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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 19, 1992
See the Register Index for Subsequent Rulemaking Activity.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 72(1992)
Tribute to Richard Hughes

Issued: December 7, 1992.
Effective: December 7, 1992.
Expiration: Indefinite.

WHEREAS, Richard J. Hughes was the only Governor in New Jersey history to serve the people of his beloved state as both Chief Executive and Chief Justice of the State Supreme Court; and

WHEREAS, Governor Hughes devoted more than five decades of his life to public service; and

WHEREAS, he shepherded New Jersey safely through some of our most uncertain times and, through his deep commitment to justice and equality, helped to ennoble those times; and

WHEREAS, his skilled and gracious statesmanship, his integrity and his commitment to fiscal responsibility remain today a model and an inspiration for all in government; and

WHEREAS, he understood that the lasting greatness of any society is contained in the promise of its children, and that the most important task of government is to nurture that promise through education; and

WHEREAS, his singular vision and determined leadership enabled New Jersey to create a world-class system of universities, colleges and junior colleges in which we could nurture the creative genius of all our young people and continue New Jersey's proud tradition of generational progress; and

WHEREAS, his administration laid the foundation for a strong, modern transportation system that has enabled New Jersey to keep its economy moving for more than a generation; and

WHEREAS, he believed deeply that the strength of America lies in our diversity and that, as President Roosevelt said, we are all sons and daughters of immigrants, equally deserving of dignity and opportunity; and

WHEREAS, his belief in New Jersey's greatness and his ability to convince others of that greatness helped move New Jersey into the national spotlight as the site of the 1964 Democratic national convention and the 1967 summit meeting at Glassboro between President Lyndon Johnson and Soviet Premier Aleksei Kosygin; and

WHEREAS, his keen insight and devotion to justice, now inscribed in law, helped our state, and our nation, to move a little closer to the noble ideals on which we were founded; and

WHEREAS, as Chief Justice of the state's highest court, he was widely respected and admired for his leadership and courageous stands on such diverse issues as the sacred right of each individual to live and die with dignity, the right of every child to receive a quality education, the right of those accused of crimes to receive a fair trial and the right of those convicted to receive fair and humane treatment.

WHEREAS, his devotion to public and community service never detracted from his love and devotion to family and friends; and

WHEREAS, his Irish wit, wise counsel and indomitable spirit were rare and precious resources that will be greatly missed in the halls of government and throughout our state; and

WHEREAS, it is fitting and appropriate for the State of New Jersey to mark the passing of Richard J. Hughes, a great statesman and public servant who always put New Jersey first;

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

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all state departments, offices, agencies and instrumentalities during appropriate hours beginning on Monday, December 7, 1992 and through and including Monday, December 21 in recognition and mourning of the passing of one of New Jersey's most distinguished sons, Richard J. Hughes.

2. This order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 73(1992)
Limited State of Emergency in Atlantic, Burlington, Cape May, Cumberland, Middlesex, Monmouth and Ocean Counties

Issued: December 11, 1992.
Effective: December 11, 1992.
Expiration: Indefinite.

WHEREAS, severe weather conditions of December 11, 1992 including heavy rains, winds and high tides have created flooding, hazardous road conditions, and threatened homes and other structures in the coastal areas of the State; and

WHEREAS, these weather conditions pose a threat and constitute a disaster from a natural cause which threatens and presently does endanger the health, safety or resources of the residents of more than one municipality and county of this State; and which is in some parts of the State and may become in other parts of the State too large in scope to be handled in its entirety by the normal municipal operating services; and

WHEREAS, the Constitution and Statutes of the State of New Jersey, particularly the provisions of the Law of 1942, Chapter 251 (N.J.S.A. App: 9-30 et seq.) and the Laws of 1979, Chapter 240 (N.J.S.A. 38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers.

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a limited State of Emergency has and presently exists in Atlantic, Burlington, Cape May, Cumberland, Middlesex, Monmouth and Ocean Counties.

NOW THEREFORE, in accordance with the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4), I hereby authorize the Adjutant General of the New Jersey National Guard to order to active duty such members of the New Jersey National Guard that, in his judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare. He may authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251 as supplemented and amended, I hereby empower the Superintendent of the Division of State Police, who is the State's Director of Emergency Management, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area that he, in his discretion, deems necessary for the protection of the health, safety and welfare of the public.

The Superintendent of the Division of State Police is further authorized and empowered to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from their residences during the course of this emergency.

FURTHERMORE, the Superintendent of the Division of State Police is hereby authorized to order the evacuation of all persons, except for those emergency and governmental personnel whose presence he deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

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This Order shall take effect immediately and it shall remain in effect until such time as it is determined by me that an emergency no longer exists.

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 74(1992)
Limited State of Emergency in Bergen, Hudson and Salem Counties

Issued: December 11, 1992.
Effective: December 11, 1992.
Expiration: Indefinite.

WHEREAS, severe weather conditions in the State of New Jersey led to the declaration of a limited State of Emergency in certain areas of the State, pursuant to Executive Order No. 73; and

WHEREAS, conditions in other areas of the State have deteriorated and the conditions in Bergen, Hudson and Salem Counties constitute a disaster from a natural cause and continue to pose a threat and endanger the health, safety or resources of the residents of one or more municipalities and counties of this State; and which is in some parts of the State, and threatens to become, too large in scope to be handled in its entirety by normal municipal or county operation services.

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a limited State of Emergency exists in Bergen, Hudson and Salem Counties.

Executive Order No. 73 is hereby extended to include Bergen, Hudson and Salem Counties. This Order shall take effect immediately and shall remain in effect until such time as I determine that an emergency no longer exists.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 75(1992)
Limited State of Emergency in Camden, Essex, Gloucester, Hunterdon, Mercer, Morris, Passaic, Somerset, Sussex, Union and Warren Counties

Issued: December 11, 1992.
Effective: December 11, 1992.
Expiration: Indefinite.

WHEREAS, severe weather conditions in the State of New Jersey led to the declaration of a limited State of Emergency in certain areas of the State, pursuant to Executive Order Nos. 73 and 74; and

WHEREAS, conditions in other areas of the State have deteriorated and the conditions in Camden, Essex, Gloucester, Hunterdon, Mercer, Morris, Passaic, Somerset, Sussex, Union and Warren Counties constitute a disaster from a natural cause and continue to pose a threat and endanger the health, safety or resources of the residents of one or more municipalities and counties of this State; and which is in some parts of the State, and threatens to become, too large in scope to be handled in its entirety by normal municipal or county operation services.

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a limited State of Emergency exists in Camden, Essex, Gloucester, Hunterdon, Mercer, Morris, Passaic, Somerset, Sussex, Union and Warren Counties.

Executive Order Nos. 73 and 74 are hereby extended to include Camden, Essex, Gloucester, Hunterdon, Mercer, Morris, Passaic, Somerset, Sussex, Union and Warren Counties. This Order shall take effect immediately and shall remain in effect until such time as I determine that an emergency no longer exists.

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RULE PROPOSALS

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Coastal Zone Management
Energy Use Policies
Outer Continental Shelf Oil and Gas Exploration and Development

Proposed Amendment: N.J.A.C. 7:7E-7.4

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1D-1 et seq.; 13:19-1 et seq.; 13:9B-1 et seq.; and 12:5-1 et seq.

DEPE Docket Number: 59-92-12.

Proposal Number: PRN 1993-7.

A **public hearing** concerning the proposal will be held on Tuesday, January 26, 1993 at 10:00 A.M. at:

New Jersey Department of Environmental Protection and Energy
First Floor Hearing Room
401 East State Street
Trenton, New Jersey 08625

Submit written comments, identified by the DEPE docket number above, by February 3, 1993 to:

Richard J. McManus, Administrative Practice Officer
New Jersey Department of Environmental Protection and Energy, Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) proposes to amend the Coastal Zone Management Rules concerning Outer Continental Shelf (OCS) oil and gas exploration and development, N.J.A.C. 7:7E-7.4(d). This rule currently encourages rapid exploration of the outer continental shelf for oil and gas reserves, as long as no long term adverse impacts result. The proposed change would discourage such exploration as long as other viable alternative measures exist that could meet national energy needs without posing environmental threats. These measures include demand reduction, conservation, and renewable energy sources. The proposed change comports with the Comprehensive National Energy Policy Act (P.L. 102-486), enacted on October 24, 1992. This legislation, designed to curb the United States' dependence on foreign oil, also stresses the importance of a concerted nationwide energy conservation policy. It established new guidelines and standards for energy efficiency improvements and provided numerous incentives to encourage these improvements to take place in homes, offices and industries. It also encourages development and production of energy drawn from renewable sources, such as the sun, wind and geothermal heat.

The existing OCS policy, formulated in the late 1970's, was prompted by the national energy crisis that erupted from an oil embargo in the winter of 1973-74. It was adopted by the Department of Environmental Protection as a regulation and as part of the New Jersey Coastal Zone Management Program in 1980. At that time, in response to the energy crisis, the Department of the Interior promoted the leasing of OCS areas at an accelerated pace. The OCS Natural Oil and Gas Leasing Program operates on a five year cycle. The Department of the Interior identifies the size, timing and location of the areas to be assessed for leasing in a draft proposal for public comment prior to finalizing the program for that five year period. The current five-year Leasing Program begins at mid-1992 and ends at mid-1997. In the proposed final Program, one sale will be considered in 1996 for 250 blocks or less (a block = 5,000 acres) within the combined Mid-Atlantic and South-Atlantic Planning Areas which includes blocks off New Jersey's coast.

The proposed rule change reflects New Jersey's comments on the draft proposal for the current five-year Program submitted by Governor Florio on October 7, 1991. The State of New Jersey, in its response to the draft proposal for the 1992-1997 Leasing Program, urged the Minerals Management Service to designate the OCS off the New Jersey Coast as a "no leasing" area. New Jersey has always been concerned with the potential negative impacts that OCS exploration and development activities may have upon the coastal environment and tourism industry. These negative impacts may be unnecessary as long as there are viable alternatives to offshore exploration, such as conservation and the use of renewable energy sources. Energy conservation in particular is a cost-effective, long term measure without negative environmental consequences.

Under the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., each Federal agency activity that affects any land or water use or natural resource of the coastal zone must be carried out in a manner consistent with the enforceable policies of approved state coastal zone management programs, to the maximum extent practicable. New Jersey's Coastal Zone Management Program is a Federally approved program. This amendment if adopted will amend New Jersey's regulations and be reflected in decisions New Jersey makes under the Waterfront Development Act, CAFRA, and other State laws. In addition, it would require approval by the National Oceanic and Atmospheric Administration (NOAA) as a change to the New Jersey Coastal Zone Management Program. If the revised policy is approved by NOAA as part of New Jersey's Federally approved program, it then would also have a direct impact on Federal actions, discouraging activities related to offshore oil and gas exploration such as lease sales of OCS tracts off the New Jersey coast.

The Department does not expect that the proposed amendment will have a significant impact upon the oil and gas industries in the near future, because the oil and gas resources off the New Jersey coast are not currently commercially recoverable. According to the historic information contained in the *1990 OCS National Compendium* (MMS91-0032), published by the OCS Information Program of the Minerals Management Service, 32 testing wells were drilled off the New Jersey OCS between 1978 and 1984. The exploration activities were the heaviest during the first two years of that period and sparse thereafter. These tests resulted in a few small discoveries of oil and gas, but none were considered commercially recoverable. No exploration activities have taken place since 1984.

The proposed amendment will update the concerned governmental agencies, the oil and gas industries, the fishery and tourism industries and the public on New Jersey's current approach to the exploration and development of OCS. This proposed change in policy will alleviate the concerns of many New Jersey coastal residents and visitors who fear that the State's currently published policy unnecessarily exposes the coastal area to environmental threats associated with the exploration and development of OCS.

The Department is also proposing to amend the energy facility siting procedures at N.J.A.C. 7:7E-7.4(b) to reflect Governor Florio's Reorganization Plan No. 002-1991. N.J.A.C. 7:7E-7.2(b) currently provides for the Department and the Board of Public Utilities to review the acceptability of all proposed new or expanded coastal energy facilities. The Reorganization Plan transferred to the Department the functions, powers and duties of the Division of Energy Planning and Conservation in the Board of Public Utilities. As a result, the review process under N.J.A.C. 7:7E-7.4(b) has been consolidated within the Department. The proposed amendments reflect that consolidation.

Social Impact

As stated in the Summary above, the proposed amendment to N.J.A.C. 7:7E-7.4(d) may affect the oil and gas industries, should those industries consider OCS exploration off the New Jersey coast in the future. However, because the results of the explorations performed in the late 1970s and early 1980s show that the resources off New Jersey's OCS are not economically recoverable, the Department does not expect that the oil and gas industries will be significantly affected by the change. The proposed change will still permit OCS exploration to occur off the New Jersey coast in the event that a need arises.

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The Department expects that the proposed changes will have a generally positive social impact to the extent that they encourage energy conservation as an alternative to exploration of offshore reserves for oil and gas. They will allay the concerns of those who fear that the existing policy may unnecessarily expose the coastal communities and the tourism and fishing industries to potential environmental and economic threats associated with OCS activities, by broadening the decision-making process concerning OCS exploration and development so that they will be evaluated in conjunction with other viable alternatives.

Economic Impact

The Department anticipates that the proposed amendments to N.J.A.C. 7:7E-7.4(d) will have a positive economic impact on the coastal tourism and fishing industries, by reducing the fear of potential pollution associated with OCS exploration and development of oil and gas resources. In addition, the Department expects that the proposed amendments will have a generally positive economic impact to the extent that they encourage energy conservation as an alternative to exploration for offshore reserves for oil and gas. The proposed amendment to N.J.A.C. 7:7E-7.4(d) is not expected to have any significant economic impact on the oil and gas industries since testing results to date show that the resources off the New Jersey coast are not commercially recoverable.

Environmental Impact

The Department anticipates that the proposed amendment to N.J.A.C. 7:7E-7.4(d) will have a positive environmental impact to the extent that it encourages energy conservation as an alternative to exploration for offshore reserves for oil and gas. Energy conservation and renewable energy sources pose fewer environmental problems. Increased reliance on these measures will not only reduce the environmental risks involved in the exploration, production and transport of the hydrocarbon reserves, but will also reduce the amount of pollutants released into the environment from their use.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose any additional reporting, record keeping or other compliance requirements on the oil and gas industries.

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

7:7E-7.4 Energy Use Policies

(a) (No change.)

(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by [a] **the following** review process [that includes both the Department, and the Board of Public Utilities, (N.J.S.A. 52:27F-6 and 52:27-11 et seq.) according to the procedures defined in the Memorandum of Understanding between NJDEPE and BPU on Coordination of Permit Review].

2. [BPU] **The Department** will determine the need for future coastal energy facilities according to three basic standards. [BPU] **The Department** will [submit] **prepare** an Energy Report [to DEP] with its determination of the need for a coastal energy facility based on three required findings:

i.-iii. (No change.)

3. The Department will determine the acceptability of coastal energy facilities using [Coastal Resources and Development Policies] **this chapter** supported by appropriate, technically sound analyses of alternatives.

[4. If BPU has submitted an Energy Report to the Department, the Department decision document shall refer to the BPU Energy Report and indicate the Department's reasons for differences, if any, between the Department decision and the BPU Energy Report.

5. Where BPU and the Department disagrees on the acceptability of a specific proposed energy facility (for example, on a specific proposed site for one type of energy facility) the disputed decision shall, in accord with state law, be submitted to the State's Energy Facility Review Board for final administrative action.]

[6.]**4.** Rationale: See OAL Note at the beginning of the subchapter.

(OAL NOTE: The following amendment is a change to the rationale for N.J.A.C. 7:7E-7.4(b) which, as explained in the Code, is not published as part of the Code.)

Rationale: [BPU and the Department] **The State's Energy and Coastal Zone Management Programs** share responsibility for carrying out the energy facility siting, planning and project review [elements of the New Jersey Coastal Management Program. The State Energy Master Plan and its appendices, the Coastal Resource and Development Policies, and the Memorandum of Understanding between the Two Department and BPU provide clear framework for decision-making by these two State agencies on the review of proposed facilities, as well as a basis for continued consultation and cooperative planning]. **These review standards and procedures facilitate a concurrent and coordinated review of the need for and siting of energy facilities in the coastal zone by the State's Energy and Coastal Zone Management programs.**

(c) (No change.)

(d) Outer Continental Shelf (OCS) Oil and Gas Exploration and Development Policy

1. [Rapid] Exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is [encouraged] **discouraged**, as long as [no long terms adverse impact will result, on shore or offshore and such activities are conducted in accordance with the policies of the program] **other viable alternatives with less or no environmental threats to the coastal environment, including energy conservation, have not been fully explored and fully integrated into the National Energy Strategy. Nevertheless, should exploration occur and commercially recoverable amounts of oil or natural gas be found** [Onshore activities related to the exploration], development and production of offshore hydrocarbons shall be carried out according to the specific energy facility policies of this section.

2. Rationale: See OAL Note at the beginning of the subchapter.

(OAL NOTE: The following amendment is a change to the rationale for N.J.A.C. 7:7E-7.4(d) which, as explained in the Code, is not published as part of the Code.)

Rationale: The decision of the U.S. Department of Interior to lease offshore tracts for oil and natural gas exploration presents New Jersey with new onshore and marine-related environmental problems and opportunities (See Figure 15). New Jersey [supports offshore exploration, recognizing the national need to identify new energy supplies as long as this new industrial activity does not conflict with the state's second most important industry, tourism, which depends upon the maintenance of a high quality coastal environment.] **recognizes the national need to identify new energy supplies, but discourages the exploration of offshore oil and gas reserves as long as there are other viable alternative measures that could meet national energy needs without posing any environmental threats. These measures include demand reduction, conservation and renewable energy sources. New Jersey encourages a balanced energy use strategy which fully explores all alternatives and evaluates the viability of each in a comprehensive manner, before continuing to rely on oil, gas and other energy sources posing environmental risks.**

New Jersey strongly advocates that energy conservation be fully integrated into all major governmental policies affecting economic and land use developments, because it is a cost-effective, long term measure which bears no negative environmental consequences. This is especially important in the New Jersey coastal area where the tourism based economy is closely tied to the quality of the coastal environment. Energy conservation is a key component of the New Jersey State Energy Master Plan, Transportation Master Plan and State Implementation Plan for air quality, all of which directly and indirectly affect the development pattern of the coastal area. Energy conservation and other environmentally non-threatening measures need to be fully factored into the national energy demand and supply equation, and afforded a leading role in the formulation of national energy strategy.

A number of natural gas strikes were made on tracts leased in the Mid-Atlantic OCS Region since the 1970s. These strikes did not constitute a commercial discovery. In the event that commercial quantities of natural gas and/or oil are found off the New Jersey

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coast, there may be considerable onshore and offshore activity during the development stage of OCS operations that is necessary for the production of these hydrocarbon resources. Development activity will diminish once production begins.

[A number of natural gas strikes have been made on tracts leased in the Mid-Atlantic OCS Region since the 1970s. To date, these strikes do not constitute a commercial discovery.]

Figure 15 (No change.)

To minimize the impact of needed facilities, DEP encourages the location of OCS-related facilities, except oil and gas transportation facilities, in developed areas where the infrastructure and labor market already exist to absorb such activity.

During the construction of onshore oil and gas facilities, there may be an influx to the coastal zone of the marine service and engineering industry. This service sector office-oriented activity will be encouraged to locate in urban centers, such as Atlantic City.

(e)-(s) (No change.)

(a)

COMMISSION ON RADIATION PROTECTION

Medical Diagnostic X-Ray Installations
Dental Radiographic Installations

Proposed Repeals and New Rules: N.J.A.C. 7:28-15 and 7:28-16.8
Proposed Amendment: N.J.A.C. 7:28-16.2

Authorized By: Commission on Radiation Protection, Henry J. Powsner, M.D., Chairman.

Authority: N.J.S.A. 26:2D-1 et seq., including 26:2D-7, 26:2D-9(h), 26:2D-9(i), and 26:2D-10.

DEPE Docket Number: 60-92-12.

Proposal Number: PRN 1993-12.

A **public hearing** concerning the proposed repeal and new rules at N.J.A.C. 7:28-15 and the proposed amendments to N.J.A.C. 7:28-16 will be held on:

Wednesday, February 24, 1993 at 10 A.M.
Radiation Protection Program Office
729 Alexander Road
Princeton, NJ 08540

Submit written comments by March 5, 1993 to:

Richard J. McManus, Director
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., (the "Act") was enacted. The Act provides authority to set standards for the possession, handling, transportation and use of sources of radiation within the State of New Jersey. The Act established the State's Radiological Health Program, which was transferred from the Department of Health to the Department of Environmental Protection and Energy ("the Department"). The Radiological Health Program is now known as the Bureau of Radiological Health ("BRH"). The Act also created the Commission on Radiation Protection ("the Commission"), and vested in that body the authority to promulgate rules and regulations necessary to prohibit and prevent unnecessary exposure to radiation.

Since the existing rules were adopted over 30 years ago, there have been many technological advances in the design and use of medical x-ray equipment. In August 1974, the United States Food and Drug Administration ("F.D.A.") adopted Federal performance standards for newly manufactured x-ray equipment, which have been codified in 21 C.F.R. Part 1020. These regulations require manufacturers to construct x-ray equipment that complies with these standards, and assemblers to install the equipment in conformity with the Federal standards.

New Jersey's Bureau of Radiological Health ("BRH") has historically used these Federal regulations as guidelines when inspecting x-ray equipment manufactured after 1974. The Commission has written the proposed rules to require that registrants or owners of x-ray equipment manufactured after August 1, 1974 meet standards that are identical to the Federal performance standards. This equipment is known as "certified equipment."

The Commission is also proposing to promulgate standards for equipment manufactured before August 1, 1974, which is not required to comply with the Federal performance standards in 21 C.F.R. Part 1020. This equipment is known as "uncertified" equipment. Performance standards for uncertified equipment are addressed in the Suggested State Regulations for the Control of Radiation (SSRCR). The requirements proposed by the Commission are consistent with the SSRCR document.

In addition to advances in machine technology over the years, there have been advances in radiation protection principles and practices for both patients and the general public. The Commission is proposing to revise N.J.A.C. 7:28-15 to mandate the use of the advancements in shielding and to make the survey requirements more explicit. These new rules will ensure that the general public and individuals undergoing x-ray procedures are better protected from unnecessary exposure to radiation. It does not make sense to enforce rules that are outdated and which do not address current safety issues.

The Commission proposes to amend N.J.A.C. 7:28-15 to ensure that it provides reasonable and state-of-the art protection for the prevention of unnecessary exposure to radiation during medical diagnostic procedures. The Commission's goal is to set standards that are specific, clearly defined, and consistent with the changes that have been made in technology and safety practices. The following references were consulted by the Commission during the preparation of these revisions, and were used in developing the safety requirements set forth in these proposed rules:

1. Parts B and F of the 8th edition, June 1990, Suggested State Regulations for the Control of Radiation (SSRCR), Volume I, Ionizing Radiation prepared by the Conference of Radiation Control Program Directors, Inc., the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, and U.S. Food and Drug Administration's National Center for Devices and Radiological Health (1990).
2. Performance Standards for Ionizing Radiation Emitting Products, Code of Federal Regulations, Title 21, Chapter 1, Subchapter J, Part 1020 (21 C.F.R. 1020.30, 31, 32, 33 and 40) (1991).
3. Conditions for Coverage of Screening Mammography, Code of Federal Regulations, Title 42, Chapter IV, Part 494, Subpart B, (42 C.F.R. Part 494.50 et seq.) (1991).
4. National Council on Radiation Protection and Measurements Reports (NCRP), National Council on Radiation Protection and Measurements, Bethesda, Maryland, as follows:

Report No. 49—Structural Shielding Design and Evaluation for Medical Use of X-Rays and Gamma Rays of Energies Up to 10 MeV (1976).

Report No. 66—Mammography (1980).

Report No. 85—Mammography—A User's Guide (1986).

Report No. 68—Radiation Protection in Pediatric Radiology (1981).

Report No. 82—SI Units in Radiation Protection and Measurements (1985).

Report No. 91—Recommendations on Limits for Exposure to Ionizing Radiation (1987).

Report No. 102—Medical X-ray, Electron Beam and Gamma Ray Protection for Energies Up to 50 MeV (1989).

Report No. 105—Radiation Protection for Medical and Allied Health Personnel (1989).

5. American Association of Physicists in Medicine (AAPM) Report No. 13, Physical Aspects of Quality Assurance in Radiation Therapy (1984).
6. American Association of Physicists in Medicine (AAPM) Report No. 25, Protocols for the Radiation Safety Surveys of Diagnostic Radiological Equipment (1988).
7. American College of Radiology (ACR) Mammography Quality Control for Radiologic Technologists, Radiologists, and Medical Physicists (1992).

The Code of Federal Regulations establishes machine performance standards that are in force nationwide. In this subchapter, the Commission is proposing to adopt standards that are identical to the Federal performance standards. The Suggested State Regulations for the Control of Radiation (SSRCR) document is used throughout the country as a guide for establishing individual state regulations for the control of radiation. The SSRCR was used as the basis for the standards applicable

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to uncertified equipment and for the personal health and safety standards proposed in these rules. The NCRP and AAPM reports are widely used by physicists as references in the field of radiation protection, and were consulted in establishing the health and safety standards proposed in this subchapter.

A copy of each of the documents listed above is available for review during business hours at the Radiation Protection Program's offices located at 729 Alexander Road, Princeton, New Jersey. Please contact the Bureau of Radiological Health at 609-987-2022 to schedule an appointment to view the documents. To purchase a copy of these documents, contact the following:

"Suggested State Regulations for the Control of Radiation" (SSRCR): Conference of Radiation Control Program Directors, Inc., 205 Capital Avenue, Frankfort, Kentucky 40601. (502-227-4543).

NCRP Reports: NCRP Publications, 7910 Woodmont Avenue, Suite 800, Bethesda, Maryland 20814. (301-657-2652).

AAPM: Executive Officer, American Association of Physicists in Medicine, 335 East 45 Street, New York, NY 10017. (212-661-9404).

C.F.R.: Superintendent of Documents, Government Printing Office, Washington, DC 20402. (202-783-3238).

ACR: American College of Radiology, 1891 Preston White Drive, Reston, VA 22091. (703-648-8900).

A section-by-section summary of the proposed new rules at N.J.A.C. 7:28-15 follows:

N.J.A.C. 7:28-15.1 defines the purpose and scope of the subchapter. The rules address certified and uncertified ionizing-radiation-producing equipment.

N.J.A.C. 7:28-15.2 defines the words and terms that are specific to this subchapter.

N.J.A.C. 7:28-15.3 establishes the performance standards for medical radiographic equipment. The Commission has revised this section to be identical to the Federal Performance Standards for Ionizing Radiation Emitting Products in 21 C.F.R. Part 1020, which apply to equipment manufactured after August 1, 1974. For equipment manufactured prior to August 1, 1974, the rule is consistent with the Suggested State Regulations for the Control of Radiation.

Proposed N.J.A.C. 7:28-15.3 addresses: alignment of light field, x-ray field, and image receptor; half-value layer; control panel indicators; visual and audible signals to indicate exposure termination; reproducibility of the timer, exposure, and kVp; accuracy of the timer, exposure and kVp; linearity; and additional requirements for mobile and portable units, and podiatric units.

N.J.A.C. 7:28-15.4 establishes the requirements for medical radiographic equipment used to perform diagnostic and screening mammography procedures. Due to the increased interest in separate standards for mammography, which was prompted by the voluntary American College of Radiology (ACR) accreditation program, new Medicare regulations, and public concern, the Commission felt it was necessary to have a separate section addressing mammography. This section is based on universally recognized ACR standards and the Medicare regulations in 42 C.F.R. Part 494.

Proposed N.J.A.C. 7:28-15.4 includes machine performance standards, and establishes the requirements for the quality assurance program. The Commission wrote these requirements to be consistent with the requirements to obtain accreditation from the American College of Radiology.

The Commission proposes to require all mammography units to be accredited by the American College of Radiology. The Commission is allowing a two-year period to achieve accreditation status since the process takes a minimum of six months and only 30 percent of the units pass on the first application. The Commission believes that two years is a reasonable amount of time to give the regulated community notice and an opportunity to complete the accreditation process.

The Commission recognizes that in the future there may be other accrediting agencies or organizations that may establish standards that are equivalent to ACR accreditation standards. In order to allow for this possible development, a registrant who owns or operates a mammography unit that is accredited by an agency or organization other than ACR may petition the Commission for recognition of this alternative accreditation program. The Commission may approve the registrant's petition if the Commission concludes that this agency or organization has established standards that are equivalent to ACR accreditation standards.

The Commission seeks to expand the requirements in areas where it felt it was necessary to keep the radiation dose to the patient and public as low as reasonably achievable (ALARA). ALARA is a commonly used concept in the radiation protection field. The specific requirements chosen by the Commission are based on the above listed references, and the Commission believes that these documents provide sufficient support for the standards selected in this proposed rule. The Commission also believes that the proposed standards in this section will provide clear notice to the regulated community of what is required for compliance, and that these unambiguous standards will make compliance relatively easy. (A further explanation of the ALARA concept appears in the Social Impact statement below.)

In addition to the machine performance standards in N.J.A.C. 7:28-15.4, the Commission is proposing to require the registrant to establish and maintain a quality assurance ("QA") program. A QA program is an organized effort by a facility to ensure that the product produced (for example, the x-ray image) is of a consistently high quality. The QA program maximizes the likelihood that the images will provide adequate diagnostic information at the least possible radiation exposure and cost to the patient. This program includes quality control ("QC"), that is, doing routine testing and maintenance of the components of the x-ray system to verify that the equipment is operating satisfactorily. QA includes administrative procedures to verify that the QC procedures are done routinely and properly, that the results of these tests are evaluated promptly and accurately, and that necessary corrective actions are taken in response to the results.

The QA program requires a quality assurance manual; quality control testing procedures on the x-ray equipment, the film processor, the darkroom and the xeromammography processing equipment; and recordkeeping requirements. The Commission proposes to require that records of test results be retained for at least 36 months. The Commission believes that this is a reasonable time limit and will not impose a burden on the registrant.

Although the Commission had previously adopted rules for a QA program for therapeutic installations, this is the first time the Commission has proposed a QA program for medical diagnostic x-ray equipment. Since ACR and Medicare require a QA program as a criterion for accreditation and certification respectively, the Commission believes that the QA requirements in this proposed rule will not impose an additional burden on the registrant.

N.J.A.C. 7:28-15.5 establishes the machine performance standards for a medical fluoroscopic x-ray system. The proposed rule adds specific requirements for certified fluoroscopic equipment which are consistent with the Federal performance standards in 21 C.F.R. 1020.32. Stationary and mobile fluoroscopic equipment are addressed. Tabletop entrance exposure rate limits have been set for both certified and uncertified fluoroscopic units. The entrance exposure rate limit for certified and uncertified equipment that is provided with automatic exposure control was relaxed from five R/min to 10 R/min, unless optional high-level control is provided. The entrance exposure rate limit for certified and uncertified equipment that is not provided with automatic exposure control remains at five R/min. The Commission chose these limits in order to be identical to the Federal performance standards. The Commission believes that the entrance exposure rate limits set forth in this section provide an acceptable margin of safety for both patients and the general public, without compromising the diagnostic effectiveness of fluoroscopic equipment.

N.J.A.C. 7:28-15.6 establishes the requirements for radiation therapy simulator systems. This new section includes machine performance standards and the requirements for a quality assurance program. The requirements for therapy simulator systems have been placed in the medical diagnostic installations subchapter instead of in the therapeutic installations subchapter because a therapy simulator system uses the components of a radiographic and a fluoroscopic system. In 1986 the Commission proposed regulations for therapy simulator systems in N.J.A.C. 7:28-14.6 at the same time that it proposed revisions to N.J.A.C. 7:28-14, Therapeutic Installations. Due to comments that therapy simulator systems were similar to radiographic and fluoroscopic x-ray equipment, the Commission did not adopt this section when it adopted N.J.A.C. 7:28-14 in 1987. Instead, due to the resemblance to the radiographic and fluoroscopic x-ray equipment, the Commission has chosen to propose the requirements for therapy simulator systems in N.J.A.C. 7:28-15.

The proposed rule will require a quality assurance program to be established by the registrant in collaboration with a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems, as defined in N.J.A.C. 7:28-15.2. Records of the

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quality assurance program must be maintained for at least 36 months, a time limit which the Commission believes is reasonable and will not impose a burden on the registrant.

This proposed rule will exempt therapy simulators from the requirements of light-field and x-ray field alignment, and from the tabletop entrance exposure rate limits. This is consistent with the Federal performance standards.

N.J.A.C. 7:28-15.7 establishes the requirements for computed tomography ("CT") equipment. This proposed new section requires specific safety and operating procedures for CT equipment that are identical to the Federal performance standards in 21 C.F.R. 1020.33. The proposed rule also establishes quality control procedures which are consistent with the Federal regulations. This new section will provide the Department with specific health and safety standards to enforce, where previously CT units were regulated by the general provisions of N.J.A.C. 7:28. The Commission felt that the increased use of CT equipment in the practice of medicine and necessarily higher radiation doses required for CT examinations than the routine radiographic studies necessitated a section dedicated to this particular type of equipment.

N.J.A.C. 7:28-15.8 establishes specific requirements for medical cabinet x-ray systems. These cabinet systems are used to x-ray surgical pathology specimens from humans and are not used for industrial or research use. Since the cabinet systems rules in N.J.A.C. 7:28-17 only address industrial and nonmedical radiography machines, the Commission felt that it was not appropriate to apply the requirements of N.J.A.C. 7:28-17 to those cabinet units used for medical diagnostic purposes. The proposed medical cabinet system rule will require operational safety checks, radiation safety surveys, radiation leakage limits, and x-ray-on warning lights.

N.J.A.C. 7:28-15.9 establishes the requirements for individual radiation safety. This section specifically prohibits a licensed practitioner from ordering or causing a radiologic technologist to hold a patient during a radiographic or fluoroscopic procedure, except in a medical life-threatening situation. It requires the registrant to provide written safety rules specific to the x-ray equipment used at that facility to ensure that each individual working in a controlled area understands the equipment and safety procedures, and has read them. The use of protective shielding when an individual must be in the room during an x-ray procedure is specified. This section also sets forth the requirements as to who is prohibited and permitted to hold a patient during an x-ray procedure.

N.J.A.C. 7:28-15.10 establishes the requirements for structural shielding of the x-ray facility. It also establishes the minimum requirements for the information to be included in the radiation area survey report, and specifies a time limit within which the survey must be completed and submitted to the Department. To the extent that this section provides more stringent requirements than those in N.J.A.C. 7:28-7, Radiation Surveys and Personnel monitoring, and N.J.A.C. 7:28-8, Records, it is the intent of the Commission that N.J.A.C. 7:28-15.10 shall govern.

The Commission is proposing to require that the original survey report be maintained by the registrant for a time period of "... as long as the unit remains registered plus one year." The Commission selected this time period because shielding information is needed for as long as the unit is registered. The additional one year was added because the registrant may stop using a unit, without removing it from the x-ray room. If this occurs, the registrant has, in effect, a one-year grace period to either reactivate the unit or disassemble it. The proposed provision in this section takes into account this one-year grace period. The time frame of "as long as the unit remains registered plus one year" is different than the current requirement in N.J.A.C. 7:28-8 that records be maintained for at least 10 years. The Commission believes that the proposed requirement is more comprehensive, and will ensure that survey records are maintained for the entire registration life span of the unit. Up-to-date shielding information is necessary should questions arise from patients or the general public.

N.J.A.C. 7:28-15.11 lists the types of x-ray equipment that the Commission proposes to ban in New Jersey. Shoe-fitting fluoroscopic devices and hand-held fluoroscopic screens are already prohibited and the Commission proposes to continue this ban. The Commission also proposes to ban the use of fixed vertical systems designed for non-image-intensified fluoroscopy which are used for any medical radiograhic or fluoroscopic procedure. In addition, the Commission proposes to ban chest photofluorographic x-ray equipment. The Commission intends these new bans to take effect one year after the effective date of these new rules.

The Commission proposes to prohibit the use of this equipment because it does not comply with most of the new requirements of N.J.A.C. 7:28-15.5, and will not be capable of upgrade to comply with the standards set forth therein. These systems are more than 40 years old and cannot approach the lower radiation doses and increased safety afforded by more modern equipment provided with image-intensification. The Commission has evaluated the declining effectivenes of this equipment, the increased radiation exposure to the patient and the general public from these devices, and the small number of units affected (estimated 35), and has determined that the harm caused by these devices far outweighs the need that these units continue to be used. The Commission believes that the one-year transition period is a reasonable amount of time for the regulated commuity to comply with this section. This time frame is sufficient to allow registrants either to purchase equipment that complies with the rules or to make arrangements with facilities that own and operate machines that meet the New Jersey standards.

N.J.A.C. 7:28-15.12 sets forth a "severability" clause, which provides that the entire subchapter will not be deemed unenforceable in the event that one or more provisions of the rules are declared to be invalid. Since New Jersey is on the forefront of radiation protection, and proposed N.J.A.C. 7:28-15 seeks to regulate new types of medical diagnostic equipment, the Commission felt that the inclusion of a severability provision was an appropriate precautionary measure.

In addition to the proposed repeal and new rules at N.J.A.C. 7:28-15, the Commission proposes to correct a typographical error in the definition of "coefficient of variation," which is found in N.J.A.C. 7:28-16.2. This error of misplacement of the equation brackets is obvious to medical health physicists and radiation protection specialists. Research on the rule proposal and adoption revealed this error, and the Commission now proposes to correct it.

The Commission also proposes to change the definition of "protective barrier" in N.J.A.C. 7:28-16.2, which was adopted in November 1990. The Commission intends to make this definition conform to the definition of "protective barrier" which was adopted in N.J.A.C. 7:28-1.4 in February 1992. During the public comment period for N.J.A.C. 7:28-1.4, a comment was received that the term "millirem" was the appropriate term to use, instead of the term "milliroentgen," which appeared in the original rule proposal. The Commission responded that the intent of the definition of "protective barrier" was to include all types of radiation, and agreed that "millirem" was the correct term. The adoption of the definition of "protective barrier" in N.J.A.C. 7:28-1.4 included the correct term. By amending the definition in N.J.A.C. 7:28-16.2, the Commission intends to have a uniform definition of "protective barrier."

The Commission is also proposing to amend N.J.A.C. 7:28-16.8 by making the radiation safety survey requirements consistent with the proposed survey requirements in N.J.A.C. 7:28-15. Since the same qualified individuals perform both medical and dental surveys, it is illogical to have two different sets of survey requirements. The Commission intends to repeal N.J.A.C. 7:28-16.8 and replace it with radiation safety survey requirements that are consistent with those proposed in N.J.A.C. 7:28-15.10.

Proposed N.J.A.C. 7:28-16.8 seeks to change the requirements that surveys must be performed within 60 days, and a copy of the survey report submitted to the Department within 30 days. The proposed new rule will require that within 30 days of the date the machine is acquired the registrant shall have a survey performed, shall send a copy of the survey report to the Department, and shall maintain a copy of the survey report at the facility. This proposed shortened time period will not create additional financial costs to the registrant. The Commission does not believe that the shortened time period will place a burden on the registrant since he or she will know when the unit will be installed and can arrange for the survey to be performed shortly thereafter.

Social Impact

The proposed new rules at N.J.A.C. 7:28-15 will allow the Department to improve its regulatory program to ensure that all registrants and users of medical ionizing-radiation-producing equipment operate, handle and maintain it in such a manner that they safeguard themselves, their patients and the general public from unnecessary exposure to radiation. The operational safety procedures and machine performance standards are designed to keep radiation exposure to individuals as low as reasonably achievable ("ALARA").

ALARA is an industry term that takes into account the state of technology and the economics of improvements in relation to the benefits to the public health and safety and other societal and socioeconomic factors. ALARA also takes into consideration the use of radiation in the public interest. In these rules, the Commission has set specific

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standards that are based on the Code of Federal Regulations, the Suggested State Regulations for the Control of Radiation, the National Council on Radiation Protection and Measurements reports, and the American Association of Physicists in Medicine reports. The Commission has proposed that all medical diagnostic x-ray installations must meet the standards set forth in N.J.A.C. 7:28-15. When these minimum standards are met, radiation doses will be less than they are under the current regulatory scheme. Since these standards are taken from well-respected and widely-accepted sources, the Commission believes that the proposed standards satisfy the ALARA concept.

Proposed N.J.A.C. 7:28-15 does not prohibit a facility from instituting more stringent standards to further decrease radiation doses to patients and the public. The Commission encourages a registrant to institute these added protections. However, it recognizes that stricter voluntary standards are not part of these proposed rules.

The diagnosis and treatment of medical conditions is an established practice. The inherent goal of this radiological health rule is to eliminate unnecessary radiation by reducing radiation dose levels and rates of exposure to a point that is as low as reasonably achievable, while still meeting the intended medical needs. The Commission expects that the proposed new standards will contribute to the safe and effective use of ionizing radiation in the area of medical diagnosis, while adequately protecting patients and the general public from unnecessary radiation exposure.

The impact on society of banning shoe-fitting fluoroscopic devices, hand-held fluoroscopic screens, chest photofluorographic machines, and fixed vertical non-image-intensified fluoroscopes for radiography and fluoroscopy will be positive since the new rules will greatly reduce the radiation exposure hazard to the patient and the residents of New Jersey.

The proposed amendments to N.J.A.C. 7:28-16.2 correct a typographical error that appeared in the definition of "coefficient of variation." By correcting this formula, the Department and the registrants will be able to make proper calculations. This will ensure that the equipment is in compliance with the standards set forth in N.J.A.C. 7:28-16, and will, therefore, have a positive social impact.

The Commission proposes to amend the definition of "protective barrier" in N.J.A.C. 7:28-16.2 to make it consistent with the definition of "protective barrier" in N.J.A.C. 7:28-1.4. The Commission believes that uniformity in N.J.A.C. 7:28 is important; however, it does not believe that this change will have any social impact.

The proposed repeal and new rule of N.J.A.C. 7:28-16.8 to shorten the time frame to perform a survey and submit the survey report to the Department will have a positive social impact. This is because the Department, the registrant and the general public will know in a shorter period of time that room shielding is in place and that it is adequate to prevent exposure to unnecessary radiation.

Economic Impact

Proposed N.J.A.C. 7:28-15 will require some new expenditures by practitioners in the regulated community. However, the Commission does not believe that the added expenses will be onerous.

Medical x-ray equipment manufactured after August 1, 1974 is known as "certified" equipment, and is required to meet the Federal performance standards in 21 C.F.R. Part 1020 (1991). The primary expenditure to the regulated community will be for service or maintenance contracts to assure that the equipment continues to meet the Federal performance standards. The cost will vary depending on the number of x-ray units the registrant owns and the service contract agreement he or she obtains.

Medical x-ray equipment manufactured before the establishment of the Federal performance standards is considered "uncertified" x-ray equipment. The primary expenditure incurred by the registrant will be for service or maintenance contracts to assure that the equipment meets the regulations set forth in N.J.A.C. 7:28-15. The cost will vary depending on the number of x-ray units the registrant owns and the service contract agreement he or she obtains.

The Commission proposes to ban uncertified non-image intensified fluoroscopic equipment one year after the adoption of proposed N.J.A.C. 7:28-15. Replacement of the equipment will be a major expense. However, the Commission estimates that only 35 units will be affected. The cost will range from approximately $100,000 for a refurbished image-intensified fluoroscopic unit up to $190,000 for a new unit. The Commission believes that this additional cost will be more than offset by the overriding concern for patient care and public safety.

The cost to a facility to comply with the proposed mammography section will depend on whether the facility has already achieved ACR accreditation for each mammography unit under its jurisdiction. The current application fee to achieve accreditation by the American College of Radiology is $700.00 for the first unit and $600.00 for each additional unit. The cost to reapply after a first failure to achieve accreditation is $300.00 and for the second failure is $400.00. The cost to renew the ACR accreditation is $700.00 for the first unit and $600.00 for each additional unit. The Commission believes that the cost to achieve ACR accreditation or its equivalent is outweighed by the benefits of dose reduction to the patient.

The Commission expects that the costs to comply with proposed N.J.A.C. 7:28-15 will be passed on by the registrant to the patients. How much, if any, of these costs of doing business is passed on to patients will depend on each registrant, and is not addressed by these rules.

The proposed amendments to N.J.A.C. 7:28-16.2 correct the definitions of "coefficient of variation" and "protective barrier." The Commission believes that such corrections will not have any economic impact on the regulated community.

Proposed N.J.A.C. 7:28-16.8 seeks to change the requirements that surveys must be performed within 60 days, and a copy of the survey report submitted to the Department within 30 days. The proposed new rule will require that within 30 days of the date the machine is acquired the registrant shall have a survey performed, shall send a copy of the survey report to the Department, and shall maintain a copy of the survey at the facility. The Commission is also proposing similar survey requirements in new rule N.J.A.C. 7:28-15.10. The Commission believes that the proposed shortened time periods in both N.J.A.C. 7:28-15.10 and 16.8 will not create financial costs to the registrant. However, proposed N.J.A.C. 7:28-15.10 and 16.8 will create additional record keeping requirements, which the Commission anticipates may place additional, but nominal, costs on the regulated community.

Environmental Impact

The Commission is committed to establishing a program which will prevent unnecessary exposure to radiation. Proposed N.J.A.C. 7:28-15 establishes standards which will protect the patients and the public from unnecessary exposure to radiation from medical x-ray equipment. The protection of these individuals will have a positive effect on the environment because less radiation exposure to humans means less radiation emitted to the environment.

The proposed amendment to the definition of "coefficient of variation" in N.J.A.C. 7:28-16.2 will have a positive environmental impact because the correct formula will now be used to determine compliance with N.J.A.C. 7:28-16. If equipment is in compliance with N.J.A.C. 7:28-16, less radiation will be emitted into the environment. The Commission does not believe that the proposed change to the definition of "protective barrier" in N.J.A.C. 7:28-16.2 will have any environmental impact because the amendment only addresses the terminology used to measure radiation.

The Commission believes that the proposed repeals and new rules in N.J.A.C. 7:28-15.10 and 16.8 will hve a positive environmental impact because the new rules address the information required to be in a radiation safety survey report, in addition to the timing of when surveys must be performed and reports submitted to the Department. Having this information available will enable the Department to ensure that proper shielding is in place, which will result in less radiation emitted into the environment.

Regulatory Flexibility Analysis

The proposed new rules will update the New Jersey Administrative Code to reflect current radiation protection machine performance standards and facility operating procedures that must be followed by all medical facilities.

It is estimated that of the 7,000 medical units registered to 3,700 facilities with the Department, 3,500 private offices are considered to be small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Commission intends for all small businesses to comply with the requirements set forth in N.J.A.C. 7:28-15. The remaining 200 facilities with registered medical diagnostic x-ray units are hospitals, educational institutions, and industries and are not considered small businesses under the Regulatory Flexibility Act.

It is anticipated that some small businesses will incur capital and administrative costs in complying with the proposed rules. The costs will be borne by registrants who currently have a unit that will be banned by these proposed rules and who opt to purchase a replacement unit. The specific costs of taking such action is addressed in the Economic Impact Statement above. Mammography facilities which have not already

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achieved ACR accreditation will also incur costs in completing the accreditation process. The Commission believes that these capital and administrative expenditures will only be incurred by registrants who own units proposed to be banned and registrants who own mammography units.

In addition to the capital and administrative expenses discussed above, the Commission anticipates proposed N.J.A.C. 7:28-15 will place significant reporting and record keeping requirements on the regulated community. The proposed survey requirements of N.J.A.C. 7:28-15.10 will affect all x-ray units covered by this subchapter. Each unit must have a radiation survey performed to determine the adequacy of the room shielding. A report of this survey must be prepared by a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems, and a copy must be kept by the registrant. It is required that a copy of the survey report be sent to the department within 30 days of the date the machine is acquired. The information that must be contained in the radiation survey report is stipulated in N.J.A.C. 7:28-15.10(b)3, and is consistent with current radiation survey protocols recommended by NCRP and AAPM reports for evaluating shielding. The minimum requirements for the information in the survey report, generally, are: name of registrant; New Jersey registration number; description of equipment and survey instrument; name and address of qualified individual; date of survey; diagram of floor plan of the facility; records of measurement of radiation exposure; and various exposure rates.

Radiation surveys must be performed by qualified individuals, as defined in N.J.A.C. 7:28-15.2. The cost to hire a qualified individual to perform a radiation area survey varies according to the individual and the type of machine to be surveyed. The cost generally ranges from $100.00 to $500.00 per unit.

Proposed N.J.A.C. 7:28-15 requires quality assurance programs that set forth specific record keeping requirements for mammography equipment, therapy simulator systems and computed tomography systems. (See, N.J.A.C. 7:28-15.4(h), (i) and (j); 15.6(c)1; 15.7(b)2 and 3.) Each of these programs requires that a manual and test results be maintained. A qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray and therapy simulator systems must be hired to perform certain tasks required by the quality assurance program. The cost to comply with the quality assurance programs varies depending on the qualified medical physicist and the number of units owned by the registrant.

In addition to the quality assurance programs described above, registrants who operate or permit the operation of a medical cabinet x-ray system are required to make and maintain certain records. (See, N.J.A.C. 7:28-15.8(b)1 and 3.) The Commission does not believe that a registrant will have to engage the services of a professional to comply with this requirement.

It is estimated that of the 11,700 dental x-ray units registered to 4,600 dental facilities with the department, 4,400 private offices are considered to be small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The Commission intends for all small businesses to comply with the proposed amendments in N.J.A.C. 7:28-16.2 and the requirements set forth in proposed new rule N.J.A.C. 7:28-16.8. The remaining 200 facilities with registered dental x-ray units are hospitals, educational institutions and industries, and are not considered to be small businesses under the Regulatory Flexibility Act.

The Commission does not believe that the proposed amendments to the definitions of "coefficient of variation" and "protective barrier" in N.J.A.C. 7:28-16.2 will impose any capital costs or any reporting, record keeping or other compliance requirements on small businesses. Therefore, pursuant to N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not applicable to those proposed amendments.

The Commission anticipates the proposed repeal and new rule at N.J.A.C. 7:28-16.8 will impose some additional record keeping requirements on the regulated community. However, the Commission does not believe that this proposed new rule will impose additional expenditures on the regulated community. In order to comply with the requirement that a radiation survey be performed, a registrant will have to hire a qualified individual to conduct the survey. The cost to hire a qualified individual ranges from $100.00 to $300.00 per unit, however, this is a cost already incurred by the regulated community under the current N.J.A.C. 7:28-16.8.

The time frames to have the survey performed and to send a copy of the survey report to the Department have been shortened under proposed new rule N.J.A.C. 7:28-16.8. In addition, the time for maintaining survey reports has been enlarged. Since the current N.J.A.C. 7:28-16.8 already imposes some record keeping requirements, the Commission does not expect the proposed changes to place a substantial burden on the regulated community.

In developing proposed new rules in N.J.A.C. 7:28-15 and 16.8, the Commission balanced the need to protect the public from unnecessary radiation against the economic impact of the proposed new rules and amendments on small businesses. The Commission has determined that to minimize the impact of these proposed new rules on small businesses would endanger the health and safety of the citizens of New Jersey. Therefore, no exemption from proposed new rules N.J.A.C. 7:28-15 and 16.8 is provided for small businesses.

Full text of the proposed repeal of N.J.A.C. 7:28-15 may be found in the New Jersey Administrative Code.

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

SUBCHAPTER 15. MEDICAL DIAGNOSTIC X-RAY INSTALLATIONS

7:28-15.1 Scope

(a) This subchapter establishes the requirements for medical radiographic and fluoroscopic installations of certified and uncertified ionizing-radiation-producing machines used in all the healing arts, except where exempted by the rules in N.J.A.C. 7:28-16, Dental Radiographic Installations.

(b) No person shall operate or permit the operation of x-ray equipment used in the healing arts unless the equipment and installation meet the applicable requirements of this subchapter.

(c) Provisions of this subchapter are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(d) The registrant shall ensure that all ionizing-radiation-producing machines under his or her jurisdiction are operated only by persons authorized pursuant to the Radiologic Technologist Act, N.J.S.A. 26:2D-24 through 36, and applicable provisions of N.J.A.C. 7:28-19.1.

7:28-15.2 Definitions

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

"Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

"Acquired date" means the date the unit has been installed and is capable of use on patients.

"Aluminum equivalent" means the thickness of aluminum (type 1100 alloy) affording the same attenuation, under specified conditions, as the material in question.

"Anti-collision device" means either an electronic position sensor combined with a microprocessor or a mechanical touch bar microswitch which will stop all equipment movement and radiation exposures to prevent collision of any part of the radiation therapy simulator system with the patient, or damage to other components of the simulator system.

"Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into a diagnostic x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent who assembles components into an x-ray system that is subsequently used to provide professional or commercial services.

"Automatic exposure control" means a device which automatically controls one or more technique factors in order to obtain a required quantity of radiation at a preselected location(s) (for example, phototimer).

"Beam axis" means a line from the source through the center of the x-ray field.

"Beam-limiting device" means a mechanism which provides a means to restrict the dimensions of the x-ray field.

"C-arm x-ray system" means an x-ray system in which the image receptor and x-ray tube housing assembly are connected by a common mechanical support system in order to maintain a desired

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spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

"Cassette holder" means a device other than a spot-film device, that supports and/or fixes the position of an image receptor during an x-ray exposure.

"Certified components" means components of x-ray systems which are subject to the regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J, Radiological Health (21 C.F.R. Part 1020 et seq., Performance Standards for Ionizing Radiation Emitting Products).

"Certified system" means any x-ray system which has all certified components. Also known as a certified unit or a certified diagnostic x-ray system.

"Coefficient of variation" means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}}\left[\sum_{i=1}^{n} \frac{(X_i - \overline{X})^2}{n-1}\right]^{1/2}$$

where:

s = estimated standard deviation of population
$\overline{X}$ = mean value of observations in sample
X_i = ith observation in sample
n = number of observations in sample

"Computed tomography" (CT) means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

"Computed tomography dose index" (CTDI) means the integral of the dose measured along a line perpendicular to and centered at the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan, that is:

$$CTDI = \frac{1}{nT}\int_{-7T}^{+7T} D(z)\, dz$$

where:

z = position along a line perpendicular to the tomographic plane
$D(z)$ = Dose at position z
T = nominal tomographic section thickness
n = number of tomograms produced in a single scan

This definition assumes that the dose profile is centered around $z = 0$ and that, for a multiple tomogram system, the scan increment between adjacent scans is nT.

"Contrast scale" (CS) for computed tomography means the change in the linear attenuation coefficient per CT number relative to water, that is:

$$CS = \frac{\mu_x - \mu_w}{(CT)_x - (CT)_w}$$

where:

μ_x = linear attenuation coefficient of material of interest
μ_w = linear attenuation coefficient of water
$(CT)_x$ = CT number of the material of interest
$(CT)_w$ = CT number of water

"Contrast ratio" for a light field is the ratio of the illumination three millimeters from the edge of the field towards the center of the field to the illumination three millimeters from the edge of the field away from the center of the field.

"Control panel" means the part of the x-ray control upon which are mounted the switches, knobs, push-buttons, and other hardware necessary for manually setting the technique factors.

"CT conditions of operation" means all selectable parameters governing the operation of a CT x-ray system, including nominal tomographic section thickness, filtration, and the technique factors.

"CT number" means the number used to represent the x-ray attenuation associated with each elemental area of the CT image.

"Dedicated mammography unit" means an x-ray system specifically designed for mammographic procedures.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Diagnostic type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation at a distance of one meter from the target cannot exceed 100 milliroentgens in one hour when the tube is operated at its maximum continuous rated current for the maximum continuous rated tube potential.

"Diagnostic x-ray system" means an x-ray system designed for irradiation of any part of the human body for the purpose of diagnostic imaging or measurement.

"Emergency off switch" means a switch located near the table or near the console which, when operated, turns off all power to the system.

"Entrance exposure rate" means the exposure per unit time at the point where the center of the useful beam enters the patient.

"Equipment" means x-ray equipment.

"Exposure" means a measure of the quantity of x or gamma radiation based upon its ability to ionize air through which it passes.

"Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Fluoroscopic imaging assembly" means a subsystem in which x-ray photons produce a fluoroscopic image. The subsystem includes the image intensifier, spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

"General purpose radiographic x-ray system" means any radiographic x-ray system which is not limited by its design to the radiographic examination of a specific anatomical region.

"Half-value layer" (HVL) means the thickness of specified material which attenuates the x-ray beam so that the exposure is reduced to one-half of its original value.

"Image intensifier" means a device, installed in its housing, which instantaneously converts an x-ray pattern into a corresponding light image.

"Image receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where means are provided to preselect a portion of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

"Image receptor support" means that part of the system designed to support the image receptor during a radiographic examination.

"kV" means kilovolts.

"kVp" (see "peak tube potential").

"Leakage radiation" means radiation emanating from the diagnostic source assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows:

1. For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs that is 10 milliampere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

2. For diagnostic source assemblies intended for field emission equipment rated for pulsed operations, the maximum-rated peak

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tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

3. For all other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Light field" means the area of the intersection of the light beam from the beam-lighting device and one of the set of planes parallel to the plane of the image receptor as well as at the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"mA" means milliampere.

"mAs" means milliampere second.

"Mobile x-ray equipment" means completely assembled x-ray equipment, which is mounted on a permanent base with wheels and/or casters and is used in multiple locations.

"Motor vehicle mounted" means an x-ray system permanently mounted and operated in a motor vehicle.

"Multiple-tube installation" means a radiographic installation in which one control panel may energize more than one radiographic x-ray tube.

"Noise" for computed tomography means the standard deviation of the fluctuations in CT number expressed as a percent of the attenuation coefficient of water. Its estimate (S_n) is calculated using the following expression:

$$S_n = \frac{100 \times CS \times s}{\mu_w}$$

where: CS = contrast scale
μ_w = linear attenuation coefficient of water
s = estimated standard deviation of the CT numbers of picture elements in a specified area of the CT image

"Nominal tomographic section thickness" means the full width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which x-ray transmission data are collected.

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"Positive beam-limiting device" (PBL) means a device which automatically restricts the x-ray field to the size of the image receptor.

"Portable x-ray equipment" means x-ray equipment designed to be hand-carried.

"Primary protective barrier" see "protective barrier".

"Protective barrier" means a barrier of radiation-absorbing material used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, intercepting the useful beam for protective purposes to reduce the radiation exposure so that it does not exceed two millirems per hour; and

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to reduce radiation exposure so that it does not exceed two millirems per hour.

"Qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems" as required in this subchapter means an individual who meets at least one of the following criteria:

1. Certification by one of the following agencies in the specialty listed:

i. The American Board of Radiology and Diagnostic Radiological Physics or Radiological Physics;

ii. The American Board of Health Physics in Comprehensive Health Physics;

iii. The American Board of Medical Physics in Diagnostic Imaging Physics or Medical Health Physics;

iv. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to 1i or iii above; or

v. Certification by other national certifying boards which may be recognized by the Commission on Radiation Protection (Commission) where the person seeking recognition as a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems has petitioned the Commission in writing and where the Commission has issued a written determination that the certification in question meets the criteria of a qualified individual pursuant to this definition;

2. A bachelor's degree from an accredited college in biology, chemistry, radiation sciences, physics, engineering, or mathematics and at least five years of professional technical experience in the field of radiological physics or in the use of medical ionizing-radiation-producing equipment;

3. A master's or doctorate degree from an accredited college in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least two years of professional technical experience in the field of radiological physics or in the use of medical ionizing-radiation-producing equipment;

4. Ten years of professional technical experience in the field of radiological physics or in a radiation protection activity. At least five years of the required health physics experience shall have been with medical ionizing-radiation-producing equipment; or

5. Any individual who does not meet at least one of the foregoing criteria may petition the Commission for recognition as a "qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems". The individual shall submit a written petition to Commission which contains sufficient information on his or her educational, professional, clinical, technical, employment and/or any other relevant experience. The Commission may approve any such petition based on its determination that the individual demonstrates competence to act as a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems.

"Qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment" as required in this subchapter means an individual who meets at least one of the following criteria:

1. Certification by one of the following agencies in the specialty listed:

i. The American Board of Radiology in Diagnostic Radiological Physics or Radiological Physics;

ii. The American Board of Medical Physics in Diagnostic Imaging Physics;

iii. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to 1i or ii above; or

iv. Certification by other national certifying boards which may be recognized by the Commission where the person seeking recognition as a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment has petitioned the Commission in writing and where the Commission has issued a written determination that the certification in question meets the criteria of a qualified medical physicist pursuant to this definition;

2. A master's or doctorate degree from an accredited college in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least three years of professional, clinical and technical experience in the field of radiological physics obtained under the supervision of a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment; or

3. Any individual who does not meet at least one of the foregoing criteria may petition the Commission for recognition as a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment. The individual shall submit a written petition to the Commission which contains sufficient information on his or her educational, professional, clinical, technical, employment and/or any other relevant experience. The Commission may approve any such petition based on its determination that the individual demonstrates competence to act as a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment.

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"Qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems" means an individual who meets at least one of the criteria listed below:

1. Is certified by the American Board of Radiology in therapeutic radiological physics or by the American Board of Medical Physics with special competency in radiation oncology physics;

2. Is certified by the American Board of Radiology in Radiological Physics which includes all three subspecialties of diagnostic radiological physics, therapeutic radiological physics, and medical nuclear physics.

3. Is certified by the American Board of Radiology or the American Board of Medical Physics in a specialty other than therapeutic radiological physics or radiation oncology physics and has at least three years of professional, clinical and technical experience obtained under the supervision of a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems;

4. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to 1, 2, or 3 above;

5. Certification by other national certifying boards which may be recognized by the Commission where the person seeking recognition as a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems has petitioned the Commission in writing and where the Commission has issued a written determination that the certification in question meets the criteria of a qualified medical physicist pursuant to this definition;

6. A master's or doctorate degree from an accredited college in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least three years of professional, clinical and technical experience in the field of radiological physics obtained under the supervision of a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems; or

7. Any individual who does not meet at least one of the foregoing criteria may petition the Commission for recognition as a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems. The individual shall submit a written petition to the Commission which contains sufficient information on his or her educational, professional, clinical, technical, employment and/or any other relevant experience. The Commission may approve any such petition based on its determination that the individual demonstrates competence to act as a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems.

"Quality assurance" means an organized effort by the registrant to maintain a level of equipment performance to assure consistent production of diagnostic images without unnecessary radiation exposure. It includes quality control procedures and administrative procedures.

"Quality control" is the routine measurement of image quality and the performance of the diagnostic x-ray imaging system, from x-ray beam output to the viewing of radiographs, and the continual adjustment of that performance to an optimal and consistent level.

"Radiation therapy simulation system" means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

"Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

"Radiographic imaging system" means any system whereby a permanent or temporary image is recorded on an image receptor by the action of ionizing radiation.

"Reference plane" for computed tomography means a plane which is displaced from and parallel to the tomographic plane.

"Scan" for computed tomography means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

"Scan increment" for computed tomography means the amount of relative displacement of the patient with respect to the CT x-ray system believes successive scans measured along the direction of such displacement.

"Scan time" means the period of time between the beginning and end of photon transmission data accumulation for a single scan.

"Scan sequence" for computed tomography means a preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

"Scattered radiation" means radiation that, during passage through matter, has changed in direction or in energy.

"Sensitivity profile" means the relative response of the CT x-ray system as a function of position along a line perpendicular to the tomographic plane.

"Single-purpose x-ray system" means an x-ray system which is limited by its design to the radiological examination of a specific anatomical region.

"Source" means the focal spot of the x-ray tube.

"Source-to-image receptor distance" (SID) means the distance from the source to the center of the input surface of the image receptor.

"Source-to-skin distance" (SSD) means the distance from the source of radiation to the patient's skin.

"Spot-film device" means a device intended to transport and/or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

"Stationary equipment" means equipment which is installed in a fixed location.

"Technique factors" means the conditions of operation of a diagnostic x-ray system. They are specified as follows:

1. For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

2. For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

3. For computed tomography x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs.

4. For computed tomography x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time in seconds when the scan time in seconds and the exposure time are equivalent.

5. For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

"Tomogram" means an image of a planar section of a body part or object.

"Tomographic plane" for computed tomography means that geometric plane which is identified as corresponding to the tomographic image.

"Tomographic section" for computed tomography means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

"Tube housing assembly" means the x-ray tube housing with the x-ray tube insert installed. It includes high-voltage and/or filament transformers and other components that are contained within the tube housing.

"Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

"Uncertified unit" means an x-ray system comprised of components that are not subject to the regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J Radiological Health (21 C.F.R. Part 1020 et seq., Performance Standards for Ionizing Radiation Emitting Products). An "uncertified unit" is also known as a noncertified unit or a noncertified diagnostic x-ray system.

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"Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

"Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

"X-ray control" means a device which controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness control systems (stabilizers), and similar devices or means, which control the technique factors of an x-ray exposure.

"X-ray equipment" means an x-ray system, subsystems, or component thereof.

"X-ray field" means that area of the intersection of the useful beam and any one of the set of planes parallel to the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the x-ray tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assembly of components for the controlled production of x-rays. The system includes an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

"X-ray subsystem" means any combination of two or more components of an x-ray system.

"X-ray tube" means any electron tube which is designed for the conversion of electrical energy into x-ray energy.

7:28-15.3 General requirements for radiographic installations

(a) The provisions of this section are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(b) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless a diagnostic type protective tube housing is provided.

(c) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless a device is used to collimate the useful beam, and this device provides the same degree of protection as required of the diagnostic type protective tube housing.

1. Any new or used x-ray machine sold or otherwise transferred after July 1, 1969 shall be equipped with an adjustable, rectangular collimator fitted with a light field or laser system for delineating the edges of the collimated x-ray beam. The light field and/or laser system shall be operational. There shall be provided a means for stepless adjustment of the size of the x-ray field. The minimum field size at, an SID of 100 centimers (39.4 inches) shall be equal to or less than five centimeters by five centimeters (two inches by two inches). For equipment that employs a light field to define the x-ray field, the following criteria shall apply:

i. The light field shall have an average illumination of not less than 160 lux (15 footcandles) at 100 centimeters (39.4 inches) or at the maximum SID, whichever is less. The average illumination shall be based upon measurements made in the approximate center of each quadrant of the light field. Radiation therapy simulation systems are exempt from this requirement.

ii. The edge of the light field at 100 centimeters (39.4 inches) or at the maximum SID, whichever is less, shall have a contrast ratio, corrected for ambient lighting, of not less than four for beam-limiting devices designed for use on stationary equipment, and a contrast ratio of not less than three for beam-limiting devices designed for use on mobile equipment.

iii. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

iv. If a laser system is used to delineate the edges of the collimated x-ray beam, this source shall provide illumination levels sufficient to determine the collimated edges under ambient light conditions.

2. A system not requiring a light-beam collimator shall have an assortment of removable, fixed-aperture, beam-limiting devices (diaphragms) sufficient to meet each combination of image receptor size and SID used. Each fixed-aperture beam-limiting device shall be clearly and permanently marked to indicate the image receptor size and SID for which it is designed. Each fixed-aperture beam-limiting device shall limit the size of the x-ray field to the size of the image receptor. It shall be the responsibility of the operator to ensure that the correct combination of diaphragm and image receptor size is used during the radiographic procedure.

3. A single-purpose x-ray system, such as chest x-ray equipment, may use a fixed collimator provided the x-ray field does not exceed the size of the image receptor and the beam is fully intercepted by the image receptor. If such an x-ray system is equipped with a light field system, it shall be exempt from (c)1 above.

(d) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the beam alignment and distance measurements meet the following requirements:

1. Certified x-ray systems shall be provided with a means or device to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

2. The center of the x-ray field shall be aligned with respect to the center of the image receptor to within two percent of the SID when the x-ray beam is perpendicular to the plane of the image receptor; and

3. A means shall be provided to indicate the SID to within two percent. If it is a fixed SID, the distance shall be indicated on the unit with a permanent marking.

(e) No persons shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the x-ray filtration and beam quality meet the following requirements:

1. The amount of total filtration permanently in the useful beam shall provide the minimum half-value layer specified in the following table:

TABLE 1
TABLE OF HALF VALUE LAYERS

Designed Operating Range (kVp)	Measured operating potential (kVp)	Minimum half-value layer (HVL) (mm of Al)
Below 50	30	0.3
	40	0.4
	49	0.5
50 to 70	50	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

(f) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the exposure control and exposure timer meet the following requirements:

1. A device shall be provided to terminate the exposure at a preset time interval, preset product of current and time, preset number of pulses, or preset radiation exposure.

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i. Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure.

ii. Except during serial radiography, termination of the exposure shall cause automatic resetting of the timer to its initial setting or to zero.

iii. Except during serial radiography, it shall not be possible to make an exposure when the timer is set to a zero or off position, if either position is provided.

iv. During serial radiography, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process;

2. The x-ray control panel shall include a means for indicating x-ray tube voltage (kVp), tube current (mA), and time setting or the product of the tube current and time setting in milliampere-seconds (mAs);

3. The x-ray control panel shall provide visual indication to the operator whenever x-rays are produced. Certified equipment shall also provide audible indication to the operator while x-rays are produced or on termination of the exposure;

4. The technique factors to be used during an exposure shall be indicated on the control panel before the exposure begins. If automatic exposure controls are used, the technique factors which are set prior to the exposure shall be indicated. For equipment having fixed technique factors, this requirement shall be met by permanent markings;

5. The exposure control switch when depressed shall not energize the x-ray tube when the timer is in the "off" or "zero" position;

6. The exposure control switch shall be arranged so that it can only be operated when the operator is within a shielded area; and

7. For equipment that provides an automatic exposure control, the following requirements shall be met:

i. There shall be a device on the control panel that indicates when this mode of operation is selected;

ii. For certified equipment only, a signal audible and visible to the operator shall indicate when an exposure has been terminated; and

iii. For uncertified equipment only, a signal visible to the operator shall indicate when the exposure has terminated.

(g) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the accuracy, reproducibility and linearity meet the following requirements:

1. The timer accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value;

2. The following timer reproducibility requirements shall apply:

i. For certified equipment only, the coefficient of variation of the timer reproducibility shall not exceed 0.05 for any specific combination of selected technique factors.

ii. For uncertified equipment only, the coefficient of variation of the timer reproducibility shall not exceed 0.07 for any specific combination of selected technique factors;

3. The following exposure reproducibility requirements shall apply:

i. For certified equipment only, the coefficient of variation of radiation exposure reproducibility shall not exceed 0.05 for any specific combination of selected technique factors;

ii. For uncertified equipment only, the coefficient of variation of radiation exposure reproducibility shall not exceed 0.07 for any specific combination of selected technique factors;

4. The kVp accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value;

5. The kVp reproducibility shall not exceed a coefficient of variation of 0.05; and

6. The following linearity requirements apply to x-ray equipment which allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rating.

i. For x-ray equipment having independent selection of x-ray tube current (mA), the average ratios of exposure to the indicated milliampere-seconds product (mR/mAs) or (C/kg/mAs) obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum.

ii. For x-ray equipment having a combined x-ray tube current-exposure time product (mAs) selector, the average ratios of exposure to the indicated milliampere-seconds product (mR/mAs) or (C/kg/mAs) values obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum.

iii. The average exposure ratio for 15.3(g)6i and ii above shall be expressed as follows:

$$\left| \overline{X}_1 - \overline{X}_2 \right| \leq 0.10 \left(\overline{X}_1 + \overline{X}_2 \right)$$

where X_1 and X_2 are the average mR/mAs or C/kg/mAs values obtained at each of two consecutive tube settings.

(h) No person shall operate or permit the operation of a certified or uncertified multiple-tube installation where a control panel can energize more than one x-ray tube unless the following additional requirements are met: (Interventional biplane radiographic systems shall be exempted from these additional requirements.)

1. Only one radiographic tube shall be capable of activation at any time;

2. Where two or more radiographic tubes are controlled by one exposure switch, the radiographic tube which has been selected shall be clearly indicated to the operator prior to initiation of the exposure. Certified units only shall be provided with such an indicator on both the x-ray control panel and at or near the radiographic tube housing assembly which has been selected; and

3. A radiographic tube shall be energized only when that specific radiographic tube is selected.

(i) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment unless the following requirements for positive beam limitation are met:

1. Positive beam limitation (PBL) shall be provided on general purpose stationary radiographic systems which contain a tube housing assembly, an x-ray control, and an image receptor holder or table, if a table is provided, all certified in accordance with 21 C.F.R. 1020.30(c) whenever all the following conditions are met:

i. The image receptor is inserted into a permanently mounted cassette holder;

ii. The image receptor length and width are each less than 50 centimeters (20 inches);

iii. The x-ray beam axis is within plus or minus three degrees of vertical and the SID is 90 centimeters (35.5 inches) to 130 centimeters (51 inches) inclusive; or the x-ray beam axis is within plus or minus three degrees of horizontal and the SID is 90 centimeters (35.5 inches) to 205 centimeters (81 inches) inclusive;

iv. The x-ray beam is perpendicular to the plane of the image receptor to within plus or minus three degrees; and

v. Neither tomographic nor stereoscopic radiography is being performed;

2. Positive beam limitation (PBL) shall prevent the production of x-rays whenever:

i. Either the length or width of the x-ray field in the plane of the image receptor differs from the corresponding image receptor dimensions by more than three percent of the SID, except as permitted by (i)5 below; or

ii. The sum of the differences, without regard to sign, between the length and width of the x-ray field in the plane of the image receptor and the corresponding dimensions of the image receptor exceeds four percent of the SID;

3. Compliance with (i)2 above shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor and the provisions of (i)1 above are met. Determination of compliance shall be no sooner than five seconds after insertion of the image receptor;

4. If a means of overriding the positive beam limitation (PBL) system exists:

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i. It shall be designed for use only in the event of PBL system failure or if the system is being serviced.

ii. If the override capability is in a position such that the operator would consider it part of the operational controls or if it is referenced in the operator's manual or in other materials intended for the operator:

(1) A key shall be required to defeat the PBL; and

(2) The key shall remain in place during the entire time the PBL system is overridden;

5. The positive beam limitation system shall be capable of operation, at the discretion of the operator, in such a manner that the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. The minimum field size at an SID of 100 centimeters (39.4 inches) shall be equal to or less than five centimeters by five centimeters (two inches by two inches); and

6. The positive beam limitation system shall be so designed that if a change in image receptor does not cause an automatic return to the positive beam limitation function as described in (i)2 above, then any change of image receptor size or SID must cause the automatic return.

