10,000. The penalty for a first violation when failing to perform an integrity test is $15,000. This penalty also takes into account the adverse impact on the environment of a tank failure. Potential for a detrimental environmental impact was a main factor used to set penalty amounts, and cause and nature of a discharge are specifically taken into account in N.J.A.C. 7:1E-6.8(c)1.

COMMENT: All penalties associated with DPCC/DCR plan deficiencies should be eliminated until a penalty structure is developed which has a direct relationship between degree of environmental risk and punitive value of the penalty. (27)

RESPONSE: The Department believes that the penalties associated with DPCC/DCR plan deficiencies bear a direct relationship between the degree of environmental risk. DPCC plan deficiencies which are addressed in a facility's schedule for upgrading pursuant to N.J.A.C. 7:1E-4.3(e) and approved by the Department will not be subject to penalty as long as the schedule is being adhered to. Plan deficiencies that pose the greatest risk for a discharge (such as lack of secondary containment) carry the greatest penalties, therefore, these sections are not being eliminated.

**N.J.A.C. 7:1E-6.1 Scope**

COMMENT: After "an administrative order," in N.J.A.C. 7:1E-6.1, insert "imposition of a term or condition in a DPCC plan or a DCR plan". (26)

RESPONSE: The Department agrees that conditions of approval may constitute a contested case and has added language to N.J.A.C. 7:1E-6.1 and 6.4(a) and (b) after "an administrative order": "conditions of approval for any plan or amendment to a plan."

**N.J.A.C. 7:1E-6.2 Applicability**

COMMENT: N.J.A.C. 7:1E-6.2(c) states that each day a violation continues shall constitute an additional, separate and distinct offense. It becomes unclear how this applies to the gallonage based penalty in N.J.A.C. 7:1E-6.8(c)1. Does the gallons discharged on each day establish the fine? For example, if a discharge of 100 gallons occurs on day one and continues to day two when an additional 500 gallons are discharged, is the penalty calculated as 100 for day one equals $2,000 plus 500 gallons for day two equals $3,000 for a total of $5,000 or is it a total of 600 gallons for a penalty of $3,000? If it is calculated on a day by day basis it is nearly impossible to even estimate a daily discharge rate. Most discharges are only estimated based on the total inventory missing from storage. If this is calculated on a daily basis then discharges that have a means of being monitored on a daily basis will receive a higher penalty than those which cannot. This does not appear to be fair. (35)

RESPONSE: In reference to the hypothetical case presented, a strict interpretation of the rule would be that the violation would be considered two offenses. However, pursuant to N.J.A.C. 7:1E-6.8(d), the Department may modify the amount of a civil administrative penalty based on mitigating or extenuating circumstances or other circumstances or conditions acceptable to the Department. In most cases, when a discharge continues over two calendar days (before and after midnight) a penalty would be calculated as if it were a single incident, with the penalties based on the estimated volume of hazardous substance released. If the person responsible for the discharge does not take appropriate action and the discharge continues for an extended period of time, the penalty could be based on daily discharges. The Department can provide guidance on techniques to estimate daily discharge rates.

COMMENT: Discretionary treatment by the Department as described in N.J.A.C. 7:1E-6.2(d) may have the effect of actually penalizing larger facilities within the State who are likely to have more minor spills over the years simply due to their larger size. (25)

RESPONSE: N.J.A.C. 7:1E-6.2(d) gives the Department the discretion to recognize facilities which have made an effort to reduce their discharges and comply with the rules of this chapter. The management of a larger facility must exercise greater care. When such care has been exercised for five years, past violations can be essentially expunged from the facility's record. Pursuant to N.J.A.C. 7:1E-6.8(d), discretion may also be used in assessing a civil administrative penalty when a violation is not a first offense but extenuating circumstances are involved. The Department feels these provisions allow discretion in penalty assessment for both large and small facilities.

**N.J.A.C. 7:1E-6.4 Procedures for requesting and conducting adjudicatory hearings**

COMMENT: Twenty days is an unrealistic time for a party to assess the terms and conditions of a notice of violation, an administrative order or a civil administrative penalty assessment and to gather the requisite facts necessary to make the pleading required by N.J.A.C. 7:1E-6.4(b). After "deny the hearing request" insert "unless a request for an extension of time to file is submitted and said request is granted in writing by the Department". (26)

RESPONSE: The Act at N.J.S.A. 58:10-23.11uc(2)(a) establishes the 20 day period in which a hearing may be requested.

COMMENT: In N.J.A.C. 7:1E-6.4(a), the term "violator" should be replaced by "alleged violator." (19)

RESPONSE: The Department is aware of and appreciates the concern inherent in this comment, but is following the statutory language of the Act at N.J.S.A. 58:10-23.11u.

COMMENT: N.J.A.C. 7:1E-6.4(b)1 through 4 provide the specific requirements for pleading if an owner or operator were seeking adjudicatory hearing to contest a notice of violation, an administrative order or civil administrative penalty assessment. However, the Department has not provided any guidance with respect to what an owner or operator who is aggrieved of a final decision regarding a DPCC/DCR plan must plead. The Department should establish certain guidelines for seeking an adjudicatory hearing for those purposes since this will facilitate the filing and processing of such requests. (26)

RESPONSE: N.J.A.C. 7:1E-6.4(b)1 through 4 does apply to "denial or revocation of approval of any plan or amendment to a plan required pursuant to the Act," as stated in this paragraph. In order to clarify that this also applies to any conditions of approval, the phrase "conditions of approval for any plan or amendment to a plan" has been added to subsections (a) and (b).

COMMENT: N.J.A.C. 7:1E-6.4(c) would authorize the Department to deny a hearing request unless all information required to be submitted is included in the hearing request. This requirement is unduly harsh; petitioners should be provided an automatic opportunity to cure any defect in their pleadings within a reasonable period of time. Otherwise, their substantive due process rights could be unnecessarily abridged to achieve procedural ease. Federal and State court rules include provisions for amending pleadings, and a similar provision should apply here. After "deny the hearing request" insert "unless the information is provided to the Department within a reasonable time." (26)

RESPONSE: An "automatic opportunity to cure any defect" would in effect extend the 20-day period, and would be contrary to the statutory requirement. The information which is required to be submitted as part of a hearing request is essential to determine whether a hearing is warranted. The Department will, however, review hearing requests on a case by case basis in order to allow petitioners a reasonable opportunity to contest an administrative order. In order to be fair and reasonable the Department would allow a petitioner to correct a clerical error or an inadvertent omission; however, the Department would not grant a hearing to a letter which is incomprehensible or which, without specificity, generally denies all the findings of the administrative order.

**N.J.A.C. 7:1E-6.6 Civil administrative penalty for submitting inaccurate or false information**

COMMENT: The word "inaccurate" needs a tighter definition. Many laboratory analyses are by their nature inaccurate to a certain degree. The methods have variability associated with them and the laboratory estimates this variability as it performs the analysis. It is suggested that the word "false" or "inaccurate with the intent to deceive" be used in its place. (35)

RESPONSE: A penalty for inaccurate or false information would not apply to the results of a laboratory analysis if the proper quality assurance

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and quality control are exercised and the margin of error is reported. In addition, as stated in N.J.A.C. 7:1E-6.6(c), information which the violator has no reason to know is false is subject to a much smaller penalty. In all cases, the Department will use its discretion in assessing penalties for violations under this section.

COMMENT: There should be no penalties for inadvertent non-significant inaccuracies. (25)

RESPONSE: Various items of information are requested by the Department because they are deemed to be important. Even telephone numbers are important when you are trying to contact someone. The determination that a given inaccuracy is inadvertent or non-significant must be made on a case by case basis. At that time, the Department will consider all the factors in the finding of a violation or assessment of a penalty, if any.

**N.J.A.C. 7:1E-6.8 Civil administrative penalties for violations of rules adopted pursuant to the Act**

COMMENT: The base penalty ranges column in N.J.A.C. 7:1E-6.8(c)1 should not begin with 0 gallons. Also, the base penalty should differentiate between administrative and actual discharge violations. The chemicals listed in Appendix A have, in many instances, well defined Reportable Quantities (RQ's). These RQ's must be applied for the determination of the amounts discharged in the determination of "Base Penalty for each Violation". (9, 11)

RESPONSE: The base penalty column has been modified to begin with discharges greater than zero gallons rather than zero gallons. However, the base penalty schedule has not been changed to differentiate between "administrative and actual discharge violations," as suggested by the commenter. The Act at N.J.S.A. 58:10-23.11c specifically states that "the discharge of hazardous substances is prohibited", thus there are no "administrative discharge violations." Furthermore, although "reportable quantities" have been developed for other rules and other circumstances, they are not appropriate for the determination of base penalties in this case. For example, the reportable quantity established for hydrochloric acid by federal CERCLA (40 CFR 302.4) is 5,000 pounds. A discharge of this magnitude clearly could cause significant environmental impacts, as would discharges smaller than this. Therefore, using 5,000 pounds as the base for a penalty would not reflect the true risk to the environment.

COMMENT: It is not reasonable to have the same type of penalty for a pint of liquid versus a quart. (B)

RESPONSE: The Department disagrees. The actual amount of a hazardous substance discharged is only one factor which affects the potential environmental damage from a discharge. The time it takes the facility to initiate a response to the discharge and the area of impact of the discharge are also primary factors which contribute to the overall environmental impact of a discharge. This is specifically the reason why these factors are used as multipliers in N.J.A.C. 7:1E-6.8(c)1.

COMMENT: The base penalty is based upon the amount, in gallons, of a discharge. No basis is provided as to the cutoff for each base penalty amount. One commenter states that absent some basis for the base penalties, the cutoff for each base penalty is arbitrary and capricious. (45)

RESPONSE: The Department disagrees with this comment. The base penalty column was developed using a sliding scale of gallons discharged and the appropriate penalty equivalent based on the limits allowed by the Act. In recognition that larger discharges have larger impacts on the State's natural resources and environment than smaller discharges, larger discharges have proportionally larger penalties. This is consistent with legislative intent, because the Spill Act allows a penalty of up to $50,000 for discharges of up to 100,000 gallons, and up to $10 million for discharges over 100,000 (N.J.S.A. 58:110-23.11uc(1) and u1).

COMMENT: Accidental discharges automatically have a 100 percent increase from the base penalty. (N)

RESPONSE: As stated in N.J.A.C. 7:1E-6.8(c)1 under "Cause of Discharge," accidental discharges result in a 50 percent reduction from the base penalty, not a 100 percent increase.

COMMENT: The definition of "person responsible for a discharge" includes, "Any person who brokers, generates or transports the hazardous substance discharged." The fourth item under the "Cause of the Discharge" table includes "Homeowner." If there is a release by a homeowner such as a leaking fuel oil tank, is there an automatic connection back to the "person who brokers, generates or transports the hazardous substance?"

If so, the major facility bears responsibility for complying with all the reporting requirements, both the notification and written, of the rules for a failure at the homeowner's residence regardless of what the cause is. Is that the intent? (H, 21)

RESPONSE: In the hypothetical case presented by the commenter, the "person who brokers, generates or transports the hazardous substance" would only be required to report a discharge if that person "knew or reasonably should have known" of the discharge (N.J.A.C. 7:1E-5.3(a)). If the broker neither knew nor reasonably should have known of a discharge from a homeowner's fuel oil tank, the broker would not be required to report that discharge. Therefore, no penalty for failure to notify the Department would be issued to the broker. In addition, if the broker was not required to report a homeowner's discharge for the reasons stated above, he or she would not be required to submit a confirmation report pursuant to N.J.A.C. 7:1E-5.8(a).

COMMENT: The use of the word "occurred" in "Initiate Response to Discharge" should be changed to "detected" in the parenthetical. (35)

RESPONSE: The Department has changed the wording this section to read "from the time the discharge was detected or reasonably should have been detected", for clarification. Reporting is required within 15 minutes of when the person responsible knew or should have known. The same standard should apply here. Therefore, detection of the discharge is the proper starting point. The Department thanks the commenter for the suggested language.

COMMENT: The factor which is applied for the time to "initiate response to discharge" is inconsistent with and contrary to proposed N.J.A.C. 7:1E-5.3. That section requires a discharger to notify the Department within 15 minutes of the time that he or she knew or should have known of the occurrence of a discharge. In contrast, the response to discharge factor measures time from the time the discharge occurred **not** from the time the discharger knew or should have known of the occurrence. Thus, a discharger is in compliance with the notification requirement if he or she reports a discharge three hours after the discharge occurred but within 15 minutes of the time it knew or should have known of the discharge. However, if he or she responds within the same 15 minute period, he or she will be deemed to have a poor response time and be subject to a 20 percent **increase** in the base penalty, even though he or she had no reason to know that the discharge occurred until three hours after the occurrence. One commenter believes that the Initiate Response to Discharge Factor should be change to read as follows:

Initiate Response to Discharge (from time **a discharger knew or should have known of a discharge)**

This change would provide for consistency within the regulatory scheme and would not penalize a discharger for failing to initiate a response when he did not know and had no reason to know that a discharge occurred. (45)

RESPONSE: The Department thanks to commenter for the suggested language. As stated above, the Department has changed the wording of N.J.A.C. 7:1E-6.8(c)1 to measure the time it took for a facility to Initiate Response to a Discharge "from the time the discharge was detected or should have been detected." The Department feels this provides consistency with the reporting requirements of N.J.A.C. 7:1E-5.3 while at the same time addressing the concerns of the commenter.

COMMENT: The Department should confer with its own purchasers about contract X549. This contract is for emergency response where the Department hires contractors to clean up spills that are reported to it on an emergency basis. Required response is two hours. If the Department's own definition for the required response is two hours, then the rules should not say two hours is poor or only fair because that is what is being done right now in the State. (D)

RESPONSE: The Department believes that all major facilities should initiate a response to a discharge within two hours, at a minimum. Initiating a response includes implementing the steps laid out in the facility's DCR plan, calling a discharge cleanup and removal organization, taking steps to stop or mitigate the discharge, and notifying the proper agencies. As long as the facility has begun the process of cleanup and removal, it will be deemed to have initiated a response.

COMMENT: The impact on the environment is very poorly defined. How many birds or fish have to be killed to trigger this impact? What is visible damage to flora/fauna? It can be viewed that even one blade of grass being damaged is visible damage. According to these factors, a discharge in which one minnow is killed would result in a penalty larger than a discharge of the same volume which was intentional or caused

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by gross negligence, migrated off-site and into waters of the State, and which involved a poor initial response. If a minnow and a small patch of grass are killed, does this result in a 175 percent increase in the base penalty? It is suggested that the factors associated with environmental impacts be ranges, such as up to a 100 percent increase for bird/fish kills. Smaller percent increases would be applied to the base penalty for relatively minor environmental impacts.

In assessing the "Impact on Environment" multipliers to the base penalty, the Department should be required to establish that wildlife mortality was definitely due to a discharge of hazardous substances at the facility and not due to other unrelated causes before assessing this penalty factor. (28, 35, 36, B, N)

RESPONSE: In N.J.A.C. 7:1E-6.8(c)1, the factor for environmental impact has been deleted from these rules. After further review, the Department has determined that other regulatory programs and agencies, such as the Division of Fish, Game and Wildlife, may be better able to assess this specific penalty. Additionally, the provisions of the Act at N.J.S.A. 58:10-23.11u1 allow for "compensation or damages recoverable for the loss of wildlife or destruction of the environment, and the restoration thereof."

COMMENT: Effectively, all penalties will be doubled because only five reported discharges for the life of a facility will incur a 100 percent increase in the penalty. With the definition of a discharge so broad, the number of penalties issued to a large facility will result in substantial penalty dollars that may drive many companies either out of business or out of the State. It is recommended that all fines for discharges be reduced to amounts which compare to the environmental damage incurred. For example, the Discharge History which adds up the number of discharges in the last 12 months does not take into account the size of the discharge or the consequences from the discharge. The base penalties are sufficiently steep to encourage facilities to implement preventative measures to minimize the occurrence of discharges of petroleum and hazardous substances. It is recommended that the Discharge History category be deleted from the rules. If necessary, a civil administrative penalty can be adjusted to reflect a poor discharge history using the provisions in N.J.A.C. 7:1E-6.8(d) of the rules. (27, 36, 40, B, N)

RESPONSE: Based on comments received concerning Discharge History, N.J.A.C. 7:1E-6.8(c)1 has been modified. Discharge History has been changed from "Number of discharges within the previous 12 months" to "number of discharges not contained on the facility within the previous 12 months." The Department agrees that discharge history should be based on the consequences of a discharge. As stated in the summary to the proposal, the Department believes that facilities which react quickly to contain and mitigate a discharge should not be fined as heavily as facilities which do not react as quickly (23 N.J.R. 1341). That is what these rules encourage facilities to do, and the penalties should as well. This intent is reflected in the factor for area of impact, but is not reflected in the discharge history factor. Therefore, this factor has been qualified to those discharges of the facility's property to more accurately reflect the intent.

COMMENT: The penalty structure promotes reporting of only major discharges to the Department. (40)

RESPONSE: The Department disagrees. The Department intentionally set a substantial penalty for failure to report a discharge. For instance, in the case of discharges under 5,000 gallons, the base penalty would be $5,000, whereas the penalty for not reporting this discharge is $10,000 for the first offense. The Department believes this is an incentive to report all discharges and does not at all promote reporting only major discharges to the Department.

COMMENT: The procedure found at N.J.A.C. 7:1E-6.8(c)2 provides for increasing penalties depending upon a person's status. Thus, the penalty for a third offense is greater than that for a second offense. Likewise, the penalty for a second offense is greater than a first offense. The proposed rules are silent regarding the time frame in which offenses must occur in order to achieve second or third level status. Moreover, there is no procedure which allows for an offender's status to be reduced in the event the offender has not committed an offense for a designated period immediately preceding the date of a later offense. The rules should provide a period in which an offense must occur in order to be elevated to second or third offender status. Likewise, a procedure must be provided which allows a person to reduce its status to second or first level if it has not committed an offense during a designated period. The Department is urged to include such procedures in the rules which it ultimately adopts. (45)

RESPONSE: The Department believes that N.J.A.C. 7:1E-6.2(d), as proposed, already addresses the commenter's concern. N.J.A.C. 7:1E-6.2(d) specifically states that the "Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense."

COMMENT: No basis is provided as to how the various factors or their amounts/percentages were determined. Absent a sound basis for each of the factors and the application thereof, the factors are arbitrary and capricious. Many of the factors are subject to interpretation and require more detailed descriptions. For example: operational, accidental, bird/fish kill, and visible damage to flora/fauna. The Department must take situations and impacts into consideration when applying these criteria. (11, 45, N)

RESPONSE: The Department disagrees that the multiplier factors contained in N.J.A.C. 7:1E-6.8(c)1 are arbitrary and capricious. These factors were chosen because they are appropriate in determining the environmental impact of a discharge. Regarding the commenter's specific concerns, under the "Cause of Discharge" factor, operational can mean any number of things that may go wrong at a facility during the normal course of operations including personnel error or equipment failure. With respect to "accidental" under that same factor, a dictionary definition applies. Bird/fish kill and visible damage to flora/fauna, under the "Environmental Impact" factor, have been deleted as along with that factor and therefore, need not be defined. After further review, the Department has determined that other regulatory programs and agencies, such as the Division of Fish, Game and Wildlife, may be better able to assess this specific penalty. The Department will take specific situations and circumstances into account.

COMMENT: When calculating penalties, the Department should consider an additional mitigating factor to be the nature of the substance. Specifically, fuel oil should be distinguished from other hazardous materials. A study submitted to the Department analyzes the nature of fuel oil. While this report was developed to address fuel oil storage the results can be applied here. The study states number 2 fuel oil is far less hazardous than gasoline, based upon its chemical content. Fuel oil permeates the ground at 20 percent of the rate of gasoline and different volumes in water at 10 percent of the rate of gasoline. Number 2 oil will be retained in the soil to a degree four to five times greater than gasoline so that the spread of fuel oil will be much less extensive than gasoline on the ground water table. (J)

RESPONSE: The Department does not feel that distinguishing fuel oil from other hazardous substances is appropriate in assessing penalties. All substances are different and will cause different effects under different scenarios and conditions. It would be impossible to account for all of these differences in the scope of these rules.

In regard to fuel oil, while discharges to groundwater may not pose as much danger as gasoline, discharges to surface water are much worse. The Exxon pipeline discharged number 2 fuel oil which seriously affected the birds, fish, shellfish and plants on the New York/New Jersey harbor area. A large spill of number 2 fuel oil of the coast of Rhode Island devastated Narragansett Bay, decimating prime fisheries and shellfisheries and fouling ten miles of beach. Incidents such as these point out that although a given substance may be perceived to be less harmful, that is not always the case.

COMMENT: While the draft rules take into account certain circumstances surrounding a hazardous substance discharge, the Department cannot allow home owners and small petroleum marketers to be grouped in with major facilities. The legislation enacted did not specifically mandate the Department to propose minimums for homeowners and small independent petroleum marketers. (J)

RESPONSE: The Act, at N.J.S.A. 58:10-23.11c, prohibits the discharge of hazardous substances, unless in compliance with a State or Federal permit. No distinction is made as to who causes the discharge. Therefore, homeowners, petroleum marketers, and any other individual who causes a prohibited discharge is subject to the Act and these rules promulgated pursuant thereto.

COMMENT: There are numerous instances, where the penalty amount bears little relationship to the nature of the offense. Categories of offense that appear to have excessive and capricious penalties are: for N.J.A.C. 7:1E-2.3(d), 2.3(e), 2.4(a), 2.5(a,b), 2.8, 2.10(a), 2.10(c), 2.11(a), 2.11(b), 2.11(g), and 2.14(d). (40)

RESPONSE: The Department has determined that, based on potential environmental impact, the various penalties cited by the commenter are

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reasonable amounts for the violations cited and need not be adjusted. Many of these items, such as failure to attend a tank car during a transfer and failure to repair leaking equipment (N.J.A.C. 7:1E-2.11(b)), can be directly linked to an increased risk of a discharge. The various violations were ranked based on environmental impact, and those with the greatest potential impact engendered the highest penalties, such as lack of secondary containment. Those with the least potential impact, such as recordkeeping violations, have the lowest penalties.

COMMENT: The rules only require that heating coils be designed so that a leak will remain within the secondary containment. The proposed phrasing in N.J.A.C. 7:1E-6.8(c)2 is too broad. (35)

RESPONSE: The phrasing used under "category of offense" is only for easy reference purposes. It is the actual language which appears in the indicated citation which governs the determination of the violation. To clarify this, a footnote has been added to the rule explaining the "category of offense" column.

COMMENT: Imposing a penalty for a requirement that is conditional is too severe. The requirement is to mark the piping where practicable. No penalty should be imposed for failure to properly mark in-facility pipes. (35)

RESPONSE: As stated in the response above, it is the actual language which appears in the citation for each category of offense which governs. In this particular case, for example, only if marking the in-facility pipe was practicable and was not done would a penalty be imposed.

COMMENT: The penalty for failure to properly clean up and remove a discharge prior to removing a containment device needs to be relaxed to allow for the intentional release of a discharge if it is for safety reasons, such as the boom becomes tangled with a boat propeller or the discharged material catches fire. (35)

RESPONSE: N.J.A.C. 7:1E-6.8(d) allows for extenuating circumstances such as this to be taken into account when assessing the amount of a penalty. Also, N.J.A.C. 7:1E-1.10 allows for the waiver of any provision in these rules, to preclude the endangerment of the public health or welfare, which would be the case if there were a fire.

COMMENT: The penalty for failure to minimize the chance of vehicular collision with in-facility pipe should only apply to overhead collisions as required in the rules. (35)

RESPONSE: As stated previously, the phrasing used under "category of offense" is only for easy reference purposes. It is the actual language which appears in the indicated citation which governs. A footnote to the heading explaining this has been added to the rule. However, in this case the rule language is not limited to overhead collisions so the penalty is not limited either.

COMMENT: Under N.J.A.C. 7:1E-5.7(b), chemical treatment is prohibited except under certain circumstances. Therefore, the penalty which references N.J.A.C. 7:1E-2.5(b) for failure to treat is contradictory. (29)

RESPONSE: Chemical treatment is prohibited only if it has not been pre-approved. Additionally, it is the citation which governs, not the language used under "category of offense." To be consistent with a change made to N.J.A.C. 7:1E-2.5(b), this violation now reads, "Failure to **provide** for hazardous substance which drained into process wastewater lines."

COMMENT: With the enormous number of visual inspections required by the proposed rule the penalty for failure to conduct visual inspections can be issued on a daily basis at all major facilities. This is not just and must be restricted to the complete failure to perform any visual inspections. (35)

RESPONSE: The Department disagrees that the penalty for failure to conduct visual inspections should be restricted to the "complete failure" to perform visual inspections. The rule, as adopted, has limited the number of inspections required. Furthermore, these inspections can be combined with other inspections required under various other rules of the Department such as N.J.A.C. 7:27-16.

COMMENT: A penalty is listed for failure to clean up a spill of a hazardous substance. The word spill is not defined in the proposed rules. Imposing a penalty for an action that is not defined is unjust. Further, if the word spill implies a discharge from an historical event the penalty should not be applied. An exemption is also needed for discharges that are under an Administrative Consent Order or similar agreement. (35)

RESPONSE: The category of offense wording for citation 2.11(c,d) has been changed to "Failure to clean up a leak or discharge of a hazardous substance" for consistency. In the case where an Administrative Consent Order is in effect the terms of that ACO would dictate whether an exemption from this penalty provision is appropriate.

COMMENT: In N.J.A.C. 7:1E-6.8(c)4, the citation for failure to provide notice of new construction, installation modification appears to be incorrect. (35)

RESPONSE: This citation was incorrect and has been changed to 4.9(a) accordingly.

COMMENT: N.J.A.C. 7:1E-5.2(a) and 5.3(a) are categories of offense that appear to have excessive and capricious penalties. (40)

RESPONSE: Based on the potential environmental impact of the failure to notify the Department immediately of a discharge, the Department believes that the penalties cited by the commenter are just and equitable amounts for the violations cited.

In 1986, a discharge of ammonia that was not reported to the Department resulted in people succumbing to fumes throughout the municipality in which the discharge occurred. Notification of the Department may have resulted in a more appropriate discharge response by the facility involved, and forestalled the subsequent problems.

Furthermore, N.J.A.C. 7:1E-5.2(a), as adopted, no longer requires "immediate" notification, but rather notification "promptly upon completion of a diligent inquiry and discovery of a discharge." The Department believes this change better conveys the intent in regard to prior discharges, and makes compliance easier to determine.

COMMENT: The requirement to provide all required information upon notification is nearly impossible to meet and will result in most timely notifications being penalized. Limitations with the available people in a very short period of time should be taken into consideration by the Department. (35, N)

RESPONSE: The Department believes the information required for notification should be readily accessible to the person reporting the discharge and that this requirement is not impossible to comply with. Some of the information requested, such as the street address of the facility, can be assembled before any discharge and kept at the ready. Other information, such as the name and title of the person reporting the discharge, should be known to the individual making the telephone call. In addition, the Department has reviewed all the information which could be of use during a discharge incident and has included in the rule only those items of most importance. While the Department may ask for additional information, these items are the only ones absolutely required when a discharge notification is made. In cases where this information is not provided, the Department believes a penalty is reasonable based on the need to receive prompt information concerning a discharge so that the Department can respond appropriately to the threat to the environment and the natural resources of the State.

COMMENT: The Department lists a penalty for failure to coordinate remedial action with the Department and the citation for that violation is N.J.A.C. 7:1E-5.9(f) and it does not exist in the rules. (N, 19)

RESPONSE: The correct citation for "failure to coordinate any remedial action with the Department" in N.J.A.C. 7:1E-5.7(a). This change has been made accordingly.

COMMENT: The citation for failure to provide the Department with requested information or to respond to an administrative order is to a section that does not exist in the rules. Additionally, the statement is too broad and poorly defined. As stated, this could include a verbal request to a facility employee who forgets the request. This should be restricted to just written requests that are required by rule and can be reasonably answered. (35)

RESPONSE: This citation does not exist in the rules and therefore, this violation has been deleted from the penalty schedule.

**APPENDIX A**

COMMENT: This entire list is too extensive. Many of the substances listed are common household, or natural materials or are harmless in smaller quantities. This list makes not only every safely operated major facility a violator but probably every citizen in New Jersey. The list needs to be reduced in scope to those substances that are truly hazardous and then there needs to be a reportable quantity associated with each remaining substance similar to the CERCLA requirements. Those substances which are gaseous at ambient conditions, such as ammonia, should be deleted. (35)

RESPONSE: The Department disagrees. The hazardous substance list is a compilation of the hazardous substances that comprise the lists referenced in the Act at N.J.S.A. 58:10-23.11bk plus the extremely hazardous substance list and the toxic chemical lists promulgated by USEPA pursuant to SARA section 302 and 313. Appendix A is comprised of hazardous substances from the following lists:

a. Pesticides designated as prohibited or restricted use, pursuant to N.J.A.C. 7:30, which includes by reference the restricted use pesticides

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under the Federal Insecticide, Rodenticide, Fungicide Act (FIFRA), 40 CFR 162.31.

b. Environmental hazardous substances, pursuant to N.J.A.C. 7:1G-2.1.

c. Hazardous substances, pursuant to 40 CFR 116.4.

d. Toxic pollutants, pursuant to 40 CFR 401.15.

e. Hazardous substances, pursuant to 40 CFR 302.4.

f. Extremely hazardous substances, pursuant to 40 CFR 355, Appendices A and B.

g. Toxic chemicals, pursuant to 40 CFR 372.

All of the substances on these lists have been found to be either hazardous or toxic by the agency promulgating the list. By compiling the consolidated list at Appendix A, the Department and the regulated community will have one list to work from. It is also the intent of the Department to use this list for its various State and Federally delegated programs so that there is consistency within the Department from program to program as to what is a hazardous substance.

Substances which are gases at ambient conditions when released can impact public health and the natural resources of the State. Additionally, some gases, such as ammonia, are stored as liquids whose discharge would have a significant impact on the lands or waters of the State. Due to this concern, the Department and State Legislature have chosen not to differentiate between physical states of hazardous substances.

The Department is also not adopting a "reporting quantity" (RQ) for each hazardous substance as is the case in CERCLA. The CERCLA RQ for hydrochloric acid is 5,000 pounds. A discharge of that magnitude would cause significant harm to the land or water of the State and is thus inappropriate for use in these rules.

COMMENT: These rules do not differentiate between acutely toxic liquids and mildly irritating products in solid form, which cannot have nearly the same potential risk. (1)

RESPONSE: The rules do not differentiate between solids or liquids because the behavior of hazardous substances in solid or liquid form when discharged into the environment can cause the same detrimental effect on natural resources as well as the public health. Solid hazardous substances can and do cause the same damage to human health and natural resources as liquids. It would not be in the best interest of the public or the environment to differentiate between solid and liquid hazardous substances. The definition of "hazardous substances" in the Spill Act makes no such distinction between solids and liquids.

COMMENT: Most research laboratories will store many of the chemicals listed in Appendix A. In one commenter's interpretation of the rules, this means that a "major facility" which includes research facilities, must have a DPCC plan for each and every laboratory on site. Since research quantities of chemicals are very small (on the order of a few grams to as much as one gallon), and since research laboratories employ technically trained individuals, it appears reasonable to exclude research laboratories from the new rules. This could be addressed by excluding laboratories that store de minimus quantities of chemicals. (34)

RESPONSE: The Department believes that the rules already address the commenter's concern. If a research facility has such small quantities of hazardous substances on hand, it will not be considered a "major facility" for which a DPCC plan is required. The definition of "major facility" encompasses only facilities having a total combined storage capacity of: 1. 20,000 gallons or more for hazardous substances other than petroleum or petroleum products; 2. 200,000 gallons or more for hazardous substances of all kinds.

COMMENT: Synonyms should be included in the list.

RESPONSE: The Department has included a number of synonyms in the list as a result of the combination of the source lists into one final list. However, the Department has elected not to address all synonyms in an effort to keep the list smaller and more manageable. By publishing the list alphabetically and numerically by CAS number, the Department believes that all hazardous substances can be readily identified as such. (25)

COMMENT: Although there are a number of compounds in this list which appear to be out of character, there is one broad category "Quaternary Ammonium Compounds" which should be removed from the Appendix. The vast majority of the compounds in this category are approved for household use. Many are precursors for treatment of potable water and analogous applications. In addition, the referenced lists used to determine Appendix A do not appear to contain this broad category. (30)

RESPONSE: The Department disagrees. Quaternary ammonium compounds are included in the list established under FIFRA, 40 CFR 162.31, which is part of the prohibited or restricted use pesticide list, pursuant to N.J.A.C. 7:30 as referenced at N.J.A.C. 7:1E-1.7 and used to establish Appendix A. When properly used, these compounds have many beneficial uses including household and potable water applications. However, their discharge into the environment can have detrimental effects on natural resources.

COMMENTS: One commenter questions the listed item "leachate resulting from the treatment, storage, or disposal of wastes classified by more than one waste code under Subpart D, or from a mixture of wastes classified under Subparts C and D of this part. (Leachate resulting from the management of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its hazardous waste code(s): F020, F021, F022, F023, F026, F027 and/or F028.)"

In reading this item, the commenter could not determine what type of leachate this rule would apply to. Reference is made to Subparts C and D, but no mention is made to what C and D are subparts of. He could not find Subparts C or D within this proposed rule. Please note also that the above item is listed in two places in Appendix A. He would like to obtain an explanation or have incorporated a clarification or modification to this item so that one could determine upon reading what types of leachate would be impacted by this rule. A clear and understandable description of the types of leachate applicable to the requirements of this rule should be incorporated into the final rule. (7)

RESPONSE: The definition of a hazardous substance includes all RCRA waste codes. The Department included this description of a F039 waste code to provide the regulated community with a consistent name as found in the statutory act from which the compound was incorporated. These wastes are commonly referred to RCRA as Subpart C and D listed wastes. Subpart C wastes include wastes which exhibit characteristics of ignitability, corrosivity, reactivity and EP toxicity (identified with a hazardous waste code prefix of D), as defined in 40 CFR 261. Subpart D wastes include listed wastes generated from specific sources (identified with a hazardous waste code prefix of K), non specific sources (identified with a hazardous waste code prefix of F), discarded commercial chemical products, off-specification species, containers, and spill residues thereof (identified with a hazardous waste code prefix of P), and commercial chemical products or manufacturing chemical intermediates (identified with a hazardous waste code prefix of U).

The Department agrees with the commenter that this code appears twice. The code appears in both the alphabetic and numeric listings.

COMMENT: One must appreciate the original make-up of some of the lists, particularly those developed under the requirements of SARA and CERCLA. Some of the chemicals listed in those lists originated in the OSHA 29 CFR, Z List or are listed in the ACGIH Booklet issued by this organization. Aluminum considered in the prevention of releases to "New Jersey's lands and waters" (N.J.S.A. 58:10-23.11a) surely must not have been the intent of our legislators.

It appears that while N.J.S.A. 58:10-23.11d defines a "hazardous substance," the text of the Act, as well as the proposed rules, indicates again and again that only liquids are to be regulated. Therefore, for example, copper, CAS #7440-50-8, would be very difficult to discharge to the lands and waters of New Jersey. (9)

RESPONSE: Solid hazardous substances can and do cause the same impact or damage to human health and the environment. It would not be in the best interest of the public or the environment to differentiate between solid and liquid hazardous substances.

The Act specified that substances on certain source lists were to be regulated. All of the substances referred to by the commenter are listed on at least one list specified in the Act. While the phrase "hazardous liquid" is occasionally used in the Act, no where does the Act state that only liquids are to be regulated. In fact, at N.J.S.A. 58:10-23.11bb, the definition of barrel gives the option to the Director of the Division of Taxation, in the Department of Treasury, of setting an appropriate equivalent measure for hazardous substances which are other than liquid or which are not commonly measured by the barrel.

COMMENT: Please define the listed hazardous substance given as "radionuclides" in terms of detection, naturally occurring, etc. (11)

RESPONSE: The term "radionuclides" refers to those substances listed in Appendix B of 40 CFR 302.4. A definition stating this fact has been added to N.J.A.C. 7:1E-1.6. The list was published at 54 FR 22538, May 24, 1991 and is also available from the Department.

COMMENT: Appendix A of the proposed rules must be consistent with existing lists of hazardous substances. The starting point is the definition of "hazardous substances" now contained in the Spill Act.

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"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the Department pursuant to section 4 of P.L. 1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the Department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L. 92-500, as amended by the Clean Water Act of 1977, Pub.L. 95-217 (33 U.S.C. Sec. 1251 et seq.; the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L. 96-510 (42 U.S.C. Sec. 9601 et seq.); provided however, that sewage and sewage sludge shall not be considered as hazardous substances for the purpose of this act . . .

The Legislature clearly intended that the Spill Act would not result in a new list of hazardous substances. Instead, the Department was to rely upon and incorporate lists already in existence and the Spill Act was to be construed in a manner consistent with those other lists. (32)

RESPONSE: The list adopted as Appendix A is not a new list but is a compilation of the existing lists referenced in the definition of a hazardous substance as developed by the legislature plus the substances contained on the SARA 302 and 313 lists. USEPA has formally proposed adding the SARA 302 list to the CERCLA list that is included by definition of the Act. The SARA 313 list is the list of substances to be regulated by the Department under the newly enacted Pollution Prevention Act.

COMMENT: In the proposed rules, "hazardous substances" would be defined in N.J.A.C. 7:1E-1.7 to include all substances listed in a new Appendix A, and to incorporate by reference 8 specific designations or compilations of hazardous substance lists. In proposed Appendix A, the Department has listed "zinc" and "zinc and compounds" as hazardous substances, without regard to the form of zinc involved. This is contrary to, and inconsistent with, all of the specific lists which the Department uses; hence, the Department made a mistake in listing "zinc" and "zinc and compounds" in proposed Appendix A without the appropriate qualifier (fume and dust). There are several reasons why the entries "zinc" and "zinc and compounds" should be qualified by limiting the zinc portion to "fume and dust" only.

The first reason is that the Department's goal is to develop a consistent list taken from the eight aforementioned sources. In each source where zinc is mentioned, it is made clear that zinc is not hazardous in its solid form, and qualified by the reference to dust and fume.

Second, since zinc is not hazardous in the solid form and it is the goal of the Department to convince industry to replace hazardous substances with nonhazardous substances, we must not call zinc in all forms hazardous. In fact, if we did, most all major banks which handle the zinc penny might very well be considered major facilities under this new legislation.

Lastly, if uncorrected, the additional regulatory burden may result in the closing of industrial facilities in areas of already high unemployment.

Consequently, it is requested that where zinc is listed in Appendix A, the Department should use the qualifier, dust and fume.

Another commenter states that zinc is unquestionably essential to sound human, animal and plant health. Its major uses are environmentally friendly and serve the public good. It is not a carcinogen, nor has it been implicated in any of the situations the proposal lists as reasons for this action. Zinc is reported to be the basis of important, emerging electric-auto technology, wherein zinc would replace oil and reduce auto pollution. Zinc should be removed from any list of "hazardous substances." (20, 32)

RESPONSE: The Department agrees that the listing of zinc on Appendix A should include the qualifier "fume and dust" to be consistent with the source lists and has revised Appendix A accordingly.

COMMENT: One commenter requests the dichlorodifluoromethane (CFC-12), trichlorofluoromethane (CFC-11) and trichlorotrifluoroethane (CFC-113), be deleted from Appendix A. It is stated that the inclusion of these three chemical compounds under the proposed rules does nothing to advance the public safety and environmental policies set forth in the Spill Act. These substances are not subject to being "leaked" or "discharged" as soil or water contaminants, nor are they toxic in nature. Thus, the proposed rules, with a focus on containment and recovery to prevent water or land pollution, would be completely misdirected as to these CFCs.

Each of the chemicals is stored in a compressed gas or liquid state in aboveground tanks. However, due to the fact that these substances have such low boiling points at which they are converted from a liquid to gas state, any leak or discharge would be in the form of evaporation into the atmosphere, rather than as a potential water or soil pollutant. By way of example, the boiling point of CFC-12 is -21 degrees Fahrenheit thus precluding the possibility of a liquid or solid discharge under any foreseeable circumstances. By a decision with an effective date of December 24, 1980, the USEPA deleted CFC-12 and CFC-11 from the 40 CFR 307 toxic pollutant list. In doing so, the USEPA made the following specific findings:

1. No significant potential exists for contamination of water supplies by CFC-11 or CFC-12 due to the methods of transportation, use and disposal of these compounds;

2. Test data and field measurements all confirm that the water/air partition for CFC-11 and CFC-12 is so low that no significant hazard exists for contamination of water supplies;

3. The low solubility and high volatility of CFC-11 and CFC-12 do not suggest any environmental or human health hazard.

Despite the deletion of these two chemicals from the 40 CFR 307 list almost ten years ago, the Department has failed to conduct public hearings or to take any corrective action in order to harmonize its own "hazardous substance" list to the "maximum extent possible" with the Federal list, which it was adopting by incorporation. The requested relief will rectify this long-standing oversight.

In October of 1990, the Department was petitioned for a public hearing and rulemaking to have these chemical compounds removed from the list of substances regulated pursuant to the Spill Act. The Department formally noticed receipt of the Petition by publication on December 17, 1990 (22 N.J.R. 3881). However, no further administrative action has been taken on the pending Petition since that publication date. This commenter renews his request for relief that these chemical compounds be listed for Spill Act purposes for the various reasons advanced in the Petition. (24)

RESPONSE: The Department has evaluated the commenter's petition for deletion of CFC-11, CFC-12, CFC-113, dichlorotetrafluorethane (CFC-114), and monochloropentafluoroethane (CFC-115). This rule adoption constitutes the Department's response.

The compounds CFC-114 and CFC-115 do not appear on any of the lists consolidated into Appendix A, and therefore do not appear in Appendix A. CFC-113 is listed in 40 CFR 372, the Superfund Amendment and Reauthorization Act (SARA) 313 list, with no qualifiers. Therefore, it is subject to the rules in all forms. The two others, CFC-11 and CFC-12 are listed in CERCLA, 40 CFR 302.4, pursuant to the RCRA list at 40 CFR 261.33, which includes qualifiers. These two CFCs are covered in any form only when they are to be disposed. That same qualifier is applicable to inclusion of the compounds in Appendix A.

Therefore, the final disposition of the commenter's rule petition is as follows: CFC-114 and CFC-115 have been deleted as requested; CFC-11 and CFC-12 remain in Appendix A, but are restricted to wastes only; and CFC-113 remains on in Appendix A. This is consistent with the intent of the Legislature as evidenced by the definition of "hazardous substance" in the Spill Act (N.J.S.A. 58:10-23.11bk).

COMMENT: One commenter requests that copper be deleted from Appendix A. It is vital to human health and is used as a pesticide. Cases of copper toxicity in humans are rare. (20)

RESPONSE: The Department agrees that copper can have beneficial effects when properly used; however, copper discharged into the environment can have detrimental effects on natural resources. Copper is listed on the environmental hazardous substance list (N.J.A.C. 7:1G-2.1), the toxic pollutant list (40 CFR 401.15), the hazardous substance list (40 CFR 302), and the toxic chemical list (40 CFR 372). Therefore, copper has not been deleted from Appendix A.

COMMENT: The Department's proposal to list silver as a "hazardous substance" under the State's Spill Act is misguided and inconsistent with recent changes in federal environmental regulations. In January, the USEPA, recognizing the error of categorizing silver as harmful in drinking water, permanently removed it from the U.S. Primary Drinking Water Standard List of Contaminants. USEPA agreed with longstanding critics of the original listing who repeatedly presented data and information on the health benefits of water purification systems that purposely use silver to kill bacteria.

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USEPA, in deleting silver from the drinking water regulations, said, "There is either little or no adverse effect associated with its presence in drinking water." (Federal Register, January 1991.) Silver is not toxic, whether ingested from silver pharmaceuticals, drinking water or particles in the air. It seems ridiculous for New Jersey officials to consider labeling silver as "hazardous" at the same time federal regulators are paving the way for its broader use in water purification. Silver is not a carcinogen. It is a bactericide that inactivates bacterial cells, but not mammalian cells. (20)

RESPONSE: While USEPA has recently deleted silver from its drinking water regulations, silver remains a listed hazardous substance under CERCLA, 40 CFR 30.24 and SARA, 40 CRF 372, and thus will remain in Appendix A.

**Summary** of Hearing Officer Recommendations and Agency Response:

John S. Keith, P.E., Assistant Commissioner of the Department, served as the hearing officer at the June 6, 1991 public hearing. After reviewing the testimony given at the public hearing, Assistant Commissioner Keith felt that the responses to this testimony and the subsequent changes made to the rules to address the concerns raised by the public should be accepted as set forth in the Summary of Public Comments and Agency Responses for this adoption.

A copy of the record of the public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Susan Kleinberg, Esquire
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

**Summary** of Agency-Initiated Changes:

The Department has made the following changes to correct errors or ensure consistency:

1. At N.J.A.C. 7:1E-4.10(b)2, the term "major sewers" has been clarified as "all arterial and collector sewers."
2. The phrase "person or persons responsible for a discharge" in N.J.A.C. 7:1E-5.5(a) has been replaced with "owner or operator of a major facility" for consistency.
3. In N.J.A.C. 7:1E-6.8(a)1, in the "Gallons" column for the Base Penalty for each Violation, 149,000 has been corrected to 149,999 and 199,000 has been corrected to 199,999.
4. Under "Category of Offense" in N.J.A.C. 7:1E-6.8(a)2, the term "spillage" has been replaced by "leakage" and the term "spill" has been replaced by "leak or discharge" to be consistent with the regulatory citations.
5. In N.J.A.C. 7:1E-6.8(a)5, citations for failure to provide all required information, failure to prominently display notification requirements and failure to notify of the status of a malfunctioning discharge detection system have been corrected.
6. Misspellings and incorrect CAS numbers in Appendix A were corrected.
7. Duplicative listings in Appendix A were deleted.
8. Concentration limits on hazardous substances that are contained on Federal lists used to compile Appendix A have been added to Appendix A.

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

## CHAPTER 1E
## DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES

### SUBCHAPTER 1. GENERAL PROVISIONS

7:1E-1.1 Scope

(a) This chapter covers the discharge of hazardous substances as defined in this chapter, excepting those pursuant to and in compliance with the conditions of a valid and effective Federal or State permit. These rules set forth guidelines and procedures to be followed by all persons in the event of a discharge of a hazardous substance. They also set forth certain registration, reporting, design and maintenance requirements for owners and operators of major facilities and transmission pipelines which handle hazardous substances.

(b) This subchapter prescribes the provisions that are generally applicable. The following shall govern how certain terms are defined for use in this chapter, which persons are subject to this chapter, and the Department's rights of access for determining compliance with this chapter and the Act.

7:1E-1.2 Construction

(a) These rules, being necessary to promote the public health and welfare, and to protect the environment, shall be liberally construed so as to permit the Department to discharge its statutory functions under the Act.

(b) The Commissioner may amend or repeal this chapter in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.

7:1E-1.3 Severability

If any section, subsection, provision, clause or portion of this chapter or the application thereof to any person or circumstance is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter and the application thereof to other persons or circumstances shall not be affected thereby, and shall remain in full force and effect.

7:1E-1.4 Relationship to Federal and State Law

These rules are not intended to and do not relieve any person of the duty to comply with all other applicable laws, ordinances, rules, regulations or orders of governmental authorities governing activities regulated hereunder, including rules or regulations of the New Jersey Department of Environmental Protection, New Jersey Department of the Treasury, and other appropriate State, Federal and local agencies.

7:1E-1.5 State non-liability

(a) New Jersey State government is not liable for any damages arising from its actions or omissions relating to any plan, registration or map required pursuant to this chapter. No approval by the Department of any plan or of any cleanup and removal activities shall be a defense against liability for the discharge, nor shall it shift liability for the discharge to the Department.

(b) In the event of a discharge, the person responsible for the discharge shall be held liable to the extent determined by the Act.

7:1E-1.6 Definitions

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

"Aboveground storage tank" means any storage tank not defined as an underground storage tank.

"Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 ***et seq., as amended***.

"Affiliate" means, with respect to any person, another person:

1. Who has a controlling interest in such person;
2. In whom such person has a controlling interest; or
3. Who is under common control with such person.

"Agent(s) or officer(s) of the municipality" means a duly authorized representative of the municipality or local board of health, including, but not limited to, a member of the police, fire, or public works department, public health officer, township engineer, zoning officer, director of emergency management, or environmental compliance officer.

"API" means the American Petroleum Institute.

"API 574" means the API's Recommended Practice 574, entitled "Inspection of Piping, Tubing, Valves and Fittings."

"API 653" means the API's Standard 653, entitled "Tank Inspection, Repair, Alteration and Reconstruction."

"ASME" means the American Society of Mechanical Engineers.

"ASME Section V" means ASME Boiler and Pressure Vessel Code Section V, entitled "Nondestructive Examination."

"ASME Section VIII" means ASME Boiler and Pressure Vessel Code Section VIII, entitled "Pressure Vessels."

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"ASME Section X" means ASME Boiler and Pressure Vessel Code Section X, entitled "Fiberglass-Reinforced Plastic Pressure Vessels."

"ASTM" means the American Society of Testing and *[Measurement]* ***Materials***.

"Broker" means any person who arranges for the transportation, treatment, storage or disposal of hazardous substances on behalf of another person.

***"Bulk storage" means the holding of large quantities of substances.***

"CFR" means the Code of Federal Regulations.

"Cleanup and removal activities" means actions to clean up *[and]* ***or*** remove or attempt to clean up or remove a discharge of a hazardous substance or the source thereof, or to chemically neutralize the discharge, or measures to prevent or mitigate damages to the public health, safety or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources.

"Cleanup and removal costs" means all costs associated with cleanup and removal activities incurred by the State, its political subdivisions or their agents or any person with written approval of the Department.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the person designated to act on his or her behalf pursuant to an administrative order.

"Containment" or "containment activities" means actions to limit or prevent the spread of a leak or discharge.

"Controlling interest" means any of the following:

1. The direct or indirect beneficial ownership, by the person asserted to have a controlling interest and any of such person's affiliates, of at least 50 percent of the voting stock or other equity interest in a person;

2. The holding of any direct or indirect beneficial interest, by the person asserted to have a controlling interest in any of such person's affiliates, in at least 50 percent of the income or profits of a person; or

3. The existence of any other relationship between the person asserted to have a controlling interest and the person controlled, which relationship in fact constitutes control over the affairs of the person controlled.

"DCR plan" means the discharge cleanup and removal plan required under N.J.A.C. 7:1E-4.

"Department" means the New Jersey Department of Environmental Protection.

"Diligent inquiry" means:

1. Conducting a diligent search of all documents which are reasonably likely to contain information related to a possible discharge, which documents are in such person's possession, custody or control, or in the possession, custody or control of any other person from whom the person conducting the search has legal right to obtain such documents; and

2. Making reasonable inquiries of current and former employees and agents whose duties include or included any responsibility for hazardous substances, and any other current and former employees or agents who may have knowledge or documents relevant to a discharge.

"Discharge" means any intentional or unintentional action or omission***, unless pursuant to and in compliance with a valid and effective Federal or State permit,*** resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State or into waters outside the jurisdiction of the State*[,]* when damage may result to the lands, waters or natural resources within the jurisdiction of the State. This term does not include "leak."

"Discharge cleanup organization" means an organization or association that engages in or intends to engage in cleanup and removal activities.

***"Discharge monitoring device" means any equipment or instrumentation that is used to detect discharges at the facility.***

***"Double-walled piping" means piping which consists of one pipe fixed inside another, with an annular space between.***

"DPCC plan" means the discharge prevention, containment and countermeasure plan required under N.J.A.C. 7:1E-4.

"Environmentally sensitive areas" means, for the purposes of planning for discharge control and mitigation, geographic areas which contain one or more significant natural or ecological resources as set forth in N.J.A.C. 7:1E-1.8.

"EPA" means the U.S. Environmental Protection Agency.

"Facility" means any place or equipment that is used to refine, produce, store, hold, handle, transfer, process or transport hazardous substances.

"Guarantor" means a person who:

1. Possesses a controlling interest in the owner or operator;

2. Possesses a controlling interest in a person who possesses a controlling interest in the owner or operator;

3. Is controlled by a common parent firm that possesses a controlling interest in the owner or operator; or

4. Is engaged in a substantial business relationship with the owner or operator and issues the guarantee as an act incident to that business relationship.

***"Handling" means treating, dealing with, or managing.***

"Hazardous substances" means petroleum, petroleum products, pesticides, solvents and other substances as set forth in N.J.A.C. 7:1E-1.7.

"Impermeable" means utilizing a layer of natural or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for the hazardous substance being contained of $10^{-7}$ centimeters per second at the maximum anticipated hydrostatic pressure.

"Incompatible materials" means those substances which, if mixed, will create hazards greater than those posed by the individual substances alone, such as fire, explosion, or generation of toxic fumes.

"Integrity testing" means a method of testing structures where ***either*** hydrostatic testing using water or other liquid or pneumatic testing is done in combination with a system of nondestructive testing which includes shell thickness testing. The nondestructive testing procedures shall be adequate to detect cracks, leaks, and corrosion, erosion or other wall thinning to less than a predetermined minimum thickness to ensure sufficient structural strength. Nondestructive integrity test*[s]* techniques include magnetic particle tests, acoustic emission tests, electromagnetic particle or eddy current tests, radiography and radiation tests, liquid penetrant tests, or ultrasonic tests.

"Leak" or "leakage" means any escape of a hazardous substance from the ordinary containers employed in the normal course of storage, transfer, processing or use into a secondary containment or diversion system ***or onto a surface from which it is cleaned up and removed prior to its escape into the waters or onto the lands of the State***.

"Liquid" means having a viscosity between 0.2 centipoise and 3000 centipoise inclusive at one atmosphere (760.0 millimeters of mercury) pressure and temperatures between –20 and 120 degrees Fahrenheit (–29 and 49 degrees centigrade).

"Major facility" means *[any facility]* ***all facilities, located on one or more contiguous or adjacent properties owned or operated by the same person,*** having total combined storage capacity of:

1. 20,000 gallons or more for hazardous substances other than petroleum or petroleum products;

2. 200,000 gallons or more for hazardous substances of all kinds; or

3. An appropriate equivalent measure as set by the Director of the Division of Taxation in the Department of the Treasury for hazardous substances which are not commonly measured by volume.

A vessel shall be considered a major facility only when hazardous substances are transferred between vessels. A "transmission pipeline" is not a major facility.

***"Major leak" means an accident required to be reported pursuant to 49 CFR 195.50.***

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***"Major maintenance" means maintenance required to correct any condition which is of such a nature that it presents an immediate hazard to persons or property.***

***"Major repair" means repairs necessary because of a major leak or major maintenance.***

"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust, or otherwise controlled by the State.

"NJPDES permit" means a permit or permit-by-rule issued by the Department pursuant to N.J.A.C. 7:14A.

"Nonmiscible lighter-than-water" means having a density less than water and not mixing with water to an appreciable degree.

"NPDES permit" means a permit or permit-by-rule issued by EPA pursuant to 40 CFR 122.

"Owner or operator" means any person who, with respect to:

1. A vessel, owns, operates or charters by demise such vessel;
2. Any facility, owns such facility, or operates it by lease, contract or other form of agreement; and
3. Abandoned or derelict facilities, owned or operated such facility immediately prior to such abandonment, or the owner at the time of the discharge.

***"Paved or surfaced" means to cover with concrete, tile, stones or the like, to create a level, stable, impermeable surface.***

"Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, as well as individuals, and when used to designate the owner of property which may be subject to this chapter, includes this State, the United States, any other state of the United States, and any foreign country or government, and any political subdivisions or agents, lawfully owning or possessing property in this State.

"Person responsible for a discharge" means:

1. Any person whose act or omission results or has resulted in a discharge;
2. Each owner or operator of any facility, vehicle or vessel from which a discharge has occurred;
3. Any person who owns or controls any hazardous substance which is discharged;
4. Any person who has directly or indirectly caused a discharge;
5. Any person who has allowed a discharge to occur; or
6. Any person who brokers, generates or transports the hazardous substance discharged.

"Petroleum" or "petroleum products" means any bituminous liquid that is essentially a complex mixture of hydrocarbons of different types with small amounts of other substances, such as compounds of oxygen, sulfur or nitrogen, or metallic compounds, or any of the useful liquid products obtained from such a liquid by various refining processes, such as fractional distillation, cracking, catalytic reforming, alkylation and polymerization. This term shall include, but not be limited to, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils***,*** and *[purified hydrocarbons. Hydrocarbons listed by specific chemical name pursuant to N.J.A.C. 7:1E-1.7 shall not be considered "petroleum" or "petroleum products" unless such purified hydrocarbons]* ***hazardous substances listed in Appendix A which*** are to be used in the refining or blending of crude petroleum or petroleum stock in this State.

*["Potable water supply" means surface water or ground water fit for human consumption.]*

"Process area" ***or "production facility"*** means an area ***employed in production*** in which an action, operation or treatment embracing chemical, industrial, manufacturing or processing factors, methods, or forms is carried out ***utilizing hazardous substances***. These factors, methods or forms include, but are not limited to, batch or continuous chemical reactions, distillation, blending and mixing operations, refining and re-refining processes, and separation processes.

"Quality assurance" or "QA" means a system for integrating the quality of planning, quality assessment, and quality improvement efforts of various groups in an organization. In pollution measurement, quality assurance is concerned with all activities affecting the quality of the measurements, as well as establishment of methods and techniques to assure the quality of the measurements.

"Quality control" or "QC" means the application of standard operating procedures for obtaining prescribed standards of performance in a monitoring and measurement process.

***"Radionuclide" means any substance listed in 40 CFR 302.4, Appendix B.***

"Regional Administrator" means the Regional Administrator of EPA for the Federal region which includes the State of New Jersey.

***"Reservoir" means a receptacle or chamber which can be used for storing a fluid.***

"Response coordinator" means the individual at the major facility who is responsible for the management of the DPCC and DCR plans at the facility and who shall possess sufficient corporate authority and technical background to resolve issues relating to the execution of the DPCC and DCR plans based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives.

"Secondary containment or diversion system" means any structures, devices or combinations thereof supplementary to the ordinary containers employed in the normal course of storage, transfer, processing or use, designed and operated to prevent leaks of hazardous substances from becoming discharges.

"Sewage" means domestic sewage, including the contents and effluents of septic tanks, public sewer systems and public sewage treatment plants.

"Sewage sludge" means the dried or semi-liquid residue of a sewage treatment process.

"Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and employs fewer than 100 full time employees.

"SPCC plan" means a Federal Spill Prevention Control and Countermeasure plan developed and approved pursuant to 40 CFR 112.

"Standard operating procedure" or "SOP" means the document setting forth the operating procedures covering all details of any operation involving a hazardous substance which is stored, processed, transferred or used at the facility.

"State of the art technology" means up-to-date technology reflected in equipment or procedures that, when applied at a major facility, will result in a significant reduction in the probability of a discharge. The technology represents an advancement in reduction of leaks or discharges and shall have been demonstrated at a similar facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved, or otherwise available at reasonable cost commensurate with the reduction in probability of leaks or discharges achieved.

***"Static head product testing" means testing which involves the filling of a tank, not under pressure, to determine if there are any leaks over a definite period of time.***

"Storage capacity" means that capacity which is dedicated to, used for, or intended to be used for storage of hazardous substances of all kinds. This term shall include, but not be limited to, above- and underground storage tanks, drums, reservoirs, containers, bins, and the intended or actual use of open land or unenclosed space. For a storage tank, the total volumetric design capacity of the tank shall be the storage capacity. ***This term shall not include the capacity of a heating oil tank servicing only the individual private residence at which it is located.***

"Storage tank" means any tank or reservoir which is a container for hazardous substance(s) and which is primarily used for bulk storage.

"Substantial business relationship" means the extent of a business relationship necessary under applicable State law to insure that a guarantee contract issued incident to that relationship is valid and enforceable.

"Substantial reconstruction" means any restoration, refurbishment, renovation or relocation of existing equipment which incurs

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costs equal to 50 percent or more of the replacement value of the equipment, or which impairs the physical integrity of the equipment or its monitoring systems.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tertiary watershed" means drainage basins which are emptied via third-order channels, as delineated by the United States Geological Survey. A small percentage of land drains directly into higher-order streams without passing through a third-order channel. This occurs predominately at the edge of large bays and the ocean.

***"Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility except for fueling or refueling operations, and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility.***

"Transfer capacity" means the maximum quantity of hazardous substances which can be transferred into or out of a facility in a 24-hour period.

"Transmission pipeline" means new and existing pipe and any equipment, facility, rights-of-way, or building used or intended for use in the transportation of a hazardous substance by a pipeline and having a throughput capacity of 140 gallons per minute (530 liters per minute) or greater. This term does not include the transportation of a hazardous substance through onshore production or flow lines, refining, or manufacturing facilities, or storage terminals or inplant piping systems associated with those facilities. Any pipe ***used or intended to be used in the transportation of a hazardous substance*** which is not a transmission pipeline will be considered an in-facility pipe.

"Underground storage tank" means any tank defined as such in N.J.A.C. 7:14B.

"Vessel" means every description of watercraft or other contrivance that is practicably capable of being used as a means of commercial transportation of hazardous substances upon the waters, whether or not self propelled.

"Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State.

7:1E-1.7 Hazardous substances

(a) All substances listed in Appendix A to this chapter, incorporated herein by reference, and in any of the following shall be considered hazardous substances for the purposes of this chapter:

1. Petroleum and petroleum products;
2. Pesticides designated as prohibited or restricted use, pursuant to N.J.A.C. 7:30 (effective as of August 21, 1988);
3. Substances designated as environmental hazardous substances, pursuant to N.J.A.C. 7:1G-2.1 (effective as of February 16, 1988);
4. Substances designated as hazardous substances in 40 CFR 116.4 (July 1, 1989 ed.);
5. Substances designated as toxic pollutants in 40 CFR 401.15 (July 1, 1989 ed.);
6. Substances designated as hazardous substances in 40 CFR 302.4 (July 1, 1990 ed.);
7. Substances designated as extremely hazardous substances in 40 CFR 355, Appendices A and B (July 1, 1989 ed.); and
8. Substances designated as toxic chemicals in 40 CFR 372 (July 1, 1989 ed.).

(b) In the event of a difference between any list included in (a) above and the list contained in Appendix A to this chapter, the list in Appendix A shall supersede.

(c) Sewage and sewage sludge shall not be considered hazardous substances for the purposes of this chapter.

7:1E-1.8 Environmentally sensitive areas

(a) For the purposes of designing and implementing a DPCC and a DCR plan, pursuant to N.J.A.C. 7:1E-4, the following shall be considered environmentally sensitive areas:

1. Surface waters, including without limitation the following: large rivers as defined in N.J.A.C. 7:7E-4.7; medium rivers, streams and creeks as defined in N.J.A.C. 7:7E-4.8; ponds and lakes as defined in N.J.A.C. 7:7E-4.9; canals as defined in N.J.A.C. 7:7E-3.8; trout maintenance waters, trout production waters, FW1 and category one waters as defined at N.J.A.C. 7:9-4.4; estuaries, as defined in 33 U.S.C. § 1330(k); and bays, including without limitation open bays, semi-enclosed bays and back bays, as defined in N.J.A.C. 7:7E-4.4 and 4.5;
2. Sources of water supply, including without limitation the following: water supply systems, as defined at N.J.A.C. 7:19-6.2; public community water systems, public noncommunity water systems, public water systems, and water systems, as defined at N.J.A.C. 7:10-1.3; public water distribution systems, as defined at N.J.A.C. 7:10-13.2; and public water supply systems, as defined at N.J.S.A. 58:11-65;
3. Bay islands, as defined at N.J.A.C. 7:7E-3.21, and barrier island corridors, as defined at N.J.A.C. 7:7E-3.20;
4. Beaches, as defined in N.J.A.C. 7:7E-3.22;
5. Dunes, as defined in N.J.A.C. 7:7E-3.16;
6. Wetlands and wetland transition areas, including without limitation the following: freshwater wetlands and wetland transition areas, as defined at N.J.A.C. 7:7A-1.4; wetlands, as defined in N.J.A.C. 7:7E-3.27; and cranberry bogs, as defined at N.J.A.C. 7:7E-3.29;
7. Breeding areas for forest area nesting species, colonial waterbirds or aquatic furbearers;
8. Migratory stopover areas for migrant shorebirds, raptors or passerines;
9. Wintering areas, including coastal tidal marshes and water areas, waterfowl concentration areas and Atlantic white cedar stands;
10. Prime fishing areas, as defined in N.J.A.C. 7:7E-3.4;
11. Finfish migratory pathways, as defined in N.J.A.C. 7:7E-3.5;
12. Estuarine areas supporting various species of submerged vegetation, as defined in N.J.A.C. 7:7E-3.6;
13. Shellfish harvesting waters as defined in N.J.A.C. 7:7E-3.2 and 7:9-4.4;
14. Forest areas, including prime forestland and unique forestland;
15. Habitat for Federal and State endangered or threatened plant and animal species identified pursuant to the Federal Endangered Species Act of 1973, P.L. 93-205; the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A, and the New Jersey Endangered Species List, N.J.A.C. 7:5C-5.1;
16. Federal and State wilderness areas, including areas included within the Natural Areas System or the State Register of Natural Areas pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq. and 15.4 et seq., and N.J.A.C. 7:2-11, and preserved land held by the New Jersey Natural Lands Trust pursuant to the New Jersey Natural Lands Trust Act, N.J.S.A. 13:1B-15.119 et seq.; and
17. Areas designated as wild, scenic, recreational, or developed recreational rivers, pursuant to the National Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq., or the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:*[1]*8-45 et seq. and N.J.A.C. 7:38.

7:1E-1.9 Access

(a) *[The]* ***During normal business hours and at any time during an actual or suspected discharge or violation the*** Department and its representatives shall have the right to enter and inspect any facility, vessel, building, or equipment, or any portion thereof, *[at any time,]* in order to ascertain compliance with the Act, this chapter, or any order, or consent agreement issued or entered into pursuant thereto. ***At any time, the Department and its representatives shall have the right to enter and inspect those portions of any facility, vessel, building or equipment actively engaged in the transfer or processing of hazardous substances in order to ascertain compliance with the Act or this chapter, or any order, consent order***

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**or agreement issued or entered into pursuant thereto.*** Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch, photograph or videotape any portion of the facility, vessel, building or equipment, to copy or photograph any document or records necessary to determine such compliance or noncompliance; and to interview any employees or representatives of the owner or operator or their contractors. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

*[(b) Any person who may be subject to liability for a discharge shall provide the Department with access to any real or personal property owned, operated, occupied or controlled by such person, which property the Department reasonably believes may contain information pertinent to the discharge for which such person may be subject to liability. The Department may take samples, photographs, videotape and statements of fact, and photocopy documents, for the purpose of obtaining such information.]* ***(Reserved)***

*[(c) Any person who owns, operates, occupies or controls real property which the Department reasonably believes may contain information pertinent to a discharge, or at which monitoring equipment or records required by a plan or permit are kept, shall provide the Department with access to such real property and such monitoring equipment and records, for the purposes of inspection, sampling, copying or photographing.]* ***(Reserved)***

(d) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection.

***(e) All information collected by or originated by the Department in connection with the Act, this chapter or the Discharge Prevention program shall be made available to the public in accordance with N.J.S.A. 13:1D-9d.***

7:1E-1.10 Waiver

The Department, when it determines that the application of these rules would impair expeditious containment or cleanup and removal of discharges, or endanger life, health, safety or the environment, may waive any provision of these rules.

7:1E-1.11 Applicability

(a) No person shall cause, suffer, allow or permit a discharge of a hazardous substance*[, unless such discharge is pursuant to and in compliance with a valid and effective Federal or State permit]*.

(b) Major facilities, as defined in N.J.A.C. 7:1E-1.6, are required to meet the standards of this chapter. The Department shall grant the owner or operator of a major facility a reasonable period of time, in light of all circumstances including economic feasibility, to upgrade to meet the standards of these rules if the major facility proves to the satisfaction of the Department that such a time period is needed. The rate of such upgrading shall be proposed by the owner or operator as part of the DPCC and DCR plans submitted pursuant to N.J.A.C. 7:1E-4.

(c) A non-major facility which adds storage capacity so as to become a major facility shall be considered a major facility.

(d) The Department may require of any major facility which has been granted a period to upgrade, the installation of alternative prevention and/or detection devices such as alarms, so as to minimize the chances of a discharge, and may, in addition, require the owner or operator of such a major facility to demonstrate an enhanced ability to prevent, expeditiously contain and/or clean up and remove a discharge from the portion of the facility to which a time period to upgrade has been granted. If the Department requires the installation of alternative prevention and/or detection devices, the owner or operator shall propose the devices to be used, subject to the Department's approval.

(e) The Department recognizes that the designs of major facilities differ, and, therefore, appropriate methods of discharge prevention are necessarily site-specific. Wherever in these rules a particular method of discharge prevention is mandated, the owner or operator of a major facility may substitute an alternate method if he or she can demonstrate to the satisfaction of the Department that such alternate method will provide protection against discharges at least equivalent to the method it is intended to replace.

SUBCHAPTER 2. PREVENTION AND CONTROL OF DISCHARGES AT MAJOR FACILITIES

7:1E-2.1 Scope

This subchapter prescribes the rules of the Department applicable to major facilities storing, transferring, processing or using hazardous substances. The following shall govern the standards for equipment and procedures utilized at major facilities.

7:1E-2.2 Storage

(a) Aboveground storage tanks shall meet the following standards:

1. Aboveground storage tank installations shall be provided with an adequate means of secondary containment, designed and built pursuant to N.J.A.C. 7:1E-2.6, and 40 CFR 112, including amendments and supplements, where applicable.

2. The base underlying the storage tank shall be made of or surfaced with a material impermeable to passage or chemical attack by the stored substance under the conditions of storage prevailing within the tank. Existing storage tanks shall be exempt from this requirement until such time as they may require substantial reconstruction or replacement, unless the Department orders a storage tank removed from service because of the likelihood of a discharge. Before such a tank is returned to service, it must meet this requirement.

3. Pipes leading to and from aboveground storage tanks which enter the tank below the liquid level shall be equipped with valves that can be remotely activated or are readily accessible in the event of a leak or discharge, and which are sufficiently close to the tank that they can prevent the contents of the tank from escaping outside the secondary containment area in the event of a pipe rupture outside the containment area. Such pipes shall not penetrate or pass through any walls, dikes or berms used as secondary containment, unless the impermeability *[and]* ***or*** integrity of the secondary containment is not impaired.

4. Aboveground storage tanks ***with a capacity greater than 2,000 gallons*** and all appurtenant piping ***to the first valve*** shall be subject to initial integrity ***testing*** or static head product testing on a schedule which takes into account the age of the tank, proximity to *[potable]* ***surface*** water supplies, the leak record of the tank for the preceding five years, and the date of the tank's last integrity test, as delineated in Table 1, and according to the schedule in Table 2. Thereafter, each aboveground storage tank ***with a capacity greater than 2,000 gallons*** and its appurtenant piping ***to the first valve*** shall undergo integrity testing at intervals based on the construction material of the tank, substances stored, soil conditions, corrosion allowance remaining, corrosion rate, leak history of the tank, degree of risk and the results of visual inspections, as described in the DPCC plan pursuant to N.J.A.C. 7:1E-4.3(d). In no case shall the period of time between tests exceed five years, unless the tank has an inspection and maintenance program that is in compliance with API 653, incorporated herein by reference. Integrity testing should be performed in compliance with accepted industry standards, which include, but are not limited to, API 574, API 653, ASME Section V, ASME Section VIII, and ASME Section X, incorporated herein by reference.

Table 1
Testing Schedule Factors

| Factor | Points |
|---|---|
| Age of tank (years) | |
| > 50 | 10 |
| 26-50 | 6 |
| 10-25 | 3 |
| < 10 | 1 |
| Proximity to *[potable]* ***surface*** water supplies (feet) | |
| ≤ 500 | 5 |
| > 500 | 1 |

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| | |
|---|---|
| Number of leaks in past five years | |
| ≥ 2 | 25 |
| 1 | 5 |
| 0 | 1 |
| Years since last ***structural*** integrity test | |
| ≥ 5 | 15 |
| > 1 but < 5 | 5 |
| ≤ 1 | 1 |

Table 2
Initial Testing Schedule

| Total points from Table 1 | Deadline for testing |
|---|---|
| > 30 | February 1, 1992 |
| 21-30 | August 1, 1992 |
| 11-20 | February 1, 1993 |
| ≥ 10 | August 1, 1993 |

5. A report on the initial integrity testing or static head product testing required by (a)4 above shall be submitted to the Department within 30 days of the completion of the test. This report shall include identification of the facility and the equipment tested, the age of the equipment, the test method(s) used, date of the test(s), name and affiliation of the person performing the test, the summary test results, any repairs performed ***or scheduled to be performed*** after the tests, and the expected service life of the equipment. The report shall be certified pursuant to N.J.A.C. 7:1E-4.11, and shall be sent to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027

(b) Underground storage tanks shall meet the requirements of N.J.A.C. 7:14B.

(c) If a storage tank is served by internal heating coils, such coils, the pipes leading to and from them, and the appurtenances to which they connect, must be designed so that any leakage passing from the tank into the heating coil system will be captured and contained in a secondary containment or wastewater treatment system.

(d) Storage tank installations shall be equipped with *[fail-safe]* devices capable of detecting overfills. Every storage tank shall have a high liquid level alarm with an audible or visual signal designed to alert plan personnel of overfills***, unless the capacity of the tank is 2,000 gallons or less, in which case the tank shall be attended at all times during the filling procedure,*** and ***one of the following***:

1. A high ***high*** liquid level pump cutoff device designed to stop flow at a predetermined level;
2. Direct communication between tank gauger and pumping station; or
3. Fast response systems for determining liquid levels, such as monitored visible gauges or computer links.

(e) Storage tank overfill lines, where they exist, shall be directed into secondary containment, other tanks, or other containment holding areas.

(f) Mobile or portable storage tanks shall be positioned or located so as to be protected by secondary containment ***or diversion structures*** pursuant to N.J.A.C. 7:1E-2.6. Such storage tanks shall not be located in areas subject to periodic flooding or washout, unless adequately protected so as to prevent hazardous substances stored therein from being carried off or discharged at times of flooding or washout.

(g) Drum storage areas shall be equipped with adequate secondary containment pursuant to N.J.A.C. 7:1E-2.6.

7:1E-2.3 Tank car or tank truck loading/unloading areas

(a) All tank car or tank truck loading/unloading areas employed in the transfer of hazardous substances shall be paved or surfaced in the area of transfer with impermeable materials, and equipped with an adequate means of secondary containment, designed and built pursuant to N.J.A.C. 7:1E-2.6.

(b) Prior to the filling of any tank car or tank truck, the lowermost drain and all outlets of such vehicle shall be examined in accordance with the applicable SOP to insure they are closed.

(c) During filling and prior to departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles shall be closely examined for leakage, in accordance with the appropriate SOP, and if necessary, tightened, adjusted, repaired or replaced so as to prevent liquid leakage in transit. All manifolds on tank cars or tank trucks shall be flanged or capped, and valves secured, prior to leaving transfer areas.

(d) A system to prevent tank car or tank truck departure before complete disconnect of transfer lines, such as a physical barrier (that is, wheel chocks) or brake interlock system, shall be utilized in transfer areas.

(e) Tank cars in the process of being loaded or unloaded shall be attended at reasonable intervals during the procedure, and shall be attended during topping off, in accordance with the appropriate SOP. Tank trucks in the process of being loaded or unloaded shall be attended at all times during the procedure, in accordance with the appropriate SOP.

7:1E-2.4 In-facility pipes for hazardous substances

(a) Where practicable, each in-facility pipe at a major facility containing a hazardous substance shall be marked by lettering, color banding or color coding to indicate the substance transferred through it.

(b) New buried piping installations shall be double walled, or have adequate secondary containment pursuant to N.J.A.C. 7:1E-2.6 and a product-sensitive leak detection device, where such devices are state-of-the-art technology.

(c) Existing buried pipes shall be equipped with product-sensitive leak detection devices, where such devices are state-of-the-art technology.

(d) If a section of buried pipe is exposed for any reason, the owner or operator shall ensure that it is carefully examined for deterioration, and if found to be deteriorated, shall be repaired or replaced. Existing pipes which require substantial reconstruction or replacement shall be upgraded to the standards applicable to new buried piping.

(e) Pipes removed from service shall be capped or blank-flanged and marked as to origin, or physically removed.

(f) Pipe supports should be designed so as to minimize abrasion and corrosion and allow for expansion and contraction.

(g) If in-facility pipes are elevated across roadways, gate check-in procedures, warning signs or other means shall be used to minimize the chance of a vehicular collision with the pipes.

7:1E-2.5 Process areas at major facilities for hazardous substances

(a) Drainage from production facilities, including buildings, and other process areas shall be engineered so as to provide a means of secondary containment or diversion for leaked hazardous substances.

(b) Process wastewater and cooling water pipes, plant drains and similar installations which drain into sewers, storm drains, public wastewater treatment plants, watercourses or other routes which drain to the waters of the State shall be engineered so that leaks of hazardous substances will not escape through them to waters of the State. If hazardous substances captured in secondary containment systems will drain into process wastewater lines, provision must be made to ensure compliance with the applicable NPDES or NJPDES permit before the water is discharged.

7:1E-2.6 Facility drainage and secondary containment

(a) All portions or areas of a major facility in which hazardous substances are routinely refined, produced, stored, held, handled, processed, or transferred shall be designed so that any leak will be prevented from becoming a discharge.

(b) Impermeable secondary containment or diversion structures to prevent leaked hazardous substances from becoming discharges include:

1. Dikes, berms or retaining walls;
2. Curbing;
3. Gutters, culverts and drainage systems;

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4. Diversion ponds, lagoons, retention basins, holding tanks, sumps, slop tanks and other collecting systems;

5. Drip pans; or

6. Other equivalent means approved by the Department.

(c) Secondary containment or diversion systems, structures or equipment shall meet the following standards;

1. The secondary containment or diversion system must block all probable routes by which leaked hazardous substances could reasonably be expected to become discharges;

2. The capacity of the secondary containment or diversion system shall include an additional capacity to accommodate six inches of rainwater, if the secondary containment or diversion structure is located such that rainwater could accumulate in it, and shall be:

i. For storage areas, the volume of the largest tank or drum utilizing the system;

ii. For tank car or tank truck loading/unloading areas, the volume of the largest compartment in any tank car or tank truck utilizing the area;

iii. For buried pipes, the maximum volumetric flow rate multiplied by the maximum amount of time between the detection of a leak and the shutdown of the pipe; or

iv. For process areas, the volume of the largest piece of equipment in the area, or the volumetric flow rate through the area multiplied by the maximum amount of time between the detection of a leak and the shutdown of the system, whichever is greater;

3. All components of the secondary containment or diversion system shall be made of or lined with impermeable materials, which must be maintained in an impermeable condition. Existing systems for existing aboveground storage tanks are exempt from this requirement if the existing system:

i. Can protect ground water for the period of time needed to clean up and remove a leak, up to the entire volume of the largest tank utilizing the system;

ii. Allows the visual detection of leaks; and

iii. Is inspected daily;

4. No process area, transfer area, diked storage area or other storage area, or secondary containment or diversion system appurtenant thereto shall drain into a watercourse, or into a ditch, sewer, pipe or storm drain that leads directly or indirectly into a watercourse or public sewage treatment plant, unless provision is made to:

i. Retain, by valves or other positive means, any accumulated precipitation until its condition can be ascertained; or

ii. Intercept any leaked hazardous substances in a permitted industrial wastewater treatment or pretreatment facility or other facility operated in accordance with a valid and effective NJPDES or NPDES permit;

5. Catchment basins, lagoons, and so forth, shall not be located in a manner that would subject them to flooding;

6. Incompatible materials shall not be stored within the same containment area if there is a substantial likelihood of them mixing in the event of leakage. This restriction does not apply to process areas where the substances are brought into proximity as part of a production process; and

7. Provision shall be made for promptly removing leaked hazardous substances from a secondary containment or diversion system. Secondary containment systems shall not be used as backup storage systems nor for any other purpose that would impair their capacity to contain leaks.

(d) A major facility handling nonmiscible lighter-than-water hazardous substances, which is adjacent to, or sufficiently near a body of surface water such that a leak from the facility would be reasonably expected to become a discharge, shall maintain on site flotation boom and/or filter fences and/or sorbent materials sufficient to contain and prevent the further spread of discharges.

7:1E-2.7 Marine transfer facilities

(a) All rules and regulations of the U.S. Coast Guard which apply to oil transfer facilities, in particular 33 CFR 154 and 156, are herein expressly adopted by reference, and are further made applicable as well to all marine transfer facilities which transfer in the liquid state any hazardous substances other than oil.

(b) If oil or other nonmiscible lighter-than-water hazardous substances are transferred at the facility, there shall be kept available a length of flotation boom or other containment device sufficient to totally enclose a vessel while engaged in the transfer of hazardous substances from a vessel to the facility or from the facility to a vessel.

(c) When transferring hazardous substances between vessels, the containment device shall be capable of encircling both vessels.

(d) A containment device shall be deployed prior to commencing the transfer of any nonmiscible lighter-than-water hazardous substance with a flash point in excess of 100 degrees Fahrenheit (38 degrees centigrade) as measured by the Penske-Martens closed cup flash test (ASTM D-93, incorporated herein by reference), when current and wind conditions permit the effective use of such devices and the device can be safely deployed without endangering any personnel, any vessel, or obstructing any shipping channel. This provision does not apply to the transfer of any hazardous substance to be used as a fuel or a lubricant by the vessel.

(e) When conditions prohibit the immediate deployment of a containment device, such containment device shall be maintained on a standby basis during the transfer for rapid deployment in the event of a discharge.

(f) When transferring or receiving hazardous substances where the vessel is docked parallel to the dock, the containment device is to originate at some point before the bow and terminate at some point behind the stern of the vessel so that the dock itself constitutes one side of the contained area, if the dock is capable of acting as an effective barrier.

(g) In the case of an "open pier" or a "finger dock" where the vessel is docked perpendicular to the dock, the boom is to encircle the entire vessel except for the area of the dock the vessel sits adjacent to, if the dock is capable of acting as an effective barrier.

(h) If a containment device is required by the Department to be in place during a transfer of a hazardous substance, the device shall be deployed not less than 15 feet from the vessel prior to *[commencemnt]* ***commencement*** of the transfer operation, except in the case where a dock may act as part of the containment.

(i) Transfer operations shall not commence, or if commenced shall be discontinued, if:

1. Weather forecasts predict for the vicinity of the facility that winds will reach gale force, or that heavy rain, sleet, snow or other storm conditions will substantially reduce visibility or otherwise increase the risk of discharges, of if severe weather conditions occur after transfer operations have been commenced;

2. Fire occurs in the vicinity of the transfer operation or a nearby portion of the transfer facility ***unless such a transfer is necessary to prevent further endangerment of personnel, the vessel or facility***;

3. At any time the transfer system is functioning contrary to the standard operating procedures of the facility;

4. A break occurs in the transfer system;

5. There is an apparent discrepancy between the quantity of hazardous substance transferred and received;

6. The communication system is not operative;

7. Hazardous substances are observed in the water near any transfer component, unless it can be ascertained that the hazardous substances are not being discharged from the vessel or the marine transfer facility involved in the transfer operation; or

8. A discharge occurs during transfer. Transfer shall not be resumed until after the discharge has been reported to the Department, and the Department or Federal on-scene coordinator under the National Contingency Plan pursuant to 40 CFR 1510 is satisfied that adequate steps have been taken to contain the discharge and to prevent further discharges. Under certain circumstances, it may be necessary to continue transfer operations even though a discharge has occurred, for example, in order to off-load the contents of a vessel which is leaking.

(j) When a containment device is deployed, prior to its removal, all discharged hazardous substances contained by the device shall be properly cleaned up and removed.

(k) Any containment device deployed shall be retrieved ***and properly cleaned or disposed of by the owner or operator*** upon

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completion of the transfer, or at such time as it is no longer needed to prevent the spread of or to divert a discharge.

7:1E-2.8 Illumination

(a) Major facilities which transfer hazardous substances to or from vessels between the hours of sunset and sunrise shall perform all such transfers using fixed lighting that shall adequately illuminate:

1. Each transfer connection point in use at the facility;
2. Each transfer connection point in use on the vessel;
3. Each hazardous substances transfer work area at the facility; and
4. Each hazardous substances transfer work area on the vessel.

(b) Major facilities which transfer hazardous substances to or from vessels between the hours of sunset and sunrise shall perform all such transfers using fixed or portable lighting that shall adequately illuminate surface area of the water surrounding the vessel sufficient to determine that no discharge is occurring.

(c) Adequate lighting shall mean any lighting which complies with U.S. Coast Guard rules or regulations applicable to oil transfers facilities, particularly 33 CFR 154.570.

7:1E-2.9 Flood hazard areas

Hazardous substances stored within the 100-year flood hazard area of any watercourse as delineated by the Department in N.J.A.C. 7:13-7.1 or stored within an area known by the owner or operator of the major facility to be subject to a high probability of flooding shall be adequately protected so as to prevent such hazardous substances from being carried off by or being discharged into flood waters.

7:1E-2.10 Leak detection and monitoring

(a) All equipment and portions of the major facility in service ***using hazardous substances*** shall be visually inspected in accordance with standard operating procedures pursuant to N.J.A.C. 7:1E-2.14, in order to detect any leaks or *[dicharges]* ***discharges***. Visual inspections shall be performed at a minimum according to the following schedule:

1. Prior to each use, all transfer area lighting, and all ***aboveground*** transfer valves, pumps, flanges and connections, unless they are not readily accessible***, that are to be used in the transfer***;
2. Once daily, process areas and all secondary containment systems for aboveground storage tanks which are not impermeable;
3. Once weekly, all other storage areas and secondary containment or diversion systems, and all aboveground pipes;
4. Once quarterly, ***all other aboveground*** valves, pumps, flanges, connections and equipment *[which are not readily accessible]*, and all security fences and locks; and
5. Once every five years, the interior of ***aboveground*** tanks, unless the tank has an inspection and maintenance program that is in compliance with API 653*[, incorporated herein by reference]*. ***Aboveground tanks with a capacity of 2,000 gallons or less shall be exempt from this requirement.***

(b) Records shall be kept for all visual inspections. These records shall document that inspections were performed, any problems found, and the subsequent correction of such problems.

(c) Unless a leak ***or discharge*** is likely to be detected by personnel, product gauging, an automatic leak detection system, or other means acceptable to the Department, the owner or operator of a major facility shall implement a ground water monitoring program approved by the Department and satisfying the requirements of N.J.A.C. 7:14A-6.

7:1E-2.11 Housekeeping and maintenance

(a) Hazardous substances shall be kept in containers suitable for their storage or processing at all times except when being transferred between containers. Containers shall be compatible with the substances stored therein and resistant to chemical attack by the substances. Hazardous substances shall be kept protected from the elements and the possibility of leakage.

(b) Tanks, pipes, valves, glands, drums or other equipment leaking hazardous substances shall be promptly repaired, replaced or taken out of use following detection of a leak, unless provision is made to capture and contain leaking hazardous substances in a drip pan or other appropriate containment device. If such provision is made, the leaking item shall be repaired, replaced or taken out of use within 15 days after the leak is detected unless the shutdown of a process unit is necessary. A leak shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first.

(c) Cleanup of all leaks or discharges of hazardous substances shall begin promptly upon detection. Loose quantities of hazardous substances shall not be allowed to persist on grounds, floors, walls or equipment, or any other places within the facility.

(d) The facility shall keep on hand, in convenient locations, adequate quantities of sorbent materials, chemical neutralizing agents or other materials as needed, sufficient to contain and clean up such small leaks or discharges as may be expected to occur in the ordinary operations of the facility.

(e) The facility shall maintain an adequate supply of protective safety equipment, such as chemically resistant coveralls, boots, or gas masks, in convenient locations for use by any personnel who are required to clean up leaked or discharged hazardous substances. Where protective safety equipment is required by any regulation of the Federal Occupational Safety and Health Administration, compliance with such regulation shall be deemed to fulfill this requirement.

(f) Secondary containment or diversion systems shall be maintained in good repair, free of cracks through which hazardous substances could be discharged.

(g) Flexible hoselines which are used to transfer hazardous substances shall be visually inspected prior to each use. Visibly damaged, deteriorated or discarded hoses shall be immediately taken out of service and removed from the work area.

7:1E-2.12 Employee training

(a) Owners or operators of major facilities shall implement an appropriate program for training their employees involved in the handling of hazardous substances and shall maintain a written description of the program.

(b) The training program shall include, at the minimum, the following;

1. A written job description which includes the duties and responsibilities ***relating to hazardous substances*** for each position, and the education, experience and training necessary to qualify for the position;
2. Procedures to determine whether an employee has demonstrated the ability to carry out the duties and responsibilities of a specific position; and
3. Specified time periods of in-house training for each position covering orientation, specific hazardous substances training and on-the-job training, trainee evaluation, final qualification, and periodic refresher training. A procedure shall be established for tracking the progress of each employee at regular intervals and shall be included in the written description required by (a) above. In addition, the maximum period of time for each training program shall be established within which the employee must achieve qualified status.

(c) The training which employees will receive shall, at a minimum, include:

1. General orientation and initial training of new employees before assignment to hazardous substance operations, which shall include instruction on the general site rules and practices, safety procedures and equipment, and the DCR plan, including identification of all environmentally sensitive areas delineated in the plan;
2. Classroom training for new or newly assigned employees involved with hazardous substances. This training shall cover the details of standard operating procedures and safety training specific to a hazardous substance, including a detailed review of the hazardous substance material safety data sheets, the safe handling practices for the hazardous substance, the hazards of the operation involving the hazardous substance, and emergency procedures regarding fires, leaks and discharges;
3. On-the-job training for newly assigned employees, including, but not limited to:
   i. Equipment familiarization;
   ii. Operating data collection and entry;

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iii. Actual equipment startup and shutdown;

iv. Control and adjustment of operating conditions; and

v. The application of standard operating procedures to actual conditions; and

4. Refresher training at least once a year which shall present an overview and updated information on the standard operating procedures, hazardous substances material safety data sheets, safe handling of the hazardous substances, and procedures to be followed in the event of a leak or discharge.

(d) The training program shall specify the qualifications required for the personnel responsible for training employees working with hazardous substances.

(e) Documentation of all training, evaluation and qualifying activities for each employee shall be kept at the facility and shall include identification of all personnel trained, their job titles, subjects covered and training dates.

(f) Owners or operators shall have procedures to insure that all employees utilized by outside contractors have received appropriate training.

7:1E-2.13 Security

(a) Major facilities shall be adequately illuminated so that personnel on the premises can detect intruders, leaks or discharges during hours of darkness.

(b) Major facilities shall have security consisting of:

1. Fencing adequate to prevent unauthorized entry (full fencing on land) of all portions or areas within which hazardous substances are stored, processed, transferred or used, with entrance gates locked and/or guarded when the facility is unattended, and either locked, guarded or under observation by personnel at all other times; or

2. All of the following:

i. Valves which will permit escape of a tank's or other container's contents to the surface securely locked in the closed position when *[in non-operating or standby status]* ***not in use***;

ii. Starter controls on all pumps locked in the "off" position when the pumps are *[in non-operating or standby status]* ***not in use*** unless the controls are located at a site accessible only to authorized personnel, which site is itself attended or locked; and

iii. The *[manifolds]* ***open ends*** of all pipes securely capped or blank-flanged when not in *[service or standby service]* ***use*** for an extended time.

7:1E-2.14 Standard operating procedures

(a) The standard operating procedures shall be written in English in a manner understandable by employees of the major facility and shall also be written in the language of fluency of employees ***utilizing those SOPs*** not fluent in English.

(b) A copy of the standard operating procedures shall be readily available to employees.

(c) A copy of material safety data sheets or fact sheets for each hazardous substance used or stored at the facility shall be readily available to employees.

(d) The standard operating procedures shall include, but not be limited to:

1. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures;

2. Procedures and conditions for normal operation;

3. A description of ***the most common*** abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions;

4. A description of leak or discharge conditions which could occur, including the control and mitigation procedures to be followed to reduce the impact of the leak or discharge conditions;

5. Pre-startup procedures;

6. Startup procedures including conditions to be maintained during startup;

7. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of equipment to be maintained after shutdown;

8. A description of the type, location and purpose of containment systems and devices, leak monitoring equipment and alarms;

9. Safety procedures related to each specific operation in the standard operating procedures;

10. Procedures for visual inspection of equipment;

11. Procedures to prepare equipment for maintenance and inspection of maintenance work upon completion and prior to placement of equipment in service; and

12. Log sheets and checklists where appropriate to the operation.

(e) A generic SOP may be written when more than one piece of *[the same]* equipment ***designed to perform the same function*** is located at the facility. Such a generic SOP must cover all hazardous substances used by all the equipment and must delineate any special conditions associated with a specific piece of equipment or hazardous substance.

(f) Modifications to the standard operating procedures shall be incorporated into the standard operating procedures prior to their implementation.

(g) A current index of the standard operating procedures with corresponding latest dates of issue shall be maintained and readily available.

7:1E-2.15 Recordkeeping

(a) The owner or operator of a major facility shall maintain records of employee training and drills for discharge prevention, hazardous substances inventories, and confirmation reports on discharges pursuant to N.J.A.C. 7:1E-5.8 for a period of 10 years.

(b) The owner or operator of a major facility shall maintain records of integrity testing, inspection, major maintenance, and major repair of all structures, equipment, and detection or monitoring, prevention or safety devices related to discharge prevention and response for the lifetime of the structure, equipment or device.

(c) All records shall be available for inspection upon the request of the Department or appropriate local agencies.

(d) Records ***may be retained on microfilm or microfiche*** or may be kept in an electronic or computerized form if they are adequately backed up.

SUBCHAPTER 3. TRANSMISSION PIPELINES

7:1E-3.1 Scope

This subchapter prescribes the rules of the Department for information to be submitted concerning transmission pipelines. The following rules shall govern the preparation and submission of registrations.

7:1E-3.2 Registration of transmission pipelines

(a) By February 1, 1992, the owner or operator of a transmission pipeline shall submit the following information to the Department, on forms provided by the Department;

1. The business name(s), address and telephone number of the owner or operator of the facility;

2. The name and business address of the owner or operator's registered agent;

3. The storage capacity of any facility;

4. A description of the hazardous substances which are stored, held, handled, transferred or transported by the facility;

5. The transfer capacity and the average daily throughput, on an annual basis, of the transmission pipeline for each hazardous substance;

6. An accurate map or maps, showing the location of each of the owner or operator's pipeline facilities, storage areas, transfer areas, or other structures in or on which hazardous substances are stored or handled, the geographical features of the surrounding area, and the location at which the pipeline facility enters or leaves the State ***. Those maps which are currently maintained pursuant to regulations of the U.S. Department of Transportation are sufficiently accurate***;

7. An inventory of all types of pipe used for the transmission of hazardous substances, including a history of major repairs, ***major*** maintenance and ***major*** leaks from all pipes; and

8. Any certifications required*[,]* pursuant to N.J.A.C. 7:1E-4.11 ***(b)***.

(b) Any change in the information supplied pursuant to (a) above shall be reported to the Department within 60 days.

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(c) The information required by (a) or (b) above shall be sent to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027
Attention: Pipeline Registration

7:1E-3.3 Standards

All transmission pipelines shall conform to 49 CFR 195, "Transportation of Liquids by Pipeline", and any future supplements and amendments thereto.

7:1E-3.4 Discharge cleanup information

(a) By February 1, 1992, the owner or operator of a transmission pipeline shall submit the following information to the Department at the address specified in N.J.A.C. 7:1E-3.2(c):

1. A summary of the action plan used in responding to, and minimizing health and environmental dangers from, fires, explosions or discharges, including the deployment of personnel and equipment, the chain of command for an emergency response action, and notification procedures pursuant to N.J.A.C. 7:1E-5;

2. A list of containment and removal equipment and materials to which the transmission pipeline has access through ownership, contract or other means, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communications devices. If access to equipment is by contract with or membership in a discharge cleanup organization which has filed information with the Department pursuant to N.J.A.C. 7:1E-4.2, it is sufficient to supply the name of the organization in lieu of an equipment list;

3. A list of the trained personnel who are available to operate such equipment and a brief description of their qualifications. If personnel to be used for this purpose are employees of a discharge cleanup organization which has filed information with the Department pursuant to N.J.A.C. 7:1E-4.2, it is sufficient to supply the name of the organization in lieu of a personnel list. In lieu of supplying a list of names, the owner or operator may supply a list of job titles of employees who will be assigned to operate containment and removal equipment, and a statement of the minimum qualifications that will be required of each employee so assigned;

4. The name, title and 24-hour business telephone number of facility's response coordinator or other person authorized to hire contractors and release funds for discharge response, containment, cleanup and removal. A response coordinator or alternate shall be available at all times; and

5. Procedures for ***determining*** the recycling or disposal *[of]* ***options for*** hazardous substances or contaminated soil, debris, and so forth gathered during cleanup and removal operations.

SUBCHAPTER 4. REGISTRATIONS AND PLANS

7:1E-4.1 Scope

This subchapter prescribes the rules of the Department for information to be submitted concerning major facilities and discharge cleanup organizations. The following rules shall govern the preparation and submission of registrations, discharge prevention, containment and countermeasure plans, and discharge cleanup and removal plans.

7:1E-4.2 Registration of discharge cleanup organizations

(a) Discharge cleanup and removal organizations, other than owners or operators of major facilities covered by DCR plans who intend to clean up only discharges from their own facilities, shall submit in writing to the Department on or before January 1 of each year the following information:

1. The name of the organization;

2. The form of the organization, such as corporation, cooperative or association;

3. Name(s) of executive officer(s);

4. The mailing address;

5. The address, telephone number, and name of the manager of each office maintained by the organization;

6. The name and address of the registered agent of the organization, if applicable;

7. A list of the containment and removal equipment owned, leased, contracted or otherwise available for immediate response by the organization, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, sorbents, hand tools and communication devices, and the location(s) of such equipment;

8. Names of the trained personnel who are available to operate such equipment and a brief description of their qualifications;

9. Areas of the State where the organization will respond to discharges;

10. Hours during which the organization will be available to respond to discharges. If other than around-the-clock, the organization shall supply the Department with at least two telephone numbers by which the organization can be reached during off-hours in an emergency;

11. A brief record of the organization's response history in New Jersey and other states for the previous two years, indicating the magnitude of discharges and the types of hazardous substances handled; and

12. Any certifications required pursuant to N.J.A.C. 7:1E-4.11.

(b) Two copies of the information required by (a) above shall be sent to the Department at:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027
Attention: Discharge Cleanup Organization Submission

7:1E-4.3 Discharge prevention, containment and countermeasure plans

(a) The owner or operator of a major facility shall prepare a DPCC plan demonstrating compliance with the standards in N.J.A.C. 7:1E-2, and shall appoint a response coordinator for each site who shall be responsible for insuring compliance with the DPCC plan, the Act, and this chapter. The response coordinator shall *[submit]* ***be responsible for submission of*** all reports required by this chapter to the Department.

(b) The DPCC plan shall contain the following general information:

1. The name, telephone number and location of the facility including street and mailing address, county, municipality, tax lot and block number, and the coordinate centroid in New Jersey State Plane;

2. The name(s), telephone number(s) and business address(es) of the owner or operator of the facility;

3. The name and business address of the owner's or operator's registered agent, if applicable;

4. A general site plan, which accurately reflects the current facility, showing the location of storage tanks, drum storage areas, process buildings, transfer areas, and any other structures in or on which hazardous substances are stored or handled, or which are used for the prevention of discharges, and all facility fencing and gates. It shall be drawn to a scale in the range of one inch equals 30 feet to one inch equals 200 feet, such that it is sufficient to delineate all items to be mapped, and shall be certified by a licensed land surveyor;

5. A drainage and land use map, in the format prescribed in N.J.A.C. 7:1E-4.10, which accurately reflects the current facility and the surrounding area, including the location of all major sewers, storm sewers and all watercourses into which the surface water runoff from the facility drains and the location of all supply or monitoring wells;

6. Topographical maps, in the format prescribed in N.J.A.C. 7:1E-4.10, covering all surrounding area which could be affected by a discharge from the facility, including environmentally sensitive areas; and

7. The anticipated date on which the facility will become operational, if the facility is a new one.

(c) If the facility has experienced two or more discharge events within the previous 12 months, the DPCC plan shall include a description of each such event, corrective action taken, and plans for preventing recurrences.

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(d) The DPCC plan shall include, at a minimum, the following technical information:

1. A description of all storage areas, the schedule or criteria for scheduling integrity testing and maintenance or reconstruction, pursuant to N.J.A.C. 7:1E-2.2;

2. A description of any tank car or tank truck loading/unloading area, pursuant to N.J.A.C. 7:1E-2.3;

3. A description of all secondary containment or diversion systems, including their capacity and materials of construction, pursuant to N.J.A.C. 7:1E-2.6;

4. A description of the fixed and portable lighting in use in marine transfer areas, pursuant to N.J.A.C. 7:1E-2.8;

5. A description of any flood hazard areas ***within the facility's boundaries***, and any measures implemented to protect hazardous substances from flood waters, pursuant to N.J.A.C. 7:1E-2.9;

6. A description of all leak detection or monitoring procedures, pursuant to N.J.A.C. 7:1E-2.10;

7. An outline of the housekeeping and maintenance program, pursuant to N.J.A.C. 7:1E-2.11;

8. An outline of the personnel training program and procedures for insuring proper training of contractors, including a catalog list of all pertinent documents, pursuant to N.J.A.C. 7:1E-2.12;

9. A description of the physical security measures at the facility, pursuant to N.J.A.C. 7:1E-2.13;

10. A catalog list of all standard operating procedures that have been written pursuant to N.J.A.C. 7:1E-2.14; and

11. A description of the recordkeeping system employed by the facility, pursuant to N.J.A.C. 7:1E-2.15.

(e) The DPCC plan shall include a schedule, to be approved by the Department, for upgrading equipment or portions of the facility to meet the requirements of this chapter.

(f) The owner or operator shall maintain and make available for Department review, at either the facility or the Department's offices at the discretion of the Department, the following updated documentation including a catalog list of all such documents showing title, identification number and date of issue:

1. Facility inventory of hazardous substances;

2. Updated process flow and piping and instrumentation diagrams;

3. Standard operating procedures;

4. Facility emergency response plan;

5. Job classifications and job descriptions; and

6. Housekeeping and maintenance program procedures and records.

7:1E-4.4 Discharge cleanup and removal plan

(a) The owner or operator of a major facility shall prepare and implement a DCR plan containing, at a minimum, the following information:

1. A summary of the action plan used in responding to, and minimizing health and environmental dangers from, fires, explosions, or discharges of hazardous substances, including the deployment of personnel and equipment, the chain of command for an emergency response action and notification procedures, pursuant to N.J.A.C. 7:1E-5. The action plan shall provide for annual emergency response drills to determine the currency and adequacy of, and personnel familiarity with, the emergency response action plan. When possible, this annual drill can be combined with other required emergency response drills;

2. A list of containment and removal equipment and materials to which the facility has access through ownership, contract or other means, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communications devices. If access to equipment is by contract with or membership in a discharge cleanup organization which has filed information with the Department pursuant to N.J.A.C. 7:1E-4.2, it is sufficient to supply the name of the organization in lieu of an equipment list. A copy of all current contracts or agreements between the owner or operator and a discharge cleanup organization for emergency response service shall be maintained at the facility or with the facility's registered agent ***, as appropriate,*** and shall be available to the Department for review upon request;

3. A list of the trained personnel who are available to operate such equipment and a brief description of their qualifications. If personnel to be used for this purpose are employees of a discharge cleanup organization which has filed information with the Department pursuant to N.J.A.C. 7:1E-4.2, it is sufficient to supply the name of the organization in lieu of a personnel list. In lieu of supplying a list of names, the owner or operator may supply a list of job titles of employees who will be assigned to operate containment and removal equipment, and a statement of the minimum qualifications that will be required of each employee so assigned;

4. The name, title and 24-hour business telephone number of the facility's response coordinator or other person authorized to hire contractors and release funds for discharge response, containment, cleanup and removal. A response coordinator or alternate shall be available at all times;

5. A plan identifying priorities for the off-site deployment of personnel and equipment to protect residential, environmentally sensitive, or other areas from a discharge based on use, seasonal sensitivity, or other relevant factors;

6. An environmentally sensitive areas protection plan, pursuant to N.J.A.C. 7:1E-4.11, certified by a marine biologist ***or aquatic biologist or ecologist or freshwater equivalent*** and ornithologist acceptable to the Department, that shall:

i. Identify all environmentally sensitive areas that could be affected by a discharge from the facility. The mapping required by N.J.A.C. 7:1E-4.3(b)6 may serve as this identification;

ii. Identify the seasonal sensitivity of the areas;

iii. Provide for an environmental assessment of the impact of any discharge on the identified areas; and

iv. Provide for the protection from, and mitigation of, any potentially adverse impact on the identified areas in the event of a discharge;

7. Procedures for ***determining*** the recycling or disposal *[of]* ***options for*** hazardous substances or contaminated soil, debris, and so forth, gathered during cleanup and removal operations;

8. A copy of an agreement with the local emergency planning committee or committees that coordinates the emergency responses of the parties to the agreement; and

9. A *[description]* ***copy*** of ***all*** financial responsibility ***documents required*** pursuant to N.J.A.C. 7:1E-4.5 ***in accordance with N.J.A.C. 7:1E-4.5(e) or Appendix B*.**

(b) Each major facility shall have available to it, by ownership or by arrangement with a discharge cleanup organization which is registered with the Department pursuant to N.J.A.C. 7:1E-4.2, adequate equipment and personnel to clean up any discharge that occurs at the facility.

7:1E-4.5 Financial responsibility

(a) The owner or operator of a major facility shall demonstrate financial responsibility for taking corrective action resulting from the discharge of a hazardous substance, and for the removal of any abandoned structure owned or operated, as the case may be, by the owner or operator.

(b) The owner or operator of a major facility shall demonstrate financial responsibility in the minimum amount of $1 million per occurrence and $2 million annual aggregate; provided, however, that if the owner or operator establishes to the satisfaction of the Department that a lesser amount will be sufficient to protect the environment and public health, safety and welfare, the Department may accept evidence of financial responsibility in such lesser amount. In determining the sufficiency of the amount of financial responsibility, the Department may consider factors including, without limitation, the nature and quantity of the hazardous substances which may be present at the facility, and the proximity and nature of environmentally sensitive areas located near the facility.

(c) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(d) Financial responsibility may be established by any one, or by any combination, of the following mechanisms:

1. Financial test of self-insurance;

2. Guarantee;

3. Insurance or risk retention group coverage;

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4. Surety bond; or
5. Letter of credit.

(e) The owner or operator of any major facility which demonstrates financial responsibility pursuant to the requirements of the Federal Oil Pollution Act of 1990, P.L. 101-380, shall be deemed to have demonstrated financial responsibility in accordance with this chapter and the Act.

(f) An owner or operator may use self-insurance in combination with a guarantee only if, for the purposes of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

(g) To pass the financial test of self-insurance, the owner or operator or guarantor must meet the criteria of (g)1 or 2 below based on the year-end financial statements of the latest completed fiscal year and maintain onsite a letter signed by the chief financial officer worded as specified in Appendix B, incorporated herein by reference. This letter shall be updated within 120 days of the close of each financial reporting year. In addition:

1. The owner or operator or guarantor must have a tangible net worth of at least $10 million, and the owner or operator or guarantor must:

i. Have a tangible net worth of at least 10 times the required aggregate amount in (b) above plus any other liability coverage for which the owner or operator is using the test to demonstrate financial responsibility to the State or EPA;

ii. Either file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A; and

iii. Have year-end financial statements which do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification; or

2. The owner or operator or guarantor must have a bond rating of AAA, AA, A or BBB from Standard and Poor's, or Aaa, Aa, A or Baa from Moody's, or net working capital of at least six times the required amount, and the owner or operator, or the guarantor, must have:

i. A tangible net worth of at least six times the applicable aggregate amount in (b) above;

ii. U.S. assets that are at least 90 percent of total assets or at least six times the required aggregate amount; and

iii. Fiscal year-end financial statements filed with U.S. Securities and Exchange Commission, Energy Information Administration, or Rural Electrification Administration, or examined by a certified public accountant accompanied by the accountant's report of the examination.