(j) No person shall operate or permit the operation of certified or uncertified mobile or portable radiographic x-ray equipment unless the following requirements are met:

1. These requirements are in addition to and not in substitution for the applicable requirements of this subchapter;

2. The equipment shall be provided with a collimator and a spacer device to limit the source-to-skin distance to not less than 30 centimeters (12 inches);

3. If the equipment was manufactured with a device to measure the SID, the device shall be present to measure the SID and the device shall indicate the SID to within two percent;

4. The exposure control switch shall be of the dead-man type and shall be so arranged that the operator can stand at least six feet from the patient for all exposures. The exposure control switch when depressed shall not energize the x-ray tube when the timer is in the "off" or "0" position;

5. A mobile or portable radiographic unit used routinely in one location shall be considered a permanent installation and shall comply with the requirements of N.J.A.C. 7:28-15.10; and

6. No person shall operate or permit the operation of certified or uncertified mobile or portable equipment unless the person operating the equipment is protected with a lead apron of at least 0.25 mm lead equivalent.

(k) No person shall operate or permit the operation of certified or uncertified ionizing-radiation-producing podiatric x-ray equipment unless the following requirements are met:

1. These requirements are in addition to and not in substitution for the applicable requirements of this subchapter; and

2. Certified and uncertified podiatric x-ray equipment shall be provided with an exposure control switch which will allow the operator to stand at least six feet (1.8 meters) from the patient or behind a protective barrier. The requirement set forth in this paragraph shall supersede the requirement in (f)6 above.

7:28-15.4 Mammography radiographic installations

(a) This section establishes the requirements for medical diagnostic and screening radiographic mammography procedures. Hereafter, all references to mammography shall mean mammography performed with ionizing-radiation-producing equipment.

(b) The provisions of this section are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(c) No person shall operate or permit the operation of x-ray equipment used for mammography unless the equipment and installation meet the applicable requirements of this subchapter.

(d) The registrant shall ensure that each mammography unit under the registrant's jurisdiction is operated only by a licensed diagnostic x-ray technologist or a licensed practitioner as prescribed in N.J.A.C. 7:28-19.

(e) Within two years of the effective date of this rule or within two years of the installation of a mammography unit, whichever shall be later, the registrant shall ensure that each mammography unit under the registrant's jurisdiction shall be accredited by the American College of Radiology (ACR) or shall meet an equivalent standard acceptable to the Commission. Current accreditation by the ACR or its equivalent acceptable to the Commission shall be maintained for each mammography unit under the registrant's jurisdiction.

1. If a mammography unit is accredited or certified by an agency or organization other than ACR, a registrant may petition the Commission in writing for recognition of this agency's or organization's accreditation or certification as equivalent to ACR accreditation. The registrant shall submit sufficient documentation to the Commission related to machine performance standards, quality assurance, operating safety standards, and any additional information that the Commission may request in order to demonstrate equivalence to ACR accreditation.

2. The Commission may approve the registrant's petition based on the information contained in the petition and the Commission's determination that the alternative agency's or organization's accreditation or certification is equivalent to ACR accreditation.

(f) No person shall operate or permit the operation of any radiographic equipment for mammography unless the equipment meets the following requirements:

1. It shall be a dedicated mammography unit;

2. The tube housing assembly shall be provided with a beam-limiting device and a light-field localizer. This assembly shall be so constructed that the leakage radiation measured at a distance of one meter (39 inches) from the source does not exceed 26 microcoulombs per kilogram (0.1 Roentgen) in any one hour when the source is operated at its leakage technique factors;

3. A mark shall be provided on the visible exterior of the source assembly which indicates the location of the focal spot;

4. An x-ray beam-limiting device shall be used to restrict the size of the x-ray beam to the size of the image receptor. Types of beam-limiting devices include, but are not limited to, diaphragms, cones, and adjustable colimators. The beam-limiting device shall provide the same primary beam attenuation as the tube housing.

i. The misalignment between the edges of the light field and the x-ray field shall be less than two percent of the SID.

ii. The x-ray beam shall be totally intercepted by the image-receptor support, except for the edge of the image-receptor support designed to be adjacent to the chest wall. The x-ray field at the edge of the image-receptor support designed to be adjacent to the chest wall shall not extend beyond the edge of the image-receptor support by more than two percent of the SID;

5. The image-receptor support shall transmit less than 0.026 microcoulombs (0.1 milliroentgens) per exposure at 5 centimeters (2 inches) beyond the support with no breast present for maximum kV and mAs values clinically used;

6. The requirements for the control panel on the mammography system are as follows:

i. The mammography system shall have the capability of automatic exposure control;

ii. The control panel shall provide visual display of the x-ray tube voltage (kVp) and either the tube current (mA) and time setting (sec) or the product of the tube current and time setting in milliampere-seconds (mAs); and

iii. The control panel shall have a device or means for emitting a signal audible to the operator which indicates when the exposure has terminated and a device such as a light or milliammeter to give a visual indication when the beam is on;

7. The radiation exposure reproducibility shall not exceed a coefficient of variation of 0.05. For manual mode this shall be for any selected technique factors. For automatic exposure control this shall be for any selected absorber or phantom;

8. The timer shall meet the following requirements:

i. The timer reproducibility shall not exceed a coefficient of variation of 0.05 for any specific combination of selected technique factors; and

ii. The timer accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value;

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9. The kVp shall meet the following requirements:

i. The kVp accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed ±five percent from the nominal kVp setting;

ii. The kVp reproducibility shall not exceed a coefficient of variation of 0.02;

iii. The kVp shall be capable of being selected in increments of no greater than two kVp whether kVp is selected manually or automatically; and

iv. The kVp shall be selected either manually or automatically;

10. The following linearity requirements apply to mammography x-ray equipment which allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rating:

i. For x-ray equipment having independent selection of x-ray tube current (mA), the average ratios of exposure to the indicated milliampere-seconds product (mR/mAs) or (C/kg/mAs) obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum.

ii. For x-ray equipment having a combined x-ray tube current-exposure time product (mAs) selector, the average ratios of exposure to the indicated milliampere-seconds product (mR/mAs) or C/kg/mAs) values obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum.

iii. The average exposure ratio for (f)10i and ii above shall be expressed as follows:

$$|\overline{X}_1 - \overline{X}_2| \leq 0.10\ (\overline{X}_1 + \overline{X}_2)$$

where X_1 and X_2 are the average mR/mAs or C/kg/mAs values obtained at each of two consecutive tube settings

11. The measured HVL shall be equal to or greater than the value:

$$HVL \geq \frac{kVp}{100} \text{ (in units of mm of aluminum)}$$

For film-screen mammography units only, the maximum measured HVL shall be equal to or less than the value:

$$HVL \geq \frac{kVp}{100} + 0.1 \text{ (mm of aluminum)}$$

12. There shall be a device to maintain parallel breast compression. The degree of compression shall be adjustable and shall remain at the set level during the exposure. A device, scale or other means shall indicate the thickness of the compressed breast. The compression plate shall attenuate the beam by no more than the attenuation provided by ±two mm of polymethylacrylate;

13. There shall be a means or a device on the mammography unit to indicate the SID, if this is variable. The actual SID shall be posted on the mammography unit if this distance is fixed. Accuracy of the SID indicator shall be within two percent of the indicated value;

14. There shall be a means of determining the angulation on the mammography unit. This determination shall be displayed on the unit.

i. There shall be a means to lock the position and angulation of the source assembly;

ii. Such lock shall be deemed to have been provided if the position or angulation can only be changed by activation of a motor; and

15. The exposure switch shall be a dead-man type and shall be arranged so that it can only be operated when the operator is within a shielded area. The exposure control when depressed shall not energize the x-ray tube when the timer is in the "off" or "zero" position.

(g) A radiation-protection barrier for the operator shall be provided in the room for a mammography unit that requires the operator to remain in the room during the exposure. The operator shall stand behind the protective barrier provided and shall observe the patient during each mammographic exposure.

(h) No person shall operate or permit the operation of a mammography unit unless the registrant has developed and maintains a quality assurance program that meets the requirements listed in (j) below.

(i) The registrant shall ensure that no person operates the mammography unit until he or she has reviewed the quality assurance manual and has documented that such review has been completed.

(j) The requirements for the quality assurance program shall be as follows:

1. The registrant shall develop and maintain a quality assurance manual that identifies and assigns over-all quality control responsibilities. The following items shall be in the quality assurance manual:

i. A list of the individuals responsible for testing, supervising, repairing or servicing the equipment. This list shall include the specific responsibilities for the radiologist, the qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment (the medical physicist), the diagnostic x-ray technologist (radiologic technologist), and repair or service personnel;

ii. A list of the equipment to be tested;

iii. A list of the tests to be performed. For each test, the following items shall be included:

(1) The frequency of performance of each test in accordance with (j)4, 6, 7, 8, 9, 10, and 11 below;

(2) The acceptability limits for each test; and

(3) A brief description of the procedures to be used for each test;

iv. The protocol for corrective action which shall be taken if the test results do not lie within the acceptability limits;

v. Sample forms to be used for each test and;

vi. Reference materials and their location;

2. The registrant shall present the quality assurance manual, records of all testing, test data, equipment maintenance and other required procedures to the department for review during any inspection;

3. For each mammography unit, the registrant shall ensure that tests are performed and records are maintained as listed below:

i. The initial test results shall be maintained for as long as the mammography unit is registered plus one year; and

ii. A record of each service to the mammography unit shall be kept for 36 months from the date of such service;

4. For each mammography unit, the registrant shall perform or have performed at least annually the test procedures listed below and shall maintain the records for as long as the mammography unit remains registered plus one year.

i. Measurement of breast entrance exposure and average glandular dose;

ii. Measurement of half-value layer;

iii. Measurement of accuracy and reproducibility of kVp settings;

iv. Measurement of linearity of exposure at various mA stations or mAs settings;

v. Measurement of accuracy and reproducibility of timer settings where these are adjustable;

vi. Measurement of exposure reproducibility at techniques representative of clinical use;

vii. Measurement of focal spot size;

viii. Assessment of performance of automatic exposure control system, including short-term reproducibility, kilovoltage and thickness compensation, density control selector function and back-up timer function;

ix. Assessment of mammography unit assembly, including accuracy of source-to-film distance indicator, physical integrity of breast thickness indicator, functioning of all locks, detents, angulation indicators and mechanical support for the x-ray tube and image-receptor-holder assembly; and

x. Assessment of collimation, including alignment of light field and x-ray field;

5. For each processor used for mammography, the registrant shall ensure that the records of maintenance and quality control tests are maintained in a processor maintenance log. Processor maintenance logs shall include preventive maintenance, cleaning

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performed and corrective actions taken. A record of each such measure taken shall be maintained in the log for at least 36 months;

6. For each processor used for film-screen mammography, the registrant shall perform or have performed quality control tests for each processor on each day the processor is used for mammography. For motor vehicle and mobile mammographic units with processing capability, quality control tests for each processor shall be performed at each new location.

i. Quality control tests shall include measurement of developer temperature, film sensitometry to indicate film speed, film contrast and base-plus-fog density;

ii. Logs, charts, or graphs of these measurements shall be maintained for 36 months from the dates of such measurements. The registrant may discard such records after 36 months, except that at least one representative set of quality control records from each year shall be maintained for an additional five years;

7. For each darkroom used for loading, storing or processing film used for mammography, the registrant shall ensure that:

i. Measurement of film fog is performed at least semiannually and test results are maintained for the current year and the preceding year; and

ii. Darkroom cleanliness is maintained and checked daily;

8. For each radiographic cassette used for film-screen mammography, the registrant shall ensure that:

i. The intensifying screen is cleaned and inspected at least weekly;

ii. The film-screen contact is tested at least semiannually and the record of each test is maintained for at least 36 months from the date of the test; and

iii. Uniformity of screen speed is assessed annually and the record of each test is maintained for at least 36 months from the date of the test;

9. For each component used for xeromammography, the registrant shall perform or have performed the quality control tests listed below:

i. For the conditioner, tests for light leaks, temperature of relaxation oven, charging of the plate, and optimization for the kVp used shall be performed on each day the conditioner is used for mammography;

ii. For the processor, tests for light leaks, toner supply, back bias setting, and optimization for the kVp used shall be performed on each day the processor is used for mammography;

iii. Each cassette shall be cleaned and checked for dust particles and pressure artifacts every week; and

iv. Each selenium plate shall be examined for powder deficiency spots, powder efficiency spots, dark dusting, scratches, and artifacts on a monthly basis;

10. For each mammography unit, the registrant shall ensure that the following image quality assessments are performed:

i. A phantom is used whose image can be quantitatively scored;

ii. For fixed units, mammographic phantom image quality is tested monthly;

iii. For mobile units and motor vehicle mounted units, mammographic phantom image quality is tested after each relocation and at least monthly. Equipment must be recalibrated prior to use to maintain quality of the phantom image; and

iv. At least one test phantom image for each mammography unit is maintained for each month of the current calendar year and for the preceding year. The registrant shall also maintain at least one phantom image a year for each mammography unit beginning from the year of installation;

11. Repeat analysis shall be performed at least quarterly for film-screen mammography and xeromammography; and

12. Technique charts or standard settings of factors such as density, kVp, focal spot selection, listing of all factors appropriate to the design of the mammography unit shall be posted either next to or on each mammography unit.

7:28-15.5 Medical fluoroscopic x-ray systems

(a) The provisions of this section are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(b) No person shall operate or permit the operation of certified or uncertified fluoroscopic X-ray equipment used in the healing arts unless the equipment meets the following requirements:

1. The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any source-to-image receptor distance.

i. The x-ray tube used for fluoroscopy shall not produce x-rays unless the primary protective barrier is in position to intercept the entire useful beam.

ii. The exposure rate due to transmission through the primary protective barrier with an attenuation block in the useful beam combined with the radiation from the image itensifier, if provided, shall not exceed 5.2 E-6 Coulombs per kilogram (two milliroentgens per hour) at 10 centimeters (four inches) from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each Roentgen per minute of entrance exposure rate. The attenuation block shall be a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters (eight inches by eight inches by 1.5 inches), of type 1100 aluminum alloy or aluminum alloy having equivalent attenuation.

iii. The exposure rate due to transmission through the primary barrier combined with radiation from the image intensifier, if provided, shall be determined by measurements averaged over an area of 100 square centimeters (15.5 square inches) with no linear dimension greater than 20 centimeters (eight inches). If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 centimeters (12 inches) above the tabletop. If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device of spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters (12 inches). Movable grids and compression devices shall be removed from the useful beam during the measurement. For all measurements, the attenuation block shall be positioned in the useful beam 10 centimeters (four inches) from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly. For C-arm fluoroscopy equipment, the measurement shall be made with the end of the beam-limiting device at the minimum SID and the attenuation block not closer than 30 centimeters (12 inches) from the imaging assembly.

iv. For uncertified fluoroscopic equipment only, the fluoroscopic screen shall be covered with a transparent protective material such that under normal operating conditions the dose rate measured five centimeters from the viewer's side of the screen shall not be more than 20 milliroentgens per hour (5.2 E-6 Coulombs per kilogram) without a patient and with the screen 20 centimeters (eight inches) from the tabletop or panel);

2. For fluoroscopic equipment that does not have image intensification, the following field limitation requirements shall be met:

i. The x-ray field shall not extend beyond the visible area of the image receptor;

ii. Means shall be provided for stepless adjustment of the field size;

iii. The minimum field size at the greatest SID shall be equal to or less than five centimeters by five centimeters (two inches by two inches); and

iv. Equipment manufactured after February 25, 1978, which permits a variable angle between the image receptor and the axis of the x-ray beam shall be provided with a means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

3. For image-intensified fluoroscopic equipment, the following field limitation requirements shall be met:

i. Neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three percent of the SID;

ii. The sum of the excess length and the excess width shall be no greater than four percent of the SID. Compliance shall be

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determined with the beam axis indicated to be perpendicular to the plane of the image receptor;

iii. For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined by comparison of the length and width of the x-ray field with the diameter of the visible area of the image receptor which parallels each;

iv. Equipment manufactured after February 25, 1978, in which the angle between the image receptor and beam axis is variable, shall be provided with a means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

v. Beam-lighting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID and/or a visible area of greater than 300 square centimeters (46.5 square inches) shall be provided with means for stepless adjustment of the x-ray field;

vi. Equipment with a fixed SID and a visible area of 300 square centimeters (46.5 square inches) or less shall be provided with either stepless adjustment of the x-ray field or with some other means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters (19.4 square inches) or less;

vii. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size of five centimeters by five centimeters (two inches by two inches) or less; and

viii. fluoroscopic x-ray equipment that automatically adjusts the field size as the SID is changed may be provided with a capability for overriding the automatic adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic field adjustment is overridden. Each such system failure override switch shall be clearly labeled "FOR X-RAY FIELD LIMITATION SYSTEM FAILURE";

4. X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the operator for the entire time of any exposure. When recording serial fluoroscopic images, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in progress;

5. Fluoroscopic equipment which is provided with automatic exposure rate control shall not be operable at any combination of tube potential and current which will result in an entrance exposure rate in excess of 10 Roentgens per minute (2.6 E-3 Coulombs per kilogram per minute) at the point where the center of the useful beam enters the patient except:

i. During the recording of fluoroscopic images; or

ii. When an optional high-level control is provided. When so provided, the equipment shall not be operable at any combination of tube potential and current which will result in an entrance exposure rate in excess of 5 Roentgens (1.3 E-4 Coulombs/kilogram/minute) at the point where the center of the useful beam enters the patient unless the high-level control is activated;

6. Fluoroscopic equipment which is not provided with automatic exposure rate control shall not be operable at any combination of tube potential and current which will result in an entrance exposure rate in excess of five Roentgens per minute (1.3 E-4 Coulombs/kilogram/minute) at the point where the center of the useful beam enters the patient, except:

i. During recording of fluoroscopic images; or

ii. When an optional high-level control is activated;

7. For equipment provided with high-level control, the following requirements shall be met:

i. Special means of activation of high-level controls shall be required (for example, two-step foot pedal);

ii. Continuous manual activation of the high-level control shall be provided by the operator; and

iii. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed;

8. Measuring compliance of entrance exposure rates shall be determined as follows:

i. When the source is below the table, the entrance exposure rate shall be measured one centimeter (0.4 inch) above the tabletop or cradle;

ii. When the source is above the table, the entrance exposure rate shall be measured at 30 centimeters (12 inches) above the tabletop with the end of the beam-limiting device or spacer positioned as close as possible to the point of measurement;

iii. For stationary and mobile c-arm types of fluoroscopes, the entrance exposure rate shall be measured 30 centimeters (12 inches) from the input surface of the fluoroscopic imaging assembly.

iv. In a lateral type of fluoroscope, the entrance exposure rate shall be measured 15 centimeters (5.9 inches) from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 centimeters (5.9 inches) to the centerline of the x-ray table;

9. Fluoroscopic radiation therapy simulation systems are exempt from the entrance exposure rate requirements of (b)5 and (b)6 above;

10. The x-ray tube potential and current shall be continuously indicated to the operator and/or at the control panel during fluoroscopy and cinefluorography. Deviation of x-ray tube potential and current from the indicated values shall not exceed the maximum deviation as stated by the manufacturer;

11. A means shall be provided to limit the source-to-skin distance to not less than 38 centimeters (15 inches) on stationary fluoroscopes and to not less than 30 centimeters (12 inches) on mobile and portable fluoroscopes.

i. Image-intensified fluoroscopes intended for specific surgical applications that would be impossible to perform at the source-to-skin distances specified above, may be operated at shorter source-to-skin distances but in no case less than 20 centimeters (eight inches);

12. The following requirements shall apply to a fluoroscopic timer:

i. A means shall be provided to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timer shall not exceed five minutes without resetting;

ii. The timer shall either terminate the exposure or emit a signal audible to the fluoroscopist when the exposure time reaches five minutes. Such signal shall continue to sound while x-rays are produced until the timer is reset; and

iii. As an alternative to the requirements of (b)12ii above, radiation therapy simulation systems may be provided with a means to indicate the total cumulative exposure time during which x-rays were produced, and which is capable of being reset between x-ray examinations;

13. Mobile and portable fluoroscopes shall be provided with image intensification;

14. The fluoroscopy table shall be provided with a bucky slot cover and shall provide protection equivalent to at least 0.5 millimeters of lead;

15. Protective shielding such as a drape shall be in place between the patient and fluoroscopist and shall provide protection equivalent to at least 0.5 millimeters of lead;

16. When a sterile field will not permit the use of the normal protective barriers, the requirements of (b)15 above may be omitted;

17. A mobile fluoroscopic unit used routinely in one location shall be considered a permanent installation and shall comply with the shielding and survey requirements in N.J.A.C. 7:28-15.10; and

18. The following requirements shall apply to spot-film devices except when the spot-film device is provided for use with a radiation therapy simulator system:

i. A means shall be provided between the source and the patient which will automatically limit the x-ray field at the time the exposure is initiated to no more than that portion of the image receptor chosen by the operator on the spot-film selector. If the x-ray field size is less than the size of the selected portion of the image receptor, the field size shall not open automatically to the size of the selected portion of the image receptor unless the operator has selected such a mode of operation;

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ii. Neither the length nor the width of the x-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than three percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum of the differences in length and width, without regard to the sign, shall not exceed four percent of the SID. Spot-film devices manufactured after February 25, 1978, which permit a variable angle between the plane of the image receptor and beam axis, shall be provided with a means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

iii. The center of the x-ray field in the plane of the image receptor shall be aligned with the center of the selected portion of the image receptor to within two percent of the SID;

iv. Means shall be provided to reduce the x-ray field size in the plane of the image receptor to a size smaller than the selected portion of the image receptor such that:

(1) For spot-film devices used on fixed-SID fluoroscopic systems which are not required to provide, and do not provide stepless adjustment of the x-ray field, the minimum field size, at the greatest SID, shall not exceed five by five centimeters (two by two inches); or

(2) For spot-film devices used on fluoroscopic systems that have a variable SID and/or stepless adjustment of the field size, each dimension of the minimum field size, and the greatest SID, shall not exceed five centimeters (two inches); and

v. A capability may be provided for overriding the automatic x-ray field size adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic x-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows: FOR X-RAY FIELD LIMITATION SYSTEM FAILURE.

7:28-15.6 Radiation therapy simulators

(a) No person shall operate or permit the operation of a radiation therapy simulator system unless it meets the requirements of this section and complies with all applicable requirements of this subchapter, unless otherwise exempted.

(b) Operation of a radiation therapy simulator system on a patient shall be performed only by a licensed practitioner, a licensed radiation therapy technologist, or a licensed diagnostic x-ray technologist, as prescribed in N.J.A.C. 7:28-19.

(c) No person shall operate or permit the operation of a radiation therapy simulator system unless it meets the following requirements:

1. A quality assurance program has been established in collaboration with a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems, and implemented by the registrant to ensure congruence of the position and size of the simulated field with the position and size of the irradiation field.

i. The quality assurance program is consistent with, but not limited to, the guidelines established by the American Association of Physicists in Medicine, (AAPM) Report Number 13;

ii. The quality assurance program is documented by the registrant; and

iii. The quality assurance program records are maintained by the registrant for at least 36 months, and are available for review at the facility by the department during any inspection;

2. Any radiation therapy simulator system, which uses a gantry rotation system when performing radiographic examinations, shall be equipped with a sensor mechanism that shall stop the gantry motion if necessary to prevent collision. This requirement shall take effect one year after the effective date of this subchapter.

i. Restarting the unit shall only be possible when the cause of the termination has been determined and corrected and the sensor mechanism is satisfied that a collision reoccurrence is not possible.

ii. Tests of the operation of the anti-collision sensor mechanism are performed and results are documented by those individuals listed in (b) above or by a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems at intervals not to exceed 12 months. The records shall be maintained for at least 36 months, and shall be available at the facility for review by the department during any inspection. A true copy of these records shall be sent to the department upon request;

3. A dead-man switch and/or an emergency "off" control shall be located on the remote control console and also at all places in the simulator room from which motions are controlled;

4. A radiation therapy simulator system attached to a megavoltage radiation therapy x-ray system shall meet the following requirements:

i. Exposure controls shall be located outside the therapy room;

ii. The operator shall be able to view the patient from the control panel at all times during the procedure. The viewing system may consist of, but is not limited to, a window, mirror, or closed circuit television; and

iii. A method for two-way aural communication between the patient and the operator shall be provided at the control panel and shall be operable at all times when the system is in operation;

5. A superficial or orthovoltage therapy x-ray system shall not be used for radiation therapy simulation except for treatments given on this system; and

6. Protective aprons of at least 0.25 millimeters lead equivalent shall be worn by the operator or therapy physician during every instance in which entry into the simulator room is necessary while the patient exposure is in progress. Protective gloves of at least 0.25 millimeters lead equivalent shall be worn by the operator or therapy physician during every instance when the hands must be in the primary beam while the patient exposure is in progress. The exposure of such individuals shall be controlled by the use of shielding and protective clothing as necessary to ensure that they are not exposed to radiation doses in excess of those permitted by N.J.A.C. 7:28-6.

7:28-15.7 Computed tomography equipment

(a) The provisions of this section are in addition to and not in substitution for the applicable sections of this subchapter.

(b) No person shall operate or permit the operation of computed tomography equipment used in the healing arts unless the equipment meets the following requirements:

1. The registrant shall maintain the technical and safety information supplied by the manufacturer as required by the Code of Federal Regulations at 21 C.F.R. 1020.33(c) near the control panel and produce it to the department during any inspection;

2. The registrant shall ensure that a CT quality assurance phantom is available for testing the CT system. The use of the phantom and the physical properties of the phantom shall meet the following requirements:

i. Instructions on the use of the phantom shall be provided. The instructions shall include a schedule of tests appropriate for the CT system, the allowable variations for the test parameters, and a method to store the test results;

ii. Images of the phantom that demonstrate compliance with the CT's performance specifications shall be obtained on both film and digital archive media. These images shall be maintained and used to compare with current test results; and

iii. The phantom shall be capable of providing an indication of contrast scale, noise, nominal tomographic section thickness, the resolution capability of the system for low and high contrast objects, and measurement of the mean CT number of water or a reference material;

3. The registrant shall ensure that a CT dosimetry phantom is available for testing the CT system. The use of the phantom and the physical properties of the phantom shall meet the following requirements:

i. The phantom shall be a right circular cylinder of polymethylmethacrylate of density 1.19 ± 0.01 grams per cubic centimeter;

ii. The phantom shall be at least 14 centimeters in length and shall have a diameter of 32.0 centimeters for testing any CT system designed to image any section of the body (whole body scanners);

iii. The phantom shall be at least 16.0 centimeters in diameter for any system designed to image the head (head scanner) or for any whole body scanner operated in the head scanning mode;

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iv. The phantom shall provide means for the placement of a dosimeter(s) along its axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom; and

v. Any effect on the doses measured due to the removal of phantom material to accommodate dosimeters shall be accounted for through appropriate corrections to the reported data or included in the statement of maximum deviation for the values obtained using the phantom;

4. A visual indication of the conditions of operation to be used during a scan or scan sequence shall be indicated prior to initiation of a scan or scan sequence. On equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of CT conditions shall be visible from any position from which the scan can be initiated;

5. A means shall be provided to terminate the exposure automatically by either de-energizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. A visible signal shall indicate when the x-ray exposure has been terminated by this means. Such termination shall occur within an interval that limits the total scan time to no more than 110 percent of the preset value through the use of either a backup timer or devices which monitor equipment function. Means shall be provided such that the exposure from the system does not exceed 100 mR/scan except when x-ray transmission data are being collected for use in image production or technique factor selection;

6. The operator shall be able to terminate the x-ray exposure at any time during a scan or during a series of scans under the x-ray system control of greater than one-half second exposure. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to the initiation of another scan;

7. A means shall be provided to permit visual determination of the location of the tomographic plane or a reference plane offset from the tomographic plane;

8. If a device using a light source, including a laser source, is used to determine the location of the tomographic plane, this source shall provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux;

9. The x-ray control and gantry shall provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed. If the x-ray production period is less than one-half second, the indication of x-ray production shall be actuated for one-half second. Indicators at or near the housing of the scanning mechanism shall be discernible from any point external to the patient opening where insertion of any part of the human body into the primary beam is possible;

10. For systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x-rays with a shutter, the radiation emitted shall not exceed 100 milliroentgens (2.6 E-2 Coulombs per kilogram) in one hour at any point five centimeters (two inches) outside the external surface of the housing of the scanning mechanism when the shutter is closed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters (15.5 square inches) with no linear dimensions greater than 20 centimeters (eight inches);

11. The deviation of indicated scan increment from actual scan increment shall not exceed 1 millimeter. Compliance shall be measured as follows: The determination of the deviation of indicated versus actual scan increment shall be based on measurements taken with a mass of 100 kilograms or less on the patient support. The patient support shall be incremented from a typical starting position to the maximum incremented distance or 30 centimeters (12 inches), whichever is less, and then returned to the starting position;

12. The distance between the indicated location of the tomograhic plane or reference plane and its actual location may not exceed five millimeters;

13. The beam entrance width at five millimeters or above shall not be more than ten percent greater than the nominal tomographic section thickness. At less than five millimeters the beam entrance width shall not be more than 20 percent greater than the nominal tomographic section thickness; and

14. An emergency off switch shall be available at the control panel and in the CT room.

(c) No person shall operate or permit the operation of computed tomographic equipment unless the facility meets the following:

1. Provision shall be made for two-way aural communication between the patient and the operator at the control panel; and

2. Windows, mirrors, closed-circuit television, or an equivalent shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator can observe the patient from the control panel. When the primary viewing system is by electronic means, such as a closed-circuit television, an alternate viewing system, which may also be electronic, shall be provided to permit continuous observation of the patient during irradiation in the event of failure of the primary viewing system.

(d) No person shall operate or permit the operation of computed tomography x-ray equipment used in the healing arts unless the following operating conditions are met:

1. The CT system shall not be operated except by a licensed individual who has been specifically trained in its operation;

2. Information shall be available near the control panel regarding the operation and calibration of the system. That information shall contain:

i. Dates of the latest calibration and spot checks and the location within the facility where the results of these tests may be obtained;

ii. Instructions on the use of the phantom(s), including a schedule of testing appropriate for the system, allowable variations for the indicated parameters, and the results of at least the most recent tests conducted on the system; and

iii. A technique chart shall be available at the control panel; and

3. The registrant shall ensure that a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment does performance testing procedures annually, which shall include but not be limited to CTDI, nominal tomographic section thickness accuracy, incremental table movement accuracy, noise, and high/low resolution.

7:28-15.8 Medical cabinet x-ray systems

(a) The requirements of this section are in addition to and not in substitution for the applicable requirements in N.J.A.C. 7:28.

(b) No person shall operate or permit the operation of a medical cabinet x-ray system used in the healing arts unless it meets the following requirements:

1. The registrant shall ensure and document that the operator has received a copy of the operator's manual, has been trained in the operating procedures for the system, and has demonstrated competence in operating the system to the registrant. This documentation shall be available to the department for review during any inspection. The registrant shall maintain a copy of the operator's manual in the proximity of the system;

2. Radiation emitted from the medical cabinet x-ray system shall not exceed an exposure of 0.5 milliroentgens in one hour at any point five centimeters outside the external surface;

3. No medical cabinet x-ray system shall be placed into operation until the registrant demonstrates that a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment has determined that the exposure level in (b)2 above is not exceeded. Where an operating system is subsequently modified, repaired, or moved to a new location, the unit shall not be used until a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment has determined compliance with this limit. The registrant shall maintain the original report(s) at the facility, and make the report(s) available to the Department during any inspection. The registrant shall submit a copy of the report(s) to the Department within 30 days of the date the determination has been completed; and

4. Safety interlocks shall be provided on medical cabinet x-ray systems as follows:

i. Each door of a cabinet x-ray system shall have a minimum of two safety interlocks installed in such a manner that the opening

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of any door would disconnect the energy supply circuit to the high-voltage generator;

ii. Each access panel on a cabinet x-ray system shall have at least one safety interlock;

iii. Following interruption of the energy supply circuit by the functioning of any safety interlock, a manually reset control switch shall be activated before x-ray production can resume;

iv. Failure of any single component of the medical cabinet x-ray system shall not cause failure of more than one required safety interlock;

v. Safety interlocks shall be tested for operation at intervals not to exceed six months. A record of these tests shall be maintained for review by the Department during any inspection;

5. A medical cabinet x-ray system shall have a permanent floor, which means the underside external surface of the cabinet;

6. There shall be permanently affixed or inscribed on the medical cabinet x-ray system at the location of any controls which can be used to initiate x-ray production a clearly legible and visible label bearing the statement or words having a similar meaning: "CAUTION: X-RAYS PRODUCED WHEN ENERGIZED"; and

7. All medical cabinet systems shall be provided with the following controls and indicators:

i. A key-activated control to insure that x-ray production is not possible with the key removed;

ii. A control button or control switch to initiate and terminate the production of x-rays other than by the functioning of a safety interlock or the main power control;

iii. A warning light at the control button or control switch that indicates when and only when x-rays are being produced. This light shall be clearly labeled with the words: "X-RAY ON";

iv. A warning light which indicates when and only when x-rays are being produced. This warning light shall be visible from each door, access panel, and port, and shall be clearly labeled with the words: "X-RAY ON"; and

v. A means to indicate the kilovoltage, current and time during the production of x-rays at each x-ray control button or control switch unless the x-ray tube current is preset.

7:28-15.9 Individual radiation safety

(a) No person shall operate or permit the operation of certified or uncertified medical radiographic and fluoroscopic equipment or therapy simulation systems unless the following conditions are met:

1. Only individuals required for the medical procedure, for training, or for equipment maintenance shall be in the radiographic or fluoroscopic or therapy simulator room during an exposure.

i. Individuals who are present in a radiographic or fluoroscopic or therapy simulator room during any exposure shall wear protective aprons of at least 0.25 mm lead equivalent during every exposure.

ii. Protective gloves of at least 0.25 mm lead equivalent shall be worn by the fluoroscopist and assistant(s) during every examination when it is required that their hands be placed in the useful beam;

2. When a patient must be provided with auxiliary support during a radiation exposure and mechanical holding devices are insufficient, the following procedures shall be followed:

i. The person holding the patient shall be protected with a lead apron of at least 0.25 mm lead equivalent;

ii. The person holding the patient shall be protected with lead gloves of at least 0.25 mm lead equivalent if the hands must be placed in the useful beam;

iii. No licensed practitioner shall order or otherwise cause an individual who is licensed pursuant to N.J.S.A. 26:2D and this chapter to hold a patient during a radiation exposure, except in a life-threatening situation;

iv. No person shall be employed, routinely assigned, or required to hold a patient during radiographic and fluoroscopic procedures;

v. If a patient must be held during the x-ray exposure, non-radiation workers such as aides, orderlies, nurses, or members of the patient's family may be asked to perform this duty; and

vi. No person other than the patient shall hold the film during the exposure;

3. Gonadal shielding of not less than 0.5 mm lead equivalent shall be used on a patient during radiographic and fluoroscopic procedures, except for cases in which this would interfere with the diagnostic procedure. If the patient is sterile, the use of gonadal shielding may be omitted;

4. The operator shall collimate x-ray units that do not have positive beam limitation to ensure that the x-ray field does not extend beyond the image receptor;

5. The radiographic field shall be restricted to the area of clinical interest as far as practical;

6. A method to observe the patient during the x-ray exposure shall be provided for all units. Observation of the patient shall be made from the shielded area;

7. During radiographic exposures, the operator shall stand behind the protective barrier;

8. The registrant shall provide written safety rules to each individual operating x-ray equipment including any restrictions as to the operating technique required for the safe operation of the particular x-ray apparatus, and require that the operator sign a form acknowledging that the safety manual was read. These safety rules and restrictions shall be made available for review by the Department during any inspection;

9. No person shall permit or arrange for the intentional irradiation of a human being except for the purpose of medical diagnosis or treatment;

10. No person shall deliberately expose an individual to the useful beam for the sole purpose of training or demonstration; and

11. No person shall operate an ionizing-radiation-producing machine unless that person understands and uses the principles of radiation safety to keep radiation exposure as low as reasonably achievable.

7:28-15.10 Structural shielding and radiation safety surveys

(a) No person shall operate or permit the operation of x-ray equipment used in the healing arts unless permanent structural shielding and/or protective barriers are used as necessary to ensure that no person other than the patient being examined receives a dose in excess of the limits specified in N.J.A.C. 7:28-6.

(b) No person shall operate or permit the operation of x-ray equipment used in the healing arts unless the survey requirements listed below are met. To the extent that this section imposes more stringent requirements than the survey requirements in N.J.A.C. 7:28-7 and recordkeeping requirements in N.J.A.C. 7:28-8, the requirements of this section shall be followed.

1. The registrant of a medical ionizing-radiation-producing machine shall ensure that a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulators performs a radiation safety survey of the environs and submits a copy of the radiation safety survey report to the Department within 30 days of the date the machine is acquired. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available to the Department during any inspection.

2. The registrant of a medical ionizing-radiation-producing machine shall ensure that a qualified individual for the performance of surveys for diagnostic x-ray equipment and therapy simulator systems performs a radiation safety survey of the environs when changes have been made to shielding, equipment, or equipment location which affect the radiation levels of the environs. A copy of the survey report shall be submitted to the Department within 30 days of the date of such change. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available to the Department during any inspection.

3. The minimum requirements for the information to be included in the radiation safety survey report are as follows:

i. The name of the registrant of the installation as listed on form VRH-001, address, telephone number, and room location of the unit;

ii. The New Jersey Registration Number, if available;

iii. The manufacturer, model number, generator serial number, control panel serial number, tube manufacturer, tube serial number, and tube housing number;

iv. The name and address of the qualified individual performing the survey;

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v. The date of survey;

vi. The survey instrument manufacturer, model number, and date calibrated;

vii. A diagram or floor plan of the area indicating the x-ray tube location, exposure switch location, normal operator position, lead shielding if present, wall, floor, and ceiling construction, labeling all areas adjacent to the exposure room including those above and below, and labeling of all areas as to occupancy and use;

viii. Records of the measurement of radiation exposure with a suitable phantom in the average patient position. Measurements shall be taken at the operator's position and at all nearby locations which are normally occupied. For each measurement, the kVp, and mA, exposure time, instrument reading, and correction made to the instrument reading (such as energy response, calibration, etc.) shall be recorded; and

ix. Exposure rates at each measured location shall be converted into Coulombs/kilogram/week or mR/week. Records shall include all assumptions of workload, use and occupancy factors used in the calculations.

7:28-15.11 Prohibited installations

(a) No person shall operate, permit to be operated, maintain or display in working condition any of the following:

1. Shoe-fitting fluoroscopic devices;

2. Chest photofluorographic machine after one year from the effective date of these rules;

3. Fixed vertical systems designed for non-image intensified fluoroscopy used for radiography after one year from the effective date of these rules;

4. Uncertified fluoroscopic equipment that does not have image intensification after one year from the effective date of these rules; or

5. Hand-held fluoroscopic screens.

7:28-15.12 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the subchapter, which can be given effect without the invalid provision or application, and to this end, the provisions of this subchapter are declared to be severable.

7:28-16.2 Definitions

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

. . .

"Coefficient of variation" or "C" means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$\left[C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \sum_{i=1}^{n} \left[\frac{(X_i - X)^2}{n - 1} \right]^{1/2} \right]$$

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \left[\sum_{i=1}^{n} \frac{(X_i - X)^2}{n - 1} \right]^{1/2}$$

where:

s = estimated standard deviation of population
$\bar{X}$ = mean value of observations in sample
X_i = i^{th} observation in sample
n = number of observations in sample

. . .

"Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, intercepting the useful beam for protection purposes to reduce the radiation exposure so that it does not exceed to [milliroentgens] **millirems** per hour.

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to reduce radiation exposure so that it does not exceed two [milliroentgens] **millirems** per hour.

[7:28-16.8 Radiation safety surveys

(a) The registrant of a dental ionizing radiation-producing machine shall ensure that a qualified individual performs a radiation survey of the controlled and non-controlled areas within 60 days of the installation of the x-ray equipment to ensure compliance with this chapter. The qualified individual shall provide the registrant with a report of the results of the radiation survey.

(b) The registrant shall submit a copy of the radiation survey report required in (a) above to the Department within 30 days after the date of the survey. The registrant shall maintain the original survey report at the facility for at least as long as the registrant owns the radiographic equipment at that location. The survey report shall be produced for review by the Department during an inspection.

(c) The registrant shall have a radiation protection survey performed by a qualified individual within 60 days after any changes made to shielding or equipment location. The registrant shall submit a copy of the survey to the Department within 30 days after the date of the survey. The registrant shall maintain the original survey report at the facility for at least as long as the registrant owns the equipment in that location. The survey report shall be produced for review by the Department during an inspection.]

7:28-16.8 Radiation safety surveys

(a) No person shall operate or permit the operation of x-ray equipment used for dental radiography unless the installation meets the following requirements:

1. The registrant of a dental ionizing radiation-producing machine shall ensure that a qualified individual performs a radiation safety survey of the environs and submits a copy of the radiation safety survey report to the Department within 30 days of the date the machine is acquired. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available for review by the Department during any inspection;

2. The registrant of a dental ionizing radiation-producing machine shall ensure that a qualified individual performs a radiation safety survey of the environs when changes have been made to shielding, equipment, or equipment location which affect the radiation levels of the environs. A copy of the survey report shall be submitted to the Department within 30 days of the date of such change. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available for review by the Department during any inspection; and

3. The minimum requirements for the information to be included in the radiation safety survey report are as follows:

i. The name of the registrant of the installation as it appears on form VRH-001, address, telephone number, and room location of the unit;

ii. The New Jersey Registration Number, if available;

iii. The manufacturer, model number, generator serial number, control panel serial number, tube manufacturer, tube serial number, and tube housing number;

iv. The name and address of the qualified individual performing the survey;

v. The date of survey;

vi. The survey instrument manufacturer, model number, and date calibrated;

vii. A diagram or floor plan of the area indicating the x-ray tube location, exposure switch location, normal operator position, lead shielding if present, wall, floor, and ceiling construction, labeling of all areas adjacent to the exposure room including those above and below, and labeling of all areas as to occupancy and use;

viii. Records of the measurement of radiation exposure with a suitable phantom in the average patient position. Measurements shall be taken at the operator's position and at all nearby locations

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which are normally occupied. For each measurement, the kVp, mA, exposure time, instrument reading, and correction made to the instrument reading (such as energy response, calibration, etc.) shall be recorded; and

ix. Exposure rates at each measured location shall be converted into Coulombs/kilogram/week or mR/week. Records shall include all assumptions of workload, use and occupancy factors used in the calculations.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Residential Health Care Facilities

Proposed Repeal and New Rule: N.J.A.C. 8:43

Authorized By: Bruce Siegel, M.D., M.P.H., Acting 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 1993-9.

Submit comments by February 3, 1993 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

N.J.A.C. 8:43, Residential Health Care Facilities, readopted elsewhere in this issue of the New Jersey Register, contains rules for the licensure of residential health care facilities. Although the Division of Health Facilities Evaluation & Licensing developed a completely revised manual of standards for residential health care facilities during 1991, the Department agreed to participate in a study of the economic impact of the revised new rules, in response to concerns expressed by members of the Residential Health Care Advisory Committee who assisted with the revision of the chapter.

The final report of the study of the impact of the revised Manual of Standards on New Jersey Residential Health Care Facilities has been completed. The report provides a database that describes the costs of RHCF services and the financial status of residential facilities, with attention paid to variations by facility size and location. In addition to assessing the costs of current operations, the study projects the impact of the revised standards on the RHCF industry as a whole as well as the differences in impact for variably sized facilities and facilities in several regions of the state.

The study indicates that the RHCFs which participated in the study already met at least half of the revised standards, with an average of 85 percent of the revised standards currently being met. Therefore, many facilities would not experience any significant financial impact as a result of the adoption of revised rules. According to the study, however, some of the standards which are not being met may be costly to implement, and some of the facilities which were included in the study expected that the revised standards would have a substantial financial impact.

Fifteen of the revised standards were identified in the study as most likely to have a significant impact on facilities. After reviewing these study results, the Department reconvened the Advisory Group in order to reassess the revised rules before proposing them. After careful consideration of those rules which were expected to have the greatest potential impact, changes were made in order to avert increased costs while at the same time maintaining minimum standards which the Department feels are necessary to provide residents with acceptable quality of care. In some instances, the Department was able to modify specific rules; others will be deferred until additional funds become available for their full implementation.

The requirement to maintain 70 square feet of clear floor area, for example, was modified to minimize the cost impact on existing facilities by applying the requirement in effect at the time of construction. Requirements for staff supervision of residents in facilities which have more than one floor were changed to minimize the cost impact without compromising patient safety. Standards regarding provision of resident transportation and those regarding minimum amounts of recreational activity to be provided were also modified. Requirements for consultant dietitian services have been deferred until such time as the Commissioner of Health determines that adequate funds are available for their implementation, unless the facility fails to substantially comply with requirements for dietary services. If deficiencies occur, the Department may require that the facility retain a consultant dietitian until all dietary and nutritional problems have been corrected. The requirement for health maintenance and monitoring services has been increased from the present requirement of 0.20 hours of nursing care from a registered professional nurse per resident per week to a minimum of 0.25 hours per week. However, facilities having an average resident census of greater than 75 percent whose source of income is SSI, Municipal Assistance or Interim Assistance will be exempted from this requirement. The revised rules further state that when adequate funding becomes available, this requirement will be increased to 0.33 hours of nursing care from a registered professional nurse per resident per week.

The changes which have been made to the revised rules with the assistance of the advisory committee are expected to mitigate any cost impact which might have resulted from their adoption.

The fully revised N.J.A.C. 8:43 incorporates newer terminology and more specific language to render the rules more objective, measurable, and enforceable, while also reflecting current trends in the provision of residential health care. Changes were made in the format of the rules in order to make the manual more consistent with licensure standards for other health care facilities, and to make them easier to use as a part of the survey process. Most of these changes, which update and improve the licensure standards, will not increase costs to facilities, since they are based upon concepts already reflected in the current manual, N.J.A.C. 8:43, or already in use throughout the residential health care industry.

N.J.A.C. 8:43, Residential Health Care Facilities, became effective October 27, 1965, and was promulgated by the New Jersey Department of Institutions and Agencies, which is no longer in existence. The responsibility for the licensure and regulation of health care facilities was transferred from the New Jersey State Department of Institutions and agencies to the New Jersey State Department of Health in 1971 by the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. All provisions of this Chapter were adopted pursuant to authority of N.J.S.A. 26:2H-1 et seq. and were filed and became effective November 19, 1974, as R.1974 d.319. See: 9 N.J.R. 396(c), 6 N.J.R. 472(e). This chapter has not undergone substantial revision since that time. A summary of the proposal follows.

N.J.A.C. 8:43-1, Definitions and Qualifications, contains statements of the scope and purpose of residential health care facilities as well as definitions of some of the terms which are used in Chapter 43. According to N.J.A.C. 8:43-1.1, Scope, rules in this chapter pertain to all facilities and constitute the basis of licensure of these facilities by the New Jersey State Department of Health. The purpose of the rules, as stated at N.J.A.C. 8:43-1.2, is to provide sheltered care and services to residents who do not require skilled nursing care, in order to protect their health and safety and to assist them in maintaining personal interests and dignity. Qualifications of the administrator, dietitians, direct care staff, director of health maintenance and monitoring services, pharmacists, physicians, and registered professional nurses are included in the subchapter.

Licensure procedures are included in N.J.A.C. 8:43-2. The subchapter addresses certificate of need requirements and procedures, as well as application for a license, surveys and temporary license, full license, surrender of license, the waiver process, action against a license, and hearings.

Physical plant requirements are specified at N.J.A.C. 8:43-3, Physical plant. Requirements for new construction, alterations and renovations are listed at sections 3.1 through 3.21, while rules for existing licensed facilities are listed at sections 3.22 through 3.27. Subchapter 3 requires that the physical plant be in compliance with specified sections of the New Jersey Uniform Construction Code as well as the Americans with Disabilities Act (ADA). Ventilation and exit access passageways and corridors are addressed in the subchapter. Specifications for fire alarms, detectors and fire suppression systems are included. Interior and floor finish requirements are listed. Physical environment requirements for resident bedrooms, toilets, baths, living and recreation rooms, dining

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rooms, lighting and electricity, laundry equipment, kitchens and employee sleeping rooms are delineated.

N.J.A.C. 8:43-4, General Requirements, lists the types of services which must be provided to residents, including at least personal care, health, pharmacy, dietary, and recreational services. Requirements for a sufficient number of staff to meet resident needs are specified. Subchapter 4 also includes requirements for submission of documents and disclosure of ownership to the Department. Personnel policies are detailed, including written job descriptions, verification of appropriate licensure, certification or authorization for personnel, staff orientation and staff education plans, and reporting of communicable disease. Details regarding a written policy and procedure manual for the facility are listed. Requirements for resident transportation, written agreements, and events which must be reported to the Department are included in the subchapter, as are requirements for posting notices of information available to residents and the public. Information and procedures for reporting of pertinent information to the Board of Medical Examiners regarding any practitioners who may be employed by the facility is included. Rules for maintaining records of residents admitted and discharged, and the forwarding of any requested statistical data to the Department are included in the subchapter. Information concerning admission, retention and involuntary discharge is included, as well as conditions under which residents who require wheelchairs may be admitted to the facility. Notification requirements for informing residents' families when an illness, accident or other significant event occurs are specified. Subchapter 4 contains rules for developing policies and procedures for dispute resolution and a forum for discussion of advance directives. The facility must ensure that each resident is informed of his or her rights under New Jersey law to make decisions concerning the right to refuse medical care, their right to formulate an advance directive, and the right to receive information about or assistance in preparation of advance directives. Also included in the subchapter are rules concerning building occupancy, access to residents' bedrooms, and interpretation services.

Subchapter 5, Administration, contains rules regarding the apppointment of an administrator and the administrator's responsibilities.

N.J.A.C. 8:43-6, Resident care policies, describes the necessary content of such policies and procedures, including resident rights, staffing levels, referral and emergency medical and dental care of residents, informed consent requirements, rules for the control of smoking in the facility, criteria for discharge, termination and transfer of residents, and care of deceased residents. The need to inform residents of all financial arrangements and to keep records of financial arrangements with residents are specified. Procedures for distribution of personal needs allowances and recordkeeping by administrators to whom residents' personal funds are entrusted are also addressed in subchapter 6.

Subchapter 7, Personal care services, requires that each resident be provided with personal care services as needed, and be assisted with obtaining suitable clothing and having clothing laundered as necessary. Facilities and furnishings which each resident must have within his or her sleeping area are specified.

N.J.A.C. 8:43-8 contains rules for the provision of dietary services to residents. A consultant dietitian must be designated to be responsible for the provision and quality of the dietary services, and the dietitian's responsibilities are listed. Requirements for the consultant dietitian are deferred until such time as adequate funds are available for their implementation, unless the facility fails to meet the dietary needs of residents. If the facility does not substantially comply with requirements in subchapter 8 or residents have significant nutritional deficiencies, the Department may require that a consultant dietitian be retained by the facility until all such deficiencies are corrected. The facility has the responsibility to develop policies and procedures for planning, preparing, and serving meals. The administrator is responsible for providing food and drink with regard for the nutritional, cultural and therapeutic needs of residents. Requirements for menus, meal times, recipes, work schedules and a plan for kitchen cleaning operations are listed. A daily food guide is included, to assist the facility to prepare nutritionally adequate meals.

N.J.A.C. 8:43-9 describes the health maintenance and monitoring services which are to be provided to residents. A registered professional nurse must direct the health maintenance and monitoring services. At least one registered professional nurse must be available at all times. Written policies and procedures must be developed for resident assessment, monitoring residents' health conditions, and recordkeeping. Each resident is to be provided with a minimum of 0.25 hours of registered professional nursing care per week, which is to be increased to 0.33 hours per week at such time when adequate funds are available to implement the requirement. Each resident is to receive an initial nursing assessment and at least semiannual reassessment. Assessments must be documented on the minimum data set approved by the Department or on an equivalent assessment instrument.

Subchapter 10, Medications, includes rules for supervision of self-administration of medications and lists procedures to be followed when residents self-administer. The facility must designate a consultant pharmacist to be responsible for the direction, provision, and quality of pharmaceutical services. As a means to mitigate the cost impact of this rule, the consultant may also serve as the provider pharmacist to the facility. Rules for storage of medications in conformance with manufacturer's instructions as well as U.S.P. (United States Pharmacopoeia) requirements are specified. The administrator must provide a medication storage area of sufficient size for the medications of all residents. Labeling and identification requirements for medications are given, as well as requirements for a unit dose drug distribution system, if used.

Provision of recreational services is addressed at Subchapter 11. The facility must offer a planned, diversified program of residential activities, in accordance with residents' needs. Residents must have the opportunity to organize and participate in a Resident Council. The administrator or designee is responsible for recreational services, written policies and procedures, coordination of recreational activities with other resident care, and posting of a schedule of activities.

Subchapter 12, Emergency services and procedures, requires the facility to ensure that community emergency services are available to residents who need them. The facility must develop emergency plans and procedures to be followed in case of medical emergencies, power failure, fire, or natural disasters. A total of twelve drills must be conducted and documented, and fire alarms must be tested monthly. Fire extinguishers are to be available, examined monthly, inspected and maintained in accordance with manufacturer's and National Fire Protection (NFP) requirements.

Procedures for maintenance of resident records are delineated at N.J.A.C. 8:43-13, as well as requirements for confidentiality and retention of records. Specific information which must be included in each resident record is listed in this subchapter.

The rights of each resident are delineated in N.J.A.C. 8:43-14. The facility is responsible for establishing and implementing written policies regarding the rights of residents. Resident rights are to be conspicuously posted in the facility and each resident is to be informed of these rights. Resident rights must include the right to privacy, the right to be treated with consideration and respect, and the right to exercise civil and religious liberties.

Housekeeping, sanitation, safety and maintenance requirements are contained in Subchapter 15. The facility must maintain a safe and sanitary environment for residents. Housekeeping, laundry, pest control and maintenance services must be provided according to the rules in this subchapter. Requirements for removal of solid and liquid waste are listed. Requirements for heating and air conditioning to maintain specified temperatures are included. Requirements for ensuring an adequate supply of safe water for drinking and culinary purposes are specified, in addition to acceptable temperatures for hot water used for bathing and handwashing by residents. The facility must develop and implement plans for maintaining an attractive and safe building and grounds. Laundry services must be provided in accordance with written policies and procedures as well as specified rules.

Subchapter 16, Infection prevention and control services, requires that the administrator and the health maintenance and monitoring nurse be responsible for the development of an infection prevention and control program, written policies and procedures, a manual and an organizational plan for the services. All written policies and procedures must be consistent with listed Centers for Disease Control publications, must be implemented, and must be reviewed annually. The facility must also develop employee health policies and procedures and ensure that all employees receive Mantoux tuberculin skin tests as specified in this subchapter. Communicable diseases, employee illness, reporting of infections or diseases, and handwashing are addressed. Staff must be informed of facility infection control procedures. Regulated medical waste must be collected, handled, and disposed of in accordance with applicable Federal and State laws, as specified.

Social Impact

The proposed N.J.A.C. 8:43 will have social impacts on the Department, residents and residential health care facilities. In accordance with

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the Health Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., the Department has the responsibility to promote the health and safety of the residents of the State. Licensure rules are one of the means by which the department monitors the quality of the health care services provided to residents in residential health care facilities. The quality of health care, to a great extent, depends upon the organization and effectiveness of the health care services provided. N.J.A.C. 8:43 contains essential definitions and qualifications of residential health care providers, building requirements, fire protection rules, requirements for administration of the facility, personal care services to be provided to residents, rules for dietary services, resident rights, and requirements for health maintenance and monitoring services. These rules promote and support quality care and continuity of care for residents.

If these rules were not adopted, the social impact resutling from the loss of this rule would have serious consequences for residents of residential health care facilities. For example, without licensure rules, the nature and purpose of residential health care facilities would be fundamentally altered. Without definitions, as specified in N.J.A.C. 8:43, rules could be misinterpreted, which might adversely affect the life and safety of residents. The absence of rules regarding the required services of a residential health care facility could have serious consequences for residents because essential services would not be ensured. Elimination of the rules relating to the qualifications of the administrator and staff could have a deleterious effect both on the safety of the residents and on the quality of care provided. Failure to retain qualified, competent staff capable of discharging their responsibilities in a timely, conscientious manner might jeopardize the welfare of residents.

Residential health care facilities represent a relatively low-cost means by which adults 18 years of age or over can be cared for in a home-like environment. The current trend toward de-institutionalization of chronically ill, long-term patients to a more home-like milieu has greatly enhanced the importance of residential health care facilities as an alternative in the health care delivery system. Continuation of the rules for licensure of residential health care facilities will therefore result in the availability of needed facilities for those residents who require this type of care. Failure to adopt N.J.A.C. 8:43 could jeopardize the quality of services provided in residential health care facilities because there would be no regulatory mechanism. The adoption of N.J.A.C. 8:43 would help to ensure that residents are being provided with adequate care in a home-like atmosphere suited to their needs and requirements and conducive to the maintenance of their self-respect and dignity. The revised rules are clearer, more specific, more responsive to the needs of residents and providers of residential health care, more consistent with current trends in residential health care, and more enforceable.

Economic Impact

In preparation for proposal of a new manual of licensure standards, the Center for Health Policy Studies conducted a study in which the costs of residential health care facilities were evaluated during the latter part of 1991. Financial data were supplied by a sample group of New Jersey residential health care providers, although these data were not audited by the Department. Cost centers identified in the study included operating expenses (repairs, maintenance, food, laundry, recreation expenses), facility (depreciation of equipment and buildings, rentals, mortgage), salaries (of all personnel, including administrators and owners), fringe benefits (health insurance, pensions, profit sharing, payroll taxes), other costs (consulting fees, advertising, legal/professional fees, dues/memberships, subscriptions and taxes other than payroll taxes), and miscellaneous expenses (any expense not otherwise included). Based on the information reported in the study, it was found that the total mean cost per resident per day varies regionally, with the North-Central Suburban region the lowest, at $37.10; the Southern region next, with $38.50; and the Northern-Urban region the highest, at $48.78. Within these categories, additional variation is seen; for example, fringe benefits are highest in the North-Central-Suburban region, and lowest ($2.67) in the Southern region. For all facilities, the per-resident mean cost is $39.60 per day, or $14,454 per year. The median cost is $30.00 per day, or $10,950.00 per year.

Costs per resident per day also vary with facility size, with those facilities serving 100 or more residents showing the lowest cost ($30.53), those serving 50 or less, second, and those serving 51 to 100 residents the highest ($56.24). There are a large number of facilities with low costs, but the smaller number of facilities with high costs have costs that are substantially higher than most facilities. The range from lowest to highest cost per day is $117.66.

Operating expenses as a percentage of total per resident per day costs are consistent at 28 to 30 per cent, as are facility costs, at 19 per cent.

As indicated in the summary above, the Department has worked closely with the Advisory Committee in order to modify or defer many of the revised rules which might increase costs to facilities. Therefore, a significant cost impact is not expected as a result of the adoption of this chapter.

Failure to adopt N.J.A.C. 8:43 could have serious consequences with a concomitant economic impact. For example, the definitions provided in N.J.A.C. 8:43-1 define the residents who may be admitted to a residential health care facility, thus preventing the admission of patients who require a high level of care who may be in jeopardy and, as a result, experience higher health care costs. Without rules regarding the required services in a residential health care facility and the qualifications of the administrator and staff there would be no assurance that the required services will be provided in an organized and efficient manner by competent staff and would be cost-effective. Therefore, it is imperative that these revised rules be adopted.

Regulatory Flexibility Statement

The Department acknowledges that most of the 172 residential health care facilities presently licensed have fewer than 100 full-time employees and may, therefore, be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The proposed adoption will not change the recordkeeping and reporting requirements already placed upon small businesses by the current rules, N.J.A.C. 8:43. The facility must, for example, maintain a register which contains a current census of all residents. A record must be kept for each resident, which includes an admission record, a medical certification, a record of physician's visits and a death record when applicable. Any major occurrence or incident of an unusual nature must be reported immediately to the Department. The Department of Health has determined that compliance with the other requirements in the proposed rules, as delineated in the Summary, is necessary for all facilities which provide residential health care services, in the interest of public health and safety, and that there should be no differentiation based on business size provided in the proposed rules. As discussed in the Summary above, the Department has worked closely with the Advisory Committee to minimize any potentially adverse impact on small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:43.

Full text of the proposed new rules follows:

CHAPTER 43
STANDARDS FOR LICENSURE OF RESIDENTIAL HEALTH CARE FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43-1.1 Scope

The rules in this chapter pertain to all facilities which provide residential health care services. These rules constitute the basis for the licensure of residential health care facilities by the New Jersey State Department of Health.

8:43-1.2 Purpose

Residential health care facilities provide sheltered care and services to residents who do not require skilled nursing care, in order to assist residents to maintain personal interests and dignity as well as to protect their health and safety. The aim of this chapter is to establish minimum rules with which a residential health care facility must comply in order to be licensed to operate in New Jersey.

8:43-1.3 Definitions

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

"Assistive device" means a leg brace, splint, cane, crutch, special shoe, back brace, walker, wheelchair, or prosthesis.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Basic physical plant services" means heat, power, lighting, water, food and staff.

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"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, or vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by residents and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970, N.J.S.A. 24:21-1 et seq.

"Current" means up-to-date, extending to the present time.

"Department" means the New Jersey State Department of Health.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

1. "High-level disinfection" means that disinfection which kills vegetative bacteria, tubercle bacillus, some spores, fungi, lipid and non-lipid viruses.

2. "Intermediate-level disinfection" means that disinfection which kills vegetative bacteria, tubercle bacillus, fungi, lipid and non-lipid viruses and does not kill resistant bacterial spores.

3. "Low-level disinfection" means that disinfection which kills most vegetative bacteria, fungi, and lipid viruses and does not kill spores and non-lipid viruses. Low-level disinfection is sometimes less active against some of the gram-negative rods *(Pseudomonas)* and *Mycobacterium* (TB).

"Documented" means written, signed, and dated.

"Employee" means a person who is gainfully employed in the residential health care facility on a full or part-time basis and for whom a record of hours worked and wages paid are maintained and who meets the health, age and other requirements of this chapter. Reimbursement for such employment may include salaries, wages, room and board, or any combination thereof. A person placed in the residential health care facility under a purchase of care or service agreement will not be considered an employee.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Full-time" means relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Guardian" means a person appointed by a court of competent jurisdiction to handle the affairs and protect the rights of any resident of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Monitor" means to observe, watch, or check.

"Residential health care facility" means a facility which provides food, shelter, supervised health care and related services to four or more persons 18 years of age or older who are unrelated to the owner or administrator.

"Resident" means a person who is 18 years of age or over, mobile under his or her own power with or without assistive devices and able to effectuate his or her own evacuation from the building. A licensed physician must certify that the resident does not have medical or personal care needs which exceed the level of services provided in a residential health care facility, is free from communicable diseases (that is, does not have a reportable, communicable disease which is not controlled through prophylaxis or medication), and does not require skilled nursing care.

"Resident supervision" means the provision of direct services required by this manual to residents.

"Responsible person" means a person who has been designated by the resident and who has agreed to assist the resident, as needed, in arranging for health, social and financial services or making decisions regarding such services.

"Self administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a resident to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39), labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand. A controlled electronic signature system may be used.

"Staff education plan" means a written plan which describes a coordinated program for staff education for each service, including inservice programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity. "Direct supervision" means supervision on the premises within view of the supervisor.

8:43-1.4 Qualifications of the administrator of a residential health care facility

(a) The administrator of a residential health care facility shall be in good physical and mental health, be of good moral character, exhibit concern for the safety and well-being of residents, and shall:

1. Complete a training course approved by the Department of Human Services, or other equivalent training as approved by the Department of Health, within one year of his or her employment as administrator; or

2. Hold a current New Jersey license as a nursing home administrator, or be eligible to take the New Jersey Nursing Home Administrator's Licensing Examination, according to the Department of Health requirements found in N.J.A.C. 8:34.

(b) The owner of a residential health care facility who meets the qualifications listed in (a) above may also serve as the administrator.

8:43-1.5 Qualifications of dietitians

Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration (Office on Dietetic Credentialing, 216 W. Jackson Boulevard—7th Floor, Chicago, Illinois 60606-6995).

8:43-1.6 Qualifications of direct care staff

(a) The facility shall exercise good faith and due diligence to ensure that staff providing direct care and resident supervision to residents in the facility:

1. Are in good physical and mental health, emotionally stable, of good moral character, are concerned for the safety and well-being of residents;

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2. Have not been convicted of a crime relating adversely to the person's ability to provide resident care, such as homicide, assault, kidnapping, sexual offenses, robbery, and crimes against the family, children or incompetents, except where the applicant or employee with a criminal history has demonstrated his rehabilitation in order to qualify for employment at the facility; and

3. Are at least 18 years of age, or have obtained working papers.

8:43-1.7 Qualifications of the director of health maintenance and monitoring services

The director of health maintenance and monitoring services shall be a registered professional nurse.

8:43-1.8 Qualifications of licensed practical nurses

Each licensed practical nurse shall be so licensed by the New Jersey State Board of Nursing.

8:43-1.9 Qualifications of pharmacists

Each pharmacist shall be so registered by the New Jersey State Board of Pharmacy.

8:43-1.10 Qualifications of physicians

Each physician shall be licensed or authorized by the New Jersey Board of Medical Examiners to practice medicine in the State of New Jersey.

8:43-1.11 Qualifications of registered professional nurses

Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43-2.1 Certificate of need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, licensed to operate, or closed except upon application for, and receipt of, a certificate of need issued by the Commissioner.

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

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625
609-292-6552

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the certificate of need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:43-2.2 Application for licensure

(a) Following receipt of a certificate of need, any person, organization, or corporation desiring to operate a residential health care facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing and Certification
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
609-588-7726

(b) The Department shall charge a nonrefundable fee of $100.00 plus $3.00 per bed for the filing of an application for licensure of a residential health care facility and for the annual renewal of the license.

(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing and Certification Program.

8:43-2.3 Newly constructed or expanded facilities

(a) Any residential health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

(b) The licensure application for a newly constructed or expanded facility shall include written approval of final construction of the physical plant by Health Facilities Construction Services, Division of Health Facilities Evaluation and Licensure, New Jersey State Department of Health, in accordance with this chapter.

(c) An on-site inspection of the construction of the physical plant shall be made by representatives of Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

8:43-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this manual.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing and Certification Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. The completed licensure application is on file with the Department;

3. The fee for filing of the application has been received by the Department;

4. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

5. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

6. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this manual; and

7. Personnel are employed in accordance with the staffing requirements in this manual.

(c) No facility shall admit residents to the facility until the facility has the written approval and/or license issued by the Licensing and Certification Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and resident records and conferences with residents.

(e) A temporary license may be issued to a facility for a period of up to six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:43-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less, as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

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(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met.

8:43-2.6 Surrender of license

The facility shall notify each resident, the resident's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing and Certification Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:43-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this manual, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of residents or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing and Certification Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure resident safety; and

4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:43-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of residents from a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary or provisional license and facilities with a full license.

8:43-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, assess a monetary penalty, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

8:43-2.10 Special residential health care services

(a) Any existing or new residential health care facility proposing to serve a specialized client population representing a substantial proportion of its census shall submit a plan for provision of services appropriate to the needs of these clients. Such a plan shall be reviewed by the Department and approval shall be received prior to the initiation of such admissions and services.

(b) The Department may impose operational standards derived from the plan submitted by the facility and from other adopted licensure regulations appropriate to this population as a condition on the issuance of a license. Such conditions are subject to the enforcement actions and procedures specified at N.J.A.C. 8:43-2.8 and 2.9.

SUBCHAPTER 3. PHYSICAL PLANT

8:43-3.1 Scope

(a) Physical plant rules at N.J.A.C. 8:43-3.1 through 3.21 shall apply to new construction, alterations or renovations of residential health care facilities.

(b) Alterations and renovations shall be evaluated as follows:

1. Alterations exceeding 50 percent: If alterations or repairs are made within any period of 12 months, costing in excess of 50 percent of the current replacement value of the structure, requirements for new structures shall apply to the entire structure, including those portions not altered or repaired;

2. Alterations under 50 percent: If alterations or repairs are made within any period of 12 months, costing between 25 percent and 50 percent of the current replacement value of the structure, only the altered or repaired portions need conform to the requirements for new structures;

3. Alterations under 25 percent: If alterations or repairs are made within any period of 12 months, costing under 25 percent of the current replacement value of the structure, the construction official and appropriate subcode officials shall determine to what degree the portions so altered or repaired shall be made to conform to the requirements for new structures.

(c) Physical plant standards for existing licensed facilities shall be maintained and existing facilities will be inspected according to those codes and standards which were in effect at the time of licensure, unless otherwise required by statute.

(d) Prior to approval of a certificate of need for a transfer of ownership, the Department shall conduct a physical plant inspection of the facility to determine the extent of physical plant deficiencies, based upon current codes and standards. Subsequent to the Department's inspection:

1. A report of the physical plant inspection shall be provided to the prospective buyer and sellers; and

2. A plan of correction shall be submitted to the Department for all physical plant deficiencies.

(e) A request for waiver of any physical plant standards whose correction creates a financial hardship may be submitted by a prospective buyer and will be reviewed by the Department, in accordance with N.J.A.C. 8:43-2.7.

8:43-3.2 Physical plant

Construction of residential health care facilities in new buildings, additions, alterations and renovations to existing buildings shall be in compliance with N.J.A.C. 5:23-3.2 of the New Jersey Uniform Construction Code, Use Group I-1. of the Sub-Code, and in compliance with the Americans with Disabilities Act (ADA).

8:43-3.3 Restrictions

Mixed use occupancy shall not be permitted in buildings classified as High Hazard (H), Factory (F) or assembly (A-2) Use Groups.

8:43-3.4 Ventilation

(a) Means of ventilation shall be provided either by a window with an openable area or by mechanical ventilation for every habitable room. If mechanical ventilation is used, there shall be at least two air changes per hour.

(b) Means of ventilation shall be provided for every bathroom or water closet compartment (toilet). Ventilation shall be provided either by a window with an openable area or by mechanical ventilation with at least 10 air changes per hour.

(c) All hallway corridors and passageways shall have a minimum of two outside air changes per hour.

8:43-3.5 Exit access passageways and corridors

The width of passageways, aisles and corridors shall not be less than 44 inches. If an existing building(s) is being converted to a

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residential health care facility, the authority having jurisdiction may consider an exception which would allow a 36 inch corridor, in accordance with N.J.A.C. 8:43-2.7.

8:43-3.6 Automatic fire alarm system and detectors systems

(a) Smoke detectors shall be provided in corridors not more than 30 feet on center and not more than 15 feet from any wall and in all residents' bedrooms, even in a completely sprinklered building.

(b) All alarm systems shall be connected to a full-time fire station or police station or other approved agency. Detectors for self-closing doors, windows and shutters shall be connected to fire alarm systems. Air handling systems shall be provided with smoke detectors. All detectors shall be hardwired and connected to fire alarm system.

8:43-3.7 Fire suppression systems

(a) Facilities licensed for 21 or more beds, of all construction types except type 1A, 1B, and 2B or one story non-combustible/combustible protected construction types 2B, 3A, 4 and 5A, shall be provided with a fire suppression system in accord with section 1002.0 of 1990 BOCA National Building Code.

(b) In facilities which are not required to have a complete fire suppression system, all hazardous areas, including kitchens, boiler rooms, electrical rooms, laundry rooms and areas used for storage of combustible materials, shall be protected by a fire suppression system.

8:43-3.8 Interior finish requirement

(a) Interior wall and ceiling finishes in resident areas shall be Class A (having a flame spread of 0-25 and smoke development of 0-450, based on test results from National Fire Protection Association (NFPA) 255, Standard Method of Test of Surface Burning Characteristics of Building Materials). In all other areas, interior wall and ceiling finishes shall be Class A or Class B (having a flame spread of 26-75 and smoke development of 0-450).

(b) Interior floor finishes in corridors, stairways and exits shall be Class I or Class II (critical radiant flux, minimum of 0.45 watts per square centimeter (W/sq.cm.) or 0.22 W/sq.cm., respectively, based on test results from NFPA 253, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source).

8:43-3.9 Attached structures

Attached structures such as storage sheds or private garages located beneath buildings shall have wall partitions, floors, and ceilings separating the space from the adjacent interior enclosed space constructed of not less than one-hour fire resistance rating. Attached private garages shall be completely separated from the adjacent interior enclosed spaces and the attic area by means of one-inch gypsum board or equivalent applied to the garage side. The sills of all door openings in the garage between garage and building shall be raised not less than four inches above the garage floor. The door openings protectives shall be 1¾" solid core wood doors or approved equivalent.

SUBCHAPTER 3A. PHYSICAL ENVIRONMENT

8:43-3A.1 Resident bedrooms

(a) Sleeping rooms for one resident shall have a minimum of 90 square feet of clear floor area. "Clear floor area" means space exclusive of toilet rooms, fixed closets, fixed wardrobes, alcoves, or vestibules.

(b) Sleeping rooms occupied by more than one resident shall have a minimum of 70 square feet of clear floor area per resident. There shall be three feet of clear space between beds and at the foot of each bed to insure comfort and safety to residents. Space for storage of personal possessions and a non-folding arm chair shall be provided for each bed.

(c) No more than four residents shall be housed in any one room, regardless of room size.

(d) Toilets, bathing facilities, and handwashing sinks shall be available in the following minimum ratios (excluding bedrooms which have private facilities as part of the bed count and excluding facilities of family members and resident employees):

1. Toilets shall be provided so that each resident bedroom shall be adjacent to a toilet room, with no more than four residents served by this toilet.