(h) If an owner or operator or guarantor using the financial test of self-insurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(i) The Department may require reports of financial condition at any time from the owner or operator, or guarantor. If the Department finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of (g) above, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(j) If the owner or operator fails to obtain alternate coverage within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

(k) To demonstrate financial responsibility through a guarantee:

1. Within 120 days of the close of each financial reporting year, the guarantor must demonstrate that it meets the financial test criteria set forth in (g) above by completing the letter from the chief financial officer as specified in Appendix B and must deliver the letter to the owner or operator and the Department. If the guarantor fails to meet the requirements of (g) above, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator and the Department. If the Department notifies the guarantor that he or she no longer meets the requirements of (g) above, the guarantor must notify the owner or operator within 10 days of receiving such notification from the Department. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification or 120 days after the date the Department receives the notification, whichever is later, as evidenced by the return receipt. The owner or operator must obtain alternate coverage within 30 days; and

2. The guarantee must be worded as specified in Appendix B, and a copy of the guarantee maintained at the facility at all times.

(l) To demonstrate financial responsibility through liability insurance:

1. Such insurance must be obtained from a qualified insurer or risk retention group. It may be in the form of a separate insurance policy or an endorsement to an existing insurance policy;

2. An existing insurance policy must be amended by an endorsement worded as specified in Appendix B and a separate insurance policy must be evidenced by a certificate of insurance worded as specified in Appendix B. A copy of this endorsement or certificate must be maintained at the facility at all times;

3. Cancellation or any other termination of the liability insurance by the insurer or group will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later; and

4. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.

(m) To demonstrate financial responsibility through a surety bond:

1. The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the latest Circular 570 of the U.S. Department of the Treasury;

2. The surety bond must be worded as specified in Appendix B, and a copy of the surety bond maintained at the facility at all times;

3. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate sums;

4. The owner or operator who uses a surety bond to meet the requirements of (a) above must establish a standby trust fund when the surety bond is acquired. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Department;

5. The surety(ies) may cancel the bond by sending written notice of cancellation by certified mail to the principal and the Department, provided, however, that the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the principal or the date of receipt of the notice of cancellation by the Department, whichever is later, as evidenced by the return receipt; and

6. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.

(n) To demonstrate financial responsibility through a letter of credit:

1. The issuing agency must be an entity that has the authority to issue letters of credit in the State and whose letter-of-credit operations are regulated and examined by a State agency;

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2. The letter of credit must be worded as specified in Appendix B, and a copy of the letter of credit maintained at the facility at all times;

3. The owner or operator who uses a letter of credit to meet the requirements of (a) above must establish a standby trust fund when the letter of credit is acquired. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department;

4. The letter of credit must be irrevocable with a term specified by the issuing institution, and must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator and the Department by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice or on the date when the Department receives the notice, whichever is later, as evidenced by the return receipt; and

5. Within 60 days of receipt of a notice of cancellation or other termination, the owner or operator shall provide alternative financial assurance as specified in this section.

(o) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code:

1. Naming an owner or operator as debtor, the owner or operator shall notify the Department by certified mail of such commencement; or

2. Naming the provider of financial assurance as debtor, the provider shall notify the owner or operator by certified mail of such commencement, and the owner or operator shall then notify the Department.

(p) An owner or operator will be deemed to be without the required demonstration of financial responsibility in the event of commencement of bankruptcy or other incapacity of his or her provider of financial assurance. Within 30 days after receiving notice of such an event, the owner or operator shall submit to the Department an alternate demonstration of financial responsibility.

(q) Owners or operators of major facilities who are unable to demonstrate evidence of financial responsibility by the date of the submission of a DCR plan may apply to the Department for suspension of enforcement. In order to receive suspension of enforcement, the owner or operator must demonstrate that:

1. Methods of financial responsibility are not practicable to him or her; and

2. A good faith effort has been made to secure financial responsibility in the full aggregate amount.

(r) The Department may establish an alternate minimum amount of financial responsibility in lieu of suspending enforcement.

7:1E-4.6 Preparation and submission of plans

(a) The owner or operator of a major facility shall prepare a DPCC plan and a DCR plan in accordance with N.J.A.C. 7:1E-4.3 and 4.4. The DPCC and DCR plans shall be prepared and submitted as a single document.

(b) The owner or operator of an existing major facility shall submit a DPCC plan and a DCR plan, certified pursuant to N.J.A.C. 7:1E-4.11, to the Department at the address in (g) below. Such plans shall be submitted no later than the following dates:

1. By February 1, 1992, all facilities with a storage capacity for hazardous substances of all kinds of at least 300,000 gallons, but less than one million gallons;

2. By August 1, 1992, all facilities with a storage capacity for hazardous substances of all kinds of at least one million gallons, but less than four million gallons;

3. By February 1, 1993, all facilities with a storage capacity for hazardous substances of all kinds of four million gallons or greater;

4. By August 1, 1993, all facilities with a storage capacity for hazardous substances other than petroleum or petroleum products of at least 80,000 gallons, but less than 200,000 gallons, or for hazardous substance of all kinds of at least 200,000 gallons, but less than 300,000 gallons;

5. By February 1, 1994, all facilities with a storage capacity for hazardous substances other than petroleum or petroleum products of at least 40,000 gallons, but less than 80,000 gallons; and

6. By August 1, 1994, all facilities with a storage capacity for hazardous substances other than petroleum and petroleum products of at least 20,000 gallons, but less than 40,000 gallons.

(c) The owner or operator of a new major facility shall submit a DPCC plan and a DCR plan, certified pursuant to N.J.A.C. 7:1E-4.11, to the Department at least 180 days prior to the anticipated operational date of the facility, and shall implement the approved plans prior to operating the facility.

(d) If plans call for facilities, procedures, methods or equipment not yet fully operational, these items shall be listed separately and a schedule for installation and operational status shall be provided.

(e) Within 60 calendar days of receipt of a DPCC and a DCR plan, the Department shall notify the owner or operator in writing as to whether all information required by (a) above to begin technical review of the plans has been submitted. A list of additional information required will be included if the plans are deemed incomplete.

(f) Unless time is extended by the Department, such additional information as outlined in this subchapter as the Department may require shall be submitted within 30 days of receipt of the Department's request. If additional information requested by the Department is not submitted within the 30-day period, the Department may deny approval of the plan without prejudice to resubmission.

(g) Two copies of a DPCC or DCR plan shall be submitted to the Department for approval. Copies shall be sent to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625-0027
Attention: Plan Submittal

7:1E-4.7 Approval and conditional approval of plans

(a) The Department shall act to approve or deny approval of a complete submission of a DPCC or DCR plan, pursuant to N.J.A.C. 7:1E-4.6, within 180 days of receipt, or no later than the date on which the new major facility is issued treatment works approvals pursuant to N.J.A.C. 7:14A-12 which are required as conditions precedent to lawful operation of the facility, whichever is longer.

(b) If the Department finds a plan to be incomplete or denies approval of a plan, the owner or operator shall have 30 days within which to submit an acceptable plan, unless the Department extends the time for good cause shown.

(c) The Department may conditionally approve a plan if the maps required pursuant to N.J.A.C. 7:1E-4.3(b)5 or 6 are incomplete or are not in the format prescribed by N.J.A.C. 7:1E-4.10. The Department shall grant such conditional approval if the Department determines that:

1. The plan otherwise satisfies all of the requirements of this subchapter; and

2. The owner or operator is making a good faith effort to provide complete, acceptable maps.

(d) The conditional approval under (c) above shall set forth a date on which the conditional approval will expire unless the owner or operator has provided maps which satisfy the requirements of N.J.A.C. 7:1E-4.10.

(e) Implementation of the DPCC and DCR plans shall begin immediately upon receipt of the Department's approval.

(f) The Department may inspect major facilities prior to approving DPCC or DCR plans and at reasonable intervals thereafter in order to ascertain compliance with the plans.

(g) The major facility shall keep a copy of the approved or conditionally approved plan onsite at all times.

7:1E-4.8 Denial or revocation of approval of DPCC or DCR plans or amendments

(a) The Department shall state in writing its reasons for denying or revoking approval of any DPCC or DCR plans or amendments thereto.

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(b) The Department may revoke its approval of a DPCC or DCR plan if the owner or operator fails to comply with an approved schedule for bringing the facility's plan into compliance with the requirements of these rules, or submits to the Department false or willfully misleading information.

(c) The owner or operator of a major facility who is aggrieved by any decision of the Department to deny or revoke approval of a DPCC or DCR plan or amendment thereto has the right to a hearing before the Department, pursuant to the procedure outlined in N.J.A.C. 7:1E-6.

7:1E-4.9 Amendment of plans by owners or operators

(a) *[Notice]* ***Written notice*** of proposed new construction or installation, substantial modification or replacement of any aboveground storage tank, other aboveground enclosed storage space, any appurtenant structures, or leak detection or other monitoring, prevention, or safety systems or devices shall be provided to the Department at least 60 days prior to the commencement of construction, installation or modification. This provision does not apply to construction, installation or modification contained in a schedule for upgrading in an approved DPCC plan.

(b) Within 30 days of any change, the owner or operator of a major facility having an approved DPCC or DCR plan shall report to the Department any change in facility design, construction, operation or maintenance which will materially affect the facility's potential for discharges of hazardous substances or the substance of existing plans. The owner or operator shall amend the DPCC or DCR plan to reflect such changes, and shall certify the amendments pursuant to N.J.A.C. 7:1E-4.11, prior to submission to the Department for approval.

(c) The Department shall act *[on]* ***to approve or deny approval of*** proposed amendments within 60 days.

(d) Amendments to DPCC or DCR plans shall be implemented promptly upon approval by the Department.

(e) Notwithstanding compliance with (a) above, at least once every three years following approval or conditional approval of the DPCC and DCR plans, the owner or operator shall renew the DPCC and DCR plans. The renewal shall consist of revised plans or a certification that the existing plans on file with the Department are current. Renewals shall be accompanied by a summary of leaks and discharges at the facility since the plan approval, conditional approval, or renewal. A revised plan may be required at the time of renewal so as to incorporate into the plan all amendments adopted since the approval, conditional approval, or last renewal. All renewals shall be certified pursuant to N.J.A.C. 7:1E-4.11. Any DPCC or DCR plan which is not renewed within three years of the date of approval, conditional approval, or last renewal, shall be considered expired.

7:1E-4.10 Mapping criteria

(a) Drainage and land use, and topographical maps delineating environmentally sensitive areas, required pursuant to N.J.A.C. 7:1E-4.3(b)5 and 6, shall meet the following standards:

1. All *[delineations for required features]* ***mapping*** shall employ ***current commercially available*** mylar orthophoto basemaps (quarterquads) or other *[stable material]* ***comparable current*** basemaps *[which meet or exceed National Map Accuracy Standards established by the United States Geological Survey]* at a scale equal to or larger than 1:12,000, such as 1:9,600.

2. ***If required for clarity,*** *[All]* ***all*** delineations shall be made on *[matte finish]* stable base mylar overlays ***registered*** to the basemaps.

3. Mapped information shall not be so crowded as to obscure the clarity of data of any features.

4. All maps shall have a minimum of four reference points (tics) widely spaced across the map for which the geographic coordinates are known. The coordinates for each tic shall be listed by the appropriate ticmark and shall be in New Jersey State Plane Feet.

5. Delineations shall be made with a standard *[000]* drafting/technical pen producing a line width of 0.01 inches***, provided however, that a greater line width of up to 0.05 inches may be used when necessary for emphasis***. In all cases, the drafted lines and points shall bisect the feature *[being delineated]* ***as seen on the basemap and shall be within ± 50 feet of its location on the ground***.

6. *[Data from sources which are not on stable base and/or are not georeferenced, but which are suitable in other respects, must be recompiled to rectified stable basemaps.]* ***Mapped data from other sources must be accurately transferred to the basemaps.***

7. *[Data provided on the maps shall be documented with respect to cartographic information on the forms in Appendix C, incorporated herein by reference.] ***The name and the affiliation of the preparer of the map, the date of preparation, the scale or scales employed, and the sources of data used shall be stated in a legend block on each map.***

(b) Drainage and land use maps, required pursuant to N.J.A.C. 7:1E-4.3(b)5, shall:

1. *[Classify and delineate all land use areas to level II of the Anderson et al. (1976) modified classification, incorporated herein by reference,]* ***Include maps*** for the land area within *[a one mile buffer]* ***1,000 feet*** from the major facility's boundary. This boundary includes all lands owned or used by the owner or operator at a given location. ***The following categories of land use shall be included:***

**i. Urban land:**
**(1) Residential;**
**(2) Transportation/communication/utilities;**
**(3) Industrial and commercial complexes;**
**(4) Recreational land and parks;**
**(5) Schools; and**
**(6) Hospitals and nursing care facilities;**
**ii. Water:**
**(1) River channels;**
**(2) Lakes and ponds;**
**(3) Reservoirs;**
**(4) Bays and estuaries; and**
**(5) Cranberry bogs;**
**iii. Wetlands:**
**(1) Coastal wetlands; and**
**(2) Interior wetlands;**
**iv. Agricultural land:**
**v. Barren lands:**
**(1) Beaches;**
**(2) Extractive mining;**
**(3) Other barren or altered lands; and**
**vi. Forest:**
**(1) Deciduous;**
**(2) Coniferous;**
**(3) Mixed; and**
**(4) Brushland and shrubland;**

2. Locate*[, delineate]* and label *[major]* ***all arterial and collector*** sewers, storm sewers, catchment or containment systems or basins, diversion systems, and watercourses into which surface water run-off from the facility drains; and

3. Locate*[, delineate]* and label all water supply wells and wellhead protection areas ***which have been delineated by the Department*** within *[a one mile buffer]* ***1,000 feet*** from the major facility's boundary.

(c) Topographical maps showing environmentally sensitive areas, required pursuant to N.J.A.C. 7:1E-4.3(b)6, shall:

1. Cover that area of the tertiary watershed in which the ***major*** facility is located which is downgradient or topographically lower than the highest land point within the major facility and which could be affected by a discharge as delineated in (c)2*[i]* below. At a minimum, this shall include the 100 year floodplain; *[and]*

2. Extend to the maximum area of potential impact, if that area is greater than the tertiary watershed. This area shall be the lesser of the following:

i. The distance and path an uncontrolled discharge would travel in 48 hours taking into account the largest tank, container, or vessel compartment utilized by the facility, the loss of secondary containment, consideration of *[tertiary]* containment ***measures in addition to secondary containment***, the dispersivity of the hazardous

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substance, temperature extremes, average rainfall and stream flows, tidal cycles, prevailing winds, and potential threat to the environment. All floodprone areas and water or wetlands features within the maximum area shall be included, at a minimum;

ii. The distance downstream from the facility at which the concentration of the hazardous substance would fall below EPA's Quality Criteria for Water issued by EPA's Office of Water Regulations and Standards, including all floodprone areas around any surface water or wetlands features; or

iii. Fifteen miles from the facility boundary, ***downgradient along the path a discharge would follow,*** including all floodprone areas around any surface water or wetland features*[.]* ***; and***

***3. Include, at a minimum, the following types of environmentally sensitive areas:**

**i. Environmentally sensitive areas for which information concerning the existence and location of the area, sufficient to allow for the location of the area on the topographical map, is available from any of the following:**

**(1) The Department;**

**(2) Other government agencies and published sources listed by the Department, which lists are available from the Department upon request; or**

**(3) A review and interpretation of the photo basemap;**

**ii. Without limiting the generality of the foregoing, the Department has determined that information from the sources listed in (c)3i(1), (2) and (3) above is available for wetlands and wetland transition areas; bay islands and barrier island corridors; dunes; and areas designated as wild, scenic, recreational or developed recreational rivers; and**

**iii. The environmentally sensitive areas listed in (c)3iii(1) through (4) below:**

**(1) Of the surface waters listed in N.J.A.C. 7:1E-1.8(a)1, large rivers, medium rivers, streams, creeks, ponds, lakes and canals;**

**(2) Of the sources of water supply listed in N.J.A.C. 7:1E-1.8(a)2, intakes and wells;**

**(3) Beaches, as listed in N.J.A.C. 7:1E-1.8(a)4;**

**(4) Of the breeding areas and migratory stopover areas listed in N.J.A.C. 7:1E-1.8(a)7 and 8, those which are known to the ornithologist who certifies the DCR plan under N.J.A.C. 7:1E-4.11(e).***

*[(d) Drainage and land use and topographical maps of environmentally sensitive areas required by N.J.A.C. 7:1E-4.3(b)5 and 6, shall be submitted in digital and hardcopy form. Hardcopy shall consist of two mylar copies and two paper copies. Digital shall be nine track tape, or 5¼ or 3½ inch diskette, clearly labelled and including relevant information where appropriate, such as block size, blocking factor and BPI for nine track tape. The digital copy shall meet the following standards:

1. Digital data shall be in a format compatible with the Department's Geographic Information System, which is ARC/INFO running on a PRIME 9955 and a UNIX based Sparc Station. Compatible formats include, but are not limited to, DXF, DLG-3-Optional, and UNIX.

2. Proof plots of digital data shall be made on mylar and compared to the original manuscript. Plotter pen widths shall be 0.01 inches in liquid ink.

3. The proof plot shall meet the following test: 90 percent of the digitized features shall be within 0.01 inches of the centerline of the feature on the manuscript map, and the remaining 10 percent of the features must be within 0.02 inches.

4. Coding of features shall follow approved classification systems as accepted by State and Federal agencies. All attribute coding shall be 100 percent correctly coded.

5. All digital data shall be topographically clean and free of errors, including, but not limited to, silver polygons, overshoots, open polygons, uncoded features, unlabelled polygons, and undetected intersections.

6. All maps shall be edge matched prior to digitization to eliminate cartographic errors and reduce digital problems.]*

***(d) All maps required by N.J.A.C. 7:1E-4.3(b)4, 5 and 6 shall be submitted in hardcopy form, including two paper copies and, if mylar basemaps are used, two mylar copies. Such hard copies may be accompanied by a submission of the mapped information in digital form, at the option of the person required to submit the map.***

(e) An owner or operator may apply for an exemption from compliance with the mapping criteria set forth above.

1. The application shall be in writing and shall contain the following:

i. A copy of a written estimate of the cost of preparing the required maps in accordance with the criteria set forth in this section; and

ii. An affidavit, signed and sworn to by the person required to provide certifications pursuant to N.J.A.C. 7:1E-4.11(c), stating that the owner or operator is a small business and that incurring the cost of obtaining maps in compliance with this section would substantially impair the owner or operator's ability to continue as a going concern.

2. The owner or operator shall submit such certified financial statements as the Department requests.

3. The Department shall grant the exemption if it determines that the cost of obtaining maps in compliance with this section would substantially impair the owner or operator's ability to continue as a going concern. The grant of the exemption shall set forth other mapping criteria, which the Department determines will satisfactorily serve the purposes of this subchapter.

7:1E-4.11 Certifications

(a) Any person who submits a ***discharge cleanup organization*** registration, summary test results, plan, plan amendment, or plan renewal, or confirmation report to the Department shall include, as an integral part of the ***discharge cleanup organization*** registration, summary test results, plan, plan amendment or plan renewal, or confirmation report, the following certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

(b) In addition to the certification in (a) above, any person who submits a plan, plan amendment *[or plan amendment]* ***, plan renewal or transmission pipeline registration*** to the Department shall include, as an integral part of the plan, plan amendment *[or plan amendment]* ***, plan renewal or transmission pipeline registration***, the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this plan and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

(c) The additional certification in (b) above shall be signed by the ranking official, as follows:

1. For a corporation, a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

3. For a municipality, the mayor or equivalent official;

4. For a county, the county executive or equivalent official;

5. For the State, an official of at least the rank of agency director; or

6. For any other public agency, a principal executive officer or ranking elected official.

(d) Notwithstanding the provisions of (b) above, the certification contained in (a) above shall be the only certification required if the individual required in (a) above to sign the certification is the same individual required in (c) above to sign the additional certification.

(e) Any person submitting a DCR plan containing an environmentally sensitive areas protection plan, or submitting an amendment

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or renewal to the environmentally sensitive areas protection plan, shall include, as an integral part of the plan, plan amendment or plan renewal, a certification, signed by a marine biologist ***or aquatic biologist or ecologist or freshwater equivalent*** and an ornithologist stating that the environmentally sensitive areas protection plan identifies those environmentally sensitive areas that could be affected by a discharge from this facility and the seasonal sensitivity of those areas, provides for protection from, and mitigation of, any potentially adverse impact on the identified areas, and for an environmental assessment in the event of a discharge.

SUBCHAPTER 5. DISCHARGE NOTIFICATION, RESPONSE AND REPORTING

7:1E-5.1 Scope

This subchapter prescribes the rules of the Department ***for*** notification and reporting of discharges of hazardous substances, the reporting of malfunctions of *[leak]* ***discharge*** detection systems, and response to discharges of hazardous substances. The following rules shall govern the procedures for notification of the Department, response to a discharge of a hazardous substance, and follow-up reporting.

7:1E-5.2 Notification of discharges which occurred before the January 23, 1980, amendments to the Act

(a) All persons responsible for a discharge ***who know or suspect that a discharge has occurred prior to January 23, 1980 and*** who have not previously reported *[a]* ***that*** discharge *[which occurred prior to January 23, 1980,]* shall *[immediately]* ***conduct a diligent inquiry and shall promptly upon completion of the diligent inquiry and discovery of a discharge*** notify the Department in writing of such discharge at the address given at N.J.A.C. 7:1E-5.8(e).

(b) All persons responsible for a discharge pursuant to (a) above who previously reported a discharge which occurred prior to January 23, 1980, shall *[immediately]* ***promptly*** correct or supplement the prior notice to the Department if any of the information in the prior notice is determined to be false, misleading or inaccurate, or if additional relevant information is discovered which has not been previously reported to the Department.

*[(c) Any persons responsible for a discharge is required to notify the Department of a discharge, pursuant to (a) above, shall conduct a diligent inquiry to determine whether any such discharge has occurred.]*

7:1E-5.3 Discharge notification

(a) Immediately after a discharge commences, any person or person responsible for a discharge who knows or ***reasonably*** should know of the discharge, shall immediately notify the Department at (609) 292-7172. In the event that this number is inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.

(b) Notification received by the Department pursuant to (a) above within 15 minutes of the time that the person responsible for a discharge knew, or reasonably should have known, of the occurrence of a discharge shall be considered immediate. It shall be presumed that notification received by the Department more than 15 minutes after the person responsible for a discharge knew, or reasonably should have known, of the discharge is not immediate. The person responsible for the discharge may rebut this presumption by satisfying the requirement of N.J.A.C. 7:1E-5.6.

(c) Any notification performed by any person responsible for a discharge pursuant to (a) and (b) above shall include, but not be limited to, the following information.

1. The name, title, affiliation, address and telephone number of the person reporting the discharge;

2. The location of the discharge, with as much specificity as the Department requests, and in any event with sufficient specificity to enable the Department to direct its agents and employees and any other person to the discharge site, including:

i. For discharges from sites located on land, the name of the site, the street address, the municipality, and the county;

ii. For discharges on, under or into water, the name of the water body, location of the discharge with reference to a fixed point or points, and a description of the area which the discharge may reach.

3. The common name of the hazardous substance(s) discharged;

4. An estimate of the quantity of each hazardous substance discharged, including best estimates if the quantities are unknown;

5. The date and time at which the discharge began, the date and time at which the discharge was discovered, and, if the discharge has ended, the date and time at which it ended;

6. The actions such person proposes to take to contain, clean up and remove the hazardous substance(s) discharged;

7. The name and address of any person responsible for the discharge.

(d) A copy of the requirements in (c) above, printed in a conspicuous format, shall be displayed by the owner or operator of any vessel which is ordinarily docked in this State in a prominent place on the bridge or pilot house of any such vessel, and by the owner or operator or any onshore facility at any transfer areas and the operations center of any such facility.

7:1E-5.4 Notification of aircraft discharges

(a) In the case of a discharge of a hazardous substance used as fuel from an aircraft into the airspace over the lands or waters of New Jersey, any person responsible for a discharge shall notify the Department at (609) 292-7172. In the event that this number is inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.

(b) Any person responsible for a discharge who notifies the Department pursuant to (a) above shall report:

1. The person causing the discharge;
2. The amount of hazardous substance discharged;
3. The time the discharge occurred;
4. The location in the aircraft flight path of the discharge;
5. The wind speed and direction; and
6. The area likely to be affected by the discharge.

7:1E-5.5 Notification of malfunctions in *[leak]* ***discharge*** detection systems

(a) The owner or operator of a major facility shall immediately notify the Department at (609) 292-7172 of any malfunction of a *[leak]* ***discharge*** detection or other discharge monitoring, prevention or safety system or device. In the event that this number is inoperable, any *[person or persons responsible for a discharge]* ***owner or operator of a major facility*** shall immediately notify the State Police at (609) 882-2000.

(b) Notification received by the Department pursuant to (a) above within 15 minutes of the time that the owner or operator knew, or reasonably should have known, of the occurrence of a malfunction shall be considered immediate. It shall be presumed that notification received by the Department more than 15 minutes after the owner or operator knew, or reasonably should have known, of the malfunction is not immediate. The owner or operator may rebut this presumption by satisfying the requirements of N.J.A.C. 7:1E-5.6.

(c) Within two hours of the initial notification, the owner or operator ***of a major facility*** shall notify the Department that one of the following situations exists:

1. The malfunction has been repaired;

2. An alternate *[leak]* ***discharge*** detection system has been activated for the equipment utilizing the malfunctioning system; or

3. The equipment protected by the *[leak]* ***discharge*** detection system has been taken out of service.

7:1E-5.6 Justification of delay

(a) The Department, at its discretion, may determine that a period of longer than 15 minutes for initiating the notification of the Department of a discharge is immediate if the person responsible for the discharge can show, by clear and convincing evidence, that the notification of the Department was initiated as soon as possible or reasonable and that notification within 15 minutes was impossible or unreasonable because of:

1. Essential immediate response activities;

2. The circumstances under which the discharge occurred;

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3. The circumstances under which the discharge was first discovered; or

4. Some other valid cause or reason.

(b) A person who does not initiate the notification of the Department of a discharge within 15 minutes and who desires to establish that the notification was as immediate as reasonably possible under the circumstances in which the discharge occurred, shall submit a sworn affidavit so attesting with the written confirmation report required by N.J.A.C. 7:1E-5.8. This affidavit shall set forth the circumstances of the discharge to establish that the notification of the Department was as immediate as reasonably possible under the circumstances in which the discharge occurred. The affidavit shall be signed by the person or persons required to sign any certifications pursuant to N.J.A.C. 7:1E-4.11, and shall include, but not be limited to, the following information:

1. The address of the facility at which the discharge occurred;

2. The date and time at which the discharge began and the date and time at which it ceased;

3. The name, job title, affiliation, business telephone number and business address of the individual who first discovered the discharge;

4. The date, the time, and the circumstances under which the discharge was first discovered;

5. The reason(s), if any, why the discharge was not immediately discovered;

6. The date and time which the discharge was first reported to the Department;

7. The name, business telephone number, and business address of the individual who first notified the Department of the discharge;

8. Any reason why initiation of notification of the Department within 15 minutes of the onset of the discharge was impossible or unreasonable; and

9. A demonstration that initiation of notification was carried out as soon as possible or reasonable.

7:1E-5.7 Discharge response

(a) Any person responsible for a discharge shall take immediate action to stop the discharge and shall take all necessary and appropriate measures to contain, mitigate, cleanup and remove the discharge, or shall follow the action plan in the facility's approved DCR plan, prepared and implemented in accordance with N.J.A.C. 7:1E-4. All persons shall coordinate such actions with the Department.

(b) No person shall apply chemicals to a discharge without the prior approval of the Department or the Federal on-scene coordinator under the National Contingency Plan pursuant to 40 CFR 300, unless such application is necessary to prevent or mitigate a situation that poses a serious and imminent threat to human life. In any such situation of imminent threat to human life, the owner or operator shall make reasonable efforts to secure the approval of the Department or the Federal on-scene coordinator before applying chemicals. Approval to apply chemicals may be obtained verbally, including by telephone. Application of chemicals pursuant to a DCR plan approved by the Department shall be deemed to have prior approval. Unauthorized use of chemicals shall be regarded as a discharge in violation of N.J.A.C. 7:1E-1.11.

(c) Upon learning that a discharge of a hazardous substance has occurred, the Department may act to contain, mitigate, clean up and remove the discharge, unless it determines that such action will be done properly and expeditiously by the person responsible for the discharge, or by any other authorized person.

(d) The Department, at its discretion, may observe, supervise or participate in any aspect of containment, or cleanup and removal activities. In the exercise of its supervisory power, the Department may order any person to cease cleanup and removal activities and other discharge-related operations if it determines that the person is not capable of properly containing, cleaning up or removing a discharge, or if the Department determines that person is failing to conduct cleanup operations in a proper and expeditious manner.

7:1E-5.8 Confirmation report

(a) Any person responsible for a discharge reporting a discharge or leak detection system malfunction who has notified the Department pursuant to N.J.A.C. 7:1E-5.3 or 5.5 shall send to the Department a written confirmation report within 30 days of said notification.

(b) Any person required to submit a confirmation report pursuant to (a) above shall include the following in the confirmation report:

1. The name, address and telephone number of the individual that reported the discharge or *[leak]* ***discharge*** detection malfunction pursuant to N.J.A.C. 7:1E-5.3 *[and]* ***or*** 5.5 above;

2. The name, address and telephone number of the individual submitting the confirmation report if different from the individual identified in (b)1 above;

3. If the person identified in (b)2 above is either not subject to the provisions of this subchapter, or is submitting the confirmation report on behalf of another person, the name, address, and telephone number of the person subject to the provisions of this subchapter for whom the confirmation report is being submitted;

4. The name, address and telephone number of each person in any way responsible for the discharge;

5. The name, address and telephone number of each owner and operator of the facility at which the discharge occurred, or the vessel or vehicle from which the discharge occurred;

6. The source of the discharge, if known;

7. The location of the discharge, as follows:

i. For discharge from sites located on land, the name of the site, the street address, the tax lot and block, the municipality, the county, any Department or EPA ID numbers of facilities involved, and a site map identifying the area in which the discharge occurred and the surrounding area;

ii. For discharges on, under or into water, the name of the water body, the latitude and longitude of the place the discharge originated, and a map identifying the areas affected by the discharge;

8. A list of the common name and Chemical Abstract Service number of each of the hazardous substances discharged;

9. A list of the quantities of each hazardous substance discharged, including best estimates if the quantities are unknown;

10. The date and time at which the discharge began, the date and time at which the discharge was discovered, the date and time at which the discharge ended, and the date and time at which the Department was notified pursuant to N.J.A.C. 7:1E-5.3 or 5.5;

11. A detailed description of the measures taken to contain, cleanup and remove the discharge, summary of costs incurred, and proof of proper disposal of all hazardous substances discharged;

12. The corrective actions or countermeasures taken, including a description of equipment repairs or replacements;

13. Additional preventative measures taken or proposed to minimize the possibility of recurrence;

14. The name, addresses and telephone numbers of all entities involved in containment, cleanup or removal of the discharge;

15. A description of the type, quantity, location and date of all samples taken at or around the site of the discharge, whether before, during or after any containment, cleanup or removal;

16. The results of all analyses of samples described in (b)15 above; if the data are unavilable within 30 days due to laboratory delay, any person may apply to the Department at the address specified in N.J.A.C. 7:1E-5.8(d) and (e) for an extension of the deadline, not to exceed an additional 90 days; the decision as to whether or not to grant such an extension rests solely with the Department; the results shall include:

i. The name, address and telephone number of any person conducting sample analyses;

ii. Quality assurance/quality control procedures utilized for sample collection and analyses;

iii. Rationale for the location, number and frequency of samples collected;

iv. A detailed description of the sample methodology for all samples, as follows:

(1) Types of sample containers and closures, cleaning procedures of sample containers/closures and sampling equipment;

(2) Use of quality assurance samples (for example, blanks and duplicates);

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(3) Groundwater monitoring well permit numbers, designs and installation techniques; and

(4) Chain of custody procedures and sample documentation;

v. A description of the analytical methodologies performed by parameter and rationale for selection of monitoring parameters and analytical methodologies; and

vi. A list by parameter of the concentrations of each hazardous substance analyzed for;

17. For major facilities, *[a copy of all financial responsibility documents required by N.J.A.C. 7:1E-4.5 in accordance with N.J.A.C. 7:1E-4.5(e) or Appendix B.]* ***a certification stating that financial responsibility demonstrated pursuant to N.J.A.C. 7:1E-4.5 and submitted to the Department pursuant to N.J.A.C. 7:1E-4.4(a)9 is in full force and effect.***

18. Information supplementing any information previously provided to the Department if additional relevant information is discovered, or if it is determined that the information previously provided was false, inaccurate or misleading;

19. Any other information concerning the discharge which the Department may request; and

20. A fully executed certification pursuant to N.J.A.C. 7:1E-4.11.

(c) Any person responsible for a discharge shall promptly notify the Department in writing of any additional or corrected information which becomes available after the submission of a confirmation report, within 10 days of the availability of that information. Such information shall reference the date, title and author of the confirmation report which is being supplemented.

(d) Any person required to submit a confirmation report for a discharge at a major facility or transmission pipeline shall submit the confirmation report to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
401 East State Street
CN 027
Trenton, New Jersey 08625-0027
Attention: Discharge Confirmation Report

(e) Any person required to submit a confirmation report other than those referenced in (d) above shall submit the confirmation report to:

Hazardous Waste Enforcement Element
New Jersey Department of Environmental Protection
401 East State Street
CN 028
Trenton, New Jersey 08625-0028

7:1E-5.9 Reporting responsibilities of the Department

(a) Upon obtaining any information which leads it to suspect that a discharge has occurred in a municipality's jurisdiction, the Department shall immediately notify orally the contact persons for the governing body of the municipality and the local board of health as specified in (b) below, unless these entities have been notified previously.

(b) The governing body of the municipality and the local board of health shall provide the Department with the name, address and telephone number of a 24 hour contact point and an alternate 24 hour contact point. The governing body of the municipality and the local board of health may change the contact point and alternate contact point upon written notice to the Department. If a contact point and an alternate contact point are not specified, the local police department or local fire department shall be the points designated by the Department to receive notification pursuant to (a) above.

(c) Within 10 days of the initial oral notification required by (a) above, the Department shall issue a letter confirming and, if appropriate, expanding upon that initial oral notification.

(d) The Department shall take appropriate action to verify that a discharge has occurred as suspected, including the authorization of agent(s) or officer(s) of the municipality or local board of health by an appropriate Department official to investigate the site of the suspected discharge. Such investigation shall include conducting visual assessment of the site of the discharge and contacting any persons potentially responsible for the discharge.

(e) The agent(s) or officer(s) of the municipality shall report all findings to the Department.

7:1E-5.10 Discharge reporting requirements of local officials

(a) When any governing body of a municipality or local board of health obtains information which leads it to suspect that a discharge has occurred, the governing body or local board of health shall immediately notify, as specified in (b) below, the Department, unless the Department has already been notified of the discharge.

(b) The governing body or local board of health shall provide the Department with information regarding any discharge pursuant to (a) above in the format specified at N.J.A.C. 7:1E-5.3(a).

(c) The local governing body and the local board of health shall coordinate all responses to the discharge with the Department.

7:1E-5.11 Amendment of plans following a discharge

(a) Following submission of a confirmation report pursuant to N.J.A.C. 7:1E-5.8, the Department may review a facility's DPCC and DCR plans and may require the owner or operator of the facility to amend the plans if it finds that a plan does not meet the requirements of this chapter or that amendment of the plan is necessary to prevent and contain similar discharges.

(b) Amendments required by the Department shall become part of the DPCC or DCR plan within 30 days after approval by the Department, unless the Department specifies another effective date. The owner or operator shall implement the amendment of the plan as soon as possible, in accordance with a schedule submitted by the owner or operator and approved by the Department.

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:1E-6.1 Scope

This subchapter shall govern the Department's assessment of civil administrative penalties for violation of any provision of the *[Spill Compensation and Control]* Act, *[N.J.S.A. 58:10-23.11,]* including any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant to the Act. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment, an administrative order, ***conditions of approval for any plan, or amendment to a plan,*** or a denial or revocation of approval of a plan or amendment to a plan required under the Act.

7:1E-6.2 Applicability

(a) The Department may assess a civil administrative penalty of not more than $50,000 for any discharge less than 100,000 gallons, not more than $10,000,000 for any discharge of 100,000 gallons or more, and not more than $50,000 for each violation of the Act or of any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant to the Act.

(b) Each violation of any provision of the Act, or any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant thereto shall constitute a separate and distinct offense.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provisions provided for by the Act, or any other statute, in connection with the violation for which the assessment is levied.

7:*[27A]***1E***-6.3 Procedures for issuance of administrative orders and assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act or any rule, regulation, plan, information request, access request, order or directive promulgated or issued

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pursuant to the Act, the Department shall, by means of an administrative order or notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single administrative order or notice of civil administrative penalty assessment or in multiple administrative orders or notices of civil administrative penalty assessment. This Administrative Order or Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, plan, request, order or directive violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:1E-6.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a Notice of Civil Administrative Penalty becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:1E-6.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st calendar day following receipt by the violator;
2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of such denial; or
3. If an adjudicatory hearing is conducted, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

(c) If a civil administrative penalty is not paid within 30 calendar days of the date of a Final Order, and the penalty is not contested pursuant to N.J.A.C. 7:1E-6.4, or any payment pursuant to a payment schedule entered into with the Department is not made, an interest charge shall accrue on the amount of the penalty from the 30th calendar day that amount was due and owing.

(d) If a civil administrative penalty is appealed pursuant to N.J.A.C. 7:1E-6.4, and the amount of the penalty is upheld, in whole or in part, a rate of interest shall be calculated on that amount as of the 30th calendar day from the date the amount was due and owing under the administrative order.

(e) The rate of interest charged on any late penalty shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The Department may assess and recover, by civil administrative order, the costs of any investigation, cleanup or removal, and the reasonable costs of preparing and successfully enforcing a civil administrative penalty. The assessment may be recovered at the same time as a civil administrative penalty, and shall be in addition to the penalty assessment.

(g) Any person who violates a provision of the Act or a Court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed $50,000 per offense. Any penalty so incurred may be recovered with costs in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq. in the Superior Court or a municipal court.

(h) Any conveyance used or intended for use in the willful discharge of a hazardous substance is subject to forfeiture to the State.

7:1E-6.4 Procedures for requesting and conducting adjudicatory hearings

(a) If the Department does not receive a hearing request within 20 calendar days after receipt by the violator of an administrative order or notice of civil administrative penalty assessment***, conditions of approval for any plan, or amendment to a plan, or*** denial or revocation of approval of any plan or amendment being challenged, the Department shall deny the hearing request.

(b) To request an adjudicatory hearing to contest an administrative order or notice of civil administrative penalty assessment issued pursuant to the Act, or ***conditions of approval for any plan, or amendment to a plan, or*** the denial or revocation of approval of any plan or amendment to a plan required pursuant to the Act, the violator shall submit the following information in writing to the Department of the address in (e) below:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment stated in short and plain terms;
3. An admission or denial of each of the Department's findings of fact in the administrative order or notice of civil administrative penalty assessment, or denial or revocation of approval of a plan or amendment to a plan. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings, but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(c) If the violator fails to include all the information required by (b) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request

7:1E-6.5 Civil administrative penalty determination—general

(a) For violations other than those set forth in N.J.A.C. 7:1E-6.6 through 6.8, the Department may assess a civil administrative penalty for offenses described in this subchapter within the following ranges:

1. Up to $20,000 for the first offense;
2. Up to $35,000 for the second offense; and
3. Up to $50,000 for the third and each subsequent offense.

(b) The Department may, in its discretion, set the amount determined pursuant to (a) above to assess a civil administrative penalty on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the offense(s);
3. The measures taken by the violator to mitigate the effects of the current offense and to prevent future offenses;
4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or offense.

7:1E-6.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any DPCC plan, DCR plan, registration, record, or other document submitted or maintained, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act or any rule, regulation, plan, order or directive pursuant thereto.

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(b) Each time the violator submits inaccurate or false information to the Department shall be an additional, separate, and distinct offense.

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, for each act or omission, is up to $20,000 for the first offense, up to $40,000 for the second offense, and up to $50,000 for the third and each subsequent offense; and

2. For all other conduct, the civil administrative penalty, for each act or omission, is up to $1,000 for the first offense, up to $2,000 for the second offense, and up to $5,000 for the third and each subsequent offense.

7:1E-6.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, vessel or place, except private residences, by an authorized Department representative.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, or place, except private residences, by an authorized Department representative, shall be an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section is up to $10,000 for the first offense, up to $20,000 for the second offense, and up to $50,000 for the third and each subsequent offense.

7:1E-6.8 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) Civil administrative penalties for offenses described in (c)2 and 4 below shall not be assessed until the time allotted under the applicable schedule for upgrading approved by the Department has expired.

(b) Civil administrative penalties for offenses described in (c)2 and 4 below, exclusive of registration requirements, shall apply to major facilities only. All other civil administrative penalties shall apply to all persons.

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. The number of the following paragraphs corresponds to the number of the corresponding subchapter in N.J.A.C. 7:1E.

1. The violations of N.J.A.C. 7:1E-1, General Provisions, and the civil administrative penalties for each violation are as set forth in the following table, unless modified by (d) below. In no case shall the assessed penalty be less than zero or more than the statutory limit.

Citation

N.J.A.C. 7:1E-1.11(a)

Base Penalty for each Violation

| Gallons | | Penalty |
|---|---|---|
| *>*0-9 | | $ 500 |
| 10-55 | | $ 1,000 |
| 56-499 | | $ 2,000 |
| 500-999 | | $ 3,000 |
| 1,000-4,999 | | $ 5,000 |
| 5,000-9,999 | | $ 7,500 |
| 10,000-19,999 | | $ 10,000 |
| 20,000-29,999 | | $ 15,000 |
| 30,000-39,999 | | $ 20,000 |
| 40,000-49,999 | | $ 25,000 |
| 50,000-59,999 | | $ 30,000 |
| 60,000-69,999 | | $ 35,000 |
| 70,000-79,999 | | $ 40,000 |
| 80,000-89,999 | | $ 45,000 |
| 90,000-99,999 | | $ 50,000 |
| *[100,000-149,000]* | ***100,000-149,999*** | $ 75,000 |
| *[150,000-199,000]* | ***150,000-199,999*** | $ 100,000 |
| 200,000-299,999 | | $ 200,000 |
| 300,000-399,999 | | $ 400,000 |
| 400,000-499,999 | | $ 800,000 |
| 500,000-599,999 | | $ 1,000,000 |
| 600,000-699,999 | | $ 2,000,000 |
| 700,000-799,999 | | $ 3,000,000 |
| 800,000-899,999 | | $ 4,000,000 |
| 900,000-999,999 | | $ 5,000,000 |
| 1,000,000-1,999,999 | | $ 6,000,000 |
| 2,000,000-2,999,999 | | $ 7,000,000 |
| 3,000,000-3,999,999 | | $ 8,000,000 |
| 4,000,000-4,999,999 | | $ 9,000,000 |
| 5 million or greater | | $10,000,000 |

The base penalty may be reduced or increased by applying the following factors**[1]***:

| Cause of Discharge | |
|---|---|
| Intentional or Gross Negligence | 50% increase from base |
| Operational | No change from base |
| Accidental | 50% reduction from base |
| Homeowner | 75% reduction from base |

Initiate Response to Discharge (*[from the time the discharge occurred]* ***from the time the discharge was detected or should have been detected***)

| | |
|---|---|
| Poor—over 2 hours | 20% increase from base |
| Fair—within 2 hours | No change from base |
| Good—within 1 hour | 20% reduction from base |
| Excellent—within 15 minutes | 40% reduction from base |

| Area of Impact | |
|---|---|
| Off the facility and into waters of the State | 20% increase from base |
| Off the facility but not into waters of the State | No change from base |
| Contained on the facility | 40% reduction from base |

*[Impact on Environment

| | |
|---|---|
| Bird/Fish Kill | 100% increase from base |
| Visible Damage to Flora/Fauna (includes damage to beaches) | 75% increase from base |
| No Visible Damage | No change from base]* |

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Discharge History (Number of discharges ***not contained on the facility*** within the previous 12 months)

| | |
|---|---|
| Five or more discharges | 100% increase from base |
| 1-5 discharges | 50% increase from base |
| Zero discharges | No change from base |

***1The penalty for each violation is calculated by summing the base penalty and the resultant percentage of the base penalty for each of the four factors.***

2. The violations of N.J.A.C. 7:1E-2, Prevention and Control of Discharges ***at Major Facilities***, and the civil administrative penalty amounts for each violation are as set forth in the following table, unless revised pursuant to (d) below:

| Category of Offense*2* | Citation | First Offense | Second Offense | Third or Subsequent Offense |
|---|---|---|---|---|
| Inadequate secondary containment for an above ground storage tank | 2.2(a)1 | $20,000 | $40,000 | $50,000 |
| Failure to surface the base underlying a storage tank with impermeable material | 2.2(a)2 | $20,000 | $40,000 | $50,000 |
| Failure to equip a pipe with remotely activated or readily accessible valves | 2.2(a)3 | $10,000 | $20,000 | $50,000 |
| Failure to perform integrity testing | 2.2(a)4 | $15,000 | $30,000 | $50,000 |
| Failure to submit summary test results | 2.2(a)5 | $ 1,000 | $ 2,000 | $ 5,000 |
| Improper design of heating coil system | 2.2(c) | $10,000 | $20,000 | $50,000 |
| Failure to equip storage tanks with devices capable of detecting overfills and initiating shutdown mechanisms | 2.2(d) | $15,000 | $30,000 | $50,000 |
| Failure to direct overfill lines into appropriate holding areas | 2.2(e) | $15,000 | $30,000 | $50,000 |
| Failure to locate mobile or portable storage tanks in areas protected by secondary containment | 2.2(f) | $15,000 | $30,000 | $50,000 |
| Location of mobile or portable storage tanks in areas subject to flooding or washout | 2.2(f) | $20,000 | $40,000 | $50,000 |
| Failure to equip drum storage areas with adequate secondary containment | 2.2(g) | $15,000 | $30,000 | $50,000 |
| Failure to surface a tank car or tank truck loading/unloading area with impermeable material or to equip area with secondary containment | 2.3(a) | $20,000 | $40,000 | $50,000 |
| Failure to inspect the lowermost drain and all outlets of a tank car or tank truck prior to filling | 2.3(b) | $ 5,000 | $10,000 | $25,000 |
| Failure to examine for leakage during filling and secure valves on all manifolds of a tank car or tank truck prior to departure | 2.3(c) | $ 5,000 | $10,000 | $25,000 |
| Failure to provide a physical barrier, brake interlock or similar system in a transfer area | 2.3(d) | $10,000 | $20,000 | $50,000 |
| Failure to attend a tank car at reasonable intervals during a transfer and during topping off | 2.3(e) | $10,000 | $20,000 | $50,000 |
| Failure to attend a tank truck at all times during a transfer | 2.3(e) | $10,000 | $20,000 | $50,000 |
| Failure to properly mark in-facility pipes | 2.4(a) | $ 5,000 | $10,000 | $25,000 |
| Failure to double wall or have adequate secondary containment and a leak detention device for new buried in-facility pipes | 2.4(b) | $15,000 | $30,000 | $50,000 |
| Failure to equip existing in-facility buried pipe with leak detection devices | 2.4(b), (c) | $15,000 | $30,000 | $50,000 |
| Failure to examine exposed in-facility buried pipe and make necessary repairs or replacements | 2.4(d) | $15,000 | $30,000 | $50,000 |
| Failure to upgrade in-facility pipe when required | 2.4(d) | $15,000 | $30,000 | $50,000 |
| Failure to cap, blank-flange or physically remove in-facility pipe removed from service | 2.4(e) | $10,000 | $20,000 | $50,000 |

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| Category of Offense | Citation | First Offense | Second Offense | Third or Subsequent Offense |
|---|---|---|---|---|
| Failure to minimize the chance of vehicular collision with in-facility pipe | 2.4(g) | $ 5,000 | $10,000 | $50,000 |
| Improper design of a drainage system | 2.5(a), (b) | $15,000 | $30,000 | $50,000 |
| Failure to *[treat]* ***provide for*** a hazardous substance which drained into process wastewater lines | 2.5(b) | $20,000 | $40,000 | $50,000 |
| Inadequate or improper secondary containment | 2.6(a), (b), (c) | $20,000 | $40,000 | $50,000 |
| Failure to maintain adequate containment devices | 2.6(d), 2.7(b), (c) | $10,000 | $20,000 | $50,000 |
| Failure to deploy or maintain a containment device on standby when required | 2.7(d), (e) | $20,000 | $40,000 | $50,000 |
| Failure to properly deploy a containment device | 2.7(f), (g), (h) | $15,000 | $30,000 | $50,000 |
| Commencement or continuation of transfer operations during unacceptable conditions | 2.7(i) | $15,000 | $30,000 | $50,000 |
| Failure to properly clean up and remove a discharge prior to removing a containment device | 2.7(j) | $20,000 | $40,000 | $50,000 |
| Failure to retrieve a containment device | 2.7(k) | $ 5,000 | $10,000 | $25,000 |
| Improper or inadequate illumination | 2.8 | $15,000 | $30,000 | $50,000 |
| Failure to protect a hazardous substance from being carried off or discharged into flood waters | 2.9 | $20,000 | $40,000 | $50,000 |
| Failure to conduct visual inspections | 2.10(a) | $10,000 | $20,000 | $50,000 |
| Failure to keep documentation of visual inspections | 2.10(b) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to implement a groundwater monitoring program | 2.10(c) | $20,000 | $40,000 | $50,000 |
| Failure to keep hazardous substances in suitable containers | 2.11(a) | $10,000 | $20,000 | $50,000 |
| Failure to protect hazardous substances from the elements and the possibility of *[spillage]* ***leakage*** | 2.11(a) | $10,000 | $20,000 | $50,000 |
| Failure to repair, replace or take out of service any leaking equipment | 2.11(b) | $10,000 | $20,000 | $50,000 |
| Failure to clean up a *[spill]* ***leak or discharge*** of a hazardous substance | 2.11(c), (d) | $20,000 | $40,000 | $50,000 |
| Failure to maintain a supply of safety equipment | 2.11(e) | $10,000 | $20,000 | $50,000 |
| Failure to maintain secondary containment or diversion systems in good repair | 2.11(f) | $20,000 | $40,000 | $50,000 |
| Failure to visually inspect flexible hoseline prior to each use and replace if necessary | 2.11(g) | $10,000 | $20,000 | $50,000 |
| Failure to implement a training program | 2.12(a), (b), (c), (d), (f) | $15,000 | $30,000 | $50,000 |
| Failure to keep documentation of all training | 2.12(e) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to provide adequate security or to follow security procedures | 2.13 | $ 5,000 | $10,000 | $25,000 |
| Failure to establish standard operating procedures (SOPs) | 2.14(d) | $10,000 | $20,000 | $50,000 |
| Failure to make copies of the SOPs or MSDS or fact sheets in all appropriate language readily available | 2.14(a), (b), (c) | $ 5,000 | $10,000 | $25,000 |
| Failure to incorporate modifications of procedures into the SOPs prior to implementation | 2.14(f) | $ 5,000 | $10,000 | $25,000 |
| Failure to maintain and make available a current index of SOPs | 2.14(g) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to maintain required records | 2.15 | $ 1,000 | $ 2,000 | $ 5,000 |

3. The violations of N.J.A.C. 7:1E-3, Transmission Pipelines, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

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| Category of Offense | Citation | First Offense | Second Offense | Third or Subsequent Offense |
|---|---|---|---|---|
| Failure to register | 3.2(a) | $ 5,000 | $10,000 | $25,000 |
| Failure to complete registration form | 3.2(a) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to report a change in information | 3.2(b) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to conform to 49 CFR 195 | 3.3 | $10,000 | $20,000 | $50,000 |
| Failure to submit the required information | 3.4 | $ 5,000 | $10,000 | $25,000 |

4. The violations of N.J.A.C. 7:1E-4, Plans and Registrations, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

| Category of Offense*2* | Citation | First Offense | Second Offense | Third or Subsequent Offense |
|---|---|---|---|---|
| Failure to register annually | 4.2(a) | $ 5,000 | $10,000 | $25,000 |
| Failure to complete registration form | 4.2(a) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to appoint a response coordinator | 4.3(a) | $ 5,000 | $10,000 | $25,000 |
| Failure to submit a DPCC or DCR plan | 4.3(a), 4.4(a) | $20,000 | $40,000 | $50,000 |
| Failure to maintain on-site and make available any required plans or documentation | 4.3(f), 4.7*[(f)]****(g)*** | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to have adequate cleanup equipment and personnel available | 4.4(b) | $10,000 | $20,000 | $50,000 |
| Failure to demonstrate financial responsibility | 4.5(a), (b) | $15,000 | $30,000 | $50,000 |
| Failure to notify of bankruptcy commencement | 4.5(o) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to submit information when requested by the Department | 4.6*[(e)]****(f)*** | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to submit an amendment | 4.9*[(a)]****(b)*** | $ 5,000 | $10,000 | $25,000 |
| Failure to provide notice of new construction, installation or modification | *[4.7]****4.9(a)*** | $ 1,000 | $ 4,000 | $ 5,000 |
| Failure to renew DPPC/DCR plans | *[4.8]****4.9(e)*** | $ 5,000 | $10,000 | $25,000 |
| Failure to provide any required certification | 4.11 | $ 5,000 | $10,000 | $25,000 |

5. The violations of N.J.A.C. 7:1E-5, Notification, Response and Reporting, and the civil administrative ***penalty*** amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

| Category of Offense*2* | Citation | First Offense | Second Offense | Third or Subsequent Offense |
|---|---|---|---|---|
| ***Failure to promptly notify the Department of a discharge*** | ***5.2(a)*** | ***$10,000*** | ***$20,000*** | ***$50,000*** |
| Failure to immediately notify the Department of a discharge | *[5.2(a),]* 5.3(a) | $10,000 | $20,000 | $50,000 |
| Failure to provide all required information upon notification | 5.2*[(c)]****(b)***, 5.3*[(a)]****(c)***, 5.4(b) | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to prominently display notification requirements | 5.3*[(b)]****(d)*** | $ 5,000 | $10,000 | $25,000 |
| Failure to notify the Department of a discharge of aircraft fuel | 5.4(a) | $ 5,000 | $10,000 | $25,000 |
| Failure to notify of a malfunction in a leak detection system | 5.5(a) | $ 5,000 | $10,000 | $25,000 |
| Failure to notify of the status of a malfunctioning *[leak]* ***discharge*** detection system | 5.5*[(b)]****(c)*** | $ 1,000 | $ 2,000 | $ 5,000 |
| Failure to attempt to stop and contain a discharge or to follow the DCR action plan | 5.7(a) | $20,000 | $40,000 | $50,000 |
| Failure to submit a confirmation report | 5.8(a) | $ 5,000 | $10,000 | $25,000 |
| Failure to include all required information in a confirmation report | 5.8(b), 5.8(c) | $ 1,000 | $ 2,000 | $ 5,000 |

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| Category of Offense | Citation | First Offense | Second Offense | Third or Subsequent Offense |
|---|---|---|---|---|
| Failure to coordinate any remedial action with the Department | *[5.9(f)]***5.7(a)** | $ 5,000 | $10,000 | $25,000 |
| Failure to file a requested amendment following a discharge | 5.11(a) | $ 5,000 | $10,000 | $25,000 |
| *[Failure to provide the Department with requested information or to respond to an administrative order | 5.12(a) | $ 5,000 | $10,000 | $25,000]* |

***[2]The column headed "Category of Offense" is descriptive in nature and to be used for easy reference only. The rule language cited in the column headed "citation" shall determine the specific violation.***

(d) The Department may modify the amount of a civil administrative penalty under (c) above, based upon any or all of the following:

1. Mitigating or extenuating circumstances;
2. The implementation of prevention measures in addition to those minimally required by applicable statute or rule;
3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order or notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
4. Any other circumstances or conditions acceptable to the Department.