2. Handwashing sinks shall be provided in every resident bedroom and in every toilet room except in private bedroom(s) where the handwashing sink in the bathroom is sufficient.

3. Tubs or showers shall be provided in a ratio of one per eight residents, with a minimum of one tub per fifty residents, or at least one tub per resident sleeping floor.

4. On floors other than sleeping floors utilized by residents there shall be at least a toilet and a lavatory available and accessible from a common corridor.

(e) Resident bedroom doors may be lockable by the occupant only from the corridor side (outside) by the use of a key. Egress from the room shall be possible at all times by turning the doorknob or pressing a lever. Duplicate keys to resident rooms which are locked shall be carried by designated staff at all times.

8:43-3A.2 Living and recreation rooms

(a) A living room or rooms shall be provided to insure adequate seating for the licensed capacity of the facility. There shall be 15 square feet per resident. The living room(s) shall have ample space for socialization as well as other resident activities such as letter writing, card playing, radio, television, and reading.

(b) Facilities with a licensed capacity of 30 or more residents shall provide two or more separate living or recreation rooms. A quiet sitting room with a minimum of 120 square feet shall be provided on each floor.

8:43-3A.3 Dining room

(a) Twenty-five square feet per resident shall be provided in a dining room or rooms.

(b) The congregate or common dining room shall be a separate area and shall not be a part of any other room. This area may be used for the recreation activities of residents, exclusive of the time required for dining service.

8:43-3A.4 Storage space

(a) Each facility shall provide a minimum of 30 square feet of lighted storage space per resident, in accordance with the following allotments:

1. At least ten square feet of locked personal storage, which may be in a room or common area other than the resident's bedroom; and

2. At least twenty square feet for linens, foods, cleaning and other supplies.

8:43-3A.5 Lighting and electricity

A bedside light shall be available for each bed, in addition to one duplex outlet for each bed and ceiling lights or other fixtures suitable for lighting the entire room.

8:43-3A.6 Laundry equipment

(a) Each facility shall provide at least one non-commercial washer and dryer for residents' personal items.

(b) Where laundry equipment is limited to non-commercial type (ordinary household or residential types), no special fire protective measures shall be required.

(c) When commercial-type laundry equipment is utilized, it shall be installed in a separate laundry room. The remainder of the home shall be protected from the laundry room by partitions and openings of at least one-hour fire-resistance rating. Doors to such laundry rooms shall be protected in accordance with N.J.A.C. 8:43-3.17(b).

(d) All dryers shall be vented to the outside of the building.

8:43-3A.7 Kitchens

(a) All interior openings in common-area kitchens, except doorways, shall be protected by materials of at least one-hour fire-resistance rating.

(b) Interior kitchen doors shall be:

1. Hollow metal doors; or

2. Solid wood doors of the flush type not less than 1¾ inches thick.

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(c) Doors leading from kitchens to adjacent areas shall swing in one direction, shall be self-closing, tightfitting, and shall be equipped with an automatic releasing device. Such doors shall have transparent wire-glass vision panels which shall not exceed 100 inches in area and shall be installed in steel frames.

(d) Kitchen exhaust fans and metal ducts shall be kept free of grease and dirt; metal ducts from such fans shall comply with 1990 BOCA National Mechanical Code Article 5.

8:43-3A.8 Fire extinguisher specifications

(a) There shall be a minimum of two fire extinguishers in the basement, at least one on each floor of the building, and as required in kitchen areas. All fire extinguishers shall bear the seal of the Underwriters Laboratories.

(b) The following types of fire extinguishers shall be provided:

1. In kitchen areas, because of danger of grease fires, extinguishers shall be of the Class B dry chemical type 2-B and a minimum of 5 lbs. The maximum travel distance to an extinguisher shall be 50 feet.

2. In the basement area, extinguisher shall be Class B dry chemical type 2-B and a minimum of 5 lbs., if oil or gas is used as fuel. The maximum travel distance to an extinguisher shall be 50 feet.

3. In all other areas a Class A air-pressurized 2½ gallon water type 2-A extinguisher shall be provided. The maximum travel distance to an extinguisher shall be 75 feet.

8:43-3A.9 Employees' sleeping rooms

In any facilities where 24-hour awake coverage is not required, the employees' sleeping rooms shall be equipped with a four-inch alarm bell connected to the fire alarm system.

8:43-3A.10 Sounding devices

(a) An intercom system with alarm shall be provided on every resident floor and shall ring at an area staffed 24 hours a day and also in the staff sleeping quarters.

(b) Self-locking doors at the main entrance and other entrances opening onto a roof or balcony shall be equipped with a sounding device such as bell, buzzer or chimes, which is in operating condition. The sounding device shall be affixed to the outside of the door or to the adjacent exterior wall, for use in the event that a person is unable to re-enter the building and shall ring at an area staffed 24 hours a day and at staff sleeping quarters.

8:43-3A.11 Ceiling heights

Ceiling heights in corridors, storage rooms, resident rooms, and toilet rooms shall be at least 7 feet 8 inches. Ceilings in normally unoccupied spaces may be reduced to at least 7 feet.

SUBCHAPTER 3B. EXISTING FACILITIES

8:43-3B.1 Physical plant standards for all existing licensed facilities

Existing licensed facilities shall comply with and shall continue to be inspected according to those codes and standards which were in effect at the time of their initial licensure, and in addition shall comply with N.J.A.C. 8:43-3.23 through 3.27.

8:43-3B.2 Smoke detectors

Smoke detectors shall be provided in all residents' bedrooms, even in a completely sprinklered building. The detectors may be either battery operated or hardwired.

8:43-3B.3 Fire suppression systems

In all facilities which are not required to have a complete automatic fire suppression system, all hazardous areas, kitchens, electrical rooms, laundry rooms and areas used for storage of combustible materials shall be protected by a fire suppression system.

8:43-3B.4 Attached structures

Attached structures, such as storage sheds or private garages located beneath buildings, shall have wall partitions, floors and ceilings separating the space from the adjacent interior enclosed space constructed of not less than one-hour fire resistance rating. Attached private garages shall be completely separated from the adjacent interior enclosed spaces and the attic area by means of one-inch gypsum board or equivalent applied to the garage side. The sills of all door openings in the garage between garage and building shall be raised not less than 4 inches above the garage floor. The door openings protectives shall be 1¾" solid core wood doors or approved equivalent.

8:43-3B.5 Resident bedrooms

(a) Existing licensed facilities shall have 70 square feet of floor area for single rooms and 50 square feet of floor area per resident in multi-bed rooms.

(b) No more than four residents shall be housed in any one room, regardless of room sizes.

8:43-3B.6 Fire extinguishers; specifications

(a) There shall be a minimum of two fire extinguishers in the basement, at least one on each floor of the building, and as required in kitchen areas. All fire extinguishers shall bear the seal of the Underwriters Laboratories. The following types of extinguishers shall be provided:

1. In kitchen areas, because of danger of grease fires, extinguishers shall be of the Class B dry chemical type 2-B and a minimum of 5 lbs. The maximum travel distance to an extinguisher shall be 50 feet;

2. In the basement area, extinguishers shall be Class B dry chemical type 2-B and a minimum of 5 lbs. if oil or gas is used as fuel. The maximum travel distance to an extinguisher shall be 50 feet; and

3. In all other areas, a Class A air-pressurized 2½ gallon water type extinguisher shall be provided. The maximum travel distance to an extinguisher shall be 75 feet.

SUBCHAPTER 4. GENERAL REQUIREMENTS

8:43-4.1 Minimum services and staffing

(a) Each residential health care facility shall provide, at a minimum, personal care, health maintenance and monitoring, pharmacy, dietary, and recreational services.

(b) The facility shall provide at all times at least one employee in each building or structure occupied by residents, in order to provide necessary resident supervision, as follows:

1. In residential health care facilities with 24 or more residents, the facility shall provide sufficient staff for resident supervision 24 hours per day by an employee who is awake on the premises.

2. In residential health care facilities with fewer than 24 licensed beds, the facility shall provide sufficient staff for resident supervision. During the normal sleeping hours of residents, inactive resident supervision shall be provided by an employee who is on duty and available on the premises to provide care and services, but not necessarily awake.

(c) In all residential health care facilities with more than 24 beds, the facility shall have the capacity to provide a sufficient number of on-duty employees (other than residents) to assure a minimum of one hour of resident supervision for each resident during a 24-hour period.

(d) In addition to meeting the requirements of (b) above, all residential health care facilities which have more than one floor shall have a system in place to assure resident safety by providing for immediate notification of staff through an emergency communication system and periodic monitoring of all areas occupied by residents.

(e) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

8:43-4.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Any proposed change in ownership shall be reported to the Director of the Licensing and Certification Program of the Department in writing at least 30 days prior to the change and in conformance with reguirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to that person's capability of owning or operating the facility.

(c) The owner or governing authority of the facility shall assume legal responsibility for the management, operation, and financial viability of the facility.

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8:43-4.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this manual to the Director of the Licensing and Certification Program of the Department.

8:43-4.4 Personnel

(a) The facility shall develop written job descriptions and shall ensure that personnel are assigned duties based upon their education, training, and competencies and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide resident care shall be licensed, certified, or authorized under the appropriate laws and/or rules of the State of New Jersey.

(c) The facility shall maintain and implement written staffing schedules. Actual hours worked by each employee shall be documented.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training. All personnel shall receive orientation at the time of employment and at least annual in-service education regarding, at a minimum, emergency plans and procedures and the infection prevention and control program.

(e) The staffing ratios of this chapter are minimum only and the residential health care facility shall employ staff in sufficient number and with sufficient ability and training to provide the basic care and resident supervision required in this chapter.

(f) The facility shall have a policy regarding personnel with a reportable communicable disease, infection or exposure to infection, specifying that such an employee shall be excluded from the residential health care facility until that employee has received a physical examination and certification that the condition will not endanger the health of residents or other employees.

8:43-4.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and resident care services of the facility;

2. A description of the services provided;

3. Specification of business hours and visiting hours;

4. Policies and procedures for reporting all diagnosed and/or suspected cases of resident abuse or exploitation, as follows:

i. All county welfare agencies shall be notified, in accordance with N.J.S.A. 40:69A-60.5, P.L.1979, c.469, The Rooming and Boarding House Act of 1979, as amended; and

ii. If the resident is 60 years of age or older, the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall also be notified, in compliance with N.J.S.A. 52:27G-7.1 et seq.;

5. Policies and procedures for maintaining confidentiality of resident records, including policies and procedures for examination of resident records by the resident and other authorized persons and for release of the resident's records to any individual outside the facility, as consented to by the resident or as required by law or third party payor;

6. Policies and procedures for the maintenance and confidentiality of personnel records for each employee, including at least the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, prior criminal records, records of physical examinations, job description, and evaluations of job performance; and

7. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and persons providing direct resident care services in the facility through contractual arrangements or written agreement.

(b) The facility shall make all policy and procedure manuals available to residents, guardians, designated responsible persons, prospective applicants, and referring agencies during normal business hours or by prior arrangement.

8:43-4.6 Resident transportation

(a) The facility shall ensure that resident transportation will be provided, either directly or by arrangement, which may include an arrangement with a family member or other responsible person, to and from health care services provided outside the facility. The facility shall have policies and procedures addressing reasonable plans for security and accountability for the resident and his or her personal possessions, as well as transfer of resident information to and from the provider of the service.

(b) The facility shall assist the resident in arranging for transportation to activities of social, religious, and community groups in which the resident chooses to participate.

8:43-4.7 Written agreements

The facility shall have a written agreement or its equivalent, or a linkage for services not provided directly by the facility. If the facility provides care to residents with psychiatric disorders, the facility shall also have a written agreement with one or more community mental health centers specifying which services will be provided by the mental health center. The written agreements shall require that services be provided in accordance with the rules in this chapter.

8:43-4.8 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7725 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption for three or more hours of basic physical plant services;

2. Termination of employment of the administrator, and the name and qualifications of his or her replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, all residents who are missing for 24 hours, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to residents and/or personnel, disruption of services, and extent of damages;

5. Any major occurrence or incident shall be reported promptly to the Department by telephone, and shall be confirmed in writing to the Department as soon as possible thereafter;

6. All alleged or suspected crimes which are serious crimes committed by or against residents, which have also been reported at the time of occurrence to the local police department; and

7. All suspected cases of resident abuse or exploitation which have been reported to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly and/or to the county welfare agencies.

8:43-4.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility during normal business hours, to residents and the public:

1. All waivers granted by the Department;

2. A list of deficiencies from the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding resident rights;

4. Visiting hours (including at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily) and business hours of the facility, including the policies of the facility regarding limitations and activities during these times;

5. The toll-free hot line number of the Department; telephone numbers of county agencies and of the State of New Jersey Office of the Ombudsman; and

6. The names of, and a means to formally contact, the owner and/or members of the governing authority.

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8:43-4.10 Information reportable to State Board of Medical Examiners

(a) In accordance with the Professional Medical Conduct Reform Act, P.L.1989, c.300, as amended, the facility shall notify the New Jersey Board of Medical Examiners of all actions which result in reduction or restriction of staff privileges of any practitioner who is employed by or who is under contract to the facility. The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the facility against any practitioner licensed by the Board when the proceeding or action results in a practitioner's reduction or suspension of privileges or removal or resignation from the facility's medical staff; and

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved.

(b) For purposes of (a) above, "practitioner" means physician, medical resident or intern, or podiatrist.

(c) Notifications shall be provided within seven days of the reported event, on forms provided by the Department of Health for that purpose. Forms shall be submitted to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. (Questions may be directed to the Board Office at (609) 292-4843.)

8:43-4.11 Maintenance of records

(a) The facility shall maintain an annual chronological listing of residents admitted and discharged, including the destination of residents who are discharged; and

(b) Statistical data, such as resident census and facility characteristics, shall be forwarded on request, in a format provided by the Department.

8:43-4.12 Admission and retention of residents

(a) The administrator or the administrator's designee shall conduct an interview with the resident and, if available, the resident's family, guardian, or interested agency, prior to or at the time of the resident's admission. The interview shall include at least orientation to the facility's policies, business hours, fee schedule, services provided, resident rights, and criteria for admission and discharge. Documentation of the resident interview shall be included in the resident's record.

(b) At the initial interview prior to or at the time of admission of each resident, the administrator or the administrator's designee shall be provided with the name, address, and telephone number of a family member, guardian, responsible person or designated community agency who can be notified in the event of the resident's illness, incident, or other emergency.

(c) A physician shall certify for each resident that he or she has seen the resident within 30 days prior to admission and that the resident does not have needs which exceed the level of care provided by the facility, is free from communicable disease, is not in need of skilled nursing care, is mobile under his or her own power with or without assistive devices, and, if incontinence is suspected, has received a medical and nursing evaluation to determine whether the facility can provide an appropriate level of services to the resident.

(d) For emergency admissions, the physician's certification shall be received within 72 hours of admission.

(e) If a facility has reason to believe, based on a resident's behavior, that the resident poses a danger to himself or herself or others, and that the facility is not capable of providing proper care to the resident; then the attending physician or the physician on call shall evaluate the resident to determine whether the resident is appropriately placed in that facility, to locate a new placement if necessary, and to initiate the mental health screening process in accordance with Title 30 of New Jersey Statutes Annotated.

(f) If the facility is not of fire-resistive construction, residents who are blind or who can walk independently assisted by crutches or other assistive devices shall be housed on a floor with direct grade level access.

(g) The facility may admit residents who require wheelchairs if the following conditions are met:

1. The resident is able to propel the wheelchair independently;

2. The resident's living unit shall be located on a floor at grade level, or if not at grade level, on a floor with handicap access to grade level;

3. The corridor on which the resident's living unit is located shall be at least 44 inches wide;

4. Each door through which the resident must travel to exit shall be at least 32 inches wide; and

5. The facility shall be in full compliance with uniform fire safety codes.

(h) If any condition listed in (g) above is not met, the facility may request approval from the Department to admit the resident. These conditions shall not apply to a resident who uses a wheelchair for convenience, but who is capable of ambulating independently without a wheelchair. The Department's determination will be made on a case-by-case basis.

(i) If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or his or her family, guardian, or designated community agency shall, upon written request, be given the reason for such denial in writing, signed by the administrator, within 15 days of the receipt of the written request.

(j) Each resident shall be admitted or retained only upon his or her own volition.

8:43-4.13 Involuntary discharge

(a) Written notification by the administrator or the administrator's designee shall be provided to a resident and/or his or her family, guardian, designated responsible person, and county welfare agencies of a decision to involuntarily discharge the resident from the facility. Such involuntary discharge shall only be upon grounds contained in the facility's policies and procedures and shall occur only if the resident has been notified and informed of such policies in advance of admission. The notice of discharge shall be given at least 30 days in advance of the involuntary discharge and shall include the reason for discharge and the resident's right to appeal. A copy of the notice shall be entered in the resident's record.

(b) The resident shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the resident's record with the disposition or resolution of the appeal. The resident shall have the right to retain legal counsel to appeal.

(c) In an emergency situation, as stated in N.J.A.C. 8:43-4.12(d), for the protection of the life and safety of the resident or others, the facility may discharge the resident without 30 days notice. The Department and county welfare agencies shall be notified in the event of such discharge.

8:43-4.14 Notification requirements

(a) The resident's family, guardian, and/or responsible person or community agency shall be notified, promptly after the occurrence, in the event of the following:

1. Any significant change in the resident's physical or mental status;

2. Any serious accident, criminal act or incident occurs which involves the resident and results in serious harm or injury or results in the resident's arrest or detention.

3. The transfer of the resident from the facility; or

4. The death of the resident.

(b) The Department shall also be notified of the events in (a)2 above.

(c) The notification required in (a) above shall be given at the time of occurrence, and then documented in the resident's record.

8:43-4.15 Policies and procedures for dispute resolution; forum for discussion of advance directives

(a) The facility shall establish procedures for considering disputes among the resident, health care representative and the attending physician concerning the resident's decision-making capacity or the appropriate interpretation and application of the terms of an advance directive to the resident's course of treatment. The procedures may include consultation with an institutional ethics committee, a regional ethics committee or another type of affiliated ethics commit-

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tee, or with any individual or individuals who are qualified by their background and/or experience to make clinical and ethical judgements.

(b) The facility's policies shall establish a process for residents, families, and staff to discuss and address questions and concerns relating to advance directives and decisions to accept or refuse medical treatment.

8:43-4.16 Policies and procedures for advance directives

(a) For purposes of this Chapter, "advance directive" means a written statement of a resident's instructions and directions for health care in the event of future decision making incapacity, in accordance with the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq, P.L. 1991, c.201. An advance directive may include a proxy directive, and instruction directive, or both.

(b) The facility shall develop and implement procedures to ensure that there is a routine inquiry made of each adult resident, upon admission to the facility and at other appropriate times, concerning the existence and location of an advance directive. If the resident is incapable of responding to this inquiry, the facility shall have procedures to request the information from the resident's family or, in the absence of a family member, another individual with personal knowledge of the resident. The procedures shall assure that the resident or family's response to this inquiry shall be documented in the resident's record. Such procedures shall also define the role of facility admissions, nursing, social service and other staff, as well as the responsibilities of the attending physician.

(c) The facility shall develop and implement procedures to promptly request and take reasonable steps to obtain a copy of currently executed advance directives from all residents. These shall be entered into the resident's record when received.

(d) The facility shall have procedures to provide each adult resident upon admission and, where the resident is unable to respond, the family or other representative of the resident, with a written statement of his or her rights under New Jersey law to make decisions concerning the right to refuse medical care and the right to formulate an advance directive. Such a statement shall be issued by the Commissioner. Appropriate information and materials on advance directives and the institution's written policies and procedures concerning implementation of such rights shall also be provided. Such written information shall also be made available in any language which is spoken, as a primary langauge, by more than 10 percent of the population served by the facility.

(e) The facility shall develop and implement procedures for referral of residents requesting assistance in executing an advance directive or additional information to either staff or community resource persons that can promptly advise and/or assist the resident.

(f) The facility shall develop and implement policies to address application of the facility's procedures for advance directives to residents who are experiencing an urgent life-threatening situation.

(g) A resident shall be transferred to another health care facility only for a valid medical reason, in order to comply with other applicable laws or Department rules, to comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act in the instance of private, religiously affiliated health care institutions who establish policies defining circumstances in which they will decline to participate in the implementation of advance directives. Such institutions must provide notice of their policies to residents or their families or health care representatives prior to or upon admission. A timely and respectful transfer of the individual to another institution which will implement the resident's advance directive shall be effected. The facility's inability to care for the resident shall be considered a valid medical reason. The sending facility shall receive approval from a physician and the receiving health care facility before transferring the resident.

(h) At least one education training program each year shall be held for all administrative staff and employees providing resident supervision and/or personal care on the rights and responsibilities of staff under the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., P.L. 1991, c.201, and internal facility policies and procedures which implement this law.

8:43-4.17 Building occupancy

(a) A facility licensed as a residential health care facility shall not be used for any other purpose, including the use of the facility for housing quarters of the owner, the administrator, or other employees, without prior approval from the Department.

(b) Resident occupancy shall be limited to floors at or above the grade level, with the following exceptions:

1. Basement occupancy may be permitted if no more than one-half the height of the room or rooms to be occupied is below grade level and if there are no other conditions which might jeopardize the health, safety or welfare of the resident;

2. Any resident who requires assistance from staff to ambulate stairs shall be housed on a floor with grade level access; and

3. Any resident with a walker, crutch(es) or leg brace(es) shall be assessed before being placed on a floor other than a grade level floor in order to ensure that the resident is able to evacuate the building safely.

8:43-4.18 Resident bedrooms

(a) Each resident's personal living unit shall have direct access to corridors and toilet facilities without passing through the rooms of other residents, kitchen or dining areas, or other occupied rooms.

(b) No more than four residents shall be housed in one bedroom.

8:43-4.19 Interpretation services

The facility shall demonstrate the ability to provide a means to communicate with any resident admitted who is non-English-speaking and/or has a communication disability, using available community services.

SUBCHAPTER 5. ADMINISTRATION

8:43-5.1 Appointment of administrator

An administrator shall be appointed and an alternate shall be designated in writing to act in the absence of the administrator. The administrator or a designated alternate shall be available on the premises of the facility at all times.

8:43-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including resident rights;

2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Ensuring that all personnel are assigned duties based upon their ability and competency to perform the job and in accordance with job descriptions;

4. Ensuring the provision of staff orientation and staff education; and

5. Establishing and maintaining liaison relationships and communication with facility staff and services and with residents and their families.

SUBCHAPTER 6. RESIDENT CARE POLICIES

8:43-6.1 Resident care policies and procedures

(a) Written resident care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures regarding the following:

1. Resident rights;

2. The determination of staffing levels to ensure a minimum of one hour of resident supervision for each resident of the facility during each 24-hour period. Supervision may be provided by on-duty employees who are engaged in the direct supervision and care of residents, and also by those providing basic services such as food service, housekeeping, laundry and general maintenance, who, by reason of their availability on the premises, provide care and supervision as needed;

3. The referral of residents to health care providers in order to provide a continuum of resident care;

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4. Emergency medical and dental care of residents, including notification of the resident's family, guardian, or designated community agency, and care of residents during periods of acute illness;

5. Obtaining written informed consent for any medical procedures performed at the facility which require informed consent by law, and the circumstances under which written informed consent shall be obtained;

6. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq. as follows:

i. Residents shall not be permitted to smoke in their rooms and in other secluded areas;

ii. Restricted smoking areas shall be designated and rules governing such smoking specified and rigidly enforced. Nonflammable ashtrays in sufficient numbers shall be provided in permitted smoking areas. In any area where smoking is permitted, there shall be adequate outside ventilation;

iii. A facility may continue to enforce a smoke-free policy in effect on the implementation date of these rules and shall set forth this policy in its admission agreement;

iv. At the facility's option, it may institute a smoke-free policy after the implementation date of these rules. Any prospective smoke-free policy shall be set forth in the facility's admission agreement and shall only apply to residents entering the facility on or after the policy's effective date. The facility shall protect the rights of resident smokers by providing a designated area with adequate outside ventilation for controlled smoking. If inside, the designated smoking room shall be adequately vetilated to prevent recirculation of smoke to other areas of the facility. If outside, the designated area shall provide reasonable protection from inclement weather;

7. Discharge, termination by the facility, transfer, and readmission of residents, including criteria for each;

8. The care and control of pets, if the facility permits pets in the facility or on its premises;

9. Residents' leaving the facility or its premises, including expected time of return. The facility shall have a system, such as a sign-in sheet, to document resident's time of leaving, destination and time of return; and

10. Care of deceased residents, including, but not limited to, policies and procedures regarding the following:

i. Pronouncement of death: The resident's family, guardian, or designated community agency shall be notified at the time of death. The deceased shall not be removed from the facility until pronounced dead and the death is documented in the resident's medical record; and

ii. Transportation of the deceased in the facility, and removal from the facility, in a dignified manner.

8:43-6.2 Financial arrangements

(a) The facility shall:

1. Inform residents of any and all fees for services provided and charges for supplies routinely utilized. The resident shall also be informed of costs of supplies which are specially ordered;

2. Maintain a written record of all financial arrangements with the resident and/or his or her family, guardian, or designated community agency, with copies furnished to the resident and, upon request, to the person or agency with whom the arrangements were made;

3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

i. Upon written approval and authority of the resident and/or his or her family, guardian, or designated community agency, who shall be given a copy of the written approval;

ii. Upon written orders of the resident's physician, stipulating specific services not included in the admission agreement;

iii. Upon 30 days' prior written notice to the resident and/or his or her family of charges, expenses, or other financial liabilities that are in addition to the agreed daily, weekly, or monthly rate. The resident's prior written approval for additional charges shall not be required in the event of a health emergency that requires the resident to receive immediate special services or supplies; and

4. Provide the resident with information regarding financial assistance available from third-party payors and/or other payors and referral systems for residents' financial assistance.

8:43-6.3 Personal needs allowance

(a) The administrator or his or her representative shall reserve for each resident who receives Supplementary Security Income (SSI) or General Public Assistance a monthly personal needs allowance of at least the amount specified by the Division of Youth and Family Services of the New Jersey State Department of Human Services pursuant to N.J.S.A. 44:7-87(h) and N.J.A.C. 10:123-3, and under the following conditions:

1. The resident shall not be required to provide the owner, administrator, employee or their representative(s) with any portion of the personal needs allowance.

2. No owner, administrator, employee or their representative(s) shall coerce, intimidate, or exploit residents into providing them with any portion of the personal needs allowance.

3. Each resident shall receive his or her personal needs allowance within three working days of the receipt of the check by the administrator.

(b) Every administrator to whom a resident's personal funds are entrusted shall maintain written records, such as a ledger, including the date each payment was received, the amount of payment, the date of each disbursement, the amount of each disbursement, the reason for each disbursement and to whom each disbursement was made.

(c) The resident shall sign to acknowledge receipt of funds, goods or services purchased with such funds at the time of disbursement.

(d) Residents' funds received in trust or on deposit with the facility shall be kept in a separate bank account(s) and not commingled with the facility's general funds. If residents' funds are kept in an interest bearing account, all interest earned shall be credited to the resident after bank charges, if any, are deducted.

SUBCHAPTER 7. PERSONAL CARE SERVICES

8:43-7.1 Provision of personal care services

(a) Each resident shall be provided with personal care services (bathing, oral hygiene, hair care, manicuring and pedicuring, and shaving) as needed to maintain acceptable personal hygiene.

8:43-7.2 Resident clothing

(a) The administrator or the administrator's designee shall assist residents in obtaining clothing which is suitable for the climate and weather conditions, of proper size, and in sufficient amounts for necessary changes.

(b) Clothing shall be laundered as frequently as necessary to maintain cleanliness, in accordance with N.J.A.C. 8:43-15.8.

8:43-7.3 Facilities and furnishings

(a) The administrator shall ensure that each resident has, within his or her sleeping area, the following items, which shall at all times be clean and comfortable and in good repair:

1. Beds:

i. A standard bed not less than 36 inches in width;

ii. A bedspring which is in good condition;

iii. A mattress not less than four inches in thickness that fits the bed.

iv. Beds shall not be located under windows, against radiators or air conditioners, or in alcoves unless a resident has chosen to place his or her bed in such a location and the administrator has determined that such placement poses no safety risk to the resident.

v. Roll-away beds, day beds, cots and latex foam mattresses shall be prohibited. (Day beds may be permitted, if the resident so requests.)

2. Pillows: At least one standard size pillow. Extra pillows available to meet the needs of the resident. Latex foam pillows shall be prohibited.

3. Chairs: At least one chair.

4. Reading light: A reading light and/or a bed light.

5. Storage:

i. A closet in the resident's room;

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ii. A dresser or chest for personal possessions;
iii. A night table.
6. Bed linen:
i. A moisture-proof mattress or a moisture-proof mattress cover or pad which can be removed for cleaning or laundering;
ii. A pillowcase for each pillow;
iii. At least two sheets or two sheet blankets or a combination thereof; sheets and pillowcases shall be changed at least weekly and more often if necessary;
iv. A washable blanket and such additional blankets as are necessary for the resident's comfort;
v. A bedspread.
7. Personal linen: A washcloth and a bath towel which shall be changed when soiled.
8. Windows: Shades, curtains, drapes, or blinds shall be provided for all windows, to ensure privacy.

SUBCHAPTER 8. DIETARY SERVICES

8:43-8.1 Provision of meals
The residential health care facility shall provide dietary services to meet the daily nutritional needs of residents.

8:43-8.2 Requirements for dietary services
(a) The facility shall establish and implement written policies and procedures for the provision of dietary services.
(b) Beginning January 1, 1994, the facility shall designate a consultant dietitian to be responsible for the direction, provision, and quality of the dietary service, unless the Commissioner determines that adequate funds are not available to implement the requirements, based upon a financial analysis conducted subsequent to an increase in:
1. Supplemental Security (S.S.I.) income by the State of New Jersey (see N.J.S.A. 44:7-85 et seq.);
2. Third party insurance coverage of residential health care facility services; or
3. Revenues in excess of expenses for a majority of providers.
(c) Notice of any postponement or suspension of the operative date in (b) above shall be provided in the New Jersey Register by the Commissioner.
(d) The dietitian required in (b) above shall be responsible for, but not limited to, the following:
1. Participating in developing and implementing written objectives, policies, a procedure manual, an organization plan, and a quality assurance program for the dietary service;
2. Participating in planning and budgeting for the dietary service;
3. Ensuring that dietary services are provided to meet the dietary needs of residents;
4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions;
5. Participating in staff education activities and providing consultation to facility personnel; and
6. Providing nutritional counseling.
(e) If the facility fails to substantially comply with the requirements of this subchapter, or if residents of the facility have significant nutritional deficiencies, the Department may require a consultant dietitian to be retained by the facility to assist in correcting the deficiencies in dietary services cited by the Department, in addition to other enforcement actions. The facility shall retain the consultant dietitian until all deficiencies have been corrected.
(f) The facility shall provide:
1. Policies and procedures for planning, preparing, and serving meals, purchasing food, supervising residents at mealtime, and providing therapeutic diets in accordance with admission policy of the facility and as prescribed by the resident's physician. "Therapeutic diet" means a diet prescribed by a physician, and may include modifications in nutrient content, caloric value, consistency, methods of food preparation, content of specific foods, or a combination of these modifications;
2. Nutrients and calories for each resident, in accordance with current recommended dietary allowance of the Food and Nutrition Board of the Nation Academy of Sciences, National Research Council, adjusted for age, sex, weight, and physical activity, therapeutic needs of the resident if therapeutic diets are provided, and Appendix A;
3. A current diet manual;
4. Diets served to residents that are consistent with the diet manual;
5. Written menu plans for all meals and snacks;
6. For each resident at each meal, a place setting consisting of at least a dish(es), a glass and/or cup, fork, spoon, and napkin, and a knife or additional utensils as required or requested by the resident; and
7. For each resident's use, in the dining room at each meal, salt, pepper, sugar or sugar substitute, dairy or non-dairy additives for beverages, and condiments, unless contraindicated by the resident's physician.
(g) All meals shall be served in the dining room. Exceptions may be made if the resident is ill, or requests that his or her meal be served in another location.
(h) All meals shall be attractive when served to residents.
(i) The facility and personnel shall comply with the provisions of Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24 (see Appendix C).

8:43-8.3 Administrator's responsibilities
(a) The administrator or the administrator's designee shall ensure that the dietary service:
1. Selects foods and beverages, which include fresh and seasonal foods, and prepares menus with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of residents;
2. Has written and dated menus for all meals and snacks, planned at least seven days in advance for all diets. The same menu shall not be used more than once in any continuous seven day period. The facility shall offer substitute food and drink of equivalent nutritional value, if requested by a resident at least 24 hours in advance;
3. Posts current menus, with portion sizes, in the food preparation area and in a conspicuous place in residents' area, or provides a copy of the menu to each resident. Any changes or substitutes in menus shall be posted or provided in writing to each resident. Menus, with changes or substitutes, shall be kept on file in the facility for at least 30 days;
4. Prepares and serves daily to residents at least three meals;
5. Complies with written policies regarding meal hours. No more than 15 hours shall elapse between an evening meal and breakfast the next morning, and the first meal shall not be served before 7:00 A.M.;
6. Provides evening snacks and beverages;
7. Prepares food by cutting, chopping, grinding, or blending to meet the needs of each resident;
8. Provides self-help feeding devices as required by residents;
9. Maintains a file of recipes for menu items that require a recipe, adjusted to yield, which shall be used in preparing foods listed on the posted menus;
10. Maintains thermometers in refrigerators and freezers;
11. Adheres to written policies and procedures for the selection, storage, use, and disposition of nondisposable and disposable items. Disposable items shall not be reused;
12. Prepares work schedules for the dietary service so as to allow residents to eat at their own pace;
13. Maintains at least a three-day supply of non-perishable food on the premises; and
14. Develops a written schedule of cleaning operations for the kitchen, including daily, weekly, monthly, or annual tasks.

8:43-8.4 Commercial food management services
If a commercial food management firm provides dietary services, it shall be required to conform to the standards of this subchapter.

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SUBCHAPTER 9. HEALTH SERVICES

8:43-9.1 Health maintenance and monitoring services

(a) The residential health care facility shall provide health maintenance and monitoring services under the direction of a registered professional nurse.

(b) The facility shall have at least one registered professional nurse available at all times. Available, in this instance, shall mean on call and capable of being reached by telephone.

(c) A registered professional nurse shall be designated in writing as the director of health maintenance and monitoring services and shall be responsible for the direction, provision and quality of health maintenance and monitoring services. The director shall be responsible, in coordination with the administrator, for developing and implementing written objectives, standards of practice, policies and procedures and an organization plan for the health maintenance and monitoring service. The director may be employed directly by the facility or on a contractual basis.

(d) Written policies and procedures shall include, but not be limited to the following:

1. Assessing the health service needs of all residents in the facility;
2. Monitoring the conditions of the residents on a continuing basis;
3. Notification of the administrator if there are significant changes in a resident's condition;
4. Assessing the resident's need for referral to a physician or community agencies as appropriate;
5. Maintaining records as required by the facility; and
6. Serving as a resource person and health educator to the residents and to the administrator of the facility.

(e) The facility shall provide health maintenance and monitoring services according to the following schedule:

1. The facility shall provide a minimum of 0.25 hours of nursing care from a registered professional nurse per resident per week. Facilities having an average resident census, over a 12-month period, of greater than 75 percent or more residents whose source of income is SSI, Municipal Assistance or Interim Assistance shall be exempted and shall provide a minimum of 0.20 hours of nursing care from a resident professional nurse per resident per week. A facility claiming that 75 percent or more of its residents are SSI, Municipal Assistance, or Interim Assistance recipients shall provide documentation to the Department and receive approval prior to reducing health monitoring and maintenance staffing to the level of 0.20 hours of nursing care.

2. Beginning January 1, 1994, if the Commissioner determines that adequate funds are available to implement these requirements, based upon a financial analysis conducted subsequent to an increase in SSI funding by the State of New Jersey; or additional third party insurance coverage is available; or that the Commissioner has issued a finding that the majority of providers have adequate revenues in excess of expenses, the facility shall provide a minimum of 0.33 hours (20 minutes) of nursing care from a registered professional nurse per resident per week, of which a maximum of 0.13 hours (8 minutes) of each 0.33 hours (20 minutes) of nursing care may be delegated to a licensed practical nurse. Notice of any postponement or suspension of the operative date in this paragraph shall be provided in the New Jersey Register by the Commissioner.

8:43-9.2 Provision of health services

(a) The facility shall arrange for health services to be provided to residents as needed.

(b) At the time of admission, arrangements shall be made between the administrator and the resident, guardian, or designated community agency regarding the physician and dentist to be called in case of illness, or the person to be called for a resident who, because of religious affiliation, is opposed to medical treatment.

(c) Beginning January 1, 1994, or subsequent date published in the New Jersey Register in accordance with N.J.A.C. 8:43-9.1(e)2, each resident shall be screened by a licensed professional nurse at least monthly. Screening shall be done every 60 days, until the time monthly screening begins. "Screening" means a personal evaluation of the resident which includes a review of the resident's physical and mental status, progress in response to nursing interventions, and education of the resident to new nursing interventions. The licensed professional nurse shall document each resident's monthly screening in the resident record.

(d) The registered professional nurse shall notify the resident's physician of any significant change in the resident's physical or psychological condition.

(e) Each resident shall receive an initial nursing assessment, and, beginning January 1, 1994, a quarterly nursing assessment from the registered professional nurse. Until quarterly screening begins, each resident shall receive a semiannual nursing assessment from the registered professional nurse. The nursing assessment shall include, at a minimum, evaluation of the following:

1. Cognitive patterns;
2. Communication/hearing patterns;
3. Vision patterns;
4. Physical functioning and structural problems;
5. Continence;
6. Psychosocial well-being;
7. Mood and behavior patterns;
8. Activity pursuit patterns;
9. Disease diagnoses;
10. Health conditions;
11. Oral/nutritional status;
12. Oral/dental status;
13. Skin condition;
14. Medication use; and
15. Special treatment and procedures.

(f) Notice of any postponement or suspension of the operative dates in (c) and (e) above shall be provided in the New Jersey Register by the Commissioner.

(g) The nursing assessment required by (e) above shall be documented on the minimum data set for resident assessment and care screening (MDS), which is included in Appendix B, or on an equivalent assessment instrument which has been developed by the facility and approved by the Department prior to its use.

(h) The registered professional nurse or a physician shall be called at the onset of illness of any resident to arrange for assessment of the residents's nursing care needs of medical needs and for the needed nursing care intervention or medical care.

(i) A resident with a temporary illness may be cared for in a residential health care facility for a period not to exceed one week. If a resident needs bed care for a more extended period, arrangements shall be made for his or her prompt transfer to an appropriate health care facility.

(j) Each resident shall have an annual physical examination by a physician, which shall be documented in the resident's record. The physician shall certify annually that the resident does not have needs which exceed the care provided by the residential health care facility.

(k) Residents shall be permitted free choice of a physician.

(l) The administrator shall arrange for a physician to be available for emergencies, including injuries or accidents to residents, or when required by a resident's condition.

(m) If the physician determines the need for a transfer to another health care facility because the residential health care facility cannot meet the resident's needs, such transfers shall be initiated promptly. The registered professional nurse shall be notified to ensure that the resident is receiving appropriate care during the transfer period. If the resident is not transferred within seven days, the Department shall be notified and assistance shall be requested from the Department to arrange for transfer of the resident.

SUBCHAPTER 10. MEDICATIONS

8:43-10.1 Self-administration of medications

(a) A designated employee shall provide resident supervision and/or assistance during self-administration of medications in accordance with physicians' orders. Any employee who has been designated to provide resident supervision or assistance during self-administration of medications shall have received training from the health maintenance and monitoring nurse, the provider pharmacist, or the consultant pharmacist.

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1. The facility shall document the provision of training to each employee who has been designated to provide resident supervision and/or assistance with self-administration of medications; and

2. The facility shall document any observed instance where medications are not taken in accordance with physician's orders.

(b) Self-administration of medications by residents shall be performed as follows:

1. By removing a dose from a previously dispensed, properly labeled container (including a unit dose container);

2. By verifying it with the directions on the label; and

3. By taking orally, injecting, inserting, or otherwise administering the medication.

8:43-10:2 Designation of a consultant pharmacist

(a) The facility shall designate a consultant pharmacist who shall be responsible for the direction, provision, and quality of pharmaceutical services. The consultant pharmacist may be the director of pharmaceutical services or pharmacist provider. The consultant pharmacist shall be responsible for, but not limited to, the following:

1. Training of employees;

2. Educating staff and residents regarding medications;

3. Establishing policies and procedures which ensure safe and appropriate self-administration of medications;

4. Reviewing medication records; and

5. Inspecting all areas in the facility where medications are stored and maintaining records of such inspections.

(b) The consultant pharmacist shall be present in the facility at least quarterly and shall provide written reports to the administrator and to the health maintenance and monitoring nurse.

(c) If the facility fails to substantially comply with the requirements of this subchapter the Department may require a pharmacist be retained by the facility to assist in correcting the deficiencies in pharmaceutical services cited by the Department, in addition to the requirements at (b) above, and in addition to other enforcement actions. The facility shall retain the pharmacist until all deficiencies have been corrected.

8:43-10.3 Storage of medications

(a) The facility shall provide a medication storage area of sufficient size for the storage of all medications of residents, and shall assure that:

1. The storage area shall be conveniently located and adequately lighted;

2. The storage area shall be kept locked when not in use;

3. The storage area shall be used only for storage of medications and medical supplies;

4. The key to the storage area shall be kept on the person on duty responsible for resident supervision; and

5. Each resident's medications shall be kept separated in the storage area, with the exception of large volume medications which may be labeled and stored together in the storage area.

(b) If a resident is authorized through a written physician's order to store medications in such resident's room, the facility shall provide a secure locked area for storage of such medications which complies with the requirements for medication storage areas stated in (a)1 and 2 above. Exceptions for emergency medications to remain unlocked in the resident's room may be made with the approval of the consultant pharmacist.

(c) Medications shall be stored in accordance with manufacturer's instructions.

(d) Medications which require refrigeration shall be properly maintained. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopeia) requirements. If medications are stored in a refrigerator in common with food, medications shall be stored in a container which is securely fastened to the refrigerator and locked.

(e) All medications shall be kept in their original containers and shall be properly labeled and identified.

1. The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, physician's name, prescription number, name and strength of drug, lot number, date of issue, expiration date, manufacturer's name if generic, and cautionary and/or accessory labels. If a generic substitute is used, the drug shall be labeled according to the Drug Utilization Review Council Formulary, N.J.A.C. 8:71 and N.J.S.A. 24:6E-1 et seq. Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.

2. All over-the-counter (OTC) medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of the drug, lot number, date of issue, manufacturer's name if generic, and cautionary and/or accessory labels. Original manufacturer's containers shall be labeled with at least the resident's name, and the name label shall not obstruct any of the aforementioned information.

3. If a unit dose drug distribution system is used, each dose of medication shall be individually packaged in a hermetically sealed, tamper-proof container, and shall carry full manufacturer's disclosure information on each discrete dose. Disclosure information shall include, but not be limited to, the following: product name and strength, lot number, expiration date, and manufacturer's or distributor's name. ("Bingo" or punch card systems are not required to have each discrete dose labeled.)

(f) Single use and disposable items shall not be reused.

(g) No stock supply of prescription medications shall be maintained.

(h) Discontinued or expired medications shall be destroyed within 30 days, in the facility. All medication destruction in the facility shall be witnessed by two persons, each of whom shall be either the administrator, the licensed nurse or the consultant pharmacist.

SUBCHAPTER 11. RECREATIONAL SERVICES

8:43-11.1 Provision of recreational services

(a) A planned, diversified program of recreational activities shall be offered at least 6 days a week, including individual and/or group activities, on-site or off-site, to meet the needs of residents.

(b) A diversity of programs shall be available to maintain residents' sense of usefulness and self-respect, including at a minimum, on a monthly basis, the following:

1. Social, such as parties, club meetings, picnics, and other special events;

2. Physical, such as exercise, sports, dancing, and swimming;

3. Creative, educational and cultural, such as crafts, poetry, drama, music, art, gardening, discussion groups, and guest speaker programs;

4. Spiritual, such as religious services;

5. Awareness, including, for example, cognitive and sensory individual and group stimulation for residents; and

6. Community-integrating, such as visits by community volunteers, visits by nursery school classes, exchange visits with other health care facilities, participation in senior citizen organization meetings or support group sessions, and participation in adopt-a-grandparent programs.

(c) If the facility requires an exception from any of the categories of activities listed at (b)1 through 6 above, reasons for the exception, such as impracticability or lack of appropriateness or interest on the part of residents, shall be documented.

(d) Indoor and outdoor recreational activities shall be provided.

(e) Residents shall have the opportunity to organize and participate in a resident council that presents the resident's concerns to the administrator of the facility.

8:43-11.2 Administrator's responsibility for recreational services

(a) The administrator or the administrator's designee shall be responsible for the direction, provision, and quality of the recreational service. The administrator shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual and an organizational plan for the recreational service;

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2. Ensuring that recreational services are provided and are coordinated with other resident care services to provide a continuum of care for the resident;

3. Assisting in developing and maintaining written job descriptions for recreational service personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

4. Posting a current weekly recreational activities schedule where it can be read by residents and staff.

SUBCHAPTER 12. EMERGENCY SERVICES AND PROCEDURES

8:43-12.1 Emergency medical services

(a) The facility shall have a procedure to access all available emergency medical services.

(b) The facility shall have a written plan for arranging for emergency transportation of residents to another health care facility for care and returning them to the residential health care facility.

(c) The facility shall maintain first aid supplies to meet the emergency needs of the residents. The supplies shall be approved by the physician who is available for resident emergencies and reviewed by the provider pharmacist.

8:43-12.2 Emergency plans and procedures

(a) The facility shall develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergencies, power failures, fire, or natural disasters. The emergency plans shall be filed with the Department of Health and the Department shall be notified when the plans are changed. Copies of emergency plans shall also be forwarded to both municipal and county emergency management officials for their review.

(b) The emergency plans, including a written evacuation diagram specific to the unit that includes evacuation procedure location of fire exits, alarm boxes, and fire extinguishers, and all emergency procedures shall be conspicuously posted throughout the facility. All employees shall be trained in procedures to be followed in the event of a fire and instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter.

(c) Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating residents, procedures for reentry and recovery, frequency of fire drills, tasks and responsibilities assigned to all personnel, and shall specify medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

8:43-12.3 Drills and tests

(a) The facility shall conduct at least one drill of the emergency plans every month, of which at least one annually shall take place during every working shift. The facility shall maintain documentation of all drills, including the date, hour, description of the drill, participating staff, and signature of the person in charge. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, other natural disaster, bomb threat, or nuclear accident (a total of 12 drills). All staff shall be assigned to participate in at least one drill annually, and selected residents may participate in drills.

(b) At least one joint fire drill shall be conducted annually, involving the local fire department. The facility shall notify first aid and civil defense agencies of this drill and shall participate in community-wide disaster drills.

(c) The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(d) Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable National Fire Protection Association (NFPA) requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

SUBCHAPTER 13. RESIDENT RECORDS

8:43-13.1 Maintenance of resident records

(a) A current, complete record shall be maintained for each resident.

(b) Records and information regarding the individual resident shall be considered confidential and the resident shall have the opportunity to examine such records, in accordance with facility policies. The written consent of the resident shall be obtained for release of his or her records to any individual not associated with the facility, except in the case of the resident's transfer to another health care facility, or as required by law, third-party payor, or authorized government agencies.

(c) All resident records shall be maintained for a period of 10 years after the discharge of a resident from the home.

(d) The following records shall be maintained and shall be kept available on the premises for review at any time by representatives of the Department of Health:

1. A register which contains a current census of all residents, along with other pertinent information shall be maintained by each residential health care facility. The following standards for maintaining the register shall apply:

i. The administrator or the administrator's designee shall make all entries in the register and shall be responsible for its maintenance and safe-keeping;

ii. The register shall be kept up-to-date at all times. Admissions, discharges and discharge destination, and other changes shall be recorded within 24 hours;

iii. The register, which is a permanent record, shall be kept in a safe place, in a fire-resistant container; and

iv. All entries into the register shall be clear, legible, and written in ink or typed.

2. Each resident's record shall include at least the following:

i. The resident's completed admission application and all records forwarded to the facility;

ii. The resident's name, last address, date of birth, name and address of sponsor or interested agency, date of admission, date of discharge (and discharge destination) or death, the name, address and telephone number of physician to be called, and the name and address of nearest relative, guardian, responsible person, or interested agency, documentation of the existence or nonexistence of an advance directive and the facility's inquiry of the resident concerning this, together with any other information the resident wishes to have recorded;

iii. A statement by a physician of the individual's suitability for admission to the facility, as specified in N.J.A.C. 8:43-4.12(c). The administrator or the administrator's designee shall be responsible for having the certification properly completed and signed by a physician. When first contact is made regarding the placement of an individual in the facility, the administrator or the administrator's designee shall inform the individual making the inquiry that the medical certification must be completed before admission;

iv. Whenever a resident dies in the residential health care facility, the administrator or the administrator's designee shall include written documentation from the physician of the date and time of death, the name of the person who pronounced the death, disposition of the body, and a record of notification of the family;

v. A complete record of physicians' visits, as known by the facility, including dates and physician's comments if applicable; and

vi. Annual nursing assessments and nurse's health monitoring and maintenance notes, entered in accordance with N.J.A.C. 8:43-9.2 or more frequently based on individual resident's needs.

SUBCHAPTER 14. RESIDENT RIGHTS

8:43-14.1 Policies and procedures regarding resident rights

(a) The facility shall establish and implement written policies regarding the rights and responsibilities of residents, and shall be

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responsible for developing and adhering to procedures implementing such policies. These policies and procedures and a copy of N.J.S.A. 55:13B-17 et seq. shall be given to residents and their next of kin and/or sponsors and/or guardians, and to each member of the facility's staff. These policies and procedures and N.J.S.A. 55:13B-17 et seq. shall also be conspicuously posted in the facility.

(b) Each employee of the facility, upon employment, shall receive inservice education concerning the implementation of policies and procedures regarding resident rights.

(c) The facility shall comply with all applicable State and Federal statutes, rules, and regulations concerning resident rights, including N.J.S.A. 52:27G-7.1 et seq. and Chapter 500, P.L. 1979, N.J.S.A. 55:13B-17 et seq.

(d) Any suspected case of resident abuse or exploitation shall be reported to the county welfare agency, in accordance with P.L. 1979, c.469, the Rooming and Boarding House Act of 1979. If the resident is 60 years of age or older, the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall also be notified, pursuant to N.J.S.A. 52:27G-7.1 et seq.

8:43-14.2 Rights of each resident

(a) Resident rights, policies, and procedures shall ensure that, as a minimum, each resident admitted to the facility:

1. Is informed of these rights, as evidenced by his or her written acknowledgment, and is given a statement of these rights and the facility's rules and regulations, and an explanation of the resident's responsibility to adhere to all regulations of the facility and to respect the personal rights and private property of other residents;

2. Is informed, and is given a written statement prior to or at the time of admission and during stay, as documented in the resident's record, of services available in the facility and of all charges including room, board, laundry, and personal services, and is given written notification at least 30 days prior to any change in charges. This statement shall include the payment, fee, deposit, and refund policy of the facility;

3. Is allowed to retain the services of his or her personal physician at his or her own expense or under a third-party payment system; is assured of assistance in obtaining medical care, may refuse medication and treatment, after being informed of the effects of such actions; and may refuse to participate in research projects (but if the resident chooses to participate, his or her informed written consent shall be obtained);

4. Is, except in the case of an emergency, transferred or discharged only for medical reasons or for his/her welfare or that of other residents upon the written order of the resident's physician, who shall document the reason for the transfer or discharge in the resident's record, or for nonpayment for the resident's stay, or for repeated violations of the facility's written rules and regulations after being advised of them in writing, if required by the Department, or to comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., as specified in N.J.A.C. 8:43-4.16;

i. If a transfer or discharge on a non-emergency basis is requested by the facility, the resident or, in the case of an adjudicated mentally incompetent resident, the next of kin and/or sponsor and/or guardian, shall be given at least 30 days advance notice in writing of such transfer or discharge;

5. Is encouraged and assisted, throughout the period of stay, to exercise rights as a resident and as a citizen, and to this end may voice grievance on behalf of himself or herself or others, initiate action for damages or other relief for deprivations or infringements of the right to treatment and care established by any applicable statute, rule, regulation, or contract, and recommend changes in policies and services to facility personnel and/or to outside representatives of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal.

i. The administrator shall provide all residents and/or next of kin and/or sponsors and/or guardians with the following names, addresses, and telephone numbers where complaints may be lodged:

Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625
Telephone: (800) 792-9770 and

State of New Jersey
Office of the Ombudsman for the
Institutionalized Elderly
CN 808
Trenton, N.J. 08625
Telephone: (800) 624-4262

ii. These telephone numbers shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices. The facility shall also conspicuously post the name, address, and telephone number of the county welfare agency and the county office on aging.

6. Is free from mental and physical abuse, free from exploitation, in accordance with N.J.S.A. 52:27G-7.1, and free from chemical and physical restraints. Drugs and other medication shall not be used for punishment, for convenience of facility personnel, or in quantities that interfere with a resident's living activities;

7. Is allowed to keep and use his or her personal property, including at least clothing and personal possessions used on a daily basis, unless this would be unsafe, impractical, or an infringement on the rights of other residents. The residential health care facility must provide reasonable protection of the resident's personal possessions from theft, loss, and misplacement;

8. Is assured confidential treatment of his or her personal and health and social records and has the opportunity to examine such records. The written consent of the resident shall be obtained for release of his or her records to any individual outside the facility, except in the case of the resident's transfer to another health care facility, or as required by law or third-party payor;

9. Is treated with consideration, respect, and full recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, privacy concerning his or her treatment and condition and the care of his or her personal needs. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

10. Is not required to perform services for the facility. If the resident volunteers to perform services for the facility, the resident shall receive direct supervision;

11. May associate and communicate privately with persons of his or her choice, may have reasonable opportunities for private and intimate physical and social interaction with other people, may join with other residents or individuals within or outside the facility to work for improvements in resident care, may send and receive personal mail unopened, and upon his or her request, shall be given assistance in the reading and writing of correspondence;

i. The facility shall, with the consent of the resident being visited, permit visitors, legal services representatives, employees of the Department of the Public Advocate, employees and volunteers of the Office of the Ombudsman for the Institutionalized Elderly in the Department of Community Affairs, representatives of governmental welfare and social agencies, and all governmental representatives full and free access at a reasonable hour to the facility in order to visit with, and make personal, social and legal services available to all residents;

12. May participate in facility activities, and meet with, and participate in activities of social, religious, and community groups at his/her discretion; and has the opportunity for physical exercise and the opportunity to be outdoors;

13. Is allowed to leave the facility. If the resident's absence is medically contraindicated, the physician or other appropriate person(s) shall be notified in the event that the resident leaves the facility;

14. May retain and use personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except where the facility can demonstrate that such would be unsafe,

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impractical to do so, infringes upon the rights of others and that mere convenience is not the facility's motive to restrict this right. If the resident has property on deposit with the facility, he or she shall have daily access to such property during specific periods established by the facility, and at a reasonable hour;

15. Has the right to unrestricted communication, including personal visitation with any person of his or her choice during visiting hours, which must be set at reasonable times and for no less than 12 hours per day. The facility shall develop policies specifying times when visits are allowed and shall conspicuously post its visiting hours;

16. The facility shall develop policies and procedures so that the resident is allowed visits from his or her next of kin and/or sponsor and/or guardian at any time, if ill. Members of the clergy shall be notified by the facility at the resident's request, and shall be admitted at the request of the resident and/or next of kin and/or sponsor and/or guardian at any time. Privacy shall be ensured for visits with his or her family, friends, clergy, social workers, attorney, counselor, advocates, or for professional or business purposes;

17. Is allowed unaccompanied access to telephones, in the facility, at a reasonable hour, both to make and to receive confidential calls, and has the right to a private telephone at his or her expense. If the facility provides telephones which are not coin-operated, the resident shall be charged no more than the actual cost of the call, except that an access fee no greater than the charge for a local call on a coin-operated telephone may be charged;

18. Is not required to go to bed and has the right to be outside his or her bedroom;

19. Is allowed, or his or her next of kin and/or sponsor and/or guardian and/or conservator, as defined in N.J.S.A. 3B:13A-1 through 13A-36, Laws of 1983, Chapter 192, is allowed, to manage the resident's personal financial affairs, or is given at least a quarterly written statement of financial transactions made on his or her behalf, should the facility accept his or her written delegation of this responsibility.

i. The written delegation of responsibility shall be witnessed by a person who is unconnected with the facility, its operations, and its personnel, and shall be included in the resident's record;

ii. The financial statement shall account for all the resident's property on deposit at the beginning of the quarter, all deposits and withdrawals transacted during the quarter (substantiated by receipts given to the resident or his or her next of kin and/or sponsor and/or guardian), and the property on deposit at the end of the quarter;

iii. The facility shall maintain a monthly written record for each resident who receives Social Security Administration (SSA) and/or Supplemental Security Income (SSI) checks. The written record shall include the resident's name, the date and amount of each check, the date and amount of each disbursement, the reasons for each disbursement, and to whom each disbursement was made;

iv. Each resident residing in a residential health care facility who receives benefits generated from the Home Energy Assistance Program shall not be required to provide the owner, operator, employee, or their representative with any portion of monies provided through the Home Energy Assistance Program. No owner, operator, employee, or representative of the facility shall coerce, intimidate, or exploit residents into providing them with any portion of their home energy assistance checks;

20. Is assured of exercising civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any resident or facility. Knowledge of available choices shall not be infringed upon and the facility shall encourage and assist in the exercise of these rights. Arrangements shall be made, at the resident's expense, for attendance at religious services of his or her choice when requested;

21. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions. The resident's participation may be restricted or prohibited if recommended by the resident's physician in the resident's record, and consented to by the resident;

22. Is not deprived of any constitutional, civil, and/or legal rights solely by reason of admission to the facility. Such rights shall include, but not be limited to, the right to gainful employment, to move to a different living arrangement, to wear his or her own clothing, and to determine his or her own dress, hair style, and other personal choices according to individual preference; and

23. Is allowed to discharge himself or herself from the facility upon presentation of a written release and, in the case of an adjudicated mentally incompetent resident, upon the written consent of his or her next of kin and/or sponsor and/or guardian.

SUBCHAPTER 15. HOUSEKEEPING, SANITATION, SAFETY AND MAINTENANCE

8:43-15.1 Provision of housekeeping, sanitation, safety and maintenance

(a) The facility shall provide and maintain a sanitary and safe environment for residents, in accordance with the requirements of Chapter 12 of the New Jersey Sanitary Code, N.J.A.C. 8:24.

(b) The facility shall provide housekeeping, laundry, pest control, and maintenance services.

(c) Written objectives, policies, a procedure manual, and an organizational plan for housekeeping, sanitation, safety, laundry and maintenance services shall be developed and implemented.

8:43-15.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures within the scope of their responsibility, including the use, cleaning and care of equipment.

8:43-15.3 Resident environment

(a) The following housekeeping and sanitation conditions shall be met:

1. The facility and its contents, including all environmental surfaces, shall be clean to sight and touch and free of dirt and debris;

2. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

3. All resident areas shall be free of noxious odors;

4. All facility furnishings shall be clean and in good repair, and facility mechanical equipment shall be in working order. Broken or worn items shall be repaired, replaced, or removed promptly;

5. All equipment and materials necessary for cleaning, disinfecting, sanitizing, and sterilizing (if applicable) shall be provided;

6. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration, in accordance with Chapter 12 of the New Jersey Sanitary Code, N.J.A.C. 8:24;

7. Sufficient and adequately lighted storage space shall be provided in the facility for the proper storage of residents' clothing, linens, drugs, food, cleaning and other supplies;

8. Articles in storage shall be elevated from the floor and away from walls, ceilings, and air vents;

9. Unobstructed aisles shall be provided in storage areas;

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

11. Items that come in contact with open skin or mucous membranes shall be sterilized or, at a minimum, receive high level disinfection;

12. Items that come in contact with intact skin, such as bedpans, toilets and sinks, shall be disinfected, using a process for disinfection established by the facility as specified above, at N.J.A.C. 8:43-15.2; and

13. Toilet tissue, soap, paper towels or air dryers, and waste receptacles shall be provided in each bathroom at all times. A self-

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draining dish or device shall be provided for storage of bar soap, if bar soap is used.

(b) The following safety conditions shall be met:

1. Scatter rugs shall not be permitted and floors shall be coated with slip-resistant floor finish. Carpeting shall be kept clean and odor free and shall not be frayed, worn, torn, or buckled;

2. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

3. All household, cleaning and personal care products in the facility shall be identified and labeled. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose. The facility shall ensure that all household and cleaning products in a resident's possession are stored in the resident's locked room or other secure location. The telephone number of the poison control center shall be conspicuously posted in the facility;

4. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater;

5. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in accordance with fire safety requirements specified at Table 313.1.4.1 of BOCA National Building Code;

6. Wastebaskets and ashtrays shall be made of noncombustible materials;

7. If pets are allowed in the facility, the facility shall provide safeguards to prevent interference in the lives of residents, and the facility shall comply with guidelines for pet facilitated therapy issued by the New Jersey State Department of Health;

8. The use of open fireplaces shall be restricted to the living and recreation rooms on the first floor of the building;

i. When a fireplace is in use it shall be protected by a metal screen or glass enclosure;

ii. When a fireplace is in use it shall be under the supervision of a responsible employee;

iii. All ashes shall be kept in metal containers;

9. A licensed electrician or an independent inspection agency approved by the State of New Jersey shall annually inspect and provide a written statement that the electrical circuits and wiring in the facility are satisfactory and in safe condition;

i. The written statement shall include the date of inspection, and shall indicate that circuits are not overloaded, that all wiring and permanent fixtures are in safe condition, and that all portable electrical appliances, including lamps, are U.L. approved;

ii. The written statement shall be forwarded annually to the New Jersey Department of Health, Division of Health Facilities Evaluation; and

10. All partitions in the basement shall be constructed of noncombustible material.

8:43-15.4 Waste removal

(a) All solid or liquid waste which is not regulated medical waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly so as to prevent nuisances such as odors. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24.

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

(c) Plastic bags shall be used for solid waste removal. Plastic bags used for solid waste removal shall be of sufficient strength to safely contain waste from point of origin to point of disposal and shall be effectively closed prior to disposal.

8:43-15.5 Heating and air conditioning

(a) The heating and air conditioning system shall be adequate to maintain the required temperature in all areas used by residents. The temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day ("day" means the time between sunrise and sunset) and 68 degrees Fahrenheit (20 degrees Celsius) at night, when residents are in the facility.

1. Filters for heaters and air conditioners shall be provided and maintained in accordance with manufacturer's specifications.

2. Tanks for all new installations of oil furnaces or other equipment shall be located outside the building. Previously installed oil storage tanks shall have the vent pipe and fill pipe located outside the building.

3. An identifiable electrical emergency shut-off switch shall be provided, on the first floor, for any oil burner.

4. Portable heaters shall not be permitted.

(b) During warm weather conditions, the temperature of the facility shall not exceed 82 degrees Fahrenheit.

1. The facility shall establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 82 degrees Fahrenheit or higher for a continuous period of four hours or longer. The facility shall provide for and operate adequate ventilation in all areas used by residents.

2. Beginning January 1, 1994, if the conditions of N.J.S.A. 26:2H-14.3 are met, all areas of the facility used by residents shall be equipped with air conditioning and the air conditioning shall be operated so that the temperature in these areas does not exceed 82 degrees Fahrenheit. Notice of any postponement or suspension of the operative date in this paragraph shall be provided in the New Jersey Register by the Commissioner.

8:43-15.6 Water supply

(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe and sanitary quality, and from a water system which shall be constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., N.J.A.C. 7:10, and local laws, ordinances, and regulations. Copies of the Safe Drinking Water Act can be obtained from the Department of Environmental Protection, Bureau of Potable Water, CN 209, Trenton, New Jersey 08625.

(b) There shall be no back-siphonage conditions present.

(c) There shall be no cross connections between city and well water supplies. When the facility uses well water for potable water every day, a double check valve shall be permitted if the facility has approval for such use from the water company and the New Jersey State Department of Environmental Protection.

(d) The temperature of the hot water used for bathing and handwashing shall be maintained between 95 degrees and 110 degrees Fahrenheit (35 to 43 degrees Celsius).

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

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

8:43-15.7 Building and grounds maintenance

(a) The building and grounds shall be well maintained at all times. The interior and exterior of the building shall be kept in good condition to ensure an attractive appearance, provide a pleasant atmosphere, and safeguard against deterioration. The building and grounds shall be kept free from fire hazards and other hazards to residents' health and safety.

(b) A written work schedule for building and grounds maintenance operations shall be established and implemented, with categorization of maintenance assignments as daily, weekly, monthly, or annually within each area of the facility and the grounds.

8:43-15.8 Laundry services

(a) Written policies and procedures shall be established and implemented for the facility's laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage and transportation of laundry;

2. Collection and storage of soiled laundry in a ventilated area;

3. Protection of clean laundry from contamination during processing, transporting, and storage; and

4. Handling and laundering of residents' clothing and personal items separately from other laundry.

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

(c) All soiled laundry from resident rooms and other service areas shall be stored, transported, collected, and delivered in a covered laundry bag or cart. Laundry carts shall be in good repair, kept clean, and identified for use with either clean or soiled laundry.

(d) Clean laundry shall be protected from contamination during processing, storage, and transportation within the facility.

(e) Soiled and clean laundry shall be kept separate. An established procedure shall be followed to reduce the number of bacteria in the fabrics. Equipment or surfaces such as tables that come into contact with soiled laundry shall be sanitized after use.

(f) Residents who choose to launder their personal items shall be provided with in-house assistance and resident supervision, as required.

(g) If the facility provides an on-premises laundry in lieu of using a commercial laundry service, it shall provide a receiving, holding, and sorting area with hand-washing facilities in close proximity. The walls, floors, and ceilings of the area shall be clean and in good repair. Ventilation shall be adequate to prevent heat and odor buildup. If a structural change is required by this rule, the facility shall demonstrate an alternate system to meet the intended requirements of all subsections of this rule.

SUBCHAPTER 16. INFECTION PREVENTION AND CONTROL SERVICES

8:43-16.1 Infection control program

(a) The facility shall develop and implement an infection prevention and control program.

(b) The health maintenance and monitoring nurse, in coordination with the administrator, shall be responsible for the direction, provision, and quality of infection prevention and control services. The health maintenance and monitoring nurse, in coordination with the administrator, shall be responsible for, but not limited to, developing and maintaining written objectives, a policy and procedure manual, and an organizational plan for the infection prevention and control service.

8:43-16.2 Development of infection control policies and procedures

(a) The facility shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control. Written policies and procedures shall be consistent with the following Centers for Disease Control publications:

1. Guideline for Handwashing and Hospital Environmental Control; and

2. Infection control practices, including universal precautions, in accordance with the Occupational Safety and Health Administration (OSHA) rule, 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne pathogens.

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

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

or

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

8:43-16.3 General infection control policies and procedures

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures for the following:

1. In accordance with Chapter II, New Jersey State Sanitary Code, N.J.A.C. 8:57, a system for investigating, reporting and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all residents or personnel having these infections, diseases, or conditions (see Appendix D);

2. Infection control and isolation, in accordance with the Occupational Safety and Health Administration (OSHA) rule 29, CFR part 1910.1030, Occupational Exposure to Bloodborne Pathogens;

3. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

4. Surveillance techniques to minimize sources and transmission of infection;

5. Techniques to be used during each resident contact, including handwashing before and after caring for a resident;

6. Protocols for identification of residents with communicable diseases and education of residents regarding prevention and spread of communicable diseases;

7. Cleaning, and, where applicable, sterilization and disinfection practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable resident care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

(b) High-level disinfection techniques approved by the New Jersey State Department of Health shall be used for all reusable respiratory therapy equipment and instruments that touch mucous membranes.

(c) Disinfection procedures for items that come in contact with bedpans, sinks, and toilets shall conform with established protocols for cleaning and disinfection.

(d) Personnel who have had contact with resident excretions, secretions, or blood, whether directly or indirectly, in activities such as performing a physical examination, providing catheter care, and emptying bedpans, shall wash their hands with soap and warm water for between 10 and 30 seconds or use other effective hand sanitation techniques immediately after such contact.

(e) Equipment and supplies used for sterilization, disinfection, and decontamination purposes shall be maintained according to manufacturers' specifications.

(f) Needles and syringes used by residents as part of home self-care shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto, and shall then be placed in a puncture-resistive container prior to disposal.

8:43-16.4 Employee health and resident policies and procedures for infection prevention and control

(a) Each new employee, including members of the medical staff employed by the facility, upon employment shall receive a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative Mantoux tuberculin skin test results (zero to nine millimeters of induration) within the last year, employees with a documented positive Mantoux skin test result (10 or more millimeters of induration), employees who have received appropriate medical treatment for tuberculosis, or when medically contraindicated. Results of the Mantoux tuberculin skin tests administered to new employees shall be acted upon as follows:

1. If the Mantoux tuberculin skin test result is between five and nine millimeters or more of induration, the test shall be repeated one to three weeks later. If the test result is below five millimeters of induration, no follow-up test is required.

2. If the Mantoux test is significant (10 millimeters or more of induration), a chest x-ray shall be performed and, if necessary, followed by chemoprophylaxis or therapy.

(b) The facility shall have written policies and procedures establishing timeframes for subsequent Mantoux tuberculin skin tests for all employees after the initial test.

(c) The facility shall assure that all current employees who have not received the Mantoux test upon employment, except those ex-

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empted by (a) above, shall receive a test within three months of the effective date of this rule. The facility shall act on the results of tests of current employees in the same manner as prescribed in (a) above.

(d) Employees who have signs or symptoms of a communicable disease shall not be permitted to perform functions that expose residents to risk of transmission of the disease.

(e) If a communicable disease prevents the employee from working for a period of more than three days, a physician's statement approving the employee's return shall be required prior to the employee's return to work.

(f) The facility shall develop and implement procedures for the care of employees who become ill while at work or who have a work-related accident.

(g) The facility shall maintain records documenting contagious diseases contracted by employees during employment.

(h) The facility shall maintain listings of all residents and personnel who have infections, diseases, or conditions which are reportable to the Department pursuant to Chapter II, New Jersey State Sanitary Code, N.J.A.C. 8:57, unless prohibited by Federal or state law.

(i) All residents shall be provided with an opportunity to wash their hands before each meal and shall be encouraged to do so. Staff shall wash their hands before each meal and before assisting residents in eating.

(j) The health maintenance and monitoring nurse shall perform at least monthly checks of handwashing practices throughout the facility.

8:43-16.5 Staff education and training for infection prevention and control

All employees shall be informed about the facility's infection control procedures, including personal hygiene requirements.

8:43-16.6 Regulated medical waste

(a) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.

(b) The facility shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules promulgated pursuant to the aforementioned act, including, but not limited to, N.J.A.C. 7:26-3A.

APPENDIX A
A Daily Food Guide

MEAT GROUP

Foods included: Beef; veal; lamb; pork; variety meats, such as liver, heart, kidney. Poultry and eggs. Fish and shellfish. As alternates—dry beans, dry peas, lentils, nuts, peanuts, peanut butter.

Amounts Recommended: Choose 2 or more servings every day. Count as a serving: 2 to 3 ounces of lean cooked meat, poultry or fish—all without bone; 1 egg, ½ cup cooked dry beans, dry peas, or lentils; 2 tablespoons peanut butter may replace one-half serving of meat.

VEGETABLE-FRUIT GROUP

Foods Included: All vegetables and fruits. This guide emphasizes those that are valuable as sources of vitamin C and vitamin A.

Sources of Vitamin C: Good sources—Grapefruit or grapefruit juice; orange or orange juice; cantaloupe; guava; mango; papaya; raw strawberries; broccoli; Brussels sprouts; green pepper; sweet red pepper. Fair sources—Honeydew melon; lemon; tangerine or tangerine juice; watermelon; asparagus tips; raw cabbage; collards; garden cress; kale; kohlrabi; mustard greens; potatoes and sweet potatoes cooked in the jacket; spinach; tomatoes or tomato juice; turnip greens.

Sources of Vitamin A: Dark-green and deep-yellow vegetables and a few fruits, namely: Apricots, broccoli, cantaloupe, carrots, chard, collards, cress, kale, mango, persimmon, pumpkin, spinach, sweet potatoes, turnip greens and other dark-green leaves, winter squash.

Amounts Recommended: Choose 4 or more servings each day, including: 1 serving of a good source of vitamin C or 2 servings of a fair source. 1 serving, at least every other day, of a good source of vitamin A. If the food for chosen vitamin C is also a good source of vitamin A, the additional serving of a Vitamin A food may be omitted.

The remaining 1 to 3 or more servings may be of any vegetable or fruit, including those that are valuable for vitamin C and for Vitamin A.

Count as 1 serving: ½ cup of vegetable or fruit; or a portion as ordinarily served, such as 1 medium apple, banana, orange, or potato, half a medium grapefruit or cantaloupe, or the juice of 1 lemon.

MILK GROUP

Foods Included: Milk—fluid whole, evaporated, skim, dry, buttermilk. Cheese—cottage; cream; Cheddar-type, natural or process. Ice cream.

Amounts Recommended: Some milk every day for everyone.

Recommended amounts are given below in terms of 8-ounce cups of whole fluid milk:

Children under 9	2 or 3
Children 9 to 12	3 or more
Teenagers	4 or more
Adults	2 or more
Pregnant women	3 or more
Nursing mothers	4 or more

Part or all of the milk may be fluid skim milk, buttermilk, evaporated milk, or dry milk.

Cheese and ice cream may replace part of the milk. The amount of either it will take to replace a given amount of milk is figured on the basis of calcium content. Common portions of cheese and of ice cream and their milk equivalents in calcium are:

1-inch cube Cheddar-type cheese	½ cup milk
½ cup cottage cheese	⅓ cup milk
2 tablespoons cream cheese	1 tablespoon milk
½ cup ice cream	¼ cup milk

BREAD-CEREAL GROUP

Foods Included: All breads and cereals that are whole grain, enriched, or restored; check labels to be sure. Specifically, this group includes: Breads; cooked cereals; ready-to-eat cereals; cornmeal; crackers; flour; grits; macaroni and spaghetti; noodles; rice; rolled oats; and quick breads and other baked goods if made with whole-grain or enriched flour. Bulgur and par-boiled rice and wheat also may be included in this group.

Amounts Recommended: Choose 4 servings or more daily. Or, if no cereals are chosen, have an extra serving of breads or baked goods, which will make at least 5 servings from this group daily.

Count as 1 serving: 1 slice of bread; 1 ounce ready-to-eat cereal; ½ to ¾ cup cooked cereal, cornmeal, grits, macaroni, noodles, rice or spaghetti.

OTHER FOODS

To round out meals and meet energy needs, almost everyone will use some foods not specified in the four food groups. Such foods include: unenriched, refined breads, cereals, flours; sugars; butter, margarine, other fats. These often are ingredients in a recipe or added to other foods during preparation or at the table.

Try to include some vegetable oil among the fats used.

INTRODUCTION

Food alone cannot make anyone healthy. Good health also depends on heredity, environment, and health care, that is, exercise, habits, smoking, etc. affect health status. Lifestyle is also important to health. But a diet based on these guidelines can help promote good health.

When planning your facility's menu incorporate the following **Dietary Guidelines for Americans.**

1. Serve a variety of foods.
2. Prepare a diet moderately low in fat, saturated fat and cholesterol.
3. Offer a diet with plenty of vegetables, fruits and whole grain products.
4. Use salt and sodium in moderation when preparing foods.
5. Offer foods high in sugars in moderation.

#1 EAT A VARIETY OF FOODS

These guidelines call for moderation avoiding extremes in diet. More than 40 different nutrients are essential for good health. Essential nutrients include vitamins, minerals, amino acids from protein, certain fatty acids from fat, and sources of calories (protein, carbohydrates, and fat). These nutrients should come from a variety of foods, not from a few highly fortified foods or supplements. Any food that supplies calories and nutrients can be part of a nutritious diet. The content of the total diet over a day or more is what counts.

Many foods are good sources of several nutrients. For example, vegetables and fruits are important for Vitamins A and C, folic acid, minerals, and fiber. Breads and cereals supply B vitamins, iron, and protein; whole-

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grain types are also good sources of fiber. Milk provides protein, B vitamins, vitamins A and D, calcium, and phosphorus. Meat, poultry, and fish provide protein, B vitamins, iron and zinc.

No single food can supply all nutrients in the amounts needed. For example, milk supplies calcium but little iron; meat supplies iron but little calcium. Diets should be adjusted to meet individual factors and needs such as healthy weight, cholesterol and blood pressure levels, etc. For a nutritious diet, consume a variety of foods.

#2 CHOOSE A DIET LOW IN FAT, SATURATED FAT AND CHOLESTEROL

Most health authorities recommend an American diet with less fat, saturated fat, and cholesterol. Populations like ours with diets high in fat have more obesity and certain types of cancer. The higher levels of saturated fat and cholesterol in our diets are linked to our increased risk for heart disease.

A diet low in fat makes it easier to include the variety of foods you need for nutrients without exceeding calorie needs because fat contains over twice the calories of an equal amount of carbohydrates or protein. A diet low in saturated fat and cholesterol can help maintain a desirable level of blood cholesterol. For adults this level is below 200 mg/dl. As blood cholesterol increases above this level, greater risk for heart disease occurs. Risk can also be increased by high blood pressure, cigarette smoking, diabetes, a family history of premature heart disease, obesity, and being a male.

The way diet affects blood cholesterol varies among individuals. However, blood cholesterol does increase in most people when they eat a diet high in saturated fat and cholesterol and excessive in calories. Of these, dietary saturated fat has the greatest effect; dietary cholesterol has less.

Total fat. An amount that provides 30 percent or less of calories is suggested. Thus, the upper limit on the grams of fat in the diet depends on the calories needed. For example, at 2,000 calories per day, your suggested upper limit is 600 calories from fat (2,000 × .30). This is equal to 67 grams of fat (600 – 9, the number of calories each gram of fat provides).

Saturated fat. An amount that provides less than 10 percent of calories (less than 22 grams at 2,000 calories per day) is suggested. All fats contain both saturated and unsaturated fat (fatty acids). The fats in animal products are the main sources of saturated fat in most diets, with tropical oils (coconut, palm kernel, and palm oils) and hydrogenated fats providing smaller amounts.

Cholesterol. Animal products are the source of all dietary cholesterol. Eating less fat from animal sources will help lower cholesterol as well as total fat and saturated fat in your diet.

FOR A DIET LOW IN FAT, SATURATED FAT, AND CHOLESTEROL

- Use fats and oils sparingly in cooking.
- Use small amounts of salad dressings and spreads, such as butter, margarine, and mayonnaise. One tablespoon of most of these spreads provides 10 to 11 grams of fat.
- Choose liquid vegetable oils most often because they are lower in saturated fat.
- Check labels on foods to see how much fat and saturated fat are in a serving.
- Choose lean meat, poultry, fish, dry beans, and eggs as protein sources.

CHOOSE A DIET WITH PLENTY OF VEGETABLES, FRUITS AND GRAIN PRODUCTS

This guideline recommends that adults eat at least three servings of vegetables and two servings of fruits daily. It recommends at least six servings of grain products, such as breads, cereals, pasta, and rice, with an emphasis on whole grains.

Vegetables, fruits and grain products are emphasized in this guideline especially for their complex carbohydrates, dietary fiber, and other food components linked to good health.

These foods are generally low in fats. By choosing the suggested amounts of them, you are likely to increase carbohydrates and dietary fiber and decrease fat in the diet, as health authorities suggest.

Complex carbohydrates, such as starches, are in breads, cereals, pasta, rice, dry beans and peas, and other vegetables, such as potatoes and corn. Dietary fiber—a part of plant foods—is in whole-grain breads and cereals, dry beans and peas, vegetables, and fruits. It is best to eat a variety of these fiber-rich foods because they differ in the kinds of fiber they contain.

Eating foods with fiber is important for proper bowel function and can reduce symptoms of chronic constipation, diverticular disease, and hemorrhoids. Populations like ours with diets low in dietary fiber and complex carbohydrates and high in fat, especially saturated fat, tend to have more heart disease, obesity, and some cancers. Just how dietary fiber is involved is not yet clear.

Some of the benefit from a higher fiber diet may be from the food that provides the fiber, not from fiber alone. For this reason, it's best to get fiber from foods rather than from supplements. In addition, excessive use of fiber supplements is associated with greater risk for intestinal problems and lower absorption of some minerals.

Advice for today: Eat more vegetables, including dry beans and peas; fruits; and breads, cereals, pasta, and rice. Increase your fiber intake by eating more of a variety of foods that contain fiber naturally.

USE SALT AND SODIUM ONLY IN MODERATION

Table salt contains sodium and chloride—both are essential in the diet. However, most Americans eat more salt and sodium than they need. Food and beverages containing salt provide most of the sodium in our diets, much of it added during processing and manufacturing.

In populations with diets low in salt, high blood pressure is less common than in populations with diets high in salt. Other factors that affect blood pressure are heredity, obesity, and excessive drinking of alcoholic beverages.

In the United States, about one in three adults has high blood pressure. If these people restrict their salt and sodium, usually their blood pressure will fall.

- Use salt sparingly, if at all, in cooking and at the table.
- When planning meals, consider that:

—fresh and plain frozen vegetables prepared without salt are lower in sodium than canned ones.

—cereals, pasta, and rice cooked without salt are lower in sodium than ready-to-eat cereals.

—milk and yogurt are lower in sodium than most cheeses.

—fresh meat, poultry, and fish are lower in sodium than most canned and processed ones.

—most frozen dinners and combination dishes, packaged mixes, canned soups, and salad dressings contain a considerable amount of sodium.

—so do condiments, such as soy and other sauces, pickles, olives, catsup, and mustard.

- Use salted snacks, such as chips, crackers, pretzels, and nuts, sparingly.
- Check labels for the amount of sodium in foods. Choose those lower in sodium most of the time.

USE SUGARS ONLY IN MODERATION

Americans eat sugars in many forms. Sugars provide calories and most people like their taste. Some serve as natural preservatives, thickeners, and baking aids in foods. This guideline cautions about eating sugars in large amounts and about frequent snacks of foods containing sugars and starches.

Sugars and many foods that contain them in large amounts supply calories but are limited in nutrients. Thus, they should be used in moderation by most healthy people and sparingly by people with low calorie needs. Both sugars and starches—which break down into sugars—can contribute to tooth decay. Sugars and starches are in many foods that also supply nutrients—milk; fruits; some vegetables; and breads, cereals, and other foods with sugars and starches as ingredients.

Adapted from *Nutrition and Your Health: Dietary Guidelines for Americans;* Third Edition, 1990: U.S. Department of Agriculture, U.S. Department of Health and Human Services.

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APPENDIX B. Resident Assessment

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)
BACKGROUND INFORMATION/INTAKE AT ADMISSION

I. IDENTIFICATION INFORMATION

1.	RESIDENT NAME	(First) (Middle Initial) (Last)
2.	DATE OF CURRENT ADMISSION	Month — Day — Year
3.	MEDICARE NO. (SOC. SEC. or Comparable No. if no Medicare No.)	
4.	FACILITY PROVIDER NO.	Federal No.
5.	GENDER	1. Male 2. Female
6.	RACE/ ETHNICITY	1. American Indian/Alaska Native 2. Asian/Pacific Islander 3. Black, not of Hispanic origin 4. Hispanic 5. White, not of Hispanic origin
7.	BIRTHDATE	Month — Day — Year
8.	LIFETIME OCCUPATION	
9.	PRIMARY LANGUAGE	Resident's primary language is a language other than English 0. No 1. Yes _____ (Specify)
10.	RESIDENTIAL HISTORY PAST 5 YEARS	*(Check all settings resident lived in during 5 years prior to admission)* Prior stay at this nursing home — a. Other nursing home/residential facility — b. MH/psychiatric setting — c. MR/DD setting — d. *NONE OF ABOVE* — e.
11.	MENTAL HEALTH HISTORY	Does resident's RECORD indicate any history of mental retardation, mental illness, or any other mental health problem? 0. No 1. Yes
12.	CONDITIONS RELATED TO MR/DD STATUS	*(Check all conditions that are related to MR/DD status, that were manifested before age 22, and are likely to continue indefinitely)* Not applicable—no MR/DD (Skip to Item 13) — a. MR/DD with Organic Condition Cerebral palsy — b. Down's syndrome — c. Autism — d. Epilepsy — e. Other organic condition related to MR/DD — f. MR/DD with no organic condition — g. Unknown — h.
13.	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
14.	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
15.	LIVED ALONE	0. No 1. Yes 2. In other facility
16.	ADMISSION INFORMATION AMENDED	*(Check all that apply)* Accurate information unavailable earlier — a. Observation revealed additional information — b. Resident unstable at admission — c.

II. BACKGROUND INFORMATION AT RETURN/READMISSION

1.	DATE OF CURRENT READMISSION	Month — Day — Year
2.	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
3.	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
4.	LIVED ALONE	0. No 1. Yes 2. In other facility
5.	ADMISSION INFORMATION AMENDED	*(Check all that apply)* Accurate information unavailable earlier — a. Observation revealed additional information — b. Resident unstable at admission — c.

III. CUSTOMARY ROUTINE (ONLY AT FIRST ADMISSION)

1.	CUSTOMARY ROUTINE (Year prior to first admission to a nursing home)	*(Check all that apply. If all information UNKNOWN, check last box only.)*
		CYCLE OF DAILY EVENTS
		Stays up late at night (e.g., after 9 pm) — a.
		Naps regularly during day (at least 1 hour) — b.
		Goes out 1+ days a week — c.
		Stays busy with hobbies, reading, or fixed daily routine — d.
		Spends most time alone or watching TV — e.
		Moves independently indoors (with appliances, if used) — f.
		NONE OF ABOVE — g.
		EATING PATTERNS
		Distinct food preferences — h.
		Eats between meals all or most days — i.
		Use of alcoholic beverage(s) at least weekly — j.
		NONE OF ABOVE — k.
		ADL PATTERNS
		In bedclothes much of day — l.
		Wakens to toilet all or most nights — m.
		Has irregular bowel movement pattern — n.
		Prefers showers for bathing — o.
		NONE OF ABOVE — p.
		INVOLVEMENT PATTERNS
		Daily contact with relatives/close friends — q.
		Usually attends church, temple, synagogue (etc.) — r.
		Finds strength in faith — s.
		Daily animal companion/presence — t.
		Involved in group activities — u.
		NONE OF ABOVE — v.
		UNKNOWN—Resident/family unable to provide information — w.

END

Signature of RN Assessment Coordinator: _____

Signatures of Others Who Completed Part of the Assessment:

_____ _____ _____

_____ _____ _____

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MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)

(Status in last 7 days, unless other time frame indicated)

SECTION A. IDENTIFICATION AND BACKGROUND INFORMATION

1.	ASSESSMENT DATE	Month — Day — Year
2.	RESIDENT NAME	(First) (Middle Initial) (Last)
3.	SOCIAL SECURITY NO.	— —
4.	MEDICAID NO. (If applicable)	
5.	MEDICAL RECORD NO.	
6.	REASON FOR ASSESSMENT	1. Initial admission assess. 2. Hosp/Medicare reassess. 3. Readmission assessment 4. Annual assessment 5. Significant change in status 6. Other (e.g., UR)
7.	CURRENT PAYMENT SOURCE(S) FOR N.H. STAY	*(Billing Office to indicate; check all that apply)* Medicaid a. Medicare b. CHAMPUS c. VA d. Self pay/Private insurance e. Other f.
8.	RESPONSIBILITY/ LEGAL GUARDIAN	*(Check all that apply)* Legal guardian a. Other legal oversight b. Durable power attrny./ health care proxy c. Family member responsible d. Resident responsible e. *NONE OF ABOVE* f.
9.	ADVANCED DIRECTIVES	*(For those items with supporting documentation in the medical record, check all that apply)* Living will a. Do not resuscitate b. Do not hospitalize c. Organ donation d. Autopsy request e. Feeding restrictions f. Medication restrictions g. Other treatment restrictions h. *NONE OF ABOVE* i.
10.	DISCHARGE PLANNED WITHIN 3 MOS.	*(Does not include discharge due to death)* 0. No 1. Yes 2. Unknown/uncertain
11.	PARTICIPATE IN ASSESSMENT	a. Resident 0. No 1. Yes b. Family 0. No 1. Yes 2. No family
12.	SIGNATURES	Signature of RN Assessment Coordinator _____ Signatures of Others Who Completed Part of the Assessment _____ _____ _____

SECTION B. COGNITIVE PATTERNS

1.	COMATOSE	*(Persistent vegetative state/no discernible consciousness)* 0. No 1. Yes *(Skip to SECTION E)*
2.	MEMORY	*(Recall of what was learned or known)* a. Short-term memory OK—seems/appears to recall after 5 minutes 0. Memory OK 1. Memory problem b. Long-term memory OK—seems/appears to recall long past 0. Memory OK 1. Memory problem
3.	MEMORY/ RECALL ABILITY	*(Check all that resident normally able to recall during last 7 days)* Current season a. Location of own room b. Staff names/faces c. That he/she is in a nursing home d. *NONE OF ABOVE* are recalled e.
4.	COGNITIVE SKILLS FOR DAILY DECISION-MAKING	*(Made decisions regarding tasks of daily life)* 0. Independent—decisions consistent/reasonable 1. Modified independence—some difficulty in new situations only 2. Moderately impaired—decisions poor; cues/supervision required 3. Severely impaired—never/rarely made decisions
5.	INDICATORS OF DELIRIUM —PERIODIC DISORDERED THINKING/ AWARENESS	*(Check if condition over last 7 days appears different from usual functioning)* Less alert, easily distracted a. Changing awareness of environment b. Episodes of incoherent speech c. Periods of motor restlessness or lethargy d. Cognitive ability varies over course of day e. *NONE OF ABOVE* f.
6.	CHANGE IN COGNITIVE STATUS	Change in resident's cognitive status, skills, or abilities in last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION C. COMMUNICATION/HEARING PATTERNS

1.	HEARING	*(With hearing applicance, if used)* 0. Hears adequately—normal talk, TV, phone 1. Minimal difficulty when not in quiet setting 2. Hears in special situations only—speaker has to adjust tonal quality and speak distinctly 3. Highly impaired/absence of useful hearing
2.	COMMUNICATION DEVICES/ TECHNIQUES	*(Check all that apply during last 7 days)* Hearing aid, present and used a. Hearing aid, present and not used b. Other receptive comm. techniques used (e.g., lip read) c. *NONE OF ABOVE* d.
3.	MODES OF EXPRESSION	*(Check all used by resident to make needs known)* Speech a. Writing messages to express or clarify needs b. Signs/gestures/sounds c. Communication board d. Other e. *NONE OF ABOVE* f.
4.	MAKING SELF UNDERSTOOD	*(Express information content—however able)* 0. Understood 1. Usually Understood—difficulty finding words or finishing thoughts 2. Sometimes Understood—ability is limited to making concrete requests 3. Rarely/Never Understood
5.	ABILITY TO UNDERSTAND OTHERS	*(Understanding verbal information content—however able)* 0. Understands 1. Usually Understands—may miss some part/intent of message 2. Sometimes Understands—responds adequately to simple, direct communication 3. Rarely/Never Understands
6.	CHANGE IN COMMUNICATION/ HEARING	Resident's ability to express, understand or hear information has changed over last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION D. VISION PATTERNS

1.	VISION	*(Ability to see in adequate light and with glasses if used)* 0. Adequate—sees fine detail, including regular print in newspapers/books 1. Impaired—sees large print, but not regular print in newspapers/books 2. Highly impaired—limited vision; not able to see newspaper headlines; appears to follow objects with eyes 3. Severely impaired—no vision or appears to see only light, colors, or shapes
2.	VISUAL LIMITATIONS/ DIFFICULTIES	Side vision problems—decreased peripheral vision (e.g., leaves food on one side of tray, difficulty traveling, bumps into people and objects, misjudges placement of chair when seating self) a. Experiences any of following: sees halos or rings around lights; sees flashes of light; sees "curtains" over eyes b. *NONE OF ABOVE* c.
3.	VISUAL APPLIANCES	Glasses; contact lenses, lens implant; magnifying glass 0. No 1. Yes

▒ = Code the appropriate response ☐ = Check all the responses that apply

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SECTION E. PHYSICAL FUNCTIONING AND STRUCTURAL PROBLEMS

1. ADL SELF-PERFORMANCE—*(Code for resident's PERFORMANCE OVER ALL SHIFTS during last 7 days—Not including setup)*

0. *INDEPENDENT* — No help or oversight — OR — Help/oversight provided only 1 or 2 times during last 7 days
1. *SUPERVISION* — Oversight, encouragement or cueing provided 3+ times during last 7 days — OR — Supervision plus physical assistance provided only 1 or 2 times during last 7 days
2. *LIMITED ASSISTANCE* — Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times — OR — More help provided only 1 or 2 times during last 7 days
3. *EXTENSIVE ASSISTANCE* — While resident performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times:
   — Weight-bearing support
   — Full staff performance during part (but not all) of last 7 days
4. *TOTAL DEPENDENCE* — Full staff performance of activity during entire 7 days

2. ADL SUPPORT PROVIDED — *(Code for MOST SUPPORT PROVIDED OVER ALL SHIFTS during last 7 days; code regardless of resident's self-performance classification)*

0. No setup or physical help from staff
1. Setup help only
2. One-person physical assist
3. Two+ persons physical assist

			(1) SELF-PERF.	(2) SUPPORT
a.	BED MOBILITY	How resident moves to and from lying position, turns side to side, and positions body while in bed		
b.	TRANSFER	How resident moves between surfaces—to/from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet)		
c.	LOCO-MOTION	How resident moves between locations in his/her room and adjacent corridor on same floor. If in wheelchair, self-sufficiency once in chair		
d.	DRESSING	How resident puts on, fastens, and takes off all items of street clothing, including donning/removing prosthesis		
e.	EATING	How resident eats and drinks (regardless of skill)		
f.	TOILET USE	How resident uses the toilet room (or commode, bedpan, urinal); transfer on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes		
g.	PERSONAL HYGIENE	How resident maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum (EXCLUDE baths and showers)		
3.	BATHING	How resident takes full-body bath/shower, sponge bath, and transfers in/out of tub/shower (EXCLUDE washing of back and hair. *Code for most dependent in self-performance and support.* Bathing Self-Performance codes appear below)	a.	b.

0. Independent—No help provided
1. Supervision—Oversight help only
2. Physical help limited to transfer only
3. Physical help in part of bathing activity
4. Total dependence

4. BODY CONTROL PROBLEMS — *(Check all that apply during last 7 days)*

- Balance—partial or total loss of ability to balance self while standing — a.
- Bedfast all or most of the time — b.
- Contracture to arms, legs, shoulders, or hands — c.
- Hemiplegia/hemiparesis — d.
- Quadriplegia — e.
- Arm—partial or total loss of voluntary movement — f.
- Hand—lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid) — g.
- Leg—partial or total loss of voluntary movement — h.
- Leg—unsteady gait — i.
- Trunk—partial or total loss of ability to position, balance, or turn body — j.
- Amputation — k.
- *NONE OF ABOVE* — l.

5. MOBILITY APPLIANCES/DEVICES — *(Check all that apply during last 7 days)*

- Cane/walker — a.
- Brace/prothesis — b.
- Wheeled self — c.
- Other person wheeled — d.
- Lifted (manually/mechanically) — e.
- *NONE OF ABOVE* — f.

6. TASK SEGMENTATION — Resident requires that some or all of ADL activities be broken into a series of subtasks so that resident can perform them

0. No 1. Yes

7. ADL FUNCTIONAL REHABILITATION POTENTIAL

- Resident believes he/she capable of increased independence in at least some ADLs — a.
- Direct care staff believe resident capable of increased independence in at least some ADLs — b.
- Resident able to perform tasks/activity but is very slow — c.
- Major difference in ADL Self-Performance or ADL Support in mornings and evenings (at least a one category change in Self-Performance or Support in any ADL) — d.
- *NONE OF ABOVE* — e.

8. CHANGE IN ADL FUNCTION — Change in ADL self-performance in last 90 days

0. No change 1. Improved 2. Deteriorated

SECTION F. CONTINENCE IN LAST 14 DAYS

1. CONTINENCE SELF-CONTROL CATEGORIES *(Code for resident performance over all shifts)*

0. CONTINENT — Complete control
1. USUALLY CONTINENT — BLADDER, incontinent episodes once a week or less; BOWEL, less than weekly
2. OCCASIONALLY INCONTINENT — BLADDER, 2+ times a week but not daily; BOWEL, once a week
3. FREQUENTLY INCONTINENT — BLADDER, tended to be incontinent daily, but some control present (e.g., on day shift); BOWEL, 2-3 times a week
4. INCONTINENT — Had inadequate control. BLADDER, multiple daily episodes; BOWEL, all (or almost all) of the time

a.	BOWEL CONTI-NENCE	Control of bowel movement, with appliance or bowel continence programs, if employed	
b.	BLADDER CONTI-NENCE	Control of urinary bladder function (if dribbles, volume insufficient to soak through underpants), with appliances (e.g., foley) or continence programs, if employed	
2.	INCONTIN-ENCE RELATED TESTING	*(Skip if resident's bladder continence code equals 0 or 1 AND no catheter is used)*	
		Resident has been tested for a urinary tract infection	a.
		Resident has been checked for presence of a fecal impaction, or there is adequate bowel elimination	b.
		NONE OF ABOVE	c.

3. APPLIANCES AND PROGRAMS

- Any scheduled toileting plan — a.
- External (condom) catheter — b.
- Indwelling catheter — c.
- Intermittent catheter — d.
- Did not use toilet room/commode/urinal — e.
- Pads/briefs used — f.
- Enemas/irrigation — g.
- Ostomy — h.
- *NONE OF ABOVE* — i.

4. CHANGE IN URINARY CONTINENCE — Change in urinary continence/appliances and programs in last 90 days

0. No change 1. Improved 2. Deteriorated

SECTION G. PSYCHOSOCIAL WELL-BEING

1.	SENSE OF INITIATIVE/ INVOLVE-MENT	At ease interacting with others	a.
		At ease doing planned or structural activities	b.
		At ease doing self-initiated activities	c.
		Establishes own goals	d.
		Pursues involvement in life of facility (e.g., makes/keeps friends; involved in group activities; responds positively to new activities; assists at religious services)	e.
		Accepts invitations into most group activities	f.
		NONE OF ABOVE	g.
2.	UNSETTLED RELATION-SHIPS	Covert/open conflict with and/or repeated criticism of staff	a.
		Unhappy with roommate	b.
		Unhappy with residents other than roommate	c.
		Openly expresses conflict/anger with family or friends	d.
		Absence of personal contact with family/friends	e.
		Recent loss of close family member/friend	f.
		NONE OF ABOVE	g.
3.	PAST ROLES	Strong identification with past roles and life status	a.
		Expresses sadness/anger/empty feeling over lost roles/status	b.
		NONE OF ABOVE	c.

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SECTION H. MOOD AND BEHAVIOR PATTERNS

1.	SAD OR ANXIOUS MOOD	*(Check all that apply during last 30 days)*	
		VERBAL EXPRESSIONS of DISTRESS by resident (sadness, sense that nothing matters, hopelessness, worthlessness, unrealistic fears, vocal expressions of anxiety or grief)	a.
		DEMONSTRATED (OBSERVABLE) SIGNS of mental DISTRESS	
		— Tearfulness, emotional groaning, sighing, breathlessness	b.
		— Motor agitation such as pacing, handwringing or picking	c.
		— Failure to eat or take medications, withdrawal from self-care or leisure activities	d.
		— Pervasive concern with health	e.
		— Recurrent thoughts of death—e.g., believes he/she about to die, have a heart attack	f.
		— Suicidal thoughts/actions	g.
		NONE OF ABOVE	h.
2.	MOOD PERSISTENCE	Sad or anxious mood intrudes on daily life over last 7 days — not easily altered, doesn't "cheer up" 0. No 1. Yes	
3.	PROBLEM BEHAVIOR	*(Code for behavior in last 7 days)* 0. Behavior not exhibited in last 7 days 1. Behavior of this type occurred less than daily 2. Behavior of this type occurred daily or more frequently	
		WANDERING (moved with no rational purpose, seemingly oblivious to needs or safety)	a.
		VERBALLY ABUSIVE (others were threatened, screamed at, cursed at)	b.
		PHYSICALLY ABUSIVE (others were hit, shoved, scratched, sexually abused)	c.
		SOCIALLY INAPPROPRIATE/DISRUPTIVE BEHAVIOR (made disrupting sounds, noisy, screams, self-abusive acts, sexual behavior or disrobing in public, smeared/threw food/feces, hoarding, rummaged through others' belongings)	d.
4.	RESIDENT RESISTS CARE	*(Check all types of resistance that occurred in the last 7 days)*	
		Resisted taking medications/injection	a.
		Resisted ADL assistance	b.
		NONE OF ABOVE	c.
5.	BEHAVIOR MANAGEMENT PROGRAM	Behavior problem has been addressed by clinically developed behavior management program. (Note: Do not include programs that involve only physical restraints or psychotropic medications in this category) 0. No behavior problem 1. Yes, addressed 2. No, not addressed	
6.	CHANGE IN MOOD	Change in mood in last 90 days 0. No change 1. Improved 2. Deteriorated	
7.	CHANGE IN PROBLEM BEHAVIOR	Change in problem behavioral signs in last 90 days 0. No change 1. Improved 2. Deteriorated	

SECTION I. ACTIVITY PURSUIT PATTERNS

1.	TIME AWAKE	*(Check appropriate time periods over last 7 days)* Resident awake all or most of time (i.e., naps no more than one hour per time period) in the:			
		Morning	a.	Evening	c.
		Afternoon	b.	*NONE OF ABOVE*	d.
2.	AVERAGE TIME INVOLVED IN ACTIVITIES	0. Most—more than 2/3 of time 1. Some—1/3 to 2/3 of time 2. Little—less than 1/3 of time 3. None			
3.	PREFERRED ACTIVITY SETTINGS	*(Check all settings in which activities are preferred)*			
		Own room	a.	Outside facility	d.
		Day/activity room	b.	*NONE OF ABOVE*	e.
		Inside NH/off unit	c.		
4.	GENERAL ACTIVITY PREFERENCES (adapted to resident's current abilities)	*(Check all PREFERENCES whether or not activity is currently available to resident)*			
		Cards/other games	a.	Spiritual/religious activities	f.
		Crafts/arts	b.	Trips/shopping	g.
		Exercise/sports	c.	Walking/wheeling outdoors	h.
		Music	d.	Watch TV	i.
		Read/write	e.	*NONE OF ABOVE*	j.
5.	PREFERS MORE OR DIFFERENT ACTIVITIES	Resident expresses/indicates preference for other activities/choices 0. No 1. Yes			

SECTION J. DISEASE DIAGNOSES

Check only those diseases present that have a relationship to current ADL status, cognitive status, behavior status, medical treatments, or risk of death. (Do not list old/inactive diagnoses.)

1.	DISEASES	*(If none apply, CHECK the NONE OF ABOVE box)*			
		HEART/CIRCULATION		**PSYCHIATRIC/MOOD**	
		Arteriosclerotic heart disease (ASHD)	a.	Anxiety disorder	p.
		Cardiac dysrhythmias	b.	Depression	q.
		Congestive heart failure	c.	Manic depressive (bipolar disease)	r.
		Hypertension	d.	**SENSORY**	
		Hypotension	e.	Cataracts	s.
		Peripheral vascular disease	f.	Glaucoma	t.
		Other cardiovascular disease	g.	**OTHER**	
		NEUROLOGICAL		Allergies	u.
		Alzheimer's	h.	Anemia	v.
		Dementia other than Alzheimer's	i.	Arthritis	w.
		Aphasia	j.	Cancer	x.
		Cerebrovascular accident (stroke)	k.	Diabetes mellitus	y.
		Multiple sclerosis	l.	Explicit terminal prognosis	z.
		Parkinson's disease	m.	Hypothyroidism	aa.
		PULMONARY		Osteoporosis	bb.
		Emphysema/Asthma/COPD	n.	Seizure disorder	cc.
		Pneumonia	o.	Septicemia	dd.
				Urinary tract infection—in last 30 days	ee.
				NONE OF ABOVE	ff.
2.	OTHER CURRENT DIAGNOSES AND ICD-9 CODES	a. _____			
		b. _____			
		c. _____			
		d. _____			
		e. _____			
		f. _____			

SECTION K. HEALTH CONDITIONS

1.	PROBLEM CONDITIONS	*(Check all problems that are present in last 7 days unless other time frame indicated)*			
		Constipation	a.	Pain—resident complains or shows evidence of pain daily or almost daily	j.
		Diarrhea	b.	Recurrent lung aspirations in last 90 days	k.
		Dizziness/vertigo	c.	Shortness of breath	l.
		Edema	d.	Syncope (fainting)	m.
		Fecal impaction	e.	Vomiting	n.
		Fever	f.	*NONE OF ABOVE*	o.
		Hallucinations/delusions	g.		
		Internal bleeding	h.		
		Joint pain	i.		
2.	ACCIDENTS	Fell in past 30 days	a.	Hip fracture in last 180 days	c.
		Fell in past 31-180 days	b.	*NONE OF ABOVE*	d.

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3.	STABILITY OF CONDITIONS	Conditions/diseases make resident's cognitive, ADL, or behavior status unstable—fluctuating, precarious, or deteriorating	a.
		Resident experiencing an acute episode or a flare-up of a recurrent/chronic problem	b.
		NONE OF ABOVE	c.

SECTION L. ORAL/NUTRITIONAL STATUS

1.	ORAL PROBLEMS	Chewing problem	a.
		Swallowing problem	b.
		Mouth pain	c.
		NONE OF ABOVE	d.
2.	HEIGHT AND WEIGHT	*Record height (a.) in inches and weight (b.) in pounds. Weight based on most recent status in last 30 days; measure weight consistently in accord with standard facility practice—e.g., in a.m. after voiding, before meal, with shoes off, and in nightclothes.* HT (in.) a. WT (lb.) b.	
		c. Weight loss (i.e., 5%+ in last 30 days; or 10% in last 180 days) 0. No 1. Yes	c.
3.	NUTRITIONAL PROBLEMS	Complains about the taste of many foods a.	
		Insufficient fluid; dehydrated b.	
		Did NOT consume all/almost all liquids provided during last 3 days c.	
		Regular complaint of hunger	d.
		Leaves 25%+ food uneaten at most meals	e.
		NONE OF ABOVE	f.
4.	NUTRITIONAL APPROACHES	Parenteral/IV a.	
		Feeding tube b.	
		Mechanically altered diet c.	
		Syringe (oral feeding) d.	
		Therapeutic diet e.	
		Dietary supplement between meals	f.
		Plate guard, stabilized built-up utensil, etc.	g.
		NONE OF ABOVE	h.

SECTION M. ORAL/DENTAL STATUS

1.	ORAL STATUS AND DISEASE PREVENTION	Debris (soft, easily movable substances) present in mouth prior to going to bed at night	a.
		Has dentures and/or removable bridge	b.
		Some/all natural teeth lost—does not have or does not use dentures (or partial plates)	c.
		Broken, loose, or carious teeth	d.
		Inflamed gums (gingiva); swollen or bleeding gums; oral abscesses, ulcers or rashes	e.
		Daily cleaning of teeth/dentures	f.
		NONE OF ABOVE	g.

SECTION N. SKIN CONDITION

1.	STASIS ULCER	(open lesion caused by poor venous circulation to lower extremities) 0. No 1. Yes	
2.	PRESSURE ULCERS	*(Code for highest stage of pressure ulcer)* 0. No pressure ulcers 1. Stage 1 A persistent area of skin redness (without a break in the skin) that does not disappear when pressure is relieved 2. Stage 2 A partial thickness loss of skin layers that presents clinically as an abrasion, blister, or shallow crater 3. Stage 3 A full thickness of skin is lost, exposing the subcutaneous tissues—presents as a deep crater with or without undermining adjacent tissue 4. Stage 4 A full thickness of skin and subcutaneous tissue is lost, exposing muscle and/or bone	
3.	HISTORY OF RESOLVED/ CURED PRESSURE ULCERS	Resident has had a pressure ulcer that was resolved/cured in last 90 days 0. No 1. Yes	
4.	SKIN PROBLEMS/ CARE	Open lesions other than stasis or pressure ulcers (e.g., cuts)	a.
		Skin desensitized to pain, pressure, discomfort	b.
		Protective/preventive skin care	c.
		Turning/repositioning program	d.
		Pressure relieving beds, bed/chair pads (e.g., egg crate pads)	e.
		Wound care/treatment (e.g., pressure ulcer care, surgical wound)	f.
		Other skin care/treatment	g.
		NONE OF ABOVE	h.

SECTION O. MEDICATION USE

1.	NUMBER OF MEDICATIONS	*(Record the number of different medications used in the last 7 days; enter "0" if none used)*	
2.	NEW MEDICATIONS	Resident has received new medications during the last 90 days 0. No 1. Yes	
3.	INJECTIONS	*(Record the number of days injections of any type received during the last 7 days)*	
4.	DAYS RECEIVED THE FOLLOWING MEDICATION	*(Record the number of days during last 7 days; enter "0" if not used; enter "1" if long-acting meds. used less than weekly)*	
		Antipsychotics	a.
		Antianxiety/hypnotics	b.
		Antidepressants	c.
5.	PREVIOUS MEDICATION RESULTS	*(SKIP this question if resident currently receiving antipsychotics, antidepressants, or antianxiety/hypnotics—otherwise code correct response for last 90 days)* Resident has previously received psychoactive medications for a mood or behavior problem, and these medications were effective (without undue adverse consequences) 0. No, drugs not used 1. Drugs were effective 2. Drugs were not effective 3. Drug effectiveness unknown	

SECTION P. SPECIAL TREATMENT AND PROCEDURES

1.	SPECIAL TREATMENTS AND PROCEDURES	SPECIAL CARE—*Check treatments received during the last 14 days*			
		Chemotherapy	a.	IV meds	f.
		Radiation	b.	Transfusions	g.
		Dialysis	c.	O_2	h.
		Suctioning	d.	Other _____	i.
		Trach. care	e.	*NONE OF ABOVE*	j.
		THERAPIES—*Record the number of days each of the following therapies was administered (for at least 10 minutes during a day) in the last 7 days:*			
		Speech—language pathology and audiology services			a.
		Occupational therapy			b.
		Physical therapy			c.
		Psychological therapy (any licensed professional)			d.
		Respiratory therapy			e.
2.	ABNORMAL LAB VALUES	Has the resident had any abnormal lab values during the last 90-days? 0. No 1. Yes 2. No tests performed			
3.	DEVICES AND RESTRAINTS	*Use the following codes for last 7 days:* 0. Not used 1. Used less than daily 2. Used daily			
		Bed rails			a.
		Trunk restraint			b.
		Limb restraint			c.
		Chair prevents rising			d.

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SECTION Q: Resident Classification

1. Payment Source
   - Private |____|
   - Medicare |____|
   - Medicaid |____|
   - Other _____

2. Requires Basic Nursing Services (NJAC 10:63-1.3) |____|

3. Requires Additional Nursing Services (NJAC 10:63(f)4) as below: |____|

   - Trachestomy |a____|
   - Use of Respirator |b____|
   - Head Trauma Stimulation/ advanced neuromuscular/ orthopedic care |c____|
   - Intravenous Therapy |d____|
   - Wound Care |e____|
   - Oxygen Therapy |f____|
   - Nasogastric tube feeding and/or Gastrostomy |g____|

_____ _____ _____
Signature of RN Coordinator License Number Date

Signatures of Others Who Completed Part of the Assessment:

_____ _____
Name Title

_____ _____
Name Title

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Resident's Name:	Medical Record No.:

Signature of RN Assessment Coordinator: _____

RESIDENT ASSESSMENT PROTOCOL SUMMARY

1. For each RAP area triggered, show whether you are proceeding with a care plan intervention.
2. Document problems, complications, and risk factors; the need for referral to appropriate health professionals; and the reasons for deciding to proceed or not to proceed to care planning. Documentation may appear anywhere the facility routinely keeps such information, such as problem sheets or nurses' progress notes.
3. Show location of this information.

RAP Problem Area	Care Planning Decision		Location of Information
	Proceed	Not Proceed	
DELIRIUM	☐	☐	
COGNITIVE LOSS/DEMENTIA	☐	☐	
VISUAL FUNCTION	☐	☐	
COMMUNICATION	☐	☐	
ADL FUNCTIONAL/ REHABILITATION POTENTIAL	☐	☐	
URINARY INCONTINENCE AND INDWELLING CATHETER	☐	☐	
PSYCHOSOCIAL WELL-BEING	☐	☐	
MOOD STATE	☐	☐	
BEHAVIOR PROBLEM	☐	☐	
ACTIVITIES	☐	☐	
FALLS	☐	☐	
NUTRITIONAL STATUS	☐	☐	
FEEDING TUBES	☐	☐	
DEHYDRATION/FLUID MAINTENANCE	☐	☐	
DENTAL CARE	☐	☐	
PRESSURE ULCERS	☐	☐	
PSYCHOTROPIC DRUG USE	☐	☐	
PHYSICAL RESTRAINTS	☐	☐	

August 15, 1990

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RESIDENT ASSESSMENT PROTOCOL TRIGGER LEGEND

LEGEND:
● Automatic Trigger—Go directly to RAP Instructions
▲ Potential Trigger—Go to RAP Instructions for more detailed trigger definitions

Instructions: Match MDS Item codes with trigger codes below. Proceed to RAP Instructions as indicated by symbol. Circle all RAPs that are "triggered," based on your review.

MDS Item	Code	Delirium	Cognitive Loss/Dementia	Visual Function	Communication	ADL Functional/Rehabilitation Potential	Urinary Incontinence and Indwelling Catheter	Psychosocial Well-Being	Mood State	Behavior Problem	Activities	Falls	Nutritional Status	Feeding Tubes	Dehydration/Fluid Maintenance	Dental Care	Pressure Ulcers	Psychotropic Drug Use	Physical Restraints
B2 a or b	1		▲																
B3 a,b,c,d	fewer than 3 ✓		▲																
B4	0,1,2				▲														
	1,2,3		▲																
B5 a,b,c,d,e	any ✓	●																	
B6	2	●													▲				
C4	2,3				▲														
C5	1,2,3		▲																
	2,3				▲	▲													
C6	2	●																	
D1	1,2,3			●															
D2 a	✓			●															
E1 a,b,c,d,e,f	3,4					▲													
E3 a	3,4					▲													
E4 a,b,d,e,h,j	any ✓											▲							
E7 a,b	any ✓					▲													
E8	2														▲				
F1 b	2,3,4						▲												
F3 b,c,d,f	any ✓						▲												
G2 a,b,c,d	any ✓							●											
G3 b	✓							●											
H1 a,b,c,d,e,f,g	any ✓								●										
H1 d	✓														▲				
H2	1								●										
H3 a,b,c or d	1,2									●									
H6	2	▲																	
H7	2	●																	
I2	0,2,3										▲								
I5	1										●								
J1 ee	✓														▲				
J2	260, 261, 262												●						
	263, 263.0, 263.1												●						
	263.2, 263.8, 263.9												●						
	276.5														▲				
	291.0, 292.81	●																	
	293.0, 293.1	●																	
K1 b,c,f,h,n	any ✓														▲				
K2 a,b	any ✓											●							
L1 c	✓															●			
L2 c	1												●		▲				
L3 a,d,e	any ✓												●						
L3 b	✓														●				
L3 c,e	✓														▲				
L4 a,b	any ✓														▲				
L4 a,c,d,e	any ✓												●						
L4 b	✓													●					
M1 a,c,d,e	any ✓															●			
M1 f	not ✓															●			
N2	1,2,3,4												●				●		
N4 c,d,e,f,g	none ✓																▲		
O4 a,b,c	1-7									▲		▲						▲	
P2 b,c or d	1,2									▲									●

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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 1993-10.

A **public hearing** concerning these proposed amendments will be held on Monday, February 1, 1993 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 February 3, 1993 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council, Room 501
New Jersey Department of Health
CN 360
Trenton, N.J. 08625-0360
609-292-4029

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 triazolam 0.125 mg and 0.25 mg tablets could be used as a less expensive substitute for Halcion, a branded prescription medicine. Similarly, the proposed phenytoin 125 mg/5 ml suspension could be substituted for the more costly branded product, Dilantin.

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:

Aminophylline tabs 100mg, 200mg	West-ward
Atenolol tabs 25mg	IPR
Atenolol/chlorthalidone 50/25, 100/25	Mylan
Azo Gantrisin tabs substitute 500/50	Trinity
Colchicine tabs 0.6 mg	Trinity
Colyte substitute	Copley
Cortisone acetate tabs 25mg	West-ward
Cyclobenzaprine tabs 10mg	Invamed
Entex cap substitute	Trinity
Entex LA tabs substitute	Trinity
Entex liquid substitute	Hi-Tech
Entex liquid substitute	Barre-Nat'l
Fluocinonide cream 0.05%	NMC Labs
Folic acid tabs 1 mg	West-ward
Guaifenesin DM 100mg/10mg/5ml	Halsey
Histalet Forte substitute tabs	Trinity
Hydrocodone bitartrate/guaifenesin syrup	Barre-Nat'l
Hydrocortisone tabs 20mg	West-ward
Hyoscyamine sulfate elixir 0.125mg/5ml	Hi-Tech
Hyoscyamine tabs 0.125mg	Trinity
Ibuprofen tabs 400mg, 600mg, 800mg	Invamed
Isoniazid tabs 300mg	Duramed
Loperamide HCl liquid 1mg/5ml	Barre-Nat'l
Metoclopramide oral solution 5mg/5ml	Silarex
Midrin caps substitute	Duramed
Nadolol tabs 20mg, 40mg, 80mg, 120mg	Mylan
Naproxen tabs 250mg, 375mg, 500mg	Mylan
Naproxen tabs 250mg, 375mg, 500mg	Purepac
Nortriptyline caps 10, 25, 50, 75mg	Mylan
Oxtriphylline/guaifenesin elixir 100/50 per 5ml	Barre-Nat'l
Phenobarbital elixir 20mg/5ml	Halsey
Phenytoin suspension 125mg/5ml	Barre-Nat'l
Pindolol tabs 5mg, 10mg	Genpharm
Pindolol tabs 5mg, 10mg	Novopharm
Piroxicam caps 10mg, 20mg	Genpharm
Piroxicam caps 10mg, 20mg	Purepac
Poly-Vi-Flor w/Iron 0.25mg/ml substitute	Hi-Tech
Prednisone tabs 5mg, 10mg, 20mg	West-ward
Promethazine HCl syrup	Halsey
Rondec DM syrup substitute	Hi-Tech
Rynatan ped susp substitute	Barre-Nat'l
Rynatan-S Ped Susp substitute	Duramed
Rynatuss ped susp substitute	Barre-Nat'l
Rynatuss tabs substitute	Trinity
Salsalate tabs 500, 750mg	Trinity
Singlet LA caps substitute	Trinity
Sodium fluoride tabs 2.2mg	Trinity
Sulindac tabs 150 mg, 200mg	Lederle
Theo-Organidin elixir substitute	Barre-Nat'l
Tri-Vi-Flor tabs 0.25 mg substitute	Cenci
Tri-Vi-Flor tabs 0.5 mg substitute	Cenci
Tri-Vi-Flor w/Iron 0.25mg/ml substitute	Hi-Tech
Triazolam tabs 0.125mg, 0.25mg	Mylan
Trilisate tabs substitute 500mg, 750mg, 1000mg	Trinity
Valproic acid caps 250mg	Pharmacaps

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INSURANCE

(a)

OFFICE OF THE COMMISSIONER

Notice of Public Hearing and Extension of Comment Period

Automobile Insurance: Rate Filing Requirements Filings Reflecting Paid, Apportioned MTF Expenses and Losses

Proposed New Rule: N.J.A.C. 11:3-16.12

Take notice that, in accordance with N.J.S.A. 52:14B-4, the Department of Insurance ("Department") will hold a **public hearing** regarding proposed new rule N.J.A.C. 11:3-16.12 which establishes procedures by which personal passenger automobile insurers may seek to establish the need to recover amounts paid by the insurer as its apportioned share of New Jersey Market Transition Facility operational expenses and losses. The **hearing** shall be held as set forth below:

Friday, January 29, 1993 at 9:30 A.M.
Department of Insurance
Mary Roebling Building
Room 219-220
20 West State Street
Trenton, New Jersey 08625

The purpose of the hearing is to receive public comment from interested parties regarding whether proposed rule N.J.A.C. 11:3-16.12, which was published on December 21, 1992 in the New Jersey Register at 4486(a), should be promulgated, amended or not adopted. The hearing shall be conducted pursuant to the provisions of N.J.S.A. 52:14B-4g. The hearing shall be conducted by a Hearing Officer designated by the Commissioner. The Hearing Officer shall make recommendations to the Commissioner in the form of a written report, which shall be issued no later than 30 days after the record is closed and shall be made public. A verbatim transcript of the hearing will be prepared by a certified stenographic reporter; copies of the transcript may be obtained by ordering them directly from the reporter at the hearing or thereafter.

At the beginning of the hearing, the Department will present a summary of the factual information regarding the rationale for the rule and the methodology used to develop the procedures set forth at N.J.A.C. 11:3-16.12. Thereafter, interested parties may present oral comments and may direct questions about the proposed rule through the Hearing Officer. The Department reserves the right to limit oral comments and questions in either time or number in order to complete the hearing by 4:30 P.M. on the scheduled hearing date.

Take further notice that the Department is extending the deadline for the submission of written comments to January 29, 1993. Written comments shall be submitted to the Department at the following address:

Attention: Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, NJ 08625-0325

No provision is made in N.J.S.A. 52:14B-4g for written comments on the Hearing Officer's Report and they will not be accepted.

The Department requests that **persons who wish to present oral comments or questions** notify the Department of their intention no later than 12 Noon, January 28, 1993, either by writing to the Department at the address set forth above or by calling (609) 984-3602. If it is necessary to limit oral comments at the hearing, preference will be given to persons who notified the Department on a first come, first served basis.

(b)

DIVISION OF THE REAL ESTATE COMMISSION

Real Estate Guaranty Fund

Proposed Amendment: N.J.A.C. 11:5-1.36

Authorized By: The New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Authority: N.J.S.A. 45:15-6 and N.J.S.A. 45:15-40.
Proposal Number: PRN 1993-17.

Submit comments by February 3, 1993 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with N.J.S.A. 45:15-40, the New Jersey Real Estate Commission has proposed to amend N.J.A.C. 11:5-1.36 so as to impose a special assessment upon all licensees in order to replenish the Real Estate Guaranty Fund. It is necessary to impose this assessment at this time because over the period of approximately the last 18 months, payments made from the fund have resulted in a substantial reduction in the operating balance of the fund. In addition, as a result of pending claims against the fund, anticipated payments over the course of the next year exceed the remaining balance in the fund. Consequently, the Commission is required by law to impose an assessment upon licensees in order to maintain an adequate balance in the fund. As provided in N.J.S.A. 45:15-40(a), the assessment shall be in amounts provided for in N.J.S.A. 45:15-35. At the present time those amounts are $10.00 for broker licensees and $5.00 for salesperson licensees. However, a bill now pending in the legislature (A-1347) would raise those amounts to $20.00 and $10.00 respectively. If that bill is enacted into law earlier than 90 days prior to July 1, 1993, which is the date on which the assessments to be made by this proposed amendment would apply, then the assessments to be made will be in the higher amounts noted above.

All licenses renewed by the Commission in 1992 will expire on June 30, 1993. All initial licenses issued by the Commission after July 1, 1992 will expire on June 30, 1993. Thus this amendment will affect all licensees who renew their licenses on July 1, 1993, regardless of whether they hold a license which was renewed on July 1, 1992, or a new license issued between July 1, 1992 and June 30, 1993.

Social Impact

The proposed amendment will have a beneficial social impact, as the replenishment of the Real Estate Guaranty Fund will assure that members of the public who have suffered losses as the result of the embezzlement, conversion or unlawful obtaining of money or property by a licensed real estate broker or salesperson, or an unlicensed employee of a real estate broker will continue to be afforded the protections provided by the Real Estate Guaranty Fund. The fund permits such persons to obtain a recovery of their losses up to a maximum of $10,000 for each claim filed.

Economic Impact

The proposed amendment will have a beneficial economic impact upon parties to real estate transactions who suffer economic losses as a result of the dishonest conduct of real estate licensees. The minimal amount of the assessments will impose only a very minor detrimental economic impact upon real estate licensees. However, by permitting aggrieved persons to recover up to $10,000 from the fund, many real estate licensees ultimately benefit from the fund's existence. This is true because a person's ability to recover from the fund may enable them to consummate a transaction which they otherwise might not have been able to complete, had they not been able to rely upon reimbursement from the fund of monies which had been wrongfully diverted by dishonest real estate licensees. By providing the wherewithall for such parties to complete real estate transactions, honest members of the licensee community benefit economically.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other com-

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pliance requirements on small businesses, other than the requirement that all brokers, regardless of the size of their business, pay the same assessment. The amount of the assessment cannot be varied based upon the size of a broker's business because the amount is established by statute at N.J.S.A. 45:15-35 and 45:15-40(a).

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

11:5-1.36 Real estate guaranty fund

(a) Every licensed real estate broker and licensed broker-salesperson shall pay an additional [$10.00] **amount as specified in N.J.S.A. 45:15-35** and every licensed real estate salesperson shall pay an additional [$5.00 fee] **amount as specified in N.J.S.A. 45:15-35** with their application for license renewal next following January 1, [1991] **1993.**

1. (No change.)

(b) (No change.)

LAW AND PUBLIC SAFETY

(a)

BOAT REGULATION COMMISSION

Boating Regulations

Seven Presidents Park, Long Branch, Monmouth County

Proposed New Rule: N.J.A.C. 7:6-1.45

Authorized By: Boat Regulation Commission, Robert J. Del Tufo, Attorney General, Department of Law and Public Safety.

Authority: N.J.S.A. 12:7-34.36 et seq. particularly 12:7-34.49 and 12:7-34.53.

Proposal Number: PRN 1993-2.

Submit written comments by February 3, 1993 to:
Captain William J. Gronikowski
New Jersey State Police
Marine Law Enforcement Bureau
Post Office Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

The New Jersey Boat Regulation Commission ("Commission") and the Department of Law and Public Safety ("Department") propose to adopt special regulations regarding the operation of personal watercraft and power vessels in certain jetty boundaries at Seven Presidents Park, located in Long Branch, Monmouth County, New Jersey, at the request of the Monmouth County Board of Recreation Commissioners. Specifically, the agencies propose to adopt special regulations which would prohibit a person, between Memorial Day weekend and Labor Day, from operating a personal watercraft or power vessel or any other type of vessel (hereinafter referred to in these regulations as watercraft) within the outer (eastern) most boundaries of the jetties located at the park with the exception of watercraft entering and egressing the water at the Boat Launch Area. Those watercraft entering and egressing the boat launch area are to stay within the designated entry-egress lane and are to maintain a speed no faster than that which is required to safely navigate the surf.

The Boat Launch Area is defined by two jetties; the northern jetty is located approximately 900 feet south of the park's northern boundary and the southern jetty is located approximately 1,300 feet south of the park's northern boundary.

Social Impact

The proposed special rule will have a positive social impact on the people of the State by continuing and refining the State's regulation of boating activities and the enforcement of the regulations regarding those activities. In this way, boating on the waterways of New Jersey will be conducted in a safe manner, increasing the enjoyment of boating for all vessel operators while also protecting the health and property of all persons enjoying the beaches of Seven Presidents Park, Long Branch, Monmouth County, New Jersey. The Monmouth County Board of Recreation Commissioners requested special regulations because the current general regulations regarding vessels and personal watercraft were inadequate to protect persons utilizing the park for other recreational activities, such as swimming, surfboarding and boogieboarding in areas designated for those purposes. The jetties provide an easily recognized boundary for all persons in the park. Regulation by political subdivisions of State waters is permitted only to the extent that such regulations are identical to State law and regulations promulgated by the Boat Regulation Commission. Promulgation of this new rule will allow enforcement by county park police and provide uniform regulation of ocean waters at the park.

Economic Impact

The proposed new rule will have little or no economic impact on the approximately 200,000 watercraft in the State since they require no additional compliance with standards of operation that involve additional equipment or other costs.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose any reporting, recordkeeping or other compliance requirements on small businesses. The rule will affect operation of all watercraft within the designated area at Seven Presidents Park but will not affect sales or rental of watercraft or other business activities.

Full text of the proposed new rule follows:

7:6-1.45 Seven Presidents Park, Long Branch, Monmouth County

Between Memorial Day weekend and Labor Day, no person shall operate a personal watercraft, power vessel or any other type of vessel (hereinafter referred to as watercraft) within the outer (eastern) most boundaries of the jetties located at Seven Presidents Park, Long Branch, Monmouth County, with the exception of watercraft entering and egressing the water at the Boat Launch Area. Those watercraft entering and egressing the boat launch area are to stay within the entry-egress lane as designated on site and are to maintain a speed no faster than that which is required to safely navigate the surf.

(b)

BOARD OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

Continuing Education

Proposed New Rule: N.J.A.C. 13:33-1.43
Proposed Amendment: N.J.A.C. 13:33-1.41

Authorized By: Board of Ophthalmic Dispensers and Ophthalmic Technicians, H. Lee Gladstein, Executive Director.

Authority: N.J.S.A. 52:17B-41.6a and 41.13.

Proposal Number: PRN 1993-13.

Submit written comments by February 3, 1993 to:
H. Lee Gladstein, Executive Director
Board of Ophthalmic Dispensers and Ophthalmic Technicians
Post Office Box 45011
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians is proposing a new rule, N.J.A.C. 13:33-1.43, to require mandatory continuing education for all licensed ophthalmic dispensers in order to qualify for license renewal. This rule will implement the legislative mandate of N.J.S.A. 52:17B-41.6a. The Board has determined that given the technological changes occurring in the field of opticianry, continuing education should be required of licensees in order to renew their biennial licenses. Such a requirement will improve the educational proficiency of licensees and at the same time benefit the consumers of the State in that the overall level of competency among licensees will be maintained and strengthened.

The rule requires a licensed ophthalmic dispenser to submit with the biennial renewal application proof of nine credits of continuing education

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per biennial period. An exception is made for licensees applying for their first biennial renewal. An ophthalmic dispenser on inactive status who seeks to reactivate his or her license must submit proof of completion of nine credits for each biennial period of approved inactive status. The rule includes the responsibilities of continuing education program sponsors to obtain Board approval prior to offering any course; notify all licensees of the time, place and date of the course being offered; and provide each course participant with a verification of attendance.

An amendment is proposed to the Board's fee schedule, N.J.A.C. 13:33-1.41, in order to include a $100.00 biennial continuing education sponsor fee to cover the Board's administrative and program evaluation costs.

Social Impact

The proposed new rule will require ophthalmic dispensers to attend continuing education programs, thereby maintaining their educational proficiency in a field where the technology is rapidly changing. Mandatory continuing education benefits not only the individual optician but also the consumers in the State of New Jersey who will have access to opticians who have a continuing obligation to be current in their occupation.

Economic Impact

The cost of continuing education courses to be undertaken by licensees will be an additional cost of doing business in the State of New Jersey. However, it is anticipated that this will not be an undue financial burden for licensees in that the credit-hour requirement (nine hours over a two year period, or 4½ hours per year) is moderate and there will be a wide range of approved courses from various sources at differing costs. To the extent that any increased costs of doing business may be passed on to consumers, the price of eyeglasses may be minimally affected. The Board has considered the potential economic impact on both licensees and consumers but believes that the benefits strongly weigh in favor of the rule.

Sponsors of continuing education courses will be required to pay a biennial fee of $100.00 for administrative costs and program evaluation.

Regulatory Flexibility Analysis

If for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., ophthalmic dispensers are deemed "small businesses" within the meaning of the statute, the following statements are applicable.

The proposed new rule creates new reporting, recordkeeping and compliance requirements for licensees in that they will be required to attend continuing education courses, to submit with their biennial renewals verification of attendance at such courses and to keep all sponsor verifications as part of their records for a period of three years. The services of other professionals are not needed in order to comply with the new reporting requirements. There are no initial capital costs and annual compliance costs are in large part determined by the courses the licensee chooses to take. For the reasons previously stated, the economic impact upon licensees is expected to be minimal. Because this requirement is intended to maintain a minimum level of proficiency in a field with rapidly changing technology, no exemption after the first biennial renewal period is possible regardless of the size of the business except in cases of undue hardship or certified illness.

The proposed new rule and fee schedule amendment will also apply to sponsors of continuing education. The Board estimates that approximately 10 sponsors will apply for program approval. Compliance requirements for program sponsors include filing an application for Board approval prior to offering any course; notifying all licensees of the time, place and date of the course being offered; and providing each course participant with a verification of attendance. It is unlikely that sponsors will require additional professional services in order to comply with these requirements. In addition to the $100.00 biennial fee, compliance costs for approved program sponsors include the cost of notifying all licensees of the program being offered and supplying participants with verification of program attendance. In the Board's opinion there should be no adverse economic impact upon small business because program costs will likely be offset by fees charged by the sponsors.

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

13:33-1.41 Fee schedule

(a) The following fees shall be charged by the Board effective upon promulgation.

1.-8. (No change.)

9. Continuing education sponsor fee (biennial) $100.00

13:33-1.43 Continuing education requirements

(a) No biennial renewal of a license for an ophthalmic dispenser shall be issued by the Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians for the biennial period commencing January 1, 1994 or any following biennial period unless the ophthalmic dispenser submits satisfactory proof to the Board of participation in approved continuing education courses as specified hereafter. Ophthalmic dispensers applying for their first biennial renewal are exempt from this mandatory continuing education requirement.

(b) Each ophthalmic dispenser licensed by the Board shall successfully complete nine credits per biennial period of approved continuing education course work, except that for the biennial period commencing January 1, 1994, five credits of continuing education course work shall be required for the period January 1, 1993 to December 31, 1993. One credit shall equal one hour of attendance at an approved course. Two credits may be carried over into a succeeding biennial period only if earned during the last six months of the preceding biennial period.

(c) Licensees shall submit to the Board, with the application for biennial license renewal, the sponsors' written verification of attendance. The ophthalmic dispenser shall maintain all sponsor verifications as part of his or records for a period of three years. Falsification of any information submitted with the renewal application may result in an appearance before the Board, penalties and/or suspension of the license.

(d) The Board may waive the requirements of this section on an individual basis in cases of certified illness or undue hardship.

(e) The Board shall approve only such continuing educational programs as are available on a reasonable nondiscriminatory basis to all persons practicing ophthalmic dispensing in the State. The Board shall maintain a list of all approved courses and lecturers at the Board offices and shall furnish this information to licensees upon request. Courses to be approved for the continuing education requirement shall be in areas of ophthalmic science, study related to the human eye and its care, or such other areas of opticianry education as the Board shall designate. Speakers, lecturers and others participating in the presentation of programs shall be recognized as possessing requisite qualifications and being of recognized repute in their area of instruction.

(f) Any person desiring approval as a sponsor of a continuing education course, seminar or program shall:

1. Complete and submit the written application form provided by the Board. The application form will elicit descriptive information concerning the course offering, such as:

i. The name and address of sponsoring organization and the name of individual filing application;

ii. The title and a complete description of course offering;

iii. The date, time (beginning and end) and place of course offering;

iv. Curriculum vitae of each speaker; and

v. The mechanism to be used to assess program value.

2. Secure Board approval prior to offering any continuing education course, seminar or program and prior to representing that any course, seminar or program fulfills the requirements of this section;

3. Notify all licensees of the time, place and date of the course being offered; and

4. Monitor the attendance at each approved course and furnish to each enrollee a verification of attendance.

(g) An ophthalmic dispenser on inactive status who seeks to reactivate his or her license shall submit proof to the Board of successful completion of nine credits of approved continuing education course work for each biennial period of approved inactive status.

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TRANSPORTATION

(a)

DIVISION OF SUPPORT SERVICES

Records Management
Issuance and Sale of NJDOT Public Records
Requirements, Accessibility and Sale of Public Records

Proposed Amendment: N.J.A.C. 16:1-2.2

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, Section 2(a), Executive Order No. 9(1963) and N.J.S.A. 47:1A-2.

Proposal Number: PRN 1993-4.

Submit written comments by February 3, 1993 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment under the provisions of Section 2(a), Executive Order No. 9(1963) and N.J.S.A. 47:1A-2, will cause "appraisal review analyses," internal opinion memoranda used in the Division of Right-of-Way, not to be deemed to be public records, subject to inspection and examination and available for copying. Review analyses are critiques of appraisals submitted to the Department of Transportation. It is essential that the Department of Transportation's reviewers are able to write freely and candidly in their reports. This results in offers of just compensation that are fair to both property owners and the Department. Also, some appraisers will refuse to accept work from the Department, if it becomes known that the Department's critiques of their work will be made public.

Appraisal review analyses are considered by the staff of the Division of Right-of-Way to be of a sensitive nature and it is recommended that review analyses be deemed not to be public records.

Therefore, the Department proposes to amend N.J.A.C. 16:1-2.2.

Social Impact

The proposed amendment under the provisions of Section 2(a), Executive Order No. 9(1963) and N.J.S.A. 47:1A-2 will cause "appraisal review analyses" to be not deemed public records, not subject to inspection and examination and available for copying. Public release of these analyses could inhibit the free and candid comments necessary for Department appraisal reviewers to establish just compensation amounts that are fair to both property owners and the Department. Also, some appraisers will refuse to accept work for the Department, should it become known that the Department's critiques of their work will be made public.

Economic Impact

The Department will incur direct and indirect costs for the promulgation of this amendment. There will be no economic impact to the public.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects internal operations and procedures within the Department of Transportation's Division of Right-of-Way.

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

16:1-2.2 Requirements; accessibility and sale of public records
(a)-(i) (No change.)

(j) The records listed below shall not be deemed NJDOT public records and shall not be made available for inspection, examination and copying:

1. Appraisal review analyses.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Rural Secondary Road Systems Aid

Proposed Repeal: N.J.A.C. 16:13

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 et seq., and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240.105 Stat. 1914).

Proposal Number: PRN 1993-5.

Submit comments by February 3, 1993 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66 (1978), the Department of Transportation proposes to repeal N.J.A.C. 16:13, Rural Secondary Road System Aid.

The chapter was reviewed by the staff of the Bureau of Local Highway Design, in compliance with the Department's ongoing rulemaking and review procedures. This review and analysis revealed that the rules were found to no longer be necessary, reasonable, adequate or responsible to the purpose for which they were originally promulgated. Additionally, funding for this program has been eliminated.

These rules were proposed to implement and comply with the provisions of the Federal Highway Act of 1970 and related Federal regulations. Rural Secondary funds under the Act were appropriated by the Federal Government and allocated annually to the State for right-of-way, preliminary engineering, construction and reconstruction of municipal, county and State highways on the Rural Secondary Road System. These funds were committed by the Department of Transportation and matched by funds provided by the State, county, or local municipality or combination thereof sponsoring the project. The Act was further supplemented by the Surface Transportation Assistance Act (STAA) of 1987, which has been replaced by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240.105 Stat. 1914), effective December 18, 1991. Under ISTEA, the Rural Secondary Road Aid program has been discontinued.

Social Impact

The proposed repeal will comply with the requirements of Executive Order No. 66(1978), and the Intermodal Surface Transportation Efficiency Act (ISTEA), in that the Department has removed rules and regulations no longer needed for the purposes they were promulgated.

Economic Impact

The proposed repeal of these rules should not economically impact local governments, because funding under this program has been eliminated. The Department will incur direct and indirect costs for personnel performing these rulemaking requirements.

Regulatory Flexibility Statement

The proposed repeal does not place any reporting, recordkeeping, or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The chapter primarily affects a program which provided funds annually from the Federal Government to the State for the right-of-way, preliminary engineering, construction and reconstruction of municipal, county, and State highways on the Rural Secondary System. Funding under this

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program has been eliminated. A regulatory flexibility analysis is not required, as no small businesses are affected.

Full text of the chapter proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:13.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Federal Aid Urban Systems

Proposed Repeal: N.J.A.C. 16:20

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 et seq., and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240.105 Stat. 1914).

Proposal Number: PRN 1993-6.

Submit comments by February 3, 1993 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to repeal N.J.A.C. 16:20, Federal Aid Urban System.

The chapter was reviewed by the staff of the Bureau of Local Highway Design, in compliance with the Department's ongoing rulemaking and review procedures. This review and analysis revealed that the rules were found to no longer be necessary, reasonable, adequate or responsible to the purpose for which they were originally promulgated. Additionally, funding for this program has been eliminated.

These rules were proposed to implement and comply with the provisions of the Federal Highway Act of 1970 and related Federal regulations. Federal Aid Urban System (FAUS) funds under the Act were appropriated by the Federal government and allocated annually to the State for right-of-way, preliminary engineering, construction and reconstruction of municipal, county and State highways on the Federal Aid Urban System. These funds were committed by the Department of Transportation and matched by funds provided by the State, county, or local municipality or combination thereof sponsoring the project. The Act was further supplemented by the Surface Transportation Assistance Act (STAA) of 1987, which has been replaced by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240.105 Stat. 1914), effective December 18, 1991. Under ISTEA, the Federal Aid Urban System programs have been discontinued.

Social Impact

The proposed repeal will comply with the requirements of Executive Order No. 66(1978), and the Intermodal Surface Transportation Efficiency Act (ISTEA), in that the Department has removed rules and regulations no longer needed for the purposes they were promulgated.

Economic Impact

The proposed repeal of these rules will not economically impact local governments, because funding under this program has been eliminated. The Department will incur direct and indirect costs for personnel performing these rulemaking requirements.

Regulatory Flexibility Statement

The proposed repeal does not place any reporting, recordkeeping, or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The chapter proposed for repeal primarily affects a program which provided funds annually from the Federal Government to the State of New Jersey for right-of-way, preliminary engineering, construction and reconstruction of municipal, county and State highways on the Federal Aid Urban System. The funding has been eliminated, as described in the Summary. Therefore, a regulatory flexibility analysis is not required.

Full text of the chapter proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:20.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

No Passing Zones
Route N.J. 41 in Camden County

Proposed Amendment: N.J.A.C. 16:29-1.71

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-201.1.

Proposal Number: PRN 1993-1.

Submit comments by February 3, 1993 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish "No Passing" zones along Route N.J. 41 in the Township of Gloucester and the Borough of Runnemede, Camden County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from local governments, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of the "No Passing" zones along Route N.J. 41 in the Township of Gloucester and the Borough of Runnemede in Camden County was warranted. The no passing zones are being implemented along this segment of the highway system because the safety of the roadway configuration will be enhanced by a no passing restriction. The Department therefore proposes to amend N.J.A.C. 16:29-1.71.

Social Impact

The proposed amendment will establish "No Passing" zones along Route N.J. 41 in the Township of Gloucester and the Borough of Runnemede, Camden County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected and no passing zone markings will be placed to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "No Passing" zone highway markings. The costs involved in the installation and procurement of highway markings vary, depending upon the material used, length of zone, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:29-1.71 Route 41

(a) The following certain parts of State highway Route N.J. 41 shall be designated and established as "No Passing" zones:

1. (No change.)

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2. That part within the Township of Gloucester and the Borough of Runnemede, Camden County, as described in drawing #HNPZ-117, dated May 9, 1991.

Agency Note: The drawings referenced in this proposed amendment were filed with the Office of Administrative Law as part of this notice of proposal. They may be inspected at the Office of Administrative Law, Quakerbridge Plaza Building 9, Trenton, New Jersey, or at the Department of Transportation, Bureau of Traffic Engineering and Safety Programs, 1035 Parkway Avenue, Trenton, New Jersey.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax; Real Property Defined

Proposed Amendments: N.J.A.C. 18:12-10.1, 10.2 and 10.3

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:4-2.2k.

Proposal Number: PRN 1993-3.

Submit comments by February 3, 1993 to:
Nicholas Catalano
Chief, Tax Services Branch
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments would modify N.J.A.C. 18:12-10.1, 10.2 and 10.3 to bring the rules into conformance with P.L. 1992, c.24, which was signed into law on June 26, 1992. The new law, known as the "Business Retention Act," amended the definition of locally taxable real property to clarify the exclusion for machinery, apparatus and equipment used or held for use in business. The bill specified that if machinery, apparatus or equipment is used or held for use in business and is neither a structure nor machinery, apparatus or equipment the primary purpose of which is to enable the structure to support, shelter, contain, enclose or house persons or property, it is classified as personal and not real property.

The bill reversed the classification of property and narrowing of business personal property exclusions accomplished by a series of recent New Jersey Tax Court decisions, including *Texas Eastern Transmission Corporation v. Div. of Taxation,* 11 *N.J. Tax* 198 (1990); *American Hydro Power Partners v. Clifton,* 11 *N.J. Tax* 12 (1990); and *Badische Corporation v. Town of Kearny,* 11 *N.J. Tax* 385 (1990).

The definition of "functionally essential" has been deleted as no longer necessary; that for "machinery, apparatus or equipment" has been amended; and definitions for "production process" and "use or held for use in business" have been added at N.J.A.C. 18:12-10.1.

N.J.A.C. 18:12-10.2(a)4 has been substantially revised and a new subsection (b) added to incorporate the amended statutory provisions and to specify what is considered real property.

N.J.A.C. 18:12-10.3 has been amended to clarify the real property nature of storage tanks in excess of 30,000 gallon capacity.

Social Impact

The proposed amendments will have a positive social impact by bringing the existing rules into conformance with the statute as amended. The statutory changes made by the "Business Retention Act" were intended to resolve confusion with respect to the classification of certain real and personal property for local tax purposes caused by the Tax Court's interpretation of N.J.S.A. 54:4-1 in the case of *Texas Eastern Transmission Corporation v. Div. of Taxation,* 11 *N.J. Tax* 198 (1990) and other recent decisions, and to reaffirm the broad exclusion from local property taxes of business personal property used or held for use in business.

Economic Impact

The proposed amendments reflect changes made to the statute itself. The "Business Retention Act" reversed recent Tax Court cases which had made the classification of certain real and personal property dependent on the type of structure in which the property was located or to which it was affixed. The court cases restored the uncertainty, risk of "tax lightning," and uncompetitive property tax costs which led to the original exemption of business personal property from local taxation, and threatened to shrink the economic activity, earnings and property base on which the state and local governments depend for tax revenue. By reversing these court cases, the Act was expected to have a generally beneficial impact on the economy.

Regulatory Flexibility Statement

The proposed amendments do not impose reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 54:14B-16. The proposed amendments are intended to bring the definition of real property in N.J.A.C. 18:12-10.2 and 10.3 into conformance with the new definition enacted in the "Business Retention Act," P.L. 1992, c.24.

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

18:12-10.1 Definitions

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

. . .

["Functionally essential" refers to machinery, apparatus or equipment necessary for the habitability of the structure, including, but not limited to, such items as air conditioning and heating equipment or apparatus, lighting and bathroom fixtures, elevators, escalators, electrical wiring, plumbing, etc.]

"Machinery, apparatus or equipment" means any machine, device, mechanism, instrument, tool, **tank** or [other] item of **tangible personal** property [directly] used **or held for use in business** [in the manufacture, assembly, refining or processing of property or in the sale of services or goods in the regular course of business]. The term includes, but is not limited to, that machinery, apparatus or equipment described in N.J.A.C. 18:24-4.2. The term also includes machinery, apparatus or equipment directly used in the production of sale of gas, water, steam, electricity or telecommunication services and such items directly used in the production of property on farms as defined in N.J.S.A. 54:32B-8.16.

. . .

"Production process" means the process of commencing with the introduction of raw materials or components into a systematic series of manufacturing, assembling, refining or processing operations and ceasing when the product is in the form in which it will be sold to the ultimate consumer.