## APPENDIX A
## NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION LIST OF HAZARDOUS SUBSTANCES
## *(ALPHABETICAL LISTING)*

| Name | CAS Number |
|---|---|
| Bottom sludge generated from the processing, blending, and treatment of waste oil in waste oil processing facilities | -- |
| Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. | -- |
| Cyanidation wastewater tailing pond sediment from mineral metals recovery operations. | -- |
| Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulation containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.) | -- |
| Leachate resulting from the treatment, storage, or disposal of wastes classified by more than one waste code under Subpart D, or from a mixture of wastes classified under Subparts C and D of this part. (Leachate resulting from the management of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its hazardous waste code(s): F020, F021, F022, F023, F026, F027 and/or F028.) | -- |
| Oil spill cleanup residue which: A. is contaminated beyond saturation; or B. the generator fails to demonstrate that the spill material was not one of the listed hazardous waste oils. | -- |
| Plating sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process. | -- |
| Processes wastes, including but not limited to, distillation, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalized processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 261.31 or 261.32.) | -- |
| Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process. | -- |
| Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. | -- |
| Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027. | -- |
| Spent cyanide bath solutions from mineral metals recovery operations. | -- |
| Spent cyanide plating bath solutions from electroplating operations. | -- |
| Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. | -- |
| Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. | -- |
| The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride. 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | -- |
| The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-tri-chloro-1,2,2-trifluoroethane, orthodichloro benzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. | -- |

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The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. ——

The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. ——

The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. ——

The following used and unused waste oils: metal working oils; turbine lubricating oils; diesel lubricating oils; and quenching oils ——

Waste automotive crankcase and lubricating oils from automotive service and gasoline stations, truck terminals, and garages ——

Waste oil and bottom sludge generated by gasoline stations when gasoline and oil tanks are tested, cleaned, or replaced ——

Waste oil and bottom sludge generated from tank cleanouts from residential/*[commerical]****commercial*** fuel oil tanks ——

Waste petroleum oil generated when tank trucks or other vehicles or mobile vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships, or other vessels ——

Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. ——

Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) ——

Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) ——

Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating carbon steel, and (6) chemical etching and milling of aluminum. ——

Wastewater treatment sludges from chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. ——

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| Acenaphthene | 83-32-9 |
| —— Acenaphthylene | 208-96-8 |
| Acetaldehyde | 75-07-0 |
| Acetamide | 60-35-5 |
| Acetic acid | 64-19-7 |
| Acetic anhydride | 108-24-7 |
| Acetone | 67-64-1 |
| Acetone cyanohydrin | 75-86-5 |
| Acetone thiosemicarbazide | 1752-30-3 |
| Acetonitrile | 75-05-8 |
| 3-(alpha-acetonyl benzyl)-4-hydroxy-coumarin and salts | *[——]* ***81-81-2*** |
| Acetophenone | 98-86-2 |
| —— 2-Acetylaminofluorene | 53-96-3 |
| Acetyl bromide | 506-96-7 |
| Acetyl chloride | 75-36-5 |
| —— 1-Acetyl-2-thiourea | 591-08-2 |
| Acrolein | 107-02-8 |
| Acrylamide | 79-06-1 |
| —— Acrylic acid | 79-10-7 |
| Acrylonitrile | 107-13-1 |
| Acrylyl chloride | 814-68-6 |
| —— Adipic acid | 124-04-9 |
| Adiponitrile | 111-69-3 |
| Alachlor | 15972-60-8 |
| —— *[Alanine, 3- [p-bis(-chloroethyl) amino] phenyl]-,L-]* ***Alanine, 3-[p-bis(2-chlorethyl)amino] phenyl]-,L-]**** | 148-82-3 |
| Alar | 1596-84-5 |
| Aldicarb | 116-06-3 |
| —— Aldrin | 309-00-2 |
| Allyl alcohol | 107-18-6 |
| Allyl chloride | 107-05-1 |
| Aluminum (fume or dust) | 7429-90-5 |
| Aluminum oxide ***fibrous forms**** | 1344-28-1 |
| Aluminum phosphide | 20859-73-8 |
| —— Aluminum sulfate | 10043-01-3 |
| 2-Aminoanthraquinone | 117-79-3 |
| 4-Aminoazobenzene | 60-09-3 |
| 4-Aminobiphenyl | 92-67-1 |
| 1-Amino-2-methylanthraquinone | 82-28-0 |
| 2-Amino-1-methylbenzene | 95-53-4 |
| 4-Amino-1-methylbenzene | 106-49-0 |
| 5-(Aminomethyl)-3-isoxazolol | 2763-96-4 |
| p-Aminopropiophenone | 70-69-9 |
| Aminopterin | 54-62-6 |
| —— 4-Aminopyridine | 504-24-5 |
| N-Aminothioxomethyl acetamide | 591-08-2 |
| Amiton | 78-53-5 |
| Amiton oxalate | 3734-97-2 |
| Amitraz | 33089-61-1 |
| Amitrole | 61-82-5 |
| Ammonia | 7664-41-7 |
| Ammonium acetate | 631-61-8 |
| Ammonium benzoate | 1863-63-4 |

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| Ammonium bicarbonate | 1066-33-7 |
| Ammonium bichromate | 7789-09-5 |
| Ammonium bifluoride | 1341-49-7 |
| Ammonium bisulfite | 10192-30-0 |
| Ammonium carbamate | 1111-78-0 |
| Ammonium carbonate | 506-87-6 |
| Ammonium chloride | 12125-02-9 |
| Ammonium chromate | 7788-98-9 |
| Ammonium citrate, dibasic | 3012-65-5 |
| Ammonium fluoborate | 13826-83-0 |
| Ammonium fluoride | 12125-01-8 |
| Ammonium hydroxide | 1336-21-6 |
| Ammonium hypophosphite | 7803-65-8 |
| Ammonium nitrate | 6484-52-2 |
| Ammonium nitrate (solution) | 6484-52-2 |
| Ammonium oxalate | 1113-38-8 |
| Ammonium persulfate | 7727-54-0 |
| Ammonium picrate | 131-74-8 |
| Ammonium silicofluoride | 16919-19-0 |
| Ammonium sulfamate | 7773-06-0 |
| Ammonium sulfate (solution) | 7783-20-2 |
| Ammonium sulfide | 12135-76-1 |
| Ammonium sulfite | 10196-04-0 |
| Ammonium tartrate | 3164-29-2 |
| Ammonium thiocyanate | 1762-95-4 |
| Ammonium thiosulfate | 7783-18-8 |
| Ammonium vanadate | 7803-55-6 |
| Amphetamine | 300-62-9 |
| Amyl acetate | 628-63-7 |
| iso-Amyl acetate | 123-92-2 |
| sec-Amyl acetate | 626-38-0 |
| tert-Amyl acetate | 625-16-1 |
| Aniline | 62-53-3 |
| Aniline, 2,4,6-trimethyl- | 88-05-1 |
| o-Anisidine | 90-04-0 |
| p-Anisidine | 104-94-9 |
| o-Anisidine hydrochloride | 134-29-2 |
| Anthracene | 120-12-7 |
| Antimony | 7440-36-0 |
| Antimony compounds | —— |
| Antimony pentachloride | 7647-18-9 |
| Antimony pentafluoride | 7783-70-2 |
| Antimony potassium tartrate | 28300-74-5 |
| Antimony tribromide | 7789-61-9 |
| Antimony trichloride | 10025-91-9 |
| Antimony trifluoride | 7783-56-4 |
| Antimony trioxide | 1309-64-4 |
| Antimycin A | 1397-94-0 |
| Antu | 86-88-4 |
| Aroclor 1016 | 12674-11-2 |
| Aroclor 1221 | 11104-28-2 |
| Aroclor 1232 | 11141-16-5 |
| Aroclor 1242 | 53469-21-9 |
| Aroclor 1248 | 12672-29-6 |
| Aroclor 1254 | 11097-69-1 |
| Aroclor ***1260*** | 11096-82-5 |
| Arsenic | 7440-38-2 |
| Arsenic acid | 7778-39-4 |
| Arsenic compounds | —— |
| Arsenic disulfide | 1303-32-8 |
| Arsenic (III) oxide | 1303-36-2 |
| Arsenic pentoxide | 1303-28-2 |
| Arsenic trioxide | 1327-53-3 |
| Arsenic trisulfide | 1303-33-9 |
| Arsenous trichloride | 7784-34-1 |
| Arsine | 7784-42-1 |
| Arsonous dichloride, phenyl- | 696-28-6 |
| Asbestos | 1332-21-4 |
| Auramine | 492-80-8 |
| Avitrol | 504-24-5 |
| Azaserine | 115-02-6 |
| Azinphos-ethyl | 2642-71-9 |
| Azinphos-methyl | 86-50-0 |
| Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8, 8a,8b-hexahydro-8a-methoxy-5-methyl,[1aS-(1aalpha,8beta, 8aalpha,8balpha)]- | 50-07-7 |
| Barium | 7440-39-3 |
| Barium cyanide | 542-62-1 |
| Bendiocarb ***(conc. above 15%)*** | 22781-23-3 |
| Benomyl | 17804-35-2 |
| 3,4-Benzacridine | 225-51-4 |
| Benz[c]acridine | 225-51-4 |
| Benzal chloride | 98-87-3 |
| Benzamide | 55-21-0 |
| 1,2-Benzanthracene | 56-55-3 |
| Benz[a]anthracene | 56-55-3 |
| Benzenamine | 62-53-3 |
| Benzenamine, 4,4'-carbonimidoylbis(N,N- dimethyl- | 492-80-8 |
| Benzenamine, 4-chloro- 2-methyl-, hydrochloride | 3165-93-3 |
| Benzenamine, 2-methyl- | 95-53-4 |
| Benzenamine, 4-methyl- | 106-49-0 |
| Benzenamine, 2-methyl-hydrochloride | 636-21-5 |
| Benzenamine, 4-nitro- | 100-01-6 |
| Benzenamine, 3-(trifluoromethyl)- | 98-16-8 |
| Benzene | 71-43-2 |
| Benzenearsonic acid | 98-05-5 |
| Benzene, 1-(chloromethyl)-4-nitro- | 100-14-1 |
| Benzenediamine, ar-methyl- | 95-80-7 |
| | 496-72-0 |
| | 823-40-5 |
| | 25376-45-8 |
| 1,2-Benzenedicarboxylic acid anhydride | 85-44-9 |
| 1,2-Benzenedicarboxylic acid, di-n-octyl ester | 117-84-0 |
| Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro- | 72-54-8 |
| 1,3-Benzenediol | 108-46-3 |
| 1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino) ethyl]- | 51-43-4 |
| Benzeneethanamine, alpha, alpha-dimethyl- | 122-09-8 |
| Benzene, hexahydro | 110-82-7 |
| Benzene, 1-methyl-1,2,4-dinitro- | —— |
| Benzene, 1-methyl-2,4-dinitro- | 121-14-2 |
| Benzene, 1-methyl-2,6-dintro- | 606-20-2 |
| Benzene, 1,2-methylenedioxy-4-allyl- | 94-59-7 |
| Benzene, 1,2-methylenedioxy-4-propenyl- | 94-58-6 |
| Benzene, 1,2-methylenedioxy-4-propyl | —— |
| Benzenesulfonyl chloride | 98-09-9 |
| Benzenethiol | 108-98-5 |
| Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4- methoxy- | 72-43-5 |
| Benzidine | 92-87-5 |
| Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)- | 3615-21-2 |
| 1,2-Benzisothiazolin-3-one, 1,1-dioxide | 81-07-2 |
| 1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts | —— |
| Benzo[a] anthracene | 56-55-3 |
| 1,3-Benzodioxole, 5-(2-propenyl)- | 94-59-7 |
| 1,3-Benzodioxole, 5-propyl- | 94-58-6 |
| Benzo(b)fluoranthene | 205-99-2 |
| Benzo(k)fluoranthene | 207-08-9 |
| Benzo[j,k]fluorene | 206-44-0 |
| Benzoic acid | 65-85-0 |
| Benzonitrile | 100-47-0 |
| Benzo[rst]pentaphene | 189-55-9 |
| Benzo[ghi]perylene | 191-24-2 |
| 2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts, when present at concentrations greater than 0.3% | 81-81-2 |
| Benzo[a]pyrene | 50-32-8 |
| p-Benzoquinone | 106-51-4 |
| Benzotrichloride | 98-07-7 |
| Benzoyl chloride | 98-88-4 |
| Benzoyl peroxide | 94-36-0 |

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| 1,2-Benzphenanthrene | 218-01-9 |
| Benzyl chloride | 100-44-7 |
| Benzyl cyanide | 140-29-4 |
| Beryllium | 7440-41-7 |
| Beryllium chloride | 7787-47-5 |
| Beryllium compounds | 7440-41-7 |
| Beryllium dust | 7440-41-7 |
| Beryllium fluoride | 7787-49-7 |
| Beryllium nitrate | 13597-99-4 |
| BHC | 608-73-1 |
| alpha-BHC | 319-84-6 |
| beta-BHC | 319-85-7 |
| delta-BHC | 319-86-8 |
| gamma-BHC | 58-89-9 |
| Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-((((methyla | 15271-41-7 |
| Biphenyl | 92-52-4 |
| Bis(2-chloroethoxy) methane | 111-91-1 |
| Bis(2-chloroisopropyl)ether | 108-60-1 |
| Bis(chloromethyl) ether | 542-88-1 |
| Bis(2-chloro-1-methylethyl)ether | 108-60-1 |
| Bis(chloromethyl) ketone | 534-07-6 |
| Bis(2-ethylhexyl) adipate | 103-23-1 |
| Bis(2-ethylhexyl)phthalate | 117-81-7 |
| Bithionol | 97-18-7 |
| Bitoscanate | 4044-65-9 |
| 2,2'-Bloxirane | 1464-53-5 |
| Bomyl ***(conc. above 1%)*** | 122-10-1 |
| Boron trichloride | 10294-34-5 |
| Boron trifluoride | 7637-07-2 |
| Boron trifluoride ***(conc. above 0.005%)*** ***(*compound with methyl ether (1:1)*)*** | 353-42-4 |
| Brodifacoum | 56073-10-0 |
| Bromadiolone | 28772-56-7 |
| Bromine | 7726-95-6 |
| Bromine cyanide | 506-68-3 |
| Bromoacetone | 598-31-2 |
| Bromoform | 75-25-2 |
| 4-Bromophenyl phenyl ether | 101-55-3 |
| Bromoxynil | 1689-84-5 |
| Bromoxynil butyrate | 3861-41-4 |
| Brucine | 357-57-3 |
| 1,3-Butadiene | 106-99-0 |
| Butanoic acid, 4-[bis(2-chloroethyl) | —— |
| 2-Butanone | 78-93-3 |
| 2-Butanone, 3,3-dimethyl-1-(methylthio)-, 0-[methylamino) carbonyl] oxime | 39196-18-4 |
| 2-Butanone peroxide | 1338-23-4 |
| 2-Butenal | 4170-30-3 |
| 2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy] methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester,[1S-(1alpha(Z),72S*,3R*),7aalpha]]- | 303-34-4 |
| Butyl acetate | 123-86-4 |
| iso-Butyl acetate | 110-19-0 |
| sec-Butyl acetate | 105-46-4 |
| tert-Butyl acetate | 540-88-5 |
| Butyl acrylate | 141-32-2 |
| n-Butyl alcohol | 71-36-3 |
| sec-Butyl alcohol | 78-92-2 |
| tert-Butyl alcohol | 75-65-0 |
| Butylamine | 109-73-9 |
| iso-Butylamine | 78-81-9 |
| sec-Butylamine | 13952-84-6 |
| tert-Butylamine | 75-64-9 |
| Butyl benzyl phthalate | 85-68-7 |
| 1,2-Butylene oxide | 106-88-7 |
| n-Butyl phthalate | 84-74-2 |
| Butyraldehyde | 123-72-8 |
| Butyric acid | 107-92-6 |
| iso-Butyric acid | 79-31-2 |
| C.I. Acid Green 3 | 4680-78-8 |
| C.I. Basic Green 4 | 569-64-2 |
| C.I. Basic Red 1 | 989-38-8 |
| C.I. Direct Black 38 | 1937-37-7 |
| C.I. Direct Blue 6 | 2602-46-2 |
| C.I. Direct Brown 95 | 16071-86-6 |
| C.I. Disperse Yellow 3 | 2832-40-8 |
| C.I. Food Red 5 | 3761-53-3 |
| C.I. Food Red 15 | 81-88-9 |
| C.I. Solvent Orange 7 | 3118-97-6 |
| C.I. Solvent Yellow 1 | 60-09-3 |
| C.I. Solvent Yellow 14 | 842-07-9 |
| C.I. Solvent Yellow 3 | 97-56-3 |
| C.I. Solvent Yellow 34 | 492-80-8 |
| C.I. Vat Yellow 4 | 128-66-5 |
| Cacodylic acid | 75-60-5 |
| Cadmium | 7440-43-9 |
| Cadmium acetate | 543-90-8 |
| Cadmium bromide | 7789-42-6 |
| Cadmium chloride | 10108-64-2 |
| Cadmium compounds | —— |
| Cadmium oxide | 1306-19-0 |
| Cadmium products | 7440-43-9 |
| Cadmium stearate | 2223-93-0 |
| Calcium arsenate | 7778-44-1 |
| Calcium arsenite | 52740-16-6 |
| Calcium carbide | 75-20-7 |
| Calcium chromate | 13765-19-0 |
| Calcium cyanamide | 156-62-7 |
| Calcium cyanide | 592-01-8 |
| Calcium dodecylbenzenesulfonate | 26264-06-2 |
| Calcium hypochlorite | 7778-54-3 |
| Camphechlor | 8001-35-2 |
| Camphene, octachloro- | 8001-35-2 |
| Cantharidin | 56-25-7 |
| Captafol | 2939-80-2 |
| Captan | 133-06-2 |
| Carbachol chloride | 51-83-2 |
| Carbamic acid, methyl-, O-(((2,4-dimethyl-1, 3-dithiolan-2-y | 26419-73-8 |
| Carbamic acid, methylnitroso-, ethyl ester | 615-53-2 |
| Carbamide, N-ethyl-N-nitroso- | 759-73-9 |
| Carbamide, N-methyl-N-nitroso- | 684-93-5 |
| Carbamide, thio- | 62-56-6 |
| Carbamimidoselenoic acid | —— |
| Carbaryl | 63-25-2 |
| Carbofuran | 1563-66-2 |
| Carbon bisulfide | 75-15-0 |
| Carbon disulfide | 75-15-0 |
| Carbonic acid, dithallium(I) salt | 6533-73-9 |
| Carbonic dichloride | 75-44-5 |
| Carbonic difluoride | 353-50-4 |
| Carbon oxyfluoride | 353-50-4 |
| Carbon tetrachloride | 56-23-5 |
| Carbonyl chloride | 75-44-5 |
| Carbonyl fluoride | 353-50-4 |
| Carbonyl sulfide | 463-58-1 |
| Carbophenothion | 786-19-6 |
| Catechol | 120-80-9 |
| Chloramben | 133-90-4 |
| Chlorambucil | 305-03-3 |
| Chloranil | 116-29-0 |
| Chlordane | 57-74-9 |
| Chlordane (Technical Mixture and Metabolites) | 57-74-9 |
| Chlordane, alpha & gamma isomers | 57-74-9 |
| Chlordane, technical | —— |
| Chlordimeform | 6164-98-3 |
| Chlorfenvinfos | 470-90-6 |
| Chlorinated benzenes | —— |
| Chlorinated ethanes | —— |
| Chlorinated naphthalene | —— |

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| Chlorinated phenols | —— |
| Chlorine | 7882-50-5 |
| Chlorine cyanide | 506-77-4 |
| Chlorine dioxide | 10049-04-4 |
| Chlormephos | 24934-91-6 |
| Chlormequat chloride | 999-81-5 |
| Chlornaphazine | 494-03-1 |
| Chloroacetaldehyde | 107-20-0 |
| Chloroacetic acid | 79-11-8 |
| 2-Chloroacetophenone | 532-27-4 |
| Chloroalkyl Ethers | —— |
| p-Chloroaniline | 106-47-8 |
| Chlorobenzene | 108-90-7 |
| Chlorobenzilate | 510-15-6 |
| 2-Chloro-1,3-butadiene | 126-99-8 |
| 4-Chloro-m-cresol epoxy- | —— |
| 4-Chloro-m-cresol | 59-50-7 |
| p-Chloro-m-cresol | 59-50-7 |
| Chlorodibromomethane | 124-48-1 |
| Chloroethane | 75-00-3 |
| Chloroethyl chloroformate | 627-11-2 |
| 2-Chloroethyl vinyl ether | 110-75-8 |
| Chloroform | 67-66-3 |
| Chloromethyl ether | 542-88-1 |
| Chloromethyl methyl ether | 107-30-2 |
| 2-Chloronaphthalene | 91-58-7 |
| Chlorophacinone | 3691-35-8 |
| o-Chlorophenol | 95-57-8 |
| 4-Chlorophenyl phenyl ether | 7005-72-3 |
| 1-(o-Chlorophenyl)thiourea | 5344-82-1 |
| Chloroprene | 126-99-8 |
| 3-Chloropropionitrile | 542-76-7 |
| Chlorosulfonic acid | 7790-94-5 |
| Chlorothalonil | 1897-45-6 |
| 4-Chloro-o-toluidine hydrochloride | 3165-93-3 |
| Chloroxuron | 1982-47-4 |
| Chlorpyrifos | 2921-88-2 |
| Chlorthiophos | 21923-23-9 |
| Chromic acetate | 1066-30-4 |
| Chromic acid | 1333-82-0 |
| Chromic acid, calcium salt | 13765-19-0 |
| Chromic chloride | 10025-73-7 |
| Chromic sulfate | 10101-53-8 |
| Chromium | 7440-47-3 |
| Chromium compounds | —— |
| Chromous chloride | 10049-05-5 |
| Chrysene | 218-01-9 |
| Cobalt | 7440-48-4 |
| Cobalt carbonyl | 10210-68-1 |
| Cobalt, ((2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis(6- | 62207-76-5 |
| Cobaltous bromide | 7789-43-7 |
| Cobaltous formate | 544-18-3 |
| Cobaltous sulfamate | 14017-41-5 |
| Coke Oven Emissions | —— |
| Coking: ammonia still lime sludge from coking operations | —— |
| Coking: decanter tank far sludge from coking operations | —— |
| Colchicine | 64-86-8 |
| Copper | 7440-50-8 |
| Copper arsenate | 10103-61-4 |
| Copper compounds | —— |
| Copper cyanide | 544-92-3 |
| Coumafuryl ***(conc. above 3%)*** | 117-52-2 |
| Coumaphos | 56-72-4 |
| Coumatetralyl | 5836-29-3 |
| Creosote | 8001-58-9 |
| p-Cresidine | 120-71-8 |
| *[Cresol | ——]* |
| Cresol(s) | 1319-77-3 |
| m-Cresol | 108-39-4 |
| Cresol (mixed isomers) | 1319-77-3 |
| o-Cresol | 95-48-7 |
| p-Cresol | 106-44-5 |
| *[Cresols | ——]* |
| Crimidine | 535-89-7 |
| Crotonaldehyde | 4170-30-3 |
| Cumene | 98-82-8 |
| Cumene hydroperoxide | 80-15-9 |
| Cupferron | 135-20-6 |
| Cupric acetate | 142-71-2 |
| Cupric acetoarsenite | 12002-03-8 |
| Cupric chloride | 7447-39-4 |
| Cupric nitrate | 3251-23-8 |
| Cupric oxalate | 5893-66-3 |
| Cupric sulfate | 7758-98-7 |
| Cupric sulfate, ammoniated | 10380-29-7 |
| Cupric tartrate | 815-82-7 |
| Cyanazine | 21725-46-2 |
| Cyanide | 57-12-5 |
| Cyanide compounds | —— |
| Cyanides (soluble salts and complexes), not otherwise specified | —— |
| Cyanogen | 460-19-5 |
| Cyanogen bromide | 506-68-3 |
| Cyanogen chloride | 506-77-4 |
| Cyanogen iodide | 506-78-5 |
| Cyanophos | 2636-26-2 |
| Cyanuric fluoride | 675-14-9 |
| 1,4-Cyclohexadienedione | —— |
| 2,5-Cyclohexadiene-1,4-dione | 106-51-4 |
| Cyclohexane | 110-82-7 |
| Cyclohexanone | 108-94-1 |
| Cycloheximide | 66-81-9 |
| Cyclohexylamine | 108-91-8 |
| 2-Cyclohexyl-4,6-dinitrophenol | 131-89-5 |
| Cyclophosphamide | 50-18-0 |
| Cyhexatin | 13121-70-5 |
| 2,4-D Esters | 94-11-1 |
| | 94-79-1 |
| | 94-80-4 |
| | 1320-18-9 |
| | 1928-38-7 |
| | 1928-61-6 |
| | 1929-73-3 |
| | 2971-38-2 |
| | 25168-26-7 |
| | 53467-11-1 |
| 2,4-D, salts and esters | —— |
| 2,4-*[d]****D*** butoxyethanol ester ***(conc. above 20%)*** | 1929-73-3 |
| 2,4-D Diethanolamine salt ***(conc. above 20%)*** | 5742-19-18 |
| 2,4-D Dimethylamine salt ***(conc. above 20%)*** | 2008-39-1 |
| 2,4-D Ethyl ester | 533-23-3 |
| 2,4-D 2-ethylhexyl ester | 1928-43-4 |
| 2,4-D isooctyl ester ***(conc. above 20%)*** | 25168-26-7 |
| 2,4-D, isopropyl ester | 94-11-1 |
| 2,4-D Methyl ester | 1928-38-71 |
| 2,4-D, mixed butyl esters | 94-80-4 |
| 2,4-D mixed isobutyl esters | 1713-15-1 |
| 2,4-D, Propylene glycol butyl ether esters ***(conc. above 20%)*** | 1928-45-6 |
| 2,4-D Sodium salt ***(conc. above 20%)*** | 2702-72-9 |
| Daminozide | 1596-84-5 |
| Daunomycin | 20830-81-3 |
| DDE | 72-55-9 |
| 11,17-Dimethoxy-18-[(3,4,5- trimethoxybenzoyl)oxy]-methyl ester, (3Beta, 16beta, 17alpha, 18beta, 20alpha)-yohimban-16-carboxylic acid | 50-55-5 |
| DDT metabolites | —— |
| Decaborane(14) | 17702-41-9 |
| Decabromodiphenyl oxide | 1163-19-5 |

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| Demeton | 8065-48-3 |
| Dialifor | 10311-84-9 |
| Di-allate | 2303-16-4 |
| Diamine | 302-01-2 |
| 2,4-Diaminoanisole | 615-05-4 |
| 2,4-Diaminoanisole sulfate | 39156-41-7 |
| 4,4'-Diaminodiphenyl ether | 101-80-4 |
| 2,4-Diaminotoluene | 95-80-7 |
| Diaminotoluene (mixed isomers) | 25376-45-8 |
| Diazinon | 333-41-5 |
| Diazomethane | 334-88-3 |
| 1,2:5,6-Dibenzanthracene | 53-70-3 |
| Dibenz[a,h]anthracene | 53-70-3 |
| Dibenzo[a,h]anthracene | 53-70-3 |
| Dibenzofuran | 132-64-9 |
| 1,2:7,8-Dibenzopyrene | 189-55-9 |
| Dibenz[a,i]pyrene | 189-55-9 |
| Diborane | 19287-45-7 |
| 1,2-Dibromo-3-chloropropane | 96-12-8 |
| di-n-butyl phthalate | 84-74-2 |
| Dicamba | 1918-00-9 |
| Dichlobenil | 1194-65-6 |
| Dichlone | 117-80-6 |
| m-Dichlorobenzene | 541-73-1 |
| S-(2,3-Dichloroallyl)diisopropylthiocarbamate | 2303-16-4 |
| Dichlorobenzene | 25321-22-6 |
| 1,2-Dichlorobenzene | 95-50-1 |
| 1,3-Dichlorobenzene | 541-73-1 |
| 1,4-Dichlorobenzene | 106-46-7 |
| m-Dichlorobenzene | —— |
| Dichlorobenzene (mixed isomers) | 25321-22-6 |
| o-Dichlorobenzene | 95-50-1 |
| p-Dichlorobenzene | 106-46-7 |
| Dichlorobenzidine | 91-94-1 |
| Dichlorobromomethane | 75-27-4 |
| 1,4-Dichloro-2-butene | 764-41-0 |
| Dichlorodifluoromethane | 75-71-8 |
| 3,5-Dichloro-N (1,1-dimethyl-2-propynyl) benzamide | 23950-58-5 |
| Dichlorodiphenyldichloroethane | 72-54-8 |
| Dichloro diphenyl trichloroethane | 50-29-3 |
| 1,1-Dichloroethane | 75-34-3 |
| 1,2-Dichloroethane | 107-06-2 |
| 1,1-Dichloroethylene | 75-35-4 |
| 1,2-Dichloroethylene | 540-59-0 |
| 1,2-Dichloroethylene (E) | 156-60-5 |
| Dichloroethylenes (mixture) | 25323-30-2 |
| Dichloroethyl ether | 111-44-4 |
| Dichloroisopropyl ether | 108-60-1 |
| Dichloromethane | 75-09-2 |
| Dichloromethoxy ethane | 111-91-1 |
| Dichloromethyl ether | 542-88-1 |
| Dichloromethylphenylsilane | 149-74-6 |
| 2,4-Dichlorophenol | 120-83-2 |
| 2,6-Dichlorophenol | 87-65-0 |
| (2,4-Dichlorophenoxy)acetic acid | 94-75-7 |
| 2,4-Dichlorophenoxyacetic acid, salts and esters | —— |
| Dichlorophenylarsine | 696-28-6 |
| Dichloropropane | 26638-19-7 |
| 1,1-Dichloropropane | 78-99-9 |
| 1,3-Dichloropropane | 142-28-9 |
| n-,2,3 Dichloropropanol | 616-23-9 |
| Dichloropropene | 542-75-6 |
| Dichloropropene(s) ***(mixtures)*** | 26952-23-8 |
| 1,3-Dichloropropene | 542-75-6 |
| 2,3-Dichloropropene | 78-88-6 |
| Dichloropropene-Dichloropropene (mixture) | 8003-19-8 |
| 2,2-Dichloropropionic acid | 75-99-0 |
| 1,3-Dichloropropylene | 542-75-6 |
| Dichlorvos | 62-73-7 |
| Dicofol | 115-32-2 |
| Dicrotophos | 141-66-2 |
| Dieldrin | 60-57-1 |
| 1,2:3,4-Diepoxybutane | 1464-53-5 |
| Diepoxybutane | 1464-53-5 |
| Diethanolamine | 111-42-2 |
| Diethylamine | 109-89-7 |
| Diethylarsine | 692-42-2 |
| Diethylcarbamazine citrate | 1642-54-2 |
| Diethyl chlorophosphate | 814-49-3 |
| N,N'-Diethylhydrazine | 1615-80-1 |
| O,O-Diethyl S-methyl dithiophosphate | 3288-58-2 |
| Diethyl-p-nitrophenyl phosphate | 311-45-5 |
| Diethyl phthalate | 84-66-2 |
| O,O-Diethyl O-pyrazinyl phosphorothioate | 297-97-2 |
| Diethylstilbestrol | 56-53-1 |
| Diethyl sulfate | 64-67-5 |
| Digitoxin | 71-63-6 |
| Diglycidyl ether | 2238-07-5 |
| Digoxin | 20830-75-5 |
| 1,2-Dihydro-3,6-pyradizinedione | 123-33-1 |
| Dihydrosafrole | 94-58-6 |
| Dimefox | 115-26-4 |
| Dimethoate | 60-51-5 |
| 3,3'-Dimethoxybenzidine | 119-90-4 |
| Dimethylamine | 124-40-3 |
| Dimethylaminoazobenzene | 60-11-7 |
| N,N-Dimethylaniline | 121-69-7 |
| 7,12-Dimethylbenz[a]anthracene | 57-97-6 |
| 3,3'-Dimethylbenzidine | 119-93-7 |
| alpha, alpha-Dimethylbenzylhydroperoxide | 80-15-9 |
| Dimethylcarbamyl chloride | 79-44-7 |
| Dimethyldichlorosilane | 75-78-5 |
| Dimethylhydrazine | 57-14-7 |
| 1,2-Dimethylhydrazine | 540-73-8 |
| 3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl] oxime | 39196-18-4 |
| Dimethylnitrosamine | 62-75-9 |
| alpha, alpha-Dimethylphenethylamine | 122-09-8 |
| 2,4-Dimethylphenol | 105-67-9 |
| Dimethyl-p-phenylenediamine | 99-98-9 |
| Dimethyl phosphorochloridothioate | 2524-03-0 |
| Dimethyl phthalate | 131-11-3 |
| Dimethyl sulfate | 77-78-1 |
| Dimetilan | 644-64-4 |
| Dinitrobenzene (mixed isomers) | 25154-54-5 |
| m-Dinitrobenzene | 99-65-0 |
| o-Dinitrobenzene | 528-29-0 |
| p-Dinitrobenzene | 100-25-4 |
| 4,6-Dinitro-o-cresol | 534-52-1 |
| 4,6-Dinitro-o-cresol and salts | —— |
| Dinitrophenol | 25550-58-7 |
| 2,4-Dinitrophenol | 51-28-5 |
| 2,5-Dinitrophenol | 329-71-5 |
| 2,6-Dinitrophenol | 573-56-8 |
| Dinitrotoluene | 25321-14-6 |
| 2,4-Dinitrotoluene | 121-14-2 |
| 2,6-Dinitrotoluene | 606-20-2 |
| 3,4-Dinitrotoluene | 610-39-9 |
| Dinocap | 39300-45-3 |
| Dinoseb | 88-85-7 |
| Dinoterb | 1420-07-1 |
| Di-n-octyl phthalate | 117-84-0 |
| 1,4-Dioxane | 123-91-1 |
| Dioxathion | 78-34-2 |
| Diphacinone | 82-66-6 |
| Diphenylamine | 122-39-4 |
| Diphenylhydrazine | 122-66-7 |
| 1,2-Diphenylhydrazine | 122-66-7 |
| Diphosphoric acid, tetraethyl ester | 107-49-3 |
| Dipropylamine | 142-84-7 |
| Di-n-propylnitrosamine | 621-64-7 |
| Diquat | 85-00-7 |

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| Disulfoton | 298-04-4 |
| Dithiazanine iodide | 514-73-8 |
| Dithiobiuret | 541-53-7 |
| 2,4-Dithiobiuret | 32976-88-8 |
| Dithiopyrophosphoric acid, tetraethyl ester | —— |
| Diuron | 330-54-1 |
| Dodecylbenzenesulfonic acid | 27176-87-0 |
| EBDCs | —— |
| Emetine, dihydrochloride | 316-42-7 |
| Endosulfan | 115-29-7 |
| alpha-Endosulfan | 959-98-8 |
| beta-Endosulfan | 33213-65-9 |
| Endosulfan metabolites | —— |
| Endosulfan sulfate | 1031-07-8 |
| Endothall | 145-73-3 |
| Endothion | 2778-04-3 |
| Endrin | 72-20-8 |
| Endrin aldehyde | 7421-93-4 |
| Endrin metabolites | —— |
| Epichlorohydrin | 106-89-8 |
| Epinephrine | 51-43-4 |
| EPN | 2104-64-5 |
| 2,3-Epoxy-1-propanol | 556-52-5 |
| Ergocalciferol | 50-14-6 |
| Ergotamine tartrate | 379-79-3 |
| Ethanal | 75-07-0 |
| Ethanamine, 1,1-dimethyl-2-phenyl- | 122-09-8 |
| Ethanedinitrile | 460-19-5 |
| 1,2-Ethanediylbiscarbamodithioic acid | —— |
| Ethane, 1,1'-[methylenebis(oxy)] bis(2-chloro- | 111-91-1 |
| Ethanenitrile | 75-05-8 |
| Ethanesulfonyl chloride, 2-chloro- | 1622-32-8 |
| Ethanethioamide | 62-55-5 |
| Ethanol, 1,2-dichloro-, acetate | 10140-87-1 |
| Ethanol, 2,2'-(nitrosoimino)bis- | 1116-54-7 |
| Ethanoyl chloride | 75-36-5 |
| Ethenamine, N-methyl-N-nitroso- | —— |
| Ethene, trans-1,1-dichloro- | —— |
| Ethion | 563-12-2 |
| Ethoprophos | 13194-48-4 |
| 2-Ethoxyethanol | 110-80-5 |
| N-4-Ethoxyphenyl acetamid | 62-44-2 |
| Ethyl acetate | 141-78-6 |
| Ethyl acrylate | 140-88-5 |
| Ethylbenzene | 100-41-4 |
| Ethylbis(2-chloroethyl)amine | 538-07-8 |
| Ethyl carbamate | 51-79-6 |
| Ethyl chloroformate | 541-41-3 |
| Ethyl cyanide | 107-12-0 |
| Ethylenebis(dithiocarbamic acid) | —— |
| Ethylenebisdithiocarbamic acid, salts & esters | 111-54-6 |
| Ethylenediamine | 107-15-3 |
| Ethylenediamine-tetraacetic acid (EDTA) | 60-00-4 |
| Ethylene dibromide | 106-93-4 |
| Ethylene dichloride | 107-06-2 |
| Ethylene fluorohydrin | 371-62-0 |
| Ethylene glycol | 107-21-1 |
| Ethylene oxide | 75-21-8 |
| Ethylenimine | 151-56-4 |
| Ethyl ether | 60-29-7 |
| Ethylidene dichloride | 75-34-3 |
| Ethyl methacrylate | 97-63-2 |
| Ethyl methanesulfonate | 62-50-0 |
| Ethylthiocyanate | 542-90-5 |
| Explosives: pink/red water from TNT operation | —— |
| Explosives: spent carbon from the treatment of wastewater containing explosives | —— |
| Explosives: wastewater treatment sludges from the manufacturing and processing of explosives | —— |
| Explosives: wastewater treatment sludges from the manufacturing formulation and loading of lead-based initiating compounds | —— |
| Famphur | 52-85-7 |
| Fenaminosulf ***(conc. above 5%)*** | 140-56-7 |
| Fenamiphos | 22224-92-6 |
| Fenitrothion | 122-14-5 |
| Fensulfothion | 115-90-2 |
| Fenthion ***(conc. above 0.5%)*** | 55-38-9 |
| Ferric ammonium citrate | 1185-57-5 |
| Ferric ammonium oxalate | 2944-67-4 |
| | 55488-87-4 |
| Ferric chloride | 7705-08-0 |
| Ferric dextran | 9004-66-4 |
| Ferric fluoride | 7783-50-8 |
| Ferric nitrate | 10421-48-4 |
| Ferric sulfate | 10028-22-5 |
| Ferroalloys: emission control dust or sludge from ferrochromium production | —— |
| Ferroalloys: emission control dust or sludge from ferrochromiumsilicon | —— |
| Ferrous ammonium sulfate | 10045-89-3 |
| Ferrous chloride | 7758-94-3 |
| Ferrous sulfate | 7720-78-7 |
| Fluenetil | 4301-50-2 |
| Fluminic acid, mercury (III) salt | —— |
| Fluometuron | 2164-17-2 |
| Fluoranthene | 206-44-0 |
| N-2-Fluorenylacetamide | 53-96-3 |
| Fluorene | 86-73-7 |
| Fluorine | 7782-41-4 |
| Fluoroacetamide | 640-19-7 |
| Fluoroacetic acid | 144-49-0 |
| Fluoroacetic acid, sodium salt | 62-74-8 |
| Fluoroacetyl chloride | 359-06-8 |
| Fluorouracil | 51-21-8 |
| Fonofos | 944-22-9 |
| Formaldehyde | 50-00-0 |
| Formaldehyde cyanohydrin | 107-16-4 |
| Formetanate hydrochloride | 23422-53-9 |
| Formic acid | 64-18-6 |
| Formothion | 2540-82-1 |
| Formparanate | 17702-57-7 |
| Fosthietan | 21548-32-3 |
| Freon 113 | 76-13-1 |
| Fuberidazole | 3878-19-1 |
| Fulminic acid, mercury(ll) salt | 628-86-4 |
| Fumaric acid | 110-17-8 |
| Furan | 110-00-9 |
| 2-Furancarbo-carboxaldehyde | —— |
| 2-Furancarboxaldehyde | 98-01-1 |
| Furfural | 98-01-1 |
| Furfuran | 110-00-9 |
| Gallium trichloride | 13450-90-3 |
| Glycidylaldehyde | 765-34-4 |
| Haloethers | —— |
| Halomethanes | —— |
| Heptachlor | 76-44-8 |
| Heptachlor (and epoxide) | 76-44-8 |
| Heptachlor epoxide | 1024-57-3 |
| Heptachlor metabolites | —— |
| Hexachlorobenzene | 118-74-1 |
| Hexachloro-1,3-butadiene | 87-68-3 |
| Hexachlorobutadiene | 87-68-3 |
| Hexachlorocyclohexane (all isomers) | 606-73-1 |
| Hexachlorocyclohexane (gamma isomer) | 58-89-9 |
| Hexachlorocyclopentadiene | 77-47-4 |
| Hexachloroethane | 67-72-1 |
| Hexachlorohexahydro-exo, exo-dimethanonaphthalene | —— |
| Hexachloronaphthalene | 1335-87-1 |

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| Hexachlorophene | 70-30-4 |
| Hexachloropropene | 1888-71-7 |
| Hexaethyl tetraphosphate | 757-58-4 |
| Hexamethylenediamine, N,N'-dibutyl- | 4835-11-4 |
| Hexamethylphosphoramide | 680-31-9 |
| Hydrazine | 302-01-2 |
| Hydrazine sulfate | 10034-93-2 |
| Hydrochloric acid | 7647-01-0 |
| Hydrocyanic acid | 74-90-8 |
| Hydrofluoric acid | 7664-39-3 |
| Hydrogen chloride | 7647-01-0 |
| Hydrogen cyanide | 74-90-8 |
| Hydrogen fluoride | 7664-39-3 |
| Hydrogen peroxide (Conc. *>* 52%) | 7722-84-1 |
| Hydrogen phosphide | 7803-51-2 |
| Hydrogen selenide | 7783-07-5 |
| Hydrogen sulfide | 7783-06-4 |
| Hydroperoxide, 1-methyl-1-phenylethyl- | 80-15-9 |
| Hydroquinone | 123-31-9 |
| Hydroxylamine | 7803-49-8 |
| 2-Imidazolidinethione | 96-45-7 |
| Indeno(1,2,3-cd)pyrene | 193-39-5 |
| Ink formulation: solvent washes & sludges, caustic wastes & sludges or water washes & sludges from cleaning tubs & equipment used in the formulation of ink from pigments/driers/soaps & stabilizers containing CR & Pb | —— |
| Inorganic arsenic | 7440-38-2 |
| Inorganic arsenicals ***(above 0.5% of active ingredients)*** | —— |
| Inorganic chemicals: brine purification muds from the mercury cell process in chlorine production where separately prepurified brine is not used | —— |
| Inorganic chemicals: chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production | —— |
| Inorganic chemicals: wastewater treatment sludge from the mercury cell process in chlorine production | —— |
| Inorganic pigments: oven residue from the production of chrome oxide green pigments | —— |
| Inorganic pigments: wastewater treatment sludge from the production of chrome green pigments | —— |
| Inorganic pigments: wastewater treatment sludge from the production of chrome yellow and orange pigments | —— |
| Inorganic pigments: wastewater treatment sludge from the production of iron blue pigments | —— |
| Inorganic pigments: wastewater treatment sludge from the production of molybdate orange pigments | —— |
| Inorganic pigments: wastewater treatment sludge from the production of zinc yellow pigments | —— |
| Iron and steel: emission control dust/sludge from the primary production of steel in electric furnaces | —— |
| Iron and steel: spent pickle liquor generated by steel finishing operations of facilities with the iron and steel industry (SIC Codes 331 and 332) | —— |
| Iron dextran | 9004-66-4 |
| Iron, pentacarbonyl- | 13463-40-6 |
| Isobenzan | 297-78-9 |
| Isobutyl alcohol | 78-83-1 |
| Isobutyraldehyde | 78-84-2 |
| Isobutyronitrile | 78-82-0 |
| Isocyanic acid, 3,4-dichlorophenyl ester | 102-36-3 |
| Isocyanic acid, methylester | 624-83-9 |
| Isodrin | 465-73-6 |
| Isofluorphate | 55-91-4 |
| Isophorone | 78-59-1 |
| Isophorone diisocyanate | 4098-71-9 |
| Isoprene | 78-79-5 |
| Isopropanolamine dodecylbenzene sulfonate | 42504-46-1 |
| Isopropyl alcohol (mfg-strong acid process) | 67-63-0 |
| Isopropyl chloroformate | 108-23-6 |
| 4,4'-Isopropylidenediphenol | 80-05-7 |
| Isopropylmethylpyrazolyl dimethylcarbamate | 119-38-0 |
| Isosafrole | 120-58-1 |
| 3(2H)-isoxazolone, 5-(aminomethyl)- | 2763-96-4 |
| Kelthane | 115-32-2 |
| Kepone | 143-50-0 |
| Lactonitrile | 78-97-7 |
| Lasiocarpine | 303-34-4 |
| Lead | 7439-92-1 |
| Lead acetate | 301-04-2 |
| Lead acetic acid | 301-04-2 |
| Lead arsenate | 10102-48-4 |
| Lead, bis(acetato-O)tetrahydroxytn- | 1335-32-6 |
| Lead chloride | 7758-95-4 |
| Lead compounds | —— |
| Lead fluoborate | 13814-96-5 |
| Lead fluoride | 7783-46-2 |
| Lead iodide | 10101-63-0 |
| Lead nitrate | 10099-74-8 |
| Lead phosphate | 7446-27-7 |
| Lead stearate | 1072-35-1 |
| | 7428-48-0 |
| | 52652-59-2 |
| | 56189-09-4 |
| Lead subacetate | 1335-32-6 |
| Lead sulfate | 7446-14-2 |
| Lead sulfide | 1314-87-0 |
| Lead thiocyanate | 592-87-0 |
| Leptophos | 21609-90-5 |
| Lethane 384 ***(conc. above 10%)*** | 112-56-1 |
| Lewisite | 541-25-3 |
| Lindane | 58-89-9 |
| Lithium chromate | 14307-35-8 |
| Lithium hydride | 7580-67-8 |
| Malathion | 121-75-5 |
| Maleic acid | 110-16-7 |
| Maleic anhydride | 108-31-6 |
| Maleic hydrazide | 123-33-1 |
| Malononitrile | 109-77-3 |
| Maneb | 12427-38-2 |
| Manganese | 7439-96-5 |
| Manganese, tricarbonyl methylcyclopentadienyl | 12108-13-3 |
| Mechlorethamine | 51-75-2 |
| Melphalan | 148-82-3 |
| Mephosfolan | 950-10-7 |
| Mercaptodimethur | 2032-65-7 |
| Mercuric acetate | 1600-27-7 |
| Mercuric chloride | 7487-94-7 |
| Mercuric cyanide | 592-04-1 |
| Mercuric nitrate | 10045-94-0 |
| Mercuric oxide | 21908-53-2 |
| Mercuric sulfate | 7783-35-9 |
| Mercuric thiocyanate | 592-85-8 |
| Mercurous nitrate | 10415-75-5 |
| Mercury | 7439-97-6 |
| Mercury compounds | 7439-97-6 |
| Mercury fulminate | 628-86-4 |
| Metaldehyde | 108-62-3 |
| Metharcrolein diacetate | 10476-95-6 |
| Methacrylic anhydride | 760-93-0 |
| Methacrylonitrile | 126-98-7 |
| Methacryloyl chloride | 920-46-7 |
| Methacryloyloxyethyl isocyanate | 30674-80-7 |
| Methamidophos | 10265-92-6 |
| Methane, isocyanato- | 624-83-9 |
| Methane, oxybis (chloro)- | 542-88-1 |
| Methanesulfonyl fluoride | 558-25-8 |
| Methanethiol | 74-93-1 |