. . .

"Used or held for use in business" means any item of machinery, apparatus or equipment used or held for use in a business transaction, activity or occupation conducted for profit in New Jersey.

18:12-10.2 Real **and personal** property

(a) Real property means all lands and improvements thereon and includes personal property affixed to real property or an appurtenance thereto, unless personal property so affixed meets all of the conditions in (a)1 through 3 below or in [(b)](**a**)4 below.

1.-3. (No change.)

4. The personal property so affixed is machinery, apparatus, or equipment [which is neither functionally essential to a structure the personal is within or to which the personal property is affixed nor constitutes a structure itself.] **used or held for use in business and is neither a structure nor machinery, apparatus or equipment the primary purpose of which is to enable a structure to support, shelter, contain, enclose or house persons or property. For purposes of this subsection, real property includes pipe racks, and piping and electrical wiring up to the point of connections with the machinery, apparatus, or equipment of a production process.**

(b) Personal property includes only the machinery, apparatus or equipment of a petroleum refinery that is directly used to manufacture petroleum products from crude oil in any of the series of

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petroleum refining processes commencing with the introduction of crude oil and ending with refined petroleum products, excluding items of machinery, apparatus or equipment which are located on the grounds of a petroleum refinery but which are not directly used to refine crude oil into petroleum products.

Recodify existing (b) as (c) (No change in text.)

18:12-10.3 Tanks with a capacity in excess of 30,000 gallons

[Any] **A storage** tank having a capacity of more than 30,000 gallons is deemed to be real property. **The fact that products are mixed, blended, heated or subjected to a similar non-production process within a storage tank shall not in itself render that tank personal property.**

(a)

DIVISION OF TAXATION

Gross Income Tax
Credit for Excess Contributions
Proposed Amendment: N.J.A.C. 18:35-1.17

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54A:9-17(a).

Proposal Number: PRN 1993-11.

Submit comments by February 3, 1993 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

N.J.A.C. 18:35-1.17 is proposed for amendment to include guidance for employers and employees regarding the Workforce Development Partnership Fund established by recent legislation. As a result of P.L. 1992, c.44, employers will now be required to separately state on the W-2 the amounts withheld for the Workforce Development Partnership Fund, along with the amounts withheld for New Jersey unemployment insurance and disability insurance (public or private).

Employees who find that they have overpaid their contributions to the Workforce Development Partnership Fund will be entitled to claim a credit against gross income tax. Overpayments of contributions to the Workforce Development Partnership Fund, unemployment insurance or disability benefits fund can be claimed as a credit by filing the NJ-2450 (in duplicate) when filing the New Jersey gross income tax return.

Social Impact

The proposed amendment will identify for the general working public the amount withheld from their salary which is being contributed to the Workforce Development Partnership Fund.

Economic Impact

The proposed amendment should have no specific economic impact, since it only requires an employer to separately state on the W-2 the amount of the employee's contribution to the Workforce Development Partnership Fund. The amendment does not impose a new reporting requirement on the employer but simply amends a requirement that already exists.

Regulatory Flexibility Analysis

The proposed amendment imposes requirements regarding the separate statement on W-2s issued by employers of amounts withheld for the Workforce Development Partnership Fund. The proposed amendment applies to small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., as well as to large businesses. Any action to exempt employers who may be small businesses would not be in compliance with the New Jersey Gross Income Tax Act. Therefore, the Division of Taxation has applied these provisions to employers uniformly.

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

18:35-1.17 Credit for excess contributions

(a) Credit for excess amounts deducted and withheld as worker contributions for unemployment and disability insurance shall be treated as follows:

1. Employers issuing a W-2 form to employees shall include on it:

i.-ii. (No change.)

iii. The amount withheld for Workforce Development Partnership Fund contributions;

Recodify existing iii and iv as **iv and v** (No change in text.)

(b) The latter two numbers referred to in [(a)1iii and iv] **(a)1iv and v** above are assigned by the New Jersey Division of Unemployment and Disability Insurance in the Department of Labor.

(c) An individual claiming a credit against gross income tax for overpayment of unemployment [or], disability insurance **or Workforce Development Partnership Fund** contributions shall claim such credit by including with his New Jersey 1040 or New Jersey 1040-NR [return] a completed New Jersey Form 2450 [Employee's Claim for Credit for Excess Unemployment and Disability Contributions], **in duplicate.** A claim not received within two years after the end of the calendar year in which the contributions were deducted is void. Such claims are not applicable to withholdings made during calendar years prior to 1983.

Examples 1-2. (No change.)

(d) (No change.)

OTHER AGENCIES

(b)

NEW JERSEY TURNPIKE AUTHORITY

Procedure for Prequalifications and Award of Construction Contracts
Proposed Amendment: N.J.A.C. 19:9-2.7

Authorized By: Herbert I. Olarsch, Esq., Administrative Procedures Officer, New Jersey Turnpike Authority (authorized by the Board of Commissioners).

Authority: N.J.S.A. 27:23-6.1.

Proposal Number: PRN 1993-8.

Submit comments by February 3, 1993 to:
Herbert I. Olarsch, Esq.
Administrative Procedures Officer
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, N.J. 08903

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:9-2.7(g) will permit that subsection to be in conformity with the New Jersey Turnpike Authority Standard Specifications. At present, the language of N.J.A.C. 19:9-2.7(g) states "A bidder shall be disqualified from future bidding on any Turnpike project if such bidder claims, whether successfully or not, its right to withdraw its bid because of a unilateral mistake. Such disqualification shall be effective for a period of six months from the date of opening the bid sought to be withdrawn." (emphasis added) The proposed amendment will substitute the word "may" for "shall" in the first paragraph, and provide that the Authority would choose to disqualify a withdrawing bidder only in cases where the withdrawing bidder did not act in a commercially reasonable manner.

Social Impact

The proposed amendment will impact only the New Jersey Turnpike Authority and any contractors who bid on Authority contracts. If adopted, bidders will be much less likely to be disqualified for withdrawing a bid due to a unilateral mistake. The Authority will benefit by being able to act in a discretionary manner towards such bidders, and will be acting in accordance with the Authority's bid specifications.

It is anticipated that the proposed change will be welcomed by potential bidders.

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The proposed change was made necessary by the fact that the rule, as now written, conflicts with the Authority's standard bid specifications which permit the Authority to exercise its discretion in disqualification of bidders who withdraw their bids due to unilateral mistake.

Economic Impact

There may be no economic impact since the purpose for the change will permit the Authority to exercise some discretion in disqualifying bidders who seek to withdraw their bids. By being able to act in a discretionary manner, the Authority will be in a position to award contracts to low bidders who may have withdrawn previous bids less than six months prior. In this way, the Authority may be able to save money, which is in the best interests of the citizens of New Jersey.

Regulatory Flexibility Statement

The proposed amendment will affect only those firms who do, or will, bid on Turnpike contracts. While some of these firms may be small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., no requirements are imposed by the proposed amendment. The amendment permits the exercise of Authority discretion in disqualifying certain bidders. Therefore, a regulatory flexibility analysis is not required.

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

19:9-2.7 Procedure for prequalifications and award of construction contracts

(a)-(f) (No change.)

(g) A bidder [shall] **may** be disqualified from future bidding on any Turnpike project if such bidder claims, whether successfully or not, its right to withdraw its bid because of a unilateral mistake. Such disqualification shall be effective for a period of six months from the date of opening the bid sought to be withdrawn. **Only in cases where the withdrawing bidder did not act in a commercially reasonable manner would the Authority choose to disqualify the bidder.**

(h) (No change.)

(a)

CASINO CONTROL COMMISSION

Internal Controls
Records Regarding Ownership
Proposed Amendment: N.J.A.C. 19:45-1.4

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 70(b), 70(l) and 84(b).

Proposal Number: PRN 1993-14.

Submit written comments by February 3, 1993 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission (Commission) recently adopted a number of new rules which codify various standard license conditions currently imposed on all casino licensees (see December 21, 1992 New Jersey Register). Among other things, newly adopted N.J.A.C. 19:45-1.4(c) requires that each casino licensee or applicant provide, upon request of the Commission or Division of Gaming Enforcement (Division), a list of all record holders of securities issued by its holding companies.

In commenting on that proposal, the Division correctly noted that the regulatory agencies also need to review lists of holders of securities issued by other affiliated entities which have provided financing related to the casino licensee or applicant and can thus be deemed qualifiers under N.J.S.A. 5:12-84(b). This proposed amendment to N.J.A.C. 19:45-1.4(c) implements the suggested modification regarding such lists.

Social Impact

The proposed amendment is not anticipated to have any significant social impact since the persons affected by these rules are already required to comply with comparable requirements. Such rules do, however, contribute to the strict regulation of casino gaming and the persons involved therein, consistent with the goals of the Casino Control Act, N.J.S.A. 5:12-1(b).

Economic Impact

The proposed amendment is not expected to impose any new economic burden on the regulated entities or the State. Any reporting costs incurred by the casino licensee, or costs incurred by the regulatory agencies in reviewing such information, will be no greater than those costs currently incurred.

Regulatory Flexibility Statement

The proposed amendment affects only 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. A regulatory flexibility analysis is thus not required.

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

19:45-1.4 Records regarding ownership

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

(c) Each casino licensee or applicant shall, upon request by the Commission or Division, provide a list of all record holders of any or all classes of securities issued by [its] **any** holding [companies] **company or by any other affiliated entity which is a party to a financial arrangement supported by a lien on the casino hotel or guaranteed by the casino licensee, or to a financial arrangement which results in any or all of the proceeds thereof being used in connection with the operations or financing of the casino control hotel.**

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Craps
Permissible Wagers
Payout Odds
Proposed Amendments: N.J.A.C. 19:47-1.2 and 1.4

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a) and 70(f).

Proposal Number: 1993-15.

Submit comments by February 3, 1993 to:
Barbara A. Mattie
Chief Analyst—Casino Operations Unit
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendments would recognize a "craps-eleven or C and E" wager as a permissible wager in the game of craps and permit the casinos to place the wager between the "Any Craps" betting circle and the "Eleven" betting circle.

Social Impact

The proposed amendments are not expected to have any significant social impact. However, since the dealer will no longer be required to break down the bet into two separate wagers, the speed of the game may be increased providing patrons with the opportunity to place more wagers. In this regard, casino licensees may realize a slight increase in gross revenues. Additionally, any such increase would be subject to an 8 percent gross tax for deposit to the Casino Revenue Fund to be appropriated exclusively for programs to benefit eligible senior citizens and disabled residents of New Jersey.

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Economic Impact

The proposed amendments may speed up the game and provide casino licensees with a slight increase in gross revenues since the wagers would no longer have to be broken down. As noted above, any such increase would be subject to an eight percent gross tax for deposit to the Casino Revenue Fund to be appropriated exclusively for programs to benefit eligible senior citizens and disabled residents of New Jersey.

Regulatory Flexibility Statement

These proposed amendments would affect only casino licensees, none of which qualifies as a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility statement is required.

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

19:47-1.2 Permissible wagers

(a) The following shall constitute the definitions of permissible wagers at the game of craps:

1.-17. (No change.)

18. "Craps-Eleven or C and E" shall mean a one roll wager that may be made at any time which shall win, as provided at N.J.A.C. 19:47-1.4(d), if either a craps (2, 3 or 12) or 11 is rolled immediately following placement of such bet and shall lose if any other total is thrown.

Recodify existing 18.-19. as **19.-20.** (No change in text.)

(b) (No change.)

19:47-1.4 Payout odds

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

(d) A Craps-Eleven or C and E bet shall be paid as if one half of the wagered amount had been placed on "Any Craps" and one half on "Eleven," and shall be paid as if two separate wagers were made for the one roll.

[(d)]**(e)** No casino licensee or his employees shall accept any wager that because of the amount thereof cannot be paid at the odds permitted by (b), [or] (c) **or (d)** above.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

General Provisions
Soil Erosion and Sediment Control Act
Adopted Amendments: N.J.A.C. 2:90-1.4 and 1.5

Proposed: October 19, 1992 at 24 N.J.R. 3587(a).
Adopted: November 23, 1992 by the State Soil Conservation Committee, Arthur R. Brown, Jr., Chairman.
Filed: December 9, 1992 as R.1993 d.13, **without change**.
Authority: N.J.S.A. 4:24-3 and 4:24-42.
Effective Date: January 4, 1993.
Expiration Date: June 22, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:90-1.4 Application

(a) Application for soil erosion and sediment control plan certification shall be made to the local district utilizing standard application forms adopted by the Committee. Such application shall indicate the information required to make a decision on certification of plans. Application forms are available at locations listed at N.J.A.C. 2:90-1.3.

(b) Applications for certification of soil erosion and sediment control plans shall include the following items:

1. One copy of the complete subdivision, site plan or construction permit application, including key map as submitted to the municipality (architectural drawings, plans and specifications for buildings not required) which includes the following:

i. The location of present and proposed drains and culverts with their discharge capacities and velocities and supporting computations and identification of conditions below outlets;

ii. A delineation of any area subject to flooding from the 100-year storm in compliance with the Flood Plains Act, N.J.S.A. 58:16A or applicable municipal zoning;

iii. A delineation of streams, wetlands pursuant to N.J.S.A. 13:9B and other significant natural features within the project area.

iv. The soils and other natural resource information used (delineation of the project site on soil map is desirable);

v. The land cover and use of area adjacent to the land disturbance; and

vi. All hydraulic and hydrologic data describing existing and proposed watershed conditions and a completed copy of the Hydraulic and Hydrologic Data Base Summary Form SSCC 251 HDF1. Where HEC 1 and HEC 2-U.S. Army Corps of Engineers or TR20 and WSP2-USDA Soil Conservation Service computer programs are used for modeling watershed hydrology and hydraulics, a copy of electronic input files shall be included. The Data Base Summary Forms and information regarding these computer programs are available at the locations listed at N.J.A.C. 2:90-1.3 above.

2. Four copies of the soil erosion and sediment control plan at the same scale as the site plan submitted to the municipality or other land use approval agency which includes the following information detailed on the plat:

i. The proposed sequence of development including duration of each phase in the sequence;

ii. A site grading plan delineating land areas to be disturbed including proposed cut and fill areas together with existing and proposed profiles of these areas;

iii. Contours at a two foot interval, showing present and proposed ground elevation;

iv. The locations of all streams and existing and proposed drains and culverts;

v. A stability analysis of all channels below all points of stormwater discharge which demonstrates that a stable condition will exist or there will be no degradation of the existing condition;

vi. The location and detail of all proposed erosion and sediment control structures including profiles, cross sections, appropriate notes, and supporting computations;

vii. The location and detail of all proposed nonstructural methods of soil stabilization including types and rates of lime, fertilizer, seed, and mulch to be applied;

viii. Erosion control measures for non-growing season stabilization of exposed areas where the establishment of vegetation is planned as the final control measure;

ix. For residential development, erosion control measures which apply to dwelling construction on individual lots with notation on the final plat that requirement for installation of such control measures shall apply to subsequent owners if title is conveyed; and

x. Plans for maintenance of permanent soil erosion and sediment control measures and facilities during and after construction, which include the designation of persons or entity responsible for such maintenance;

3. Appropriate fees as adopted by the individual district and approved by the Committee (see N.J.A.C. 2:90-1.8); and

4. Additional information as may be required by the district depending upon the scope, topography and complexity of the project.

(c) The applicant shall certify and agree that the applicant shall:

1. Certify that all soil erosion and sediment control measures are designed in accordance with current Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the Committee and found at N.J.A.C. 2:90-1.3 and will be installed in accordance with the plan as approved by the district;

2. Acknowledge that structural measures contained in the soil erosion and sediment control plan are reviewed for adequacy to reduce offsite soil erosion and sedimentation and not for adequacy of structural design;

3. Retain full responsibility for any damages which may result from any construction activity notwithstanding district certification of the soil erosion and sediment control plan;

4. Require that all engineering related items of the soil erosion and sediment control plan be prepared by or under the direction of and be sealed by a professional engineer or architect licensed in the State of New Jersey in accordance with N.J.A.C. 13:27-6;

5. Assure that any conveyance of the project or portion thereof is conditioned upon transfer of full responsibility for compliance with the certified plan to any subsequent owners;

6. Maintain a copy of the certified plan on the project site during construction;

7. Allow district agents to go upon project lands for inspection; and

8. Notify the district in writing at least 48 hours in advance of any land disturbance activity and upon completion of the project.

(d) If the person submitting the application is not the project owner, a notarized authorization by the owner or authorized corporate officer must be submitted with the application. For public agency projects, such authorization shall be made by the principal executive officer or elected official of the agency.

2:90-1.5 Procedure

(a)-(h) (No change.)

(i) District certification of a soil erosion and sediment control plan for any project shall be valid only for the duration of the initial project approval granted by the municipality or other land use approval agency but in no case shall exceed three and one-half years. All such municipal or other agency renewals of the project will require resubmission of the project plan and recertification approval by the district.

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EDUCATION

(a)

STATE BOARD OF EDUCATION

Bilingual Education
Multiple Indicators for Exit from Bilingual Programs
Adopted Amendments: N.J.A.C. 6:31-1.1 through 1.7 and 1.9 through 1.16

Proposed: October 5, 1992 at 24 N.J.R. 3497(a).

Adopted: December 2, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: December 9, 1992 as R.1993 d.14, **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. 18A:1-1, 18A:4-15, 18A:35-15 to 35-26, 18A:7A-1 et seq. and specifically 18A:7A-4 and 5, P.L. 1992, c.12.

Effective Date: January 4, 1993.

Expiration Date: November 16, 1994.

Summary of Public Comments and Agency Responses:

The Department of Education received one public comment from the New Jersey Association of School Administrators. The commenter, Joan L. Dreyfuss, spoke at the October 21, 1992 public testimony session held by the State Board of Education and submitted written comment.

COMMENT: The association was opposed to the proposed change in N.J.A.C. 6:31-1.12(c) that would delete the phrase "unless it can be demonstrated that this requirement would place an unreasonable burden on the local school district." It was argued that such a change would cause an adverse economic impact on a number of school districts particularly those that enroll pupils from many different language groups.

RESPONSE: Upon further review, the Department has concluded that the original language of Chapter 31 readopted as R.1989 d.600, effective November 16, 1989 and proposed for deletion in N.J.A.C. 6:31-1.12(c), should be maintained with modification. This change would adequately serve the needs of parents and students in these programs without penalizing districts that are truly unable to comply with the requirement.

Summary of Agency-Initiated Changes:

A technical change has been made to correct a printing error in proposed N.J.A.C. 6:31-1.10(e) where the word "place" has been changed to the word "placement."

A technical change has been made to correct a printing error in proposed N.J.A.C. 6:31-1.12(a) where the word "if" has been changed to the word "of."

N.J.A.C. 6:31-1.12(c) has been revised to ensure that the needs of parents and students in bilingual and ESL programs are being met without penalizing districts that are truly unable to comply with the requirement. The proposed N.J.A.C. 6:31-1.12(c) has been changed. The exemption, based on a district demonstrating unreasonable burden, is being restored upon adoption but modified to require that the demonstration of undue burden be part of the annual plan required in N.J.A.C. 6:31-1.6(c).

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

6:31-1.1 Definitions

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

. . .

"Bilingual education program" means a full-time program of instruction in all those courses or subjects which a child is required by law or rule to receive, given in the native language of the children of limited English proficiency enrolled in the program and also in English; in the aural comprehension, speaking, reading, and writing of the native language of the children of limited English proficiency enrolled in the program, and in the aural comprehension, speaking, reading and writing of English; and in the history and culture of the country, territory or geographic area which is the native land of the parents of children of limited English proficiency enrolled in the program, and in the history and culture of the United States. All pupils in bilingual education programs receive English as a second language instruction.

"Bilingual part-time component" means a program alternative in which pupils are assigned to monolingual English program classes, but are scheduled daily for their developmental reading and mathematics instruction with a certified bilingual teacher.

"Bilingual resource program" means a program alternative in which pupils receive daily instruction from a certified bilingual teacher in identified subjects and with specific assignments on an individual pupil basis.

"Bilingual tutorial program" means a program alternative in which pupils are provided one period of instruction in a content area required for graduation and a second period of tutoring in other required content areas. These two periods of instruction are provided by a certified bilingual teacher.

"Children of limited English proficiency" means pupils whose native language is other than English and who have sufficient difficulty speaking, reading, writing or understanding the English language as measured by an English language proficiency test, so as to be denied the opportunity to learn successfully in the classrooms where the language of instruction is English. This term means the same as limited English speaking ability, the term used in N.J.S.A. 18A:35-15 to 26.

"Developmental bilingual education programs" means a full-time program of instruction in elementary and secondary schools which provides structured English language instruction and instruction in a second language.

. . .

"English as a second language (ESL) program" means a daily developmental second language program which teaches aural comprehension, speaking, reading and writing in English using second language teaching techniques, and incorporates the cultural aspects of the pupils' experiences in their ESL instruction.

"English language fluency" means the ability to speak the language with sufficient structural accuracy; to use vocabulary to participate effectively in most formal and informal conversations on practical, social and school topics; to read material for information; and to complete forms and write essays and reports on familiar topics. Language fluency is not the same as language proficiency, which is the full command of language skills.

. . .

"Exit criteria" means the criteria which must be applied before a pupil may be exited from a bilingual, ESL, or English language services program.

"High-intensity ESL program" means a program alternative in which pupils receive two or more class periods a day of ESL instruction. One period is the standard ESL class, and the other period is a tutorial or ESL reading class.

"Instructional program alternative" means a part-time program of instruction that may be established by a district board of education in consultation with and approval of the Department of Education. All pupils in an instructional program alternative receive English as a second language.

. . .

"Review process" is the process established by the district board of education to assess limited English proficient students for exit from bilingual, ESL, or English language services programs.

6:31-1.2 Identification of eligible participants

(a) (No change.)

(b) The district shall determine the English language proficiency of all pupils whose native language is other than English by administering an English language proficiency test, assessing the level of reading in English, reviewing the previous academic performance of pupils as well as standardized tests in English and reviewing the input of teaching staff members responsible for the educational program for the limited English proficient pupils. Those pupils who score below the State-established cutoff score on the Language

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Assessment Battery or the Maculaitis Assessment Program as per the "Norming Study of the Language Assessment Battery and the Maculaitis Assessment Program—Practitioner's Report" (1989) and who have at least one other indicator, are pupils of limited English proficiency.

(c) The district shall report annually the number of pupils identified whose native language is other than English and, of that group, the number of pupils of limited English proficiency, on the Report of Limited English Proficient Students on Roll which is part of the Fall Report.

(d) The district shall administer the Maculaitis Assessment Program to all limited English proficient pupils who enter New Jersey schools after grade eight at the time of enrollment to determine their level of English language fluency.

6:31-1.3 Graduation requirements for pupils of limited English proficiency

(a) All pupils of limited English proficiency must satisfy requirements for high school graduation in accordance with provisions of N.J.A.C. 6:8-7.1 except:

1. Pupils of limited English proficiency who enter New Jersey schools in grade nine or later may demonstrate that they have attained State minimum levels of proficiency through the Special Review Assessment in their native language; and

2. (No change.)

6:31-1.4 Required programs for limited English proficient pupils

(a) (No change.)

(b) Whenever there are 10 or more pupils of limited English proficiency enrolled within the schools of the district, the district board of education shall establish an ESL program.

1. (No change.)

2. Programs and services designed to meet the special needs of pupils of limited English proficiency shall include, but not be limited to, compensatory education, special education and vocational training, and be provided in accordance with N.J.S.A. 18A:7A-4 and 5.

(c) (No change.)

6:31-1.5 Bilingual education program

(a) When, at the beginning of any school year, there are within the schools of the district, 20 or more pupils of limited English proficiency in any one language classification, the district board of education shall establish for each such classification a program in bilingual education for all pupils therein, providing also that a district board of education may establish a program in bilingual education for any language classification with fewer than 20 pupils. All pupils in bilingual education programs must receive ESL instruction.

(b) A district may establish an instructional program alternative with the approval of the Department of Education when there are 20 or more pupils eligible for the bilingual education program in grades kindergarten through 12, and the district is able to demonstrate that due to the age range, grade span and/or geographic location of eligible pupils, it would be impractical to provide a full-time bilingual program.

1. Instructional program alternatives shall be developed in consultation with and approved annually by the Department of Education after review of pupil enrollment and achievement data.

2. The instructional program alternatives that may be established are the bilingual part-time component, the bilingual resource program, the bilingual tutorial program and the high-intensity ESL program.

3. Districts implementing program alternatives must submit annually, student enrollment and achievement data that demonstrate the continued need for these programs.

4. As the number of pupils increases to the point where it would be feasible to form a self-contained or subject area class, the district shall establish a full-time bilingual education program.

(c) A program of bilingual education may make provisions for the voluntary enrollment on a regular basis of pupils whose primary language is English. Such programs of developmental bilingual education shall be designed to help pupils achieve proficiency in English and in a second language, while mastering subject matter skills. Instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a pupil to meet grade promotion and graduation standards. Where possible classes in these programs shall be comprised of approximately equal numbers of pupils of limited English proficiency and of pupils whose native language is English.

Recodify existing (e) and (f) as (d) and (e) (No change in text.)

(f) Bilingual programs and services designed to meet the special needs of pupils of limited English proficiency shall include, but not be limited to, compensatory education, special education and vocational education services, and be provided by districts in accordance with N.J.S.A. 18A:7A-4 and 5.

6:31-1.6 Approval procedures

(a) (No change.)

(b) Plans submitted by districts for approval shall include information on the following:

1.-2. (No change.)

3. School information;

4. Evaluation design; and

5. Review process for exit.

(c) Districts shall submit annually evaluation data which shall include achievement information in reading, writing, mathematics, and ESL, and the exit data for the pupils of limited English proficiency enrolled in the district.

(d) (No change.)

6:31-1.7 Supportive services

(a) Pupils enrolled in bilingual, ESL, and English language services programs shall have full access to educational services available to other pupils in the school district.

(b) School districts may use bilingual personnel on a full or part-time basis to provide supportive services, such as counseling, to pupils of limited English proficiency. To the extent that is administratively feasible, supportive services should be provided by personnel who are familiar with and knowledgeable of the unique needs and background of the limited English proficient pupils and their parents.

6:31-1.9 Certification

(a) All teachers of bilingual classes shall hold a valid New Jersey instructional certificate with an endorsement for the appropriate grade level and/or content area, as well as an endorsement in bilingual education, pursuant to N.J.S.A. 18A:6-38 et seq. and N.J.S.A. 18A:35-15 to 26.

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

6:31-1.10 Bilingual, ESL, and English language services program participation

(a) All school-age pupils of limited English proficiency shall be enrolled in the bilingual, ESL or English language services education program established by the school district, as prescribed in N.J.A.C. 6:31-1.4(b) and 6:31-1.5(a).

(b) Pupils enrolled in the bilingual, ESL, or English Language services program shall be placed in a monolingual English program when they have demonstrated readiness to function successfully in an English-only program. The process to determine the readiness or inability of the individual pupil to function successfully in the English-only program shall be initiated by the pupil's level of English proficiency as measured by a State-established cutoff score on an English language proficiency test, and the readiness of the pupil shall be further assessed on the basis of multiple indicators which shall, at a minimum, include classroom performance, the pupil's reading level in English, the judgment of the teaching staff member or members responsible for the educational program of the pupil, and performance on achievement tests in English (see P.L. 1991, c.12).

(c) Pupils enrolled in the bilingual, ESL, or English language services program shall be assessed annually for exit.

(d) (No change.)

(e) When the review process for exiting a pupil from a bilingual, ESL, or English language services program has been completed, the district board of education shall notify, by mail, the pupil's parent(s) or legal guardian of the determination of placement. If the parent(s), guardian or teaching staff member disagrees with the *[place]*

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placement, he or she, upon exhausting the local district's appeal process, may appeal the placement before the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

6:31-1.11 Location

All bilingual, ESL, and English language services programs shall be conducted within classrooms approved by the county superintendent of schools within the regular school buildings of the district.

6:31-1.12 Notification

(a) No later than 10 working days after the enrollment of any pupil in a bilingual, ESL, or English language services program, the district shall notify, by mail, the parent(s) or legal guardian that the pupil has been enrolled in a bilingual, ESL, or English language services education program. The notice shall contain a simple, non-technical description of the purposes, method and content of the program in which the pupil is enrolled. The notice shall also inform the parent(s) *[if]* ***of*** their right to review and discuss with district administrators the procedures and pertinent data used to identify their child as having limited English proficiency. The notice shall also advise the parent(s) of the appeal process to be followed pursuant to N.J.S.A. 18A:6-9, if they wish to challenge the identification of their child. During the pendency of any such appeal before the Commissioner, the child shall remain enrolled in the program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

(b) School districts shall send progress reports to parent(s) of pupils enrolled in bilingual, ESL, or English language services programs in the same manner and frequency as progress reports are sent to parent(s) of other pupils enrolled in the school district.

(c) Progress reports shall be written in English and in the native language of the parent(s) of pupils enrolled in the bilingual program. The progress reports for pupils enrolled in an ESL program shall be written in English and in the native language of the parent(s) ***, unless it can be demonstrated and documented in the annual plan required in N.J.A.C. 6:31-1.6(c) that this requirement would place an unreasonable burden on the local school district***.

(d) Districts shall notify the parent(s) when pupils meet the exit criteria and are placed in a monolingual English program. The notice shall be in English and in the language in which the parent(s) possesses a primary speaking ability.

6:31-1.13 Joint programs

A school district may join with any other school district(s), according to procedures prescribed by the Commissioner of Education with the approval of the county superintendent, to provide bilingual, ESL or English language services programs.

6:31-1.14 Parental involvement

(a) Each district shall provide for the maximum practicable involvement of parent(s) of pupils of limited English proficiency in the development and review of program objectives and dissemination of information to and from the local school districts and communities served by the bilingual, ESL, or English language services education program.

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

6:31-1.15 Office of Bilingual Education

(a) (No change.)

(b) The Office of Bilingual Education shall be charged with the following:

1. (No change.)

2. Providing technical assistance to school districts in the implementation of their bilingual, ESL, and English language services programs; and

3. (No change.)

6:31-1.16 State advisory committee on bilingual education

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

(c) The committee shall be composed of at least 15, but not more than 25, members, one of whom shall be elected chairperson. The membership shall include the following representation:

1.-4. (No change.)

5. A minimum of two, but not more than four, school administrators of bilingual or ESL education programs; and

6. (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL CLAIMS ADMINISTRATION

Processing of Damage Claims Under Spill Compensation and Control Act

Adopted New Rules: N.J.A.C. 7:1J
Adopted Repeal: N.J.A.C. 17:26

Proposed: April 6, 1992 at 24 N.J.R. 1255(a).

Adopted: November 23, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: December 1, 1992 as R.1993 d.2, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 58:10-23.11 et seq., especially 58:10-23.11j(a), 58:10-23.11m, 58:10-23.11t, and N.J.S.A. 13:1D-9.

DEPE Docket Number: 10-92-03.

Effective Date: January 4, 1993.

Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (Department) is adopting new rules, and repealing existing rules, governing the processing of damage claims against the New Jersey Spill Compensation Fund (the "Fund") under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the "Spill Act").

The proposed repeal and new rules were published in the New Jersey Register on April 6, 1992. The Department published notice of the proposal in the Star-Ledger and in the Trenton Times. The Department held a public hearing in Trenton, New Jersey on May 4, 1992, at which no one testified. The Department received written comments from the following persons during the 60-day public comment period, which closed on June 5, 1992:

Name—Affiliation

F.M. Anderson—Exxon Company, U.S.A., Marketing Department, Business Analysis, Consumer, Legislative and Regulatory Affairs
Randi De Martini—Atlantic County Department of Health and Institutions
J. Stephen Dorrler—Marine Spill Response Corporation
Michael Gordon, Esq.—Gordon and Gordon (adopting comments made by Rutgers Environmental Law Clinic)
John G. Hnat—DuPont Chambers Works
Maria D. Laurino, Esq.—Hackensack Water Company
Edward Lloyd, Esq. and William Sullivan, Esq.—Rutgers Environmental Law Clinic, on behalf of New Jersey Public Interest Research Group, New Jersey Environmental Federation, Ironbound Committee Against Toxic Waste, and Association of New Jersey Environmental Commissions
Anthony Matarazzo—Elizabethtown Water Company
Michael Nee—Hackensack Water Company
Susan Oxford, Esq.—New Jersey Department of the Public Advocate, Division of Public Interest Advocacy

Summaries of all comments, and the Department's responses, follow:

General Comments

COMMENT 1: Elizabethtown Water Co. stated that bureaucratic obstacles delayed the circulation and availability of the proposal to preclude interested party comments. The commenter stated that much of the comment period was wasted preparing a request and check for prepayment prior to receiving a copy of the proposal. The commenter recommended that the Department return to the practice of distributing rule proposals to interested parties.

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RESPONSE: The Department disagrees that bureaucractic obstacles delayed the circulation or availability of the proposal. The proposal was published in the New Jersey Register, a publication which is widely available. In addition, the Department's Public Access Center ((609) 777-DEPE) provides a copy of any pending Department rule proposal upon request, free of charge.

The Department also disagrees that comments from interested persons were precluded. In recognition of the comprehensive nature of the proposal, the Department accepted public comments over a 60-day period, rather than using the statutory minimum 30-day period. In addition, the Department announced and held a public hearing at which its representatives were available to discuss the proposal.

The commenter correctly notes that the Department frequently distributes rule proposals to interested persons to ensure that they are aware of the proposal. However, for these rules, the universe of interested persons was so broad that no distribution list would have been fair or reasonable. The rules will affect any person who has suffered damages as a result of a discharge of a hazardous substance, and any person who may potentially be liable for such a discharge. To distribute copies of the proposal only to a small subset of that group of affected persons, such as water purveyors, would be unfair to the rest of the group.

COMMENT 2: Rutgers Environmental Law Clinic commented that the Department has taken an important step in codifying and articulating a process that has been the quintessential 'black box' for many years.

RESPONSE: The Department appreciates the commenter's support.

Subchapter 1. General Provisions

COMMENT 3: Rutgers Environmental Law Clinic commented that the definitions of "cleanup and removal costs" and "damages" should include testing and monitoring costs.

RESPONSE: The Department has not made the suggested change, because it would make the rule inconsistent with the Spill Act, and because the change is not necessary to address the commenter's concern. The definition of "cleanup and removal costs" is drawn from the Spill Act at N.J.S.A. 58:10-23.11b(d). The definition of "damages" is based upon the list of items for which the Spill Act provides that the Fund is strictly liable. N.J.S.A. 58:10-23.11g. The definitions of "damages" and "cleanup and removal costs" include all costs associated with a discharge, and the taking of reasonable measures to prevent or mitigate damage to the public health, safety or welfare. These definitions would include the reasonable cost of Department approved testing and monitoring.

COMMENT 4: Marine Spill Response Corporation commented that the "cleanup and removal costs" definition could be interpreted to require spill responders to obtain "written approval" before responding to an oil spill, as a precondition to recovering cleanup and removal costs. Such a requirement could have unacceptable consequences because a responder who conscientiously responds to the spill prior to obtaining written approval runs the risk of incurring expenses to clean up the spill that may not be reimbursed. Many responders will not incur this risk, thereby potentially hindering effective response in New Jersey. Second, unacceptable delays in response will result if responders who have previously been contacted by potentially responsible parties cannot respond to a spill after oil is already in the water without first going through an administrative process. Privately contracted responders should be able to obtain written approval prior to an oil spill so that response occurs as soon as possible after notification of such a spill. The definition of "cleanup and removal costs" should be amended to: "all costs associated with a discharge, incurred by the State, or its political subdivisions, or their agents, or any person with written approval from the Department, *including any person cited in a Discharge Cleanup and Removal Plan approved by the Department pursuant to N.J.A.C. 7:1E-4.7.*"

RESPONSE: The requirement for the Department's written approval comes from the definition of "cleanup and removal costs" in the Spill Act. N.J.S.A. 58:10-23.11(b)d. Therefore, the Department cannot change the requirement.

The Department disagrees with the commenter's suggested change to allow for blanket approval to be issued before a discharge actually occurs. The change would impair the Department's ability to provide guidance in responding to the circumstances of a particular discharge.

While the Department recognizes the rules should not encourage ineffective responses and unnecessary expenses, the Department does not believe that the rule will cause administrative delays to spill response or that it will provoke fears of non-reimbursement. The person responding to the discharge should be contacting the Department's emergency response hotline ((609) 292-7172) immediately, and can obtain direction and approval via telephone and fax. In addition, the Department's emergency response specialists normally arrive at a discharge site shortly after receiving notification, and supervise the conduct of the response in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act Amendments of 1972. A private contracted responder does not relieve the discharger from its responsibilities under the Spill Act. It is the discharger's responsibility to clean up the spill.

COMMENT 5: Elizabethtown Water Co. commented that the definition of "discovery" is ambiguous. It can be interpreted in two ways: 1) the water supply is usable and is not eligible for a claim until it exceeds a maximum contaminant level, or 2) the water supply becomes eligible upon detection of a trace amount of a contaminant. The question of when to submit a claim should be tied down in the definition of "discovery" to the time at which contaminants are detected to exceed the applicable standards.

RESPONSE: The Department agrees that the definition is ambiguous, and has revised the definition of "discovery" upon adoption to make it clear that the date of discovery is the date on which the claimant knew or should have known that he or she had incurred damages. Under the revised definition, it will be clear that "discovery" cannot be based solely upon detection of a trace amount of a contaminant, because that information alone does not make the claimant aware that he or she has incurred damages.

COMMENT 6: Atlantic County Department of Health and Institutions commented that the definition of discovery is misleading. The time of discovery should be when a claimant was notified that a hazardous substance, that was previously not reimbursed by the Spill Fund, was reimbursable, not when the claimant actually found it. This was not addressed in the regulations.

RESPONSE: The Department disagrees with the commenter's suggestion, which would create a "Catch-22" situation: under that suggestion, the time for the claimant to make a claim would not begin to run until the administration advised the claimant that the claim was reimbursable; however, the administration would not necessarily know this until after the claimant had submitted the information to be contained in a claim.

When the claimant discovers contamination by a hazardous substance, he or she has reason to believe that damages have resulted from a discharge. At this stage, there is no reason for the claimant to delay submitting the basic information which constitutes a claim, even if information which may later be discovered will be reason to deny the claim. The Department has structured the claims process so that it does not burden the claimant with the responsibility to determine that all of the eligibility requirements for reimbursement are definitely satisfied before filing a claim. The claimant's suggestion would shift part of that burden to the claimant.

COMMENT 7: DuPont commented that the definitions of "discharge" and "hazardous substance" should be revised to exclude normal wastewater discharges authorized under valid NJPDES permits. The proposed definition of "hazardous substance" provides no de minimis levels as are permitted in NJPDES permits. The current wording of these two definitions could be interpreted to include normal NJPDES outfalls as discharges of hazardous substances that qualify for damage claims under these regulations. The definitions should specifically exclude permitted NJPDES discharges from events that qualify for damage claims.

RESPONSE: The Department has not made the suggested change. The Spill Act prohibits the discharge of hazardous substances, but excludes from the prohibition discharges pursuant to and in compliance with a Federal or State permit. N.J.S.A. 58:10-23.11c. However, the statute makes no such distinction between permitted discharges and other discharges in provisions establishing eligibility for a claim for damages. The Department believes that the Legislature declined to make such a distinction because it recognized that a person who incurs damages as a result of a discharge of a hazardous substance is no less damaged if the discharge happened to be in accordance with a permit. For this reason, the Department's position is that if a person suffers damages resulting from a discharge in accordance with a permit, that person's claim is eligible for compensation if it meets the normally applicable eligibility criteria.

COMMENT 8: Elizabethtown Water Co. commented that the definition of "potable water" should include water for use in firefighting. Department regulations prohibit the installation of water mains under six inches in diameter as well as providing that it is the responsibility of the water purveyor to provide water for use in firefighting. The

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proposed definition and provisions for reductions in compensation creates a situation where the State will not provide the funding for these items when a community water supply is requested to extend into an affected area to aid the public needs.

RESPONSE: The Department has not made the suggested change. No Department regulation prohibits the installation of water mains under six inches in diameter, or requires a water purveyor to provide water for use in firefighting. Instead, N.J.A.C. 7:10-11.7(c) provides that the minimum diameter of a distribution main is six inches, unless justified by hydraulic analysis and approved by the Department. N.J.A.C. 7:10-11.7(c) further provides that if the main is intended to supply a fire hydrant, a diameter of less than six inches will not be approved. Neither of these provisions requires firefighting capacity or a six-inch main.

As discussed in the proposal, the cost of the capacity needed for firefighting does not result from the discharge, because firefighting is not a purpose requiring water which would be satisfactory for human consumption. Accordingly, the Department has not made the suggested change.

COMMENT 9: Atlantic County Department of Health and Institutions commented that the definition of a Spill Fund Claims Area ("SFCA") is unclear. The commenter questioned whether the SFCA was the same as the "Groundwater Impact Area." The commenter further questioned whether wells that are not contaminated receive the same benefits as the wells that are contaminated if both fall in the SFCA?

RESPONSE: The Department disagrees that the definition of SFCA is unclear. The SFCA consists of the currently known extent of ground water pollution, combined with the most probable pollution migration zone. The rule describes exactly how the Department delineates each of these areas.

The term "groundwater impact area" is not used or defined in these rules, in any other Department regulations, or in any environmental statute, and therefore has no definite or consistent meaning. The term "SFCA" is defined separately in this rule, without any reference to the term "groundwater impact area."

If a well is not contaminated at the time the Department delineates the SFCA, but is within the SFCA, it is most probable that the well will become contaminated. Therefore, action to ameliorate the damages from the discharge will be addressed to that well, along with the wells which are actually contaminated at the time.

COMMENT 10: Exxon Company, U.S.A. commented that the signatures and certifications section should be changed from "a person authorized ... secretary of the corporation," to "a principal executive of at least the level of vice president." This change is consistent with signatory requirements in the Spill Act, Underground Storage of Hazardous Substances Act, and all other New Jersey environmental laws.

RESPONSE: The Department has not made the suggested change. The purpose of the signatory requirement is to ensure that a person signing a claim or affidavit on behalf of a corporation has the authority to do so, so that the Department can rely upon that signed document. A vice president will not necessarily have that authority. There is no reason to believe that it will be onerous to obtain the necessary authorizing resolution from the board of directors.

Subchapter 2. Claims Generally

COMMENT 11: Elizabethtown Water Co. stated that two provisions of the rule appear to conflict. N.J.A.C. 7:1J-2.4(a) renders a claim ineligible for compensation if it is based on damages that are contingent or speculative, while N.J.A.C. 7:1J-3.1(b) allows a water purveyor to make a claim if ground water contamination is or will render a supply unsuitable.

RESPONSE: The Department disagrees. Under N.J.A.C. 7:1J-3.1(b), the water purveyor can make a claim once the Department determines that as a result of a discharge, an existing supply of water is or will become unsuitable to serve the needs of the purveyor's customers. Once the Department has made this determination, the damages are no longer contingent or speculative.

COMMENT 12: Marine Spill Resources Corporation commented that although the proposed rules allow a claimant to make a claim even if they may be entitled to reimbursement from other sources, the rules do not adequately explain when or how a potential claimant may file a claim with the Department while simultaneously pursuing a claim for compensation "from any other source from which compensation is reasonably likely to be available." The Department should fully delineate the specific process for filing such a claim.

RESPONSE: The rules fully delineate the specific process for filing a claim. The process is not affected by the claimant's pursuit of other sources of compensation.

The procedure for filing a claim is set forth in N.J.A.C. 7:1J-6.3. This procedure applies even though the claimant is simultaneously pursuing other sources of compensation. The time for filing a claim is set forth in N.J.A.C. 7:1J-6.1, which requires that the claim must be filed within one year after the date of discovery of damages. This time period is not affected by the claimant's pursuit of other sources of compensation.

COMMENT 13: Rutgers Environmental Law Clinic commented that eligibility under the standard of "best efforts to obtain compensation from any other source from which compensation is reasonably likely to be available" should be defined or given criteria. Private homeowners should not have to retain a lawyer to sue responsible parties to satisfy this test in order to collect from the Fund. The definition of "best efforts" should include discussions, negotiations, filing of the appropriate claim forms with agencies or insurance companies, and notification of responsible parties, but the definition should not include the filing of litigation.

RESPONSE: A definition of "best efforts" would not be helpful, because what constitutes "best efforts" will vary greatly depending upon the circumstances specific to a claim. The requirement to exercise "best efforts" ordinarily will not require a homeowner to retain a lawyer and sue responsible parties, especially when the cost of such efforts would not be justified by the amount of the claim. In most cases, the types of actions cited by the commenter would satisfy the "best efforts" requirement. However, it is conceivable that "best efforts" in a particular claim would include litigation; for example, if the facts of the claim are undisputed, the extent of damages is certain, a person is almost certainly liable for those damages, and the likely cost of litigating the matter is far outweighed by the likely recovery, it would be reasonable to require "best efforts" to include that litigation. This type of circumstance will arise only rarely, but the Department does not believe that "best efforts" should be defined to rule it out.

COMMENT 14: Exxon Company, U.S.A. commented that N.J.A.C. 7:1J-2.7(a) should be deleted. There is nothing in the Spill Act that precludes a potentially responsible party or owner or occupant of property from which a discharge has emanated from making a claim on the Fund. A PRP has a very legitimate claim on the Fund when it proceeds to react to a directive and spend large sums of money to clean up and remove the discharge and/or conduct remedial investigations to prove its innocence. A PRP would react in this manner because a Department notification and/or directive usually is issued with the threat of treble damages.

RESPONSE: The Department agrees with the commenter in part, and has revised the rule upon adoption to reflect that agreement. A potentially responsible party should not be precluded from making a claim. However, a person who is liable for damages resulting from a discharge should not be entitled to be reimbursed for that liability from the Fund, because that same person would be strictly liable to the Fund. Therefore, the rule has been revised to limit the exclusion from eligibility to persons who are actually (rather than potentially) in any way responsible for the discharge which is the subject of the claim, or for any hazardous substance which is the subject of the claim.

However, the owner or occupant generally should be ineligible for compensation, for one of two reasons. First, if the person owned or occupied the property from which the discharge emanated, that person will be liable for damages from the discharge unless he or she establishes one of the defenses listed in the Spill Act and referenced in the rule. Second, if the person acquired or took possession of the property after the discharge occurred, but did not make a reasonably diligent inquiry to discover the discharge, the proximate cause of that person's damages would be the lack of diligence rather the discharge itself. Accordingly, the rule has not been revised with respect to those owners and occupants.

COMMENT 15: DuPont commented that the method of establishing a defense to claims by PRPs is not as readily available as the New Jersey Register and the published regulations. The defense, which can be referenced under N.J.S.A. 58:10-23.11g(d), should be included in the regulations so that they may be more accessible.

RESPONSE: The Department has incorporated the statutory defenses by reference, rather than setting them forth at length, so that changes in the statute will automatically be incorporated in the rule without the need for a rule amendment and the resulting delay. New Jersey statutes are readily available in most libraries.

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COMMENT 16: Rutgers Environmental Law Clinic commented that a government entity should be eligible for compensation from the Fund for government acquisition of property after a discharge has occurred if the acquisition was by tax foreclosure. The Spill Fund is the appropriate mechanism to compensate municipalities for costs associated with taking back urban properties with tax delinquencies and transforming them into new urban development.

RESPONSE: The purpose of the Spill Fund is to provide swift and adequate compensation to persons damaged by discharges of hazardous substances, and to provide funds for the defense and indemnification of certain persons under contract with the State or Federal government for claims resulting from their provision of services to clean up discharges. N.J.S.A. 58:10-23.11a. The purpose of the Fund is not to pay for urban redevelopment, and a diversion of the Fund's assets for such purposes would violate the administrator's fiduciary duty to the Fund.

However, the rule contains provisions which may still be helpful to the government entity. N.J.A.C. 7:1J-5 provides for compensation to certain government entities which take action to clean up, remove, prevent, contain or mitigate a discharge that poses an immediate threat to the environment or to public health, safety or welfare. If the contamination of the property in question poses such an immediate threat, the government entity can obtain the Department's prior approval of a response, undertake a cleanup, obtain compensation for the cleanup and removal costs from the Fund, and then take title to the property through the foreclosure proceeding. In addition, if the government entity has lost tax revenues as a result of the discharge, up to one year's worth of that loss is considered "damages" which may be eligible for compensation from the Fund. Finally, the Legislature is currently considering a bill (S-1070) which would establish a fund to assist with the remediation of sites and subsequent urban revitalization.

Subchapter 3. Water Supply Systems Claims

COMMENT 17: Hackensack Water Co. commented that the evidence used by the Department to determine that a discharge has occurred to contaminate potable water should be identified. The commenter asked whether the presence of VOCs and other contaminants in a potable water supply well indicate that a discharge has occurred, or if the Department would want more information about a possible discharge, including responsible party, location, and groundwater investigation.

RESPONSE: The facts necessary to determine that a discharge had occurred will vary in each case. In many cases, the mere presence of hazardous substances will make it almost certain that a discharge has occurred. However, for certain hazardous substances which may be naturally occurring (for example, radon or mercury), further investigation will be necessary to find whether a discharge was in fact the source.

COMMENT 18: Exxon Company, U.S.A. commented that the water supply systems remedy determination should not include the acceptability to the public of a water supply alternative. This provision may be an insurmountable obstacle to achieving a final water system supply alternative. A public consensus on what is "acceptable" may not be possible. At a minimum, an attempt should be made to insert some modifying language such as "reasonable and responsible acceptance."

RESPONSE: The Department has not made the suggested change. The acceptability of a water supply alternative to the public is only one factor to be considered in determining what is the most cost-effective environmentally sound means of ameliorating damage resulting from a discharge, and will not itself be dispositive. Other factors which are likely to carry greater weight include initial capital costs, operation and maintenance costs, monitoring costs, reliability and feasibility. The lack of unanimous public approval of the one alternative which is by far the best in satisfying these factors is unlikely to block the choice of that alternative. Therefore, the provision will not be an insurmountable obstacle.

COMMENT 19: Atlantic County Department of Health and Institutions commented that the rule should address reimbursement for point of entry treatment ("POET") systems. Specifically, the commenter asked for what length of time will the monitoring of the POET be covered by the Fund. The commenter also asked how long the Fund will pay for these systems before a more permanent solution is offered.

RESPONSE: As long as a supply of water is unsuitable for human consumption due to a discharge, and until a solution more permanent than a POET has been completed, the cost of operation and maintenance of the POET and the cost of monitoring its operation will be considered "damages" incurred by the person affected. Accordingly, for that entire time these costs will be compensable from the Fund if the claim for those costs satisfies the eligibility criteria in the rule. In determining whether and when a more permanent solution (such as any of the other alternatives listed in N.J.A.C. 7:1J-3.3(c)) would be appropriate, the Department will consider whether such alternatives would be environmentally sound and a more cost-effective means of ameliorating the damage resulting from the discharge.

COMMENT 20: Rutgers Environmental Law Clinic commented that the affected homeowners who are placed on a temporary, funded water system will have water that is degraded from its previous condition when the levels of contaminants in the water drop below the applicable contaminant standards and the temporary water system is taken away.

RESPONSE: The commenter is correct in noting that this will be the result in some circumstances. However, the applicable standard is the maximum contaminant level established under Federal and/or State safe drinking water regulations (or, if there is no MCL, the applicable cleanup standard); drinking water which meets this standard is suitable for human consumption, even if it is marginally degraded from its original condition.

COMMENT 21: Rutgers Environmental Law Clinic commented that the Department will cause great hardship and unfairness if it does not treat all property owners within the zone of contamination and the most probable migration zone as 'damaged' for the purposes of Spill Fund reimbursement.

RESPONSE: All homeowners served by water supplies within the zone of contamination and the most probable migration zone (that is, the Spill Fund Claims Area or SFCA) are treated as damaged. If a homeowner is served by a water supply outside that area, but has nonetheless incurred damages for reasons unrelated to the water supply, he or she would still be considered "damaged" and eligible for reimbursement from the Fund.

COMMENT 22: Rutgers Environmental Law Clinic commented that the less costly water supply systems must be equally effective, reliable, and acceptable to the public as the most cost-effective technology for ameliorating the damages caused by a discharge before the technology is chosen.

RESPONSE: The Department disagrees. The standard set in the rule is that the water supply alternative must be "environmentally sound." If two alternatives exceed that standard by different amounts, both are sufficiently protective of public health, safety and the environment. Using the assets of the Fund to pay the entire cost of the more expensive of the two, solely because of an incremental benefit which was not justified by any threat to public health, safety and the environment, could constitute a violation of the administrator's fiduciary duty to the Fund.

The Department notes that nothing in the rule prevents a person from selecting the more expensive of those two alternatives. The only disadvantage in selecting that more expensive alternative is that the Fund will not reimburse the entire cost. The selection of the more expensive alternative will not make the entire claim ineligible for compensation.

COMMENT 23: Rutgers Environmental Law Clinic commented that the alternatives listed in N.J.A.C. 7:1J-3.3(c) should include aboveground, temporary, centralized tank, and piping systems.

RESPONSE: All of these alternatives could be considered under the rule as currently written. Therefore, the Department has not made the suggested change.

COMMENT 24: Hackensack Water Co. commented that private water purveyor claims are automatically reduced a substantial amount. The reduction should be prorated so that it is practical for a private water purveyor to submit a claim. It is the responsibility of the Department to identify and penalize the potentially responsible parties, not the private water purveyor to use its own resources. N.J.A.C. 7:1J-3.5(a) should contain a statement about prorating the reduction in order for the Spill Fund to be a practical source of funds for the private water purveyors to provide an alternative water supply. For example, if a well field consisting of four wells with identical capabilities serves a community with a total billing of $100,000 and one well is damaged, then the claim should be reduced by (5) ($100,000) (1/4) = $125,000 rather than (5) ($100,000) = $500,000.

RESPONSE: It was the Department's intent to provide for prorating as suggested by the commenter. The Department has revised the rule upon adoption to make it clear that the reduction is to be prorated as suggested.

COMMENT 25: Elizabethtown Water co. commented that the rate of reduction for a private water purveyor should be two and one half times rather than the five times proposed in N.J.A.C. 7:1J-3.5(a). The Board of Regulatory Commissioners rate used for extensions in the case of the Spill Fund is two and one half times.

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RESPONSE: The Department disagrees. The rule is consistent with the regulations of the Board of Regulatory Commissioners (formerly the Board of Public Utilities), a utility extending service is normally expected to invest in the extension an amount equal to five times the estimated annual revenue from the new service area. See N.J.A.C. 14:3-8.

COMMENT 26: The Public Advocate commented that the delineation of the reduction in compensation to private water purveyors makes sense with respect to the costs to be reimbursed, since the Spill Fund should not be responsible for paying a portion of the utility's past debt. The regulations should be clarified, however, to indicate that this limitation applies only to the reimbursement of connection fees made directly to the utility. Since the proposal does not distinguish between reimbursement of the connection fee to the homeowner claimant versus the public utility claimant, language should be added to clarify that the limitation on reimbursement for other than the actual cost of the physical connection applies only to claims filed by the utility.

RESPONSE: The Department has not made the suggested change. N.J.S.A. 40:14B-21 provides that the connection fee may include elements unrelated to the actual cost of the physical connection, such as payments toward the water purveyor's previously existing debt. These other elements are not attributable to ameliorating the damages resulting from the discharge, and therefore cannot be eligible for compensation from the Fund.

COMMENT 27: Hackensack Water Company commented that a private water purveyor should be allowed to pursue further legal action against a potentially responsible party to recover any amounts that were disallowed from its claim against the Fund. The commenter stated that it would be completely unfair to prevent the water purveyor from obtaining this recovery against a potentially responsible party.

RESPONSE: Neither the Spill Act nor the subrogation agreement entered into under N.J.A.C. 7:1J-8.4 prohibits a claimant from pursuing other actions which are allowed under State or Federal law. As a result, the water purveyor would be free to use all of its rights under other State or Federal law to recover from a potentially responsible party any costs which were disallowed as ineligible for compensation from the Fund. Under the subrogation agreement, the Fund would have the sole right to any recovery against a potentially responsible party for damages which the Fund has paid; the subrogation agreement would not affect the claimant's rights against third parties regarding amounts which the Fund declined to pay.

COMMENT 28: Hackensack Water Co. asked how a person informs the Department of a potential Spill Fund Claims Area.

RESPONSE: The rule does not impose this burden upon the claimant. The Department performs the necessary investigations and analysis and reviews the available data to determine the currently known extent of ground water pollution and the most probable pollution migration zone, which together comprise the SFCA.

COMMENT 29: Rutgers Environmental Law Clinic commented that the delineation of the currently known extent of ground water pollution does not identify what protocol or methodology will be used by the Department to make this determination.

RESPONSE: The rule cannot establish a particular methodology or set of methodologies which could be applicable in all cases. The circumstances of each case, and the variations necessary to tailor the methodology to that case, are so widely variable that they cannot be predicted in a rule of general application. The circumstances to be considered include the ground water elevations, the location and distribution of pumping wells, the distribution and concentration of pollutants in affected wells, and the topography and geology of the terrain.

COMMENT 30: Rutgers Environmental Law Clinic commented that the determination of the most probable pollution migration zone based on a remedy period of three years does not identify the basis of the three year estimate and does not provide the criteria the Department will use in altering that estimate for a given site. The Public Advocate also commented that the Department should inform the public why it has rejected its prior use of five years for a three year period to determine pollution migration zones. The Department should inform the public of its reasons for making this change, so that the public will understand the rationale and know that this change in agency policy is the result of thoughtful decision making and not the product of arbitrary administrative action.

RESPONSE: The Department believes that it is normally a realistic goal to address the migration of contaminated groundwater from a site within three years. If the circumstances of a particular case indicate that it is not practicable to complete the remediation in three years, the rule provides for the use of the longer time period which the Department estimates to be necessary in its best professional judgment based on the particular circumstances of the case. In addition, if a three-year period is originally selected, and the migration of groundwater is not fully addressed in that period, the Department can redelineate the SFCA based upon the extent of ground water contamination known at a later time, and the most probable migration zone for the time remaining before remediation is completed.

COMMENT 31: Hackensack Water Co. commented that private water supply system claimants should be afforded the same opportunity that government entity claimants can obtain under N.J.A.C. 7:1J-3.9 for the amount of compensation. The commenter stated that it did not want its claims to be reduced by disputes over treatment technologies.

RESPONSE: The Department has not made the change which the commenter suggests. N.J.A.C. 7:1J-3.9 provides that a government entity making a water supply system claim may submit to the Department preliminary plans and specifications for the water supply system. Based on that submission, the Department will provide a preliminary estimate of the amount of the claim which will be eligible for compensation from the Fund. In establishing this procedure, the Department recognized that the government entity claimant may issue bonds to fund the cost of the water supply system, and may need guidance from the Department to determine how large a bond issue is needed. A private water purveyor is unlikely to have the same need.

A water supply system claim is eligible for compensation from the Fund only to the extent of the cost of the most cost-effective environmentally sound means of ameliorating the damages resulting from a discharge. Therefore, disputes over treatment technologies can potentially cause the water purveyor to be eligible for reimbursement of some amount less than its full cost. However, the private water purveyor can always consult with the Department regarding its proposed water supply system to make sure that these disputes are resolved at the earliest possible stage of the claims process.

Subchapter 4. Property Value Diminution Claims

COMMENT 32: Rutgers Environmental Law Clinic objected to the requirement that a claimant must have sold his or her property before the claim for property value diminution is eligible for compensation from the Fund. While the commenter recognized that the New Jersey Supreme Court upheld this approach in *Citizens for Equity v. Dept. of Env. Protection,* 126 *N.J.* 391 (1991), the commenter noted that the Court did not mandate the approach. For this reason, the commenter stated that the issue is whether it is sound public policy to require a sale.

The commenter stated that sales of contaminated property would create a stigma that surrounding properties had suffered similar damages. The commenter also asserted that the sale requirement would result in multiple sales of properties in the same neighborhood at the same time, resulting in a further reduction of sale prices. The commenter suggested an appraiser's opinion, rather than a sale, should be the basis for a property value diminution claim.

RESPONSE: The Department believes that the sale requirement is sound public policy, because it disagrees with the commenter's prediction that the sale requirement will cause entire neighborhoods to be sold.

The availability of compensation from the Fund will not be an incentive for a homeowner to sell his or her home. The compensation will do nothing more than make that homeowner whole for the damages resulting from the discharge; the money available from the Fund will be nothing more than the homeowner lost as a result of the decline in property value resulting from the discharge. In addition, if part of that decline results from general market factors rather than from the discharge, the Fund will not provide compensation for that part of the decline. For these reasons, thet Department does not expect homeowners to sell their properties unless it is necessary or advantageous for them to do so due to factors completely unrelated to the Fund.

As stated in the proposal, the public policy reason behind the sale requirement is simply that the claimant has no loss until the sale occurs. Even without a discharge, real estate values rise and fall; nonetheless, despite that rise or fall a property owner neither realizes a gain or a loss without a sale.

The Department recognizes that a decline in the value of real property does reduce the net worth of the property owner. In addition, the decline may affect the property owner's ability to obtain a mortgage loan against the property. In this rule adoption, the Department has taken the position consistent with *Citizens for Equity* that these circumstances do not constitute "damages" compensable under the Spill Act in the absence

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of a sale; however, the Department will continue to analyze the issue and propose to amend the rule if its experience applying the rule justifies a change.

COMMENT 33: The Public Advocate disagreed that *Citizens for Equity* upheld the Department's authority to require a sale before a property value diminution claim would be eligible for compensation. The commenter stated that the regulations upheld in that case required only a good faith effort to sell the property. The commenter urged the Department to eliminate the sale requirement, or, at the very least, to modify it to require only a good faith effort to sell the property.

RESPONSE: The commenter is partially correct. The regulations upheld in *Citizens for Equity* require a sale, but provide an exception for claimants who have "been unable to sell the property after one year of continuous good faith attempts to sell."

That "good faith attempt" exception is necessary in the regulations upheld in *Citizens for Equity,* because those regulations also establish detailed procedures for the sale attempts, including the prices at which the claimant was required to offer the property for sale. A claimant could follow those procedures without having any success in selling the property. If the Department's own procedures made it impossible for a claimant to reduce the sale price sufficiently to make the sale, it would be unjust to deny the claim solely because there was no sale.

However, as discussed in the proposal, these regulations differ from the regulations upheld in *Citizens for Equity,* because they do not impose specific requirements for the claimant's attempted sale of the property other than that the sale of the property must be in good faith. Therefore, the claimant is free to reduce the sale price as drastically as is necessary to induce a buyer to purchase the property. Unless the property is completely uninhabitable, there will be some price at which it will sell. (If the property is uninhabitable, then the claim would be payable under N.J.A.C. 7:1J-4.7, which authorizes the administrator to award compensation immediately, without requiring a sale, if emergency relocation of the claimant is necessary). Therefore, the provisions of the regulations upheld in *Citizens for Equity* which make the "good faith attempt" exception necessary do not exist in these rules.

COMMENT 34: Rutgers Environmental Law Clinic commented that N.J.A.C. 7:1J-4.2(b) requires the claimant to list the property for sale continuously. The commenter recommended that the Department specifically set forth the period of time during which the property must be on the market in order for the owner to receive compensation. The commenter stated that the Department is imposing a totally unreasonable burden by forcing homeowners to continuously list a property, which may not be marketable, before receiving compensation from the Fund.

RESPONSE: N.J.A.C. 7:1J-4 requires that except in certain limited circumstances, the property value dimunition claim is ineligible for compensation unless the property is sold. For this reason, the property must remain on the market until that time in order for the owner to be eligible for compensation.

The Department disagrees that this requirement is an unreasonable burden. A discharge may impair the value of a property drastically, but there is still a price a buyer will be willing to pay to purchase it. The rule requires only that the seller reach that price in good faith.

There are only certain limited circumstances in which the property will be unmarketable. The owner may be legally unable to sell the property (for example, if a certificate of occupancy is required for the conveyance, and the discharge has made it impossible to obtain that certificate). Alternatively, the discharge may have rendered the property uninhabitable. In either of these circumstances, there is no requirement that the claimant list the property for sale at all before obtaining compensation for diminution in the value of the property.

COMMENT 35: Rutgers Environmental Law Clinic commented that the Department did not explain the amount of reduction in property value that a claimant can accept and remain eligible for compensation from the Fund.

RESPONSE: The commenter is correct. N.J.A.C. 7:1J-4.2(a) requires that a claim for property value diminution is eligible for compensation only if the claimant's sale of the subject property is in good faith (except in certain limited circumstances in which a sale is not required). The rule establishes no maximum price reduction, beyond which a sale could not be in good faith. The Department will determine whether a sale was in good faith based upon the claimant's compliance with the requirements for listing of the property for sale under N.J.A.C. 7:1J-4.2(b), and upon the listing and sale documents submitted under N.J.A.C. 7:1J-4.5.

This approach is consistent with the requirement that the subject property be sold, which in turn is based upon the assumption that the market will establish some price which a buyer is willing to pay for the property. The Department has not attempted to limit the price reduction, because such a limit could make a sale of the property impossible if the market required a greater reduction before any buyer would be willing to purchase the property.

COMMENT 36: Rutgers Environmental Law Clinic commented that owners of contaminated property which have been remedied should be allowed access to the Spill Fund for diminution in value due to the stigma caused by the discharge or deed restrictions attached to the property.

RESPONSE: The Department disagrees. It is the Department's position that after the remediation of the discharge has been completed, any diminution in the value of property which had been affected by the discharge must be attributable to factors other than the discharge. After the discharge has been remediated, any remaining stigma can no longer be based upon the discharge. Public education on risk prior to and after remediation will be needed.

However, in the rare case in which the Department has required that the property must be subject to a restriction, the Department agrees that this restriction can affect property value. Therefore, the Department has clarified the rule upon adoption to address this issue.

Subchapter 6. Claims Procedure

COMMENT 37: Hackensack Water Co. commented that a one year time frame of filing a claim after contamination is discovered is not practical. The basis for a water purveyor's claim is that treatment technology had to be installed to the system, not the fact that the water supply is contaminated. To collect and submit all of the required information about potentially responsible persons and costs and types of treatment technologies within one year is not feasible. The one year time frame should begin after the treatment system is installed.

RESPONSE: The Department recognizes the commenter's concern over the collection and submission of voluminous information. For this reason, N.J.A.C. 7:1J-6.3(a) requires that the claim contain only the most basic information. The Department may request that the claimant submit additional information under N.J.A.C. 7:1J-6.3(b), but that information need not be submitted with the initial claim. Therefore, it is practical to require submission of the claim within the allotted one year. The Department notes that this time limitation is required under the Spill Act. N.J.S.A. 58:10-23.11k.

If the water purveyor discovers that the water supply is contaminated to the extent that it is no longer suitable for human consumption, the purveyor has reason to believe that it has incurred damages and should file its claim immediately. Therefore, the Department has not revised the rule as suggested by the commenter.

COMMENT 38: Exxon Company U.S.A. commented that there is no need for disclosure of a home telephone number for a business claimant nor for disclosure of a work telephone number for a private claimant. Some semblance of privacy must be maintained.

RESPONSE: The Department agrees with the commenter and N.J.A.C. 7:1J-6.3(a)4 has been revised on adoption. The revision requires a phone number for contact during normal business hours.

COMMENT 39: Exxon Company U.S.A. commented that there is no justification for having to supply a long list of all directors and officers particularly in the case of a large multinational corporation. The proposal should be changed from having to supply "all directors and of all officers" to "those persons having direct responsibility for or authorized to act as an agent and attorney in fact in these types of matters."

RESPONSE: The Department agrees that this information is not necessary in every case, and should not be required to be included in the initial claim form. Therefore, the Department has revised this provision upon adoption. The Department may need the information to process a particular claim, and has reserved the ability to request the information in a particular case.

COMMENT 40: Marine Spill Response Corporation commented that the list of the types of information that a claimant will have to provide upon the Department's request is helpful. The commenter suggested adding a brief description of potentially reimbursable response costs, such as the costs of investigations, monitoring, and testing to identify the extent of and dangers posed by the discharge, and the costs of planning and implementing the response action.

RESPONSE: The Department agrees that it should be able to obtain these types of information. However, these types of information are included within N.J.A.C. 7:1J-6.3(b)3 and 4, so that the Department has not made the suggested change upon adoption.

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COMMENT 41: N.J.A.C. 7:1J-6.8 provides that the Department may relax any procedural requirements of the rule (except when prohibited by other applicable statute or court (decision) to prevent unfairness or injustice. Hackensack Water Co. commented that N.J.A.C. 7:1J-3.9 and 6.1 should be relaxed for all water purveyors. All discharges to potable water supply systems are unfair and unjust to the water purveyors, their customers, and their shareholders.

RESPONSE: The Department disagrees. N.J.A.C. 7:1J-3.9 does not impose requirements upon water purveyors, but instead provides a procedure for obtaining the Department's preliminary estimate of the amount of a water supply system claim which is eligible for compensation. Therefore, it would not be appropriate to apply the relaxation provision to this section.

N.J.A.C. 7:1J-6.1 provides that claims must be filed within one year after discovery of damages. The Department does not have the authority to relax this requirement, because it is required under the Spill Act. N.J.S.A. 58:10-23.11k.

Subchapter 7. Settlement of Claims between Claimant and Potentially Responsible Parties

COMMENT 42: Rutgers Environmental Law Clinic commented that the Department should clarify how much is required for a claimant to satisfy the obligation to negotiate in good faith with responsible parties to attempt to resolve the claim. The commenter suggested that the burden should be low, for the following reasons: First, the negotiations take place fairly soon after the discovery of the contamination when the extent of the damages sustained may still be unclear. Second, a claimant should not settle with the responsible party if that responsible party concedes liability but has few assets available, because the claimant is then required to waive all recourse against the Fund in connection with the discharge which is the subject of the claim.

RESPONSE: The standard of "negotiation in good faith" will vary depending upon the circumstances of each case. The Department recognizes the commenter's concerns, but does not believe that they will arise under the rule as written. "Good faith" would not include requiring a claimant to settle a claim without a reasonably clear idea of the damages, or to accept an inadequate settlement of a strong claim solely because one judgment-proof responsible party has conceded liability.

Subchapter 8. Settlement of Claims between Claimant and Fund

COMMENT 43: The Public Advocate urges the Department to promulgate N.J.A.C. 7:1J-8.2 as proposed. Without the assistance of a public agency, the financial means of an individual claimant or even a group of claimants who are seeking compensation from the Fund could be potentially defeated by requiring unsophisticated claimants who are seeking relatively small amounts of compensation to prove their claims. These actions could force claimants to default. Such a result would be patently unfair to claimants and would clearly subvert the Legislature's remedial purposes in adopting the Spill Act. The proposed regulatory provisions serve a critical function in ensuring that claims are arbitrated under the Spill Act in a fair and meaningful fashion, and the claimants are not deprived of compensation under the Spill Act based on a default as opposed to a meaningful examination of the claim.

RESPONSE: The Department appreciates the commenter's support.

COMMENT 44: DuPont commented that the ability for "any other person" to contest the amount or validity of a claim is too vague. This right should be limited to the claimant.

RESPONSE: The Department disagrees. The wording for N.J.A.C. 7:1J-8.2(c) is taken directly from N.J.S.A. 58:10-23.11n(a).

Subchapter 9. Boards of Arbitration

COMMENT 45: The Public Advocate commented that N.J.A.C. 7:1J-9.1 concerning the convening of a board of arbitration should be modified to include a cross-reference to N.J.A.C. 7:1J-8.2(d), (e), and (f). The cross-reference should indicate that a failure to submit the information requested under N.J.A.C. 7:1J-8.2(d) and (f) would constitute a basis for denying a request for arbitration.

RESPONSE: The Department agrees with the commenter, and has made the suggested changes upon adoption.

COMMENT 46: The Public Advocate commented that the administrator, in his discretion, should be permitted to conduct a pre-arbitration meeting where there are multiple claimants and potentially responsible parties arising from a related incident. The parties would be provided with an opportunity to undertake jointly the process of selecting a three-member arbitration board as set forth in N.J.A.C. 7:1J-9.3(c) and (d).

RESPONSE: The Department does not believe that a meeting conducted by the administrator would be helpful in the process of selecting a three-member board. The potentially responsible parties select one member, the claimant selects one member, and those two members select the third.

COMMENT 47: DuPont commented that the availability of class actions is not clearly defined. Class actions should be limited to parties with actual damage expenses.

RESPONSE: The availability for class actions is dictated by N.J.S.A. 58:1-0-23.11p. The Spill Act enables the Public Advocate to assert "such claims as are alleged against the Fund by persons who in the opinion of the Public Advocate, may be better represented as a class in recovery of damage or cleanup costs provided by this act."

COMMENT 48: The Public Advocate commented that it would be a highly unfortunate circumstance if the Board elects not to have a record and leaves it up to any party desiring such a record to make arrangements and to pay for its cost. The complex and detailed scientific or economic information would be difficult, if not impossible, to reconstruct accurately from the parties' and arbitrators' notes. The regulations should be revised to mirror the procedure followed in the Office of Administrative Law with respect to other types of administrative hearings. The regulations should provide that the board of arbitration shall at its expense, arrange to have the proceedings recorded.

RESPONSE: The Department agrees, and has revised the rule upon adoption to require a record (either stenographic or audio tape) in all cases. The Spill Fund will bear the cost of the record.

COMMENT 49: The Public Advocate commented that a provision should be added to N.J.A.C. 7:1J-9.15 providing that a motion for reconsideration may be filed within a specified period of time after **receipt** of the board's decision. It is not clear if N.J.A.C. 7:1J-9.14(c) is intended to encompass a motion for reconsideration of a final decision of the board, but such a procedure would certainly be useful to the parties. The time period should run from receipt of the decision as opposed to the date the decision is rendered, in order to permit a party sufficient opportunity to review the decision and determine the need for such a motion.

RESPONSE: The Department agrees, and has made the suggested change. N.J.A.C. 7:1J-9.14(c) encompasses motions for reconsideration of all decisions of the Board.