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| | |
|---|---|
| Methane, trichloro- | 67-66-3 |
| Methanoic acid | 64-18-6 |
| 4,7-Methano-1 H-indene,1,4,5,6,7,8,8-heptechloro-3a,4,7,7a-tetrahydro- | 76-44-8 |
| Methanol | 67-56-1 |
| Methapyrilene | 91-80-5 |
| Methidathion | 950-37-8 |
| Methiocarb | 2032-65-7 |
| Methomyl | 16752-77-5 |
| Methoxychlor | 72-43-5 |
| 2-Methoxyethanol | 109-86-4 |
| Methoxyethylmercuric acetate | 151-38-2 |
| Methyl acrylate | *[80-62-6]* |
| | ***96-33-3*** |
| | 96-33-3 |
| 2-Methylaziridine | 75-55-8 |
| Methyl bromide | 74-83-9 |
| 1-Methylbutadiene | 504-60-9 |
| Methyl chloride | 74-87-3 |
| Methyl 2-chloroacrylate | 80-63-7 |
| Methyl chlorocarbonate | 79-22-1 |
| Methylchloroform | *[——]* |
| | ***71-55-6*** |
| 3-Methylcholanthrene | 56-49-5 |
| Methyl demeton | 919-86-8 |
| 4,4'-Methylenebis(2-chloroaniline) | 101-14-4 |
| 4,4'-Methylenebis(N,N-dimethyl)benzenamine | 101-61-1 |
| Methylenebis(phenylisocyanate) | 101-68-8 |
| 2,2'-Methylenebis (3,4,6-trichlorophenol) | 70-30-4 |
| Methylene bromide | 74-95-3 |
| Methylene chloride | 75-09-2 |
| 4,4'-Methylenedianiline | 101-77-9 |
| Methylene oxide | 50-00-0 |
| Methyl ethyl ketone | 78-93-3 |
| Methyl ethyl ketone peroxide | 1338-23-4 |
| Methyl hydrazine | 60-34-4 |
| Methyl iodide | 74-88-4 |
| Methyl isobutyl ketone | 108-10-1 |
| Methyl isocyanate | 624-83-9 |
| Methyl isothiocyanate | 556-61-6 |
| *[2-Methyllactonitrile]* ***2-Methylactonitrile*** | 75-*[86]***84*-5 |
| *[Methyl mercapton]* ***Methyl mercapton*** | 74-93-1 |
| Methylmercuric dicyanamide | 502-39-6 |
| N-Methyl-N'-nitro-N-nitrosoguanidine | 70-25-7 |
| Methyl parathion | 298-00-0 |
| Methyl phenkapton | 3735-23-7 |
| Methyl phosphonic dichloride | 676-97-1 |
| Methyl tert-butyl ether | 1634-04-4 |
| Methyl thiocyanate | 556-64-9 |
| Methylthiouracil | 56-04-2 |
| Methyltrichlorosilane | 75-79-6 |
| Methyl vinyl ketone | 78-94-4 |
| Metolcarb | 1129-41-5 |
| Mevinphos | 7786-34-7 |
| Mexacarbate | 315-18-4 |
| Michler's ketone | 90-94-8 |
| Mirex | 2385-85-5 |
| Mitomycin C | 50-07-7 |
| Molybdenum trioxide | 1313-27-5 |
| Monocrotophos | 6923-22-4 |
| Monoethylamine | 75-04-7 |
| Monomethylamine | 74-89-5 |
| Muscimol | 2763-96-4 |
| Mustard gas | 505-60-2 |
| Naled | 300-76-5 |
| Naphthalene | 91-20-3 |
| Naphthalene compounds | —— |
| 1,4-Naphthalenedione | 130-15-4 |
| Naphthenic acid | 1338-24-5 |
| 1,4-Naphthoquinone | 130-15-4 |
| Naphthylamine | 91-29-3 |
| 1-Naphthylamine | 134-32-7 |
| 2-Naphthylamine | 91-59-8 |
| alpha-Naphthylthiourea | 86-88-4 |
| Nickel | 7440-02-0 |
| Nickel ammonium sulfate | 15699-18-0 |
| Nickel carbonyl | 13463-39-3 |
| Nickel chloride | 7718-54-9 |
| Nickel compounds | —— |
| Nickel cyanide | 557-19-7 |
| Nickel hydroxide | 12054-48-7 |
| Nickel nitrate | 14216-75-2 |
| Nickel sulfate | 7786-81-4 |
| Nickel tetracarbonyl | 13463-39-3 |
| Nicotine | 54-11-5 |
| Nicotine salts | —— |
| Nicotine sulfate | 65-30-5 |
| Nitric acid | 7697-37-2 |
| Nitric acid, thallium(1+) salt | 10102-45-1 |
| Nitric oxide | 10102-43-9 |
| Nitrilotriacetic acid | 139-13-9 |
| p-Nitroaniline | 100-01-6 |
| 5-Nitro-o-anisidine | 99-59-2 |
| Nitrobenzene | 98-95-3 |
| 4-Nitrobiphenyl | 92-93-3 |
| Nitrocyclohexane | 1122-60-7 |
| Nitrofen | 1836-75-5 |
| Nitrogen dioxide | 10102-44-0 |
| Nitrogen mustard | 51-75-2 |
| Nitrogen oxide | 10102-43-9 |
| Nitrogen (II) oxide | —— |
| Nitrogen (IV) oxide | —— |
| Nitrogen oxide NO2 | 10544-72-6 |
| Nitroglycerin | 55-63-0 |
| Nitrophenol (mixed isomers) | 25154-55-6 |
| 2-Nitrophenol | 88-75-5 |
| m-Nitrophenol | 554 84-7 |
| o-Nitrophenol | 88-75-5 |
| p-Nitrophenol | 100-02-7 |
| Nitrophenols | —— |
| 2-Nitropropane | 79-46-9 |
| Nitrosamines | —— |
| N-Nitrosodi-n-butylamine | 924-16-3 |
| N-Nitrosodiethanolamine | 1116-54-7 |
| N-Nitrosodiethylamine | 55-18-5 |
| Nitrosodimethylamine | 62-75-9 |
| N-Nitrosodiphenylamine | 86-30-6 |
| p-Nitrosodiphenylamine | 156-10-5 |
| N-Nitrosodi-n-propylamine | 621-64-7 |
| N-Nitroso-N-ethylurea | 759-73-9 |
| N-Nitroso-N-methylurea | 684-93-5 |
| N-Nitroso-N-methylurethane | 615-53-2 |
| N-Nitrosomethylvinylamine | 4549-40-0 |
| N-Nitrosomorpholine | 59-89-2 |
| N-Nitrosonornicotine | 16543-55-8 |
| N-Nitrosopiperidine | 100-75-4 |
| N-Nitroso-N-propylamine | —— |
| N-Nitrosopyrrolidine | 930-55-2 |
| Nitrotoluene | 1321-12-6 |
| m-Nitrotoluene | 99-08-1 |
| o-Nitrotoluene | 88-72-2 |
| p-Nitrotoluene | 99-99-0 |
| 5-Nitro-o-toluidine | 99-55-8 |
| Norbormide | 991-42-4 |
| 5-Norbornene-2, 3-dimethanol, 1,4,5,6,7,7-hexachloro, cyclic sulfite | —— |
| Octachloronaphthalene | 2234-13-1 |
| Octamethyl pyrophosphoramide | 152-16-9 |
| Organic chemicals: heavy ends from the fractionation column in ethyl chloride production | —— |
| Organic chemicals: aqueous spent animony catalyst waste from fluoromethanes production | —— |

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| Organic chemicals: bottom stream from the acetonitrile column in the production of acrylonitrile | -- |
| Organic chemicals: bottom stream from the wastewater stripper in the production of acrylonitrile | -- |
| Organic chemicals: bottoms from the acetonitrile purification column in the production of acrylonitrile | -- |
| Organic chemicals: centrifuge and distillation residues from toluene diisocyanate production | -- |
| Organic chemicals: column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDHM) from carboxylic acid hydrazines | -- |
| Organic chemicals: column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene | -- |
| Organic chemicals: combined wastewater streams generated from nitrobenzene/aniline production | -- |
| Organic chemicals: condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides | -- |
| Organic chemicals: condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDHM) from carboxylic acid hydrazines | -- |
| Organic chemicals: condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitro-toluene | -- |
| Organic chemicals: distillation bottom tars from the production of phenol/acetone from cumene | -- |
| Organic chemicals: distillation bottoms from aniline production | -- |
| Organic chemicals: Distillation bottoms from the production of 1,1,1-trichlorethane | -- |
| Organic chemicals: distillation bottoms from the production of acetaldehyde from ethylene | -- |
| Organic chemicals: distillation bottoms from the production of anhydride from ortho-xylene | -- |
| Organic chemicals: distillation bottoms from the production of nitrobenzene by the nitration of benzene | -- |
| Organic chemicals: distillation bottoms from the production of phthalic anhydride from naphthalene | -- |
| Organic chemicals: distillation light ends from the production of phthalic anhydride from naphghalne | -- |
| Organic chemicals: distillation of light ends from the production of phthalic anhydride from ortho-xylene | -- |
| Organic chemicals: distillation or fractionation column bottoms from the production of chloro-benzenes | -- |
| Organic chemicals: distillation side cuts from the production of acetaldehyde from ethylene | -- |
| Organic chemicals: heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production | -- |
| Organic chemicals: heavy ends (still bottoms) from the purification column in the production of epichlorohydrin | -- |
| Organic chemicals: heavy ends from the distillation of ethylene dichloride in ethylene dichloride production | -- |
| Organic chemicals: heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene | -- |
| Organic chemicals: heavy ends from the heavy ends column from the product of 1,1,1-trichloroethane | -- |
| Organic chemicals: heavy ends or distillation residues from the production of carbon tetrachloride | -- |
| Organic chemicals: organic condensate from the solvent recovery column in the production of toluene diisocvanate via phosgenation of toluenediamine | -- |
| Organic chemicals: process residues from aniline extraction from the production of aniline | -- |
| Organic chemicals: product washwaters from the production of dinitrotoluene via nitration of toluene | -- |
| Organic chemicals: reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene | -- |
| Organic chemicals: separated aqueous stream from the reactor product washing step in the production of chlorobenzenes | -- |
| Organic chemicals: spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene | -- |
| Organic chemicals: spent catalyst from the hydrochlorinator reactor in the production 1,1,1-trichloroethane | -- |
| Organic chemicals: spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides | -- |
| Organic chemicals: still bottoms from the distillation of benzyl chloride | -- |
| Organic chemicals: still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene | -- |
| Organic chemicals: stripping still tails from the production of methy ethyl pyridines | -- |
| Organic chemicals: vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene | -- |
| Organic chemicals: waste from the product stream stripper in the production of 1,1,1-trichloroethane | -- |
| Organic chemicals: wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene | -- |
| Organorhodium Complex (PMN-82-147) | -- |
| Osmium oxide | 12036-02-1 |
| Osmium oxide (T-4)- | 20816-12-0 |
| Osmium tetroxide | 20816-12-0 |
| Ouabain | 630-60-4 |
| Oxamyl | 23135-22-0 |
| 1,2-Oxathiolane, 2,2-dioxide | 1120-71-4 |
| 2H-1,3,2-Oxazaphosphorine, 2 [bis (2-chlorethyl) amino] benzene- | -- |
| *[Oxentane]* ***Oxetane***, 3,3-bis(chloromethyl)- | 78-71-7 |
| Oxirane | 75-21-8 |
| Oxiranecarboxyaldehyde | 765-34-4 |
| 10, 10′-Oxybisphenoxarsine | 58-36-6 |
| Oxydisulfoton | 2497-07-6 |
| Oxyfluorfen | 42874-03-3 |
| Ozone | 10028-15-6 |
| Paraformaldehyde | 30525-89-4 |
| Paraldehyde | 123-63-7 |
| Paraquat | 1910-42-5 |
| Paraquat methosulfate | 2074-50-2 |
| Parathion | 56-38-2 |
| Paris green | 12002-03-8 |
| Pentaborane | 19624-22-7 |
| Pentachlorobenzene | 608-93-5 |
| Pentachloroethane | 76-01-7 |
| Pentachloronitrobenzene | 82-68-8 |
| Pentachlorophenol | 87-86-5 |
| Pentadecylamine | 2570-26-5 |
| 1,3-Pentadiene | 504-60-9 |
| Peracetic acid | 79-21-0 |
| Perchloroethylene | 127-18-4 |

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| Perchloromethylmercaptan | 594-42-3 |
| Pesticides: 2,6-Dichlorophenol waste from the production of 2,4-D | —— |
| Pesticides: baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts | —— |
| Pesticides: by-product salts generated in the production of MSMA and cacodylic acid | —— |
| Pesticides: filter cake from the filtration of diethylphosphorodithoic acid in the production of phorate | —— |
| Pesticides: filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane | —— |
| Pesticides: filtration, evaporation, and centrifugation solids from the production of ethylenbisdithiocarbamic acid and its salts | —— |
| Pesticides: heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T | —— |
| Pesticides: process wastewater (including supermates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt | —— |
| Pesticides: reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts | —— |
| Pesticides: spent absorbent and wastewater separator solids form the production of methyl bromide | —— |
| Pesticides: still bottoms from toluene reclamation distillation in the production of disulfoton | —— |
| Pesticides: untreated process wastewater from the production of toxaphene | —— |
| Pesticides: untreated wastewater from the production of 2,4-D | —— |
| Pesticides: vacuum stripper discharge from the chlordane chlorinator in the production of chlordane | —— |
| Pesticides: wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane | —— |
| Pesticides: wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide | —— |
| Pesticides: wastewater from the washing and stripping of phorate production | —— |
| Pesticides: wastewater treatment sludge from the production of chlordane | —— |
| Pesticides: wastewater treatment sludge from the production of phorate | —— |
| Pesticides: wastewater treatment sludge from the production of toxaphene | —— |
| Pesticides: wastewater treatment sludges from the production of disulfoton | —— |
| Pesticides: wastewater treatment sludges generated in the production of creosote | —— |
| Petroleum refining: API separator sludge from the petroleum refining industry | —— |
| Petroleum refining: dissolved air flotation (DAF) float from the petroleum refining industry | —— |
| Petroleum refining: heat exchanger bundle cleaning sludge from the petroleum refining industry | —— |
| Petroleum refining: slop oil emulsion solids from the petroleum refining industry | —— |
| Petroleum refining: tank bottoms (leaded) from the petroleum refining industry | —— |
| Phenacetin | 62-44-2 |
| Phenanthrene | 85-01-8 |
| Phenarsazine chloride | 578-94-9 |
| Phenol | 108-95-2 |
| Phenol, 2,4-dinitro-6-(1-methylprophyl) | 88-85-7 |
| Phenol, 2,4-dinitro-6-methyl- salts | —— |
| Phenol, methyl- | 1319-77-3 |
| Phenol, 3-(1-methylethyl)-, methylcarbamate | 64-00-6 |
| Phenol, 2-(1-methylpropyl)-4,6-dinitro | 88-85-7 |
| Phenol, 2,2′-thiobis[4-chloro-6-methyl- | 4418-66-0 |
| Phenyl dichloroarsine | 696-28-6 |
| p-Phenylenediamine | 106-50-3 |
| 1,10-(1,2-Phenylene)pyrene | 193-39-5 |
| Phenylhydrazine hydrochloride | 59-88-1 |
| Phenylmercuric acetate | 62-38-4 |
| 2-Phenylphenol | 90-43-7 |
| Phenylsilatrane | 2097-19-0 |
| Phenylthiourea | 103-85-5 |
| Phorate | 298-02-2 |
| Phosacetim | 4104-14-7 |
| Phosalone ***(conc. above 13%)*** | 2310-17-0 |
| Phosfolan | 947-02-4 |
| Phosgene | 75-44-5 |
| Phosmet | 732-11-6 |
| Phosphamidon | 13171-21-6 |
| Phosphine | 7803-51-2 |
| Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino | 50782-69-9 |
| Phosphonothioic acid, methyl-, O-ethyl O-(4-methylthio)phen | 2703-13-1 |
| Phosphonothioic acid, methyl-, O-(4-nitrophenyl) O-phenyl es | 2665-30-7 |
| Phosphoric acid | 7664-38-2 |
| Phosphoric acid, dimethyl 4-(methylthio) phenyl ester | 3254-63-5 |
| Phosphoric acid, lead salt | 7446-27-7 |
| Phosphorothioic acid, O,O-dimethyl-O-[p-((dimethylamino)-sulfonyl)phenyl] ester | 52-85-7 |
| Phosphorothioic acid, O,O-dimethyl-5-(2-(methylthio)ethyl)es | 2587-90-8 |
| Phosphorus | 7723-14-0 |
| Phosphorus oxychloride | 10025-87-3 |
| Phosphorus pentachloride | 10026-13-8 |
| Phosphorus pentasulfide | 1314-80-3 |
| Phosphorus pentoxide | 1314-56-3 |
| Phosphorus sulfide | 1314-80-3 |
| Phosphorus trichloride | 7719-12-2 |
| Phthalate esters | —— |
| Phthalic anhydride | 85-44-9 |
| Physostigmine | 57-47-6 |
| Physostigmine, salicylate (1:1) | 57-64-7 |
| 2-Picoline | 109-06-8 |
| Picric acid | 88-89-1 |
| Picrotoxin | 124-87-8 |
| Pindone ***(conc. above 12%)*** | 83-26-1 |
| Piperidine | 110-89-4 |
| Pirimicarb ***(conc. above 15%)*** | 23103-98-2 |
| Pirimifos-*[esthyl]**ethyl* | 23505-41-1 |
| Polychlorinated biphenyls (PCBs) | —— |
| | 1336-36-3 |
| | 11096-82-5 |
| | 11097-69-1 |
| | 11104-28-2 |
| | 11141-16-5 |
| | 12672-29-6 |
| | 12674-11-2 |
| | 53469-21-9 |
| Polychlorinated terphenyls | —— |
| Polynuclear aromatic hydrocarbons | —— |
| Potassium arsenate | 7784-41-0 |
| Potassium arsenite | 10124-50-2 |
| Potassium bichromate | 7778-50-9 |
| Potassium chromate | 7789-00-6 |
| Potassium cyanide | 151-50-8 |
| Potassium hydroxide | 1310-58-3 |
| Potassium permanganate | 7722-64-7 |
| Potassium silver cyanide | 506-61-6 |

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| Primary aluminum: spent potliners from primary aluminum reduction | —— |
| Primary copper: acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production | —— |
| Primary lead: surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities | —— |
| Primary zinc: sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production | —— |
| Promecarb | 2631-37-0 |
| Pronamide | 23950-58-5 |
| 1-Propanamine | 107-10-8 |
| Propanedinitrile | 109-77-3 |
| Propanenitrile | 107-12-0 |
| Propanenitrile, 3-chloro- | 542-76-7 |
| Propane, 2,2′-oxybis(2-chloro- | 108-60-1 |
| 1,3-Propane sultone | 1120-71-4 |
| 1,Propanol,2,3-dibromo-, phosphate (3:1) | *[126:72-7]* |
| | ***126-72-7*** |
| 2-Propanone | 67-64-1 |
| Propargite | 2312-35-8 |
| Propargyl alcohol | 107-19-7 |
| Propargyl bromide | 106-96-7 |
| 2-Propenenitrile | 107-13-1 |
| 2-Propenenitrile, 2-methyl- | 126-98-7 |
| 2-Propenoic acid, ethyl ester | 140-88-5 |
| 2-Propenoic acid, 2-methyl-, ethyl ester | 97-63-2 |
| 2-Propen-1-ol | 107-18-6 |
| beta-Propiolactone | 57-57-8 |
| Propionaldehyde | 123-38-6 |
| Propionic acid | 79-09-4 |
| Propionic anhydride | 123-62-6 |
| Propoxur | 114-26-1 |
| n-Propylamine | 107-10-8 |
| Propyl chloroformate | 109-61-5 |
| Propylene (Propene) | 115-07-1 |
| Propylene dichloride | 78-87-5 |
| Propyleneimine | 75-55-8 |
| Propylene oxide | 75-56-9 |
| 1,2-Propylenimine | 75-55-8 |
| Prothoate | 2275-18-5 |
| 2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl) amino]- | 66-75-1 |
| Pyrene | 129-00-0 |
| Pyrenthrins | 121-21-1 |
| | 121-29-9 |
| | 8003-34-7 |
| 4-Pyridinamine | 504-24-5 |
| Pyridine | 110-86-1 |
| Pyridine, 2-[(2-dimethylamino)-2-thenylamino]- | —— |
| Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl) | 54-11-5 |
| Pyridine, 2-methyl-5-vinyl- | 140-76-1 |
| Pyridine, 4-nitro,-1-oxide | 1124-33-0 |
| Pyriminil | 53558-25-1 |
| Pyrophosphoric acid, tetraethyl ester | —— |
| Pyrrole, tetrahydro-N-nitroso- | 107-49-3 |
| Pyrrolidine, 1-nitroso | 930-55-2 |
| Quaternary ammonium compounds | —— |
| Quinoline | 91-22-5 |
| Quinone | 106-51-4 |
| Quintozene | 82-68-8 |
| Radionuclides | —— |
| Red squill ***(conc. above 30%)*** | 507-60-8 |
| Reserpine | 50-55-5 |
| Resorcinol | 108-46-3 |
| Saccharin and salts | 81-07-2 |
| Safrole | 94-59-7 |
| Salcomine | 14167-18-1 |
| Sarin | 107-44-8 |
| Secondary lead: emission control dust/sludge from secondary lead smelting | —— |
| Secondary lead: waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting | —— |
| Selenious acid | 7783-00-8 |
| Selenious acid, dithallium(1+) salt | 12039-52-0 |
| Selenium | 7782-49-2 |
| Selenium compounds | —— |
| Selenium dioxide | 7446-08-4 |
| Selenium disulfide | 7488-56-4 |
| Selenium oxide | 7446-08-4 |
| Selenium oxychloride | 7791-23-3 |
| Selenium sulfide | 7488-56-4 |
| Selenourea | 630-10-4 |
| Semicarbazide hydrochloride | 563-41-7 |
| Silane, (4-aminobutyl)diethoxymethyl- | 3037-72-7 |
| Silver | 7440-22-4 |
| Silver compounds | —— |
| Silver cyanide | 506-64-9 |
| Silver nitrate | 7761-88-8 |
| Silvex | 93-72-1 |
| Sodium | 7440-23-5 |
| Sodium arsenate | 7631-89-2 |
| Sodium arsenite | 7784-46-5 |
| Sodium azide | 26628-22-8 |
| Sodium bichromate | 10588-01-9 |
| Sodium bifluoride | 1333-83-1 |
| Sodium bisulfite | 7631-90-5 |
| Sodium cacodylate | 124-65-2 |
| Sodium chlorate ***(conc. above 7%)*** | 7775-09-9 |
| Sodium chromate | 7775-11-3 |
| Sodium cyanide | 143-33-9 |
| Sodium dodecylbenzenesulfonate | 25155-30-0 |
| Sodium flouride | 7681-49-4 |
| Sodium fluoroacetate | 62-74-8 |
| Sodium hydrosulfide | 16721-80-5 |
| Sodium hydroxide | 1310-73-2 |
| Sodium hypochlorite | 7681-52-9 |
| Sodium methylate | 124-41-4 |
| Sodium monofluoroacetate | 62-74-8 |
| Sodium nitrite | 7632-00-0 |
| Sodium phosphate, dibasic | 7558-79-4 |
| Sodium phosphate, tribasic | 7601-54-9 |
| Sodium selenate | 13410-01-0 |
| Sodium selenite | 10102-18-8 |
| Sodium sulfide | 1313-82-8 |
| Sodium tellurite | 10102-20-2 |
| Stannane, acetoxytriphenyl- | 900-95-8 |
| Stannous flouride | 7783-47-3 |
| 4,4′-Stilbenediol, alpha, alpha′-diethyl- | 56-33-1 |
| Streptozotocin | 18883-66-4 |
| Strobane | 8001-50-1 |
| Strontium sulfide | 1314-96-1 |
| Strontium chromate | 7789-06-2 |
| Strychnidin-10-one-and salt | 57-24-9 |
| Strychnine | 57-24-9 |
| Strychnine salts | —— |
| Strychnine, sulfate | 60-41-3 |
| Styrene | 100-42-5 |
| Styrene oxide | 96-09-3 |
| Sulfotep | 3689-24-5 |
| Sulfoxide, 3-chloropropyl octyl | 3569-57-1 |
| Sulfur dioxide | 7446-09-5 |
| Sulfuric acid | 7664-93-9 |
| Sulfuric acid, dithallium(1+) salt | 7446-18-6 |
| | 10031-59-1 |
| Sulfuric acid, thallium(I) salt | 7446-18-6 |
| Sulfur monochloride | 12771-08-3 |
| Sulfur phosphide | 1314-80-3 |
| Sulfur selenide | 7446-34-6 |

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| | |
|---|---|
| Sulfur tetrafluoride | 7783-60-0 |
| Sulfur trioxide | 7446-11-9 |
| 2,4,5-T amines | 1319-72-8 |
| | 2008-46-0 |
| | 3813-14-7 |
| | 6369-96-6 |
| | 6369-97-7 |
| 2,4,5-T esters | 1928-47-8 |
| | 2545-59-7 |
| | 25168-15-4 |
| | 61792-07-2 |
| 2,4,5-T salts | 13560-99-1 |
| Tabun | 77-81-6 |
| 2.3.6-TBA and related polychlorbenzoic acids, dimethylamine salts | 50-31-7 |
| Tellurium | 13494-80-9 |
| Tellurium hexafluoride | 7783-80-4 |
| Terbufos | 13071-79-9 |
| Terephthalic acid | 100-21-0 |
| 1,2,4,5-Tetrachlorobenzene | 95-94-3 |
| 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) | 1746-01-6 |
| 1,1,2,2-Tetrachloroethane | 79-34-5 |
| 1,1,1,2-Tetrachloroethane | 630-20-6 |
| Tetrachloroethylene | 127-18-4 |
| 2,3,4,6-Tetrachlorophenol | 58-90-2 |
| Tetrachlorvinphos | 961-11-5 |
| Tetraethyldithiopyrophosphate | 3689-24-5 |
| Tetraethyllead | 78-00-2 |
| Tetraethylpyrophosphate | 107-49-3 |
| Tetraethyltin | 597-64-8 |
| Tetrahydrofuran | 109-99-9 |
| Tetramethyllead | 75-74-1 |
| Tetranitromethane | 509-14-8 |
| Tetraphosphoric acid, hexaethyl ester | 757-58-4 |
| Thallic oxide | 1314-32-5 |
| Thallium(I) acetate | 563-68-8 |
| Thallium(I) acetic acid, salt | 563-68-8 |
| Thallium(I) carbonate | 6533-73-9 |
| Thallium chloride | 7791-12-0 |
| Thallium | 7440-28-0 |
| Thallium compounds | —— |
| Thallium(I) nitrate | 10102-45-1 |
| Thallium oxide | 1314-32-5 |
| Thallium(I) selenide | 12039-52-0 |
| Thallium selenite | 12039-52-0 |
| Thallium sulfate | 7446-18-6 |
| | 10031-59-1 |
| Thallous carbonate | 6533-73-9 |
| Thallous chloride | 7791-12-0 |
| Thallous malonate | 2757-18-8 |
| Thallous sulfate | 7446-18-6 |
| Thioacetamide | 62-55-5 |
| Thiocarbazide | 2231-57-4 |
| 4,4′-Thiodianiline | 139-65-1 |
| Thiodiphosphoric acid, tetraethyl ester | 3689-24-5 |
| Thiofanox | 39196-18-4 |
| Thioimidodicarbonic diamide | 541-53-7 |
| Thiomethanol | 74-93-1 |
| Thionazin | 297-97-2 |
| Thiophenol | 108-98-5 |
| Thiosemicarbazide | 79-19-6 |
| Thiourea | 62-56-6 |
| Thiourea, (2-methylphenyl)- | 614-78-8 |
| Thiram | 137-26-8 |
| Thorium dioxide | 1314-20-1 |
| Titanium tetrachloride | 7550-45-0 |
| TOK ***(2,4 dichlorophenyl-p-nitrophenyl)*** | 1836-75-5 |
| Toluene | 108-88-3 |
| Toluenediamine | 95-80-7 |
| | 496-72-0 |
| | 823-40-5 |
| | 25376-45-8 |
| Toluene-2,4-diisocyanate | 584-84-9 |
| Toluene-2,6-diisocyanate | 91-08-7 |
| o-Toluidine hydrochloride | 636-21-5 |
| o-Toluidine | 95-53-4 |
| p-Toluidine | 106-49-0 |
| Toxaphene | 8001-35-2 |
| 2,4,5-TP esters | 32534-95-5 |
| 2,4,5-TP | —— |
| Trans-1,4-dichlorobutene | 110-57-6 |
| Triamiphos | 1031-47-6 |
| Triaziquone | 68-76-8 |
| Triazofos | 24017-47-8 |
| Tribromomethane | 75-25-2 |
| Tributyltin | 56-35-9 |
| Trichlorfon | 52-68-6 |
| Trichloroacetaldehyde | 75-87-6 |
| Trichloroacetyl chloride | 76-02-8 |
| 1,2,4-Trichlorobenzene | 120-82-1 |
| Trichloro(chloromethyl)silane | 1558-25-4 |
| Trichloro(dichlorophenyl)silane | 27137-85-5 |
| 1,1,1-Trichloroethane | 71-55-6 |
| 1,1,2-Trichloroethane | 79-00-5 |
| Trichloroethene | 79-01-6 |
| Trichloroethylene | 79-01-6 |
| Trichloroethylsilane | 115-21-9 |
| Trichloromethanesulfenyl chloride | 594-42-3 |
| Trichloromethanethiol | 75-70-7 |
| Trichloromonofluoromethane | 75-69-4 |
| Trichloronate | 327-98-0 |
| Trichlorophenol | 25167-82-2 |
| 2,3,4-Trichlorophenol | 15950-66-0 |
| 2,3,5-Trichlorophenol | 933-78-8 |
| 2,3,6-Trichlorophenol | 933-75-5 |
| 2,4,5-Trichlorophenol | 95-95-4 |
| | 88-06-2 |
| 2,4,6-Trichlorophenol | 88-06-2 |
| 3,4,5-Trichlorophenol | 609-19-8 |
| (2,4,5-Trichlorophenoxy)acetic acid | 93-76-5 |
| (2,4,5-Trichlorophenoxy)acetic acid esters | 93-79-8 |
| Trichlorophenylsilane | 98-13-5 |
| 1,2,3-Trichloropropane | 96-18-4 |
| Triethanolamine dodecylbenzene sulfonate | 27323-41-7 |
| Triethoxysilane | 998-30-1 |
| Triethylamine | 121-44-8 |
| Trifluralin | 1582-09-8 |
| Trimethylamine | 75-50-3 |
| 1,2,4-Trimethylbenzene | 95-63-6 |
| Trimethylchlorosilane | 75-77-4 |
| Trimethylolpropane phosphite | 824-11-3 |
| Trimethyltin chloride | 1066-45-1 |
| sym-Trinitrobenzene | 99-35-4 |
| 1,3,5-Trioxane,2,4,6-Trimethyl- | 123-63-7 |
| Triphenyltin chloride | 639-58-7 |
| Triphenyltin hydroxide ***(conc. above 10%)*** | 76-87-9 |
| Tris(2-chloroethyl)amine | 555-77-1 |
| Tris(2,3-dibromopropyl) phosphate | 126-72-7 |
| Trypan blue | 72-57-1 |
| Uracil mustard | 66-75-1 |
| Uranium peroxide | 19525-15-6 |
| Uranyl acetate | 541-09-3 |
| Uranyl nitrate | 36478-76-9 |
| Uranyl sulfate | 1314-64-3 |
| Urea, N-ethyl-N-nitroso- | 759-73-9 |
| Urea, N-methyl-N-nitroso- | 684-93-5 |
| Urethane | 51-79-6 |
| Valinomycin | 2001-95-8 |

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| | |
|---|---|
| Vanadic acid, ammonium salt | 7803-55-6 |
| Vanadium (fume or dust) | 7440-62-2 |
| Vanadium oxide | 1314-62-1 |
| Vanadium pentoxide | 1314-62-1 |
| Vanadyl sulfate | 27774-13-6 |
| Veterinary pharmaceuticals: distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo arsenic compounds | — — |
| Veterinary pharmaceuticals: residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds | — — |
| Veterinary pharmaceuticals: wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds | — — |
| Vinyl acetate | 108-05-4 |
| Vinyl acetate monomer | 108-05-4 |
| Vinyl chloride | 75-01-4 |
| Vinylidene chloride | 75-35-4 |
| Warfarin | 81-81-2 |
| Warfarin sodium | 129-06-6 |
| Wood preservation: bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosole and/or pentachlorophenol | — — |
| Xylene | 1330-20-7 |
| Xylene (mixed isomers) | 1330-20-7 |
| m-Xylene | 108-38-3 |
| o-Xylene | 95-47-6 |
| p-Xylene | 106-42-3 |
| Xylenes | 1330-20-7 |
| Xylenol | 1300-71-6 |
| 2,6-Xylidine | 87-62-7 |
| Xylylene dichloride | 28347-13-9 |
| Zinc ***(fume and dust)*** | 7440-66-6 |
| Zinc acetate | 557-34-6 |
| Zinc ammonium chloride | 14639-97-5<br>14639-98-6<br>52628-25-8 |
| Zinc and compounds | — — |
| Zinc borate | 1332-07-6 |
| Zinc bromide | 7699-45-8 |
| Zinc carbonate | 3486-35-9 |
| Zinc chloride | 7646-85-7 |
| Zinc cyanide | 557-21-1 |
| Zinc, dichloro(4,4-dimethyl-5((((methylamino) carbonyl)oxy)im | 58270-08-9 |
| Zinc fluoride | 7783-49-5 |
| Zinc formate | 557-41-5 |
| Zinc hydrosulfite | 7779-86-4 |
| Zinc nitrate | 7779-88-6 |
| Zinc phenolsulfonate | 127-82-2 |
| Zinc phosphide | 1314-84-7 |
| Zinc phosphide, when present at concentration greater than 10 percent | 1314-84-7 |
| Zinc silicofluoride | 16871-71-9 |
| Zinc sulfate | 7733-02-0 |
| Zineb | 12122-67-7 |
| Zirconium nitrate | 13746-89-9 |
| Zirconium potassium fluoride | 16923-95-8 |
| Zirconium sulfate | 14644-61-2 |
| Zirconium tetrachloride | 10026-11-6 |

***NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION LIST OF HAZARDOUS SUBSTANCES (LISTED BY CAS NUMBER)***

| *CAS Number* | *Name* |
|---|---|
| — — | Bottom sludge generated from the processing, blending, and treatment of waste oil in waste oil processing facilities |
| — — | Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substition. |
| — — | Cyanidation wastewater tailing pond sediment from mineral metals recovery operations. |
| — — | Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulation containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.). |
| — — | Leachate resulting from the treatment, storage, or disposal of wastes classified by more than one waste code under Subpart D, or from a mixture of wastes classified under Subparts C and D of this part. (Leachate resulting from the management of one or more of the following EPA Hazardous Wastes and no other hazardous wastes retains its hazardous waste code(s): F020, F021, F022, F023, F026, F027 and/or F028. |
| — — | Oil spill cleanup residue which: A. is contaminated beyond saturation; or B. the generator fails to demonstrate that the spill material was not one of the listed hazardous waste oils. |
| — — | Plating sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process. |
| — — | Process wastes, including but not limited to, distillation, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalized processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in 261.31 or 261.32). |
| — — | Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process. |
| — — | Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. |
| — — | Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027. |
| — — | Spent cyanide bath solutions from mineral metals recovery operations. |
| — — | Spent cyanide plating bath solutions from electroplating operations. |
| — — | Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. |

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—— Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.

—— The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride. 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004 and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

—— The following spent halogenated solvents; tetrachloro ethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

—— The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

—— The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

—— The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of 10 percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

—— The following used and unused waste oils: metal working oils; turbine lubricating oils; diesel lubricating oils; and quenching oils

—— Waste automotive crankcase and lubricating oils from automotive service and gasoline stations, truck terminals, and garages

—— Waste oil and bottom sludge generated by gasoline stations when gasoline and oil tanks are tested, cleaned, or replaced

—— Waste oil and bottom sludge generated from tank cleanouts from residential/commercial fuel oil tanks

—— Waste petroleum oil generated when tank trucks or other vehicles or mobile vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships, or other vessels

—— Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.

—— Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.).

—— Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophena from highly purified 2,4,5-trichlorophenol.

—— Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating carbon steel, and (6) chemical etching and milling of aluminum.

—— Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.

—— 3-(alpha-acetonyl benzyl)-4-hydroxy-coumarin and salts

—— Antimony compounds

—— Arsenic compounds

—— Benzene, 1-methyl-1,2,4-dinitro-

—— Benzene, 1,2-methylenedioxy-4-propyl

—— 1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts

—— Butanoic acid, 4-[bis(2-chloroethyl)

—— Cadmium compounds

—— Carbamimidoselenoic acid

—— Chlordane, technical

—— Chlorinated benzenes

—— Chlorinated ethanes

—— Chlorinated naphthalene

—— Chlorinated phenols

—— Chloroalkyl Ethers

—— 4-Chloro-m-cresol epoxy-

—— Chromium compounds

—— Coke Oven Emissions

—— Coking: ammonia still lime sludge from coking operations

—— Coking: decanter tank far sludge from coking operations

—— Copper compounds

—— Cresol

—— Cresols

—— Cyanide compounds

—— Cyanides (soluble salts and complexes), not otherwise specified

—— 1,4-Cyclohexadienedione

—— 2,4-D, salts and esters

—— DDT metabolites

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—— m-Dichlorobenzene
—— 2,4-Dichlorophenoxyacetic acid, salts and esters
—— 4,6-Dinitro-o-cresol and salts
—— Dithiopyrophosphoric acid, tetraethyl ester
—— EBDCs
—— Endosulfan metabolites
—— Endrin metabolites
—— 1,2-Ethanediylbiscarbamodithioic acid
—— Ethenamine, N-methyl-N-nitroso-
—— Ethene, trans-1,1-dichloro-
—— Ethylenebis(dithiocarbamic acid)
—— Explosives: pink/red water from TNT operations
—— Explosives: spent carbon from the treatment of wastewater containing explosives
—— Explosives: wastewater treatment sludges from the manufacturing and processing of explosives
—— Explosives: wastewater treatment sludges from the manufacturing formulation and loading of lead-based initiating compounds
—— Ferroalloys: emission control dust or sludge from ferrochromium production
—— Ferroalloys: emission control dust or sludge from ferrochromiumsilicon
—— Fluminic acid, mercury (III) salt
—— 2-Furancarbo-carboxaldehyde
—— Haloethers
—— Halomethanes
—— Heptachlor metabolites
—— Hexachlorohexahydro-exo,exo-dimethanonaphthalene
—— Ink formulation: solvent washes & sludges, caustic wastes & sludges or water washes & sludges from cleaning tubs & equipment used in the formulation of ink from pigments/driers/soaps & stablizers containing Cr & Pb
—— Inorganic arsenicals ***(above 0.5% active ingredients)***
—— Inorganic chemicals: brine purification muds from the mercury cell process in chlorineproduction where separately prepurified brine is not used.
—— Inorganic chemicals: chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production
—— Inorganic chemicals: wastewater treatment sludge from the mercury cell process in chlorine production
—— Inorganic pigments: oven residue from the production of chrome oxide green pigments
—— Inorganic pigments: wastewater treatment sludge from the production of chrome green pigments
—— Inorganic pigments: wastewater treatment sludge from the production of chrome yellow and orange pigments
—— Inorganic pigments: wastewater treatment sludge from the production of iron blue pigments
—— Inorganic pigments: wastewater treatment sludge from the production of molybdate orange pigments
—— Inorganic pigments: wastewater treatment sludge from the production of zinc yellow pigments
—— Iron and steel: emission control dust/sludge from the primary production of steel in electric furnaces
—— Iron and steel: spent pickle liquor generated by steel finishing operations of facilities with the iron and steel industry (SIC Codes 331 and 332)
—— Lead compounds
—— Methylchloroform
—— Naphthalene compounds
—— Nickel compounds
—— Nicotine salts
—— Nitrogen (II) oxide
—— Nitrogen (IV) oxide
—— Nitrophenols
—— Nitrosamines
—— N-Nitroso-N-propylamine
—— 5-Norbornene-2, 3-dimethanol, 1,4,5,6,7,7-hexachloro, cyclic sulfite
—— Organic chemicals: heavy ends from the fractionation column in ethyl chloride production
—— Organic chemicals: aqueous spent animony catalyst waste from fluoromethanes production
—— Organic chemicals: bottom stream from the acetonitrile column in the production of acrylonitrile
—— Organic chemicals: bottom stream from the wastewater stripper in the production of acrylonitrile
—— Organic chemicals: bottoms from the acetonitrile purification column in the production of acrylonitrile
—— Organic chemicals: centrifuge and distillation residues from toluene diisocyanate production
—— Organic chemicals: column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDHM) from carboxylic acid hydrazines
—— Organic chemicals: column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene
—— Organic chemicals: combined wastewater streams generated from nitrobenzene/aniline production
—— Organic chemicals: condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides
—— Organic chemicals: condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDHM) from carboxylic acid hydrazines
—— Organic chemicals: condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene
—— Organic chemicals: distillation bottom tars from the production of phenol/acetone from cumene
—— Organic chemicals: distillation bottoms from aniline production
—— Organic chemicals: Distillation bottoms from the production of 1,1,1-trichloroethane
—— Organic chemicals: distillation bottoms from the production of acetaldehyde from ethylene
—— Organic chemicals: distillation bottoms from the production of anhydride from ortho-xylene
—— Organic chemicals: distillation bottoms from the production of nitrobenzene by the nitration of benzene
—— Organic chemicals: distillation bottoms from the production of phthalic anhydride from naphthalene
—— Organic chemicals: distillation light ends from the production of phthalic anhydride from naphghalene
—— Organic chemicals: distillation of light ends from the production of phthalic anhydride from ortho-*[pxylene]* ***xylene***
—— Organic chemicals: distillation or fractionation column bottoms from the production of chlorobenzenes
—— Organic chemicals: distillation side cuts from the production of acetaldehyde from ethylene
—— Organic chemicals: heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production
—— Organic chemicals: heavy ends (still bottoms) from the purification column in the production of epichlorohydrin

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—— Organic chemicals: heavy ends from the distillation of ethylene dichloride in ethylene dichloride production
—— Organic chemicals: heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene
—— Organic chemicals: heavy ends from the heavy ends column from the product of 1,1,1-trichloroethane
—— Organic chemicals: heavy ends or distillation residues from the production of carbon tetrachloride
—— Organic chemicals: organic condensate from the solvent recovery column in the production of toluene diisocvanate via phosgenation of toluenediamine
—— Organic chemicals: process residues from aniline extraction from the production of aniline
—— Organic chemicals: product washwaters from the production of dinitrotoluene via nitration of toluene
—— Organic chemicals: reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene
—— Organic chemicals: separated gagueous stream from the reactor product washing step in the production of chlorobenzenes
—— Organic chemicals: spent adorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene
—— Organic chemicals: spent catalyst from the hydrochlorinator reactor in the production 1,1,1-trichloroethane
—— Organic chemicals: spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides
—— Organic chemicals: still bottoms from the distillation of benzyl chloride
—— Organic chemicals: still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene
—— Organic chemicals: stripping still tails from the production of methy ethyl pyridines
—— Organic chemicals: vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene
—— Organic chemicals: waste from the product stream stripper in the production of 1,1,1-trichloroethane
—— Organic chemicals: wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene
—— Organorhodium Complex (PMN-82-147)
—— 2H-1,3,2-Oxazaphosphorine, 2 [bis (2-chloroethyl) amino] benzene-
—— Pesticides: 2,6-Dichlorophenol waste from the production of 2,4-D
—— Pesticides: baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts
—— Pesticides: by-product salts generated in the production of MSMA and cacodylic acid
—— Pesticides: filter cake from the filtration of diethylphosphorodithoic acid in the production of phorate
—— Pesticides: filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane
—— Pesticides: Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts
—— Pesticides: heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T
—— Pesticides: process wastewater (including supermates, filtrates, and washwaters), from the production of ethylenebisdithiocarbamic acid and its salt
—— Pesticides: reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts
—— Pesticides: spent absorbent and wastewater separator solids from the production of methyl bromide
—— Pesticides: still bottoms from toluene reclamation distillation in the production of disulfoton
—— Pesticides: Untreated process wastewater from the production of toxaphene
—— Pesticides: untreated wastewater from the production of 2,4-D
—— Pesticides: vacuum stripper discharge from the chlordane chlorinator in the production of chlordane
—— Pesticides: wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane
—— Pesticides: wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide
—— Pesticides: wastewater from the washing and stripping of phorate production
—— Pesticides: wastewater treatment sludge from the production of chlordane
—— Pesticides: wastewater treatment sludge from the production of phorate
—— Pesticides: wastewater treatment sludge from the production of toxaphene
—— Pesticides: wastewater treatment sludges from the production of disulfoton
—— Pesticides: wastewater treatment sludges generated in the production of creosote
—— Petroleum refining: API separator sludge from the petroleum refining industry
—— Petroleum refining: dissolved air flotation (DAF) float from the petroleum refining industry
—— Petroleum refining: heat exchanger bundle cleaning sludge from the petroleum refining industry
—— Petroleum refining: slop oil emulsion solids from the petroleum refining industry
—— Petroleum refining: tank bottoms (leaded) from the petroleum refining industry
—— Phenol,2,4-dinitro-6-methyl- salts
—— Phthalate esters
—— Polychlorinated biphenyls (PCBs)
—— Polychlorinated terphenyls
—— Polynuclear aromatic hydrocarbons
—— Primary aluminum: spent potliners from primary aluminum reduction
—— Primary copper: acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production
—— Primary lead: surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities
—— Primary zinc: sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production
—— Pyridine, 2-[(2-dimethylamino)-2-thenylamino]-
—— Pyrophosphoric acid, tetraethyl ester
—— Quaternary ammonium compounds
—— Radionuclides
—— Secondary lead: emission control dust/sludge from secondary lead smelting

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| | |
|---|---|
| -- | Secondary lead: waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting |
| -- | Selenium compounds |
| -- | Silver compounds |
| -- | Strychnine salts |
| -- | Thallium compounds |
| -- | 2,4,5-TP |
| -- | Veterinary pharmaceuticals: distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds |
| -- | Veterinary pharmaceuticals: residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds |
| -- | Veterinary pharmaceuticals: wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds |
| -- | Wood preservation: bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosole and/or pentachlorophenol |
| -- | Zinc and compounds |
| 50-00-0 | Formaldehyde |
| 50-00-0 | Methylene oxide |
| 50-07-7 | Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methl]-1,1a,2,8,-8a,8b-hexahydro-8a-methoxy-5-methyl,[1aS-(1aalpha,8beta,8aalpha,8balpha)]- |
| 50-07-7 | Mitomycin C |
| 50-14-6 | Ergocalciferol |
| 50-18-0 | Cyclophosphamide |
| 50-29-3 | Dichloro diphenyl trichloroethane |
| 50-31-7 | 2.3.6-TBA and related polychlorbenzoic acids, dimethylamine salts |
| 50-32-8 | Benzo[a]pyrene |
| 50-55-5 | 11,17-Dimethoxy-18-[(3,4,5- trimethoxybenzoyl)oxy]-methyl ester, (3beta,16beta,17alpha,18beta, 20alpha)-yohimban-16-carboxylic acid |
| 50-55-5 | Reserpine |
| 51-21-8 | Fluorouracil |
| 51-28-5 | 2,4-Dinitrophenol |
| 51-43-4 | 1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino) ethyl]- |
| 51-43-4 | Epinephrine |
| 51-75-2 | Mechlorethamine |
| 51-75-2 | Nitrogen mustard |
| 51-79-6 | Ethyl carbamate |
| 51-79-6 | Urethane |
| 51-83-2 | Carbachol chloride |
| 52-68-6 | Trichlorfon |
| 52-85-7 | Famphur |
| 52-85-7 | Phosphorothioic acid, O,O-dimethyl-O-[p-((dimethylamino)-sulfonyl)phenyl]ester |
| 53-70-3 | 1,2:5,6-Dibenzanthracene |
| 53-70-3 | Dibenz[a,h]anthracene |
| 53-70-3 | Dibenzo[a,h]anthracene |
| 53-96-3 | 2-Acetylaminofluorene |
| 53-96-3 | N-2-Fluorenylacetamide |
| 54-11-5 | Nicotine |
| 54-11-5 | Pyridine, (s)-3-(1-methyl-2-pyrrolidinyl) |
| 54-62-6 | Aminopterin |
| 55-18-5 | N-Nitrosodiethylamine |
| 55-21-0 | Benzamide |
| 55-38-9 | Fenthion ***(conc. above 0.5%)*** |
| 55-63-0 | Nitroglycerin |
| 55-91-4 | Isofluorphate |
| 56-04-2 | Methylthiouracil |
| 56-23-5 | Carbon tetrachloride |
| 56-25-7 | Cantharidin |
| 56-33-1 | 4,4'-Stilbenediol, alpha, alpha'-diethyl- |
| 56-35-9 | Tributyltin |
| 56-38-2 | Parathion |
| 56-49-5 | 3-Methylcholanthrene |
| 56-53-1 | Diethylstilbestrol |
| 56-55-3 | 1,2-Benzanthracene |
| 56-55-3 | Benz[a]anthracene |
| 56-55-3 | Benzo[a] anthracene |
| 56-72-4 | Coumephos |
| 57-12-5 | Cyanide |
| 57-14-7 | Dimethylhydrazine |
| 57-24-9 | Strychnidin-10-one-and salt |
| 57-24-9 | Strychnine |
| 57-47-6 | Physostigmine |
| 57-57-8 | beta-Propiolactone |
| 57-64-7 | Physostigmine, salicylate (1:1) |
| 57-74-9 | Chlordane |
| 57-74-9 | Chlordane (Technical Mixture and Metabolites) |
| 57-74-9 | Chlordane, alpha & gamma isomers |
| 57-97-6 | 7,12-Dimethylbenz[a]anthracene |
| 58-36-6 | 10, 10'-Oxybisphenoxarsine |
| 58-89-9 | gamma-BHC |
| 58-89-9 | Hexachlorocyclohexane (gamma isomer) |
| 58-89-9 | Lindane |
| 58-90-2 | 2,3,4,6-Tetrachlorophenol |
| 59-50-7 | 4-Chloro-m-cresol |
| 59-50-7 | p-Chloro-m-cresol |
| 59-88-1 | Phenylhydrazine hydrochloride |
| 59-89-2 | N-Nitrosomorpholine |
| 60-00-4 | Ethylenediamine-tetraacetic acid (EDTA) |
| 60-09-3 | 4-Aminoazobenzene |
| 60-09-3 | C.I. Solvent Yellow 1 |
| 60-11-7 | Dimethylaminoazobenzene |
| 60-29-7 | Ethyl ether |
| 60-34-4 | Methyl hydrazine |
| 60-35-5 | Acetamide |
| 60-41-3 | Strychnine, sulfate |
| 60-51-5 | Dimethoate |
| 60-57-1 | Dieldrin |
| 61-82-5 | Amitrole |
| 62-38-4 | Phenylmercuric acetate |
| 62-44-2 | N-4-Ethoxyphenyl acetamide |
| 62-44-2 | Phenacetin |
| 62-50-0 | Ethyl methanesulfonate |
| 62-53-3 | Aniline |
| 62-53-3 | Benzenamine |
| 62-55-5 | Ethanethioamide |
| 62-55-5 | Thioacetamide |
| 62-56-6 | Carbamide, thio- |
| 62-56-6 | Thiourea |
| 62-73-7 | Dichlorvos |
| 62-74-8 | Fluoroacetic acid, sodium salt |
| 62-74-8 | Sodium fluoroacetate |
| 62-74-8 | Sodium monofluoroacetate |
| 62-75-9 | Dimethylnitrosamine |
| 62-75-9 | Nitrosodimethylamine |
| 63-25-2 | Carbaryl |
| 64-00-6 | Phenol, 3-(1-methylethyl)-, methylcarbamate |
| 64-18-6 | Formic acid |
| 64-18-6 | Methanoic acid |
| 64-19-7 | Acetic acid |
| 64-67-5 | Diethyl sulfate |
| 64-86-8 | Colchicine |
| 65-30-5 | Nicotine sulfate |
| 65-85-0 | Benzoic acid |
| 66-75-1 | 2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl) amino]- |
| 66-75-1 | Uracil mustard |
| 66-81-9 | Cycloheximide |
| 67-56-1 | Methanol |

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| 67-63-0 | Isopropyl alcohol (mfg-strong acid process) |
| 67-64-1 | Acetone |
| 67-64-1 | 2-Propanone |
| 67-66-3 | Chloroform |
| 67-66-3 | Methane, trichloro- |
| 67-72-1 | Hexachloroethane |
| 68-76-8 | Triaziquone |
| 70-25-7 | N-Methyl-N′-nitro-N-nitrosoguanidine |
| 70-30-4 | Hexachlorophene |
| 70-30-4 | 2,2′-Methylenebis (3,4,6-trichlorophenol) |
| 70-69-9 | p-Aminopropiophenone |
| 71-36-3 | n-Butyl alcohol |
| 71-43-2 | Benzene |
| 71-55-6 | 1,1,1-Trichloroethane |
| 71-63-6 | Digitoxin |
| 72-20-8 | Endrin |
| 72-43-5 | Benzene, 1,1′-(2,2,2-trichloroethylidene)bis[4- methoxy- |
| 72-43-5 | Methoxychlor |
| 72-54-8 | Benzene, 1,1′-(2,2-dichloroethylidene)bis[4-chloro- |
| 72-54-8 | Dichlorodiphenyldichloroethane |
| 72-55-9 | DDE ***(1,1 Dichloro-2,2-bis(p-chlorophenyl) ethylene)***** |
| 72-57-1 | Trypan blue |
| 74-83-9 | Methyl bromide |
| 74-87-3 | Methyl chloride |
| 74-88-4 | Methyl iodide |
| 74-89-5 | Monomethylamine |
| 74-90-8 | Hydrocyanic acid |
| 74-90-8 | Hydrogen cyanide |
| 74-93-1 | Methanethiol |
| 74-93-1 | Methyl mercaptan |
| 74-93-1 | Thiomethanol |
| 74-95-3 | Methylene bromide |
| 75-00-3 | Chloroethane |
| 75-01-4 | Vinyl chloride |
| 75-04-7 | Monoethylamine |
| 75-05-8 | Acetonitrile |
| 75-05-8 | Ethanenitrile |
| 75-07-0 | Acetaldehyde |
| 75-07-0 | Ethanal |
| 75-09-2 | Dichloromethane |
| 75-09-2 | Methylene chloride |
| 75-15-0 | Carbon bisulfide |
| 75-15-0 | Carbon disulfide |
| 75-20-7 | Calcium carbide |
| 75-21-8 | Ethylene oxide |
| 75-21-8 | Oxirane |
| 75-25-2 | Bromoform |
| 75-25-2 | Tribromomethane |
| 75-27-4 | Dichlorobromomethane |
| 75-34-3 | 1,1-Dichloroethane |
| 75-34-3 | Ethylidene dichloride |
| 75-35-4 | 1,1-Dichloroethylene |
| 75-35-4 | Vinylidene chloride |
| 75-36-5 | Acetyl chloride |
| 75-36-5 | Ethanoyl chloride |
| 75-44-5 | Carbonic dichloride |
| 75-44-5 | Carbonyl chloride |
| 75-44-5 | Phosgene |
| 75-50-3 | Trimethylamine |
| 75-55-8 | 2-Methylaziridine |
| 75-55-8 | Propyleneimine |
| 75-55-8 | 1,2-Propylenimine |
| 75-56-9 | Propylene oxide |
| 75-60-5 | Cacodylic acid |
| 75-64-9 | tert-Butylamine |
| 75-65-0 | tert-Butyl alcohol |
| 75-69-4 | Trichloromonofluoromethane |
| 75-70-7 | Trichloromethanethiol |
| 75-71-8 | Dichlorodifluoromethane |
| 75-74-1 | Tetramethyllead |
| 75-77-4 | Trimethylchlorosilane |
| 75-78-5 | Dimethyldichlorosilane |
| 75-79-6 | Methyltrichlorosilane |
| 75-86-5 | Acetone cyanohydrin |
| 75-86-5 | 2-Methyllactonitrile |
| 75-87-6 | Trichloroacetaldehyde |
| 75-99-0 | 2,2-Dichloropropionic acid |
| 76-01-7 | Pentachloroethane |
| 76-02-8 | Trichloroacetyl chloride |
| 76-13-1 | Freon 113 |
| 76-44-8 | Heptachlor |
| 76-44-8 | Heptachlor (and epoxide) |
| 76-44-8 | 4,7-Methano-1 H-indene,1,4,5,6,7,8,8-heptechloro-3a,4,7,7a-tetrahydro- |
| 76-87-9 | Triphenyltin hydroxide ***(conc. above 10%)*** |
| 77-47-4 | Hexachlorocyclopentadiene |
| 77-78-1 | Dimethyl sulfate |
| 77-81-6 | Tabun |
| 78-00-2 | Tetraethyllead |
| 78-34-2 | Dioxathion |
| 78-53-5 | Amiton |
| 78-59-1 | Isophorone |
| 78-71-7 | Oxetane, 3,3-bis(chloromethyl)- |
| 78-79-5 | Isoprene |
| 78-81-9 | iso-Butylamine |
| 78-82-0 | Isobutyronitrile |
| 78-83-1 | Isobutyl alcohol |
| 78-84-2 | Isobutyraldehyde |
| 78-87-5 | Propylene dichloride |
| 78-88-6 | 2,3-Dichloropropene |
| 78-92-2 | sec-Butyl alcohol |
| 78-93-3 | 2-Butanone |
| 78-93-3 | Methyl ethyl ketone |
| 78-93-4 | Methyl vinyl ketone |
| 78-97-7 | Lactonitrile |
| 78-99-9 | 1,1-Dichloropropane |
| 79-00-5 | 1,1,2-Trichloroethane |
| 79-01-6 | Trichloroethene |
| 79-01-6 | Trichloroethylene |
| 79-06-1 | Acrylamide |
| 79-09-4 | Propionic acid |
| 79-10-7 | Acrylic acid |
| 79-11-8 | Chloroacetic acid |
| 79-19-6 | Thiosemicarbazide |
| 79-21-0 | Peracetic acid |
| 79-22-1 | Methyl chlorocarbonate |
| 79-31-2 | iso-Butyric acid |
| 79-34-5 | 1,1,2,2-Tetrachloroethane |
| 79-44-7 | Dimethylcarbamyl chloride |
| 79-46-9 | 2-Nitropropane |
| 80-05-7 | 4,4′-Isopropylidenediphenol |
| 80-15-9 | Cumene hydroperoxide |
| 80-15-9 | alpha, alpha-Dimethylbenzylhydroperoxide |
| 80-15-9 | Hydroperoxide, 1-methyl-1-phenylethyl- |
| 80-62-6 | Methyl acrylate |
| 80-63-7 | Methyl 2-chloroacrylate |
| 81-07-2 | 1,2-Benzisothiazolin-3-one, 1,1-dioxide |
| 81-07-2 | Saccharin and salts |
| 81-81-2 | 2H-1-Benzopyran-2-one, 4-hydroxy-3(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3% |
| 81-81-2 | Warfarin |
| 81-88-9 | C.I. Food Red 15 |
| 82-28-0 | 1-Amino-2-methylanthraquinone |
| 82-66-6 | Diphacinone |
| 82-68-8 | Pentachloronitrobenzene |
| 82-68-8 | Quintozene |
| 83-26-1 | Pindone ***(conc. above 3%)*** |
| 83-32-9 | Acenaphthene |
| 84-66-2 | Diethyl phthalate |