Summary of Agency-Initiated Changes:

1. The Department has corrected the definition of "potentially responsible party" upon adoption. As proposed, the definition includes each owner or operator of any facility, vehicle or vessel from which a discharge has occurred. As the proposal made clear, a discharge may emanate from land as well. See N.J.A.C. 7:1J-2.7(b). The proposed definition of "potentially responsible party" inadvertently omitted any reference to this possibility. As corrected upon adoption, the definition now includes the owner or operator of land at which a discharge has occurred.

2. The Department has revised N.J.A.C. 7:1J-2.3 upon adoption, to remove a possible ambiguity. As proposed, this provision requires that the claimant show by a preponderance of the evidence that the amount of the claim correctly reflects the damages which the claimant has sustained. To remove the possibility of interpreting this provision in a manner inconsistent with the duty to mitigate damages under N.J.A.C. 7:1J-2.4 and the extent of the Fund's liability under N.J.S.A. 58:10-23.11g, the Department has added language expressly stating that the claimant must establish the reasonableness of the amount of the claim in relation to the damages sustained.

3. The Department has revised N.J.A.C. 7:1J-2.7 upon adoption, to avoid a possible misinterpretation. Under this provision, a person acquiring land from which a discharge emanated is eligible to receive compensation for damages from that discharge only if he or she satisfied certain "due diligence" requirements. As proposed, the provision uses the term "purchase," which can be read to exclude voluntary acquisitions of property through other means such as the acceptance of a gift or devise. All such voluntary acquisitions carry the same duty of diligence. The revision makes this requirement express.

4. The Department has corrected erroneous cross-references in N.J.A.C. 7:1J-3.4 upon adoption. The Department has also replaced the words "minimum necessary capacity" in N.J.A.C. 7:1J-3.4(d) with "minimal capacity needed for," because the words "minimum necessary capacity" are used elsewhere with a different meaning.

5. The Department has made the following minor changes to N.J.A.C. 7:1J-3.4(c) and (d), for purposes of clarity.

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As proposed, N.J.A.C. 7:1J-3.4(c)3i made no reference to the use of any peaking factor in calculating instantaneous water demands under for residential service connections to single-family homes. The Department has revised this provision on adoption to make it explicit that no peaking factor applies in that circumstance.

A peaking factor of 10 does apply to multi-family residences and other types of establishments which are listed in N.J.A.C. 7:1J-3.4(d)2. The Department has added a cross-reference to N.J.A.C. 7:1J-3.4(c)3i upon adoption, solely for purposes of clarification. The cross-reference does not change the meaning of the rule.

As proposed, N.J.A.C. 7:1J-3.4(d) erroneously stated that the procedures for calculating potable water requirements applied to water mains, and not just to water wells and storage facilities. Other than the table of potable water requirements in N.J.A.C. 7:1J-3.4(d)2 for water users other than single-family homes, nothing else in N.J.A.C. 7:1J-3.4(d) is relevant to calculating water demands to be served by a main. Accordingly, the Department has deleted the erroneous references upon adoption.

6. The Department has clarified N.J.A.C. 7:1J-4.3, regarding appraisals of property for property value diminution claims. As proposed, the rule provides for the administrator to obtain appraisals for claims which had been filed before the operative date of these rules and then suspended; however, the provision failed to mention that appraisals will be obtained for new claims as well.

7. The Department has corrected typographical errors in N.J.A.C. 7:1J-4.3 and 4.4.

8. As noted in the proposal at N.J.A.C. 7:1J-5.3(b), emergency response claims by local units are not subject to N.J.A.C. 7:1J-7, 8 or 9. As proposed, N.J.A.C. 7:1J-5.2(a) had expressly stated that the claims procedures in N.J.A.C. 7:1J-6 were applicable; however, that statement conceivably could be read to imply that the general requirements of N.J.A.C. 7:1J-1 and 2 were not applicable. The Department has clarified N.J.A.C. 7:1J-5.2(a) upon adoption, to avoid that possible implication.

9. N.J.A.C. 7:1J-6.3(b)8 provides that the Department may request information regarding relevant insurance policies. The Department has revised the rule upon adoption to provide that the Department may request information regarding other relevant types of financial assurance as well; this change is not substantive, because this information was available under N.J.A.C. 7:1J-6.3(b)15 as proposed. In addition, the Department has recodified certain provisions and made certain technical corrections upon adoption.

10. N.J.A.C. 7:1J-8.3 concerns offers by the administrator to settle claims against the Fund. N.J.A.C. 7:1J-8.4(c) erroneously referred to the administrator, rather than the claimant, rejecting the administrator's settlement offer. The Department has corrected this reference upon adoption.

11. The Department has made technical changes to N.J.A.C. 7:1J-8.4, to correct minor errors in the proposal.

12. The Department has made minor corrections and clarifications to N.J.A.C. 7:1J-9.11, which do not affect the substance of the provision.

13. N.J.A.C. 7:1J-9.16(e) provides that while the board of arbitration has no authority to determine the scope of coverage or the applicability of any insurance policy pertaining to a potentially responsible party, the board does have the authority to determine whether the administrator's rights to subrogation have been impaired. Implicit in the subrogation right is the ability to exercise the rights to which the administrator is subrogated, through the act of cost recovery. Accordingly, the Department has clarified this provision upon adoption to state that the board may determine whether cost recovery rights, as well as subrogation rights, have been impaired.

Summary of Hearing Officer Recommendations and Agency Response:

Lance R. Miller, the Department's Assistant Commissioner for Site Remediation, served as hearing officer at the public hearing held on May 4, 1992. Mr. Miller recommended that the Department adopt the rule with the changes described in the responses to specific comments above, and in the above summary of agency-initiated changes.

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]*):

CHAPTER 1J
PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SPILL COMPENSATION AND CONTROL ACT

SUBCHAPTER 1. GENERAL PROVISIONS

7:1J-1.1 Scope

This chapter constitutes the rules of the Department concerning the processing of all claims under the Act for damages resulting from the discharge of a hazardous substance or a threatened discharge of a hazardous substance.

7:1J-1.2 Construction and applicability

(a) This chapter shall be construed liberally to permit the Department and the administrator to fulfill their statutory functions. This chapter shall be construed in conformity with, and not in derogation of, the Act.

(b) This chapter shall apply to the processing of all claims which have not been paid, settled or denied on or before the operative date of this chapter, notwithstanding the date upon which any such claim was filed with the Department.

7:1J-1.3 Severability

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

7:1J-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

"Administrator" means the chief executive of the Fund.

"Affected area" means, with respect to a water supply system claim, the area within or outside the Spill Fund Claims Area for which the Department has determined, pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10, that the existing source of potable water is unsuitable for human consumption due to a discharge.

"Applicable contaminant standard" means, for any particular hazardous substance, the maximum contaminant level for that hazardous substance (if any) established under N.J.A.C. 7:10 and 40 CFR Part 141. If no maximum contaminant level has been established for a particular hazardous substance under those regulations, "applicable contaminant standard" means the applicable cleanup standard under N.J.A.C. 7:26D.

"Board" means a Board of Arbitration convened by the administrator pursuant to N.J.A.C. 7:1J-9.1.

"Claim" means a claim for damages filed with the Department for recovery from the Fund. The claim includes all documents submitted under this chapter in support of the claim, including without limitation any amendments thereto under N.J.A.C. 7:1J-6.4.

"Claimant" means the person filing a claim.

"Cleanup and removal costs" means all costs associated with a discharge, incurred by the State, or its political subdivisions, or their agents, or any person with written approval from the Department, in: the removal or attempted removal of a hazardous substance; or the taking of reasonable measures to prevent or mitigate damage 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, and shall include costs incurred by the Department for the indemnification and legal defense of contractors pursuant to the Act, subject to the appropriation by law of moneys from the General Fund to the Fund to defray these costs.

"Damages" means all cleanup and removal costs and all direct and indirect damages actually incurred, no matter by whom sus-

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tained, arising in connection with a discharge of a hazardous substance in violation of the Act, or in connection with a threatened discharge, or in connection with a pre-Act discharge, which costs and damages include, but are not limited to, the following:

1. The cost of restoring, repairing or replacing any real or personal property damaged or destroyed by a discharge, any income lost from the time such property is damaged to the time such property is restored, repaired or replaced, and any reduction in value of such property caused by such discharge in comparison with its value absent the discharge;

2. The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by a discharge;

3. Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge, provided that such loss or impairment exceeds 10 percent of the amount which the claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such discharge during the week, month or year for which the claim is filed;

4. Loss of tax revenue by a state or local government for a period not to exceed one year, due to damage to real or personal property proximately resulting from a discharge (which one-year period, in the case of lost real property tax revenue, commences on the effective date of the first reduction in the assessed value of real property for damage proximately resulting from the discharge);

5. Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a discharge pending the payment or settlement of a claim; and

6. Such sums as may be necessary to reimburse a local unit for costs incurred in an emergency response action taken to prevent, contain, mitigate, clean up or remove a discharge or threatened discharge of a hazardous substance.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, 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.

"Discovery" means the time at which the claimant discovers, or by the exercise of reasonable diligence and intelligence should have discovered, that he or she *[may have a basis for a claim]* ***has incurred damages***.

"Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety or welfare.

"Emergency response claim" means a claim by a local unit for reimbursement of costs incurred in an emergency response action.

"Fund" means the New Jersey Spill Compensation Fund established pursuant to the Act.

"Government entity" means a governing body, department, agency, authority or any other unit of any Federal, State, county or local government or governments, including without limitation a municipal utilities authority.

"GPD" means gallons per day.

"GPM" means gallons per minute.

"Ground water" means the portion of water beneath the land surface that is within the zone of saturation (below the water table) where the pore spaces are filled with water.

"Hazardous substance" means any substance defined as such under the Discharges of Petroleum and Other Hazardous Substances regulations, N.J.A.C. 7:1E-1.7.

"Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.

"Most probable ground water flow direction" means the most probable direction of ground water flow within the Spill Fund Claims Area, as determined by the Department.

"Most probable pollutant transport rate" means the most probable rate at which each hazardous substance present in ground water in a concentration exceeding the applicable contaminant standard or other applicable maximum level will be transported within the ground water flow regime, as calculated by the Department pursuant to N.J.A.C. 7:1J-3.8(c).

"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.

"Notice of Intent to Deny," or "NOI," means a notice issued by the administrator to a claimant pursuant to N.J.A.C. 7:1J-6.6, notifying the claimant that the claimant's claim lacks sufficient information to support a determination that the claim is eligible for compensation from the Fund.

"Person" means any individual or entity, including without limitation, a public or private corporation, company, association, society, firm, partnership, joint stock company, foreign individual or entity and its agents, interstate agency or authority, the United States and any of its political subdivisions or agents, the State of New Jersey and its agents or any of the political subdivisions of or found within the State of New Jersey and their agents, or any of the other meanings which apply to the common understanding of the term.

"Potable water" means drinking water, water for other personal uses, and water for purposes requiring a supply of water which the Department determines is suitable for human consumption pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10. "Potable water" does not include water for use in firefighting.

"Potentially responsible party" means any person who may have discharged a hazardous substance from which a claim arises, or may be responsible in any way for any hazardous substance from which a claim arises, including, without limitation, any of the following:

1. Any person whose act or omission results or has resulted in a discharge;

2. Each owner or operator of any ***land,*** 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.

"Pre-Act discharge" means a discharge of a hazardous substance which occurred before April 1, 1977.

"Private water purveyor" means a water purveyor which is not a government entity. The term "private water purveyor" does not include a municipal utilities or county utilities authority organized pursuant to N.J.S.A. 40:14B.

"Spill Fund Claims Area," or "SFCA," means the geographic area delineated by the Department pursuant to N.J.A.C. 7:1J-3.6.

"Subject property" means property which is the subject of a claim.

"Threatened discharge" means any of the following circumstances with respect to a hazardous substance:

1. A hazardous substance which has not been discharged from a grounded or disabled vessel, if the Department determines that such removal is necessary to prevent an imminent discharge of such hazardous substance; or

2. A hazardous substance which has not been discharged, if the Department determines that such substance is not satisfactorily stored or contained and said substance possesses any one or more of the following characteristics:

i. Explosiveness;

ii. High flammability;

iii. Radioactivity;

iv. Chemical properties which in combination with any discharged hazardous substance at the same storage facility would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment;

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v. Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

vi. High toxicity and is stored or being transported in a container or motor vehicle, truck, railcar or other mechanized conveyance from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container, motor vehicle, truck, railcar or other mechanized conveyance, and such discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment.

"Useful storage capacity" means that portion of a water storage facility capable of meeting the distribution system pressure requirements contained in N.J.A.C. 7:10-11.7(c) and 7:19-6.7.

"Water purveyor" means a person which owns, operates, manages or controls a water supply system, plant or equipment.

"Water Supply System Claim," or "WSSC," means a claim (whether asserted by a water purveyor or any other person) for compensation for construction and ancillary costs associated with providing an alternative supply of water required because of damage to an existing supply of water caused by a discharge of a hazardous substance.

7:1J-1.5 Delegation

The administrator may delegate administrative, supervisory, or investigatory authority to members of the Department's staff. The administrator may enter into contracts on behalf of the Fund or the Department for the performance of services ancillary to the powers and duties of the administrator under the Act, including, but not limited to, the performance of claims adjustment services.

7:1J-1.6 Signatures; certifications

(a) All claims, and all affidavits required under this chapter, shall be signed by the claimant and notarized, as follows:

1. If the claimant or affiant is a corporation, the claim or affidavit shall be signed by a person authorized by a resolution of the claimant's board of directors to sign the document in question. The claimant or affiant shall submit with the document a copy of the resolution of the claimant's board of directors authorizing the person to sign the document. The copy of the resolution shall be certified as a true copy by the secretary of the corporation.

2. If the claimant or affiant is a partnership, the claim or affidavit shall be signed by a general partner of the partnership.

3. If the claimant or affiant is a sole proprietorship, the claim or affidavit shall be signed by the proprietor of the proprietorship.

4. If the claimant or affiant is a municipality, local unit, State, Federal or other public agency, the claim or affidavit shall be signed by a principal executive officer of such entity, the ranking elected official of such entity, or the designee of such principal executive officer or ranking elected official. If the claim or affidavit is signed by a designee, the claimant shall submit with the claim or affidavit a copy of the document authorizing the designee to sign the claim or affidavit.

5. If the claimant or affiant is a natural person, the claim or affidavit shall be signed by the claimant or affiant, provided however, that if the claimant or affiant is a minor, is incompetent as defined under New Jersey law, or is deceased, the claim or affidavit shall be signed by the claimant's parent, guardian, executor, or court appointed representative, as applicable.

(b) All claims, and all affidavits required by N.J.A.C. 7:1J-4, shall contain the following certification, signed by the person required to sign the claim or affidavit:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that to the best of my knowledge, after diligent investigation including inquiry of those individuals immediately responsible for obtaining the information, the information contained in this claim is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines and/or imprisonment, for submitting false information."

7:1J-1.7 Notices and other communications

All claims, notices, requests and other communications required or permitted under this chapter shall be given in writing and sent by certified mail, return receipt requested or by other means which provides a receipt showing the date of mailing and the date of delivery. All such communications sent to the Department by certified mail shall be sent to the following address:

Department of Environmental Protection and Energy
Environmental Claims Administration
CN *[402]* ***028***
Trenton, New Jersey 08625-*[0402]* ***0028***

All such communications sent to the Department by means for which a street address is required by the carrier shall be sent to the following address:

Department of Environmental Protection and Energy
Environmental Claims Administration
506 East State Street
Trenton, New Jersey 08625

All such communications to the claimant shall be sent to the mailing address set forth in the claim under N.J.A.C. 7:1J-6.3(a)3, unless the claimant directs otherwise under N.J.A.C. 7:1J-6.7.

7:1J-1.8 Computation of time

(a) In computing any period of time fixed by or under this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(b) In computing any period of time fixed by or under any provision of this chapter, "days" shall mean calendar days, unless the provision specifies working days.

SUBCHAPTER 2. CLAIMS GENERALLY

7:1J-2.1 Persons who may submit a claim

Any person claiming to have incurred damages may submit to the Department a claim for such damages. No subrogee or assignee of a person who has incurred damages may submit a claim. No claim by a subrogee or assignee of a person who has incurred damages shall be eligible for compensation from the Fund.

7:1J-2.2 Provisions applicable to all claims

The provisions of N.J.A.C. 7:1J-1, 2, 6, 7, 8 and 9 are applicable to all claims made pursuant to this chapter, including without limitation water supply system claims pursuant to N.J.A.C. 7:1J-3, and property value diminution claims pursuant to N.J.A.C. 7:1J-4. The provisions of N.J.A.C. 7:1J-1, 2 and 6 are applicable to emergency response claims by local units pursuant to N.J.A.C. 7:1J-5; the provisions of N.J.A.C. 7:1J-7, 8 and 9 are not applicable to emergency response claims by local units pursuant to N.J.A.C. 7:1J-5.

7:1J-2.3 Burden of proof

No claim shall be eligible for compensation from the Fund unless the claimant shows by a preponderance of the evidence that the claim satisfies all requirements for eligibility under the Act and this chapter, and that the amount of the claim correctly reflects ***and is reasonable in relation to*** the damages which the claimant has sustained.

7:1J-2.4 Damages actually incurred; mitigation

(a) A claim shall not be eligible for compensation from the Fund unless the claimant has actually suffered the damages which are the subject of the claim. A claim shall be ineligible for compensation from the Fund to the extent that the damages which are the subject of the claim are contingent or speculative.

(b) A claim shall be ineligible for compensation from the Fund to the extent that the claimant has received compensation from any other source for damages which are the subject of the claim. The claimant shall exercise best efforts to obtain compensation from any other source from which compensation is reasonably likely to be available, including without limitation insurance policies, contractual rights, and any other remedies provided under statutory or common

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law (including, without limitation, remedies with respect to a potentially responsible party under N.J.A.C. 7:1J-7). The administrator may suspend processing of any claim pending the completion of the claimant's efforts to obtain compensation from such other sources.

(c) The claimant shall exercise reasonable diligence and ordinary care to prevent the damages incurred by the claimant from increasing or being aggravated.

7:1J-2.5 Overlapping claims

(a) A claim shall not be eligible for compensation from the Fund to the extent that the Fund has already paid or settled another claim for the same damages.

(b) If two or more claims include an assertion of the same damages, the administrator shall apportion payment for such damages among the claimants or exclude certain of the claims from payment. The administrator shall base the apportionment or exclusion upon the administrator's determination of which claimants have actually incurred the damages in question.

7:1J-2.6 Waiver of damages not set forth in claim

The claimant shall be deemed to have waived any damages which are not set forth in the claim or in any response to the Department's request for information under N.J.A.C. 7:1J-6.3(b), or in any amendment to such claim or response under N.J.A.C. 7:1J-6.4.

7:1J-2.7 Claims by *[potentially]* responsible parties or by owners or occupants of property from which discharge has emanated

(a) If a *[potentially responsible party]* ***person in any way responsible for a discharge which is the subject of the claim, or for any hazardous substance which is the subject of the claim*** makes a claim in connection with the subject discharge, the claim shall be ineligible for compensation from the Fund unless:

1. The claimant is the owner or operator of a major facility or vessel responsible for the discharge; and

2. The claimant establishes one or more of the defenses provided under N.J.S.A. 58:10-23.11g(d).

(b) If, after a discharge occurs, a person purchases ***or otherwise voluntarily acquires or obtains title to*** the land from which the discharge emanated, claims by such purchaser in connection with the discharge are ineligible for compensation from the Fund, unless such purchaser can establish to the satisfaction of the Department that the claim satisfies either of the following requirements:

1. Despite *[the exercise of]* ***exercising*** reasonable diligence and intelligence before *[the purchase]* ***purchasing or otherwise acquiring or obtaining title to the land***, the claimant did not discover until after *[the time of purchase]* ***purchasing or otherwise acquiring or obtaining title to the land*** that any hazardous substance has been discharged or was discharging from the property in question; and, before *[the purchase]* ***purchasing or otherwise acquiring or obtaining title to the land***, the claimant conducted a diligent and thorough inquiry into previous ownership and uses of the property.

2. The claimant is a government entity and acquired the property by escheat or other involuntary transfer or by operation of law, and not by any affirmative or voluntary act such as exercise of the power of eminent domain. If the government entity acquired ***or obtained title to*** the property by an affirmative or voluntary act, the standard set forth in *[(c)1]* ***(b)1*** above shall govern eligibility of the government entity's claim.

7:1J-2.8 Administrative closure of claims

(a) The administrator may, in his or her discretion, administratively close any claim for which the claimant has:

1. Failed to take actions required by this chatper within 60 days after the claimant was required to take such action; or

2. Failed to respond to a request for information by the Department within the time period set forth in the request.

(b) Administrative closure of a claim is without prejudice. The claimant may reactivate the claim by rectifying the failure under (a)1 or (a)2 above and making a written request to the Department for reactivation.

(c) Before closing a claim under (a) above, the administrator shall send the claimant written notice of the administrator's intent to administratively close the claim. The administrator shall state in the written notice the reason for the administrative closure, and the procedure to avoid administrative closure under (d) below.

(d) The administrator shall administratively close the claim unless:

1. Within 30 days after the claimant's receipt of the notice described in (c) above, the claimant has submitted to the Department an affidavit explaining why the claim should not be administratively closed (which affidavit may include an explanation of why the time allotted to take action or provide information was insufficient); and

2. The administrator determines that the affidavit provides an adequate explanation of why the claim should not be administratively closed.

SUBCHAPTER 3. WATER SUPPLY SYSTEMS CLAIMS

7:1J-3.1 Eligibility of water supply systems claims for compensation

(a) Water Supply Systems Claims (WSSCs) are eligible for compensation from the Fund only in accordance with the requirements of this chapter, and only to the extent permitted under this subchapter.

(b) If the Department determines that as a result of a discharge, a water purveyor's existing supply of water is or will become unsuitable to serve the needs of the water purveyor's existing customers, the water purveyor may make a WSSC for the cost of replacing or treating the existing water supply. No portion of such a WSSC which represents costs beyond those necessary to replace or treat the existing water supply is eligible for compensation from the Fund. Such a WSSC is eligible for compensation from the Fund only in accordance with those requirements of this chapter which are listed at (b)1 through 8 below, and only to the extent permitted under such listed requirements.

1. N.J.A.C. 7:1J-3.1(b);
2. N.J.A.C. 7:1J-3.2;
3. N.J.A.C. 7:1J-3.3;
4. N.J.A.C. 7:1J-3.5(c) and (d);
5. N.J.A.C. 7:1J-3.6;
6. N.J.A.C. 7:1J-3.7;
7. N.J.A.C. 7:1J-3.8; and
8. N.J.A.C. 7:1J-3.9.

7:1J-3.2 Spill Fund Claims Area

(a) No costs expended by a claimant in connection with a WSSC are compensable by the Fund unless they are either:

1. Directly associated with damages to natural resources located within the Spill Fund Claims Area (SFCA), if the Department has delineated an SFCA;

2. Directly associated with supplying potable water to real property in an area within or outside the SFCA for which the Department has determined, pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10, that the existing source of potable water is unsuitable for human consumption due to a discharge; or

3. Directly associated with damages to natural resources resulting from a discharge, notwithstanding whether the Department has delineated an SFCA.

7:1J-3.3 Most cost-effective environmentally sound alternative

(a) A WSSC shall be eligible for compensation from the Fund only if the WSSC is for costs associated with remedial actions which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge.

(b) A WSSC shall be eligible for compensation from the Fund only to the extent of the cost (as such cost is determined by the Department) of the most cost-effective means which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge. To determine what remedy is the most cost-effective, for each alternative the Department will consider initial capital costs, 20-year operation and maintenance costs, monitoring costs, reliability, feasibility of implementation, and acceptability to the public.

(c) The Department may evaluate alternatives as well as any new technologies, to determine whether any other environmentally sound

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means of ameliorating the damages resulting from a discharge are more cost-effective than the remedial actions for which the claim has been made. Such alternatives may include, without limitation, the following (or any combination thereof):

1. Filtration of water supply at point of entry;
2. Extension of existing water lines;
3. Drilling of deeper wells for individual residences;
4. Provision of interim alternative water supplies, such as bottled water or waterbuffaloes;
5. Containment of discharge and treatment of water supply;
6. Stand-alone satellite water supply systems/installation of production wells;
7. Contaminant removal;
8. No remedial action;
9. Drilling new wells; and/or
10. Treatment of the contaminated water supply, by methods such as air stripping or filtration.

7:1J-3.4 Reductions in costs eligible for compensation if alternative water supply actually constructed exceeds requirements for provision of adequate alternative water supply

(a) If a WSSC is a claim for compensation for the cost of a water well or wells, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

i. RA equals the amount of the reduction;

ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water well or wells) of the water well or wells actually constructed; and

iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water well or wells), estimated by the Department after consideration of the report submitted under (a)2 below, of constructing the water well or wells with the minimum capacity necessary to supply potable water to the affected area. Such minimum necessary capacity shall be the amount required to satisfy the users' requirements set forth in (d) below.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.2(c)3 and 4, with respect to the water well or wells actually constructed; and

ii. The design and specifications of the water well or wells that would be required to provide an adequate supply of potable water to the total number of residential and nonresidential users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum necessary capacity of the wells determined in accordance with (a)1 above.

(b) If a WSSC is a claim for compensation for the cost of water storage facilities, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

i. RA equals the amount of the reduction;

ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water storage facilities) of the water storage facilities actually constructed; and

iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water storage facilities), estimated by the Department after consideration of the report submitted under (b)2 below, of the water storage facilities with the minimum useful storage capacity necessary to supply potable water sufficient to satisfy the users' requirements set forth in (d) below. Such capacity shall be the minimum necessary to satisfy the requirements of N.J.A.C. 7:19-6.7, and maintain a minimum of 20 pounds per square inch gauge (psig) water pressure at street level throughout the distribution network, under all required flow conditions, but shall not include any additional capacity required for use in firefighting.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.8, with respect to the water storage facilities actually constructed; and

ii. The design and specifications of the water storage facilities that would be required to provide an adequate supply of potable water to the total number of residential and nonresidential users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum useful storage capacity necessary to supply potable water to the users described in (d) below.

(c) If a WSSC is a claim for compensation for the cost of water transmission and distribution lines, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

i. RA equals the amount of the reduction;

ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water transmission and distribution lines) of the water transmission and distribution lines actually constructed; and

iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water transmission and distribution lines), estimated by the Department after consideration of the report submitted under (c)2 below, of constructing the water transmission and distribution lines with the minimum capacity necessary to supply potable water to the affected area. Such minimum necessary capacity shall be determined as follows:

$$\text{Minimum necessary capacity} = (RC + NRC)$$

where:

(1) RC is the capacity, expressed in GPM and computed pursuant to (c)3 below, of water transmission and distribution lines required to serve the number of residences listed in (d)1 below; and

(2) NRC is the capacity, expressed in GPM and computed pursuant to (c)3 below, of water transmission and distibution lines required to serve all nonresidential an multifamily users listed in (d)2 and (d)3 below.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.7(c), with respect to the water transmission and distribution lines actually installed; and

ii. The design and specifications of the transmission and distribution line or lines that would be required to provide an adequate supply of potable water to all of the users listed in (d) below. The engineer's computation of such design and specifications shall be

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justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum necessary capacity of the lines (designated as "(RC + NRC)" in the formula set forth in (c)1 above), computed in accordance with (c)3 below.

3. RC and NRC shall not include such additional capacity as may be necessary for use in firefighting. RC and NRC shall be computed in accordance with the following:

i. Instantaneous water demands for residential service connections to the types of residences not listed in *[(a)1v above]* ***(d)2 below*** shall be based upon a flow of 12 gpm per residence for the first 14 residences, and three gpm for each additional residence***, not multiplied by any peaking factor***. Instantaneous water demands for service connections to the types of establishments listed in *[(a)1v above]* ***(d)2 below*** shall be equal to the requirements set forth in *[(a)1v above]* ***(d)2 below***, multiplied by the peaking factor of 10 (unless the Department determines that a different peaking factor would be more accurate), and expressed in gpm. For the purposes of (c)1 above, (RC + NRC) shall equal the total instantaneous water demands, adjusted pursuant to (c)3vi below;

ii. The maximum velocity in the water main shall not exceed five feet per second;

iii. The coefficient of friction "c" value as used in the Hazen-Williams formula shall be 100;

iv. The residual pressure in the main at the street level under the maximum flow condition as indicated herein shall not be less than 20 pounds per square inch;

v. The hydraulic analyses shall be performed using the Hazen-Williams formula for determining friction losses and the Hardy-Cross method for determining flow conditions for multiple piping systems; and

vi. If the maximum water demands, maximum velocity, "c" value, residual pressure, and hydraulic analysis pursuant to (c)3i through v above require a diameter of water pipe which is not a commonly commercially available size, then the total instantaneous water demands shall be adjusted to reflect the use of the next largest commonly commercially available diameter of water pipes.

4. If any section of transmission or distribution line has been extended beyond the point necessary to service any property within the affected area, then any and all costs associated with that section of line beyond the boundary of the affected area shall be the sole responsibility of the water purveyor and will not be eligible for compensation from the Fund. This exclusion from eligibility shall not apply to extensions which the Department has stated in writing are required for effective operation of the water system.

(d) For the purpose of calculating the *[minimum necessary capacity of]* ***minimal capacity needed for*** water wells under (a) above*[,]* ***and*** water storage facilities under (b) above, *[or water mains under (c) above,]* the potable water requirement of the users of such wells*[,]* ***or*** storage facilities *[or mains]* is the aggregate of the potable water requirements listed in (d)1, 2 and 3 below.

1. The potable water requirements of residential users in the affected area equals the following:

$$RR = (R \times 350 \times PF)$$

where:

i. RR equals the potable water requirements of residential users in the affected area;

ii. R equals the sum of *[A and B]* ***(1) and (2)*** below:

(1) The number of single-family residences within the affected area which are in existence or under construction, or for which building permits have been issued, before the Department delineated the SFCA; and

(2) The number of tax lots contained in the affected area upon which no residences or nonresidential improvements have been constructed or are under construction as of the time when the Department delineated the SFCA, and for which no building permit to construct one or more residences or nonresidential improvements has been issued prior to the time when the Department delineated the SFCA;

iii. 350 represents a potable water requirement of 350 gallons per day (GPD) to serve each single-family residence; and

iv. PF represents the peaking factor by which the 350 GPD requirement will be multiplied, which peaking factor will be equal to two unless the Department determines that a different peaking factor would be more accurate.

2. The potable water requirements of nonresidential and multifamily users are set forth in the following table, and include all nonresidential and multifamily residential facilities within the affected area which are in existence or under construction, or for which building permits have been issued, prior to the time when the Department delineated the SFCA:

Type of Establishment	Potable water requirements (in GPD per person except as noted)
1. Apartment buildings (assuming one person per bedroom)	75
2. Rooming houses	50
3. Boarding houses	75
Add for each nonresident boarder:	15
4. Hotels	75
Add if laundry facilities are on premises:	37.5
5. Motels and tourist cabins	75
6. Mobile home parks	100
7. Restaurants	10
8. Camps	
Barracks type	50
Cottage type	40
Day camps	15
9. Day schools	10
Add for cafeteria:	5
Add for showers:	5
Add for laboratories:	5
10. Boarding schools	100
Add if laundry facilities are on premises:	50
11. Industrial property (per eight hour shift)	25
12. Hospitals (depending on type)	150-250
13. Institutions other than hospitals	75-125
14. Picnic grounds and comfort stations	10
Add if showers are on premises:	5
15. Swimming pools and bathhouses	10
16. Clubhouses (per resident member)	60
Add per nonresident member:	25
17. Nursing homes	150
18. Campgrounds (GPD per individual sewer hookup)	100
Add if laundry facilities are on premises:	50
19. Retail and office space (GPD per square foot)	.125
20. Self-service laundries (gallons per wash)	50

To determine the well capacity ***or storage capacity*** required to serve the above establishments, the potable water requirements set forth in the table shall be multiplied by a peaking factor of two, unless the Department determines that a different peaking factor would be more accurate. ***To determine the instantaneous water demands of the above establishments for the purpose of calculating the required capacity of transmission or distribution lines, the potable water requirements set forth in the table shall be multiplied by the peaking factor provided under (c)3i above.***

3. The potable water requirements of agricultural, silvicultural, industrial or other users not listed in the table at (d)2 above are actual requirements of all such users which are located in the affected area and meet the requirements of both 3i and ii below:

i. Before the Department delineated the SFCA, the user's facility was in existence or under construction, or a building permit had been issued for its construction;

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ii. The user is unable to use the existing source of potable water, because such source has become unsuitable for the user's particular use as a result of the discharge; and

iii. Connection to the replacement water supply system is the most cost-effective environmentally sound means of remedying the damages incurred by the user as a result of the discharge.

7:1J-3.5 Other reductions in amount eligible for compensation from Fund

(a) If the water supply system which is the subject of the claim is to be operated by a private water purveyor, the aggregate amount eligible for compensation from the Fund for such water supply system shall be reduced by an amount equal to five times the aggregate expected average annual water bill of all residential and nonresidential users within the affected area. ***If the water supply system which is the subject of the claim will supply only part of the needs of such residential and nonresidential users, the reduction described above shall be prorated to the percentage of such needs which the system will serve.***

(b) If the claimant is the water purveyor, the amount eligible for compensation from the Fund shall be reduced further by the surplus debt service payments received by the water purveyor, calculated as follows:

$$SDSP = \frac{(DSP)\ (NR)}{ER}$$

where:

1. SDSP represents the surplus debt service payments;

2. DSP equals the aggregate amount of the payments due on all debt obligations of the water purveyor reflected in the computation of the water purveyor's rates, and incurred before the making of the WSSC, which payments are due during the period beginning on the date on which water service commences to new ratepayers not previously served by the water purveyor before the construction of the water supply system which is the subject of the claim, and ending on the first anniversary of the effective date of the water purveyor's rates in effect as of the commencement of such service;

3. NR equals the number of new ratepayers served by the new water supply system, who were not served by such water purveyor before the construction of such facilities; and

4. ER equals the number of existing ratepayers served by the water purveyor immediately prior to the making of the WSSC.

(c) No portion of the cost of any water supply system which had been installed or for which installation had begun before the discharge, and which commences operation after the discharge, shall be eligible for compensation from the Fund.

(d) If all or part of the cost of any water supply system has been paid from the Fund, no part of the cost incurred in connection with any replacement equipment for such system shall be eligible for compensation from the Fund. If, as a result of an error or omission in the design, construction, installation or operation of a water supply system, corrective action (including, without limitation, the installation of replacement or additional equipment) is necessary for proper operation of the water supply system, no part of the cost of such corrective action shall be eligible for compensation from the Fund.

(e) Costs required under BRC regulations: No costs which a water purveyor is required to incur under regulations promulgated by the Board of Regulatory Commissioners (including, without limitation, the cost of meters required to be provided under N.J.A.C. 14:3-4.1, and the cost of the work to be done under N.J.A.C. 14:9-2.1 upon making service connections) shall be eligible for compensation from the Fund.

(f) If the water purveyor or a government entity has charged fees or other costs for connecting individual properties to the water supply system which is the subject of the claim, the amount of the water purveyor or government entity's claim, eligible for compensation from the Fund shall be reduced by the aggregate amount of such fees or costs.

(g) With respect to any connection fee or tapping fee which the claimant pays for connection of any property to the water system, only the portion of such fee which represents the actual cost of the physical connection shall be eligible for compensation from the Fund. Any portion of such fee which represents other amounts allowed under N.J.S.A. 40:14B-21 is ineligible for compensation from the Fund.

7:1J-3.6 Delineation of Spill Fund Claims Area (SFCA)

The Spill Fund Claims Area (SFCA) is the geographic area delineated by the Department, consisting of the currently known extent of ground water pollution determined by the Department pursuant to N.J.A.C. 7:1J-3.7, combined with the most probable pollution migration zone determined by the Department pursuant to N.J.A.C. 7:1J-3.8.

7:1J-3.7 Currently known extent of ground water pollution

(a) The currently known extent of ground water pollution is the volumetric extent of ground water in which concentrations of one or more hazardous substances exceed the applicable contaminant standard for such hazardous substances.

(b) The delineation of the currently known extent of ground water pollution shall be based upon sampling data collected by the Department or by other persons approved by the Department in writing, pursuant to a sampling plan approved by the Department in writing. Such sampling data shall be plotted on a copy of the tax map of the municipality in which the sampling is being performed.

7:1J-3.8 Most probable pollution migration zone

(a) The most probable pollution migration zone is the volumetric extent of ground water for which the Department determines under (b) below that, within the remediation period (as defined below), it is most probable that concentrations of one or more hazardous substances in ground water will exceed the applicable contaminant standard for any such hazardous substances. The remediation period shall be the three years after delineation of the Spill Fund Claims Area, unless the Department determines, in its best professional judgment based upon the particular circumstances of the aquifer contamination, that the remediation of the aquifer contamination will not be completed within three years. In such event, the remediation period shall be the time the Department estimates for the completion of the remediation, in its best professional judgment based upon the particular circumstances of the aquifer contamination.

(b) The delineation of the most probable pollution migration zone is based upon the most probable ground water flow directions, and the most probable pollutant transport rate, for each hazardous substance present in the ground water. In delineating the most probable pollution migration zone, the Department will consider factors including, without limitation, ground water elevations, the location and distribution of pumping wells, the distribution and concentration of pollutants in affected wells, topography, and geology.

(c) The Department shall calculate the most probable pollutant transport rate pursuant to the following formula:

$$Vpt = \frac{Ki}{(ne)(Rd)}$$

where:

1. Vpt equals the most probable pollutant transport rate, expressed in feet per day, of each hazardous substance present in the ground water in a concentration exceeding the applicable contaminant standard;

2. K equals aquifer hydraulic conductivity, measured in affected wells and expressed in feet per day;

3. i equals hydraulic gradient, expressed in feet per feet;

4. ne equals aquifer effective porosity; and

5. Rd equals the retardation factor, calculated pursuant to the following formula:

$$Rd = 1 + \frac{Kd(pb)}{ne}$$

where:

i. Kd equals distribution coefficient;

ii. pb equals average dry bulk density; and

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iii. ne equals effective porosity.

(d) The most probable pollutant transport rate (expressed in feet per day), multiplied by the remediation period (expressed in days), yields the migration distance. The migration distance, projected along the most probable ground water flow directions from the currently known extent of ground water pollution (that is, the leading edge of the plume), yields the most probable pollution migration zone.

7:1J-3.9 Cost of obtaining estimate by Department consultant of amount eligible for compensation

(a) Upon the written request of a government entity claimant, accompanied by preliminary plans and specifications for the water supply system which is the subject of a WSSC (including, without limitation, the engineer's reports required under N.J.A.C. 7:1J-3.4(a)2, (b)2 and (c)2), the Department shall cause its consultant to review such plans and specifications and make a preliminary estimate of the amount of the WSSC which will be eligible for compensation from the Fund. The Department shall not be bound or estopped by the preliminary estimate in making a final determination of the amount of the claim eligible for compensation, if there are any changes in the preliminary plans and specifications which are the subject of the preliminary estimate, or if the Department finds that there are errors, omissions or other changes necessary from the preliminary plans and specifications, or if there are other changes in circumstances affecting the WSSC.

(b) The preliminary estimate prepared under (a) above shall be at the claimant's expense. Before the preliminary estimate is performed, the Department shall inform the claimant of the cost of the preliminary estimate, and shall cause the preliminary estimate to be performed only if the claimant provides the Department with written consent to the performance of the estimate at the claimant's expense. The amount eligible for compensation from the Fund shall be reduced by the cost of such estimate.

SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

7:1J-4.1 Extent of eligibility

Claims for diminution of property value shall be eligible for compensation from the Fund only to the extent that such diminution is attributable to the discharge of a hazardous substance. A diminution of property value may be deemed atributable to a discharge of a hazardous substance notwithstanding the lack of any physical intrusion of the hazardous substance onto the subject property. A diminution in the value of any improvements to the subject property made after the date of discovery of damages shall not be eligible for compensation from the Fund.

7:1J-4.2 Requirements for eligibility

(a) Except for claims settled under N.J.A.C. 7:1J-4.6 or 4.7, claims for diminution of property value are not eligible for compensation by the Fund unless the claimant has sold the subject property and the administrator determines that the claimant's sale of the subject property was in good faith, based upon the appraisals made pursuant to N.J.A.C. 7:1J-4.3 and the information submitted pursuant to N.J.A.C. 7:1J-4.5.

(b) Within 30 days after filing the claim, the claimant shall list the subject property for sale with one or more licensed real estate brokers who are members of a multiple listing service (or its commercial equivalent, for nonresidential property). The claimant shall so list the subject property for sale continuously, until entering into an agreement for the sale of the subject property; provided however, that discontinuities made necessary by the claimant's good faith choice to list the subject property with another broker shall not be deemed to violate this requirement. One discontinuity of less than 14 days shall be presumed to be in good faith.

7:1J-4.3 Appraisal of subject property

(a) After the claimant has elected under N.J.A.C. 7:1J-4.9 to pursue the claim, ***or in the case of a new claim filed after January 4, 1993,*** the administrator shall obtain appraisals of the value of the subject property. The appraisals shall be as of the time of the sale of the subject property (or, for claims under N.J.A.C. 7:1J-4.6 or 4.7, as of the date the administrator makes the settlement offer). *[Once]* ***One*** such appraisal shall state the value of the subject property as affected by the discharge (unless the administrator elects not to obtain such an appraisal, pursuant to (b) below), and one appraisal shall state the value of the subject property absent the effect of the discharge. The appraisals may, in the administrator's discretion, be based upon one or more of the following factors:

1. Sales of comparable properties in the immediate area;
2. Income generated by the subject property;
3. Replacement cost of the subject property; and/or
4. Such other factors as are ordinarily considered by real estate appraisers who are members of the Appraisal Institute or who are licensed or certified to perform real estate appraisals in New Jersey.

(b) The administrator may elect not to obtain an appraisal of the subject property as affected by the discharge if the administrator determines, in his or her discretion, that there is insufficient information to obtain a meaningful appraisal of the subject property reflecting the effect of the discharge. Without limiting the discretion of the administrator under this subsection, the administrator may determine that there is insufficient information if fewer than three comparable properties which have been affected by the discharge have been sold as of the date on which the claim is filed.

7:1J-4.4 Valuation of claim

(a) If the administrator has obtained appraisals pursuant to N.J.A.C. 7:1J-4.3(a), the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (a)1 and (a)2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and

2. The greater of:

i. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), reflecting the effect of the discharge on such value; or

ii. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(b) If, pursuant to N.J.A.C. 7:1J-4.3(b), the administrator has elected not to obtain an appraisal of the subject property as affected by the discharge, the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (b)1 and 2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and

2. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(c) The administrator may, in his or her discretion, adjust the amount determined pursuant to (a) or (b) above by considering other information available to the administrator which supports a conclusion that the amount determined pursuant to (a) or (b) above does not accurately reflect the diminution in the value of the subject property resulting from the discharge. Such information may include, but is not limited to, any of the following:

1. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1J-4.3(a), indicating that factors other than the discharge affected the sale prices of such properties. Such information may include, without limitation, the prices of comparable properties within and outside the area in which the discharge may have affected real property values; the time elapsed between listing for sale and execution of an agreement of sale for comparable properties within and outside the area in which the discharge may have affected real property values; and specific terms of the agreements of sale (such as financing terms, personal property included in the sale, and apportionments of closing costs);

2. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1J-4.3(a), indicating that such properties have characteristics which distinguish them from the subject property, and which affect the values of such properties;

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3. Information concerning the sale of the subject property, indicating that the difference between the sale price and the appraised value of the property reflected factors other than the discharge. Such information may include, but is not limited to, the time elapsed between listing of the subject property for sale and execution of an agreement of sale; the length of time *[and]* ***the*** subject property was offered for sale; the nature and number of any offers o purchase the subject property; the difference between the initial listing price and the sale price; the number and extent of intermediate reductions in the listing price; specific terms of the agreement of sale for the subjct property (such as financing terms, personal property included in the sale, *[the]* ***and*** apportionments of closing costs); data concerning the real estate market generally at the time of the sale of the subject propety; and other evidence of the good faith nature of the sale required to be submitted under ***N.J.A.C.*** 7:1J-4.5; and

4. The effect of the cleanup and removal of a discharged hazardous substance or of other amelioration of the damages resulting from a discharge.

7:1J-4.5 Evidence of good faith sale

(a) Except as provided in N.J.A.C. 7:1J-4.7 and 4.8, within 10 days after the closing of a sale of the subject property, the claimant shall submit the following documents to the Department:

1. Copies of all listing agreements for the sale of the subject property;

2. Copies of all written offers to purchase the subject property;

3. A copy of the contract of sale of the subject property;

4. Copies of all settlement statements, including without limitation the HUD-1 Uniform Settlement Statement form if required by 24 CFR 3500.8;

5. A copy of the deed conveying the subject property, together with a copy of the transmittal letter forwarding the deed to the county clerk or register of deeds and mortgages for recording;

6. An affidavit by the claimant, signed by the person required to sign the claim and certified in accordance with N.J.A.C. 7:1J-1.6, stating the following:

i. The sale price of the subject property without closing adjustments;

ii. That neither the claimant nor any person not listed on the settlement statements has received any money or other compensation from any party in connection with the subject property, except as set forth on the settlement statements; and

iii. That the documents submitted pursuant to (a)1 through 5 above are true copies of the original documents executed and delivered in connection with the sale of the subject property; and

7. An affidavit by the claimant's realtor, stating the following:

i. That the realtor is a member of the multiple listing service, and listed the property for sale with the multiple listing service (unless the subject property is of a type not normally sold through a multiple listing service);

ii. The period of time the subject property was offered for sale, and the period of time the property was listed for sale with the multiple listing service;

iii. The initial listing price;

iv. All changes in the listing price, and the dates of such changes;

v. A record of all inquiries received from potential purchasers regarding the subject property, and of all showings or open houses held in the course of offering the subject property for sale, including the names and addresses of all persons who inquired about the subject property, were shown the subject property, or attended open houses at the subject property, and a description of the responses of these persons to the subject property; and

vi. A record of the amount and date of each offer made for the purchase of the subject property.

(b) A determination by the administrator that the claimant arrived at the sale price in good faith shall not preclude the administrator from determining that any other aspect of the sale of the subject property was not in good faith.

(c) The administrator may deny the claim or adjust the amount eligible for compensation, if based upon the evidence required under (a) above, the administrator determines that any aspects of the sale of the subject property was not in good faith.

7:1J-4.6 Settlement based upon legal inability to sell the subject property

(a) If, solely as a result of the discharge, the claimant is legally unable to sell the subject property (for example, if a certificate of occupancy cannot be issued for the subject property as a result of the discharge, and the subject property is located in a municipality in which a certificate of occupancy is required for the sale), the administrator may, in his or her discretion, offer to settle the claimant's claim against the Fund in accordance with this section.

(b) If the administrator elects to settle a claim pursuant to this section, the administrator shall determine the amount of the claim eligible for compensation pursuant to N.J.A.C. 7:1J-4.4. An offer by the administrator to settle the claim shall be in such amount.

(c) The making, acceptance or rejection, and arbitration of such settlement offer pursuant to (b) above shall be in accordance with N.J.A.C. 7:1J-8 and 9.

(d) As a condition of the settlement of the claim pursuant to this section, the claimant shall cause all persons having an ownership interest in the subject property (including without limitation any dower or curtesy interest preserved pursuant to N.J.S.A. 3B:28-1) to execute, acknowledge and deliver to the Department a document, in recordable form, granting to the Fund a lien on the subject property securing repayment of the full amount of the settlement. The Department shall foward such document to the county clerk or register of deeds and mortgages of the county in which the subject property is located. Such document shall be prepared and recorded at the claimant's expense.

(e) The administrator shall execute, acknowledge and deliver to the claimant a discharge of the lien upon payment of the following amount (provided however, that if the payment amount calculated below is less than zero, the administrator shall execute, acknowledge and deliver the discharge of the lien upon the claimant's written request, without the payment of any money; and provided further, that if the payment amount calculated below exceeds the amount of the settlement, the administrator shall execute, acknowledge and deliver the discharge of the lien upon repayment of the settlement amount, plus interest at the rate for post-judgment interest established in the Rules Governing the Courts of the State of New Jersey, as such rate is in effect as of the date of the settlement):

$$\text{Payment amount} = SP - (AV - S)$$

where:

1. SP equals the sale price of the subject property, as adjusted pursuant to the criteria listed in N.J.A.C. 7:1J-4.4(c), if the administrator determines that the actual sale price does not accurately reflect the diminution in the value of the subject property resulting from the discharge;

2. AV equals the appraised value of the subject property, absent the effects of the discharge, as adjusted under N.J.A.C. 7:1J-4.4(c); and

3. S equals the amount of the settlement made pursuant to this section.

7:1J-4.7 Settlement when emergency relocation is necessary

If the administrator determines, in his or her discretion, that environmental conditions at the subject property which result from a discharge occurring after April 1, 1977 create a substantial risk of imminent harm to the health and safety of the occupants of the subject property, the administrator may suspend any or all of the requirements of N.J.A.C. 7:1J-4.2, 4.3, 4.4 and 4.5 and may immediately award compensation to enable the occupants of the property to relocate temporarily or permanently. Such an award may include all or part of the purchase price, relocation costs, and assumption of the costs of property encumbrances.

7:1J-4.8 Contract for sale of property entered into before filing of claim

(a) If a claimant has entered into a contract for the sale of property before filing a property value diminution claim with respect to such property, the administrator may, in his or her discretion, settle such a claim in accordance with this section.

(b) Claims made pursuant to this section shall be eligible for compensation only to the extent provided in N.J.A.C. 7:1J-4.1, and

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only if the subject property satisfies the eligibility requirements set forth in N.J.A.C. 7:1J-4.2.

(c) Subject to the limitation in N.J.A.C. 7:1J-4.1, the administrator shall determine the amount of the settlement offer pursuant to N.J.A.C. 7:1J-4.4.

(d) Together with the claim (or, if the claim is made before closing of the sale of the subject property, within 10 days after closing), the claimant shall submit to the Department all documents required pursuant to N.J.A.C. 7:1J-4.5; provided, however, that the Department may, in its discretion, refrain from requiring submission of the documents normally required under N.J.A.C. 7:1J-4.5(a)1 and 4.5(a)7.

7:1J-4.9 Suspension of claims

(a) The Department shall send notice of the requirements of this chapter to each claimant who filed a property value diminution claim before *[the effective date of this chapter]* ***January 4, 1993***. Within 60 days after receipt of such notice, each claimant shall notify the Department of his or her election to:

1. Pursue the claim;
2. Suspend the claim for the period provided in (c) below; or
3. Withdraw the claim.

(b) If a claimant fails to notify the Department of his or her election under (a) above, the claimant shall be deemed to have suspended the claim for the period provided in (c) below.

(c) All claims suspended pursuant to (a) or (b) above will remain in suspension until one of the following occurs:

1. The Department receives notice from the claimant, stating that the claimant desires to reinstate the claim; or
2. The claimant receives notice from the Department, stating that the remediation of the discharge has been completed to the satisfaction of the Department, and that the administrator is therefore denying the claim***; provided, however, that if the Department has required as a condition of its satisfaction that a restriction running with the subject property be recorded with the applicable county clerk or register of deeds, the claimant may make a claim for diminution resutling from such restriction***.

(d) At any time during the period of suspension under (c) above, a claimant may request reinstatement of the claim by notice to the Department.

(e) At the end of the suspension period provided in (c) above, the claim will be automatically reactivated, unless the claimant has previously withdrawn the claim.

(f) The administrator may, in his or her discretion, reactivate a claim suspended under N.J.A.C. 7:1J-2.4(b) upon the conclusion of litigation or arbitration between the claimant and any potentially responsible parties, which litigation or arbitration concerns such damages. For the purpose of this subsection, litigation or arbitration shall be deemed to have concluded upon the occurrence of any of the following: a complete settlement of the litigation or arbitration; or the entry of a certification, judgment or order completely resolving the litigation or arbitration, followed by the expiration of time allotted to appeal or otherwise challenge such certification, judgment or order.

(g) Upon reactivation of a suspended claim:

1. The administrator shall confirm the reactivation by written notice to the claimant;
2. The claim will be processed in accordance with this chapter; and
3. Within 30 days after receiving notice of the reactivation, the claimant shall list the subject property for sale with one or more licensed brokers who are members of a multiple listing service (or its commercial equivalent, for claims involving commercial property or other properties not normally offered for sale through a multiple listing service).

(h) Upon the claimant's second suspension of the claim, the administrator shall dismiss the claim, without prejudice. If the claimant subsequently files a new claim for the same damages contained in the original dismissed claim, the new claim will be deemed to have been filed as of the date of filing of the original dismissed claim.

SUBCHAPTER 5. EMERGENCY RESPONSE CLAIMS BY LOCAL UNITS

7:1J-5.1 Eligibility of emergency response claims for compensation

Emergency response claims are eligible for compensation from the Fund in accordance with the requirements of this chapter, to the extent permitted under this subchapter.

7:1J-5.2 Procedure for making emergency response claim

(a) Emergency response claims shall be subject to the claims procedure requirements of N.J.A.C. 7:1J-***1, 2 and*** 6.

(b) In addition to the information and documents required to be submitted under N.J.A.C. 7:1J-6.3(a), a claimant making an emergency response claim shall submit the following:

1. An affidavit by the claimant, signed by the person required to sign the claim and certified in accordance with N.J.A.C. 7:1J-1.6, stating that the claimant obtained the approval of the Department before taking the emergency response action which is the subject of the claim, identifying the Department employee from whom the approval was obtained, stating the date of the approval, and the form in which the approval was transmitted to the claimant (for example, by telephone, mail, or facsimile transmission);
2. Reports by the police department and fire department concerning the emergency response action which is the subject of the claim, if such reports have been prepared;
3. Reports by the local hazardous materials unit and the local health department concerning the emergency response action which is the subject of the claim, if such reports have been prepared;
4. Documentation of the time spent by the claimant's personnel, personnel of other local units, and personnel acting at the request of the claimant or other local units, in connection with the emergency response action which is the subject of the claim; and
5. Receipts or other evidence of payment of costs incurred in the emergency response action which is the subject of the claim.

7:1J-5.3 Processing of emergency response claims

(a) Within 10 days after an emergency response claim is filed, the Department shall notify the claimant whether the claim is complete. If the claim is incomplete, the Department shall list in the notice the information necessary to make the claim complete, and specify in the notice the date by which the necessary information is to be submitted. The administrator may administratively close the claim under N.J.A.C. 7:1J-2.8 for failure to submit the necessary information in the allotted time.

(b) The administrator shall approve or deny an emergency response claim, without regard to the requirements of N.J.A.C. 7:1J-7, 8 and 9, within 120 days after the filing of a completed claim, including all supportive information or documentation required under N.J.A.C. 7:1J-5.2, (a) above, and 7:1J-6.

(c) If the administrator fails to approve (in whole or in part) or deny the emergency response claim within the 120 days allotted under (b) above, all costs in the claim shall be deemed approved.

(d) If the administrator denies the emergency response claim or approves only part of the costs claimed, the claimant shall not be precluded from seeking recovery of the costs denied by the administrator under any other provision of statutory law or in accordance with any remedies available under common law.

7:1J-5.4 Notice to potentially responsible parties

If the Department determines that a person is a potentially responsible party in connection with a discharge or threatened discharge which is the subject of an emergency response claim, the Department shall provide such person with written notice of the nature of the claim and the identity of the claimant.

SUBCHAPTER 6. CLAIMS PROCEDURE

7:1J-6.1 Time for filing of claims

Claimants shall submit any claims to the Department not later than one year after the date of discovery. If a claimant fails to submit a claim to the Department within such one-year period, the claimant shall be deemed to have waived such claim. Such waiver is with

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prejudice and shall bar all recourse by the claimant against the Fund for any damages arising out of or related to the discharge or threatened discharge.

7:1J-6.2 Submission of claim

(a) For the purposes of determining whether a claim has been timely filed pursuant to N.J.A.C. 7:1J-6.1, the following shall apply:

1. If the claimant submits the claim by United States mail, the claim will be deemed filed as of the date of mailing by the claimant.

2. If the claimant submits the claim via another means of delivery, the claim will be deemed filed as of the date of receipt by the Department.

7:1J-6.3 Contents of claim

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1. The name of the claimant;

2. The street address of the claimant;

3. The mailing address of the claimant;

4. The *[home and business]* telephone *[numbers]* ***number*** of the claimant ***during normal daytime business hours***;

5. The name, mailing address, telephone number, and relationship to the claimant of any person designated to receive communications from the Department pursuant to N.J.A.C. 7:1J-6.7;

6. Whether the claimant is an individual, general partnership, limited partnership, corporation, local government entity, Federal government entity, or state government entity; *[and

i. If the claimant is a limited partnership, the names and addresses of all general partners;

ii. If the claimant is a general partnership, the names and addresses of all partners; and

iii. If the claimant is a corporation, the names and addresses of all directors and of all officers;]*

7. A statement that the claimant claims to have actually incurred damages, as such term is defined in N.J.A.C. 7:1J-1.4, that the claimant has not received compensation from any other source for such damages, and that the claimant is not a potentially responsible party in connection with the discharge which is the subject of the claim. Such statement need not be specific about the amount or the nature of such damages;

8. Except as provided in (a)9 below, if the claim is for property value diminution, a statement that the claimant is attempting to sell the subject property. The administrator shall deny, without prejudice, a claim for property value diminution (other than as provided in (a)9 below) which does not contain this statement. The claimant may again file the claim upon commencing efforts to sell the subject property; and

9. If the claim is for property value diminution and is made pursuant to N.J.A.C. 7:1J-4.8, all documents required by N.J.A.C. 7:1J-4.8 to be submitted with the claim, and a statement that the claimant has contracted to sell or has sold the subject property.

(b) The claimant shall submit to the Department any of the following types of information requested by the Department;

1. The location of the property from which the claimant believes the discharge to have emanated or at which the threatened discharge occurred, including the name of the site, the street address, the municipality, and the county;

2. With respect to all persons whom the claimant believes to be responsible for the discharge or threatened discharge:

i. The name and address of each such person;

ii. If known to the claimant, whether each such person is an individual, general partnership, limited partnership, corporation or government entity;

iii. Whether any such person has admitted responsibility for the discharge or threatened discharge from which the claim arose, or liability for the amount of damages for which the claim is being made; and

iv. If any such person has admitted responsibility or liability pursuant to iii above, the names of such persons and the nature of such admissions;

3. With respect to a claim involving damage to personal property:

i. The date or dates on which the damage occurred;

ii. The location of the personal property at the time the damage occurred;

iii. A description of the personal property which was damaged;

iv. A description of the damage;

v. The original cost paid by the claimant for the damaged personal property;

vi. The date the claimant acquired the damaged personal property;

vii. Evidence of the claimant's ownership of the damaged personal property;

viii. An estimate of the cost of repairing the damage to the personal property, and an estimate of the value of the damaged personal property as of the time of the damage;

ix. The name, address and qualifications of any persons who prepared the estimates required by (b)3viii above; and

x. The location at which the administrator or his designee can inspect the damaged personal property;

4. A description of any damage to real property located thereon, including:

i. The date on which the damage occurred;

ii. The precise location of the damaged real property, including the street address, the tax lot and block, the municipality, and the county;

iii. A description of the predominant use of the damaged real property;

iv. A detailed description of the damage to the real property;

v. An estimate of the cost of remedying the damage, and the name, address and qualifications of the person making the estimate; and

vi. A description of the claimant's interest in the damaged real property; and documents evidencing such interest. Documents evidencing fee title to the damaged real property shall include an affidavit of title executed by the claimant, together with either a copy of the recorded deed conveying title to the claimant, or an owner's title insurance policy insuring the claimant's interest in the property. Documents evidencing a leasehold interest in the property shall include a copy of the lease for the property, together with an affidavit of the claimant stating that the lease is in full force and effect;

5. A detailed description of the facts known to the claimant which support the claim, including without limitation the following:

i. The facts which lead the claimant to believe that the discharge caused the damages suffered by the claimant; and

ii. The facts which lead the claimant to believe that a person is a potentially responsible party;

6. The names and addresses of any witnesses known to the claimant who may have knowledge concerning the discharge, threatened discharge, or damage;

7. The names of any public agencies (including without limitation any local or state police or any other local, state, interstate or federal agencies) who have investigated the discharge or threatened discharge, and, if known to the claimant, the names of the persons who conducted the investigations on behalf of such agencies;

8. If any of the damaged real or personal property or any of the asserted lost income or tax revenue may be covered by any insurance policy or policies, ***or other financial agreement or instrument under which compensation may be available,*** the following information:

i. The name and address of the insurance carrier which issued the policy, ***or issuer of the other financial agreement or instrument***;

ii. The policy number ***or other applicable reference number***;

iii. A copy of the certificate of insurance ***or other financial agreement or instrument***; and

iv. Copies of any correspondence between the insurance carrier ***or issuer of the other financial agreement or instrument*** and the claimant or the claimant's representatives concerning the discharge or threatened discharge;

9. The names and addresses of any persons other than the Fund (including without limitation insurance companies) against whom the claimant has asserted a claim;

10. Whether the claimant has received or agreed to receive any compensation from any person in connection with the discharge or

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threatened discharge, and the details of any such compensation or agreement to receive compensation;

11. A description of any action taken to repair, restore or replace damaged real property, including without limitation the following:

i. The name and address of the person who has taken such action; and

ii. The cost of such action;

12. If the claimant asserts damages which include a loss of income, the claim shall include the following information:

i. The total amount of the claimed loss of income;

ii. The period of time during which the claimant asserts that the loss of income has occurred;

iii. If the claimant asserts that the loss of income has occurred over a period exceeding 12 months, a breakdown of the loss of income by three-month periods, with the first such period commencing on the date of discovery;

iv. A detailed description of the method employed by the claimant in calculating the claimed loss of income;

v. A statement of whether all income, sales and other accounting and financial information supporting the claim is available for inspection, copying and audit by the Department;

vi. If any of the information described in (b)12v above is not available for inspection, copying and audit, an explanation of why such information is unavailable for such purposes;

vii. With respect to any of the information described in (b)12v above which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information; and

viii. If any of the information described in (b)12v above has been audited, certified or reviewed by a certified public accountant, the name, address, and telephone number of such accountant, and the date of such audit, certification or review. If such information has been audited, the claimant shall attach copies of all audited statements and of the auditors' reports;

13. If the claimant asserts damages which include a loss of tax revenue, the claim shall include the following information:

i. The total amount of the claimed loss of tax revenue;

ii. The period of time during which the claimant asserts that the loss of tax revenue has occurred;

iii. A detailed description of the method employed by the claimant in calculating the claimed loss of tax revenue;

iv. A statement of whether all financial information supporting the claim is available for inspection, copying and audit by the Department;

v. If any of the information described in (b)13iv above is not available for inspection, copying and audit, an explanation of why such information is unavailable for such purposes;

vi. With respect to the information described in (b)13iv above which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information;

vii. If any of the information described in (b)13iv above has been audited, certified or reviewed by a certified public accountant, the name, address, and telephone number of such accountant, and the date of such audit, certification or review. If such information has been audited, the claimant shall attach copies of all audited statements and of the auditors' reports;

***14. If the claimant is a limited partnership, the names and addresses of all general partners;**

15. If the claimant is a general partnership, the names and addresses of all partners;

16. If the claimant is a corporation, the names and addresses of all directors and of all officers;*

*[14.]***17.*** Any other information which the claimant believes to be relevant to the claim; and

*[15.]***18.*** Any other information which the Department deems necessary to process the claim.

(c) Any documents supporting the claimant's assertion of costs incurred in ameliorating damage resulting from a discharge shall be presented as follows:

1. The claimant shall submit a compilation of all such costs, stating the aggregate amount of the costs incurred; ***and***

2. The claimant shall submit a breakdown of the aggregate costs incurred, stating which portion of the aggregate cost is attributable to ameliorating damage resulting from the discharge, and which portion is not*[; and]**.*

*[3.]***(d)*** The claimant shall submit all bills, invoices, receipts and other documentation in an orderly fashion, accompanied by an index and/or a summary if the Department determines that an index or summary would assist in the organized and expeditious processing of the claim.

*[(d)]***(e)*** The administrator may administratively close the claim pursuant to N.J.A.C. 7:1J-2.8 for failure to provide information under this section.

7:1J-6.4 Amendment of claim

A claimant may amend a claim, or a response to the Department's request for information, with respect to the nature or extent of the damages, the cause of the damages, the amount of the claim, or any other information relevant to the claim, until the occurrence of the earliest of the following: the approval of the claim by the administrator; the denial of the claim by the administrator; or the agreement to a settlement among a claimant and one or more potentially responsible parties.

7:1J-6.5 Consent to inspection

(a) Submission of a claim shall constitute consent by the claimant to the following:

1. The inspection of the damaged real and personal property by the administrator, the Department, the Board, and other persons designated by the administrator, the Department or the Board;

2. For all information submitted pursuant to N.J.A.C. 7:1J-6.3(b)12, 13, 14 or 15, the inspection, copying and audit of such information by the Department, the Board, and other persons designated by the administrator, the Department or the Board; and

3. The entry by the administrator, the Department, the Board, and other persons designated by the administrator or by the Board, onto any property to which the claimant has the right to grant access, or to which the claimant has the right to compel another person to grant access. Any cost which the claimant incurs in compelling such access shall be borne solely by the claimant.

7:1J-6.6 Notice of Intent to Deny; Denial

(a) The administrator shall deny a claim which, on its face, appears to be ineligible for compensation from the Fund.

(b) The administrator may issue a Notice of Intent to Deny (NOI) with respect to any claim which, on its face, does not contain information sufficient to support a determination that the claim is eligible for compensation from the Fund. The administrator shall send the claimant the NOI by certified mail, return receipt requested.

(c) The claimant may contest the NOI by submitting to the Department additional evidence in support of the claim, and evidence that any material fact set forth in the NOI is incorrect. The claimant shall submit such evidence within 30 days after the date on which the claimant received the NOI; provided however, that if the claimant has refused delivery of the NOI, the claimant shall submit such evidence within 30 days after the date the administrator mailed the NOI.

(d) If, after reviewing the evidence submitted pursuant to (c) above, the administrator determines that the claim does not clearly fail to satisfy the requirements for eligibility for compensation from the Fund, the administrator shall withdraw the NOI and process the claim in accordance with this chapter.

(e) The administrator shall deny the claim after the expiration of the 30-day period alloted under (c) above, if:

1. The claimant fails to submit any evidence to the Department within the 30-day period; or

2. After reviewing the evidence submitted pursuant to (c) above, the administrator determines that the claim clearly fails to satisfy the requirements for eligibility for compensation from the Fund.

(f) If the administrator denies the claim pursuant to (a) or (e) above, the administrator shall prepare a written statement setting

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forth the denial and the reasons therefor. The administrator shall send the claimant a copy of the statement by certified mail, return receipt requested.

(g) A claimant may request that a denial of a claim be arbitrated under N.J.A.C. 7:1J-9 if the denial was based solely upon the validity of the claim, and not upon other matters including, without limitation, untimely filing of the claim as shown on the face of the claim. The claimant shall make the request in writing within 20 days after receiving the administrator's written statement under (f) above; provided however, that if the claimant refuses delivery of the administrator's written statement, the claimant shall make the request for arbitration within 20 days after the date the administrator mailed the written statement. Failure to request arbitration before the expiration of such 20-day period shall operate as a waiver of any right to have the claim submitted to arbitration.

(h) A request for arbitration under (g) above shall contain the following information:

1. A denial of each fact disputed by the claimant which the administrator has asserted in the denial of the claim. The claimant's denial shall fairly meet the substance of the disputed facts, and shall contain assertions of the facts as the claimant believes them to be;

2. If the claimant asserts that, based upon the facts asserted in the administrator's denial of the claim, the administrator's denial is improper as a matter of law, a specific explanation of the legal basis for that assertion;

3. Copies of written documents which the claimant is relying upon to support the request, provided however, that if the claimant has previously submitted such documents to the Department, a specific reference to such documents will be sufficient;

4. An estimate of the time required for the hearing; and

5. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(i) If the claimant does not submit the information required under (h) above within the time allotted under (g) above, the administrator shall deny the request. If the claimant fails to include all of the information required under (h) above, the administrator may deny the request.

(j) The administrator may require that the claimant submit additional information beyond that required under (h) above, if the administrator determines that such information is necessary to provide the administrator, the Department or the Board with adequate notice of the specific factual or legal bases for the claimant's objections to the denial.

7:1J-6.7 Communication with claimant or representative

The Department will direct all communications in connection with the claim to the person who signed the claim, unless the claimant submits to the Department a written statement, signed by the person required to sign the claim, designating a representative to receive communications from the Department.

7:1J-6.8 Relaxation of procedural requirements

(a) Except as provided by (b) below, the Department may relax any of the procedural requirements of this chapter if the administrator determines that strict adherence to such requirements would result in unfairness or injustice.

(b) Nothwithstanding (a) above, the Department shall not relax procedural requirements of this chapter if such requirements are imposed by the Act, by other applicable State or Federal statutes, or by applicable decision, order or decree of a court of competent jurisdiction.

SUBCHAPTER 7. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND POTENTIALLY RESPONSIBLE PARTIES

7:1J-7.1 Notice of claim to potentially responsible party

(a) If the administrator determines that a person is a potentially responsible party in connection with a discharge which is the subject of a claim, the administrator shall provide such person with written notice of the claim.

(b) The written notice provided under (a) above shall state the following:

1. The nature of the claim;

2. The identity of the claimant;

3. The time period established for settlement negotiations under N.J.A.C. 7:1J-7.2; and

4. The right to contest the validity or amount of the claim by requesting arbitration under N.J.A.C. 7:1J-8.2(a).

7:1J-7.2 Settlement negotiations

(a) If the administrator determines that one or more persons are potentially responsible parties in connection with a discharge which is the subject of a claim, the administrator shall establish a time period for settlement negotiations between all potentially responsible parties and the claimant. Such time period shall be no longer than 60 days, commencing as of the date set forth in the written notice under N.J.A.C. 7:1J-7.1, unless the administrator, the claimant and all potentially responsible parties agree upon a longer period. During this settlement negotiation period, all parties shall negotiate in good faith in attempt to resolve the subject claim. Such settlement negotiation period may be extended upon the agreement of the administrator, the claimant and all potentially responsible parties.

(b) The administrator may arrange for the assistance of a neutral third party to attempt to promote and arrange a settlement between the claimant and the potentially responsible parties.

7:1J-7.3 Effect of settlement between claimant and potentially responsible party

(a) If the source of the discharge which is the subject of the claim is determined, and one or more potentially responsible parties concede liability, the claimant and such potentially responsible parties may agree to a settlement which shall be final and binding upon the parties and which will waive all recourse by that claimant against the Fund in connection with the discharge which is the subject of the claim. Such waiver shall be effective regardless of any communications or understanding between or among the claimant, potentially responsible parties, and/or the administrator or the Department.

(b) If the source of the discharge which is the subject of the claim has not been determined, or if no potentially responsible party has conceded liability, the claimant and such potentially responsible parties may nonetheless agree to a settlement. Such settlement shall operate as a waiver by that claimant of all recourse against the Fund in connection with the discharge which is the subject of the claim, if the terms of the settlement in any way prejudice the subrogation or assignment rights of the Fund, or in any way impair the Fund's ability to obtain cost recovery. Such waiver shall be effective regardless of any communications or understanding between or among the claimant, potentially responsible parties, and/or the administrator or the Department.

(c) Notwithstanding the waiver under (a) or (b) above, if the settling potentially responsible party is or becomes insolvent or otherwise unable to perform its obligations under the settlement, the administrator may, in its discretion, allow the claimant to reinstate the claim against the Fund. If the claim is reinstated, the Fund shall not be bound by any aspect of the settlement with the potentially responsible party.

SUBCHAPTER 8. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND FUND

7:1J-8.1 Request for payment upon failure to identify or settle with potentially responsible party

(a) A claimant may request payment of a claim from the Fund, if:

1. Based upon the information supplied by the claimant and other information obtained by the Department, the administrator has determined that he or she cannot identify any potentially responsible parties for the discharge from which the claim arose; or

2. The claimant has made good faith efforts to enter into a settlement with one or more potentially responsible parties, but has not entered into any such settlement within the time allotted under N.J.A.C. 7:1J-7.2.

(b) Upon receipt of a request under (a) above for payment of a claim from the Fund, the administrator shall provide written notice

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of the request to any potentially responsible parties who have been designated at or before the time of such claim.

7:1J-8.2 Contest of validity or amount of claim

(a) Any potentially responsible party may contest the amount or validity of the claim by requesting that the administrator submit the claim to arbitration. If a person receiving notice of the claim under N.J.A.C. 7:1J-7.1 has not delivered a request for arbitration within 20 days after the date of delivery of the notice of the claim (or, if such person has refused delivery of the notice, 20 days after the date of mailing of the notice), such person shall be deemed to have waived any right to have the claim submitted to arbitration.

(b) The administrator may contest the amount or validity of the claim by submitting the claim to arbitration.

(c) Any other person may contest the amount or validity of the claim by requesting that the administrator submit the claim to arbitration. If the person seeking to contest the claim has not delivered a request for arbitration within 20 days after receiving actual notice of the claim such person shall be deemed to have waived any right to have the claim submitted to arbitration.

(d) Upon receipt of a request for arbitration under (a) or (c) above, the administrator shall provide the person requesting arbitration with a copy of all information submitted to the administrator under N.J.A.C. 7:1J-6.3(a) and (b). Within 20 days after receipt of such information, the person requesting arbitration shall submit the following information to the administrator in writing:

1. The name, address and telephone number of the person requesting arbitration, and such person's authorized representative;

2. A denial of each fact asserted in the information submitted under N.J.A.C. 7:1J-6.3(a) and (b) which the person requesting arbitration disputes. The denial shall fairly meet the substance of the disputed facts, and shall contain assertions of the facts as the person requesting arbitration believes them to be;

3. If the person requesting arbitration asserts that, based upon the facts asserted in the information submitted under N.J.A.C. 7:1J-6.3(a) and (b), the claim is invalid or the amount is unreasonable as a matter of law, a specific explanation of the legal basis for that assertion;

4. Copies of written documents which the person requesting arbitration is relying upon to support its assertions and the request;

5. An estimate of the time required for the hearing; and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(e) If the person requesting arbitration does not submit the information required under (d) above within the time alloted under (d) above, the administrator shall deny the request. If the person requesting arbitration fails to include all of the information required under (d) above, the administrator *[my]* **may*** deny the request.