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| 84-74-2 | n-Butyl phthalate |
| 84-74-2 | di-n-butyl phthalate |
| 85-00-7 | Diquat |
| 85-01-8 | Phenanthrene |
| 85-44-9 | 1,2-Benzenedicarboxylic acid anhydride |
| 85-44-9 | Phthalic anhydride |
| 85-68-7 | Butyl benzyl phthalate |
| 86-30-6 | N-Nitrosodiphenylamine |
| 86-50-0 | Azinphos-methyl |
| 86-73-7 | Fluorene |
| 86-88-4 | Antu |
| 86-88-4 | alpha-Naphthylthiourea |
| 87-62-7 | 2,6-Xylidine |
| 87-65-0 | 2,6-Dichlorophenol |
| 87-68-3 | Hexachloro-1,3-butadiene |
| 87-68-3 | Hexachlorobutadiene |
| 87-86-5 | Pentachlorophenol |
| 88-05-1 | Aniline, 2,4,6-trimethyl- |
| 88-06-2 | 2,4,5-Trichlorophenol |
| 88-06-2 | 2,4,6-Trichlorophenol |
| 88-72-2 | o-Nitrotoluene |
| 88-75-5 | 2-Nitrophenol |
| 88-75-5 | o-Nitrophenol |
| 88-85-7 | Dinoseb |
| 88-85-7 | Phenol, 2,4-dinitro-6-(1-methylpropyl) |
| 88-85-7 | Phenol, 2-(1-methylpropyl)-4,6-dinitro |
| 88-89-1 | Picric acid |
| 90-04-0 | o-Anisidine |
| 90-43-7 | 2-Phenylphenol |
| 90-94-8 | Michler's ketone |
| 91-08-7 | Toluene-2,6-diisocyanate |
| 91-20-3 | Naphthalene |
| 91-22-5 | Quinoline |
| 91-29-3 | Naphthylamine |
| 91-58-7 | 2-Chloronaphthalene |
| 91-59-8 | 2-Naphthylamine |
| 91-80-5 | Methapyrilene |
| 91-94-1 | Dichlorobenzidine |
| 92-52-4 | Biphenyl |
| 92-67-1 | 4-Aminobiphenyl |
| 92-87-5 | Benzidine |
| 92-93-3 | 4-Nitrobiphenyl |
| 93-72-1 | Silvex |
| 93-76-5 | (2,4,5-Trichlorophenoxy)acetic acid |
| 93-79-8 | (2,4,5-Trichlorophenoxy)acetic acid esters |
| 94-11-1 | 2,4-D Esters |
| 94-11-1 | 2,4-D, isopropyl ester |
| 94-36-0 | Benzoyl peroxide |
| 94-58-6 | Benzene, 1,2-methylenedioxy-4-propenyl- |
| 94-58-6 | 1,3 Benzodioxole, 5-propyl- |
| 94-58-6 | Dihydrosafrole |
| 94-59-7 | Benzene, 1,2-methylenedioxy-4-allyl- |
| 94-59-7 | 1,3-Benzodioxole, 5-(2-propenyl)- |
| 94-59-7 | Safrole |
| 94-75-7 | (2,4-Dichlorophenoxy)acetic acid |
| 94-79-1 | 2,4-D Esters |
| 94-80-4 | |
| 94-80-4 | 2,4-D, mixed butyl esters |
| 95-47-6 | o-Xylene |
| 95-48-7 | o-Cresol |
| 95-50-1 | 1,2-Dichlorobenzene |
| 95-50-1 | o-Dichlorobenzene |
| 95-53-4 | 2-Amino-1-methylbenzene |
| 95-53-4 | Benzenamine, 2-methyl- |
| 95-53-4 | o-Toluidine |
| 95-57-8 | o-Chlorophenol |
| 95-63-6 | 1,2,4-Trimethylbenzene |
| 95-80-7 | Benzenediamine, ar-methyl- |
| 95-80-7 | 2,4-Diaminotoluene |
| 95-80-7 | Toluenediamine |
| 95-94-3 | 1,2,4,5-Tetrachlorobenzene |
| 95-95-4 | 2,4,5-Trichlorophenol |
| 96-09-3 | Styrene oxide |
| 96-12-8 | 1,2-Dibromo-3-chloropropane |
| 96-18-4 | 1,2,3-Trichloropropane |
| 96-33-3 | Methyl acrylate |
| 96-45-7 | 2-Imidazolidinethione |
| 97-18-7 | Bithionol |
| 97-56-3 | C.I. Solvent Yellow 3 |
| 97-63-2 | Ethyl Methacrylate |
| 97-63-2 | 2-Propenoic acid, 2-methyl-, ethyl ester |
| 98-01-1 | 2-Furancarboxaldehyde |
| 98-01-1 | Furfural |
| 98-05-5 | Benzenearsonic acid |
| 98-07-7 | Benzotrichloride |
| 98-09-9 | Benzenesulfonyl chloride |
| 98-13-5 | Trichlorophenylsilane |
| 98-16-8 | Benzenamine, 3-(trifluoromethyl)- |
| 98-82-8 | Cumene |
| 98-86-2 | Acetophenone |
| 98-87-3 | Benzal chloride |
| 98-88-4 | Benzoyl chloride |
| 98-95-3 | Nitrobenzene |
| 99-08-01 | m-Nitrotoluene |
| 99-35-4 | sym-Trinitrobenzene |
| 99-55-8 | 5-Nitro-o-toluidine |
| 99-59-2 | 5-Nitro-o-anisidine |
| 99-65-0 | m-Dinitrobenzene |
| 99-98-9 | Dimethyl-p-phenylenediamine |
| 99-99-0 | p-Nitrotoluene |
| 100-01-6 | Benzenamine, 4-nitro- |
| 100-01-6 | p-Nitroaniline |
| 100-02-7 | p-Nitrophenol |
| 100-14-1 | Benzene, 1-(chloromethyl)-4-nitro- |
| 100-21-0 | Terephthalic acid |
| 100-25-4 | p-Dinitrobenzene |
| 100-41-4 | Ethylbenzene |
| 100-42-5 | Styrene |
| 100-44-7 | Benzyl chloride |
| 100-47-0 | Benzonitrile |
| 100-75-4 | N-Nitrosopiperidine |
| 101-14-4 | 4,4'-Methylenebis(2-chloroaniline) |
| 101-55-3 | 4-Bromophenyl phenyl ester |
| 101-61-1 | 4,4'-Methylenebis(N,N-dimethyl)benzenamine |
| 101-6*[X]**8*-8 | Methylenebis(phenylisocyanate) |
| 101-77-9 | 4,4'-Methylenedianiline |
| 101-*[XX]**80*-4 | 4,4'-Diaminodiphenyl ether |
| 102-3*[X]**6*-3 | Isocyanic acid, 3,4-dichlorophenyl ester |
| 103-23-1 | Bis(2-ethylhexyl) adipate |
| 103-85-5 | Phenylthiourea |
| 104-94-9 | p-Anisidine |
| 105-46-4 | sec-Butyl acetate |
| 105-67-9 | 2,4-Dimethylphenol |
| 106-42-3 | p-Xylene |
| 106-44-5 | p-Cresol |
| 106-46-7 | 1,4-Dichlorobenzene |
| 106-46-7 | p-Dichlorobenzene |
| 106-47-8 | p-Chloroaniline |
| 106-49-0 | 4-Amino-1-methylbenzene |
| 106-49-0 | Benzenamine, 4-methyl- |
| 106-49-0 | p-Toluidine |
| 106-50-3 | p-Phenylenediamine |
| 106-51-4 | p-Benzoquinone |
| 106-51-4 | 2,5-Cyclohexadiene-1,4-dione |
| 106-51-4 | Quinone |
| 106-88-7 | 1,2-Butylene oxide |
| 106-89-8 | Epichlorohydrin |
| 106-93-4 | Ethylene dibromide |
| 106-96-7 | Propargyl bromide |
| 106-99-0 | 1,3-Butadiene |
| 107-02-8 | Acrolein |
| 107-05-1 | Allyl chloride |

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| 107-06-2 | 1,2-Dichloroethane |
| 107-06-2 | Ethylene dichloride |
| 107-10-8 | 1-Propanamine |
| 107-10-8 | n-Propylamine |
| 107-12-0 | Ethyl cyanide |
| 107-12-0 | Propanenitrile |
| 107-13-1 | Acrylonitrile |
| 107-13-1 | 2-Propenenitrile |
| 107-15-3 | Ethylenediamine |
| 107-16-4 | Formaldehyde cyanohydrin |
| 107-18-6 | Allyl alcohol |
| 107-18-6 | 2-Propen-1-ol |
| 107-19-7 | Propargyl alcohol |
| 107-20-0 | Chloroacetaldehyde |
| 107-21-1 | Ethylene glycol |
| 107-30-2 | Chloromethyl methyl ether |
| 107-44-8 | Sarin |
| 107-49-3 | Diphosphoric acid, tetraethyl ester |
| 107-49-3 | Pyrrole, tetrahydro-N-nitroso- |
| 107-49-3 | Tetraethylpyrophosphate |
| 107-92-6 | Butyric acid |
| 108-05-4 | Vinyl acetate |
| 108-05-4 | Vinyl acetate monomer |
| 108-10-1 | Methyl isobutyl ketone |
| 108-23-6 | Isopropyl chloroformate |
| 108-24-7 | Acetic anhydride |
| 108-31-6 | Maleic anhydride |
| 108-38-3 | m-Xylene |
| 108-39-4 | m-Cresol |
| 108-46-3 | 1,3-Benzenediol |
| 108-46-3 | Resorcinol |
| 108-60-1 | Bis(2-chloroisoprophyl)ether |
| 108-60-1 | Bis(2-chloro-1-methylethyl)ether |
| 108-60-1 | Dichloroisopropyl ether |
| 108-60-1 | Propane, 2,2′-oxybis(2-chloro- |
| 108-62-3 | Metaldehyde |
| 108-88-3 | Toluene |
| 108-90-7 | Chlorobenzene |
| 108-91-8 | Cyclohexylamine |
| 108-94-1 | Cyclohexanone |
| 108-95-2 | Phenol |
| 108-98-5 | Benzenethiol |
| 108-98-5 | Thiophenol |
| 109-06-8 | 2-Picoline |
| 109-61-5 | Propyl chloroformate |
| 109-73-9 | Butylamine |
| 109-77-3 | Melononitrile |
| 109-77-3 | Propanedinitrile |
| 109-86-4 | 2-Methoxyethanol |
| 109-89-7 | Diethylamine |
| 109-99-9 | Tetrahydrofuran |
| 110-00-9 | Furan |
| 110-00-9 | Furfuran |
| 110-16-7 | Maleic acid |
| 110-17-8 | Fumaric acid |
| 110-19-0 | iso-Butyl acetate |
| 110-57-6 | Trans-1,4-dichlorobutene |
| 110-75-8 | 2-Chloroethyl vinyl ether |
| 110-80-5 | 2-Ethoxyethanol |
| 110-82-7 | Benzene, hexahydro |
| 110-82-7 | Cyclohexane |
| 110-86-1 | Pyridine |
| 110-89-4 | Piperidine |
| 111-42-2 | Diethanolamine |
| 111-44-4 | Dichloroethyl ether |
| 111-54-6 | Ethylenebisdithiocarbamic acid, salts & esters |
| 111-69-3 | Adiponitrile |
| 111-91-1 | Bis(2-chloroethoxy) methane |
| 111-91-1 | Dichloromethoxy ethane |
| 111-91-1 | Ethane, 1,1'-[methylenebis(oxy)] (2-chloro- |
| 112-56-1 | Lethane 384 ***(conc. above 10%)*** |
| 114-26-1 | Propoxur |
| 115-02-6 | Azaserine |
| 115-07-1 | Propylene (Propene) |
| 115-21-9 | Trichloroethylsilane |
| 115-26-4 | Dimefox |
| 115-29-7 | Endosulfan |
| 115-32-2 | Dicofol |
| 115-32-2 | Kelthane |
| 115-90-2 | Fensulfothion |
| 116-06-3 | Aldicarb |
| 116-29-0 | Chloranil |
| 117-52-2 | Coumafuryl ***(conc. above 3%)*** |
| 117-79-3 | 2-Aminoanthraquinone |
| 117-80-6 | Dichlone |
| 117-81-7 | Bis(2-ethylhexyl)phthalate |
| 117-84-0 | 1,2,-Benzenedicarboxylic acid, di-n-octyl ester |
| 117-84-0 | Di-n-octyl phthalate |
| 118-74-1 | Hexachlorobenzene |
| 119-38-0 | Isopropylmethylpyrazolyl dimethylcarbamate |
| 119-90-4 | 3,3′-Dimethoxybenzidine |
| 119-93-7 | 3,3′-Dimethylbenzidine |
| 120-12-7 | Anthracene |
| 120-58-1 | Isosafrole |
| 120-71-8 | p-Cresidine |
| 120-80-9 | Catechol |
| 120-82-1 | 1,2,4-Trichlorobenzene |
| 120-83-2 | 2,4-Dichlorophenol |
| 121-14-2 | Benzene, 1-methyl-2,4-dinitro- |
| 121-14-2 | 2,4-Dinitrotoluene |
| 121-21-1 | Pyrethrins |
| 121-29-9 | |
| 121-44-8 | Triethylamine |
| 121-69-7 | N,N-Dimethylaniline |
| 121-75-5 | Malathion |
| 122-09-8 | Benzeneethanamine,alpha,alpha-dimethyl |
| 122-09-8 | alpha, alpha-Dimethylphenethylamine |
| 122-09-08 | Ethanamine, 1,1-dimethyl-2-phenyl- |
| 122-10-1 | Bomyl ***(conc. above 1%)*** |
| 122-14-5 | Fenitrothion |
| 122-39-4 | Diphenylamine |
| 122-66-7 | Diphenylhydrazine |
| 122-66-7 | 1,2-Diphenylhydrazine |
| 123-31-9 | Hydroquinone |
| 123-33-1 | 1,2-Dihydro-3,6-pyradizinedione |
| 123-33-1 | Maleic hydrazide |
| 123-38-6 | Propionaldehyde |
| 123-62-6 | Propionic anhydride |
| 123-63-7 | Paraldehyde |
| 123-63-7 | 1,3,5-Trioxane,2,4,6-Trimethyl- |
| 123-72-8 | Butyraldehyde |
| 123-86-4 | Butyl acetate |
| 123-91-1 | 1,4-Dioxane |
| 123-92-2 | iso-Amyl acetate |
| 124-04-9 | Adipic acid |
| 124-40-3 | Dimethylamine |
| 124-41-4 | Sodium methylate |
| 124-48-1 | Chlorodibromomethane |
| 124-65-2 | Sodium cacodylate |
| 124-87-8 | Picrotoxin |
| 126-72-7 | 1,Propanol,2,3-dibromo-, phosphate (3:1) |
| 126-72-7 | Tris(2,3-dibromopropyl) phosphate |
| 126-98-7 | Methacrylonitrile |
| 126-98-7 | 2-Propenitrile, 2-methyl- |
| 126-99-8 | 2-Chloro,1,3-butadiene |
| 126-99-8 | Chloroprene |
| 127-18-4 | Perchloroethylene |
| 127-18-4 | Tetrachloroethylene |
| 127-82-2 | Zinc phenolsulfonate |
| 128-66*[.]**-*5 | C.I. Vat Yellow 4 |
| 129-00-0 | Pyrene |
| 129-06-6 | Warfarin sodium |

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| 130-15-4 | 1,4-Naphthalenedione |
| 130-15-4 | 1,4-Naphthoquinone |
| 131-11-3 | Dimethyl phthalate |
| 131-74-8 | Ammonium picrate |
| 131-89-5 | 2-Cyclohexyl-4,6-dinitrophenol |
| 132-64-9 | Dibenzofuran |
| 133-06-2 | Captan |
| 133-90-4 | Chloramben |
| 134-29-2 | o-Anisidine hydrochloride |
| 134-32-7 | 1-Naphthlamine |
| 135-20-6 | Cupferron |
| 137-26-8 | Thiram |
| 139-13-9 | Nitrilotriacetic acid |
| 139-65-1 | 4,4′-Thiodianiline |
| 140-29-4 | Benzyl cyanide |
| ***140-56-7** | **Fenaminosulf (conc. above 5%)*** |
| 140-76-1 | Pyridine, 2-methyl-5-vinyl- |
| 140-88-5 | Ethyl acrylate |
| 140-88-5 | 2-Propenoic acid, ethyl ester |
| 141-32-2 | Butyl acrylate |
| 141-66-2 | Dicrotophos |
| 141-78-6 | Ethyl acetate |
| 142-28-9 | 1,3-Dichloropropane |
| 142-71-2 | Cupric acetate |
| 142-84-7 | Dipropylamine |
| 143-33-9 | Sodium cyanide |
| 143-50-0 | Kepone |
| 144-49-0 | Fluoroacetic acid |
| 140-56-7 | Fenaminosulf |
| 145-73-3 | Endothall |
| 148-82-3 | Alanine, 3-[p-bis(-chloroethyl) amino]phenyl]-,L- |
| 148-82-3 | Melphalan |
| 149-74-6 | Dichloromethylphenylsilane |
| 151-38-2 | Methoxyethylmercuric acetate |
| 151-50-8 | Potassium cyanide |
| 151-56-4 | Ethylenimine |
| 152-16-9 | Octamethyl pyrophosphoramide |
| 156-10-5 | p-Nitrosodiphenylamine |
| 156-60-5 | 1,2-Dichloroethylene (E) |
| 156-62-7 | Calcium cyanamide |
| 189-55-9 | Benzo[rst]pentaphene |
| 189-55-9 | 1,2:7,8-Dibenzopyrene |
| 189-55-9 | Dibenz[a,i]pyrene |
| 191-24-2 | Benzo[ghi]perylene |
| 193-39-5 | Indeno(1,2,3-cd)pyrene |
| 193-39-5 | 1,10-(1,2-Phenylene)pyrene |
| 205-99-2 | Benzo(b)fluoranthene |
| 206-44-0 | Benzo[j,k]fluorene |
| 206-44-0 | Fluorathene |
| 207-08-9 | Benzo(k) fluoranthene |
| 208-96-8 | Acenaphthylene |
| 218-01-9 | 1,2-Benzphenanthrene |
| 218-01-9 | Chrysene |
| 225-51-4 | 3,4-Benzacridine |
| 225-51-4 | Benz[c]acridine |
| 2310-17-0 | Phosalone |
| 297-78-9 | Isobenzan |
| 297-97-2 | O,O-Diethyl O-pyrazinyl phosphorothioate |
| 297-97-2 | Thionazin |
| 298-00-0 | Methyl parathion |
| 298-02-2 | Phorate |
| 298-04-4 | Disulfoton |
| 300-62-9 | Amphetamine |
| 300-76-5 | Naled |
| 301-04-2 | Lead acetate |
| 301-04-2 | Lead acetic acid |
| 302-01-2 | Diamine |
| 302-01-2 | Hydrazine |
| 303-34-4 | 2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2 (1-methoxethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrroliz in-1-yl ester, [1S-(1alpha(Z),72s*,3R*),7aalpha]]- |
| 303-34-4 | Lasiocarpine |
| 305-03-3 | Chlorambucil |
| 309-00-2 | Aldrin |
| 311-45-5 | Diethyl-p-nitrophenyl phosphate |
| 315-18-4 | Mexacarbate |
| 316-42-7 | Emetine, dihydrochloride |
| 319-84-6 | alpha-BHC |
| 319-85-7 | beta-BHC |
| 319-86-8 | delta-BHC |
| 327-98-0 | Trichloronate |
| 329-71-5 | 2,5-Dinitrophenol |
| 330-54-1 | Diuron |
| 333-41-5 | Diazinon |
| 334-88-3 | Diazomethane |
| 353-42-4 | Boron trifluoride compound with methyl ether (1:1) |
| 353-50-4 | Carbonic difluoride |
| 353-50-4 | Carbon oxyfluoride |
| 353-50-4 | Carbonyl fluoride |
| 357-57-3 | Brucine |
| 359-06-8 | Fluoroacetyl chloride |
| 371-62-0 | Ethylene fluorohydrin |
| 379-79-3 | Ergotamine tartrate |
| 460-19-5 | Cyanogen |
| 460-19-5 | Ethanedinitrile |
| 463-58-1 | Carbonyl sulfide |
| 465-73-6 | Isodrin |
| 470-90-6 | Chlorfenvinfos |
| 492-80-8 | Auramine |
| 492-80-8 | Benzenamine, 4,4′- carbonimidoylbis(N,N- dimethyl- |
| 492-80-8 | C.I.Solvent Yellow 34 |
| 494-03-1 | Chlornaphazine |
| 496-72-0 | Benzenediamine, ar-methyl- |
| 496-72-0 | Toluenediamine |
| 502-39-6 | Methylmercuric dicyanamide |
| 504-24-5 | 4-Aminopyridine |
| 504-24-5 | Avitrol |
| 504-24-5 | 4-Pyridinamine |
| 504-60-9 | 1-Methylbutadiene |
| 504-60-9 | 1,3-Pentadiene |
| 505-60-2 | Mustard gas |
| 506-61-6 | Potassium silver cyanide |
| 506-64-9 | Silver cyanide |
| 506-68-3 | Bromine cyanide |
| 506-68-3 | Cyanogen bromide |
| 506-77-4 | Chlorine cyanide |
| 506-77-4 | Cyanogen chloride |
| 506-78-5 | Cyanogen iodide |
| 506-87-6 | Ammonium carbonate |
| 506-96-7 | Acetyl bromide |
| 507-60-8 | Red squill ***(conc. above 30%)*** |
| 509-14-8 | Tetranitromethane |
| 510-15-6 | Chlorobenzilate |
| 514-73-8 | Dithiazanine iodide |
| 528-29-0 | o-Dinitrobenzene |
| 532-27-4 | 2-Chloroacetophenone |
| 533-23-3 | 2,4-D Ethyl ester |
| 534-07-6 | Bis(chloromethyl) ketone |
| 534-52-1 | 4,6-Dinitro-o-cresol |
| 535-89-7 | Crimidine |
| 538-07-8 | Ethylbis(2-chloroethyl)amine |
| 540-59-0 | 1,2-Dichloroethylene |
| 540-73-8 | 1,2-Dimethylhydrazine |
| 540-88-5 | tert-Butyl acetate |
| 541-09-3 | Uranyl acetate |
| 541-25-3 | Lewisite |
| 541-41-3 | Ethyl chloroformate |
| 541-53-7 | Dithiobiuret |

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| 541-53-7 | Thioimidodicarbonic diamide |
| 541-73-1 | m-Dichlorobenzene |
| 541-73-1 | 1,3-Dichlorobenzene |
| 542-62-1 | Barium cyanide |
| 542-75-6 | Dichloropropene |
| 542-75-6 | 1,3-Dichloropropene |
| 542-75-6 | 1,3-Dichloropropylene |
| 542-76-7 | 3-Chloropropionitrile |
| 542-76-7 | Propanenitrile, 3-chloro- |
| 542-88-1 | Bis(chloromethyl) ether |
| 542-88-1 | Chloromethyl ether |
| 542-88-1 | Dichloromethyl ether |
| 542-88-1 | Methane, oxybis (chloro)- |
| 542-90-5 | Ethylthiocyanate |
| 543-90-8 | Cadmium acetate |
| 544-18-3 | Cobaltous formate |
| 544-92-3 | Copper cyanide |
| 554-84-7 | m-Nitrophenol |
| 555-77-1 | Tris(2-chloroethyl)amine |
| 556-52-5 | 2,3-Epoxy-1-propanol |
| 556-61-6 | Methyl isothiocyanate |
| 556-64-9 | Methyl thiocyanate |
| 557-19-7 | Nickel cyanide |
| 557-21-1 | Zinc cyanide |
| 557-34-6 | Zinc acetate |
| 557-41-5 | Zinc formate |
| 558-25-8 | Methanesulfonyl fluoride |
| 563-12-2 | Ethion |
| 563-41-7 | Semicarbazide hydrochloride |
| 563-68-8 | Thallium (I) acetate |
| 563-68-8 | Thallium (I) acetic acid, salt |
| 569-64-2 | C.I. Basic Green 4 |
| 573-56-8 | 2,6-Dinitrophenol |
| 578-94-9 | Phenarsazine chloride |
| 584-84-9 | Toluene-2,4-diisocyanate |
| 591-08-2 | 1-Acetyl-2-thiourea |
| 591-08-2 | N-Aminothioxomethyl acetamide |
| 592-01-8 | Calcium cyanide |
| 592-04-1 | Mercuric cyanide |
| 592-85-8 | Mercuric thiocyanate |
| 592-87-0 | Lead thiocyanate |
| 594-42-3 | Perchloromethylmercaptan |
| 594-42-3 | Trichloromethanesulfenyl chloride |
| 597-64-8 | Tetraethyltin |
| 598-31-2 | Bromoacetone |
| 606-20-2 | Benzene, 1-methyl-2,6-dintro- |
| 606-20-2 | 2,6-Dinitrotoluene |
| 606-73-1 | Hexachlorocyclohexane (all isomers) |
| 608-73-1 | BHC |
| 608-93-5 | Pentachlorobenzene |
| 609-19-8 | 3,4,5-Trichlorophenol |
| 610-39-9 | 3,4-Dinitrotoluene |
| 614-78-8 | Thiourea, (2-methylphenyl)- |
| 615-05-4 | 2,4-Diaminoanisole |
| 615-53-2 | Carbamic acid, methylnitroso-, ethyl ester |
| 615-53-2 | N-Nitroso-N-methylurethane |
| 616-23-9 | n-,2,3 Dichloropropanol |
| 621-64-7 | Di-n-propylnitrosamine |
| 621-64-7 | N-Nitrosodi-n-propylamine |
| 624-83-9 | Isocyanic acid, methylester |
| 624-83-9 | Methane, isocyanato- |
| 624-83-9 | Methyl isocyanate |
| 625-16-1 | tert-Amyl acetate |
| 626-38-0 | sec-Amyl acetate |
| 627-11-2 | Chloroethyl chloroformate |
| 628-63-7 | Amyl acetate |
| 628-86-4 | Fulminic acid, mercury(II) salt |
| 628-86-4 | Mercury fulminate |
| 630-10-4 | Selenourea |
| 630-20-6 | 1,1,1,2- Tetrachloroethane |
| 630-60-4 | Ouabain |
| 631-61-8 | Ammonium acetate |
| 636-21-5 | Benzenamine, 2-methyl- hydrochloride |
| 636-21-5 | o-Toluidine hydrochloride |
| 639-58-7 | Triphenyltin chloride |
| 640-19-7 | Fluoroacetamide |
| 644-64-4 | Dimetilan |
| 675-14-9 | Cyanuric fluoride |
| 676-97-1 | Methyl phosphonic dichloride |
| 680-31-9 | Hexamethylphosphoramide |
| 684-93-5 | Carbamide, N-methyl-N-nitroso- |
| 684-93-5 | N-Nitroso-N-methylurea |
| 684-93-5 | Urea, N-methyl-N-nitroso- |
| 692-42-2 | Diethylarsine |
| 696-28-6 | Arsonous dichloride, phenyl- |
| 696-28-6 | Dichlorophenylarsine |
| 696-28-6 | Phenyl dichloroarsine |
| 732-11-6 | Phosmet |
| 757-58-4 | Hexaethyl tetraphosphate |
| 757-58-4 | Tetraphosphoric acid, hexaethyl ester |
| 759-73-9 | Carbamide, N-ethyl-N-nitroso- |
| 759-73-9 | N-Nitroso-N-ethylurea |
| 759-73-9 | Urea, N-ethyl-N-nitroso- |
| 760-93-0 | Methacrylic anhydride |
| 764-41-0 | 1,4-Dichloro-2-butene |
| 765-34-4 | Glycidylaldehyde |
| 765-34-4 | Oxiranecarboxyal dehyde |
| 786-19-6 | Carbophenothion |
| 814-49-3 | Diethyl chlorophosphate |
| 814-68-6 | Acrylyl chloride |
| 815-82-7 | Cupric tartrate |
| 823-40-5 | Benzenediamine, ar-methyl- |
| 823-40-5 | Toluenediamine |
| 824-11-3 | Trimethylolpropane phosphite |
| 842-07-9 | C.I. Solvent Yellow 14 |
| 900-95-8 | Stannane, acetoxytriphenyl- |
| 919-86-8 | Methyl demeton |
| 920-46-7 | Methacryloyl chloride |
| 924-16-3 | N-Nitrosodi-n-butylamine |
| 930-55-2 | N-Nitrosopyrrolidine |
| 930-55-2 | Pyrrolidine, 1-nitroso- |
| 933-75-5 | 2,3,6-Trichlorophenol |
| 933-78-8 | 2,3,5-Trichlorophenol |
| 944-22-9 | Fonofos |
| 947-02-4 | Phosfolan |
| 950-10-7 | Mephosfolan |
| 950-37-8 | Methidathion |
| 959-98-8 | alpha-Endosulfan |
| 961-11-5 | Tetrachlorvinphos |
| 989-38-8 | C.I. Basic Red 1 |
| 991-42-4 | Norbormide |
| 998-30-1 | Triethoxysilane |
| 999-81-5 | Chlormequat chloride |
| 1024-57-3 | Heptachlor epoxide |
| 1031-07-8 | Endosulfan sulfate |
| 1031-47-6 | Triamiphos |
| 1066-30-4 | Chromic acetate |
| 1066-33-7 | Ammonium bicarbonate |
| 1066-45-1 | Trimethyltin chloride |
| 1072-35-1 | Lead stearate |
| 1111-78-0 | Ammonium carbamate |
| 1113-38-8 | Ammonium oxalate |
| 1116-54-7 | Ethanol, 2,2'-(nitrosoimino)bis- |
| 1116-54-7 | N-Nitrosodiethanolamine |
| 1120-71-4 | 1,2-Oxathiolane, 2,2-dioxide |
| 1120-71-4 | 1,3-Propane sultone |
| 1122-60-7 | Nitrocyclohexane |
| 1124-33-0 | Pyridine, 4-nitro-, 1-oxide |
| 1129-41-5 | Metolcarb |
| 1163-19-5 | Decabromodiphenyl oxide |
| 1185-57-5 | Ferric ammoniom citrate |
| 1194-65-6 | Dichlobenil |

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1300-71-6 Xylenol
1303-28-2 Arsenic pentoxide
1303-32-8 Arsenic disulfide
1303-33-9 Arsenic trisulfide
1303-36-2 Arsenic (III) oxide
1306-19-0 Cadmium oxide
1309-64-4 Antimony trioxide
1310-58-3 Potassium hydroxide
1310-73-2 Sodium hydroxide
1313-27-5 Molybdenum trioxide
1313-82-8 Sodium sulfide
1314-20-1 Thorium dioxide
1314-32-5 Thallic oxide
1314-32-5 Thallium oxide
1314-56-3 Phosphorus pentoxide
1314-62-1 Vanadium oxide
1314-62-1 Vanadium pentoxide
1314-64-3 Uranyl sulfate
1314-80-3 Phosphorus pentasulfide
1314-80-3 Phosphorus sulfide
1314-80-3 Sulfur phosphide
1314-84-7 Zinc phosphide
1314-84-7 Zinc phosphide, when present at concentration greater than 10 percent
1314-87-0 Lead sulfide
1314-96-1 Strontium sulfide
1319-72-8 2,4,5-T amines
1319-77-3 Cresol(s)
1319-77-3 Cresol (mixed isomers)
1319-77-3 Phenol, methyl-
1320-18-9 2,4-D Esters
1321-12-6 Nitrotoluene
1327-53-3 Arsenic trioxide
1330-20-7 Xylene
1330-20-7 Xylene (mixed isomers)
1330-20-7 Xylenes
1332-07-6 Zinc borate
1332-21-4 Asbestos
1333-82-0 Chromic acid
1333-83-1 Sodium bifluoride
1335-32-6 Lead, bis(acetato-O)tetrahydroxytn-
1335-32-6 Lead subacetate
1335-87-1 Hexachloronaphthalene
1336-21-6 Ammonium hydroxide
1336-36-3 Polychlorinated biphenyls (PCBs)
1338-23-4 2-Butanone peroxide
1338-23-4 Methyl ethyl ketone peroxide
1338-24-5 Naphthenic acid
1341-49-7 Ammonium bifluoride
1344-28-1 Aluminum oxide
1397-94-0 Antimycin A
1420-07-1 Dinoterb
1464-53-5 2,2′-Bloxirane
1464-53-5 1,2:3,4-Diepoxybutane
1464-53-5 Diepoxybutane
1558-25-4 Trichloro(chloromethyl)silane
1563-66-2 Carbofuran
1582-09-8 Trifluralin
1596-84-5 Alar
1596-84-5 Daminozide
1600-27-7 Mercuric acetate
1615-80-1 N,N′-Diethylhydrazine
1622-32-8 Ethanesulfonyl chloride, 2-chloro-
1634-04-4 Methyl tert-butyl ether
1642-54-2 Diethylcarbamazine citrate
1689-84-5 Bromoxynil
1713-15-1 2,4-D mixed isobutyl esters
1746-01-6 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
1752-30-3 Acetone thiosemicarbazide
1762-95-4 Ammonium thiocyanate
1836-75-5 Nitrofen
1836-75-5 TOK ***(2,4 dichlorophenyl-p-nitrophenyl)***
1863-63-4 Ammonium benzoate
1888-71-7 Hexachloropropene
1897-45-6 Chlorothalonil
1910-42-5 Paraquat
1918-00-9 Dicamba
1928-38-7 2,4-D Esters
1928-38-7 2,4-D Methyl ester
1928-43-4 2,4-D 2-ethylhexyl ester ***(conc. above 20%)***
1928-45-6 2,4-D, Propylene glycol butyl ether esters ***(conc. above 20%)***
1928-47-8 2,4,5-T esters
1928-61-6 2,4-D Esters
*[1929-73-3]*
1929-73-3 2,4-*[d]***D*** butoxyethanol ester ***(conc. above 20%)***
1937-37-7 C.I. Direct Black 38
1982-47-4 Chloroxuron
2001-95-8 Valinomycin
2008-39-1 2,4-D Dimethylamine salt ***(conc. above 20%)***
2008-46-0 2,4,5-T amines
2032-65-7 Mercaptodimethur
2032-65-7 Methiocarb
2074-50-2 Paraquat methosulfate
2097-19-0 Phenylsilatrane
2104-64-5 EPN
2164-17-2 Fluometuron
2223-93-0 Cadmium stearate
2231-57-4 Thiocarbazide
2234-13-1 Octachloronaphthalene
2238-07-5 Diglycidyl ether
2275-18-5 Prothoate
2303-16-4 Di-allate
2303-16-4 S-(2,3-Dichloroallyl) diisopropylthiocarbamate
***2310-17-0 Phosalone *(conc. above 12%)***
2312-35-8 Propargite
2385-85-5 Mirex
2497-07-6 Oxydisulfoton
2524-03-0 Dimethyl phosphorochloridothioate
2540-82-1 Formothion
2545-59-7 2,4,5-T esters
2570-26-5 Pentadecylamine
2587-90-8 Phosphorothioic acid, 0,0-dimethyl-5-(2-(methylthio) ethyl)es
2602-46-2 C.I. Direct Blue 6
2631-37-0 Promecarb
2636-26-2 Cyanophos
2642-71-9 Azinphos-ethyl
2665-30-7 Phosphonothioic acid, methyl-, 0-(4-nitrophenyl) 0-phenyl es
2702-72-9 2,4-D Sodium salt ***(conc. above 20%)***
2703-13-1 Phosphonothioic acid, methyl-, 0-ethyl 0-(4-(methylthio)phen
2757-18-8 Thallous malonate
2763-96-4 5-(Aminomethyl)-3-isoxazolol
2763-96-4 3(2H)-isoxazolone, 5-(aminomethyl)-
2763-96-4 Muscimol
2778-04-3 Endothion
2832-40-8 C.I. Disperse Yellow 3
2921-88-2 Chlorpyrifos
2939-80-2 Captafol
2944-67-4 Ferric ammonium oxalate
2971-38-2 2,4-D Esters
3012-65-5 Ammonium citrate, dibasic
3037-72-7 Silane, (4-aminobutyl)diethoxymethyl-
3118-97-6 C.I. Solvent Orange 7
3164-29-2 Ammonium tartrate
3165-93-3 Benzenamine, 4-chloro- 2-methyl-, hydrochloride
3165-93-3 4-Chloro-o-toluidine hydrochloride
3251-23-8 Cupric nitrate
3254-63-5 Phosphoric acid, dimethyl 4-(methylthio) phenyl ester
3288-58-2 0,0-Diethyl S-methyl dithiophosphate

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| | |
|---|---|
| 3486-35-9 | Zinc carbonate |
| 3569-57-1 | Sulfoxide, 3-chloropropyl octyl |
| 3615-21-2 | Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)- |
| 3689-24-5 | Sulfotep |
| 3689-24-5 | Tetraethyldithiopyrophosphate |
| 3689-24-5 | Thiodiphosphoric acid, tetraethyl ester |
| 3691-35-8 | Chlorophacinone |
| 3734-97-2 | Amiton oxalate |
| 3735-23-7 | Methyl phenkapton |
| 3761-53-3 | C.I. Food Red 5 |
| 3813-14-7 | 2,4,5-T amines |
| 3861-41-4 | Bromoxynil butyrate |
| 3878-19-1 | Fuberidazole |
| 4044-65-9 | Bitoscanate |
| 4098-71-9 | Isophorone diisocyanate |
| 4104-14-7 | Phosacetim |
| 4170-30-3 | 2-Butenel |
| 4170-30-3 | Crotonaldehyde |
| 4301-50-2 | Fluenetil |
| 4418-66-0 | Phenol, 2,2′-thiobis[4-chloro-6-methyl- |
| 4549-40-0 | N-Nitrosomethylvinylamine |
| 4680-78-8 | C.I. Acid Green 3 |
| 4835-11-4 | Hexamethylenediamine, N,N′-dibutyl- |
| 5344-82-1 | 1-(o-Chlorophenyl)thiourea |
| 5836-29-3 | Coumatetralyl |
| 5893-66-3 | Cupric oxalate |
| 6164-98-3 | Chlordimeform |
| 6369-96-6 | 2,4,5-T amines |
| 6369-97-7 | |
| 6484-52-2 | Ammonium nitrate |
| 6484-52-2 | Ammonium nitrate (solution) |
| 6533-73-9 | Carbonic acid, dithallium(I) salt |
| 6533-73-9 | Thallium(I) carbonate |
| 6533-73-9 | Thallous carbonate |
| 6923-22-4 | Monocrotophos |
| 7005-72-3 | 4-Chlorophenyl phenyl ether |
| 7421-93-4 | Endrin aldehyde |
| 7428-48-0 | Lead stearate |
| 7429-90-5 | Aluminum (fume or dust) |
| 7439-92-1 | Lead |
| 7439-96-5 | Manganese |
| 7439-97-6 | Mercury |
| 7439-97-6 | Mercury compounds |
| 7440-02-0 | Nickel |
| 7440-22-4 | Silver |
| 7440-23-5 | Sodium |
| 7440-28-0 | Thallium |
| 7440-36-0 | Antimony |
| 7440-38-2 | Arsenic |
| 7440-38-2 | Inorganic arsenic |
| 7440-39-3 | Barium |
| 7440-41-7 | Beryllium |
| 7440-41-7 | Beryllium compounds |
| 7440-41-7 | Beryllium dust |
| 7440-43-9 | Cadmium |
| 7440-43-9 | Cadmium products |
| 7440-47-3 | Chromium |
| 7440-48-4 | Cobalt |
| 7440-50-8 | Copper |
| 7440-62-2 | Vanadium (fume or dust) |
| 7440-66-6 | Zinc ***(fume or dust)*** |
| 7446-08-4 | Selenium dioxide |
| 7446-08-4 | Selenium oxide |
| 7446-09-5 | Sulfur dioxide |
| 7446-11-9 | Sulfur trioxide |
| 7446-14-2 | Lead sulfate |
| 7446-18-6 | Sulfuric acid, dithallium(1+) salt |
| 7446-18-6 | Sulfuric acid, thallium(I) salt |
| 7446-18-6 | Thallium sulfate |
| 7446-18-6 | Thallous sulfate |
| 7446-27-7 | Lead phosphate |
| 7446-27-7 | Phosphoric acid, lead salt |
| 7446-34-6 | Sulfur selenide |
| 7447-39-4 | Cupric chloride |
| 7487-94-7 | Mercuric chloride |
| 7488-56-4 | Selenium disulfide |
| 7488-56-4 | Selenium sulfide |
| 7550-45-0 | Titanium tetrachloride |
| 7558-79-4 | Sodium phosphate, dibasic |
| 7580-67-8 | Lithium hydride |
| 7601-54-9 | Sodium phosphate, tribasic |
| 7631-89-2 | Sodium arsenate |
| 7631-90-5 | Sodium bisulfite |
| 7632-00-0 | Sodium nitrite |
| 7637-07-2 | Boron trifluoride |
| 7646-85-7 | Zinc chloride |
| 7647-01-0 | Hydrochloric acid |
| 7647-01-0 | Hydrogen chloride |
| 7647-18-9 | Antimony pentachloride |
| 7664-38-2 | Phosphoric acid |
| 7664-39-3 | Hydrofluoric acid |
| 7664-39-3 | Hydrogen fluoride |
| 7664-41-7 | Ammonia |
| 7664-93-9 | Sulfuric acid |
| 7681-49-4 | Sodium fluoride |
| 7681-52-9 | Sodium hypochlorite |
| 7697-37-2 | Nitric acid |
| 7699-45-8 | Zinc bromide |
| 7705-08-0 | Ferric chloride |
| 7718-54-9 | Nickel chloride |
| 7719-12-2 | Phosphorus trichloride |
| 7720-78-7 | Ferrous sulfate |
| 7722-64-7 | Potassium permanganate |
| 7722-84-1 | Hydrogen peroxide (Conc. 52%) |
| 7723-14-0 | Phosphorus |
| 7726-95-6 | Bromine |
| 7727-54-0 | Ammonium persulfate |
| 7733-02-0 | Zinc sulfate |
| 7758-94-3 | Ferrous chloride |
| 7758-95-4 | Lead chloride |
| 7758-98-7 | Cupric sulfate |
| 7761-88-8 | Silver nitrate |
| 7773-06-0 | Ammonium sulfamate |
| 7775-09-9 | Sodium chlorate ***(conc. above 7%)*** |
| 7775-11-3 | Sodium chromate |
| 7778-39-4 | Arsenic acid |
| 7778-44-1 | Calcium arsenate |
| 7778-50-9 | Potassium bichromate |
| 7778-54-3 | Calcium hypochlorite |
| 7779-86-4 | Zinc hydrosulfite |
| 7779-88-6 | Zinc nitrate |
| 7782-41-4 | Fluorine |
| 7782-49-2 | Selenium |
| 7782-50-5 | Chlorine |
| 7783-00-8 | Selenious acid |
| 7783-06-4 | Hydrogen sulfide |
| 7783-07-5 | Hydrogen selenide |
| 7783-18-8 | Ammonium thiosulfate |
| 7783-20-2 | Ammonium sulfate (solution) |
| 7783-35-9 | Mercuric sulfate |
| 7783-46-2 | Lead fluoride |
| 7783-47-3 | Stannous fluoride |
| 7783-49-5 | Zinc fluoride |
| 7783-50-8 | Ferric fluoride |
| 7783-56-4 | Antimony trifluoride |
| 7783-60-0 | Sulfur tetrafluoride |
| 7783-70-2 | Antimony pentafluoride |
| 7783-80-4 | Tellurium hexafluoride |
| 7784-34-1 | Arsenous trichloride |
| 7784-41-0 | Potassium arsenate |
| 7784-42-1 | Arsine |
| 7784-46-5 | Sodium arsenite |

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|---|---|
| 7786-34-7 | Mevinphos |
| 7786-81-4 | Nickel sulfate |
| 7787-47-5 | Beryllium chloride |
| 7787-49-7 | Beryllium fluoride |
| 7788-98-9 | Ammonium chromate |
| 7789-00-6 | Potassium chromate |
| 7789-06-2 | Strontium chromate |
| 7789-09-5 | Ammonium bichromate |
| 7789-42-6 | Cadmium bromide |
| 7789-43-7 | Cobaltous bromide |
| 7789-61-9 | Antimony tribromide |
| 7790-94-5 | Chlorosulfonic acid |
| 7791-12-0 | Thallium chloride |
| 7791-12-0 | Thallous chloride |
| 7791-23-3 | Selenium oxychloride |
| 7803-49-8 | Hydroxylamine |
| 7803-51-2 | Hydrogen phosphide |
| 7803-51-2 | Phosphine |
| 7803-55-6 | Ammonium vanadate |
| 7803-55-6 | Vanadic acid, ammonium salt |
| 7803-65-8 | Ammonium hypophosphite |
| 8001-35-2 | Camphechlor |
| 8001-35-2 | Camphene, octachloro- |
| 8001-35-2 | Toxaphene |
| 8001-50-1 | Strobane |
| 8001-58-9 | Creosote |
| 8003-19-8 | Dichloropropene-Dichloropropene (mixture) |
| 8003-34-7 | Pyrethrins |
| 8065-48-3 | Demeton |
| 9004-66-4 | Ferric dextran |
| 9004-66-4 | Iron dextran |
| 10025-73-7 | Chromic chloride |
| 10025-87-3 | Phosphorus oxychloride |
| 10025-91-9 | Antimony trichloride |
| 10026-11-6 | Zirconium tetrachloride |
| 10026-13-8 | Phosphorus pentachloride |
| 10028-15-6 | Ozone |
| 10028-22-5 | Ferric sulfate |
| 10031-59-1 | Sulfuric acid, dithallium(1+) salt |
| 10031-59-1 | Thallium sulfate |
| 10034-93-2 | Hydrazine sulfate |
| 10043-01-3 | Aluminum sulfate |
| 10045-89-3 | Ferrous ammonium sulfate |
| 10045-94-0 | Mercuric nitrate |
| 10049-04-4 | Chlorine dioxide |
| 10049-05-5 | Chromous chloride |
| 10099-74-8 | Lead nitrate |
| 10101-53-8 | Chromic sulfate |
| 10101-63-0 | Lead iodide |
| 10102-18-8 | Sodium selenite |
| 10102-20-2 | Sodium tellurite |
| 10102-43-9 | Nitric oxide |
| 10102-43-9 | Nitrogen oxide |
| 10102-44-0 | Nitrogen dioxide |
| 10102-45-1 | Nitric acid, thallium(1+) salt |
| 10102-45-1 | Thallium(I) nitrate |
| 10102-48-4 | Lead arsenate |
| 10103-61-4 | Copper arsenate |
| 10108-64-2 | Cadmium chloride |
| 10124-50-2 | Potassium arsenite |
| 10140-87-1 | Ethanol, 1,2-dichloro-, acetate |
| 10192-30-0 | Ammonium bisulfite |
| 10196-04-0 | Ammonium sulfite |
| 10210-68-1 | Cobalt carbonyl |
| 10265-92-6 | Methamidophos |
| 10294-34-5 | Boron trichloride |
| 10311-84-9 | Dialifor |
| 10380-29-7 | Cupric sulfate, ammoniated |
| 10415-75-5 | Mercurous nitrate |
| 10421-48-4 | Ferric nitrate |
| 10476-95-6 | Methacrolein diacetate |
| 10544-72-6 | Nitrogen oxide NO2 |
| 10588-01-9 | Sodium bichromate |
| 11096-82-5 | Aroclor 1260 |
| 11096-82-5 | Polychlorinated biphenyls (PCBs) |
| 11097-69-1 | Aroclor 1254 |
| 11097-69-1 | Polychlorinated biphenyls (PCBs) |
| 11104-28-2 | Aroclor 1221 |
| 11104-28-2 | Polychlorinated biphenyls (PCBs) |
| 11141-16-5 | Aroclor 1232 |
| 11141-16-5 | Polychlorinated biphenyls (PCBs) |
| 12002-03-8 | Cupric acetoarsenite |
| 12002-03-8 | Paris green |
| 12036-02-1 | Osmium oxide |
| 12039-52-0 | Selenious acid, dithallium(1+) salt |
| 12039-52-0 | Thallium(I) selenide |
| 12039-52-0 | Thallium selenite |
| 12054-48-7 | Nickel hydroxide |
| 12108-13-3 | Manganese, tricarbonyl methylcyclopentadienyl |
| 12122-67-7 | Zineb |
| 12125-01-8 | Ammonium fluoride |
| 12125-02-9 | Ammonium chloride |
| 12135-76-1 | Ammonium sulfide |
| 12427-38-2 | Maneb |
| 12672-29-6 | Aroclor 1248 |
| 12672-29-6 | Polychlorinated biphenyls (PCBs) |
| 12674-11-2 | Aroclor 1016 |
| 12674-11-2 | Polychlorinated biphenyls (PCBs) |
| 12771-08-3 | Sulfur monochloride |
| 13071-79-9 | Terbufos |
| 13121-70-5 | Cyhexatin |
| 13171-21-6 | Phosphamidon |
| 13194-48-4 | Ethoprophos |
| 13410-01-0 | Sodium selenate |
| 13450-90-3 | Gallium trichloride |
| 13463-39-3 | Nickel carbonyl |
| 13463-39-3 | Nickel tetracarbonyl |
| 13463-40-6 | Iron, pentacarbonyl- |
| 13494-80-9 | Tellurium |
| 13560-99-1 | 2,4,5-T salts |
| 13597-99-4 | Beryllium nitrate |
| 13746-89-9 | Zirconium nitrate |
| 13765-19-0 | Calcium chromate |
| 13765-19-0 | Chromic acid, calcium salt |
| 13814-96-5 | Lead fluoborate |
| 13826-83-0 | Ammonium fluoborate |
| 13952-84-6 | sec-Butylamine |
| 14017-41-5 | Cobaltous sulfamate |
| 14167-18-1 | Salcomine |
| 14216-75-2 | Nickel nitrate |
| 14307-35-8 | Lithium chromate |
| 14639-97-5 | Zinc ammonium chloride |
| 14639-98-6 | |
| 14644-61-2 | Zirconium sulfate |
| 15271-41-7 | Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-((((methyla |
| 15699-18-0 | Nickel ammonium sulfate |
| 15950-66-0 | 2,3,4-Trichlorophenol |
| 15972-60-8 | Alachlor |
| 16071-86-6 | C.I. Direct Brown 95 |
| 16543-55-8 | N-Nitrosonornicotine |
| 16721-80-5 | Sodium hydrosulfide |
| 16752-77-5 | Methomyl |
| 16871-71-9 | Zinc silicofluoride |
| 16919-19-0 | Ammonium silicofluoride |
| 16923-95-8 | Zirconium potassium fluoride |
| 17702-41-9 | Decaborane(14) |
| 17702-57-7 | Formparanate |
| 17804-35-2 | Benomyl |
| 18883-66-4 | Streptozotocin |
| 19287-45-7 | Diborane |
| 19525-15-6 | Uranium peroxide |

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| | |
|---|---|
| 19624-22-7 | Pentaborane |
| 20816-12-0 | Osmium oxide (T-4)- |
| 20816-12-0 | Osmium tetroxide |
| 20830-75-5 | Digoxin |
| 20830-81-3 | Daunomycin |
| 20859-73-8 | Aluminum phosphide |
| 21548-32-3 | Fosthietan |
| 21609-90-5 | Leptophos |
| 21725-46-2 | Cyanazine |
| 21908-53-2 | Mercuric oxide |
| 21923-23-9 | Chlorthiophos |
| 22224-92-6 | Fenamiphos |
| 22781-23-3 | Bendiocarb ***(conc. above 15%)***** |
| 23103-98-2 | Pirimicarb ***(conc. above 15%)***** |
| 23135-22-0 | Oxamyl |
| 23422-53-9 | Formetanate hydrochloride |
| 23505-41-1 | Pirimifos-ethyl |
| 23950-58-5 | 3,5-Dichloro-N (1,1-dimethyl-2-propynyl) benzamide |
| 23950-58-5 | Pronamide |
| 24017-47-8 | Triazofos |
| 24934-91-6 | Chlormaphos |
| 25154-54-5 | Dinitrobenzene (mixed isomers) |
| 25154-55-6 | Nitrophenol (mixed isomers) |
| 25155-30-0 | Sodium dodecylbenzenesulfonate |
| 25167-82-2 | Trichlorophenol |
| 25168-15-4 | 2,4,5-T esters |
| 25168-26-7 | 2,4-D Esters |
| 25168-26-7 | 2,4-D isooctyl ester ***(conc. above 20%)***** |
| 25321-14-6 | Dinitrotoluene |
| 25321-22-6 | Dichlorobenzene |
| 25321-22-6 | Dichlorobenzene (mixed isomers) |
| 25323-30-2 | Dichloroethylenes (mixture) |
| 25376-45-8 | Benzenediamine, ar-methyl- |
| 25376-45-8 | Diaminotoluene (mixed isomers) |
| 25376-45-8 | Toluenediamine |
| 25550-58-7 | Dinitrophenol |
| 26264-06-2 | Calcium dodecylbenzenesul fonate |
| 26419-73-8 | Carbamic acid, methyl-, O-(((2,4-dimethyl-1, 3-dithiolan-2-y |
| 26628-22-8 | Sodium azide |
| 26638-19-7 | Dichloropropane |
| 26952-23-8 | Dichloropropene(s) |
| 27137-85-5 | Trichloro(dichlorophenyl)silane |
| 27176-87-0 | Dodecylbenzenesulfonic acid |
| 27323-41-7 | Triethanolamine dodecylbenzene sulfonate |
| 27774-13-6 | Vanadyl sulfate |
| 28300-74-5 | Antimony potassium tartrate |
| 28347-13-9 | Xylylene dichloride |
| 28772-56-7 | Bromadiolone |
| 30525-89-4 | Paraformaldehyde |
| 30674-80-7 | Methacryloyloxyethyl isocyanate |
| 32534-95-5 | 2,4,5-TP esters |
| 32976-88-8 | 2,4-Dithiobiuret |
| 33089-61-1 | Amitraz |
| 33213-65-9 | beta-Endosulfan |
| 36478-76-9 | Uranyl nitrate |
| 39156-41-7 | 2,4-Diaminoanisole sulfate |
| 39196-18-4 | 2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[methylamino) carbonyl] oxime |
| 39196-18-4 | 3,3-Dimethyl-1-(methylthio-2-butanone, O-[(methylamino) carbonyl] oxime |
| 39196-18-4 | Thiofanox |
| 39300-45-3 | Dinocap |
| 42504-46-1 | Isopropanolamine dodecylbenzene sulfonate |
| 42874-03-3 | Oxyfluorfen |
| 50782-69-9 | Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl) amino |
| 52628-25-8 | Zinc ammonium chloride |
| 52652-59-2 | Lead stearate |
| 52740-16-6 | Calcium arsenite |
| 53467-11-1 | 2,4-D Esters |
| 53469-21-9 | Aroclor 1242 |
| 53469-21-9 | Polychlorinated biphenyls (PCBs) |
| 53558-25-1 | Pyriminil |
| 55488-87-4 | Ferric ammonium oxalate |
| 56073-10-0 | Brodifacoum ***(conc. above 0.005%)***** |
| 56189-09-4 | Lead stearate |
| 5742-19-18 | 2,4-D Diethanolamine salt ***(conc. above 20%)***** |
| 58270-08-9 | Zinc, dichloro(4,4-dimethyl-5 ((((methylaminocarbonyl)oxy)im |
| 61792-07-2 | 2,4,5-T esters |
| 62207-76-5 | Cobalt, ((2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis(6- |

## APPENDIX B
## FINANCIAL FORMS

B.1 Letter from chief financial officer:

To support a financial test of self-insurance or a guarantee, the chief financial officer of the major facility or guarantor shall prepare and sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

### LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [name and address of the owner or operator, or guarantor]. This letter is in support of the use of ["the financial test of self-insurance" and/or "guarantee"] to demonstrate financial responsibility for taking corrective action caused by discharges in the amount of at least [dollar amount] per occurrence and [dollar amount] annual aggregate.