(f) The administrator may require that the person requesting arbitration submit additional information beyond that required under (d) above, if the administrator determines that such information is necessary to provide the administrator, the Department, the claimant or the Board with adequate notice of the specific factual or legal bases for the objections by the person requesting arbitration to the validity or amount of the claim.

7:1J-8.3 Settlement offer by the administrator

(a) The administrator, on behalf of the Fund, may make a written settlement offer to the claimant if:

1. The claim is eligible for compensation from the Fund;

2. The claimant has requested payment of the claim under N.J.A.C. 7:1J-8.1;

3. The Department has not received any requests for arbitration of the claim within 30 days after the date of delivery of the last notice under N.J.A.C. 7:1J-8.1(b) (or, if any potentially responsible party has refused delivery, within 30 days after the date of mailing of the notice, if such date is later than the date of delivery to other potentially responsible parties); and

4. The claimant has made good faith efforts to enter into a settlement with one or more potentially responsible parties, but has not entered into any such settlement within the time allotted under N.J.A.C. 7:1J-7.2.

(b) The administrator, on behalf of the Fund, shall make a written settlement offer to the claimant if the claim is eligible for compensation from the Fund, the claimant has requestd payment of the claim under N.J.A.C. 7:1J-8.1, and the administrator determines that the source of the discharge is unknown or cannot be determined.

(c) If the administrator is not required to make a settlement offer under (b) above, has elected not to make a settlement offer under (a) above, and has not denied the claim pursuant to N.J.A.C. 7:1J-6.6(e), the administrator shall submit the claim to arbitration in accordance with N.J.A.C. 7:1J-9.

7:1J-8.4 Action on administrator's settlement offer

(a) The claimant shall either accept or reject the settlement offer made pursuant to N.J.A.C. 7:1J-8.3 no later than 20 days after the date the claimant receives the settlement offer (or, if the claimant refuses delivery of the settlement offer, 20 days after the date of mailing of the settlement offer). The administrator may extend this 20-day period by written notice to the claimant.

(b) If the claimant accepts the administrator's settlement offer made pursuant to N.J.A.C. 7:1J-8.3, the claimant shall be deemed to have waived all further claims against the Fund arising in connection with the discharge which was the subject of the settled claim. Upon such acceptance, the administrator shall be subrogated to all rights of the claimant against all other persons arising in connection with the damages which were the subject of the settled claim.

(c) If the *[administrator]* ***claimant*** rejects the settlement offer within the time allotted by (a) above, the administrator shall submit the claim to arbitration pursuant to N.J.A.C. 7:1J-9, unless the administrator and the claimant expressly agree otherwise in writing.

(d) If no acceptance or rejection of the offer is delivered to the administrator before the expiration of the 20-day period allotted by (a) above (as such period may be extended), the claimant shall be deemed to have rejected the offer, and the offer shall be deemed to have terminated.

SUBCHAPTER 9. BOARDS OF ARBITRATION

7:1J-9.1 Convening a board of arbitration

(a) The administrator shall convene a board of arbitration upon the occurrence of any of the following:

1. When a claimant contests in writing the denial of a claim issued by the administrator pursuant to N.J.A.C. 7:1J-6.6(e), and requests arbitration pursuant to N.J.A.C. 7:1J-6.6(g); provided, however, that arbitration of denial of a claim shall be granted only if the denial was based solely upon the lack of validity of the claim;

2. When a claimant rejects a settlement offer made by the administrator pursuant to N.J.A.C. 7:1J-8.4(c);

3. When any potentially responsible party contests the validity or amount of the claim under N.J.A.C. 7:1J-8.2(a), the administrator contests the validity or amount of the claim under N.J.A.C. 7:1J-8.2(b), or any other person contests the validity or amount of the claim under N.J.A.C. 7:1J-8.2(c); or

4. When a claimant has failed to agree upon a settlement with a potentially responsible party within the time allotted pursuant to N.J.A.C. 7:1J-7.2, and the administrator has elected not to make a settlement offer pursuant to N.J.A.C. 7:1J-8.3(a).

(b) The administrator shall deny a request for arbitration if the requesting party fails to submit all of the information required under N.J.A.C. 7:1J-8.2, within the time allotted under that section.

7:1J-9.2 Notice of arbitration

The administrator shall provide written notice of the arbitration to the claimant, to all potentially responsible parties identified as of the date of the notice, and to any other person who has contested the validity or amount of damage claims or cleanup and removal costs presented to the Fund for payment.

7:1J-9.3 Membership of Board

(a) In the administrator's discretion, the board of arbitration shall consist of either three individuals, or one individual.

(b) The arbitrator for a one-member board shall be selected by one of the following methods, in the administrator's discretion:

1. Selection by the administrator;

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2. Selection by agreement of the claimant and any potentially responsible parties, with the consent of the administrator; or

3. Selection by the American Arbitration Association.

(c) Membership of a three-member board shall be as follows:

1. One member appointed by the potentially responsible party, provided however, that if the administrator has not identified a potentially responsible party for the discharge, the administrator shall request the American Arbitration Association to select the member who would otherwise be appointed by a potentially responsible party;

2. One member appointed by the claimant; and

3. One member appointed by the members listed in (c)1 and 2 above. This member shall serve as chairman of the board.

(d) The claimant and the potentially responsible party each shall make the appointments required by (c) above within 30 days after each such person has received notice that a board will be convened. If either the potentially responsible party or the claimant fails to appoint a member within the allotted 30-day period, the administrator shall request the American Arbitration Association to select that member, and said member and the other member shall select the neutral arbitrator; provided however, that if both the claimant and the potentially responsible party fail to appoint a member within the allotted 30-day period, the administrator shall request the American Arbitration Association to select both members, and said members shall select the neutral arbitrator. Within 30 days after the appointment of the second of the members selected pursuant to (c)1 and (c)2 above, such members shall make the appointment required by (c)3 above. If such members fail to appoint the third arbitrator within such time period, the administrator shall request the American Arbitration Association to select the neutral arbitrator.

(e) Before the appointment of any person appointed as arbitrator becomes effective, the appointee shall disclose to the administrator any circumstance likely to affect the arbitrator's impartiality, including without limitation any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with any of the parties or any of their representatives. Upon receipt of such information from the appointee, the administrator shall communicate the information to the parties and to the board. Upon receipt of such information from a source other than the appointee, the administrator shall communicate the information to the appointee, to the parties and to the board.

(f) The selection of an arbitrator by a potentially responsible party shall not be construed as an admission of liability by any such person.

(g) Before proceeding with the first hearing, each arbitrator shall take the following oath of office:

I hereby solemnly swear to fairly, impartially and faithfully execute my duties as an arbitrator in accordance with the Spill Compensation and Control Act, and all other applicable laws and regulations.

(h) The administrator may declare the position of an arbitrator to be vacant, if presented with sufficient proof to reasonably support the conclusion that a member of the board has become unable to perform the duties of the office. A substitute member shall be appointed in accordance with this section, unless the administrator and the parties consent to proceed without a substitute member.

7:1J-9.4 Jurisdiction over all claims related to discharge

One board may be convened to hear and determine all claims arising from or related to a common discharge.

7:1J-9.5 Class actions

The board may acknowledge a class of claimants, pursuant to and in accordance with N.J.S.A. 58:10-23.11p.

7:1J-9.6 Administrative conference, preliminary hearing, and mediation conference

(a) The board, in its discretion, may schedule an administrative conference with the board and the parties and/or their representatives to expedite the arbitration proceedings.

(b) The board, in its discretion, may schedule a preliminary hearing with the parties and/or their representatives and the board to specify the issues to be resolved, to stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, at the preliminary hearing the board may establish:

1. The extent of the schedule for the production of relevant documents and other information;

2. The identification of any witnesses to be called;

3. A schedule for further hearings to resolve the dispute; and

4. Such other procedural requirements which the board deems necessary.

(c) With the consent of the parties, the board at any stage of the proceeding may arrange a mediation conference in order to facilitate settlement.

7:1J-9.7 Discovery

(a) The board shall have complete discretion regarding discovery, provided however, that the board shall exercise such discretion in light of the expedited nature of Spill Fund Arbitration as outlined in N.J.S.A. 58:10-23.11n.

(b) The board shall reduce any proposed discovery orders to writing which shall be presented to the parties. Any exceptions to the board's proposed discovery order shall be filed within seven days after receipt of the order.

(c) The board may authorize the use of telephone conferences with the parties and the board to raise, argue and resolve any disputes regarding discovery.

7:1J-9.8 Prehearing requirements

(a) At least 10 days before the commencement of the hearing, the parties shall have:

1. Met and prepared a stipulation of facts not in dispute, and provided it to the board;

2. Met and pre-marked a joint set of exhibits as to which neither authenticity nor relevance is disputed, and provided it to the board;

3. Met and resolved all questions of authenticity as to any evidence with respect to which relevance remains in dispute, and advised the board of such resolution;

4. Identified and advised the board of all evidentiary and procedural issues which must be resolved *in limine;* and

5. If required by the board, filed trial briefs with the board and served copies of the trial briefs upon all parties.

7:1J-9.9 Conduct of hearing

(a) The board shall set the date, time, and place for each hearing. The board shall mail to each party notice thereof at least 10 days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof. For good cause shown, the board may postpone any hearing upon the request of a party or upon the board's own initiative.

(b) Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the board of the name and address of the representative at least three days prior to the date set for the hearing at which the person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

(c) *[If the board elects to have a record, stenographic or otherwise, then the]* ***The*** board shall make *[the]* arrangements to obtain ***a record, stenographic or otherwise,*** *[the recording services,]* and the administrator shall bear the expense thereof. *[If the board elects not to obtain recording services, any party desiring a stenographic record or other record shall make arrangements directly with a stenographer and shall notify the other party of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the board to be, the official record of the proceeding, it shall be made available to the board and to the other parties for inspection, at a date, time, and place determined by the arbitrator.]*

(d) Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall pay the costs of the service.

(e) The arbitrator shall maintain the privacy of the hearings unless the Act or any other applicable law or regulation provides to the contrary. Any person having a direct interest in the arbitration is

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entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(f) The parties shall have leave to present to the arbitrator such motions as the arbitrator deems appropriate for purposes of resolving procedural and substantive issues and evidentiary issues. The arbitrator may require oral argument upon such motions.

(g) A hearing shall be opened by the filing of the oath of the arbitrator, by the recording of the date, time, and place of the hearing, and the presence of the board, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement.

(h) Following the opening of the hearing, the board may ask for opening statements from the parties or from parties' counsel, clarifying the issues involved.

(i) After any opening statements, the claim shall be presented. If the board, in its discretion, so directs, the claimant shall appear and present his or her proofs. Any witness appearing for the purpose of substantiating the validity or amount of the claim shall then submit to questions and cross-examination by the board and by all other parties. The potentially responsible party or other party contesting the validity and amount of a damage claim shall then present its proofs and direct examination of its witnesses, who shall submit to questions and cross-examination by the board and by all other parties. In its discretion, the board may allow rebuttal testimony. The board may vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material and relevant evidence concerning a contest to the validity or amount of damage claims or damages presented to the Fund for payment. The requirements of N.J.A.C. 7:1J-2.3 shall apply to all proceedings under this subchapter.

(j) The arbitrator may receive in evidence exhibits offered by either party. The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

(k) The order in which multiple claimants and multiple potentially responsible parties present their cases shall be determined by the board. The order in which contesting parties present their respective cases shall be determined by the board.

(l) Unless the Act or any other applicable law or regulation provides otherwise, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

(m) The hearing shall be completed within one day; provided however, that the board may, for good cause shown, schedule one or more additional days of hearing, which shall be consecutive days if possible.

(n) Before closing the hearing, the board shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the board shall declare the hearing closed and the time of such closing shall be recorded. If post-hearing submissions (such as briefs or finding of facts and conclusions of law) are to be filed after the presentation of all proofs and witnesses in the hearing, the hearing shall be declared closed as of the final date set by the board for the receipt of such post-hearing submissions. If documents are to be filed with the board after the presentation of proofs and witnesses, and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be deemed the date of closing of the hearing.

(o) The board may reopen the hearing on its own initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time mandated in N.J.A.C. 7:1J-9.16, in N.J.A.C. 7:1J-9.20, or in the Act, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

(p) There shall be no oral communication between the parties and any member of the board, except at the hearing, unless the parties and the arbitrator agree otherwise. Any written communication from the parties to the board shall be directed to the board, the administrator, and to all of the parties.

(q) All pleadings, notices, motions, correspondence or any submissions whatsoever to the board shall be served upon all parties and upon the administrator.

7:1J-9.10 Consent to service of process

Each party shall be deemed to have consented to accept service of all papers, notices, process, or awards necessary or proper for the initiation or continuation of an arbitration under these rules, or for any court action in connection therewith. The entry of any award made under these rules shall be served on a party in accordance with N.J.A.C. 7:1J-1.7.

7:1J-9.11 Evidence

(a) The parties may offer evidence which is supportive of their claim or such evidence which is relevant and material relating to a contest to the validity or amount of damage claims or cleanup and removal costs presented to the Fund for payment and shall, to the fullest extent practicable, produce such evidence as the board may deem relevant to an understanding and determination of such issues or such a contest.

(b) The board shall be the judge of the relevance and materiality of the evidence offered. *[Strict conformity to legal rules of the evidence offered.]* Strict conformity to ***the*** legal rules of *[the]* evidence shall not be necessary; provided however, that the board shall respect all privileges recognized by the New Jersey Rules of Evidence.

(c) All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

(d) Exhibits, when offered by any party, may be received in evidence by the board, and shall be retained in the board's custody until the board renders a decision. After the board renders its decision, the board shall transfer custody of all exhibits to the administrator.

(e) The board may receive and consider the evidence of witnesses by affidavit certified in accordance with N.J.A.C. 7:1J-1.6, giving it such weight as the board deems it to be entitled to after consideration of any objections made to its admission.

(f) If the parties agree or the board directs that documents or other evidence be submitted to the board after the hearing, the documents or other evidence shall be filed with the administrator for transmission to the board. All parties shall be afforded an opportunity to examine such documents or other evidence.

7:1J-9.12 Subpoenas; witnesses

(a) The board may order testimony under oath and may subpoena attendance and testimony of witnesses and the production of such documentary materials pertinent to the issues presented to the board for determination. The board may cross-examine and ask questions of any witness. All oaths and affirmations shall be made and taken before any of the persons designated in N.J.S.A. 41:2-1.

(b) The expenses of witnesses (including, without limitation, expert witnesses) for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the board, and any witness and the cost of any proof produced at the direct request of the board, shall be borne by the Fund unless the parties agree otherwise or unless the board in the award assesses such expenses or any part thereof against any specified party or parties.

7:1J-9.13 Inspections and investigations by the Board

The board may conduct inspections or investigations of any real or personal property which is relevant to the claim. An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall advise the administrator and the parties. The board shall set the date and time and shall notify the

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administrator and the parties thereof. Any party may be present at such inspection or investigation. If one or all parties are not present at the inspection or investigation, the board shall make a verbal or written report to the parties and afford them an opportunity to comment.

7:1J-9.14 Submission of briefs

(a) At any time before or during the hearing, the board may direct the parties to submit briefs on such legal issues as the board deems necessary for final determination of the claim. All parties shall serve copies of such briefs on each arbitrator, on all parties, and on the administrator. The board shall determine when the briefs are to be filed and shall notify the parties and the administrator of the filing date. The failure of a party to file such a brief shall not operate to delay the proceedings or the rendering of a decision by the board within the time limits specified in this subchapter or in the Act.

(b) Within 10 days after the board has determined that the parties have no further proofs to offer or witnesses to be heard, the board may direct the parties to submit to the board proposed findings of fact and conclusions of law. The board may also require any party to prepare supplemental legal memoranda on any issue that the board deems appropriate.

(c) Any party desiring reconsideration of any of the rulings of the Board rendered under N.J.A.C. 7:1J-9.16 shall move within 10 days after ***receiving*** the determination of the Board.

7:1J-9.15 Default

Where there is only one known potentially responsible party, and that party fails to appear at the hearing without obtaining an adjournment thereof, and where neither the administrator nor other persons contest either the validity or amount of the claim presented to the Fund for payment, a decision may be made solely on the default of the potentially responsible party. In all other cases, a decision may not be made solely on the default of a party, and the board shall require the party who is present to submit such evidence as is deemed necessary to arbitrate the issues before the board, except that issues raised only by a defaulting party need not be addressed by the board, and the board's determination of all issues before it shall be binding as to the defaulting party.

7:1J-9.16 Decisions of the board; award; payment of claim

(a) All decisions of the board shall be in writing, with notification to all parties, and shall be rendered within 60 days after the last member of the board takes the oath of office under N.J.A.C. 7:1J-9.3(g), unless the parties otherwise agree in writing to an extension. If all parties agree to such an extension, the board shall render its decision within 20 days after the date for final post-hearing submissions determined under N.J.A.C. 7:1J-9.9(n).

(b) No sooner than 30 days after the determination of the board, nor more than 60 days thereafter, the board shall certify all claims settled or arbitrated to the administrator, who, in turn, shall certify the amount of the award and the name of the claimant to the Commissioner of the Department, who shall direct the administrator to pay the award from the Fund.

(c) The award shall be in writing, signed by a majority of the arbitrators and filed with the administrator. The award shall be executed in the manner required by law.

(d) Any member of the board who disagrees with the award shall file a dissent which shall be certified and delivered to the administrator with the majority award.

(e) The board may grant any remedy or relief that the board deems just and equitable and within the scope of the arbitration provision of the Act. The arbitrator has no authority or power whatsoever to adjudicate the liability of any potentially responsible party for a discharge or threatened discharge; nonetheless, the board may deny any claim upon a finding that a particular claim is invalid for any reason or that the amount of the damage claim or cleanup and removal costs are not justified given the evidence presented to the board. The board has no authority to determine the scope of coverage or the applicability of any insurance policy pertaining to a potentially responsible party. This limitation upon the board's authority shall not be construed to limit the board's authority to determine whether the administrator's rights to subrogation ***or right to effectuate cost recovery*** have been impaired.

(f) If the parties settle their dispute during the course of the arbitration, the board may set forth the terms of the agreed settlement in a consent award.

(g) The administrator shall deliver the award in accordance with N.J.A.C. 7:1J-1.7.

(h) Determinations made by the board shall be final. Any action for judicial review shall be filed in the Appellate Division of the Superior Court within 30 days after the filing of the decision with the administrator pursuant to (b) above.

(i) All payments from the Fund pursuant to an award by the board shall be conditioned upon the administrator acquiring by subrogation all rights of the claimant to recovery of cleanup and removal costs and damages from any potentially responsible party; and provided further that the claimant has not received any compensation for said damages or cleanup and removal costs pursuant to any other State or Federal law. In any case in which a potentially responsible party seeks judicial review, reasonable attorney's fees and costs shall be awarded to the claimant if the decision of the board is affirmed.

7:1J-9.17 Waiver of hearing

(a) If the parties and the administrator agree in writing, signed by all parties and by the administrator, to waive the oral hearing, the board shall not hold a hearing.

(b) If the parties and the administrator waive the hearing pursuant to (a) above, the Board shall designate a date for submission of proofs. The Board shall notify all parties and the administrator of the date at least one week prior to the designated date. All parties shall submit all their respective proofs to the Board. The parties and the administrator shall have the opportunity to respond in writing to the proofs submitted by the other parties. The Board shall designate the time by which any such response must be filed.

(c) If the board thereafter requires additional documentation from any party, it shall notify the party of such requirement and of the date by which such material must be submitted to the board.

(d) The failure of any party to submit proofs, other documentation required by the board pursuant to (c) above, or permitted responses within the time specified by the board shall not operate to delay the rendering of a decision within the time limits specified in N.J.A.C. 7:1J-9.16, 9.20, or the Act. The board may, in its discretion, extend the time within which a party may submit information and responses so long as such extension will not operate to delay the rendering of a decision within the time limits specified in N.J.A.C. 7:1J-9.16, or the Act.

7:1J-9.18 Variance from procedural requirements

(a) Except as provided in (c) below, the board may relax any of the procedural requirements of this subchapter if the board determines that strict adherence to such requirements would result in unfairness or injustice.

(b) Nothing herein shall be deemed to preclude the parties from voluntarily agreeing to procedures more detailed than those found in this subchapter, provided that such supplemental agreements are approved by the board, and do not violate the limitations of (c) below. By way of illustration, such procedures may include guidelines for the presentation of expert testimony and the use and exchange of such testimony, or specific discovery procedures.

(c) Notwithstanding (a) and (b) above, the board shall not relax procedural requirements of this subchapter if such requirements are imposed by the Act, by other applicable State or Federal statutes, or by applicable decision, order or decree of a court of competent jurisdiction.

7:1J-9.19 Extensions of time

For good cause shown, the board may extend any period of time established by this subchapter, except the time for certifying the award. The board shall notify the parties of any extension.

7:1J-9.20 Expedited procedures

(a) The parties, the administrator and the board may unanimously agree to conduct the arbitration proceeding pursuant to the expedited procedures in this section. If the parties so agree, and if

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there is any conflict between this section and any other provision of this subchapter, this section shall control.

(b) Notwithstanding N.J.A.C. 7:1J-1.7, the parties shall accept all notices from the board by telephone. The board shall subsequently confirm such notices to the parties in writing, provided however, that the failure to provide written confirmation shall not invalidate the telephone notice.

(c) The board shall set the date, time and place of the hearing, and so notify the parties at least seven days before the scheduled hearing date.

(d) The hearing shall be completed within one day, unless the board, for good cause shown, schedules one or more additional hearing dates.

(e) Unless the parties agree otherwise, the board shall render its decision within 14 days after the date of the close of the hearing.

7:1J-9.21 Waiver of rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of this subchapter has not been complied with and who fails to state an objection thereto in writing shall be deemed to have waived the right to object.

7:1J-9.22 Interpretation and application of rules

The board shall interpret and apply this subchapter insofar as it relates to the board's powers and duties. When the board consists of more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, the difference shall be decided by a majority vote. If no majority of the board agrees upon one resolution of the difference, the board shall refer the issue to a neutral party acceptable to the board, the administrator and the parties. If the board, the administrator and the parties cannot agree upon a neutral party, the administrator shall request that the American Arbitration Association apply its procedures to select the neutral party.

7:1J-9.23 Copies of papers for judicial proceedings

The board shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the board's possession that may be required in judicial proceedings relating to the arbitration.

7:1J-9.24 Exculpation of arbitrators

No arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Types; Interdistrict and Intradistrict Solid Waste Flow

Adopted Amendments: N.J.A.C. 7:26-1.4, 2.13 and 6.3

Adopted New Rule: N.J.A.C. 7:26-6.8

Proposed: June 1, 1992 at 24 N.J.R. 1995(a).

Adopted: December 10, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: December 10, 1992 as R.1993 d.27 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEPE Docket Number: 021-92-05.

Effective Date: January 4, 1993.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

On June 1, 1992, the Department of Environmental Protection and Energy (Department) proposed amendments to N.J.A.C. 7:26-1.4, 2.13 and 6.3 and a new rule to be codified at N.J.A.C. 7:26-6.8. In addition to publication in the New Jersey Register, notice of the proposal was published in the following daily newspapers with general circulation throughout New Jersey: The Asbury Park Press, Burlington County Times, Courier Post, The Home News, The North Jersey Herald and News, The Record, The Star-Ledger and The Times.

The Department also transmitted copies of the proposal to all New Jersey Boards of Chosen Freeholders, all Solid Waste District Management officials, the New Jersey Automobile and Metal Recyclers Association and the Hudson County Improvement Authority. A public hearing was held at the Department's public hearing room on June 29, 1992. The public comment period closed on June 30, 1992. In response to the proposal, the Department received oral or written comments from the following persons:

Sandra T. Ayres—Ocean County Landfill Corp.
Joseph Balzano—South Jersey Port Corporation
Jack Caffey—Seafarers International Union
Jane Cameron—Manchester Township
Anne Miller Christensen—Let's Celebrate
Max Cohen—Salem Packing Co., Inc.
John Cormick—Turecamo Maritime
Eugene W. G'Sell—International Longshoremen's Association Local 1588
Joseph Lecowitch—American Red Cross
Lillian C. Liburdi—The Port Authority of New York and New Jersey
Stephen Micciche—United New Jersey Auto Salvage Association
Rev. Benedict P. Militello—Our Lady of Mount Carmel Rectory
Peter Murphy—Hudson County Chamber of Commerce
Andrew Naporano—Institute of Scrap Recycling Industries, Inc.
Edward Pulver—Hudson County Central Labor Council
Michael Rodburg—Lowenstein, Sandler, Kohl
Rev. Alexander Santora—St. Aloysius Church
Eugene P. Squeo—St. Patrick's Church
Virginia Statile—Visiting Homemaker Service
Anthony Stultan—Let's Celebrate
Wanda Suszka—Senior Support Services of Jersey City
Rev. Walter J.F. Swenson—Our Lady of Victories Church
Carlos Tatte—L.I.U. of N.A. Local 734
Charles Walton—New Jersey Automobile Dealers Association
Ken Wishnich—Browning-Ferris Industries
William Wittich—Sea Wolf Marine, Inc.

Substantive comments on the proposal were submitted by Sandra T. Ayres, Jane Cameron, Max Cohen, Michael Rodburg and Ken Wishnich. All other commenters voice their support for the proposed exemption to N.J.A.C. 7:26-6 for shredder residue. All comments on the proposed rule are addressed within the comment/response summary and rule adoption section which follows.

COMMENT: Jane C. Cameron, Mayor of Manchester, commented that the amendment to N.J.A.C. 7:26-2.13(g)1v would redefine solid waste type ID 25 to include animal manure and would thereby require Ocean County Landfill to accept animal manure for disposal.

RESPONSE: The amendment to N.J.A.C. 7:26-2.13(g)1v was not a redefinition of this provision but, as stated in the proposal, is a clarification of a waste category that has historically been part of solid waste type ID 25. Specifically, this category exhibits the same characteristics as other sub-categories of waste included in this waste type such as processing waste materials generated by slaughter houses, packing plants or similar industries. This solid waste type also includes dead animals. Ocean County Landfill facility has always been permitted to receive solid waste type ID 25. In addition, as set forth in accordance with the interdistrict and intradistrict solid waste flow rule set forth in N.J.A.C. 7:26-6.5(p), all solid waste type ID 25 generated in Ocean County slated for disposal shall be disposed of in the Ocean County Landfill Corporation landfill, facility number 1518B located in Manchester Township, Ocean County, New Jersey.

COMMENT: Mayor Cameron further commented that landfilling this waste is not an acceptable and environmentally sound practice for this waste because of the odors, high biological oxygen demand (BOD), ammonia and bacterial and parasitic diseases.

RESPONSE: The Department, in part, agrees with the Mayor's comments that disposal of this material is not the preferred method or more acceptable method for management of this waste. The preferred solid waste management option for this waste, as with all solid waste, is not to landfill but to utilize the material, in this case as compost. The mandate to utilize this waste material is set forth in N.J.S.A. 4:9-38. This Legislative mandate establishes the Department of Agriculture as the delegated agency for the development of rules or regulations to establish

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criteria and standards for the composting and handling of animal wastes. The Department has modified N.J.A.C. 7:26-2.13(g)1v to clarify that the composting and handling of animal waste is to be performed in accordance with N.J.S.A. 4:9-38 and the rules and regulations promulgated by the Department of Agriculture. The Department will continue to promote and assist in the expansion of markets for this type of reuse. However, when sufficient capacity is not available to compost or reuse this solid waste, landfilling of this type of solid waste is an environmentally sound disposal method.

While this waste does have a high BOD, nitrogen and ammonia content, it is not higher than the range of BOD, nitrogen and ammonia concentrations found in municipal (ID 10) solid waste leachate. The quantity of manure disposed of in sanitary landfills with municipal solid waste is not expected to significantly impact on this generation rate. In addition, the sanitary landfill is designed to attenuate and contain the constituents generated in solid waste. It has been reported that the nutrients in the animal manure actually accelerate the decomposition rate within the sanitary landfill environment, which stabilizes the landfill in a shorter timeframe.

In terms of odors, other sanitary landfills that have accepted this same category of waste have not reported any increase in operational problems, including odors. The Department understands the concerns raised by the commenter in regard to the operations of this landfill, which serves all of Ocean County's residents, located within the commenter's host municipality. The Department has the same concerns, that the landfill be operated as a good neighbor. These requirements are set forth in N.J.A.C. 7:26-2.11 and 2A.8. The provisions in the operational requirements of the solid waste regulation were developed to ensure that a sanitary landfill could receive acceptable waste types as listed in its solid waste facility (SWF) permit, in an environmentally sound manner. This clarification of the ID-25 waste type classification does not relieve any sanitary landfill from the provisions within their SWF permit and the rules and regulations set forth at N.J.A.C. 7:26-2.

COMMENT: Max Cohen representing Salem Packing Company requested a clarification of the definition of a slaughterhouse waste as it relates to its New Jersey Pollutant Discharge Elimination System (NJPDES) permit application for land application of its waste. Would its waste, because of this clarification, now be considered a solid waste and thereby require Salem Packing Company to obtain a solid waste facility (SWF) permit, including solid waste plan inclusion and consistency.

RESPONSE: The clarification to the definition of N.J.A.C. 7:26-2.13(q)1v has no impact on the status of Salem Packing Company's permit application for the land application of its waste. If the waste material generated by Salem Packing Company were to be discarded or intended to be discarded; accumulated, stored or physically, chemically or biologically treated prior to or in lieu of being discarded; burned for energy recovery; applied to the land or placed on the land or contained in a product that is applied to or placed on the land in a manner constituting disposal; or is recycled it would be defined as a solid waste. As a solid type solid waste it would be classified as a solid waste type ID 25—Animal and Food Processing Waste.

Under specific conditions, as set forth in N.J.S.A. 13:1E-4a, the Department may exempt from the requirements of registration any class of solid waste collection or disposal facility or operation. Such is the case with permanent or temporary certificates of authority to operate for landfills or transfer stations, on-site disposal of construction debris and vegetative waste Class A and B recycling facilities and land application. Salem Packing Company applied for a NJPDES permit for land application of its ID type 25 solid waste to the Bureau of Pretreatment and Residual of the Wastewater Facilities Regulations Element in accordance with the procedures established at N.J.S.A. 13:1E-4a as set forth at N.J.A.C. 7:26-1.8. In accordance with the exemption at N.J.A.C. 7:26-1.8, this is the agency within the Department that has been delegated the responsibilities to administer the permitting program for this type of solid waste facility and operations.

The application by Salem Packing Company for land application of food processing residual was determined to be incomplete on May 13, 1992 by the Bureau of Pretreatment and Residuals. The deficiencies, which were listed in the May 13, 1992 letter were highlighted by the fact that the material was actually untreated wastewater generated during animal slaughtering operations and not a food processing residual. Given this finding this waste would not be classified as a solid waste type ID 25 but as a liquid waste type ID 72. No solid waste facility is currently permitted to receive an ID 72 type waste—Bulk Liquid and Semiliquids. Given the recent promulgation by the USEPA of regulation restricting municipal solid waste landfills for receiving bulk liquid as set forth at 40 CFR 258.28, no MSW sanitary landfill will be permitted in the future to accept liquid waste. Therefore, this clarification of the ID 25 solid waste type is not applicable to Salem Packing Company's land application NJPDES permit application.

COMMENT: Sandra T. Ayres representing Ocean County Landfill Corporation opposed the clarification to N.J.A.C. 7:26-2.13(q)1v as it relates to animal manure and commented that the proposed rule was not sufficiently developed as was the rule amendment relating to auto shredder residue (ASR).

RESPONSE: The Department, in the amendment to N.J.A.C. 7:26-2.13(q)1v as it relates to animal manure, was adding clarification to an existing rule and was not proposing a new procedure as with the amendments relating to ASR. The clarification is based on the ongoing practice of treating animal manure intended for disposal as a solid waste type ID 25. Specifically, this category of solid waste type ID 25 exhibits the same characteristics as other sub-categories of this waste type, such as dead animals and slaughterhouse waste, and has historically been managed in this waste type when intended for disposal.

COMMENT: Ms. Ayres further commented that while the summary of the rule amendment stated that the Department encourages reuse of this category of waste, it does not encourage reuse to simply direct and force a landfill to take this waste. The commenter stated that the rule needs clarification as to whose choice it is to reuse. Is it the generators choice? If the generator chooses to not reuse it in some form, can the generator simply dispose of it at whatever facility in the county?

RESPONSE: The Department, within this clarification, is not requiring that this waste be disposed, but if intended for disposal it would be classified as ID 25. A legislative mandate has in fact recognized the need for the reuse of this waste and has delegated the responsibilities for establishing criteria and standards for the composting and handling of animal waste to the Department of Agriculture as set forth at N.J.S.A. 4:9-38. However, OCLF is permitted to accept this waste type. Furthermore, all of solid waste type ID 25 generated within Ocean County is directed to OCLF as set forth in N.J.A.C. 7:26-6.5(p). Therefore, OCLF has a responsibility to accept for disposal this solid waste.

In terms of clarifying who makes the decision for reuse/recycling or disposal, it is primarily a decision that is made by the State or the solid waste district. The State makes that decision by prohibiting the particular solid waste category or type from disposal and requires it to be reused or recycled, such as leaves in accordance with N.J.S.A. 13:1E-99.21 et seq. or as by designating the particular solid waste category or type in the State Solid Waste Management Plan. The solid waste district makes this decision by designating it as a recyclable material within the Recycling Plan of the District's Solid Waste Management Plan. The generator of the solid waste category or type must then manage the waste material within these provisions. Absent these provisions for a particular solid waste type or category, it is the generator's determination to reuse/recycle or dispose of the solid waste category or type. In addition, even within the context of a designated recyclable there are materials that do not meet specifications for reuse or recycling and may require disposal as a residue. In regard to this particular category of solid waste type ID 25, the Department is working with the Department of Agriculture to evaluate reuse or composting of this particular Ocean County generator, Popkorn Zoo's animal manure, with established users or composters of animal manure.

COMMENT: Ms. Ayres commented that this rule ammendment would impact on other county facilities since they do not permit this category of waste to be disposed of in their sanitary landfills. Ms. Ayres stated that over half the counties would not allow it in their sanitary landfills.

RESPONSE: A survey of other counties with sanitary landfills indicate that the disposal of animal manure is not a problem. Although they do not prohibit this waste from landfill disposal, most landfill counties do not see any appreciable amount of animal manure being disposed of in their facilities. This material is in large part being reused because of its inherent nutritive value as a fertilizer as highlighted by N.J.S.A. 4:9-1 et seq. and specifically N.J.S.A. 4:9-29 et seq. The facilities that have accepted animal manure for disposal have reported this as solid waste type ID 25. These facilities have not experienced odor or other operational problems resulting from the acceptance of this waste for disposal at their facilities. A number of sanitary landfill owner/operators have indicated that the material would actually have a beneficial impact on the decomposition and subsequent stabilization of the landfill as a result of the nutritive and biological value.

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COMMENT: Ms. Ayres commented that compliance with this rule amendment would cause odors and other operational problems at OCLF. If the facility were to receive this category of waste it would require preconditions on the generator of the waste to ensure control of these impacts at the facility. The preconditions would involve drying agents and lime to control the workability and odors, modification of the monitoring and treatment at their leachate collection and treatment operations, scheduling receipt of this waste by appointment, personnel equipment for operator safety in managing this waste and decontamination of the landfill equipment after handling this waste. In addition to the preconditions on the generator for acceptance of this waste, the facility needs a tariff to recover the costs for the additional management.

RESPONSE: As described above, as reported by owner/operators of solid waste facilities that have accepted this waste for disposal, these facilities have not experienced odor or other operational problems with the acceptance of this waste for disposal at their facility. The clarification of animal manure as a category of waste within solid waste type ID 25 does not impact on whether the landfill can or cannot implement additional operational requirements to ensure proper management. This rule clarification does not address whether the landfill can recover the cost within its tariff for the implementation of additional operational requirements. The mechanisms to evaluate and implement these additional operational controls are through the solid waste facility permit modification procedures as set forth at N.J.A.C. 7:26-2.6, specifically through a modification of the operations and maintenance (O&M) manual. In addition, the mechanism to modify or implement a tariff for these additional costs would be through filing a petition for an initial tariff as set forth at N.J.A.C. 14:1-5.11 (formerly N.J.A.C. 14:11-6.15).

COMMENT: Browning-Ferris Industries (BFI) commented that the proposed amendments to N.J.A.C. 7:26-6.3 in regard to scrap metal residues and oil spill clean-up waste are inconsistent.

RESPONSE: The Department disagrees with the commenter's statement. The test the Department used to determine whether the shredder residue should be exempted from the solid waste flow rules at N.J.A.C. 7:26-6 was based on the significant contribution to recycling by this **recycling industry**, not whether the shredder residue itself was recyclable. If the shredder residue were recyclable, it would be exempt from the waste flow rules as a source separated Class B recyclable.

As stated in the proposal, as part of its economic evaluation, the Department determined that continued application of the solid waste flow rules to the residual generated by this recycling industry could negatively impact on the financial viability of this recycling industry. This negative financial impact could be such that this recycling industry would no longer be able to provide its recycling services in New Jersey. The materials that are currently being recycled would then require disposal thereby, resulting in additional stress to New Jersey's current disposal capacity. The decision of the Department is to assist in the continued viability of this significant and unique recycling industry, the existence of which is dependent on the cost-effective management of its residual waste stream.

This is not the case with oil spill clean-up waste. Oil spill clean-up waste is a solid waste and its exemption from the solid waste flow rules for disposal does not benefit any specific or significant recycling industry nor does it benefit recycling. As stated in the proposal, if oil-spill clean-up waste is source separated at the point of generation and can be recycled by a viable market it is exempt from solid waste flow rules as set forth at N.J.A.C. 7:26-6. The expansions of exemptions to oil spill clean-up waste or to the larger category of petroleum contaminated soils would not benefit recycling and would in fact be detrimental to recycling by simply providing a potentially lower disposal cost. In this regard the Department's actions are consistent with N.J.S.A. 13:1E-99.11 et seq.

COMMENT: Browning-Ferris further commented that the proposed amendment at N.J.A.C. 7:26-6.3 in regard to oil spill clean-up waste fails to satisfy the requirements of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-4.

RESPONSE: The Department disagrees with this comment. As stated in the proposal, the amendments at N.J.A.C. 7:26-6.3 are clarifications of previously adopted rulemaking. The clarification makes this section consistent with other provisions of N.J.A.C. 7:26. Specifically N.J.A.C. 7:26-13 was amended by R.1988 d.73 effective February 16, 1988 to include oil spill clean-up waste as a part of solid waste type ID 27-dry industrial waste. As such, oil spill clean-up waste is solid waste that is directed to a solid waste facility in accordance with the provisions of N.J.A.C. 7:26-6.5 as it related to solid waste type ID 27. Provisions are currently in place to manage solid waste ID 27 including oil spill clean-up waste and the larger category of petroleum contaminated soil in all solid waste districts. As such the clarification is consistent with current Departmental rules and practices and not inconsistent with N.J.S.A. 52:14B-4. Further, the deletion of oil spill clean-up waste from the waste flow exemption as set forth at N.J.A.C. 7:26-6.1 removes contradictory provisions of the Department's rules and will avoid future confusion.

COMMENT: The New Jersey Auto and Metal Recyclers Association (NJ-AMRA) commented that the definition of scrap metal shredding facility at N.J.A.C. 7:26-1.4 does not adequately define their operations. The facility receives motor vehicles and appliances that have been prepared for shredding. They do not receive or accept mixed materials such as construction debris or mixed municipal waste that may contain some appliances. The motor vehicles and appliances when received are "source separated, non-putrescible materials." In order to clarify this point the commenter suggests the addition of the word "other" after the phrase "and/or."

RESPONSE: The Department agrees with the comment. The purpose of the definition was to ensure that only source separated materials are received by the shredding facility and has modified the definition of scrap metal shredding facility to include the term "other" source separated non-putrescible ferrous and non-ferrous metals.

COMMENT: The NJ-AMRA further commented that the definition of "scrap metal shredding facility" at N.J.A.C. 7:26-1.4 should be modified to clarify the issue that the facility may receive incidental dirt and debris associated or connected with the metal material that was not removed during the process of source separation. The NJ-AMRA suggested that the definition be changed to substitute the word "metals" at the end of the first paragraph with the phrase "metal containing materials" to clarify this situation.

RESPONSE: The Department disagrees with the commenters suggested clarification for the same reasons the commenter cited above. The Department's intention is to limit the materials accepted at the facility to source separated non-putrescible metals. The suggested modification "other source separated, non-putrescible ferrous and non-ferrous metal containing materials," would be too broad and allow the facility the ability to receive construction debris and other waste material if it contains metal. The Department recognizes the fact that the facility may take in some incidental waste that is not processible as part of their normal operations. This incidental waste would be considered to be a part of the residual waste stream generated by the facility. The Department's recycling facility regulations at N.J.A.C. 7:26A-3.5(e)3 allow for the acceptance of contaminants provided they are de minimus to the operation of the facility. In that N.J.A.C. 7:26A-3.5(e)3 addresses the commenter's concern, the Department has not added the suggested clarification.

COMMENT: The NJ-AMRA noted a typographical error in the reference at N.J.A.C. 7:26-6.3(a)5. The referenced citation is (a)2i through iii should be (a)5i through iii.

RESPONSE: The Department has corrected the above-noted typographical error.

COMMENT: The NJ-AMRA commented that the Association has previously submitted to the Department the outline of a proposed quality control plan which they believe meets the purposes of N.J.A.C. 7:26-6.3(a)5i. NJ-AMRA requested that the Department clarify that this approach would be acceptable to the Department as fulfilling the requirements of N.J.A.C. 7:26-6.3(a)5i.

RESPONSE: While the outline submitted by NJ-AMRA as part of the petition was sufficient to support the development of the proposed rule, it is not sufficient for an approvable quality control plan as set forth in N.J.A.C. 7:26-6.3(a)5i. In addition to the listing of the facility's policy to prohibit the introduction of specific components into the shredding equipment that may negatively impact its operations, the provisions at N.J.A.C. 7:26-6.3(a)5i requires the submission of the procedures that will be followed to inspect incoming material for these components and the procedures to be followed if components are detected in a load to ensure that the components are removed prior to processing. The quality control plan should detail the sampling plan to inspect incoming loads and the procedures to be employed to ensure, with some degree of confidence, that the listed components are not being processed by the facility.

COMMENT: The NJ-AMRA commented that the quality control plan as set forth at N.J.A.C. 7:26-6.3(a)5i requires that the facility "ensure" that before shredding, components that could affect the non-hazardous characteristics of the residue are removed. While the commenter agreed with the Department's objective, they cannot guarantee that in every case

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no objectionable components will be introduced into the shredding equipment. NJ-AMRA stated that no quality control plan can guarantee that some number of objectionable components, despite reasonable efforts on the part of the shredder operator, will not be introduced into the shredding equipment. In addition, periodic testing and sampling ensures that changes in manufacturing components of motor vehicles, appliances or other source separated metals will not have an adverse affect on the non-hazardous characteristics of the residue. In order to avoid the implication that the quality control plan will not guarantee that no objectionable components are introduced into the shredding equipment, NJ-AMRA suggests the addition of the phrase "to the extent reasonably practicable" after the word "ensures."

RESPONSE: The Department agrees, in part, with the commenters suggestion. However, no modification to clarify the provision is needed. The responsibility of the facility as required by the quality control plan is to ensure that the facility removes components that "could" affect the non-hazardous characteristics of the residue not that the quality control plan ensure that "all" components are removed. As stated above, for the quality control plan to be approvable, the facility must submit its procedures to be employed for sampling and inspection of incoming material and removal, as needed, of listed components, to ensure, with some degree of confidence, that the listed components are not being processed by the facility. As stated by the commenter, the periodic testing required in N.J.A.C. 7:26-6.3(a)5ii will be the bellweather by which the effectiveness of the quality control plan will be monitored.

COMMENT: The NJ-AMRA commented that the provisions of N.J.A.C. 7:26-6.3(a)5i are not sufficiently flexible enough as they relate to the listed components of sub-subparagraphs (1) through (7). NJ-AMRA stated that over time the objectionable features of some of these components may no longer be present and they would not therefore negatively impact on the non-hazardous characteristics of the residue. The commenter suggested that this requirement be clarified to allow components to be deleted from the list, without formal rulemaking, when they no longer present a potential negative impact on the non-hazardous characteristics of the residue.

RESPONSE: The Department disagrees with the comment. When a facility can demonstrate that a component no longer presents conditions that may potentially negatively impact the quality of the residue it may petition the Department for promulgation of a rule proposal pursuant to N.J.S.A. 52:14B(f) and N.J.A.C. 7:1-1.2 to delete a component from the list of components set forth at N.J.A.C. 7:26-6.3(a)5i. This petition must demonstrate that the component is produced or manufactured in such a manner that it would no longer potentially negatively impact the non-hazardous characteristics of the residue and that this new manufactured component is now predominantly found in the motor vehicle, appliance or other source separated metals processed by the facility.

The Department recognizes the overall pollution prevention policies being implemented by product manufacturers which may reduce the overall toxicity of various products and their components. However, this redesign and remanufacturing does not occur "overnight". Between the time when manufacturers redesign components to reduce their overall toxicity and these redesigned components are the predominant component in material received at the shredder facility, several years are likely to pass. As a result, the loss of flexibility noted by the commenter is unlikely to have any practical effect, because there will be more than enough time to determine that a rule change is necessary, provide the public with an opportunity to comment, and implement the change. In addition, rulemaking in this regard would address all the facilities at the same time and would not rely on individual facilities applying for the reduction at different times and would therefore be more equitable overall.

COMMENT: The NJ-AMRA commented that the provision at N.J.A.C. 7:26-6.3(a)5i does not allow the facility the option of refusing or returning the listed components to the supplier who wrongfully delivered them to the facility. In practice, suppliers of material to a shredding facility are bound by the facility's quality control policies and materials are rejected before acceptance, in most cases. If discovered after delivery, listed components are returned to the supplier whenever possible. NJ-AMRA suggested that the provision at N.J.A.C. 7:26-6.3(a)5i be modified to clarify this option as follows: "A facility is considered responsible for these components if discovered and not refused or returned to the transporter or generator, and in any such case the facility shall be responsible to dispose of these components in accordance with all applicable laws, orders and regulations (including N.J.A.C. 7:26-8, if applicable)."

RESPONSE: The Department agrees, in part, with the comment in that the facility should have the option to require the listed components be returned to the supplier, which is the intent of the quality control plan, provided the vehicles, appliances or other ferrous and nonferrous metals are not received by the facility. The Department will modify this provision to clarify that if the quality control plan, as approved by the Department, delineates this procedure for the inspection and rejection of unacceptable loads the option will be available to the facility. However, the facility will not be allowed to receive the vehicles or appliance and simply return the component to the supplier. The Department notes that if such components after removal from the vehicle or appliance are solid or hazardous waste they must be handled and transported in accordance with the applicable regulations governing such waste.

COMMENT: The NJ-AMRA submitted a sampling and analytical plan to monitor the residue for its non-hazardous characteristic as part of the rule petition. The NJ-AMRA believes the plan is consistent with N.J.A.C. 7:26-8 and the USEPA publication SW-846. NJ-AMRA requested that the Department clarify that this approach would be acceptable to the Department as fulfilling the requirements of N.J.A.C. 7:26-6.3(a)5ii.

RESPONSE: The sampling and analytical plan submitted by NJ-AMRA as part of the petition was sufficient to support the development of the proposed rule. However, it is not sufficient for an approvable sampling and analytical plan for each individual facility. The sampling and analytical plan submitted by W.Z. Baumgartner and Associates, dated August 1991, described a general method for sampling a waste pile and generating a contemporaneous sample and for preparing the composited sample for analysis. The sampling and analytical plan, in order to comply with N.J.A.C. 7:26-6.3(a)5ii, should describe the procedures to be employed by the specific facility to collect a **representative** sample to ensure that the average properties of the residual waste stream are being sampled. Specifically, Section IV of the Protocols submitted by W.Z. Baumgartner and Associates, Inc., dated August 1991, will require modification to describe the procedures by which the residue will be sampled, the sampling frequency, how the residue will be stored and composited and how the quarterly composited sample will be subsampled to collect a representative sample of the residue for analysis in accordance with the guidance set forth in Chapter 9 of the latest version of SW-846. It should be noted that if the analysis indicates the residual waste is hazardous, the facility must manage the residue as hazardous waste pending additional monitoring and evaluation to determine the nature of the exceedance. This additional monitoring and evaluation may include a more in-depth sampling and analysis program or modification to the quality assurance plan.

COMMENT: The NJ-AMRA commented that landfills to which NJ-AMRA facilities take their waste require periodic sampling and analysis, usually quarterly. However, the specific requirements of the landfill may not be identical to that required by the Department at N.J.A.C. 7:26-6.3(a)5ii. The burden of insuring that shredder residue is not hazardous waste is and remains with the facilities. Since the purpose of the proposal is to further ensure the non-hazardous characteristics of the residue, NJ-AMRA believes that annual testing as prescribed by the Department should be sufficient since the overall character of shredder residue does not change from day-to-day, week-to-week or month-to-month.

RESPONSE: The Department agrees that the shredding facility, as set forth at N.J.A.C. 7:26-8.5, is responsible for the determination of the hazardous/nonhazardous classification of the residue produced by the shredding facility. This legal responsibility may be supplemented by the requirements of the final disposal facility. The Department agrees that, where necessary, the testing as required by N.J.A.C. 7:26-6.3(a)5ii may need to be augmented to meet the specific requirements of the final disposal facility. However, the Department disagrees, in part, with the comment to revise the sampling and analytical period at this time from quarterly to annual based on the fact that the residue characteristics do not change over time.

The sampling and analytical requirements, in addition to providing the basis for the hazardous/nonhazardous classification, provides the monitoring feedback of the performance of the facility. This aspect of the provisions of N.J.A.C. 7:26-6.3(a)5ii are discussed above. In this regard, the Division does not initially permit, for other similar continually generated residual streams, less than quarterly monitoring and in some cases requires monthly performance monitoring as opposed to quarterly monitoring.

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The provisions of Chapter 9 of SW-846 "Test Methods for Evaluating Solid Waste-Physical/Chemical Methods," requires the establishment of a sampling/analytical plan that evaluates the waste stream in terms of the criteria of accuracy and precision. Since the waste stream produced by the shredding facility is variable over time, repeated sampling over the time period covered by the analysis is necessary to satisfy the criteria. Analysis based on a single sampling event would not satisfy these criteria.

The NJ-AMRA commented that their facility's residual waste stream does not vary from day-to-day, week-to-week or month-to-month. However, this statement is not supported by the USEPA publication "PCB, Lead, and Cadmium Levels in Shredder Waste Materials: A Pilot Study" dated April 1991 (EPA 560/5-90-008 B). This report documents a high degree of variability, particularly in regard to lead. While the report is not necessarily representative of the whole industry nor the individual New Jersey facilities and did not evaluate the variability of the residual waste over time, it does sufficiently document a high degree of variability of the residue and warrants the establishment of a database to evaluate this variability over time.

This variability may be controlled by strict adherence to the quality control plans and pollution prevention activities in the motor vehicle and appliance industry which may then warrant a reduction of the testing frequency. The Department does not have a sufficient database in this area to make that determination at this point. In other continually generated waste streams, the Division allows the facility the ability to petition the Department to reduce the testing frequency. In order to account for this condition, the Department has modified the provisions of N.J.A.C. 7:26-6.3(a)5ii to allow for a reduction of the sampling and analytical frequency. At the request of the owner/operator of the facility, the Department may approve less frequent sampling and analysis, if the facility demonstrates that sampling and analysis at the reduced frequency will not impair on the ability to satisfy the criteria in Chapter 9 of SW-846.

The Department notes that if the sampling and analysis shows that the residue is hazardous waste they must be handled and transported in accordance with the applicable regulations governing such waste. The facility operator should be aware that all residue generated thereafter may be hazardous as well. Therefore, a prudent operator will continue testing the residue, and have it transported to a hazardous waste facility until the implementation of quality control improvements that ensure that the residue is not hazardous. As specified in N.J.A.C. 7:26-6.3(a)5i, the facility operator must dispose of the residue in accordance with the hazardous waste regulations, if those regulations are applicable.

COMMENT: The NJ-AMRA commented that the residue does not contain pesticides or organics. Accordingly, NJ-AMRA requested clarification that the TCLP test requirements is limited to TCLP metals.

RESPONSE: As set forth at N.J.A.C. 7:26-8.5, the generator may provide documentation that materials or processes used do not exhibit a specific hazardous characteristic. As part of the sampling and analytical plan as set forth at N.J.A.C. 7:26-6.3(a)5ii, the NJ-AMRA facilities may provide the documentation that pesticides and organics are not present.

COMMENT: The NJ-AMRA commented that month-to-month reporting of activities are not necessarily good barometers for planning or monitoring because of the monthly fluctuations in shredding activity, based on inventory and price considerations. The NJ-AMRA further commented that the amount and type of material received, and metals recovered are highly confidential. Information regarding the type and amount of materials received is vital information that can be used in any variety of ways to adversely affect the competitiveness of shredding facilities in the United States, around the world and even within the New Jersey Association. The NJ-AMRA suggested that the information requested be limited to the residual disposed of or that the information be submitted on an annual basis. The NJ-AMRA suggested that if the information is required that it should be submitted only to the Department under provisions for confidentiality.

RESPONSE: The Department agrees, in part, with the commenter's concerns. However, as requested by the commenter, the Department, within the context of the adoption of this amended regulation, can grant confidentiality to the information required to be submitted by the shredder facilities as set forth at N.J.A.C. 7:26-6.3(a)5iii. In order to modify this provision to grant confidentiality to the reported information would require the Department to develop a new rule proposal in accordance with the provisions of the Administrative Procedures Act as set forth at N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 7:1-1. Based on discussion with the commenter, the Department understands that the information required to be reported will become much less sensitive over time, and that less frequent reporting will address the commenter's concern. Accordingly, the Department has revised the rule upon adoption to require semi-annual rather than monthly reporting. The intent of the provisions at N.J.A.C. 7:26-6.3(a)5iii are to monitor the amount of residue generated and to continue to have that information supplied and reported to the Department and the Solid Waste Districts. The Department is currently proposing changes to the reporting requirements within the Annual Recycling Tonnage Grant Data Reporting Manual, for recovered and recycled materials, which will address the provisions of N.J.A.C. 7:26-6.3(a)5iii(1) and (3). Therefore, the provisions of N.J.A.C. 7:26-6.3(a)5iii(1) and (3) have been modified to be consistent with the recycling reporting requirements set forth in this Manual. NJ-AMRA agrees that the modifications to this provision will resolve their concerns regarding the confidential nature of the data. The Department recognizes this issue, the reporting of business sensitive confidential data, as one that impacts on the efficient operations of a number of different programs throughout the Department. The Department is proceeding with the development of a policy to address the issue of confidentiality of business sensitive data on a Department-wide basis.

COMMENT: The NJ-AMRA commented that it acknowledges that the districts need to maintain a standby planning role of the type suggested in the proposal at N.J.A.C. 7:26-6.8. However, in view of the fact that the shredders will document and provide to all districts the reports of the generation of residue; undertake the weighing of the residue prior to disposal; and perform other activities (sampling and analysis) at their cost, NJ-AMRA had difficulty imagining how any expenses to be incurred by a district will be other than *de minimis*. NJ-AMRA commented that any reasonably based rate would be on the order of a few cents a ton, as opposed to the $1.00 to $3.00 per ton cited in the Economic Impact section of the proposal. The NJ-AMRA requested that the Department confirm that the statement in the Economic Impact section as to the range of possible rates is in no way a prejudgement by the Department of the expected allowable rate and does not prejudice any NJ-AMRA facility if it must contest any particular rate sought by a solid waste district.

RESPONSE: The provisions of N.J.A.C. 7:26-6 state that a district in which a shredding facility is located **may** apply to the Department for the establishment of a rate to recover the **reasonable costs** of monitoring the generation and disposal of the residue from the operators of the shredding facility in accordance with the procedures set forth in N.J.S.A. 48:13A-1 et seq. The analysis provided in the Economic Impact section is not a pre-judgement by the Department of the expected allowable rate but simply calculations based on the assignment of one man year to the activities. The rate application, submitted by the appropriate district to the Department, for recovery of the reasonable cost incurred by the district in the continued planning for this portion of the county's solid waste stream would need to be fully documented.

Summary of Hearing Officer's Report and Agency Response:

Steve Gabel, Director of the Division of Solid Waste Management in the Department, served as hearing officer at the public hearing. After reviewing the testimony presented at the public hearing, Mr. Gabel recommended that the Department adopt the proposed amendments and new rules with changes.

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. Person requesting copies should contact:

Richard J. McManus, Director
Department of Environmental Protection
and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, NJ 08625

The Department accepts the recommendations of the Hearing Officer. In addition, based upon written comments which the Department received and its internal review of the rules, the Department has made the following changes from the proposal. The changes are explained in the Summary of Public Comments and Agency Responses.

1. In response to written comment at N.J.A.C. 7:26-1.4, "Scrap metal shredding facility," the word "other" has been added before the word source separated in the definition. Further, the term "and/or" has been modified to simply "or."

2. In response to comments presented at the public hearing, a provision was added to the clarification of N.J.A.C. 7:26-2.13(g)1v to

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reference the legislative mandate for reuse of animal manure as delegated to the Department of Agriculture as set forth at N.J.S.A. 4:9-38.

3. In response to written comment, the typographical error in N.J.A.C. 7:26-6.3(a)5 has been corrected. The reference cited was N.J.A.C. 7:26-6.3(a)2i through iii and has been corrected to reference sub-subparagraphs (a)5i through iv below.

4. In response to written comments, a provision was added to N.J.A.C. 7:26-6.3(a)5ii to allow for the facility to request a reduction in sampling and testing frequency when it can demonstrate that a sufficient trend exists to maintain the accuracy and precision criteria required in SW-846.

5. In response to written comments, N.J.A.C. 7:26-6.3(a)5iii has been modified. The Department is proposing changes to its data collection and reporting requirements for recovered and recycled materials within its Annual Recycling Tonnage Reporting Manual. The revisions to N.J.A.C. 7:26-6.3(a)5iii will require the reporting of information consistent with the revisions to the Department's data reporting procedures. In addition, N.J.A.C. 7:26-6.3(a)5iii(2) has been modified to clarify that the information on residue as disposed and not specifically as generated, is to be reported.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:26-1.4 Definitions

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

. . .

"Scrap metal shredding facility" means an industrial facility which:

1. Receives and stores motor vehicles, appliances, *[and/]*or ***other*** source separated, non-putrescible ferrous and non-ferrous metals;

2. By mechanical shredding, reduces materials listed in paragraph 1 above in volume and alters the physical characteristics of such materials; and

3. Transfers the ferrous and non-ferrous metals remaining after shredding of materials listed in paragraph 1 above, for reintroduction into the economic mainstream for sale or *[resue]* ***reuse***.

SUBCHAPTER 2. DISPOSAL

7:26-2.13 Solid waste facilities; records

(a)-(f) (No change.)

(g) Waste identification and definition of solids includes the following:

1. Solid wastes; waste ID number and definitions:

i.-iv. (No change.)

v. 25 Animal and food processing wastes: Processing waste materials generated in canneries, slaughterhouses, packing plants or similar industries, including animal manure when intended for disposal and not reuse. Also included are dead animals. ***Animal manure, when intended for reuse or composting, is to be managed in accordance with the criteria and standards developed by the Department of Agriculture as set forth at N.J.S.A. 4:9-38.***

vi. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, asbestos-containing waste managed in accordance with 40 CFR 61 and N.J.A.C. 7:26-2A.8(1), and residue from the operations of a scrap metal shredding facility.

(h)-(i) (No change.)

SUBCHAPTER 6. INTERDISTRICT AND INTRADISTRICT SOLID WASTE FLOW

7:26-6.3 Types of waste covered

(a) This subchapter applies to all solid waste, as defined in N.J.A.C. 7:26-2.13, with the exception of the following:

1. Bulk liquid and semi-liquids, ID type 72;

2. Septic tank clean-out wastes, ID type 73;

3. Liquid sewage sludge, ID type 74;

4. Dry sewage sludge, ID type 12;

5. Dry industrial waste, ID type 27, but only if such waste is residue from the operations of a scrap metal shredding facility, provided that the operator of the scap metal shredding facility satisfies the requirements of (a)*[2i]***5i*** through *[iii]***iv*** below:

i. The ***owner/***operator of the scrap metal shredding facility shall obtain the Department's approval of a quality control plan for the facility, which ensures that before shredding the motor vehicles, appliances, *[and/]*or source separated, non-putrescible ferrous and non-ferrous metals received by the facility, the facility removes components that could affect the non-hazardous characteristics of the residue from the operations of the facility. ***As provided in the quality control plan, the facility may reject any motor vehicles, appliances or source separated non-putrescible ferrous and non-ferrous metal if inspection reveals that components that could affect the non-hazardous characteristics of the residue are present.*** The facility is considered the generator of *[these]* ***the*** components ***it accepts for processing***, and shall dispose of these components in accordance with all applicable laws, orders and regulations (including N.J.A.C. 7:26-8, if applicable). The components to be removed include, without limitation, the following:

(1) Batteries and cable ends;

(2) Gas tanks;

(3) Catalytic converters;

(4) Unspent airbag canisters;

(5) Transformers;

(6) PCB capacitors; and

(7) Fluorescent lighting fixtures;

ii. The ***owner/***operator of the scrap metal processing facility shall obtain the Department's approval of a sampling and analytical plan which insures monitoring of the characteristics of the residue from the operations of the facility, as set forth in N.J.A.C. 7:26-8 and the most recent edition of the USEPA publication SW-846 "Test Methods for Evaluating Solid Waste-Physical/Chemical Methods," incorporated herein by reference. The operator shall perform sampling and analysis quarterly, including without limitation the Toxicity Characteristic Leaching Procedure (TCLP) parameter as set forth in N.J.A.C. 7:26-8.12, Total Polychlorinated biphenyls (PCB) as set forth in N.J.A.C. 7:26-8.20(b), and Total Petroleum Hydrocarbon Content as set forth in N.J.A.C. 7:26-8.20(a)5. The operator shall submit the analysis performed in accordance with the approved sampling to the *[Division of Environmental Regulations]* ***Hazardous Waste Regulation Program***, Bureau of Advisement and Manifest for classification ***on January 15, April 15, July 15 and October 15, provided however that if the Department approves less frequent sampling and analysis, the owner/operator shall submit the analysis on the dates specified in the Department's approval of that sampling. Upon a request by the facility and as approved by the Department, the sampling frequency of the approved sampling and analytical plan may be reduced. The owner/operator of the facility shall submit a revised sampling and analytical plan which documents how the accuracy and precision criteria as required in SW-846 will be maintained with a reduced schedule***;

iii. On *[the twentieth day of every month,]* ***February 15 and August 1 of every year*** the ***owner/***operator of the scrap metal shredding facility shall submit to the ***department and to the*** solid waste district in which the facility is located, a *[monthly]* report ***on forms provided by the Department consistent with the Department's Annual Recycling Tonnage Reporting Manual*** including the following information:

(1) The total amount of each type of materials which the facility received *[in the calendar month preceding the due date of the report]* ***in the six-month period ending January 1st and July 1st of every year***;

(2) The total amount of residue *[generated at]* ***disposed of by*** the facility; *[and]*

(3) The total amount of ferrous and non-ferrous metal remaining after shredding; and

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***(4) The report shall be submitted to the following:**
New Jersey Department of Environmental Protection and Energy
Division of Solid Waste Management
CN-414
Office of Recycling and Planning; and*

iv. The scrap metal shredding facility ***shall*** either maintain*[s]* a scale certified under N.J.A.C. 13:47B-1 and provide*[s]* specific truck load weigh data to the district in which the facility is located, or transport*[s]* the residue through the district's weighing facilities to be weighed before the residue is transported for disposal;

6. Source separated Class A recyclable material and Class B recyclable material, as such terms are defined at N.J.A.C. 7:26A-1.3; and

7. Hazardous waste, as defined at N.J.A.C. 7:26-8.

7:26-6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility

(a) The solid waste district in which one or more scrap metal shredding facilities is located may, in accordance with the procedure set forth in N.J.S.A. 48:13A-1 et seq., apply to the Department for the establishment of a rate to recover the reasonable costs of monitoring the generation and disposal of the residue from the operations of such facilities, consistent with the district's interest in planning for the disposal of waste generated within the district. This reasonable rate shall reflect such costs, which include, without limitation, the cost of performing the following activities:

1. Recordkeeping concerning the amount and type of materials received by scrap metal shredding facilities, the amount of residue generated by these facilities, and the amount of ferrous and nonferrous metal remaining after the shredding process; and

2. Developing a 10 year planning forecast for the future disposal of the residue.

(b) If the scrap metal shredding facility maintains a scale certified under N.J.A.C. 13:47B-1 and provides specific truck load weigh data to the district in which the facility is located, the district's application for a reasonable rate shall not include either the cost of redirecting the residue through the district's facilities solely for the purpose of weighing and recording the residue or the cost of weighing the residue.

(a)

HAZARDOUS WASTE REGULATION

Manifest Discrepancies

Adopted Amendments: N.J.A.C. 7:26-5.4, 7.4, 7.6, 9.4 and 12.4

Proposed: December 2, 1991 at 23 N.J.R. 3607(a) (see also 24 N.J.R. 2002(a)).

Adopted: December 2, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: December 2, 1992 as R.1993 d.5, **with technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEPE Docket Number: 043-91-10.

Effective Date: January 4, 1993.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendments were proposed on December 2, 1991. Ten comments from two commenters were received during the comment period which closed on January 31, 1992. The comment period was reopened from June 1 to July 10, 1992. No comments were received during that time. A summary of the comments and agency responses is provided in accordance with N.J.S.A. 52:14B-4 and N.J.A.C 1:30-4.1(c). The following is a list of persons and organizations submitting comments on this proposal:

Sandra Smith, Advanced Environmental Technology Services (AETC); Gerard Hartig, Rollins Environmental Services.

COMMENT 1: Rollins requested that the Department include a practical procedure to detect discrepancies in cases where the wastes are manifested by volume rather than weight, or that the Department state that reporting is not necessary for wastes labeled by volume.

RESPONSE 1: The Department intended that facilities, upon receiving shipments of waste manifested by volume but not weight, would convert the volume shown on the manifest to weight using the specific gravity of the waste. Many facility owners or operators must analyze the waste for specific gravity as part of their permit conditions, and therefore know the specific gravity of each waste. The Department therefore does not believe this to be an additional burden, since the analysis is already required. This calculated weight could then be compared to the actual measured weight of the shipment as received. The Department is aware that other facilities do not perform this analysis. These facilities may choose to do this analysis in order to comply with these regulations, or may void this procedure by requiring the generator to manifest by weight rather than volume. The Department feels this to be a minimal burden, since generators and owners or operators generally cooperate to ensure correct completion of manifest documents.

COMMENT 2: Rollins noted that the Department used Federal language from 40 CFR §264.72(a)(1) at N.J.A.C. 7:26-7.6(a)4i(2), but deleted the word "obvious," as it is used in the Federal rule, when describing differences in waste type. Rollins noted that enforcement actions could be brought against a facility for discrepancies discovered during exhaustive Department inspection which were not discovered during the facility's routine inspection.

RESPONSE 2: The Department agrees with this comment, and is inserting the word "obvious" into the regulations, as in the Federal rule.

COMMENT 3: Rollins has requested that this rule amendment address a problem in regulatory language at N.J.A.C. 7:26-7.6(a)2. The language now indicates that a facility must reject a waste shipment due to either a true discrepancy or an error on the manifest. It is Rollins' understanding that the Department did not mean for facilities to reject shipments on the basis of improperly completed manifests.

RESPONSE 3: The Department agrees with this comment, but it is beyond the scope of this rule, and it would be too great a change from the proposed amendments. Even though this is an issue separate and distinct from manifest discrepancies, the Department will review the comment and respond within 60 days.

COMMENT 4: Both commenters questioned the requirement of entering discrepancies in the facility operating record. Rollins expressed their belief that, since these discrepancies are the fault of the generator, facilities should not be required to record them. Instead, the generator should be required to submit this information as part of their Generator Annual Report. AETC suggested that the Department might require this information without undue burden to the facility operator or generator, by allowing the operator five days to note the resolution of a discrepancy in Section 19 of the manifest before sending it to the Department, thus creating a record of the resolved discrepancy without entry in the facility operating record. AETC also suggested that the Department could require facilities to develop a statistical process control program such as the one already used by AETC, to monitor discrepancy data and make changes to reduce future discrepancies.

RESPONSE 4: The Department has included the requirement to enter discrepancies in the operating log so that inspectors, when reading the facility's log, will be immediately aware of the discrepancy. The Department is mandated to track hazardous waste "from cradle to grave," and cannot adequately do so without knowing of the existence of manifest discrepancies of a magnitude of 10 percent or greater. Even if these discrepancies are resolved by the generator and the facility, the Department feels that such a large error should be noted in the operating record, along with an explanation of how the discrepancy was resolved and how future instances will be avoided.

The Department feels that this burden will be small, since these amendments also raise the threshold of significant discrepancies from one percent to 10 percent. The Department anticipates that many fewer discrepancies will need to be recorded. The Department recognizes AETC's attempt to minimize discrepancies through the study of past discrepancies, but is not requiring similar systems at all facilities which accept waste under manifest.

COMMENT 5: AETC expressed agreement with the change of the reporting trigger from 1 percent to 10 percent. AETC felt that 10 percent is reasonable to compensate for the limits of sensitivity and calibration of weighing scales and possible variation in measurement.

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RESPONSE 5: The Department concurs and appreciates AETC's support for this decision.

COMMENT 6: AETC disagreed with the Department's proposal to require the submission of a discrepancy report for those significant discrepancies not resolved within one week. AETC felt that the Department should be consistent with Federal regulations which allow 15 days for discrepancy reconciliation. This would allow sufficient time for accurate analysis and rectification of the discrepancy and would reduce the number of reports submitted.

RESPONSE 6: The Department concurs with this comment and is changing proposed language to mirror Federal language. The one week limit is replaced in this adoption by a 15 day limit and the requirement to report within 10 days is replaced by a requirement to report, if necessary, during the next business day. This is in keeping with the Federal requirement to report immediately at the end of the 15 days.

COMMENT 7: AETC agreed that all unresolved significant discrepancies be reported, but felt that resolved discrepancies noted by out-of-State facilities could be noted in Section 19 of the manifest, and not reported by the New Jersey generator.

RESPONSE 7: The Department is mandated to track the handling of hazardous waste "from cradle to grave," but lacks inforcement authority outside the State of New Jersey. In cases where the generator sends waste to an out-of-State facility, the Department has no access to the operating logs of these facilities; the State cannot assure that such logs are kept. Neither would the Department receive annual reports from these facilities. Therefore, mishandling of wastes, through fraudulent or careless manifesting, would be unknown to the Department, which could not then assure protection of human health and the environment. The existence of significant discrepancies, even if resolved, is an important sign of improper waste management. The Department expects that, with the change of the threshold of significance from one percent to 10 percent, generators and facilities should experience very few significant discrepancies, and that the reporting burden will be minimal. This requirement is consistent with other generator requirements, such as that at N.J.A.C. 7:26-7.4(h)3, which states that the generator is also responsible for assuring that the State receives a copy of manifests when waste is shipped out-of-State.

COMMENT 8: AETC disagreed with the Department's proposal to amend the requirements for annual reports to include references to the operating log and manifest numbers of all resolved and unresolved significant discrepancies. AETC suggests, as in comment 4, that the Department allow five business days before the manifest must be submitted to the Department. Therefore, all resolved discrepancies would be noted in section 19 of the State's manifest copies and be accessible to the Department. Unresolved significant discrepancies would already be accessible through the submittal of discrepancy reports. AETC felt that the present annual report requires a large amount of paperwork, and that this requirement would add a further burden, and might also affect the accuracy of the capacity assurance data given in the annual report.

RESPONSE 8: The Department agrees. Both resolved and unresolved significant discrepancies will be recorded in the facility's written operating record, and those unresolved will be reported to the Department. Also, the current rule at N.J.A.C. 7:26-7.6(f)2iii requires that a compilation of the daily operating record be included in the report. This makes further description of manifest discrepancies unnecessary. N.J.A.C. 7:26-(f)2iv will be appropriately changed upon adoption.

COMMENT 9: AETC requested that the Department include language that incorporates the final rule into all current treatment, storage and disposal facility permits.

RESPONSE: 9: The Department notes that regulations take precedence over permit conditions. The Department's permits contain a statement to this effect in the general conditions section, which eliminates the necessity of modifying all permits each time the regulations are amended. Furthermore, RCRA permits generally list the specific regulations which must be complied with, as well as specifying that the permittee must comply with subsequent amendments to the regulations. Therefore, these amendments are applicable to all treatment, storage, or disposal permits.

Summary of Agency-Initiated Changes:

In order to comply with the requirements of the Environmental Protection Agency, the Department has added "the attempts to reconcile the discrepancy" to the information that must be described in the letter report required to be submitted to the Department under N.J.A.C. 7:26-7.6(a)4iv.

At N.J.A.C. 7:26-7.6(a)4iv(1), "operator" has been changed to "owner or operator" to conform this provision to the rest of the rules.

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

7:26-5.4 Civil administrative penalties for violations of rules adopted Pursuant to the Act

(a)-(f) (No change.)

(g) The rule summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12, is provided for informational purposes only. In the event that there is a conflict between the rule summary in N.J.A.C. 7:26-5.4(g) and a provision in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12, then the provision in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12 shall prevail. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:26.

1.-6. (Reserved.)

7. The violations of N.J.A.C. 7:26-7, Labeling, Records and Transportation Requirements, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty
...		
7:26-7.6(a)4	Failure of facility operator to reconcile a significant manifest discrepancy with the generator or transporter within *[one week]* ***15 days*** of receipt or to report the unresolved discrepancy to the Department within *[10]* ***16*** days of receipt.	$1,000
...		