A ["financial test" and/or "guarantee"] is also used by this ["owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under the following EPA or State rules or regulations (i.e. RCRA, ECRA, UST, etc.):

[applicable rules or regulations and amounts]

This ["owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of N.J.A.C. 7:1E-4.5(g)1 based on tangible net worth are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria based on bond rating of N.J.A.C. 7:1E-4.5(g)2 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

| | | |
|---|---|---|
| 1. Amount of annual DCR aggregate coverage being assured by a financial test and/or guarantee | $ _____ | |
| 2. Amount of annual aggregate coverage for all other federal or State regulatory costs (i.e. RCRA, ECRA, UST, etc.) covered by a financial test, and/or guarantee | $ _____ | |
| 3. Sum of lines 1 and 2 | $ _____ | |
| 4. Total tangible assets | $ _____ | |
| 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] | $ _____ | |
| 6. Tangible net worth [subtract line 5 from line 4] | $ _____ | |
| | YES | NO |
| 7. Is line 6 at least $10 million? | ___ | ___ |
| 8. Is line 6 at least 10 times line 3? | ___ | ___ |
| | YES | NO |
| 9. Have financial statements for the latest fiscal year been filed with the Securities Exchange Commission? | ___ | ___ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | ___ | ___ |

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11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? ___ ___

12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met] ___ ___

ALTERNATIVE II

1. Amount of annual DCR aggregate coverage being assured by a financial test and/or guarantee $ _____

2. Amount of annual aggregate coverage for all other federal or State regulatory cost (i.e. RCRA, ECRA, UST, etc.) covered by a financial test, and/or guarantee $ _____

3. Sum of lines 1 and 2 $ _____

4. Total tangible assets $ _____

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] $ _____

6. Tangible net worth [subtract line 5 from line 4] $ _____

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] $ _____

| | YES | NO |
|---|---|---|
| 8. Is line 6 at least $10 million? | ___ | ___ |
| 9. Is line 6 at least 6 times line 3? | ___ | ___ |

| | YES | NO |
|---|---|---|
| 10. Are at least 90 percent of total assets located in the U.S.? [If "No", complete line 11.] | ___ | ___ |
| 11. Is line 7 at least 6 times line 3? | ___ | ___ |

[Fill in either lines 12-15 or lines 16-18:]

12. Current assets $ _____

13. Current liabilities $ _____

14. Net working capital [subtract line 13 from line 12] $ _____

| | YES | NO |
|---|---|---|
| 15. Is line 14 at least 6 times line 3? | ___ | ___ |

16. Current bond rating of most recent bond issue _____

17. Name of rating service _____

18. Date of maturity of bond _____

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? ___ ___

[If "No", please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

B.2 Guarantee:

The guarantee must be worded as follows, except that instructions in brackets are to ***be*** replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of New Jersey, herein referred to as guarantor, to the Department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

(1) Guarantor meets or exceeds the financial test criteria of N.J.A.C. 7:1E-4.5(g) and agrees to comply with the requirements for guarantors as specified in N.J.A.C. 7:1E-4.5(h).

(2) This guarantee satisfies the requirements for assuring funding in the amount of [dollar amount] per occurrence and [dollar amount] annual aggregate for taking corrective action caused by discharges arising from operating the above identified major facility.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or substantial business relationship with owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a discharge has occurred at a facility covered by this guarantee, the guarantor, upon instructions from the Department, shall fund a standby trust fund in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified in N.J.A.C. 7:1E-4.5(b).

In the event that the Department determines that [owner or operator] has failed to perform corrective action for discharges arising out of the operation of the above-identified facility, the guarantor, upon written instructions from the Department, shall fund a standby trust in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of N.J.A.C. 7:1E-4.5(g), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator] and the Department. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator] or 120 days from the date of receipt of the notice by the Department, whichever is later, as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alternation of any obligation of [owner or operator] pursuant to N.J.A.C. 7:1E.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of N.J.A.C. 7:1E-4.5 for the above-identified facility, except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator];

(c) Bodily injury or property damage not related to a discharge arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a discharge from the facility;

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(e) Bodily damage or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.5.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix B of N.J.A.C. 7:1E as such rules were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]

Signature of witness or notary: _____

B.3 Insurance or risk retention group:

Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

NAME: [name of each covered location]

ADDRESS: [address of each covered location]

POLICY NUMBER: _____

PERIOD OF COVERAGE: [current policy period]

NAME OF [INSURER OR RISK RETENTION GROUP]:

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:

NAME OF INSURED: _____

ADDRESS OF INSURED: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following facility: [name and address of the facility] for taking corrective action caused by discharges.

The limits of liability are [insert the dollar amount of the "per occurrence" and "annual aggregate" limits of the Insurer's or Group's liability], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

c. Whenever requested by the Department, ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured or 60 days after a copy of such written notice is received by the Department, whichever is later.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in New Jersey".]

[Signature of authorized representative of Insurer or Risk Retention Group]
[Name of person signing]
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(2) CERTIFICATE OF INSURANCE

NAME: [name of each covered location]

ADDRESS: [address of each covered location]

POLICY NUMBER: _____

ENDORSEMENT (if applicable): _____

PERIOD OF COVERAGE: [current policy period]

NAME OF [INSURER OR RISK RETENTION GROUP]:

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:

NAME OF INSURED: _____

ADDRESS OF INSURED: _____

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following facility: [List the name and address of the facility] for taking corrective action caused by dis-

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charges arising from operating the facility identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

c. Whenever requested by the Department, the [Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured or 60 days after a copy of such written notice is received by the Department, whichever is later.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in the State"].

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name Insurer or Risk Retention Group]
[Address of Representative]

B.4 Surety Bond:

The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

DATE BOND EXECUTED: _____

PERIOD OF COVERAGE: _____

PRINCIPAL: [legal name and business address of [owner or operator]

TYPE OF ORGANIZATION: [insert "individual," "joint venture," "partnership," or "corporation"]

STATE OF INCORPORATION (If Applicable): _____

SURETY(IES): [name(s) and business address(es)]

SCOPE OF COVERAGE: [List the name and address of the facility. List the coverage guaranteed by the bond: taking corrective action caused by discharges.]

PENAL SUMS OF BOND: Per occurrence $ _____
Annual aggregate $ _____

SURETY'S BOND NUMBER: _____

Know all Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under N.J.S.A. 58:10-23.11 to provide financial assurance for taking corrective action caused by discharges arising from operating the facility identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully take corrective action caused by discharges arising from operating the facility identified above, or if the Principal shall provide alternate financial assurance within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator];

(c) Bodily injury or property damage not related to a discharge arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a discharge from the facility;

(e) Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.5.

Upon notification by the Department that the Principal has failed to take corrective action in accordance with the Department's instructions, as guaranteed by this bond, the Surety(ies) shall either perform corrective action in accordance with the Department's instructions, or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a discharge has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Department.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the 120

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days beginning on the date of receipt of the notice of cancellation by the Principal or the date of receipt of the notice of cancellation by the Department, whichever is later, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix B of N.J.A.C. 7:1E as such rules were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name And address] _____
State of Incorporation:
Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

B.5 Letter of Credit:

The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]
[Name and address of the Department]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[dollar amount]), available upon presentation of:

(1) your sight draft, bearing reference to this letter of credit, No._____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to rules issued under authority of the Spill Compensation and Control Act, and that this letter of credit is not being drawn on to cover any of the following:

(a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or operator];

(c) Bodily injury or property damage not related to a discharge arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [owner or operator] that is not the direct result of a discharge from the facility;

(e) Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of N.J.A.C. 7:1E-4.5."

This letter of credit may be drawn on to cover taking corrective action caused by discharges arising from operating the facility identified below in the amount of [in words] $ [dollar amount] per occurrence and [in words] $ [dollar amount] annual aggregate.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] and the Department by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator] or for 120 days after the date of receipt by the Department, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to ["the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

*[APPENDIX C

DATA DICTIONARY
ENTRY FORM 1

LAYER NAME: | | | | | | | |
| | | | |

COVERAGE NAME: | | | | | | | |

DATA DESCRIPTION: | | | | | | | |
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| | | | | | | | |
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AGENCY RESPONSIBLE: | | | | | | | |
| | | | |

CONTACTS:

NAMES: | | | | | | | |
| | | | | | | | |
| | | | | | | | |

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AGENCY:

STREET ADDRESS:

CITY:

STATE: ZIP CODE:

TELEPHONE:

MAP INFORMATION:

MANUSCRIPT:

SCALE:

MATERIAL:

PROJECTION:

COORDINATE SYSTEM:

DATA SOURCE:

MAP DATE:

SOURCE DATE:

MAPPING METHODOLOGY AND MAPPING SOURCES:

MAPPING CRITERIA:

DEGREE OF ACCURACY:

AREA OF COVERAGE:

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ATTRIBUTES:

KEY FIELD: (UNIQUE ID):

ADDITIONAL ATTRIBUTES: ____Y/N

SOURCE OF ATTRIBUTES:

RELATED DATA: FILES:

COMPUTERIZATION:

DATE OF AUTOMATION:

RESIDENT HARDWARE/ SOFTWARE:

AUTOMATION METHODS:

PRODUCTION STAFF:

TELEPHONE:

STATUS:

UPDATE SCHEDULE:

UPDATE RESPONSIBILITY:

DATA FORMAT:

MEDIA:

QUALITY ASSURANCE:

CARTOGRAPHIC QUALITY:

ATTRIBUTE QUALITY:

CONFIDENTIALITY:

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DATA USE LIMITATIONS:

COMMENTS:

DATA DICTIONARY
ITEM DESCRIPTION FORM

LAYER NAME:

ITEM NAME:

ITEM DESCRIPTION:

ITEM NAME:

ITEM DESCRIPTION:

ITEM NAME:

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ITEM DESCRIPTION:

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ITEM DESCRIPTION:

DATA DICTIONARY
ITEM CODE DESCRIPTION FORM

LAYER NAME:

ITEM NAME:

ITEM CODE NAME:

ITEM DESCRIPTION:

ITEM NAME:

ITEM CODE NAME:

ITEM DESCRIPTION:

ITEM NAME:

ITEM CODE NAME:

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ITEM DESCRIPTION:

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**DATA DICTIONARY SURVEY INFORMATION**

| | |
|---|---|
| Layer Name: | Gives the data layer name of the data set |
| Coverage Name: | Gives the data set is known on its host system (e.g. soils data) |
| Data Description /Definition: | Gives a complete description of the contents of the data set (e.g. existing land use/ land cover in 88 Anderson Level II categories for Camden County). |
| Agency Responsible: | Entity responsible for the creation update of the data. |

CONTACTS:

| | |
|---|---|
| Names: | Name of Contact Person(s) |
| Agency: | Contact person's agency or company—including division |
| Street Address: | |
| City: | Contact's city |
| Zip Code: | Contact's zip & (4 code) |
| Phone: | Contact's telephone number |

MAP INFORMATION

| | |
|---|---|
| Manuscript: | Base map that geographic information was automated from (e.g. USGS quads, county map, project maps) |
| Scale: | Scale of mapped info (e.g. 1:24,000) |
| Material: | Material manuscript is made of (e.g. mylar, paper) |
| Projection: | Projection which map is drawn in (e.g. polyconic, lambert, conformal, mercator) |
| Coordinate System: | Geographic coordinate Geographic coordinate system used (e.g. UTM, state plane, latitude and longitude, degrees, minutes, seconds or decimal degrees) |
| Map Date: | Date of the map base |
| Source Date: | The date of the information in the file (survey date, photo date, etc.) |
| Mapping Method: | How the data was delineated on the map |
| Mapping Criteria: | Rules followed in delineation process including: resolution, minimum mapping unit, drafting guidelines etc.) |
| Degree of Accuracy: | What is the level of accuracy and how was it determined. |
| Area of Coverge: | The areal extent of the data (e.g. Camden County, State of New Jersey) |

COMPUTERIZATION

| | |
|---|---|
| Date of Automation: | Date the data was automated, this may be a range (e.g. Sept. 1987, Fall 1987, March-June, 1987) |
| Hardware/Software: | What brand of computer is it resident on and what software accesses it (e.g. Prime-ARC/INFO) |
| Automation methods: | General technique used to capture data (e.g. digitized, optically scanned, key punched) |
| Production staff: | Agency and indiviudal who automated the data, in-house staff or contractor (e.g. in-house, DEP's GSAU staff ESRI John Doe Project Manager) |
| Telephone: | Phone # of production staff. |
| Status: | Summarize the percent complete and an expected completion date. |
| Update schedule: | Frequency of updating the information. |
| Update responsibility: | Party responsible for updating the information. |
| Data Format: | A general description of the way the data is stored. Examples are GBF/DIME, TIGER, DLG, IGES, LANDSAT, ERDAS, SIF, ARC/INFO, INTERGRAPH, ASCII, EBCDIC, DBASE III PLUS, etc.) |
| Media: | The media available for distribution of the data (e.g. magnetic tape, diskette, data cartridges, paper output, etc. Specify size/ density if appropriate). |

ATTRIBUTES

| | |
|---|---|
| What is the key field: | What is the unique identifier for each feature (e.g. FIPS code, well permit number, etc.) |
| Additional feature attributes: | Are there additional features (Yes or No). |
| Source of Attributes: | Where did the attribute information come from (e.g. US Census Bureau Survey Info, etc.) |
| Related data files: | What "expansion" files exist that allow you to derive new data sets from this one (e.g. engineering properties table allows you to interpret construction limitations from your primary soils data set). |

QUALITY ASSURANCE

| | |
|---|---|
| Cartographic Quality: | Has the quality of the line work been checked, if so, what (e.g. lines were plotted on mylar and verified within a line width of original map). |
| Attribute Quality: | Have the attributes been error checked, (e.g. data was checked for data entry errors only). |
| Confidentiality: | Is this data available? How would one get permission to access (e.g. endangered species data is available only in a generalized form through a written request to DEP's Div. of Parks & Forestry ONLM). |
| Data uses and limitations: | Intended use of the data and outline of the limitations of the data (e.g. soils data was collected at a scale appropriate for regional analysis. Not appropriate for small site specific projects). |
| Comments: | Include any pertinent information about the data, not found elsewhere in this document.]* |

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# (a)

## DIVISION OF ENVIRONMENTAL QUALITY

## Control and Prohibition of Air Pollution by Vehicular Fuel

## Adopted New Rules: N.J.A.C. 7:27-25.7 and 25.8
## Adopted Amendments: N.J.A.C. 7:27-25.1, 25.2, 25.4 and 25.5

Proposed: January 7, 1991 at 23 N.J.R. 45(b).

Adopted: August 12, 1991, as R.1991 d.462, **with substantive and technical changes** requiring no additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEP Docket Number: 046-90-12.

Effective Date: September 3, 1991.

Operative Date: November 2, 1991.

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 new rules and amendments to N.J.A.C. 7:27-25. N.J.A.C. 7:27-25 may hereinafter be referred to as subchapter 25.

The revisions to N.J.A.C. 7:27-25.4 extend the Reid vapor pressure (RVP) testing period required of each refiner, importer, blender, or distributor and change the RVP test method that may be used.

The test period is changed from May 1 through September 15 to April 15 through September 15. The test method ASTM D323 is replaced with a choice of two test methods promulgated by the United States Environmental Protection Agency (EPA) (40 CFRA 80, Appendix E) or on alternative test method, upon approval of the Department of Environmental Protection and EPA.

The adopted new section N.J.A.C. 7:27-25.7 establishes procedures for obtaining a waiver from the RVP standard for research and development projects. The adopted new section N.J.A.C. 7:27-25.8 establishes service fees for applications for research and development exemptions and annual compliance inspection fees for operations for which exemptions are granted.

The proposal for these new rules and amendments was published in the New Jersey Register at 23 N.J.R. 45(b) on January 7, 1991. Secondary notice was given by publishing notices in newspapers of general circulation, the Trenton Times, the News Tribune, the Newark Star Ledger, the Courier Post News, and the Ocean County Observer on February 7, 1991. The full text of the proposal was also sent by direct mail to 171 interested parties.

A public hearing was held on the proposal on February 7, 1991, at the Records Storage Center in Trenton, New Jersey, to provide interested parties the opportunity to comment on the proposed amendments. The comment period closed on February 25, 1991. While no oral testimony was received during the public hearing, the Department did receive written comments from one person, Mr. Robert W. Johnson, of Mobil Oil Corporation.

A summary of the public comments received and the Department's responses to these comments follows.

COMMENT: At N.J.A.C. 7:27-25.4(a)1, insert "or equivalent representation on the applicable sale or transfer document" after "test report." Thus, the paperwork burden for distributors, retailers, and other wholesale customers will be reduced.

RESPONSE: The insertion of "or equivalent representation on the applicable sale or transfer document" is too vague to be consistent with the intent of the rule. However, the Department recognizes the desirability of reducing paperwork and therefore, has adopted the following alternative language:

"A copy of the test report or documentation, certifying that the RVP of the gasoline invoiced does not exceed 9.0 pounds per square inch and is in compliance with all applicable State and Federal regulations shall be provided . . ."

COMMENT: At proposed N.J.A.C. 7:27-25.4(d)3, delete "the Department" from "in advance in writing by the Department and EPA" because the goals of EPA and DEP concerning review approval of alternative RVP test methods do not conflict. As such, the approval process for alternative test methods could be streamlined without decreasing government oversight.

RESPONSE: The commenter is correct that the goals of EPA and DEP do not conflict. However, the provisions of N.J.A.C. 7:27-25 will become part of the State Implementation Plan (SIP) and must, therefore, be enforceable by both EPA and DEP. EPA has informed the Department that variances or changes in test procedures must be evaluated by and receive approval of EPA to ensure Federal enforceability of the regulatory provisions. Therefore, the phrase "in advance in writing by the Department and EPA" has not been changed.

**Summary** of Agency-Initiated Changes:

As the rules are in effect in the present, verbs in the future tense are changed to the present tense in the second sentence of N.J.A.C. 7:27-25.1, and the first sentence in N.J.A.C. 7:27-25.2.

In order to correct a typographical error in N.J.A.C. 7:27-25.1, the word "blenders" is substituted for the word "blender."

In order to maintain a consistent style of punctuation, changes are made in the use of commas at N.J.A.C. 7:27-25.2 in the definitions of "crude oil," "petroleum distillate," and "refining process."

To correct a typographical error in the definition of "facility" at N.J.A.C. 7:27-25.2, "continuous" is replaced with "contiguous."

To maintain a consistent style of setting forth abbreviations in N.J.A.C. 7:27-25.2, "or RVP," is replaced with "(RVP)" in the definition of the term "Reid vapor pressure" and "(VOS)" replaces "or VOS" in the proposed definition of "volatile organic substance."

Pursuant to a 1948 international conference on weights and measures, "Celsius" is the technically preferred term used to describe the temperature scale formerly referred to as centigrade. Therefore, "centigrade" is replaced with "Celsius" at N.J.A.C. 7:27-25.2 in the definitions of "Reid vapor pressure" and "standard conditions."

In order to clarify that pounds per square inch and kilopascals are different units in two different systems, the word "or" is inserted immediately before kilopascals at N.J.A.C. 7:27-25.2 in the definition of Reid vapor pressure.

In order to correct a grammatical error, "is" is replaced with "are" at N.J.A.C. 7:27-25.2 in the definition of "vapor."

To maintain consistency with the definition of terms in other subchapters of N.J.A.C. 7:27, "substance" is replaced with "substances" at N.J.A.C. 7:27-25.2 in the definition of "VOS."

In order to have a correct and consistent style, in the definition of "wholesale purchaser-consumer" at N.J.A.C. 7:27-25.2, the words "that" and "which" are replaced with "who."

To maintain consistency and clarity, at N.J.A.C. 7:27-25.2, in the definition of "wholesale purchaser-consumer," the phrase ". . . storage tank of at least a 550 gallon capacity substantially . . ." is replaced with ". . . storage tank which has at least a maximum capacity of 550 gallons and is substantially . . . ."

To maintain a consistent style for setting off items in a series, the phrase "and which" is deleted and a comma is inserted immediately following the word "gasoline" and the word "vehicles" at N.J.A.C. 7:27-25.2 in the definition of "wholesale purchaser-consumer."

**Summary** of Hearing Officer Recommendations and Agency Response:

Iclal Atay, the Department's Chief of Engineering and Regulatory Development, served as hearing officer at the February 7, 1991 public hearing on N.J.A.C. 7:27-25 held at the Records Storage Center in Trenton, New Jersey. No one presented testimony. In view of the absence of testimony at the hearing, Chief Atay recommended that the rule amendments be adopted as proposed.

A copy of the record of the public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

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

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7:27-25.1 Scope

This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. The following *[shall govern]* ***governs*** the volatility standards for fuels, used as motor vehicle fuels, and provided for use as motor vehicle fuels, in the State, and the methods to be followed by refiners, importers, *[blender]* ***blenders***, distributors, wholesale purchaser-consumers and retailers to assure these standards are met.

7:27-25.2 Definitions

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

"ASTM" means the American Society for Testing and Materials.

"Blender" means any person who carries out a blending process.

...

"Crude oil" means a petroleum liquid removed from the earth and not previously used *[,]* including, but not limited to, partially refined oil.

...

"EPA" means the United States Environmental Protection Agency.

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

...

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) or greater.

...

"Nonconforming gasoline" means any gasoline whose vapor pressure does not conform with the gasoline volatility standards set forth in N.J.A.C. 7:27-25.3.

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

...

"Petroleum distillate" means any mixture of volatile organic substances produced by a refining process *[,]* including, but not limited to, naphthas, aviation gasoline, motor vehicle gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum products.

...

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

...

"Reid vapor pressure" *[or "RVP"]* ***(RVP)*** means the absolute vapor pressure of a petroleum product in pounds per square inch (***or*** kilopascals) at 100 degrees Fahrenheit (37.8 degrees *[centigrade]* ***Celsius***).

...

"Refining process" means the combination of physical and chemical operations*[,]* including *,* but not limited to *,* distillation, cracking, and reformulation, performed on crude oil in order to produce petroleum products.

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

...

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

...

"Trial use" means use of a product in an experiment or series of experiments by the manufacturer or importer of that product.

...

"Vapor" means the gaseous form of substances which, under standard conditions, *[are]* ***is*** in the solid or liquid state and which can be changed to these states by either increasing the pressure or decreasing the temperature.

"Volatile organic *[substance" or "VOS"]* ***substances (VOS)"*** means any organic *[substance]* ***substances***, mixture of organic substances, or mixture of organic and inorganic substances defined as a volatile organic substance in N.J.A.C. 7:27-16.

...

"Wholesale purchaser-consumer" means any person *[that]* ***who*** is an ultimate consumer of gasoline*,* *[and which]* purchases or obtains gasoline from a supplier for use in motor vehicles*,* and receives delivery of *[that product]* ***the gasoline*** into a storage tank *[of]* ***which has a maximum capacity of*** at least *[a]* 550 gallons *[capacity]* ***and is*** substantially under the control of that person.

7:27-25.4 Recordkeeping and testing

(a) Each refiner, importer, blender or distributor shall:

1. Between April 15 and September 15 of each year, test and prepare test reports documenting the RVP of all gasoline prior to its release from the refinery, import facility, blending facility or distribution facility for use in the State. A copy of the test report ***or documentation, certifying that the gasoline invoiced has an RVP of 9.0 pounds per square inch or less and is in compliance with all applicable State and Federal regulations,*** shall be provided to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered.

2.-3. (No change.)

(b) (No change.)

(c) Any sampling of gasoline required pursuant to the provisions of this subchapter shall be conducted in accordance with one of the following methods:

1. For manual sampling: ASTM D-4057; or

2. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R. 2261(R)(3) and (k)(4) (1987).

(d) All testing required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

1. "Method 1—Dry RVP Measurement Method" promulgated at 40 CFR 80, Appendix E;

2. "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or

3. Any other equivalent test method approved in advance in writing by the Department and EPA.

(e) (No change.)

7:27-25.5 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, any exemption, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) (No change.)

7:27-25.7 Exemptions

(a) The Department may, at its discretion, issue an exemption allowing any person to store, transfer, or use non-conforming gasoline, provided the gasoline is used solely for the purpose of research, product development, and trial use.

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

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

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1. Specification of how the non-conforming gasoline is to be used, and the purpose of this use;

2. Explanation of why the purpose could not be accomplished through use of gasoline whose volatility conforms with the N.J.A.C. 7:27-25.3 standards;

3. For any year, the maximum number of gallons and maximum RVP of non-conforming gasoline:

i. To be used from May 1 through September 15; and

ii. To be stored at the facility during the May 1 through September 15 period;

4. A calculation of the maximum potential additional VOS emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and

5. A facility diagram specifying the tanks in which non-conforming gasoline will be stored.

(d) The Department may require, as a condition of approval of an exemption, the use of control apparatus.

(e) No applicant may commence storing, transferring, and using non-conforming gasoline prior to the issuance by the Department of a written approval of an exemption.

(f) Any exemption issued by the Department pursuant to this section shall be valid for a period of no longer than three years from the date of approval.

(g) Any person holding an exemption issued by the Department pursuant to this section shall make said exemption readily available for inspection on the operating premises.

(h) Any person to whom the Department has issued an exemption pursuant to this section shall:

1. Record each day between May 1 and September 15 the quantity, in gallons, of non-conforming gasoline which is:

i. Stored at the facility; and

ii. Consumed that day in research, product development, or trial use;

2. Maintain the records kept pursuant to (h)1 above at the facility for a period no less than three years;

3. Make the records kept pursuant to (h)1 above available, upon request, for review by the Department; and

4. Upon the request of the Department, submit to the Department all or any part of the information contained in the records kept pursuant to (h)1 above.

(i) The Department shall deny an application for an exemption if:

1. The Department determines that such storage, transfer, or use of gasoline may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the person has exclusive use or occupancy;

2. The applicant fails to demonstrate, to the satisfaction of the Department, that the proposed storage, transfer, and use of non-conforming gasoline are essential to the intended research, development, or trial use set forth in the application.

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

(k) The Department may revoke any approval of any exemption granted pursuant to this section if the Department determines that the person to whom the Department has issued the exemption has:

1. Stored, transferred, or used non-conforming gasoline for any purpose other than that described in the application for an exemption and approved by the Department;

2. Failed to allow lawful entry by authorized representatives of the Department to the facility for which the exemption is issued;

3. Failed to pay any penalty assessed pursuant to a final order issued by the Department; or

4. Failed to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-25.8 within 60 days after receipt of a fee invoice.

(l) If the Department seeks to revoke an exemption during the term of that exemption, the Department shall provide the opportunity to request a hearing 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.

7:27-25.8 Service fees

(a) Any person who applies for an exemption pursuant to N.J.A.C. 7:27-25.5 shall submit with the application, as an integral part thereof, a non-refundable service fee of $500.00.

(b) Any person to whom the Department has issued an exemption pursuant to N.J.A.C. 7:27-25.7 shall remit to the Department within 60 days after receipt of an invoice, an annual compliance inspection fee of $500.00 for each year that the exemption remains in effect.

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# (a)

## DIVISION OF ENVIRONMENTAL QUALITY

## Toxic Catastrophe Prevention Act Program Fees

## Adopted Amendment: N.J.A.C. 7:31-2.16

Proposed: March 18, 1991 at 23 N.J.R. 818(a)
Adopted: August 12, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: August 12, 1991 as R.1991 d.463, **without change.**
Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., 26:2C-1 et seq., specifically 26:2C-8.
DEP Docket Number: 009-91-02.
Effective Date: September 3, 1991.
Expiration Date: June 20, 1993.

**Summary** of Public Comments and Agency Reponses:

The New Jersey Department of Environmental Protection (DEP, or the Department) is adopting an amendment to N.J.A.C. 7:31-2.16. The adopted amendment will increase fees charged by the Toxic Catastrophe Prevention Act Program (TCPA, or the Program) and make other miscellaneous fee-related changes. The increased fees will enable the Department to administer the Program consistent with the statutory requirements of the Act (N.J.S.A. 13:1K-19 et seq.).

The proposed amendment was published in the New Jersey Register at 23 N.J.R. 818(a) on March 18, 1991. The secondary notice was given by publishing notices in six newspapers of general circulation, the Newark Star-Ledger, the Camden Courier-Post, the Trenton Times, the Asbury Park Press, the Atlantic City Press and the Bergen Record on March 14, 1991. The full text of the proposal was sent by direct mail to all TCPA registrants on March 21, 1991. Five written comments were received during the public comment period which ended on May 3, 1991. A public hearing on the proposed amendments was held at the New Jersey Record Storage Center, 2300 Stuyvesant Avenue, Trenton, New Jersey on April 23, 1991. Two persons presented comments at the public hearing.

The Department received comments, either written or oral, from seven individuals:

Dale Siedsma, LaRoche Industries
Mark Bitting, LaRoche Industries
Sandra Grenci, Rahway Valley Sewerage Authority
Robert G. Wieland, North Jersey District Water Supply Commission

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Dennis G. Sullivan, Middlesex Water Company
Richard A. Yaffa, Manhattan Products, Inc.
Gerald S. Groszewski, DuPont Chambers Works

The comments and the Department's responses follow:

COMMENT: Two commenters request details on the TCPA budget, saying that the proposal did not contain sufficient budget information to explain or justify the fee increase.

RESPONSE: As stated in the proposal, the TCPA program has undergone a shortfall of approximately $1,000,000 in Fiscal Year (FY) 1991. The costs of operating the TCPA program in FY 1991 may be detailed as follows:

| | |
|---|---|
| **SALARIES** | |
| Estimated Salaries | $1,257,000 |
| (4 Administrative Positions, 2 Supervising Environmental Specialists, 2 Principal Environmental Specialists, 1 Senior Environmental Specialist, 5 Principal Environmental Engineers, 2 Senior Environmental Engineers, 5 Chemical Safety Engineers, 1 Research Scientist, 1 Environmental Scientist, 2 Clerical Positions) | |
| Fringe | 360,000 |
| Indirect Expense | 525,000 |
| SUBTOTAL | 2,142,000 |
| **PROGRAM COSTS** | |
| Printing and Office Supplies | 14,000 |
| Vehicular (Gasoline, Oil, Tires) | 5,000 |
| Safety and Protective Clothing | 2,000 |
| Materials/Supplies | 1,000 |
| Travel | 10,000 |
| Telephone | 20,000 |
| Postage | 10,000 |
| Data Processing Supplies | 10,000 |
| Professional Services | 70,000 |
| Training, Other Services | 15,000 |
| Data Processing Charges—OTIS | 10,000 |
| Maintenance of Equipment | 2,000 |
| Maintenance of Vehicles (Repairs) | 6,000 |
| Vehicular Rental Charges: Central Motor Pool (CMP) | 8,000 |
| Other Equipment (Office, Scientific, etc.) | 5,000 |
| Data Processing Equipment | 40,000 |
| Subtotal | $228,000 |
| GRAND TOTAL | $2,370,000 |
| 1991 Income | $1,400,000 |
| Shortfall | $970,000 |

COMMENT: Five commenters suggested that the Department meet the current shortfall by reducing its staff even further.

RESPONSE: The costs as detailed above represent a reduction in staff from an originally projected 46 persons in 1988 to a present staff of 25 persons. The Department has determined that present staffing levels are necessary to implement the program at current levels of service. Further reductions at this time would be detrimental to implementing the program as required by the Act and regulations. The TCPA program already operates under the handicap of having lost the expertise of several highly experienced engineers by attrition, positions which cannot be filled due to a Statewide hiring freeze. Further reduction at this time would be especially burdensome because of the projected increase in accident prevention activity due to anticipated regulatory mandates pursuant to the 1990 Federal Clean Air Amendments (P.L. 101-549, 104 Stat. 2399-2712) and the anticipated TCPA expansion of the extraordinary hazardous substance list (N.J.A.C. 7:31-2.3). The Department will continue to review staffing arrangements not less than annually, as part of its budget process, to eliminate waste and over-staffing if such exists.

COMMENT: It appears to one commenter that services associated with the program have tapered off somewhat. The commenter's organization is still awaiting its 1990 Annual Audit, which was scheduled for October last year.

RESPONSE: The Department is aware that the annual audit services of the TCPA Program are now behind schedule, and has the goal of correcting the situation. The work tasks of (1) reviewing summary risk management program statements (pursuant to N.J.A.C. 7:31-3.12), (2) performing detailed reviews of risk management programs (N.J.A.C. 7:31-3), and (3) developing work plans (N.J.A.C. 7:31-4) have taken longer than anticipated in the first three years of the program. A major cause of this delay is the amount of time expended on these work tasks with over 150 registrants that ultimately deregistered. However, as the details reviews and work plans are completed for the current registrants, the annual audits will be made in a timely fashion.

COMMENT: Two commenters referred to the 68 percent reduction in registrants from 1986 to present, resulting in a decrease in TCPA revenue and the need for a fee increase. They were concerned that the number of registrants will continue to decrease. One commenter wanted to know if this would escalate the fees "somewhere down the road." The other believed that the next step will be to raise the fee again because a "viscous (sic) cycle" has been created.

RESPONSE: The number of registrants is projected from an analysis of historical trends to stabilize at approximately 15 percent less than the present number in the next two years. This reduction in the number of registrants represents a desirable trend toward restricting the use of potentially catastrophic quantities of extraordinarily hazardous substances (EHSs) to only essential uses and locations, under carefully monitored conditions. The number of registrants will stabilize because for many uses and facilities, no replacement is feasible for the use of large quantities of EHSs.

Furthermore, to prevent unanticipated fee escalation in the future, the Department will review these fees each year, based upon changes in the Department's costs of reviewing individual facilities and administering the program. Several factors may increase or decrease costs, including, but not limited to, improvements in the time the Department requires to perform activities, changes in the average level of compensation of Department employees, and changes in regulatory requirements of the TCPA program.

After consultation with the Department of Law and Public Safety, Division of Law, the Department has determined that it cannot incorporate such a change into the rule at this adoption, without providing additional opportunity for public comment as required by N.J.A.C. 1:30-4.3. Therefore, in the near future, the Department will propose an amendment to these rules providing the Commissioner with the ability to implement this annual change through the publication of a report in the New Jersey Register, setting forth any revised fees and describing the changes in the Department's costs upon which the revisions will be based.

COMMENT: One commenter suggests that the additional expenditure due to fee increases does not help reduce the potential for a chlorine accident, or provide for additional safety equipment or safety training.

RESPONSE: The fee increase will ensure that the program will continue to provide services necessary to reduce risks of chemical accidents throughout the State. However, providing for additional safety equipment or safety training is the responsibility of the registrant, not the program. The cost of avoiding chemical accidents is an inherent part of the cost of manufacturing or using these hazardous chemicals.

COMMENT: One commenter suggests that TCPA raise revenues by assessing fees from more than the 204 companies in the program.

RESPONSE: The Department disagrees with this comment because the Act (N.J.S.A. 13:1K-19 et seq.) establishes at N.J.S.A. 13:1K-31 that the facility owners registered pursuant to the Act shall be charged fees which reflect the cost to the Department to administer the program on a self-supporting basis. The Department has no statutory authority to levy fees against companies not included in the Program.

COMMENT: The Department received two comments on fines from one commenter.

(a) One comment is that the data submitted in the proposal does not reflect the additional revenues obtained from fines collected in conjunction with the program.

(b) The other comment expresses concern that revenue shortfalls will tempt the Department to pursue an aggressive attitude on levying fines.

RESPONSE: Revenues obtained from fines for violations of the TCPA statute (N.J.S.A. 13:1K-19 et seq.) and regulations (N.J.A.C. 7:31) are not returned to the program, but are deposited into the general treasury on the State of New Jersey. Therefore, the Department has no direct financial benefit from levying fines. The Department attempts to be fair rather than aggressive or predatory in administering and enforcing the TCPA program.

COMMENT: One commenter is concerned about the need to hire a consultant to decipher regulations and prepare a Risk Management Plan. The commenter suggests that the legalistic way in which the regulations are written, plus the lack of any interpretive guides, discourages individual water treatment facilities from preparing their own Risk Management Plan.

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RESPONSE: The Department recognizes the intricacy of the regulatory language and difficulty of interpretation in many cases, and for this reason strives to reduce the costs of compliance by providing written guidelines and policy statements in numerous areas.

Guidelines documents have been developed for guidance on:

- Criteria for Design and Operation (CDO) for the Toxic Catastrophe Prevention Act (TCPA) (3/89)
- Meteorological Stations for the Toxic Catastrophe Prevention Act (TCPA) (5/89)
- New Extraordinarily Hazardous Substance (EHS) Facilities for compliance with N.J.A.C. 7:31-1 et seq., the Toxic Catastrophe Prevention Act (TCPA) Program.

Policy statements in clarification of the Toxic Catastrophe Prevention Act (TCPA) have been issued on:

- Interpretation of "site"
- Fee determination for site and system
- Extraordinarily hazardous substance (EHS) deliveries
- Non-contiguous equipment exemptions in high risk situations
- TCPA Rule with regard to hydrochloric acid
- The number of audits and checklists required
- Keeping a record of employee errors
- Log Sheet retention
- The definition of online as it applies to chlorine cylinders in water or wastewater treatment facilities
- Computerized material data sheets (MSDS)
- What triggers safety review, hazard analysis, audit and annual report
- What constitutes a modification

In addition to these documents, workshops are periodically scheduled. Two were held in June 1988 and a third in April 1989. Copies of the handouts from these workshops are available. Members of the staff are available to answer questions on all issues.

In addition, the Department participated in the creation of a generic risk management program available through a water treatment trade association. The generic program resulted in an estimated overall reduction of $625,000 in the cost of compliance by TCPA registrants.

COMMENT: One commenter cites what he believes to be a number of wasteful practices. The best example, according to the commenter, is when inspectors were sent from Trenton to the registrant's site, a distance of about 150 miles round trip, on three occasions within a period of about a year, to verify a chlorine cylinder count. Another example relates to when questions are asked of the TCPA staff, and the staff member sends a copy of the regulations for the inquirer to interpret for himself. A third example cited by the commenter is the requirement for the registrant to generate volumes of material of allegedly questionable value, such as pipe and instrumentation drawings, process flow diagrams and the like. The commenter questions whether it is really expected that during a major chlorine leak the respondents will sit down and read through the Emergency Response Manual, or review ASTM piping designations, for example, rather than suit up or don his SCBA (self contained breathing apparatus) and then shut off the flow of chlorine at the cylinder.

RESPONSE: The Department in implementing the TCPA program endeavors to keep waste at a minimum, and wishes to respond to each specific example. In the first case, the Department's records show that only the first meeting was conducted with a chemical safety engineer from the Trenton office and this was to develop an EHSARA (Extraordinarily Hazardous Substance Accident Risk Assessment) work plan. Subsequent visits were made by an engineer from a nearby regional field office to verify cylinder count, as part of the engineer's routine facility inspections.

In the second case, the Department has been unable to verify whether sufficient answers were or were not given to all the registrant's questions. However, a review of the commenter's file at the Department indicates that very substantial assistance has been provided over the past two years. A copy of the TCPA rules is routinely sent to each individual who calls with a TCPA related question, and who says that he or she does not have a copy of the regulations. The Department has the intention to assist registrants as much as possible through phone conversations and workshops. However, the registrant must become aware of details to comply with the rules, and oral communication by its nature cannot be substituted in many cases. The Department is in the process of preparing additional written guidelines to assist in rule interpretation, such as procedures for hazard analysis and risk assessment.

In the third example, the registrant refers to the large volume of printed and written material required by the program, such as piping and instrumentation diagrams, process flow diagrams, emergency response manuals, and ASTM designations for piping. The Department requires these documents in the planning stages to assist in identifying and implementing means for the prevention of chemical accidents and recognizes that they may be of secondary importance during an actual on-going release. The purpose of piping and instrumentation diagrams, for example, includes identifying precise locations where safety devices, such as interlocks and controls, should be installed. Reviewing ASTM piping designations, as another example, prevents the use of inappropriate types of piping, a potential cause of EHS releases. The TCPA program has a primary goal of prevention, and it is by means of attention to such detail that the risk of catastrophic accidents and the need for emergency response is reduced.

In summary, the Department, based on its review of the facts referred to by the commenter, does not agree with the opinion that TCPA staffing or regulations are wasteful, unhelpful, or unnecessary.

COMMENT: One commenter points out that the act makes no distinction between a manufacturer who produces massive quantities of a given toxic substance and a user who may use relatively small amounts of the same substance as part of his operation. Both have to adhere to the same stringent requirements, and both are subject to the same penalties for non-compliance.

RESPONSE: The TCPA fee structure as mandated by the Act at N.J.S.A. 13:1K-31 makes a distinction between manufacturers with massive quantities of EHS's and users with small amounts by means of a variable inventory-derived fee in addition to a uniform base fee. The largest manufacturer's fee is in fact 40 times as large as the smallest user's fee. The Act and rules identify registration quantities which correspond to modeled quantities at or above which a potentially catastrophic release could occur. Therefore, any quantity subject to the Act and its rules is considered potentially catastrophic if released. The rules are uniformly stringent to prevent all catastrophic releases and address the minimum requirements for all risk management programs.

COMMENT: One commenter proposes an alternative to the revisions and suggests that the NJDEP establish a random, statistically based audit that could be managed with much lower fees. If additional fees are needed after a revised audit program has been established, it is suggested that the base fee be applied for each EHS that a site is registered for rather than a single base fee for each site. This would allow the Department to increase revenues without increasing the base fee from $4,000, or increasing the fee per hazard unit.

RESPONSE: The Department believes that this proposal for a statistically based audit, while worthy of discussion, cannot be implemented at this early stage of the TCPA program. Too little information is available after less than three years of implementation to have confidence that such a method could provide adequate safety throughout the State. The additional proposed suggestion to apply a base fee to each EHS chemical at a site rather than a single base fee for each site has been reviewed to determine its overall revenue producing impact. The additional revenue produced, based on existing registrants, would be $670,000, which is $300,000 short of the required revenue to meet the current program costs. In addition, the analysis indicates that this fee structure skews the fee distribution considerably and has an undesirable, disproportionate impact on small businesses.

**Summary** of Hearing Officer's Report and Agency Response:

Dr. Gerald Nicholls of the Division of Environmental Quality in the Department, served as hearing officer at the public hearing. After reviewing the testimony presented at the public hearing, Dr. Nicholls recommended that the Department adopt the proposed amendments without change. However, Dr. Nicholls also recommended that the Department establish cost and effort accounting procedures and records to annually determine its costs for reviewing individual facilities and administering the TCPA program. Accordingly, Dr. Nicholls recommended that fees based on an annual review of actual Departmental costs be incorporated into a future TCPA rule revision. This recommendation is addressed in the preceding Summary of Public Comments and Agency Responses.

A copy of the record of the public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

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**Full text** of the adoption follows.

7:31-2.16 Fees

(a) Each registrant or owner or operator of a site required to register pursuant to N.J.A.C. 7:31-2.5 shall pay an annual fee to the Department. The annual fee shall be computed in accordance with (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(b) (Reserved)

(c) (Reserved)

(d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department shall submit the annual fee for that calendar year computed in accordance with (i) through (m) below in accordance with the bill received from the Department.

(e) Each registrant registering a new EHS facility or increasing the EHS inventory or both at a site with previously registered EHSs shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i), (l) and (m) below, in accordance with the bill received from the Department.

(f) (No change.)

(g) Except for the fees submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each registrant a bill stating the fee for that calendar year.

1. (No change.)

(h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee. The check or money order shall be submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
Division of Financial Management, Planning and General Services
CN 402
Trenton, New Jersey 08625

(i) (No change.)

(j) Each registrant of a water treatment system or wastewater treatment system or both shall pay a base fee of $6,500 per system annually plus an EHS inventory derived fee; except

1. Registrants with a water treatment system or wastewater treatment system or both located on a site which is also covered by (k) below shall only pay the fee required by that subsection.

(k) All other registrants not included in (j) above shall pay one base fee of $6,500 per site annually plus an EHS inventory derived fee.

(l) The inventory derived fee at each site, water treatment system and wastewater treatment system is determined in the following manner:

1.-2. (No change.)

3. The number of hazard units for each EHS is multiplied by $9.20 per hazard unit to determine the fee for each EHS.

(m) The annual fee for each registrant shall be the sum of the base fee and the sum of each EHS inventory derived fee except for (n) below.

(n) The annual fee for each registrant that does not have to comply with N.J.A.C. 7:31-3 for the site, subsequent to the granting of an exemption pursuant to N.J.A.C. 7:31-2.19, shall be 25 percent of the regular base fee.

Recodify existing (n) and (o) as (o) and (p) (No change in text).

# HEALTH

## (a)

## DRUG UTILIZATION REVIEW COUNCIL

### Interchangeable Drug Products

### Adopted Amendment: N.J.A.C. 8:71

Proposed: January 22, 1991, at 23 N.J.R. 178(a).

Adopted: August 8, 1991, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: August 9, 1991 as R.1991 d.464, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: September 3, 1991.

Expiration Date: February 17, 1994.

**Summary** of Public Comments and Agency Responses:
**No comments were received** regarding the adopted product.

**Summary** of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the additions to the List of Interchangeable Drug Products proposed at 23 N.J.R. 178(a) was held on February 13, 1991, with Thomas T. Culkin, PharmD, MPH, serving as hearing officer. Six persons attended the hearing and five comments were offered, as summarized in the New Jersey Register at 23 N.J.R. 1670(a). The addition of the adopted product was discussed at the April 9, 1991 meeting of the Drug Utilization Review Council, with the Council approving the addition of the product to the List, if the manufacturer, Abbott, would lower the average wholesale price (AWP). Abbott subsequently submitted proof of the lower AWP and the product was added to the List.

A record of the public hearing may be reviewed or obtained by contacting:

Eileen O'Donnell, Administrative Practice Officer
Department of Health
CN 360
Trenton, N.J. 08625

The following product and their manufacturer was **adopted:**

| | |
|---|---|
| **Erythromycin EC/ER tabs 250 mg** | **Abbott** |

The following products were **not adopted but are still pending:**

| | |
|---|---|
| Albuterol tabs 2, 4 mg | Watson |
| Benzonatate caps 100 mg | Chase |
| CDP/Amitriptyline tabs 5/12.5, 10/25 | PBI |
| Carisoprodol 350 mg | Mutual |
| Chlorzoxazone tabs 250, 500 mg | Ohm |
| Clemastine fumarate syrup 0.67 mg/5 ml | Lemmon |
| Clemastine fumarate tabs 1.34, 2.68 mg | Cord |
| Clofibrate caps 500 mg | Novopharm |
| Clonidine 0.1, 0.2, 0.3/chlorthal. 15 tabs | Cord |
| Dipyridamole tabs 25, 50, 75 mg | Purepac |
| Doxycycline caps 100 mg | Sidmak |
| Erythromycin EC/ER tabs 500 mg | Abbott |
| Ethosuximide caps 100 mg | Chase |
| Loperamide caps 2 mg | Cord |
| Loxapine succ. caps 5, 10, 25, 50 mg | Cord |
| Methocarbamol tabs 500, 750 mg | Mutual |
| Minoxidil tabs 2.5, 10 mg | Mutual |
| Nifedipine caps 10 mg | Novopharm |
| Nifedipine caps 20 mg | Chase |
| Propoxyphene naps/APAP 50/325, 100/650 | Mutual |
| Propoxyphene naps/APAP tabs 100/650 | LuChem |
| Sulindac tabs 150, 200 mg | Lemmon |
| Theophylline CR tabs 450 mg | Sidmak |
| Timolol maleate tabs 5, 10, 20 mg | Novopharm |
| Tolmetin tabs 200 mg, caps 400 mg | Mutual |
| Tolmetin sodium caps 400 mg | Purepac |
| Trazodone tabs 50, 100, 150 mg | Mutual |

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 23 N.J.R. 1670(a) and 2136(a).

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# PUBLIC NOTICES

## AGRICULTURE

### (a)

### STATE AGRICULTURE DEVELOPMENT COMMITTEE

### Notice of Action on Petition for Rulemaking Appeals Process

Petitioner: Ocean County Agriculture Development Board.
Authority: N.J.S.A. 4:1C-5(f) and N.J.S.A. 52:14B & 4(f).

**Take notice** that a notice of petition for rulemaking requesting the promulgation of rules for an appeals process for the resolution of disputes arising before the State Agriculture Development Committee (SADC) under the farmland preservation program was published in the June 17, 1991 New Jersey Register at 23 N.J.R. 1968(a).

The SADC has reviewed the petition and has concluded that the appeals process, as requested, would result in unnecessarily complex litigation and increase cost at the expense of farmland owners and that the rule is not warranted. The State farmland preservation program operates under a voluntary competitive grant system to counties. Each application is evaluated on the basis of several criteria such as soil types, buffers, density and price. Under petitioner's proposal any landowner who is dissatisfied with any of the SADC's determinations regarding these criteria would be entitled to a formal hearing. Since every landowner's application impacts on other applications, a formal hearing process could result in cases involving hundreds of landowners as parties. This would cause severe delays in the farmland preservation program which, because of appraisals, is time sensitive.

The current system provides for an informal review process since the SADC already reviews factual errors made in the evaluation of applications and appraisals. Of course, any final decisions by the SADC are reviewable by the Superior Court Appellate Division. Since the program is voluntary and discretionary on behalf of the State, county and landowners, the applicant retains all value of the property in the event the farm is not selected for the program.

## ENVIRONMENTAL PROTECTION

### (b)

### OFFICE OF REGULATORY POLICY

### Amendment to the Mercer County Water Quality Management Plan

### Public Notice

**Take notice** that Washington Township has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment would adopt a wastewater management plan (WMP) for Washington Township, Mercer County. The WMP proposes changes to the sewer service area within Washington Township which is served by the Hamilton Township Water Pollution Control Facility. Areas not proposed for sewer service are to be served by non-surface disposal facilities with design flows of less than 2,000 gallons per day.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Mercer County Planning Division, McDade Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Office of Regulatory Policy, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Bureau of Water Quality Planning at (609) 633-7026 or the Mercer County Planning Division at (609) 989-6545.

The Mercer County Planning Board will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, October 9, 1991, at 8:30 A.M. in Room 211 of the McDade Administration Building. Interested persons may submit written comments on the amendment to the Secretary, Mercer County Planning Board at the address cited above; and to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

### (c)

### OFFICE OF REGULATORY POLICY

### 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 proposed. This amendment proposes a new on-site groundwater disposal system to serve Main Street at Randolph, a proposed 57,400 square foot shopping center in Randolph Township, Morris County. The projected wastewater flow from this shopping center is 7,200 gallons per day. The proposed treatment facility will be abandoned and tied into Morris Township's Butterworth sewage treatment plant when capacity is available.

**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 New Jersey Department of Environmental Protection (NJDEP), Office of Regulatory Policy, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

**Interested persons** may submit written comments on the amendment to Mr. Edward Frankel, at the NJDEP address cited above with a copy sent to George M. Wolff, Rand Associates, P.O. Box 302, Mt. Freedom, N.J. 07970. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested persons** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

### (d)

### OFFICE OF REGULATORY POLICY

### Amendment to the Sussex County Water Quality Management Plan

### Public Notice

**Take notice** that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes a new on-site groundwater disposal system to serve the Blue Heron Plaza development, a proposed 125,000 square foot shopping

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center in Sparta Township, Sussex County. The projected wastewater flow from this development is 16,500 gallons per day.

**This notice** is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Sussex County Water Resource Management Program, 55-57 High Street, Newton, New Jersey 07860; and the New Jersey Department of Environmental Protection (NJDEP), Office of Regulatory Policy, Bureau of Water Quality Planning, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Bureau of Water Quality Planning at (609) 633-7026 or the Sussex County Water Resource Management Program at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold **a public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on October 3, 1991 at 2:45 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. **Interested persons** may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above, with a copy sent to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

## (a)

### DIVISION OF PARKS AND FORESTRY

### Notice of Public Hearing on Proposed Deer Hunt at Monmouth Battlefield State Park

**Take notice** that the New Jersey Department of Environmental Protection (NJDEP) has proposed a three-day controlled deer hunt for Monmouth Battlefield State Park. The purpose of the hunt is to control the deer population in the park. The hunt is proposed to be conducted on January 17, 18 and 25, 1992.

This notice is being given to advise the public that **a public hearing** will be held by NJDEP to solicit comments on the proposed hunt. The hearing will be held on Wednesday, September 25, 1991, from 6:30 P.M. to 10:00 P.M. at the Monmouth County Library Headquarters, 125 Symmes Road, Manalapan, New Jersey 07726.

**Persons wishing to make oral presentations** are asked to reserve a three to five minute time period by telephoning the State Park Service Region 2 Office located on Monmouth Battlefield State Park (908) 462-5868 by 12:00 noon, Tuesday, September 24, 1991. Presenters should bring a copy of their remarks to the hearing for use by NJDEP. The hearing record will be kept open for two weeks following the date of the public hearing so that additional written testimony can be received.

**Submit written comments** by Wednesday, October 9, 1991 to:

Richard F. Barker, Regional Superintendent
Region 2 Office
434 Freehold Englishtown Road
Freehold, New Jersey 07728-9998

# HEALTH

## (b)

### DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

### Notice of Receipt of and Action on Petition for Rulemaking
### Hospital Reimbursement
### N.J.A.C. 8:31B-3.22(d)

Petitioner: Ivan J. Punchatz, Esq., representing Hackettstown Community Hospital, Newton Memorial Hospital, Wallkill Valley Hospital and Warren Hospital

**Take notice** that on July 10, 1991, the Department of Health received a petition from Ivan J. Punchatz, Esq., representing Hackettstown Community Hospital, Newton Memorial Hospital, Wallkill Valley Hospital and Warren Hospital, requesting that the Department amend one of its hospital rate-setting regulations, N.J.A.C. 8:31B-3.22(d), to eliminate the Newton-Phillipsburg labor market area and include Sussex and Warren Counties within the Newark-Suburban labor market.

The petition was properly considered, which consideration included a thorough review by the Department's Division of Health Planning and Resources Development. As a result of such consideration, the petition is hereby declined.

The petition notes that the labor market regulations seek to make fair comparisons of cost among hospitals. For this purpose, they direct the Department to group hospitals which display similar cost patterns. Agency regulations determine as appropriate, geographic areas which include hospitals displaying similar wage levels. A review of 1988 base year costs reflects that the wage levels in the Newton-Phillipsburg labor market area are similar and also, as a group, are distinctly different from wage levels in the Newark-Suburban labor market area.

The statistics presented documented 1989 differentials between the hospitals in the Newton-Phillipsburg labor market and the Newark-Suburban labor market of between five and 10 percent. This level of difference is significant and supports the case that the current regulation is effective in grouping hospitals which display similar cost patterns.

It is the intention of the Department to undertake a full Statewide examination of the labor market areas for 1993 rates. Such an endeavor would not be possible in time for issuance of the 1992 rates, which are anticipated next month. Department staff look forward to working cooperatively with the petitioner to bring appropriate Statewide changes to the labor market area regulations after due consideration.

## (c)

### OFFICE OF HEALTH POLICY AND RESEARCH

### Notice of Availability of Grants
### Competitive Initiatives

**Take notice** that, in compliance with the Health Care Cost Reduction Act (P.L. 1991, c.187), the Department of Health hereby publishes notice of the availability of the following grant:

**Name of Grant Program:** Competitive Initiatives

**Grant Program Number:** 92-82-HPR

**Purpose:** Grant funds are to be used to create primary care demonstration projects.

**Amount of Money in the Grant Program:** Up to $6 million per year for two years will be available to fund the program. This money will be divided up among sites in accordance with their needs and with their budgetary requests. A portion of the funds will be reserved for program audit and evaluation and for consulting fees.

**Groups or Entities Which May Apply for Funding:** All entities meeting "high need" criteria defined in the RFP who are willing to arrange for provision of primary care in a community-based setting may apply.

**Qualifications Needed by an Applicant to be Considered for a Grant:** Applicants must be able to associate with community-based providers to provide primary care in an appropriate community setting.

**Procedures for Eligible Entities to Apply for Grant Funds:** Specific procedures for applying for grant funds will be explained in detail in the RFP. Completion and submittal of a New Jersey Department of

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Health application for a Health Service Grant will be required as part of the process.

**For Information Contact:**

Nancy L. Featherstone, M.A., M.B.A.
Office of Health Policy and Research
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360
(609) 984-2151

**Deadline by Which Applications Must be Submitted:** September 27, 1991.

**Date by Which Applicant Shall Be Notified Whether They Will Receive Funds:** October 11, 1991.

## (a)

## OFFICE OF HEALTH POLICY AND RESEARCH

### Notice of Availability of Grants
### Local Advisory Boards

**Take notice** that, in compliance with the Health Care Cost Reduction Act (P.L. 1991, c.187), the Department of Health hereby publishes notice of the availability of the following grant:

**Name of Grant Program:** Local Advisory Boards.

**Grant Program Number:** 92-81-HPR

**Purpose:** To serve as the local health planning agencies in each of the five Regional Health Planning Areas.

**Amount of Money in the Grant Program:** Individual grant awards will be for a one-year budget period and range up to $700,000. The project period is for two years. The continuation of funding is contingent on the appropriation of funds to the Department.

**Groups or Entities Which May Apply for Funding:** Applications are accepted from independent, private non-profit corporations incorporated in the State of New Jersey (or pending incorporation) which are not a health care facility or provider, nor a subsidiary or affiliated corporation of a health care facility or provider.

**Qualifications Needed by an Applicant to be Considered for a Grant:** The applicant must demonstrate an understanding of the region's primary health concerns; provide an appropriate proposed agency to conduct an objective review of the regions' health needs and resources, and of certificate of need applications; and provide an adequate Board membership, staff, structure and economically sound budget to perform the Local Advisory Board's activities. All proposals will be judged on the quality, clarity, and completeness of the application.

**Procedures for Eligible Applicants to Apply for Grant Funds:** Complete and submit a New Jersey State Department of Health application for a Health Service Grant.

**For Information Contact:**

Nancy L. Featherstone, M.A., M.B.A.
Office of Health Policy and Research
New Jersey State Department of Health
John Fitch Plaza
CN 360
Trenton, NJ 08625-0360
(609) 984-2177

**Deadline by Which Applications Must Be Submitted:** September 30, 1991.

**Date by Which Applicant Shall be Notified of Selected Applications for Funding:** October 18, 1991.

# HUMAN SERVICES

## (b)

## NEW JERSEY COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

### Notice of Availability of Grant Funds
### Home Products/Crafts

**Take notice** that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Commission for the Blind and Visually Impaired, Department of Human Services, hereby announces the availability of the following grant program funds.

**Name of program:** Home Products/Crafts for Blind and Visually Impaired Persons.

**Purpose:** To provide training, quality control and merchandising of hand made craft items to clients of the New Jersey Commission for the Blind and Visually Impaired who are homebound or homebased.

**Amount of available funding for the program:** $25,000 (plus income generated from Commission on sale of product.)

**Organizations which may apply for funding under this program:** Profit or non-profit organizations having sales and marketing experience able to deal with the New Jersey program. The applicant should have the ability to develop product training, pricing and merchandising program implementation.

**Qualifications needed by an applicant to be considered for funding:** An applicant must be a profit or non-profit organization or agency able to deal with the Statewide scope of the program, be financially capable, and be able to demonstrate sales/marketing experience and experience with blind and/or elderly persons.

**Procedure for eligible organizations to apply:** Request RFP from address indicated below or by phone by calling (201) 648-4799.

**Address to which applications must be submitted:**

Judith Liebman
New Jersey Commission for the Blind
and Visually Impaired
153 Halsey Street
P.O. Box 47017
Newark, New Jersey 07101

**Deadline by which applications must be submitted:** October 15, 1991.

**Date the applicant is to be notified of acceptance or rejection:** November 1, 1991.

# INSURANCE

## (c)

## DIVISION OF LEGISLATIVE AND REGULATORY AFFAIRS

### Notice of Receipt of and Action on Petition for Rulemaking
### Vehicle Anti-Theft and Recovery Devices
### N.J.A.C. 11:3-39

Petitioner: LoJack Corporation

**Take notice** that on July 9, 1991, petitioner filed a petition with the Department of Insurance ("Department") requesting an amendment to N.J.A.C. 11:3-39 concerning vehicle anti-theft and recovery devices.

Specifically, petitioner is requesting an amendment to the present requirement that a vehicle equipped with an anti-theft or recovery device display a warning label announcing that the vehicle is equipped with such a device. Petitioner wishes to amend N.J.A.C. 11:3-39.5(e) so that vehicles equipped with recovery systems need not display a sticker announcing the type of system with which a particular vehicle is equipped. Petitioner states that such a sticker would enable a potential thief to adjust his actions accordingly, thereby significantly diminishing the deterrent effect of such systems and the possibility of recovery of stolen automobiles.

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department is denying petitioner's request. N.J.A.C. 11:3-39.5(e) requires that vehicles equipped with anti-theft or vehicle recovery systems display a warning label announcing only the presence of such a system; the current rule does not require that the warning label announce the particular type of system with which the vehicle is equipped. Therefore, the Department has determined that it is unnecessary to amend N.J.A.C. 11:3-39.5(e) to comply with petitioner LoJack's request.

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# LABOR

## (a)

### OFFICE OF THE CONTROLLER

### Notice of Rates for Board and Room, Meals and Lodging Furnished by Employers in Addition to, or in Lieu of, Money Wages During Calendar Year 1992

**Take notice** that, in accordance with N.J.A.C. 12:16-4.8, the Department of Labor hereby publishes notice of the following rates for board and room, meals and lodging furnished by employers in addition to, or in lieu of, money wages during calendar year 1992:

| | |
|---|---|
| Full board and room, weekly | $103.00 |
| Lodging, per week | $ 44.10 |
| Meals per day | $ 11.80 |

If less than three meals per day, the individual meals shall be valued as follows:

| | |
|---|---|
| Breakfast | $ 3.50 |
| Lunch | $ 3.50 |
| Dinner | $ 4.70 |

# LAW AND PUBLIC SAFETY

## (b)

### DIVISION OF CONSUMER AFFAIRS
### STATE BOARD OF CHIROPRACTIC EXAMINERS

### Notice of Action on Petition for Rulemaking

Petitioners: Council of New Jersey Chiropractors.
Authority: N.J.S.A. 52:14B-4(f).

**Take notice** that on January 18, 1991, petitioners filed a petition with the Board of Chiropractic Examiners requesting a new rule concerning the performance of independent chiropractic examinations for third parties. The Board's notice of receipt of this petition and the petition's content appeared in the March 4, 1991 New Jersey Register at 23 N.J.R. 780(b).

The Board's preliminary response, published at 23 N.J.R. 1467(c), provided for referral of the petition to the Board's Rules and Regulations Committee for further study and recommendations to the full Board.

Based upon Committee recommendations and after a thorough consideration of the issues raised by the petitioner, the Board voted, at its May 16, 1991 meeting, to deny the petition on the basis that the requested rule is, in large part, outside the authority of the Board of Chiropractic Examiners.

More specifically, the Board has determined that primary jurisdiction over this matter is with the Commissioner of the Department of Insurance because, in addition to regulating performance of independent chiropractic examinations by licensees, the proposal would require all parties (that is, insurance carriers) who request an independent chiropractic examination to select a licensee from the Board's registrants. The requested rule would also make the performance of such an examination by one not licensed by the Board the unlicensed practice of chiropractic. Although arguably overlapping jurisdiction exists to the extent that the Board has the authority to regulate the conduct of its licensees in regard to the performance of independent chiropractic examinations, the Board does not believe it would be productive at this time to act in an area where primary jurisdiction appears to be with another agency. The Board has, however, advised the Department of Insurance of its interest in working with the Department for the purpose of developing regulatory provisions which will safeguard patients and their right to chiropractic care.

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# EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

## OFFICE OF ADMINISTRATIVE LAW—TITLE 1

| N.J.A.C. | Expiration Date |
|---|---|
| 1:1 | 5/4/92 |
| 1:5 | 10/20/91 |
| 1:6 | 5/4/92 |
| 1:6A | 3/19/95 |
| 1:7 | 5/4/92 |
| 1:10 | 5/4/92 |
| 1:10A | 5/4/92 |
| 1:10B | 10/6/91 |
| 1:11 | 5/4/92 |
| 1:13 | 5/4/92 |
| 1:13A | 4/3/94 |
| 1:14 | 7/15/96 |
| 1:20 | 5/4/92 |
| 1:21 | 5/4/92 |
| 1:30 | 1/25/96 |
| 1:31 | 6/17/92 |

## AGRICULTURE—TITLE 2

| N.J.A.C. | Expiration Date |
|---|---|
| 2:1 | 11/19/95 |
| 2:2 | 1/17/94 |
| 2:3 | 8/21/94 |
| 2:5 | 8/21/94 |
| 2:6 | 9/3/90 |
| 2:9 | 8/19/96 |
| 2:16 | 1/22/96 |
| 2:17 | 5/31/96 |
| 2:18 | 8/5/96 |
| 2:19 | 10/1/95 |
| 2:20 | 10/1/95 |
| 2:21 | 8/5/96 |
| 2:22 | 7/6/92 |
| 2:23 | 7/18/93 |
| 2:24 | 4/2/95 |
| 2:32 | 6/1/92 |
| 2:33 | 3/6/94 |
| 2:34 | 1/2/95 |
| 2:48 | 10/25/95 |
| 2:50 | 5/1/92 |
| 2:51 | 5/31/92 |
| 2:52 | 5/1/95 |
| 2:53 | 1/10/96 |
| 2:54 | Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004) |
| 2:68 | 11/7/93 |
| 2:69 | 11/7/93 |
| 2:70 | 8/20/95 |
| 2:71 | 7/8/93 |
| 2:72 | 7/8/93 |
| 2:74 | 7/8/93 |
| 2:76 | 7/31/94 |
| 2:90 | 6/22/95 |

## BANKING—TITLE 3

| N.J.A.C. | Expiration Date |
|---|---|
| 3:1 | 1/4/96 |
| 3:2 | 4/12/95 |
| 3:3 | 1/11/95 |
| 3:6 | 3/1/96 |
| 3:7 | 9/12/95 |
| 3:11 | 5/1/94 |
| 3:13 | 11/17/91 |
| 3:16 | 6/18/95 |
| 3:17 | 6/13/96 |
| 3:18 | 1/19/93 |
| 3:19 | 3/15/96 |
| 3:21 | 2/2/92 |
| 3:22 | 5/12/94 |
| 3:23 | 7/6/92 |
| 3:24 | 8/18/94 |
| 3:25 | 8/17/92 |
| 3:26 | 12/31/95 |
| 3:27 | 9/12/95 |
| 3:28 | 12/12/94 |
| 3:29 | 8/5/96 |
| 3:32 | 10/3/93 |
| 3:33 | 9/18/94 |
| 3:38 | 10/5/92 |
| 3:41 | 10/11/95 |
| 3:42 | 4/4/93 |

## PERSONNEL—TITLE 4A

| N.J.A.C. | Expiration Date |
|---|---|
| 4A:1 | 10/5/92 |
| 4A:2 | 10/5/92 |
| 4A:3 | 9/6/93 |
| 4A:4 | 6/6/93 |
| 4A:5 | 10/5/92 |
| 4A:6 | 1/4/93 |
| 4A:7 | 10/5/92 |
| 4A:8 | 1/16/95 |
| 4A:9 | 10/5/92 |
| 4A:10 | 11/2/92 |

## COMMUNITY AFFAIRS—TITLE 5

| N.J.A.C. | Expiration Date |
|---|---|
| 5:1 | 2/5/95 |
| 5:2 | 4/10/94 |
| 5:3 | 9/1/93 |
| 5:4 | 10/5/92 |
| 5:10 | 11/17/93 |
| 5:11 | 3/10/94 |
| 5:12 | 12/27/94 |
| 5:13 | 12/24/92 |
| 5:14 | 11/9/95 |
| 5:15 | 5/1/94 |
| 5:18 | 1/4/95 |
| 5:18A | 1/4/95 |
| 5:18B | 1/4/95 |
| 5:18C | 2/5/95 |
| 5:19 | 2/1/93 |
| 5:20 | 9/3/96 |
| 5:22 | 2/5/95 |
| 5:23 | 3/1/93 |
| 5:24 | 7/10/95 |
| 5:25 | 2/19/96 |
| 5:26 | 2/7/96 |
| 5:27 | 5/2/95 |

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| N.J.A.C. | Expiration Date |
|---|---|
| 5:28 | 12/13/95 |
| 5:29 | 2/19/96 |
| 5:30 | 6/29/93 |
| 5:31 | 12/1/94 |
| 5:33 | 8/6/95 |
| 5:34 | 12/3/95 |
| 5:37 | 1/7/96 |
| 5:50 | 10/27/93 |
| 5:51 | 9/1/93 |
| 5:52 | 1/2/95 |
| 5:70 | 7/9/92 |
| 5:71 | 6/4/95 |
| 5:80 | 4/20/95 |
| 5:91 | 2/7/96 |
| 5:92 | 2/7/96 |
| 5:100 | 6/18/95 |

## DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

| N.J.A.C. | Expiration Date |
|---|---|
| 5A:1 | 3/12/95 |
| 5A:2 | 5/17/95 |

## EDUCATION—TITLE 6

| N.J.A.C. | Expiration Date |
|---|---|
| 6:1 | 1/11/96 |
| 6:2 | 2/6/94 |
| 6:3 | 7/8/93 |
| 6:5 | 10/22/95 |
| 6:7 | 1/2/95 |
| 6:8 | 1/5/92 |
| 6:11 | 9/21/95 |
| 6:12 | 3/8/96 |
| 6:20 | 7/16/95 |
| 6:21 | 11/22/94 |
| 6:22 | 7/16/95 |
| 6:22A | 12/19/93 |
| 6:24 | 1/11/96 |
| 6:28 | 4/10/94 |
| 6:29 | 2/8/95 |
| 6:30 | 7/5/93 |
| 6:31 | 11/16/94 |
| 6:39 | 8/14/94 |
| 6:43 | 8/10/95 |
| 6:46 | 10/5/92 |
| 6:51 | 8/5/96 |
| 6:53 | 7/7/92 |
| 6:64 | 1/11/93 |
| 6:68 | 2/26/95 |
| 6:69 | 6/4/91 |
| 6:70 | 10/17/94 |
| 6:78 | 11/7/93 |
| 6:79 | 11/25/92 |

## ENVIRONMENTAL PROTECTION—TITLE 7

| N.J.A.C. | Expiration Date |
|---|---|
| 7:1 | 8/15/95 |
| 7:1A | 6/5/92 |
| 7:1C | 6/15/95 |
| 7:1D | 11/28/93 |
| 7:1E | 9/3/96 |
| 7:1F | 4/20/92 |
| 7:1G | 9/29/94 |
| 7:1H | 7/13/95 |
| 7:1I | 7/18/93 |
| 7:2 | 6/24/93 |
| 7:3 | 3/21/93 |
| 7:4A | 9/18/94 |
| 7:5 | 11/19/95 |
| 7:5C | 1/16/95 |
| 7:6 | 6/9/94 |
| 7:7 | 5/12/94 |
| 7:7A | 6/6/93 |
| 7:7E | 7/24/95 |
| 7:7F | 1/19/93 |
| 7:8 | 2/5/93 |
| 7:9 | 1/18/96 |
| 7:9A | 8/21/94 |
| 7:10 | 9/1/94 |
| 7:11 | 5/13/93 |
| 7:12 | 4/11/93 |
| 7:13 | 7/14/94 |
| 7:14 | 4/27/94 |
| 7:14A | 6/2/94 |
| 7:14B | 12/21/92 |
| 7:15 | 10/2/94 |
| 7:18 | 7/3/96 |
| 7:19 | 2/26/95 |
| 7:19A | 3/19/95 |
| 7:19B | 3/19/95 |
| 7:20 | 5/2/95 |
| 7:20A | 12/16/93 |
| 7:22 | 1/5/92 |
| 7:22A | 2/5/95 |
| 7:23 | 6/9/94 |
| 7:24 | 4/22/96 |
| 7:25 | 2/15/96 |
| 7:25A | 4/23/95 |
| 7:26 | 10/25/95 |
| 7:26B | 12/21/92 |
| 7:27 | Exempt |
| 7:27A | 12/4/94 |
| 7:27B-3 | Exempt |
| 7:28 | 7/30/95 |
| 7:29 | 5/21/95 |
| 7:29B | 2/1/93 |
| 7:30 | 12/4/92 |
| 7:31 | 6/20/93 |
| 7:36 | 11/21/93 |
| 7:38 | 9/18/95 |
| 7:45 | 2/6/94 |

## HEALTH—TITLE 8

| N.J.A.C. | Expiration Date |
|---|---|
| 8:7 | 9/14/95 |
| 8:8 | 4/12/94 |
| 8:9 | 2/14/96 |
| 8:13 | 9/8/92 |
| 8:18 | 11/6/94 |
| 8:19 | 5/11/95 |
| 8:20 | 3/2/95 |
| 8:21 | 10/23/95 |
| 8:21A | 4/1/90 |
| 8:22 | 7/11/96 |
| 8:23 | 12/13/94 |
| 8:24 | 5/2/93 |
| 8:25 | 5/19/93 |
| 8:26 | 4/12/96 |
| 8:31 | 1/16/95 |
| 8:31A | 2/20/95 |
| 8:31B | 8/17/95 |
| 8:31C | 1/20/92 |
| 8:33 | 7/27/95 |
| 8:33A | 2/20/92 |
| 8:33B | 7/27/95 |
| 8:33C | 7/17/91 |
| 8:33E | 6/23/92 |
| 8:33F | 11/16/94 |
| 8:33G | 7/17/94 |
| 8:33H | 5/16/95 |
| 8:33I | 9/15/91 |
| 8:33J | 4/24/94 |
| 8:33K | 3/27/94 |
| 8:33L | 11/16/92 |
| 8:33M | 7/17/94 |

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| N.J.A.C. | Expiration Date |
|---|---|
| 8:33N | 5/15/94 |
| 8:33P | 3/19/95 |
| 8:33Q | 11/19/95 |
| 8:34 | 11/15/93 |
| 8:38 | 4/3/94 |
| 8:39 | 6/20/93 |
| 8:40 | 5/7/91 |
| 8:41 | 2/17/92 |
| 8:42 | 8/17/92 |
| 8:42A | 6/19/94 |
| 8:42B | 7/18/93 |
| 8:43 | 11/19/92 |
| 8:43A | 7/27/95 |
| 8:43E | 12/11/92 |
| 8:43F | 2/20/95 |
| 8:43G | 2/5/95 |
| 8:43H | 8/21/94 |
| 8:43I | 3/21/93 |
| 8:44 | 11/2/93 |
| 8:45 | 2/7/95 |
| 8:51 | 9/17/95 |
| 8:52 | 12/15/91 |
| 8:53 | 8/4/91 |
| 8:57 | 4/20/95 |
| 8:57A | 4/20/95 |
| 8:59 | 9/29/94 |
| 8:60 | 5/3/95 |
| 8:61 | 10/6/91 |
| 8:65 | 6/17/96 |
| 8:66 | 3/5/95 |
| 8:66A | 3/5/95 |
| 8:70 | 8/19/93 |
| 8:71 | 2/17/94 |

## HIGHER EDUCATION—TITLE 9

| N.J.A.C. | Expiration Date |
|---|---|
| 9:1 | 2/21/94 |
| 9:2 | 5/4/95 |
| 9:3 | 9/27/93 |
| 9:4 | 10/30/91 |
| 9:5 | 4/1/96 |
| 9:6 | 4/30/95 |
| 9:6A | 1/4/93 |
| 9:7 | 2/28/93 |
| 9:8 | 10/15/95 |
| 9:9 | 10/3/93 |
| 9:11 | 4/17/94 |
| 9:12 | 4/17/94 |
| 9:14 | 4/11/95 |
| 9:15 | 8/21/94 |

## HUMAN SERVICES—TITLE 10

| N.J.A.C. | Expiration Date |
|---|---|
| 10:1 | 11/7/93 |
| 10:2 | 1/5/92 |
| 10:3 | 11/21/93 |
| 10:6 | 1/7/96 |
| 10:11 | 1/16/95 |
| 10:12 | 1/5/92 |
| 10:13 | 7/18/93 |
| 10:14 | 5/16/93 |
| 10:31 | 6/5/94 |
| 10:36 | 6/30/92 |
| 10:37 | 11/2/95 |
| 10:38 | 4/29/96 |
| 10:39 | 5/7/95 |
| 10:40 | 5/11/94 |
| 10:41 | 3/20/94 |
| 10:42 | 8/19/96 |
| 10:43 | 8/21/94 |
| 10:44A | 11/21/93 |
| 10:44B | 7/16/95 |
| 10:45 | 2/20/95 |
| 10:46 | 9/17/95 |
| 10:47 | 11/2/95 |
| 10:48 | 12/19/95 |
| 10:49 | 7/13/95 |
| 10:50 | 2/27/96 |
| 10:51 | 10/9/95 |
| 10:52 | 2/8/95 |
| 10:53 | 4/27/95 |
| 10:54 | 2/15/96 |
| 10:55 | 3/8/95 |
| 10:56 | 8/26/91 |
| 10:57 | 2/13/96 |
| 10:58 | 2/22/96 |
| 10:59 | 2/15/96 |
| 10:60 | 2/19/96 |
| 10:61 | 2/15/96 |
| 10:62 | 12/19/93 |
| 10:63 | 11/28/94 |
| 10:64 | 2/22/96 |
| 10:65 | 2/19/96 |
| 10:66 | 12/15/93 |
| 10:67 | 2/19/96 |
| 10:68 | 6/28/96 |
| 10:69 | 6/6/93 |
| 10:69A | 4/20/93 |
| 10:69B | 11/21/93 |
| 10:70 | 6/7/96 |
| 10:71 | 12/24/95 |
| 10:72 | 8/27/92 |
| 10:73 | 7/15/96 |
| 10:80 | 5/19/94 |
| 10:81 | 8/24/94 |
| 10:82 | 8/24/94 |
| 10:83 | 1/19/94 |
| 10:85 | 12/20/94 |
| 10:87 | 1/27/94 |
| 10:89 | 5/24/95 |
| 10:90 | 10/14/92 |
| 10:91 | 9/4/95 |
| 10:95 | Exempt |
| 10:97 | 5/15/94 |
| 10:99 | 6/4/95 |
| 10:109 | 2/4/96 |
| 10:120 | 7/9/96 |
| 10:121 | 7/16/95 |
| 10:121A | 12/7/92 |
| 10:122 | 5/15/94 |
| 10:122A | Exempt |
| 10:123 | 7/13/95 |
| 10:124 | 12/7/92 |
| 10:125 | 6/4/95 |
| 10:126 | 11/7/93 |
| 10:126A | 5/7/95 |
| 10:127 | 8/26/93 |
| 10:128 | 2/19/96 |
| 10:129 | 7/13/95 |
| 10:130 | 7/2/95 |
| 10:131 | 12/7/92 |
| 10:132 | 1/5/92 |
| 10:141 | 2/7/94 |

## CORRECTIONS—TITLE 10A

| N.J.A.C. | Expiration Date |
|---|---|
| 10A:1 | 7/6/92 |
| 10A:2 | 2/5/95 |
| 10A:3 | 10/6/91 |
| 10A:4 | 5/7/96 |
| 10A:5 | 6/17/96 |
| 10A:6 | 11/2/92 |
| 10A:8 | 11/16/92 |
| 10A:9 | 1/20/92 |
| 10A:10-6 | 8/17/92 |
| 10A:16 | 4/6/92 |
| 10A:17 | 12/15/91 |
| 10A:18 | 7/6/92 |

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| N.J.A.C. | Expiration Date |
|---|---|
| 10A:19 | 8/21/94 |
| 10A:21 | 2/4/96 |
| 10A:22 | 7/5/93 |
| 10A:31 | 3/5/95 |
| 10A:32 | 4/16/95 |
| 10A:33 | 5/2/94 |
| 10A:34 | 4/6/92 |
| 10A:35 | 4/15/96 |
| 10A:70 | Exempt |
| 10A:71 | 2/5/95 |

## INSURANCE—TITLE 11

| N.J.A.C. | Expiration Date |
|---|---|
| 11:1 | 1/31/96 |
| 11:2 | 11/30/95 |
| 11:3 | 1/4/96 |
| 11:4 | 11/30/95 |
| 11:5 | 10/28/93 |
| 11:7 | 10/19/92 |
| 11:10 | 7/12/95 |
| 11:12 | 10/27/91 |
| 11:13 | 11/12/92 |
| 11:15 | 10/26/94 |
| 11:16 | 1/31/96 |
| 11:17 | 4/18/93 |
| 11:17A | 1/2/95 |
| 11:17B | 1/2/95 |
| 11:17C | 1/2/95 |
| 11:17D | 1/2/95 |
| 11:18 | 12/18/94 |

## LABOR—TITLE 12

| N.J.A.C. | Expiration Date |
|---|---|
| 12:3 | 12/19/93 |
| 12:5 | 9/19/93 |
| 12:6 | 10/17/93 |
| 12:15 | 7/30/95 |
| 12:16 | 3/23/95 |
| 12:17 | 1/4/96 |
| 12:18 | 3/7/93 |
| 12:19 | 7/2/95 |
| 12:20 | 8/14/94 |
| 12:35 | 7/16/95 |
| 12:40 | 2/5/95 |
| 12:41 | 1/17/94 |
| 12:45 | 5/2/93 |
| 12:51 | 6/30/91 |
| 12:55 | 9/26/95 |
| 12:56 | 9/26/95 |
| 12:57 | 9/26/95 |
| 12:58 | 9/26/95 |
| 12:60 | 3/21/93 |
| 12:90 | 12/15/94 |
| 12:100 | 9/22/94 |
| 12:102 | 5/21/95 |
| 12:105 | 1/11/96 |
| 12:110 | 1/19/93 |
| 12:112 | 9/6/93 |
| 12:120 | 5/3/95 |
| 12:175 | 11/28/93 |
| 12:190 | 1/4/93 |
| 12:195 | 6/24/93 |
| 12:196 | 8/6/95 |
| 12:200 | 8/3/95 |
| 12:210 | 9/6/93 |
| 12:235 | 5/3/96 |

## COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

| N.J.A.C. | Expiration Date |
|---|---|
| 12A:9 | 3/7/93 |
| 12A:10-1 | 10/13/94 |
| 12A:11 | 9/21/92 |
| 12A:12 | 9/21/92 |
| 12A:31 | 7/16/95 |
| 12A:50 | 8/15/93 |
| 12A:54 | 8/15/93 |
| 12A:60 | 11/21/93 |
| 12A:80 | 7/2/95 |
| 12A:100 | 7/17/96 |
| 12A:120 | 9/6/93 |
| 12A:121 | 12/5/93 |

## LAW AND PUBLIC SAFETY—TITLE 13

| N.J.A.C. | Expiration Date |
|---|---|
| 13:1 | 7/5/93 |
| 13:1A | 10/15/95 |
| 13:2 | 7/24/95 |
| 13:3 | 4/25/93 |
| 13:4 | 1/17/96 |
| 13:10 | 3/27/94 |
| 13:13 | 7/16/95 |
| 13:18 | 3/30/95 |
| 13:19 | 8/18/94 |
| 13:20 | 12/13/95 |
| 13:21 | 12/13/95 |
| 13:23 | 5/26/94 |
| 13:24 | 9/27/94 |
| 13:25 | 3/16/95 |
| 13:26 | 9/26/93 |
| 13:27 | 2/20/95 |
| 13:28 | 5/16/93 |
| 13:29 | 5/23/95 |
| 13:30 | 3/12/95 |
| 13:31 | 12/12/91 |
| 13:32 | 10/23/92 |
| 13:33 | 3/12/95 |
| 13:34 | 10/26/93 |
| 13:35 | 9/21/94 |
| 13:36 | 9/27/94 |
| 13:37 | 1/23/95 |
| 13:38 | 8/27/95 |
| 13:39 | 6/19/94 |
| 13:39A | 6/21/96 |
| 13:40 | 8/3/95 |
| 13:41 | 7/17/95 |
| 13:42 | 10/31/93 |
| 13:43 | 9/1/93 |
| 13:44 | 8/7/94 |
| 13:44B | 11/2/92 |
| 13:44C | 7/18/93 |
| 13:44D | 8/7/94 |
| 13:44E | 7/1/96 |
| 13:45A | 11/9/95 |
| 13:45B | 4/17/94 |
| 13:46 | 9/4/95 |
| 13:47 | 2/2/92 |
| 13:47A | 10/5/92 |
| 13:47B | 2/21/94 |
| 13:47C | 6/9/94 |
| 13:47K | 9/17/95 |
| 13:48 | 1/17/96 |
| 13:49 | 12/16/93 |
| 13:51 | 4/27/92 |
| 13:54 | 10/5/91 |
| 13:59 | 7/30/95 |
| 13:60 | 1/20/92 |
| 13:61 | 3/5/95 |
| 13:62 | 3/19/95 |
| 13:63 | 8/19/96 |
| 13:70 | 1/25/95 |
| 13:71 | 1/25/95 |
| 13:75 | 6/5/94 |
| 13:76 | 6/27/93 |
| 13:77 | 2/1/93 |

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| N.J.A.C. | Expiration Date |
|---|---|
| 13:78 | 3/20/94 |
| 13:80 | 9/17/95 |
| 13:81 | 8/6/95 |

## PUBLIC UTILITIES—TITLE 14

| N.J.A.C. | Expiration Date |
|---|---|
| 14:1 | 12/16/90 |
| 14:3 | 5/6/96 |
| 14:5 | 12/16/90 |
| 14:6 | 9/3/96 |
| 14:9 | 4/1/96 |
| 14:10 | 9/8/91 |
| 14:10-6 | 9/5/91 |
| 14:11 | 1/27/92 |
| 14:17 | 4/24/94 |
| 14:18 | 7/26/95 |
| 14:25 | 3/5/95 |
| 14:29 | 3/4/96 |
| 14:30 | 2/19/96 |
| 14:32 | 1/22/96 |
| 14:38 | 4/1/96 |

## ENERGY—TITLE 14A

| N.J.A.C. | Expiration Date |
|---|---|
| 14A:6 | 1/16/95 |
| 14A:8 | 1/16/95 |
| 14A:11 | 1/16/95 |
| 14A:13 | 2/2/92 |
| 14A:14 | 1/30/94 |
| 14A:20 | 2/3/91 |
| 14A:22 | 6/4/89 |

## STATE—TITLE 15

| N.J.A.C. | Expiration Date |
|---|---|
| 15:2 | 5/2/93 |
| 15:3 | 8/19/96 |
| 15:5 | 2/17/92 |
| 15:10 | 4/15/96 |

## PUBLIC ADVOCATE—TITLE 15A

| N.J.A.C. | Expiration Date |
|---|---|
| 15A:2 | 12/27/94 |

## TRANSPORTATION—TITLE 16

| N.J.A.C. | Expiration Date |
|---|---|
| 16:1 | 10/1/95 |
| 16:1A | 6/16/94 |
| 16:5 | 11/20/94 |
| 16:6 | 8/7/94 |
| 16:7 | 3/6/94 |
| 16:13 | 9/4/95 |
| 16:20A | 2/20/95 |
| 16:20B | 2/20/95 |
| 16:21 | 8/6/95 |
| 16:21A | 11/20/94 |
| 16:21B | 12/3/95 |
| 16:22 | 12/18/95 |
| 16:24 | 2/5/95 |
| 16:25 | 8/15/93 |
| 16:25A | 7/18/93 |
| 16:26 | 9/5/94 |
| 16:27 | 4/8/96 |
| 16:28 | 6/1/93 |
| 16:28A | 6/1/93 |
| 16:29 | 6/1/93 |
| 16:30 | 6/1/93 |
| 16:31 | 6/1/93 |
| 16:31A | 6/1/93 |
| 16:32 | 2/8/95 |
| 16:38 | 10/15/95 |
| 16:41 | 7/28/92 |
| 16:41A | 1/23/95 |
| 16:41B | 7/2/95 |
| 16:43 | 5/10/95 |
| 16:44 | 5/25/93 |
| 16:45 | 9/18/94 |
| 16:46 | 11/6/94 |
| 16:49 | 2/8/95 |
| 16:51 | 4/6/92 |
| 16:53 | 7/17/94 |
| 16:53B | 7/3/94 |
| 16:53C | 6/16/93 |
| 16:53D | 5/3/94 |
| 16:54 | 3/28/96 |
| 16:55 | 6/14/93 |
| 16:56 | 8/7/94 |
| 16:60 | 6/14/93 |
| 16:61 | 6/14/93 |
| 16:62 | 2/26/95 |
| 16:72 | 3/20/96 |
| 16:73 | 1/30/92 |
| 16:74 | 10/20/91 |
| 16:75 | 5/13/93 |
| 16:76 | 2/6/94 |
| 16:77 | 3/5/95 |
| 16:78 | 12/17/95 |
| 16:79 | 10/20/91 |
| 16:80 | 11/7/93 |
| 16:81 | 11/7/93 |
| 16:82 | 9/5/94 |

## TREASURY-GENERAL—TITLE 17

| N.J.A.C. | Expiration Date |
|---|---|
| 17:1 | 5/6/93 |
| 17:2 | 11/8/94 |
| 17:3 | 8/15/93 |
| 17:4 | 6/8/95 |
| 17:5 | 11/30/95 |
| 17:6 | 11/22/93 |
| 17:7 | 12/19/93 |
| 17:8 | 10/15/95 |
| 17:9 | 10/3/93 |
| 17:10 | 5/6/93 |
| 17:12 | 10/13/94 |
| 17:13 | 10/13/94 |
| 17:14 | 10/13/94 |
| 17:16 | 5/2/96 |
| 17:19 | 3/8/95 |
| 17:20 | 9/26/93 |
| 17:25 | 5/26/94 |
| 17:27 | 10/7/93 |
| 17:28 | 8/17/95 |
| 17:29 | 9/26/95 |
| 17:30 | 5/4/92 |
| 17:32 | 3/21/93 |
| 17:33 | 4/17/94 |
| 17:40 | 11/19/95 |
| 17:41 | 4/1/96 |

## TREASURY-TAXATION—TITLE 18

| N.J.A.C. | Expiration Date |
|---|---|
| 18:1 | 7/21/94 |
| 18:2 | 9/6/93 |
| 18:3 | 3/14/94 |
| 18:5 | 3/14/94 |
| 18:6 | 3/14/94 |
| 18:7 | 3/14/94 |
| 18:8 | 2/24/94 |
| 18:9 | 6/7/93 |

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| N.J.A.C. | Expiration Date |
|---|---|
| 18:12 | 7/29/93 |
| 18:12A | 7/29/93 |
| 18:14 | 7/29/93 |
| 18:15 | 7/29/93 |
| 18:16 | 7/29/93 |
| 18:17 | 7/29/93 |
| 18:18 | 3/14/94 |
| 18:19 | 3/14/94 |
| 18:21 | 2/19/96 |
| 18:22 | 2/24/94 |
| 18:23 | 2/24/94 |
| 18:23A | 9/4/95 |
| 18:24 | 6/7/93 |
| 18:25 | 2/19/96 |
| 18:26 | 6/7/93 |
| 18:35 | 6/7/93 |
| 18:36 | 3/19/95 |
| 18:37 | 7/23/95 |
| 18:38 | 2/16/93 |
| 18:39 | 9/8/92 |

## OTHER AGENCIES—TITLE 19

| N.J.A.C. | Expiration Date |
|---|---|
| 19:3 | 5/26/93 |
| 19:3B | Exempt (N.J.S.A. 13:17-1) |
| 19:4 | 5/26/93 |
| 19:4A | 6/20/93 |
| 19:6 | 5/6/96 |
| 19:8 | 7/5/93 |
| 19:9 | 10/17/93 |
| 19:10 | 9/5/94 |
| 19:11 | 8/20/95 |
| 19:12 | 7/17/96 |
| 19:14 | 8/20/95 |
| 19:16 | 7/17/96 |
| 19:17 | 6/8/93 |
| 19:18 | 5/21/95 |
| 19:20 | 2/5/95 |
| 19:25 | 10/1/95 |
| 19:30 | 7/23/95 |
| 19:31 | 8/20/95 |
| 19:40 | 8/24/94 |
| 19:41 | 5/12/93 |
| 19:42 | 5/12/93 |
| 19:43 | 4/27/94 |
| 19:44 | 9/29/93 |
| 19:45 | 3/24/93 |
| 19:46 | 4/28/93 |
| 19:47 | 4/28/93 |
| 19:48 | 10/13/93 |
| 19:49 | 3/24/93 |
| 19:50 | 5/12/93 |
| 19:51 | 8/14/91 |
| 19:52 | 9/25/91 |
| 19:53 | 4/28/93 |
| 19:54 | 3/24/93 |
| 19:61 | 7/7/91 |
| 19:65 | 7/7/91 |
| 19:75 | 1/13/94 |

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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 July 1, 1991 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.1991 d.1 means the first rule adopted in 1991.

**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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JUNE 17, 1991**

**NEXT UPDATE: SUPPLEMENT JULY 15, 1991**

**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 |
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| 22 N.J.R. 2623 and 2860 | September 4, 1990 | 23 N.J.R. 799 and 924 | March 18, 1991 |
| 22 N.J.R. 2861 and 3072 | September 17, 1990 | 23 N.J.R. 925 and 1048 | April 1, 1991 |
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| **ADMINISTRATIVE LAW—TITLE 1** | | | | |
| 1:1-3.3 | Return of contested cases: failure of party to appear at hearing | 23 N.J.R. 1728(a) | | |
| 1:5 | Council on Affordable Housing hearings | 23 N.J.R. 2082(a) | | |
| 1:5 | Council on Affordable Housing hearings: extension of comment period | 23 N.J.R. 2497(a) | | |
| 1:10B | Medical Assistance and Health Services hearings | 23 N.J.R. 2083(b) | | |
| 1:13-1.1, 4.1 | Division of Motor Vehicle cases | 23 N.J.R. 928(a) | R.1991 d.330 | 23 N.J.R. 2010(a) |
| 1:13A-18.2 | Lemon Law hearings: exception to initial decision | 23 N.J.R. 2208(a) | | |
| 1:14 | Board of Public Utility hearings | 23 N.J.R. 640(a) | R.1991 d.361 | 23 N.J.R. 2120(a) |
| 1:14 | Board of Public Utility hearings: extension of comment period | 23 N.J.R. 1230(a) | | |
| 1:14-14.1, 14.4 | Board of Public Utility hearings: prefiled testimony; interlocutory review | 23 N.J.R. 2083(c) | | |
| | **Most recent update to Title 1: TRANSMITTAL 1991-3 (supplement June 17, 1991)** | | | |
| **AGRICULTURE—TITLE 2** | | | | |
| 2:9-1 | Avian influenza: indemnification of poultry losses | 23 N.J.R. 1485(a) | R.1991 d.430 | 23 N.J.R. 2498(a) |
| 2:18 | Nursery inspection fees | 23 N.J.R. 1230(b) | R.1991 d.407 | 23 N.J.R. 2328(a) |
| 2:21-7 | Fees for seed testing | 23 N.J.R. 1231(a) | R.1991 d.400 | 23 N.J.R. 2330(a) |
| 2:50-1.1, 2.1 | Dairy farmers and milk dealers notice to discontinue sale or purchase of milk | 23 N.J.R. 929(a) | R.1991 d.323 | 23 N.J.R. 2010(b) |
| 2:51 | Milk prices to dairy farmers | 23 N.J.R. 1966(b) | R.1991 d.448 | 23 N.J.R. 2498(b) |
| 2:69-1.11 | Commercial values of primary plant nutrients | 23 N.J.R. 1728(b) | R.1991 d.431 | 23 N.J.R. 2499(a) |
| 2:73-2 | Seal of Quality for Eggs program | 23 N.J.R. 1729(a) | R.1991 d.432 | 23 N.J.R. 2500(a) |
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| 3:1-2.17 | Closing of branch offices | 23 N.J.R. 2208(b) | | |
| 3:1-6.1, 6.2, 6.6 | Assessments on trust assets | 23 N.J.R. 1073(b) | R.1991 d.350 | 23 N.J.R. 2028(a) |
| 3:1-18 | Foreign banks and associations: registration of service facilities | 23 N.J.R. 1233(a) | R.1991 d.347 | 23 N.J.R. 2029(a) |
| 3:3-2.1 | Department records designated nonpublic | 23 N.J.R. 1858(a) | | |
| 3:6-4.5, 4.6 | Banks and savings banks: reporting of crimes | 23 N.J.R. 2209(a) | | |
| 3:16-2.1 | Pawnbroker service charges | 23 N.J.R. 1729(b) | R.1991 d.426 | 23 N.J.R. 2500(b) |
| 3:17 | Consumer Loan Act rules | 23 N.J.R. 1234(a) | R.1991 d.354 | 23 N.J.R. 2121(a) |
| 3:17-1.1, 1.4 | Consumer loan advertisements | 22 N.J.R. 2626(a) | | |
| 3:17-1.1, 1.4 | Consumer loan licensees: check solicitations | 23 N.J.R. 931(a) | R.1991 d.329 | 23 N.J.R. 2031(a) |
| 3:17-3.4 | Location of consumer loan records | 23 N.J.R. 803(a) | R.1991 d.362 | 23 N.J.R. 2122(a) |
| 3:18-2.1 | Location of secondary mortgage loan records | 23 N.J.R. 803(a) | R.1991 d.362 | 23 N.J.R. 2122(a) |
| 3:18-10.3 | Licensure of secondary mortgage lenders | 23 N.J.R. 2210(a) | | |
| 3:23-2.1 | License fees for motor vehicle installment sellers and home repair contractors | 23 N.J.R. 1073(b) | R.1991 d.350 | 23 N.J.R. 2028(a) |
| 3:24-2.7 | Posting of general ledger by check cashers | 23 N.J.R. 932(a) | R.1991 d.324 | 23 N.J.R. 2032(a) |
| 3:26-3.1, 3.2 | Savings and loan associations: reporting of crimes | 23 N.J.R. 2209(a) | | |
| 3:29-1.1–1.4, 1.6, 1.7, 1.8 | Savings and loan associations: audit requirements | 23 N.J.R. 1485(b) | R.1991 d.418 | 23 N.J.R. 2306(a) |
| 3:38-1.2, 1.4, 1.9, 2.1 | Mortgage banker and broker net worth standards | 23 N.J.R. 2450(a) | | |

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| 3:38-1.3 | Licensure of mortgage lenders | 23 N.J.R. 2210(a) | | |
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**Most recent update to Title 3: TRANSMITTAL 1991-5 (supplement June 17, 1991)**

**CIVIL SERVICE—TITLE 4**

**Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)**

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**Most recent update to Title 4A: TRANSMITTAL 1991-1 (supplement May 20, 1991)**

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| 5:18-1.5 | Fire official and fire inspector certification | 23 N.J.R. 1235(a) | R.1991 d.359 | 23 N.J.R. 2122(b) |
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| 5:18-2.8 | Uniform Fire Code life hazard uses and permit fees: administrative correction and extension of comment period | 23 N.J.R. 2453(a) | | |
| 5:18-3.2 | Uniform Fire Code: hotel-casinos | 23 N.J.R. 1237(a) | | |
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| 5:18A-2.6 | Fire Code enforcement: life hazard uses and permit fees | 23 N.J.R. 2234(a) | | |
| 5:18C-4.2 | Firefighter I certification | 23 N.J.R. 2084(a) | | |
| 5:20-1 | Meetings of governing board of a condominium association | 23 N.J.R. 1901(a) | R.1991 d.455 | 23 N.J.R. 2633(a) |
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| 5:23-2.8, 2.17A, 2.24, 2.32 | Uniform Construction Code: approval of completed work | 23 N.J.R. 2236(a) | | |
| 5:23-2.38 | Barrier Free Recreational Standards: appeals regarding facility noncompliance | 23 N.J.R. 1730(a) | R.1991 d.428 | 23 N.J.R. 2500(d) |
| 5:23-3.14, 3.18, 3.20, 10.3 | Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes | 23 N.J.R. 1487(a) | R.1991 d.429 | 23 N.J.R. 2501(a) |
| 5:23-3.15, 3.18 | Uniform Construction Code: plumbing and energy subcodes | 23 N.J.R. 804(a) | R.1991 d.326 | 23 N.J.R. 2044(a) |
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| 5:23-11 | Uniform Construction Code: Indoor Air Quality Subcode | 23 N.J.R. 1730(b) | | |
| 5:23-12.2 | Elevator Safety Subcode: referenced standards | 23 N.J.R. 2046(a) | | |
| 5:33-3 | Tenants' Property Tax Rebate Program | Emergency (expired 8-30-91) | R.1991 d.383 | 23 N.J.R. 2183(a) |
| 5:33-4 | Property tax and mortgage escrow account transactions | 23 N.J.R. 1903(a) | | |
| 5:80-2.2 | Housing and Mortgage Finance Agency: consultation with housing sponsors | 22 N.J.R. 3669(b) | R.1991 d.408 | 23 N.J.R. 2306(b) |
| 5:80-9 | Housing and Mortgage Finance Agency: housing project rents | 22 N.J.R. 2389(b) | R.1991 d.334 | 23 N.J.R. 2055(a) |
| 5:80-9.9 | Housing and Mortgage Finance Agency: JUMPP project net increases | 23 N.J.R. 646(a) | R.1991 d.335 | 23 N.J.R. 2058(a) |
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| 5:91-4.1, 4.5 | Council on Affordable Housing: petition for substantive certification; municipal/developer incentives | 23 N.J.R. 1088(a) | R.1991 d.344 | 23 N.J.R. 2058(a) |
| 5:92 | Council on Affordable Housing: preproposal regarding mandatory developers' fees | 23 N.J.R. 646(b) | | |
| 5:92-1.3, 6.1, 6.2, 6.3, 14.4 | Council on Affordable Housing: credits for rehabilitation and new construction; rental housing | 23 N.J.R. 1488(a) | R.1991 d.412 | 23 N.J.R. 2307(a) |

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|---|---|---|---|---|
| 5:92-1.6 | Council on Affordable Housing: extension of certification period/judgment of repose | 23 N.J.R. 2084(b) | | |
| | **Most recent update to Title 5: TRANSMITTAL 1991-6 (supplement June 17, 1991)** | | | |
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| 5A:4 | Brigadier General William C. Doyle Veterans' Memorial Cemetery | 23 N.J.R. 1491(a) | | |
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| 6:11-6.2 | Early childhood instructional certificate | 23 N.J.R. 2210(b) | | |
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| 6:21-7, 19 | Pupil transportation aid | 23 N.J.R. 1737(a) | R.1991 d.460 | 23 N.J.R. 2636(a) |
| 6:22-1.2–1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8 | School Facility Planning Service | 23 N.J.R. 1238(a) | R.1991 d.443 | 23 N.J.R. 2502(a) |
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| 6:30-4.4, 4.5 | Reporting of enrollments in adult high schools | 23 N.J.R. 1243(a) | R.1991 d.401 | 23 N.J.R. 2330(b) |
| 6:39-1.3, 1.4 | Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests | 23 N.J.R. 1244(a) | R.1991 d.402 | 23 N.J.R. 2331(a) |
| 6:41 | Repeal Advisory Council | 23 N.J.R. 1244(b) | R.1991 d.403 | 23 N.J.R. 2331(b) |
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**Most recent update to Title 19: TRANSMITTAL 1991-2 (supplement May 20, 1991)**

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

| | | | | |
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| 19:41-11.1 | Vendor registration form | 23 N.J.R. 2486(b) | | |
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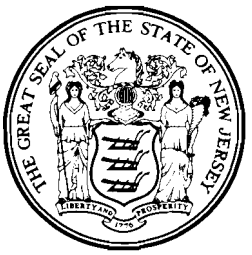


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