8. (No change.)

9. The violations of N.J.A.C. 7:26-9, Requirements for Hazardous Waste Facilities, and the civil administrative penalty amounts for each violation are as set forth in the following table.

Rule	Rule Summary	Base Penalty
...		
7:26-9.4(i)	Failure of facility owner or operator to keep written operating records meeting each requirement of N.J.A.C. 7:26-9.4(i)1 through 10.	$2,000
...		

10.-12. (No change.)

7:26-7.4 Hazardous waste generator responsibilities

(a)-(j) (No change.)

(k) If the generator utilizes an out-of-State designated facility and a manifest discrepancy considered a significant discrepancy according to the standards at N.J.A.C. 7:26-7.6(a)4 is known to the generator, the generator shall immediately submit to the Department a copy of the manifest and a letter report describing the nature of the discrepancy and the arrangements made for the disposition of the waste.

7:26-7.6 Hazardous waste facility operator responsibilities

(a) General requirements are as follows:

1.-2. (No change.)

3. The facility operator may accept a hazardous waste which appears to be other than the quantity or waste type described in the manifest, provided the facility is authorized to accept such waste and thereafter complies with (a)4 below.

4. If at the time of acceptance or after acceptance of the hazardous waste delivery, the facility operator determines that there is a "significant discrepancy", as described below, between the waste accepted and the waste described in the manifest, the operator shall comply with this paragraph.

i. Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives.

(1) Significant discrepancies in quantity are:

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(A) For bulk waste, variations greater than 10 percent in weight; and

(B) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Significant discrepancies in type are ***obvious*** differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping order.

ii. When a significant discrepancy is discovered, the facility operator shall attempt to reconcile the discrepancy with the waste generator or transporter; and

iii. If the significant discrepancy is resolved within *[one week]* ***15 days*** of receipt of the waste shipment, ***the owner or operator shall*** enter a description of the significant discrepancy and its resolution into the facility's operating record according to N.J.A.C. 7:26-9.4(i)10; or

iv. If the significant discrepancy is not resolved within *[one week]* ***15 days*** of receipt of the waste shipment, ***the owner or operator shall*** submit to the Department, *[within 10 days of]* ***before the end of the sixteenth day after*** receipt of shipment, a copy of the manifest and a letter report describing the nature of the significant discrepancy***, the attempts to reconcile the discrepancy*** and the arrangements made for disposition of the waste.

(1) The ***owner or*** operator shall also enter a description of the unresolved significant discrepancy, in accordance with N.J.A.C. 7:26-9.4(i)10, and all follow-up information into the facility operating record;

5.-6. (No change.)

(b)-(e) (No change.)

(f) Reporting and recordkeeping requirements are as follows:

1. (No change.)

2. The owner or operator shall prepare and submit two copies of an annual report to the Department by March 1 of each year, except for owners and operators of industrial waste management facilities which are subject to N.J.A.C. 7:14A-4.6. The report shall include:

i.-iii. (No change.)

iv. A summary of all manifest numbers for all hazardous waste received, identifying those shipments which were rejected in whole or in part, and identifying those shipments where a significant discrepancy occurred*[. In the case of significant discrepancies, the report shall include a description of the nature of the discrepancy and its ultimate resolution, including references to the facility operating record and manifest discrepancy reports submitted to the Department in accordance with (a)4iv above; this requirement applies to both resolved and unresolved significant discrepancies]*;

v.-ix. (No change.)

3. (No change.)

(g) (No change.)

7:26-9.4 General facility standards

(a)-(h) (No change.)

(i) The owner or operator shall keep a written operating record at the facility in which the following information shall be recorded, as it becomes available, and maintained until closure of the facility:

1.-9. (No change.)

10. Descriptions of resolved and unresolved significant manifest discrepancies pursuant to N.J.A.C. 7:26-7.6(a)4iii and iv. Each description shall include the following information:

i. The exact nature of the discrepancy;

ii. The reason(s) why the discrepancy occurred;

iii. How the discrepancy was resolved or why it remains unresolved; and

iv. Steps taken to prevent future similar discrepancies.

(j)-(o) (No change.)

7:26-12.4 Standards applicable to all permits

(a) The conditions in this section shall apply to all permits issued pursuant to this chapter. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter shall be given in the permit.

1.-11. (No change.)

12. The permittee shall comply with the reporting requirements in (a)12 of this section.

i.-viii. (No change.)

ix. The permittee shall submit significant manifest discrepancy reports in accordance with N.J.A.C. 7:26-7.6(a)4iv.

13.-16. (No change.)

17. The following reports required by N.J.A.C. 7:26-9 and 10 shall be submitted in addition to those required by (a)12 above:

i. (Reserved)

ii.-iv. (No change.)

18. (No change.)

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

(a)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Environmental Cleanup Responsibility Act Rules

Adopted Amendments: N.J.A.C. 7:26B-1.3, 1.10, 1.13, 5.4, 13.1 and Appendix A

Proposed: March 2, 1992, at 24 N.J.R. 720(a).

Adopted: November 25, 1992, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: December 1, 1992, as R.1993 d.3, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the proposed amendments to N.J.A.C. 7:26B-1.5, 1.6, 1.8 and 1.9, and a portion of the amendments to N.J.A.C. 7:26B-1.3, not adopted at this time.**

Authority: N.J.S.A. 13:1D-1 et seq., 13:1K-6 et seq., particularly 13:1K-10, and 58:10-23.11 et seq.

DEPE Docket Number: 03-92-01.

Effective Date: January 4, 1993.

Expiration Date: November 18, 1997.

Summary of Public Comments and Agency Responses:

On March 2, 1992, the Department of Environmental Protection and Energy (Department) proposed amendments to its rules implementing the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 through 13:1K-13 (ECRA). The proposal was brought about by the Appellate Division's decision, *In Re Adoption of N.J.A.C. 7:26B*, 250 *N.J. Super* 189 (App. Div. 1991), which remanded certain rules to the Department for further rulemaking consistent with the Court's opinion. The Department published notice of the proposal in the Trenton Times, the Star Ledger, and the Atlantic City Press. The Department held a public hearing on the proposed amendments on March 30, 1992, at which two people testified, and accepted written comments through May 6, 1992.

On July 23, 1992, a bill (S-1070) was introduced in the Senate which would amend certain portions of ECRA. The legislature is currently considering amendments to S-1070 which may affect the Department's March 2, 1992 rule proposal. On November 5, 1992, Chemical Industry Council, an appellant in *In Re Adoption of N.J.A.C. 7:26B*, filed a motion in the Appellate Division to extend to February 15, 1993 the Court's deadline for completion of rulemaking on remand. The motion was brought based on the introduction and anticipated passage of S-1070. The Department has not opposed the motion, since passage of the proposed legislation may require modification of portions of the rules proposed on March 2, 1992, thereby mooting issues raised by appellants in *In Re Adoption of N.J.A.C. 7:26B*.

Portions of the rule proposal not mandated by the Appellate Division in *In Re Adoption of N.J.A.C. 7:26B* involved changes to regulations at N.J.A.C. 7:26B-1.3, 1.10, 1.13, 5.4, 13.1, and Appendix A. While the Department is postponing adoption of the major portion of the proposal until February 15, 1993, the Department is adopting the definitions of "Department," "hazardous substances," and "small business" at N.J.A.C. 7:26B-1.3 and the proposed amendments to N.J.A.C. 7:26B-1.10, 1.13, 5.4, 13.1, and Appendix A, since these sections are not related to the applicability amendments being considered by the Legislature.

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The following persons submitted written comments or testified at the public hearing:

Name—Affiliation

Gary F. Danis, Esq.—Kerby, Cooper, English, Danis, Popper and Garvin
Matthias D. Dileo, Esq.—New Jersey State Bar Association
Kenneth H. Mack, Esq.—Picco, Mack, Herbert, Kennedy, Jaffe & Yoskin, on behalf of the Chemical Industry Council of New Jersey
William L. Warren, Esq.—Cohen, Shapiro, Polisher, Shiekman and Cohen

The written and oral comments are summarized and responded to below:

N.J.A.C. 7:26B-1.3

1. COMMENT: Chemical Industry Council of New Jersey questioned the use of the phrases "independently owned and operated" and "not dominant in its field" in the definition of "small business." The commenter stated that these phrases are not readily understandable.

RESPONSE: The Department agrees with the commenter that the definition of "small business" does not establish a bright-line test for determining whether a business is a "small business." However, the definition has not been changed upon adoption. The definition is taken directly from the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, 17. The Regulatory Flexibility Act requires an agency promulgating a rule to "utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small businesses." N.J.S.A. 52:14B-18. The Department's purpose in providing certain reduced requirements for small businesses is to satisfy this statutory requirement; to fulfill that purpose, the "small businesses" to which these reduced requirements apply must be the same as the "small businesses" defined in the statute.

N.J.A.C. 7:26B-1.10(a)

2. COMMENT: The amendment to N.J.A.C. 7:26B-1.10(a) provides that for various types of submittals, additional fees are assessed for each separate submission. Currently, the fee is assessed once. Kerby, Cooper, English, Danis, Popper and Garvin questioned what constitutes a submittal that is subject to a fee. As an example, the commenter stated that submittal of a revised cleanup plan that contains specific changes in response to the Department's comments should not require payment of the full fee again.

RESPONSE: The Department directs the commenter to the summary section of this proposal under the Fees Section. In short, the Department will not impose the new fee requirement on submittals that are made in response to deficiency letters. Submittals made to the Department that result in a disapproval will require a new proposal with the appropriate fee.

N.J.A.C. 7:26B-1.10(d)

3. COMMENT: N.J.A.C. 7:26B-1.10(d) requires that an applicant seeking to be charged under the "small business" fee schedule must submit an affidavit certifying that it is a small business. Kerby, Cooper, English, Danis, Popper and Garvin stated that the requirement unnecessarily adds to the burden for small businesses.

RESPONSE: The Department disagrees that the requirement adds any material burden. The applicant satisfies the requirement simply by signing a form available from the Department and having it notarized. As a result, the applicant is then charged significantly lower fees for most ECRA-related Department activities. The Department has revised the rule upon adoption to state that the form is available from the Department.

N.J.A.C. 7:26B-5.4

4. COMMENT: N.J.A.C. 7:26B-5.4 has been amended to provide that a negative declaration is effective for a maximum of 120 days, instead of a maximum of 60 days with a procedure for extending the effective date for another 60 days. Kerby, Cooper, English, Danis, Popper, and Garvin stated that this is a positive change. New Jersey State Bar Association stated that it applauded the change.

RESPONSE: The Department appreciates the commenters' support.

5. COMMENT: Kerby, Cooper, English, Danis, Popper and Garvin commented that the maximum 120-day duration of a negative declaration may not necessarily be a sufficient period of time.

RESPONSE: Both the Department and the Legislature are considering future modifications to the duration of a negative declaration. The Department will await the decision of the Legislature before further modifying this provision.

N.J.A.C. 7:26B-13.1(b)2

6. COMMENT: New Jersey State Bar Association commended the Department for extending to one year the valid life of an appraisal used in an application for a Certificate of Limited Conveyance.

RESPONSE: The Department appreciates the commenter's support.

N.J.A.C. 7:26B-13.1(d)5

7. COMMENT: The application for a Certificate of Limited Conveyance must include an affidavit certifying that "no changes have occurred since the date of the appraisal that would in any way alter the appraised value." New Jersey State Bar Association suggests that the affidavit be limited to represent that there has been "no material adverse change." The commenter stated that it would be unlikely in any period that no change would occur.

RESPONSE: The commenter is correct that it would be unlikely for no change to occur. The Department has revised the rule upon adoption to provide for a statement that "no material change" has occurred that would "in any way materially alter the appraised value." In this context, it would be ambiguous to use the word "adverse."

N.J.A.C. 7:26B Appendix A

8. COMMENT: New Jersey State Bar Association expressed concern regarding the change in liability standards in section 18 of the trust agreement from "acts or omissions" to "acts of omissions."

RESPONSE: The word "of" was a typographical error, which the Department has corrected upon adoption.

9. COMMENT: New Jersey State Bar Association suggested that the Department confirm that all instruments presently in place, and renewals, may continue to use existing language.

RESPONSE: The amendment to the rule is to be applied prospectively only. Therefore, all instruments currently in place and renewals thereof are not affected.

10. COMMENT: Kerby, Cooper, English, Danis, Popper and Garvin commented that 10 days may not be a reasonable time frame for a surety to adequately assess whether it should perform the cleanup or deposit funds in the standby trust.

RESPONSE: Based upon the Department's previous experience, 10 days is a reasonable time frame for a surety to choose between the options that the commenter presented.

General Comment

11. COMMENT: Cohen, Shapiro, Polisher, Shiekman and Cohen urged the Department to review its experience with the ECRA program annually or semianually to determine whether it can liberalize the ECRA regulations so that the incremental costs of compliance are consistent with the incremental scope of the regulations.

RESPONSE: The Department's review of its experience with the ECRA program is constant rather than periodic. The Department expects that it will be proposing substantial amendments to N.J.A.C. 7:26B soon after the amendments to the ECRA statute are enacted. In light of the support by Governor Florio and several legislators for revisions to the statute, it is likely that the revisions will become law. The Department will propose regulations consistent with these amendments. In addition, interested persons desiring to suggest specific amendments to the rule may submit a petition for rulemaking pursuant to N.J.A.C. 7:1-1.2.

Summary of Hearing Officer Recommendations and Agency Response:

The Department held a public hearing on the proposed amendments on March 30, 1992 in Trenton, New Jersey. Karl Delaney, Director of the Division of Responsible Party Site Remediation in the Department, served as hearing officer.

Mr. Delaney reviewed the testimony submitted at the public hearing, and the other comments which the Department received. Based upon that review, Mr. Delaney recommended that the Department make several minor changes to the rule upon adoption. The Department agreed with the recommendation, and has incorporated the suggested changes. The reasoning behind the suggested changes is described in the responses to public comments set forth above.

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Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

7:26B-1.3 Definitions

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

. . .

"Department" means the New Jersey Department of Environmental Protection and Energy.

. . .

"Hazardous substances" means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

. . .

"Small business" means 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.

. . .

7:26B-1.10 Fee schedule

(a) The owner or operator shall pay all applicable fees required by this section upon submittal to the Department of each submission for negative declaration, sampling plan, cleanup plan, applicability determination, de minimus quantity exemption, Certificate of Limited Conveyance, ACO or Initial Notice, except as provided at (e)4i and (e)5i below. The applicable fee required by this section shall be submitted with each and every submittal made to the Department. The fees required by this section are not one time fees but rather the fees required to perform the review of the specific submittals to the Department.

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

(d) Any applicant filing as a small business shall file an affidavit ***(on a form provided by the Department)*** certifying that it is such a business. This affidavit shall be certified in accordance with N.J.A.C. 7:26B-1.13.

(e) (No change.)

7:26B-1.13 Certification and signatories

(a) The following documents required to be submitted to the Department shall be executed and certified as set forth in (b) below:

1. Affidavit for small business filing fee (see N.J.A.C. 7:26B-1.10(d));

Recodify existing 1.-4. as 2.-5. (No change in text.)

6. Affidavit for a negative declaration and changes to an approved negative declaration (see N.J.A.C. 7:26B-5.2 and 5.4);

Recodify existing 6.-9. as 7.-10. (No change in text.)

(b)-(e) (No change.)

7:26B-5.4 Issuance and duration of negative declaration approval

(a) (No change.)

(b) A negative declaration approval shall be effective only for so long as all the information submitted pursuant to N.J.A.C. 7:26B-3.2 remains unchanged but, in any event, shall not be effective for a period to exceed 120 days.

(c) Where there is a change in the information required in the Initial Notice prior to the expiration of the 120-day period, the owner or operator of the industrial establishment shall immediately notify the Department of the change and request an amended negative declaration approval. The amended negative declaration approval shall be effective for a period not to exceed the remainder of the original 120-day period.

7:26B-13.1 Certificate of Limited Conveyance

(a) (No change.)

(b) The Certificate of Limited Conveyance shall be granted only where:

1. (No change.)

2. The appraisal has occurred as close to the application for a Certificate of Limited Conveyance from the Department as possible, but in no case more than one year prior to submittal of the application for the Certificate of Limited Conveyance;

3. (No change.)

(c) (No change.)

(d) To apply for a Certificate of Limited Conveyance the owner shall submit the following to the Department:

1.-4. (No change.)

5. An affidavit certifying that no ***material*** change*[s]* *[have]* ***has*** occurred since the date of the appraisal that would in any way ***materially*** alter the appraised value. The affidavit shall also certify that the portion of the industrial establishment to be conveyed has never been involved in the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes on-site, above or below ground;

6.-8. (No change.)

(e) (No change.)

APPENDIX A

WORDING OF INSTRUMENTS DOCUMENT FOR FINANCIAL ASSURANCE REQUIRED PURSUANT TO THE ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT

N.J.S.A. 13:1K-6 et seq. ("ECRA")

LETTER OF CREDIT

A letter of credit, as specified in N.J.A.C. 7:26B-6.4, issued pursuant to ECRA, shall 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

, Commissioner

New Jersey Department of Environmental Protection **and Energy**

CN-028

Trenton, New Jersey 08625

ATTN: Assistant Director, Industrial Site Evaluation Element

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT
ECRA CASE #_____

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's or operator's of the industrial establishment name and address] up to the aggregate amount of [in words] U.S. dollars _____, available upon presentation by you of (1) your sight draft, bearing reference to this irrevocable standby Letter of Credit No. _____, and (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to the authority of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.* (P.L. 1983, C. 330) ("ECRA") and the ECRA Regulations, N.J.A.C. 7:26B.

This Letter of Credit is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of at least one (1) year on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEPE's Industrial Site Evaluation Element, CN-028, Trenton, New Jersey, 08625, and [name of owner or operator of industrial establishment] by certified mail that we have decided not to extend this Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 years after date of receipt by both NJDEPE and [name of owner or operator of industrial establishment], as shown on the signed return receipts.

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 [name of owner or operator of industrial establishment], in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in N.J.A.C. 7:26B (Appendix A), as such regulations were constituted on [the date shown immediately below.]

[Name of issuing institution] shall not cancel this Letter of Credit on the basis of a request from [name of owner or operator of industrial establishment] until it has received written authorization from NJDEPE.

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This irrevocable standby Letter of Credit is subject to [insert the most recent edition of the "Uniform Customs and Practice for Documentary Credit", published by the International Chamber of Commerce, or "the Uniformed Commercial Code"].

Very truly yours,

[Name of Issuing Institution]

[Signature and Title of Official]

[Printed Name of Official]

[Date _____]

SURETY BOND

A surety bond guaranteeing payment into a trust fund, as specified in N.J.A.C. 7:26B-6.2, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT
ECRA CASE #_____

Date bond executed: _____

Effective Date: _____

Principal: [Legal name and business address of owner or operator of the industrial establishment]

Type of organization [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

[Insert name, current ownership, Standard Industrial Classification number, location of industrial establishment, including lot and block number, municipality and county, and ECRA cleanup amount(s) for each industrial establishment guaranteed by this bond. Indicate NJDEPE-approved ECRA cleanup amount]:

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection and Energy, hereinafter NJDEPE, in the above penal sum 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 sum "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 sum 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 sum.

* * *

[Next Paragraph For Use by Principal With ECRA Administrative Consent Order Only]

WHEREAS, said Principal has entered into an Administrative Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Principal has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, said Principal is required to provide financial assurance in an amount equal to or greater than the cost estimate for implementation of the cleanup plan approved by NJDEPE on [date] and required as a precondition to any closure or sale or transfer of an industrial establishment in accordance with the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., hereinafter "ECRA", and the ECRA Regulations, N.J.A.C. 7:26B, and

WHEREAS, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform its obligations under the provisions of ECRA, then this obligation shall be null and void; otherwise, the surety bond shall remain in full force and effect to assure performance of the obligations under ECRA and to otherwise assure and guarantee the performance and implementation of the ECRA cleanup plan approved by NJDEPE on [date];

WHEREAS, said Principal shall establish a standby trust fund as is required by N.J.A.C. 7:26B-6.2(c) when a surety bond is used to provide a mechanism for access by NJDEPE to assure payment for the implementation of the ECRA cleanup plan approved by NJDEPE on [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligation under ECRA, whenever required to do so, regarding each industrial establishment for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEPE that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the industrial establishment into the standby trust fund as directed by the NJDEPE within ten (10) days of receipt of NJDEPE's notification.

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 aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Security(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEPE Industrial Site Evaluation Element, CN-028, Trenton, N.J., 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEPE Industrial Site Evaluation Element, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26B-6.2(h).

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEPE.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatories appear below hereby certify that they are authorized to execute this surety on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the Wording of Instruments document referred to in N.J.A.C. 7:26B-6.2(b) as constituted on the date the bond was established.

Principal

[Signature(s)]

[Date]

[Name(s)]

[Title(s)]

[Corporate seal]

[Name and address]

State of incorporation: _____

Liability limit: _____

[Signature(s)]

[Date]

[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: _____

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PERFORMANCE BOND

A surety bond guaranteeing performance of ECRA cleanup or payment into a standby trust fund, as specified in N.J.A.C. 7:26B-6.3, shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT
ECRA Case # _____

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator of industrial establishment]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

[Insert name, current ownership, Standard Industrial Classification number, location of industrial establishment, including lot and block number, municipality and county, and ECRA cleanup amount(s) for each industrial establishment guaranteed by this bond. Indicate NJDEPE-approved ECRA Cleanup amount]:

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto, are firmly bound to the New Jersey Department of Environmental Protection and Energy, hereinafter NJDEPE, in the above penal sum 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 sum "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 sum 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 penal sum.

[Next Paragraph For Use by Principal With ECRA Administrative Consent Order Only]

WHEREAS, said Principal has entered into an Administrative, Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Principal has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, said Principal is required to provide financial assurance in an amount equal to or greater than the cost estimate for implementation of the cleanup plan approved by NJDEPE on [date] and required as a precondition to any closure, sale or transfer of an industrial establishment in accordance with the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA" and the ECRA Regulations, N.J.A.C. 7:26B;

WHEREAS, the condition of this obligation is such that, if the Principal shall promptly and faithfully perform its obligations under the provisions of ECRA, then this obligation shall be null and void; otherwise, the surety bond shall remain in full force and effect to assure performance of the obligations under ECRA and to otherwise assure and guarantee the performance and implementation of the ECRA cleanup plan approved by NJDEPE on [date];

WHEREAS, said Principal shall establish a standby trust fund as is required by N.J.A.C. 7:26B-6.3(c) when a surety bond is used to provide a mechanism for access by NJDEPE to all or part of such financial assurance required by ECRA to assure performance of the implementation of the ECRA cleanup plan and/or Consent Order approved by NJDEPE on [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligations under ECRA, whenever required to do so, regarding each facility for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEPE that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall either perform the monitoring and cleanup in accordance with the NJDEPE-approved cleanup plan [or, if appropriate, delete "NJDEPE-approved cleanup plan" and insert "Consent Order"] or place funds in the amount guaranteed for the cleanup of the industrial establishment into the standby trust fund as directed by the NJDEPE. The Surety(ies) shall notify NJDEPE within ten (10) days of receipt of NJDEPE's notification of the Surety(ies) intentions to either perform the monitoring and cleanup at the industrial establishment in accordance with the NJDEPE approved cleanup plan or Consent Order or place the funds in the amount guaranteed into the standby trust fund.

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 aggregate to the penal sum of the bond, but in no event shall be obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEPE Industrial Site Evaluation Element, CN-028, Trenton, N.J. 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEPE, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26B-6.3(i).

The Principal may terminate the bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEPE.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth below.

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 of Instruments document referred to in N.J.A.C. 7:26B-6.2(b).

Principal

[Signature(s)]

[Date]

[Name(s)]

[Title(s)]

[Corporate seal]

[Name and address]

State of incorporation: _____

Liability limit: _____

[Signature(s)]

[Date]

[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: _____

STANDBY TRUST AGREEMENT

A Standby Trust Fund, established pursuant to a Standby Trust Agreement, shall be required along with and in addition to a financial assurance option selected by the owner or operator of an industrial establishment pursuant to this Wording of Instruments document (see N.J.A.C. 7:26B-6.2(b) for Surety Bond; N.J.A.C. 7:26B-6.3(b) for Performance Bond; and N.J.A.C. 7:26B-6.4(b) for Letter of Credit). NJDEPE requires a Standby Trust Agreement for a Standby Trust Fund to provide a mechanism for access by NJDEPE to all or part of such financial assurance required by ECRA to assure the successful implementation of any ECRA-cleanup plan approved by NJDEPE.

A standby trust agreement for a cleanup plan approval or an Administrative Consent Order shall be worded as follows, except that instructions

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in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT
ECRA CASE #_____

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the owner or operator of the industrial establishment], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the New Jersey Department of Environmental Protection and Energy, hereinafter "NJDEPE", an agency of the State of New Jersey, has established the Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:26B, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.,* hereinafter "ECRA", applicable to the Grantor, requiring that certain procedures be followed by industrial establishments to ensure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure, sale or transfer of any industrial establishment in accordance with ECRA.

* * *

[Next Paragraph For Use by Grantor With ECRA Administrative Consent Order Only]

WHEREAS, the Grantor has entered into an Administrative Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Grantor has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, the Grantor is required, within 14 days of written approval of the ECRA-cleanup plan by NJDEPE, to provide a surety bond or other financial security pursuant to N.J.A.C. 7:26B-6 in an amount equal to or greater than the cost of said approved cleanup plan;

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Industrial Establishment and Cost Estimates.

This Agreement pertains to the industrial establishments and cost estimates identified on Attachment A. [On Attachment A, for each industrial establishment list the name, cleanup plan cost estimates, current ownership, Standard Industrial Classification number, location of the industrial establishment, tax lot and block number, municipality and county for which financial assurance is demonstrated by this Agreement.]

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEPE. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEPE. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEPE.

Section 4. Payment for ECRA Cleanup.

The Trustee shall make payment from the Fund as the NJDEPE Commissioner, or his designee, shall direct, in writing, to provide for the payment of the ECRA cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated [date]" or "covered by the ECRA cleanup approved by the NJDEPE on [date]"] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEPE, from the Fund for ECRA cleanup expenditures in such amounts as the NJDEPE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEPE specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEPE as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

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(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEPE a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEPE shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and his successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEPE and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor.

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEPE with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEPE to the Trustee shall be in writing, signed by the NJDEPE Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEPE hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEPE, except as provided for herein.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEPE or by the Trustee and the NJDEPE if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEPE or of the Trustee and the NJDEPE, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act *[of]* ***or*** omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEPE issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of law.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management official, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below.

[NAME OF GRANTOR]

DATE: _____ BY: _____

TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____

TITLE: _____

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGEMENT
(Grantor & Trustee)

ECRA Case #: _____

Industrial Establishment: _____

Owner: _____

Operator: _____

Amount of ECRA Cleanup Approval: _____

Amount of ECRA ACO: _____

Type of Financial Assurance Posted: _____

State of _____

County of _____

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On the [date], before me personally came [owner or operator of the industrial establishment] and [Trustee], to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that is so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other. [Signature of Notary Public].

FULLY FUNDED TRUST

A fully funded trust for an ECRA cleanup plan approval or an ECRA ACO shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Fully Funded Trust Agreement

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT
ECRA CASE #_____

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the owner or operator of the industrial establishment], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the New Jersey Department of Environmental Protection and Energy, hereinafter "NJDEPE", an agency of the State of New Jersey, has established the Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:26B, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA", applicable to the Grantor, requiring that certain procedures be followed by industrial establishments to ensure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure, sale or transfer of any industrial establishment in accordance with ECRA.

* * *

[Next Paragraph For Use by Grantor With ECRA Administrative Consent Order Only]

WHEREAS, the Grantor has entered into an Administrative Consent Order with NJDEPE dated [date], hereinafter "Consent Order", under which Grantor has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, the Grantor is required, within 14 days of written approval of the ECRA-cleanup plan by NJDEPE, to provide a surety bond or other financial security pursuant to N.J.A.C. 7:26B-6 in an amount equal to or greater than the cost of said approved cleanup plan;

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Industrial Establishment and Cost Estimates.

This Agreement pertains to the industrial establishments and cost estimates identified on Attachment A. [On Attachment A, for each industrial establishment list the name, cleanup plan cost estimates, current ownership, Standard Industrial Classification number, location of the industrial establishment, tax lot and block number, municipality and county for which financial assurance is demonstrated by this Agreement.]

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a fully funded trust fund, hereinafter the "Fund", for the benefit of NJDEPE. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEPE. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEPE.

Section 4. Payment for ECRA Cleanup.

The Trustee shall make payment from the Fund as the NJDEPE Commissioner, or his designee, shall direct, in writing, to provide for the payment of the ECRA cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated [date]" or "covered by the ECRA cleanup approved by the NJDEPE on [date]"] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEPE, from the Fund for ECRA cleanup expenditures in such amounts as the NJDEPE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEPE specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEPE as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

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(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and the NJDEPE a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEPE shall constitute a conclusively binding asset by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEPE and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor.

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEPE with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEPE to the Trustee shall be in writing, signed by the NJDEPE Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEPE hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEPE, except as provided for herein.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEPE or by the Trustee and the NJDEPE if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEPE or of the Trustee and the NJDEPE, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act of omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEPE issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management official, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ BY: _____

TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____

TITLE: _____

[Grantor shall attach Attachments A and B.]

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CERTIFICATION OF ACKNOWLEDGEMENT
(Grantor) & (Trustee)

ECRA Case #: _____

Industrial Establishment: _____

Owner: _____

Operator: _____

Amount of ECRA Cleanup Approval: _____

Amount of ECRA ACO: _____

Type of Financial Assurance Posted: _____

State of _____

County of _____

On the [date], before me personally came [owner or operator of the industrial establishment] and [Trustee], to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that is [was] so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public].

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Residential Health Care Facilities Standards for Licensure

Readoption with Amendments: N.J.A.C. 8:43

Proposed: July 20, 1992, at N.J.R. 2506(a).

Adopted: November 9, 1992 by Bruce Siegel, M.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: November 19, 1992 as R.1992 d.502, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: November 19, 1992, Readoption;
January 4, 1993, Amendments.

Expiration Date: November 19, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey State Department of Community Affairs, Division of Codes and Standards (DCA), submitted the only comments in response to the proposed readoption. The letter from DCA requested that "certain outdated provisions concerning building and fire safety" be deleted from the readoption "because they are in direct conflict with either the State Uniform Construction Code (N.J.A.C. 5:23) or the Uniform Fire Code (N.J.A.C. 5:18) and are therefore invalid," in accordance with the provisions of N.J.S.A. 52:27D-123.1 and 213c.

The Department has reviewed this matter and concludes that certain aspects of the existing manual are in conflict with the New Jersey Uniform Construction Code and/or the New Jersey Uniform Fire Code, contrary to the statutory requirements of N.J.S.A. 52:27D-123.1, which states that "Any law or regulation to the contrary, notwithstanding, the structure, design, construction, maintenance and use of all buildings or structures to be erected and the alteration, renovation, rehabilitation, repair, maintenance, removal, or demolition of all buildings or structures already erected shall be regulated pursuant to the State Uniform Construction Code Act, P.L.1975, c.217 (C.52:27D-119 et seq.), and the requirements of N.J.S.A. 52:27D-213, which states that "This Act shall not be construed as authorizing the adoption of a regulation or the enactment of an ordinance requiring that a building conforming in all respects to the requirements of the State Uniform Construction Code Act . . . be made to conform to more restrictive standards" and that "Buildings, structures and premises subject to inspection for fire safety by an agency of the State shall be inspected by the agency in accordance with the standards established pursuant to this act. Any State fire safety standard for buildings, structures or premises established by or pursuant to any statute other than this act shall continue in effect until such time as that standard is superseded by appropriate regulations promulgated under this act. An agency of the State that enforced fire safety standards prior to the effective date of this act shall be entitled to petition the commissioner to establish a regulation establishing the standards it considers to be necessary and appropriate for buildings, structures and premises subject to its inspection." However, as a matter of policy and practice, the Department of Health does not enforce those standards which are no longer relevant or that have been determined to be in conflict with the above cited codes. The Department also acknowledges that the entire Manual of Licensure Standards for RHCFs is in need of revision, in order to bring all of its provisions into compliance with current laws and standards of care. As explained in the notice of proposed readoption, action was deferred on the new rules in order to undertake a comprehensive economic impact study to assure that the new standards will be reasonable and enforceable. As a result, no changes were proposed in any portion of the existing manual. At this time, the economic impact study of the new rules is completed and the Department is moving forward with initial publication of the proposed new rules elsewhere in this issue of the New Jersey Register.

With respect to the substantive comments from DCA, the Department is providing several modifications to the rules on adoption. However, there are several suggested changes with which the Department does not concur, and which will not be made on adoption. The Department received an opinion from the Attorney General's office indicating that, while it may not promulgate fire safety rules in conflict with the Uniform Fire Code, supplementary standards for health care facilities that are not inconsistent may be adopted.

The Department's response to each of the six areas addressed in the comment letter follows:

COMMENT: DCA suggests that N.J.A.C. 8:43-2.3(a)1ii should be changed to require a certificate of occupancy from the construction official, the current NJUCC requirement, rather than a written statement attesting to the structural safety of the building from the building inspector, which is in conflict with the NJFC, as expressed at N.J.A.C. 5:18-2.3.

RESPONSE: The Department agrees that the rule is in conflict with N.J.A.C. 5:18-2.3 and has made the requested changes.

COMMENT: DCA believes N.J.A.C. 8:43-2.3(a)1iii should be amended to require a certificate of inspection from the fire official the current N.J.F.C. requirement, rather than a written opinion statement from local fire authorities that the building is satisfactory for the proposed occupancy, since this requirement is in conflict with the N.J.F.C., as expressed at N.J.A.C. 5:18-2.5.

RESPONSE: The Department agrees that the rule is in conflict with N.J.A.C. 5:18-2.5 and with N.J.S.A. 52:27D-213, and the requested change has been made.

COMMENT: The commenter requests that N.J.A.C. 8:43-2.6(d) be amended to delete all specific fire safety requirements and to require instead that the building conform to all requirements of the Uniform Fire Code applicable to the occupancy or proposed occupancy.

RESPONSE: N.J.A.C. 8:43-2.6(d) concerns the conditions upon which the Department of Health will permit third-floor patient occupancy within an RHCF. The Department continues to interpret the Uniform Fire Code (UFC) at N.J.A.C. 5:23-3.2(b) to provide that health care facilities will be subject to the Federal 1984 Guidelines for Construction of DHHS and the Uniform Construction Code (UCC). However, this rule specifically exempts facilities from section 501.3, article 7, which, if applicable would prohibit third floor occupancy. Therefore, substitution of the Uniform Fire Code exclusively in this section of the licensing rules would serve to disallow such occupancy, which has been approved by this agency for facilities meeting the conditions specified in its rules at N.J.A.C. 8:43-2.6(d). Additionally, elimination of third floor occupancy would represent a significant financial hardship to many licensed facilities.

The Department is also aware that the UCC should be amended to reflect the update of the 1984 DHHS standards cited, which are now out of date. A citation to the 1987 manual or "current edition" will be substituted in the revised N.J.A.C. 8:43, as there is also a 1992 version presently being completed by the American Institute of Architects (AIA).

No amendments to the proposed readoption of N.J.A.C. 8:43-2.6(d) are being made at this time.

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COMMENT: DCA comments that N.J.A.C. 8:43-2.3(a)2 should be replaced by a requirement that construction receive prior plan approval by the local construction official or by the Department of Community Affairs, before being filed with DOH.

RESPONSE: N.J.A.C. 8:43-2.3(a)2 concerns scale floor plans, but the comment is in regard to requiring approval of construction plans by the local construction official or DCA prior to their being filed with the Department of Health. The Department interprets the UCC at N.J.A.C. 5:23-4.9(c), based upon the enabling act, to give authority to the Department of Health as the "sole plan review agency for the administration and enforcement of Federal and State standards applicable to the construction, alteration, demolition, or maintenance of health care facilities ..." As such, the suggestion that DCA or local construction officials be deemed responsible for plans review, even on an initial basis, cannot be accepted. Therefore, no change is being made to the proposed readoption of N.J.A.C. 8:43-2.3(a)2.

COMMENT: DCA commented on N.J.A.C. 8:43-2.14(b) which requires the window glass area in a resident sleeping room within an RHCF to be at least 10 percent of the floor area. In a building built or altered under the State Uniform Construction Code, DCA states that not more than 8 percent can be required.

RESPONSE: The DCA on N.J.A.C. 8:43-2.14(b) states that it is in conflict with the UCC. However, the Department's review of the UCC at section 704.2 indicates that the minimum glazing area shall be "not less than 8 percent of the floor area." As the Department interprets this as a minimum, not a maximum, and as it believes the health, comfort, and welfare of RHCF residents is enhanced by increased window area, it will continue to maintain the 10 percent minimum window area requirement in our standards. No change has been made to the readopted rule.

COMMENT: DCA suggests that Subchapter 3 (N.J.A.C. 8:43-3) should be deleted in its entirety and replaced by a requirement that the facility be in compliance with all applicable provisions of the Uniform Fire Code. Subchapter 3 is "replete with obsolete references ...", such as those to the State Fire Marshall, the Fire Insurance Rating Organization of New Jersey, and the National Board of Fire Underwriters, as well as to standards which are in conflict with the New Jersey Uniform Fire Code. It is recommended that a currently valid certificate of inspection from the local enforcing agency responsible for Uniform Fire Code enforcement should be required.

RESPONSE: As noted above, the Department received an opinion from the Attorney General's office indicating that, while it may not promulgate fire safety rules in conflict with the Uniform Fire Code, supplementary standards for health care facilities that are not inconsistent may be adopted. While the Department concurs with several suggested changes to delete obsolete references found in its manual, the Department declines to eliminate the entire subchapter at this time, in that it incorporates many additional fire safety requirements believed essential in facilities of this nature. These include requirements addressing areas such as resident smoking, staff or employee sleeping rooms, and storage of combustible material. The subchapter will be substantially revised upon republication, but in view of counsel's opinion, the Department believes supplementary provisions are both permissible and in the best interest of the health and safety of residents.

The Department agrees that references to the State Fire Marshall, the Fire Insurance Rating Organization of New Jersey, and the National Board of Fire Underwriters are inappropriate and may be confusing to RHCF providers, since neither the State Fire Marshall nor the two agencies still exist. All of these references have, therefore, been deleted from the subchapter. A provision has been added to N.J.A.C. 8:43-3.1 to specify that a current written approval must be on file with the Department of Health from the local fire authority, which is consistent with current DOH practices, and with the requirements of N.J.S.A. 52:27D-123.1 and 213 and N.J.A.C. 5:18.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43.

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]*):

8:43-2.3 Local approvals and floor plans

(a) If, in the opinion of the applicant, the building proposed for use is satisfactory (or could be made satisfactory) the following local approvals and floor plans shall be secured by the applicant and filed with the department.

1. Local approvals:

i. (No change.)

ii. Building inspector: A *[written statement attesting to the structural safety of the building]* ***certificate of occupancy from the construction official, in accordance with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-2.3*;**

iii. Fire department: A *[written statement from local fire authorities to the effect that, in their opinion, the building is satisfactory for the proposed occupancy]* ***certificate of inspection from the fire official, in accordance with the New Jersey Uniform Fire Code, N.J.A.C. 5:18-2.5*.** (The department reserves the right to require fire protection measures which may exceed the requirements of municipalities);

iv. (No change.)

2. (No change.)

8:43-3.1 Prevention

Prevention is the keynote of fire protection and the boarding home operator shall make every effort to safeguard against the existence of fire hazards in the interest of protecting both lives and property. It is in these interests that the department has adopted the fire protection measures in this chapter. ***A current written certificate of inspection from the local fire authority must be on file with the Department.***

8:43-3.2 Fire detection system

All boarding homes shall have an automatic fire detection system *[of a type approved by the State Fire Marshal. No such installation shall be made without the written approval of the State Fire Marshal]*.

8:43-3.3 Horizontal zoning

(a) (No change.)

[(b) Specifications on materials which provide such rating may be obtained from the Fire Insurance Rating Organization of New Jersey, Newark.]

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

8:43-3.9 Fire-retardant paint

Approved fire-retardant paint shall be a product meeting the minimum requirements set forth in the department's specifications*[, and which product has been approved by the office of the State fire marshal]*.

8:43-3.11 Kitchens

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

[(d) Metal hoods and exhaust ducts over kitchen ranges are not required. However, where such facilities exist or are installed, construction standards of the National Board of Fire Underwriters shall be met.]

8:43-3.18 Fire rules and regulations

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

(f) A copy of all fire rules and regulations shall be forwarded to the *[State fire marshal]* ***Department of Health*** who will review and record the receipt of such regulations.

[8:43-3.21 State fire marshal] ***(Reserved)***

[Advice or interpretation of the fire protection standards of this Chapter shall be obtained from the State Fire Marshal, Department of Treasury, State House, Trenton, New Jersey 08625.]

8:43-3.22 Specifications for electrical automatic fire alarm and detection systems*[; office of State fire marshal]*

(a) Automatic fire alarm systems acceptable to this office for protection of sheltered boarding care homes are to be comprised of components listed by either Underwriters' Laboratory, Inc., or Factory Mutual Engineering Laboratories and so labeled. In addition to these component parts, the wire used in connecting the panel, detectors, gong, break stations and any other pieces of equipment which may comprise a complete system or any specific job, shall be Underwriters' Laboratory labeled. *[The complete installation shall be made in accordance with applicable standards of the National

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Fire Protection Association and the National Board of Fire Underwriters' or as specified herein.]*

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

(e) Each fire alarm system control panel shall have a means of connecting an annunciator unit. This annunciator unit shall show by means of an indicating lamp from which floor or section of the building the alarm is being transmitted. In buildings with extremely large occupancy a coded alarm system will be required in lieu of an annunciator panel, at the discretion of the *[fire marshal's office]* ***local fire official.***

(f)-(h) (No change.)

(i) An agreement shall exist between the installing company and the building owners providing for three years' service, free of charge. This service agreement shall include semiannual inspection***.*** *[and each]* ***Each*** inspection shall include an operational test of at least one-half of the detection devices installed. At the end of the three-year period, the building owner must enter into a contract with a competent fire-alarm installation or service company or licensed electrician to provide a continuation of service and semiannual inspections. *[Systems upon which a service contract is not in effect will have the approval of the fire marshal's office revoked. All service agreements shall include provision for 24-hour emergency service. Fire alarm companies or licensed electricians who enter into a service contract shall submit a report of the results of the subject service inspections to the fire marshal's office. (In certain areas local fire departments may require submission of record of inspection.)]*

(j) The fire-alarm system shall be installed in a workmanship like manner in accordance *[with standards set forth in N.F.P.A. and N.B.F.U. pamphlet number 72, and in accordance]* with the recommendation of the equipment manufacturer. Where possible, all detector circuit wiring shall be concealed. System wiring shall be enclosed in rigid or thin-wall conduit, securely fastened to ceiling or wall, only when exposed less than seven feet from the floor. Circuit wiring between buildings shall be installed underground wherever possible or on existing poles for overhead runs.

(k) Licensed facilities protected with a comprehensive *[(F.I.R.O. approved)]* automatic sprinkler system shall be exempt from the protective measures required for electrical automatic detector systems.

(l) It is required that a detailed explanation in the form of a proposal is to be submitted ***to the Department*** for approval or a drawing, to scale, showing the location of the equipment. *[Upon receipt of this information, the fire marshal's office will issue a preliminary approval of the subject installation.]*

(m) Upon notification of completion, every installation will be subject to a complete inspection by the *[fire marshal's office]* ***local fire official***. No installation shall be given final approval *[by this office]* if said installation and equipment does not comply with the standards set forth in these specifications.

(n)-(q) (No change.)

8:43-3.23 Requirements for approval of fire-retardant paint

(a)-(j) (No change.)

[Editor's Note: In addition to the rules published herein, a preliminary proposal form for intended compliance with fire regulations of the New Jersey Department of the Treasury for approved boarding homes for sheltered care was filed with these rules but due to certain limitations are not reproduced herein. Such forms or further information on such forms may be obtained from the office of the State Fire Marshal, New Jersey Department of the Treasury, Trenton, New Jersey 08625.]

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need; Psychiatric Inpatient Beds: Adult Open Acute Psychiatric Bed Standards; Adult Closed Acute Psychiatric Bed Standards; Inpatient Screening Psychiatric Bed Standards; Child and Adolescent Acute Psychiatric Bed Standards; Intermediate and Special Psychiatric Bed Standards

Readoption with Amendments and Recodification: N.J.A.C. 8:43E recodified as 8:33R

Proposed: October 19, 1992 at 24 N.J.R. 3598(a).

Adopted: December 11, 1992 by Bruce Siegel, M.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: December 11, 1992 as R.1993 d.29, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: December 11, 1992, Readoption;
January 4, 1993, Amendments.

Expiration Date: December 11, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the Administrative Code at N.J.A.C. 8:33R.

Full text of the adopted amendment follows:

CHAPTER 33R
POLICY MANUAL FOR PLANNING AND CERTIFICATE OF NEED REVIEWS OF PSYCHIATRIC HEALTH CARE FACILITIES AND SERVICES WITHIN THE STATE OF NEW JERSEY

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. RULES GOVERNING PSYCHIATRIC INPATIENT ADULT OPEN ACUTE BEDS

8:33R-2.1 Scope and purpose

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds as provided in licensed general and special hospitals throughout the State. The vast majority of licensed psychiatric beds remain in use for the purpose of treating adults with acute psychiatric disorders on a voluntary basis. These rules address the addition or establishment of licensed psychiatric beds of this type, to be classified as Adult Open Acute Psychiatric Beds, in any existing or proposed licensed hospital in New Jersey.

(b) Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is continuity of care for patients upon discharge, and that a consistent level of quality services is provided in a cost effective manner.

8:33R-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

. . .

"Adult Closed Acute Psychiatric Unit" means a separate and locked unit of inpatient beds in a New Jersey hospital specifically designated for the provision of intensive treatment services for persons experiencing an acute episode of a primary or secondary psychiatric disorder which accepts and treats individuals under an involuntary commitment order and may also admit patients to the

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unit under voluntary commitment status. Admissions to the unit have an average length of stay of thirty (30) days or less. (See N.J.A.C. 8:33R-3.)

"Children's Acute Psychiatric Beds" means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility, established for the provision of intensive treatment and rehabilitation of individuals under the age of 18, who are experiencing an acute episode of a psychiatric disorder. (See N.J.A.C. 8:33R-4.)

. . .

8:33R-2.3 Unit size

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

(c) The Department may consider exceptions to (a) above when the applicant demonstrates compliance with one or both of the following conditions:

1. Where the closest Adult Open Acute Psychiatric Unit is further than a 20 mile radius from the proposed new unit, and the bed need as determined by the methodology contained in N.J.A.C. 8:33R-2.4 indicates a need for less than 20 beds in the area. In no case may the minimum size of the unit be below 12 beds.

2. (No change.)

8:33R-2.4 Bed need

(a) (No change.)

(b) Exceptions may be considered by the Department when the applicant has demonstrated compliance with either of the following conditions:

1. (No change.)

2. When the establishment of beds is for the purpose of increasing capacity for an existing Adult Open Acute Psychiatric Unit, based upon exceeding occupancy standards as set forth in N.J.A.C. 8:33R-2.12. The applicant must demonstrate compliance with all other requirements of these regulations, and provide the following additional documentation.

i.-v. (No change.)

Recodify existing 8:43E-2.5 through 2.11 as 8:33R-2.5 through 2.11 (No change in text.)

8:33R-2.12 Conversion of existing bed capacity

(a) Facilities seeking approval of new or additional Adult Open Acute Psychiatric Beds shall convert existing bed capacity when occupancy rates for other services (for example Medical-Surgical, Pediatric, Ob/Gyn) are below, for the four previous reporting quarters, those levels set as minimum by the Hospital Policy Manual, N.J.A.C. 8:33A. Copies of the Hospital Policy Manual, N.J.A.C. 8:33A, may be obtained by written request to:

Health Systems Review, Room 604
New Jersey Department of Health
CN 360
Trenton, NJ 08625

(b) The Department may consider exceptions when the applicant demonstrates compliance with one or more of the following conditions:

1.-2. (No change.)

3. Where conversion of existing bed capacity would result in complete discontinuance of a health care service that has been found necessary to the needs of residents of the region or State as documented by the State Health Plan.

4. (No change.)

Recodify existing 8:43E-2.13 through 2.18 as 8:33R-2.13 through 2.18 (No change in text.)

8:33R-2.19 Submission of certificate of need applications

Applications for the establishment of new Adult Open Acute Psychiatric Beds will be competitively reviewed pursuant to procedures set forth in N.J.A.C. 8:33.

8:33R-2.20 Competitive review

(a) Where the need in a service area for additional Adult Open Acute Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1.-6. (No change.)

7. The endorsement of the Local Advisory Boards, County Mental Health Board(s), and mental health providers in the proposed service area.

APPENDIX A

(No change.)

APPENDIX B

METHODOLOGY FOR ESTIMATING NEED FOR ADDITIONAL PSYCHIATRIC BEDS UNDER N.J.A.C. 8:33R-2.4

(No change in text.)

SUBCHAPTER 3. ADULT CLOSED ACUTE PSYCHIATRIC BEDS

8:33R-3.1 Scope and purpose

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds provided in general acute care and special hospitals throughout the State. This subchapter sets forth the criteria by which the Department of Health will review certificate of need applications for the establishment of new Adult Closed Acute Psychiatric Beds in an existing or proposed licensed hospital in New Jersey. Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these inpatient psychiatric beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is a continuity of care for patients upon discharge, and that a consistent level of quality services is provided in a cost effective manner.

(b) (No change.)

8:33R-3.2 (No change in text.)

8:33R-3.3 Submission of certificate of need applications

Applications for establishment of new psychiatric adult closed acute psychiatric beds will be in accordance with procedures as determined by the Department and other policies and procedures set forth in N.J.A.C. 8:33.

8:33R-3.4 (No change in text.)

8:33R-3.5 Unit size

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

(c) The Department may consider exceptions to (b) above when the applicant demonstrates that the proposed unit is farther than 40 miles from any existing unit and the need as contained in N.J.A.C. 8:33R-2.4 and 4.6 indicates a need for fewer than 20 beds.

(d) (No change.)

8:33R-3.6 Bed need

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

(c) When the application is for the purpose of increasing the total number of adult psychiatric beds (rather than conversion of existing psychiatric beds to STCF status), the applicant shall additionally demonstrate the following:

1.-2. (No change.)

3. Compliance with the Hospital Policy Manual sections on occupancy rates (N.J.A.C. 8:33A-1.11) and on the addition or replacement of beds (N.J.A.C. 8:33A-1.12).

(d) (No change.)

Recodify existing 8:43E-3.7 through 3.14 as 8:33R-3.7 through 3.14 (No change in text.)

8:33R-3.15 Discharge and transfer planning

(a) The applicant shall describe the discharge planning process in writing. The description shall include provisions for discharge planning to be conducted as an ongoing process, beginning at admission and involving liaison staff. The discharge planning process shall also apply to patients being transferred to another facility. The applicant shall assure that:

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1. (No change.)
2. Representatives from the various disciplines in the treatment team (listed in N.J.A.C. 8:33R-3.14(b)), the liaison, and a member of the patient's natural support system, when appropriate, shall meet as often as necessary to develop an appropriate discharge plan. Liaison participation shall be limited to the development of the discharge plan;
3.-4. (No change.)

8:33R-3.16 (No change in text.)

8:33R-3.17 Capital financing
Financing of hospital construction, modernization/renovation, or major moveable equipment projects require a minimum equity contribution pursuant to N.J.A.C. 8:33.

8:33R-3.18 (No change in text.)

8:33R-3.19 County mental health board review
The county mental health board(s) of the service area proposed to be served by the applicant shall receive a copy of the certificate of need application, for their formal action, at the time of submission to the Department. A letter of endorsement from the board(s) or its administrator reflecting action shall be considered a significant factor in assessing local need for the project. County mental health board comments should be forwarded to the Department of Health, Local Advisory Boards, and to the Division of Mental Health and Hospitals in a timely manner, consistent with the certificate of need requirements of N.J.A.C. 8:33. Applicants are encouraged to consult with their county mental health board during the planning stages and prior to submission of the application to ensure that local needs are being met.
Recodify existing 8:43E-3.20 and 3.21 as 8:33R-3.20 and 3.21 (No change in text.)

8:33R-3.22 Competitive review
(a) In geographic areas where more than one applicant has filed a certificate of need to establish additional adult closed acute psychiatric beds, the Department may elect to approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:
1.-8. (No change.)
9. Projects which have the endorsement of the county mental health board(s) of the proposed service area. (See N.J.A.C. 8:33R-3.19); and
10. (No change.)

8:33R-3.23 (No change in text.)

SUBCHAPTER 4. CHILD AND ADOLESCENT ACUTE PSYCHIATRIC BEDS

8:33R-4.1 Scope and purpose
(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds in licensed general and special hospitals throughout the State. These rules set forth the criteria by which the Department of Health will review Certificate of Need applications for the addition or establishment of new Child and Adolescent Acute Psychiatric Beds in any existing or proposed health care facility in New Jersey, or in any facility designated as a Children's Crisis Intervention Service by the Department of Human Services. Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is continuity of care for patients upon discharge, and that a consistent level of quality services is provided in a cost effective manner.
(b)-(c) (No change.)

8:33R-4.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings:
...
"Children crisis intervention service" (CCIS means a regional community-based acute care inpatient psychiatric service designated by the Commissioner of the Department of Human Services to provide assessment, crisis stabilization, evaluation and treatment to children and adolescents with an average length of stay not to exceed 30 days. Children and adolescents are screened by local emergency/screening services and referred for admission if this level of inpatient care is indicated.
...

8:33R-4.3 Submission of Certificate of Need application
Applications for establishment of new Children's Acute Psychiatric Beds will be competitively reviewed pursuant to procedures set forth in the N.J.A.C. 8:33.

8:33R-4.4 (No change in text.)

8:33R-4.5 Bed need
(a)-(b) (No change.)
(c) Available Beds equals child and adolescent acute psychiatric inpatient beds as defined in N.J.A.C. 8:33R-4.3 which have been approved through the Certificate of Need process or are in operation.
(d) (No change.)
(e) Each applicant must also justify the need for the number of Child and Adolescent Acute Psychiatric Beds proposed in the Certificate of Need application through provision of the following documentation:
1. (No change.)
2. Projected average length of stay must be demonstrated to be clinically appropriate through analysis of current length of stay data in facilities treating similar populations in New Jersey and must conform to N.J.A.C. 8:33R-4.9.
3. (No change.)
(f) (No change.)
(g) Applicants seeking to establish Child and Adolescent Acute Psychiatric Beds must meet the criteria mentioned below as well as the provisions at N.J.A.C. 8:33R-4.11. The applicant must directly or indirectly through Affiliation Agreements as required in N.J.A.C. 8:33R-4.5(e)1, and 8:33R-4.8 provide the following services:
1.-7. (No change.)

8:33R-4.6 (No change in text.)

8:33R-4.7 Accessibility of care
(a) (No change.)
(b) For facilities under the Standard Hospital Accounting and Rate Evaluation (SHARE) system at N.J.A.C. 8:31A, the following thresholds have been established concerning payment for services:
1.-3. (No change.)
(c)-(g) (No change.)

8:33R-4.8 Continuity of care
(a) (No change.)
(b) The purpose of the affiliation agreements is to assure a full range of community-based services to emotionally disturbed youth and to develop a formal mechanism of communication and referral between public and private providers of services to the target population. Applicants are expected to participate in a system of care by showing evidence that written agreements have been established with other general hospitals, community mental health agencies, DYFS, youth correction facilities and other parts of the juvenile justice system, local education authorities and state or county hospitals (where appropriate) in the proposed service area as outlined in N.J.A.C. 8:33R-4.5(e)1. These affiliation agreements are to clarify admissions, referral, transfer, discharge, and service relationships between agencies. At a minimum, the affiliation agreements should address the following areas:
1.-5. (No change.)

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8:33R-4.9 (No change in text.)

8:33R-4.10 Aftercare services

(a) The applicant shall demonstrate how all patients, regardless of the ability to pay, shall have arrangements provided for follow-up care on an outpatient basis to reduce recidivism and to prevent further deterioration which would require a more restrictive level of care. Aftercare services may be provided by the applicant directly or by referral to agencies with which the applicant has affiliated pursuant to N.J.A.C. 8:33R-4.8. At a minimum, aftercare services should provide linkages for clinical case management, partial hospitalization, crisis intervention, and respite care.

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

8:33R-4.11 (No change in text.)

8:33R-4.12 Treatment program, staffing pattern, and discharge planning

(a) The proposed treatment program, staffing pattern, and discharge planning process must be identified within the Certificate of Need application. All applicants for Child and Adolescent Acute Psychiatric Beds must demonstrate the ability to comply with State psychiatric licensure standards as well as the current Joint Committee on Accreditation of Healthcare Organizations (JCAHO) Standards applicable to psychiatric facilities and units, Title XIX (Medicaid) licensing and staffing standards, and appropriate seclusion and restraint standards. The treatment program and staffing pattern must be fully described and their clinical appropriateness clarified.

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

(d) Discharge planning consists of the following:

1.-4. (No change.)

5. Referral/affiliation agreements for follow-up care must be in evidence. Referral/affiliation agreements must address the basic areas identified in N.J.A.C. 8:33R-4.8.

6. (No change.)

Recodify existing 8:43E-4.13 through 4.16 as 8:33R-4.13 through 4.16 (No change in text.)

8:33R-4.17 Standards regarding County Mental Health Board Review

The County Mental Health Board(s) of the service area proposed to be served by the applicant shall receive a copy of the Certificate of Need for their formal action at the time of submission to the Department. A letter of endorsement from the Board(s) or its Administrator reflecting Board action shall be considered a significant factor in assessing local need for the project. County Mental Health Board comments should be forwarded to the Department of Health, Local Advisory Boards, and to the Division of Mental Health and Hospitals in a timely manner consistent with Certificate of Need procedures as identified in N.J.A.C. 8:33.

Recodify existing 8:43E-4.18 and 4.19 as 8:33R-4.18 and 4.19 (No change in text.)

8:33R-4.20 Competitive review

(a) Where the need in a service area for additional Child and Adolescent Acute Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1.-3. (No change.)

4. Projects which most closely conform to bed need for Child and Adolescent Acute Psychiatric Beds in the area, as presented in N.J.A.C. 8:33R-4.5;

5.-6. (No change.)

7. Projects which demonstrate the greatest local endorsement including letters of support from: Local Advisory Boards, County Mental Health Board(s), mental health providers and other entities as outlined in N.J.A.C. 8:33R-4.16 in the proposed service area;

8.-9. (No change.)

8:33R-4.21 (No change in text.)

SUBCHAPTER 5. INTERMEDIATE ADULT AND SPECIAL PSYCHIATRIC BEDS

8:33R-5.1 Scope and purpose

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds as provided in licensed general and special hospitals throughout the State. These rules address the addition or establishment of licensed psychiatric beds which will be classified as Intermediate Adult Psychiatric Beds or Special Psychiatric Beds in any existing or proposed licensed hospital in New Jersey. The rules do not apply to facilities proposing to establish Adults Closed Acute Psychiatric Beds or other psychiatric services for which existing planning regulations are in effect.

(b) Inpatient psychiatric beds play a small, but critical, part in the mental health care system. The purpose of these rules is to assure that these beds are well integrated within the continuum of mental health care services, that access for all who require this level of care is assured, that there is continuity of care for patients upon discharge, and that a consistent level of quality service is provided in a cost effective manner.

8:33R-5.2 Submission of certificate of need applications

Applications for establishment of new Intermediate Adult or Special Psychiatric Beds will be in accordance with procedures as determined by the Department and under policies and procedures set forth in N.J.A.C. 8:33.

8:33R-5.3 Definitions

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

...

"Adult open acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a New Jersey hospital, for the provision of intensive evaluation, stabilization, and treatment of persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have a length of stay which is generally 30 days or less. (See N.J.A.C. 8:33R-2)

...

"Children's Acute Psychiatric Beds" means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility, established for the provision of intensive treatment and rehabilitation of individuals under the age of 18, who are experiencing an acute episode of a psychiatric disorder. (See N.J.A.C. 8:33R-4)

...

8:33R-5.4 Minimum size of facilities and nursing units

(a) The minimum number of beds that may be established in a single free-standing facility is 60. These may include any inpatient psychiatric service as well as residential alcohol beds, where at least 50 percent of licensed beds ar psychiatric. Approval of residential alcoholism services beds shall be governed by N.J.A.C. 8:33K and such beds shall be licensed as residential alcoholism services beds by the Department.

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

(e) The minimum number of total inpatient psychiatric beds in any general hospital proposing to establish Intermediate Adult or Special Psychiatric beds shall be 32 at the conclusion of the project. An exception may be considered by the Department for those applicants who demonstrate the applicant has provided a written affiliation agreement with an existing provider of adult open acute psychiatric services in its primary service area which in combined total (proposed and existing) meets the minimum 32 bed requirement. It shall be demonstrated that the current provider of adult open acute psychiatric service does not have the available licensed bed capacity to convert existing underutilized acute care beds (e.g. pediatrics, obstetrics, medical-surgical, etc.) as evidenced by occupancy levels in services below the minimum standards set within the Hospital Policy Manual (N.J.A.C. 8:33A-1.11, or that the affiliate hospital does not have an appropriate physical plant necessary for Intermediate Adult or Special Psychiatric Services.

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(f) (No change.)

8:33R-5.5 Bed need

(a)-(j) (No change.)

(k) General Hospitals seeking to establish Intermediate Adult or Special Psychiatric Beds through conversion of existing acute care bed capacity shall meet the following criteria:

1. The hospital shall, directly or indirectly through Affiliation Agreement as required in N.J.A.C. 8:33R-5.4(e) and (f), provide the following services:

i.-iii. (No change.)

2. The proposed facility shall demonstrate availability of appropriate and sufficient floor space necessary to meet Physical Plant Standards for free-standing psychiatric hospitals as defined by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Access to outdoor or indoor facilities for physical exercise shall be available.

(l) No application requesting establishment of a separate designated number of beds for the provision of psychiatric inpatient services to adolescents or children shall be approved under provisions of these rules. All such requests shall be subject to the standards and criteria contained in N.J.A.C. 8:33R-4.

(m)-(p) (No change.)

8:33R-5.6 (No change in text.)

8:33R-5.7 Accessibility of care

(a)-(f) (No change.)

(g) All applicants approved for Intermediate and Special Psychiatric beds shall submit an annual report documenting compliance with these accessibility requirements. The Department may assess licensure penalties for non-compliance with Certificate of Need conditions, in accordance with N.J.A.C. 8:43G-2.1(c).

Recodify existing 8:43E-5.8 through 5.11 as 8:33R-5.8 through 5.11 (No change in text.)

8:33R-5.12 Treatment programs and staffing patterns

(a) The proposed treatment program and staffing pattern by service must be identified within the Certificate of Need application. All applicants for Intermediate Adult and Special Psychiatric Beds shall demonstrate the ability to comply with state psychiatric licensure standards as well as the current JCAHO Standards as applicable to psychiatric facilities and units. Applicants shall demonstrate the availability of a full range of treatment modalities and staffing disciplines with the capacity to offer a multi-disciplinary treatment planning approach.

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

Recodify existing 8:43E-5.13 through 5.16 as 8:33R-5.13 through 5.16 (No change in text.)

8:33R-5.17 Standards regarding County Mental Health Board review

The County Mental Health Board(s) of the service area proposed to be served by the applicant shall be provided with a copy of the Certificate of Need application for their formal action at the time of submission to the Department. A letter of endorsement from the Board(s) or its Administrator reflecting Board action shall be considered a significant factor in assessing local need for the project. County Mental Health Board comments shall be forwarded to the Department of Health, Local Advisory Boards, and to the Division of Mental Health and Hospitals in a timely manner consistent with Certificate of Need procedures identified at N.J.A.C. 8:33.

Recodify existing 8:43E-5.18 and 5.19 as 8:33R-5.18 and 5.19 (No change in text.)

8:33R-5.20 Competitive Review

(a) Where the need in a service area for additional intermediate Adult and/or Special Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applications necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, most clearly demonstrate the fullest level of compliance with the following criteria:

1.-5. (No change.)

6. The endorsement of the Local Advisory Boards, County Mental Health Board(s), and mental health providers in the proposed service area.

7. (No change.)

APPENDIX A

Guidelines for Special Psychiatric Bed Need

Need for Special Psychiatric Beds must be demonstrated under the criteria identified at N.J.A.C. 8:33R-5.5(f), within an overall statewide cap based on the following methodology:

The total number of Special Psychiatric Beds that may be approved statewide shall not exceed the statewide cap except where all existing beds within a sub-category of special beds have been operating in excess of 90 percent occupancy for at least 12 months. The statewide cap shall be calculated as follows:

1.-2. (No change.)

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Timeframe for Providing Information Concerning Rights and Available Services to the AFDC Client; Clarification Concerning Attorney Representation in Child Support Matters

Adopted Amendments: N.J.A.C. 10:81-11.4 and 11.9

Proposed: July 6, 1992 at 24 N.J.R. 2327(a).

Adopted: November 24, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 30, 1992 as R.1993 d.1, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:10-3; Federal Regulation under 45 CFR 303.2(a)(2); and Ethics Opinion 580 authorized by the Advisory Committee on Professional Ethics.

Effective Date: January 4, 1993.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

The following provided comments on the proposed rulemaking:

Richard P. Williams, Bergen County Counsel

Robert M. Fasanello, Hunterdon County Board of Social Services

COMMENT: Ethics Opinion 580 of the Supreme Court Advisory Committee on Professional Ethics does not give authority to the Division of Family Development to interfere in the attorney/client relationship. A rule requiring a county welfare agency (CWA) attorney to represent other county welfare agencies' cases heard in the attorney's home county would create numerous conflicts of interest.

RESPONSE: The intent of the proposed amendment was to ensure that the CWA's interest would be protected and that a CWA attorney would be available to represent the CWA when it was necessary. The reference to CWA attorneys cooperating with one another concerning out-of-county cases was only to occur if there was a mutual agreement between the parties involved. After further review, and as suggested by the commenter, the Department has decided to modify the proposed amendment to state that each CWA is required to have attorneys on staff or under contract sufficient to represent the CWA in child support enforcement matters in court as necessary.

COMMENT: Since the adoption of New Jersey's Child Support Guidelines, New Jersey Court Rule 5:6A, the previous need for a "reasoned legal presentation" of the client/agency position at a paternity or child support enforcement hearing by an experienced attorney is no

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longer necessary. The use of the more recent wage reporting system by the CWA representative, which documents the earned income of the absent parent, when used in conjunction with the child support guidelines serves to represent the agency's position and interests at the hearing. Additionally, the enforcement of the support obligation is brought to court by the County Probation Department not the CWA. In light of this practice, commenters fail to see how CWA attorney representation would "initiate or generate any additional action or results".

RESPONSE: Although the Child Support Guidelines provide a standard by which the obligation is determined, there are circumstances in which the CWA will need representation. As specified by Ethics Opinion 580, non-lawyers and CWA employees are not extended the privilege of representing the CWA in court. Therefore, when representation is necessary an attorney must be present.

COMMENT: Because the majority of the agency's paternity and child support enforcement matters are heard by the court on an administrative basis utilizing the absent parent's wages from the wage reporting system and the child support obligation derived from the calculation of the guidelines, the agency representative needs a thorough knowledge of both systems and expertise in the calculation of the guidelines in order to represent the interests of the agency and ensure that the maximum allowable child support obligation is obtained. This knowledge and skill is not a requisite of law practice. It is suggested that the proposed legal representation in those matters require an agency IV-D staff member to prepare these documents for the attorney much like a paralegal or legal secretary calculates and prepares documents for an attorney in a real estate closing.

RESPONSE: It is the Department's position that the procedure for the exchange of information between the CWA attorney and the CSP worker should be worked out on a county level between the legal department and the IV-D unit.

COMMENT: Commenter objects to the provision which mandates that an attorney represent the CWA in all child support and paternity court proceedings when, in fact, most of their agency's court appearances on these matters are before administrative hearing officers who are not required by the administrative office of the courts to be licensed attorneys. The Division's arguments in support of this proposal have to be contrasted with the AOC's use of non-attorney staff and their apparent satisfaction with their performance over a several year period. Commenter's experience with the hearing officers has shown that there is no difference in performance between an attorney or non-attorney hearing officer.

RESPONSE: Under Opinion 580, an appearance by a non-attorney or a welfare agency employee to represent or assist a party in a contested case before the Office of Administrative Law is permitted. However, this privilege is not extended to any other civil jurisdiction such as the Superior Court.

COMMENT: In accordance with the publication, "A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement," published by the U.S. Department of Health and Human Services, Office of Child Support and Enforcement, National Institute for Support Enforcement, in 1985, the cost to the State would be less if non-attorney staff could be utilized. As stated in the publication, "... one final advantage of an administrative process for child support enforcement is strictly monetary. It costs a state less to establish and enforce child support obligations using hearing officers and non-attorney staff than it does using judges and attorneys ..."

RESPONSE: The Department takes note of the commenter's quoted statement but, as stated above, according to Opinion 580, the privilege of using non-attorney representation is not extended to the CWA in certain civil jurisdictions.

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

10:81-11.4 Assignment of support rights

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

(d) IM worker's responsibility: The IM worker shall advise the AFDC client that upon signing an application (PA-1J) for AFDC or AFDC/Medicaid Only, he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC client shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CWA/IV-D Unit: The IM worker, at the time of application for AFDC-C or Medicaid Only, shall complete the appropriate parts of the IV-D referral document and route this form to the CWA/IV-D Unit within two working days of issuance of an assistance check, or determination of eligibility, but no later than 45 days of initial application. Information describing available IV-D services and the individual's rights and responsibilities must be provided to all applicants within five working days of the IV-D referral.

i.-v. (No change.)

10:81-11.9 Responsibilities of the CWA/CSP Unit

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

(d) Legal action taken by the CSP Unit: If the CSP Unit collects information sufficient to locate the absent parent, legal proceedings shall be initiated for the purpose of establishing paternity and/or obtaining support and medical insurance within 90 working days of location. *[All court proceedings concerning paternity establishment and child support enforcement matters require county welfare agency representation by an attorney, holding a plenary license to practice law in this State, who is in good standing and maintains a bona fide office for the practice of law in this State. With regard to IV-D/AFDC cases heard out of the county in which assistance is provided, if mutually agreed upon by the parties involved, CWA attorneys may cooperate with one another by representing out of county IV-D/AFDC cases heard in their home county.]* ***Each county welfare agency is required to have attorneys, all of which hold a plenary license to practice law in this State, who are in good standing and maintain a bonafide office for the practice of law in this State, either on staff or under contract sufficient to represent the CWA in child support enforcement matters in court as necessary.***

1.-10. (No change.)

(e)-(l) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Requirements for Foster Care

Adopted New Rules: N.J.A.C. 10:122B

Proposed: December 16, 1991 at 23 N.J.R. 3693(a).

Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 9, 1992 as R.1993 d.15, **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. 30:4C-4(h) and 30:4C-26a.

Effective Date: January 4, 1993.

Operative Date: July 1, 1993.

Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

Ciro A. Scalera and Cecilia Zalkind of the Association for Children of New Jersey submitted general comments on all the proposed new rules which the Division published in the December 16, 1991, *New Jersey Register.* These are N.J.A.C. 10:122B, 122C, 122D, and 122E and N.J.A.C. 10:133, 133A, and 133B.

The Division is publishing the comment and response only in N.J.A.C. 10:122B, as this is numerically the first chapter to be published for adoption. The comment and response apply to each of the numerically subsequent adopted chapters which follow as referenced above, the adoptions of which are published elsewhere in this issue of the New Jersey Register.

COMMENT: The Association for Children of New Jersey supports the Division's willingness to allow the process to be more than simply putting existing policy into rules. The OPTR process afforded community participants and DYFS staff the opportunity to explore child welfare practice as it should be, rather than as it has evolved. They said that this will improve the service delivery system for children and families who rely on the Division. ACNJ said that its comments (see adoption

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of N.J.A.C. 10:122D) were "relatively minor," since the proposed rules reflected the intense discussions and consensus reached through the OPTR advisory group process.

RESPONSE: The Division appreciates the Association's support.

Summary of Agency-Initiated Changes:

In N.J.A.C. 10:122B-1.2(b)1, the word "and" has been changed to "or" to clarify that each of the two points may stand alone. Also several spelling, typographical and grammatical corrections have been made.

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 122B
REQUIREMENTS FOR FOSTER CARE

SUBCHAPTER 1. GENERAL PROVISIONS

10:122B-1.1 Authority

Pursuant to N.J.S.A. 30:4C-4(h) and 30:4C-26a, the Division of Youth and Family Services, Department of Human Services, is authorized to establish standards for foster homes which are used by the Division for the foster care placement of children under its supervision.

10:122B-1.2 Purpose

(a) The purpose of this chapter is to define certain words and terms used throughout the chapters on foster care services which follow, so as to provide standardization and ease of accessibility to the user of the chapter. The purpose of this series of chapters on foster care services is to ensure that each child requiring foster care shall reside in a safe home with a nurturing substitute family who can meet the child's individual needs.

(b) The purpose of this chapter does not:

1. Create an employer/employee relationship between the Division and an approved foster parent; *[and]* ***or***

2. Create any right to be a foster parent, apart from that which may exist under statute or case law.

10:122B-1.3 Scope

(a) The provisions of this chapter and this series of chapters shall apply to all persons approved by the Division to provide foster care services and to each household member; to all persons making application to the Division to be foster parents for the general placement of children and to each household member; and to each *[division]* ***Division*** representative responsible for studying, re-evaluating or approving foster parents and their families. Any person who resides either full-time or part-time in the home shall be considered a household member.

(b) The regulatory framework of this series of chapters on foster care services which, as of *[the effective date of this chapter, N.J.A.C. 10:122B]* ***January 4, 1993***, includes this chapter and N.J.A.C. 10:122C, Approval of Foster Homes, N.J.A.C. 10:122D, Foster Care Services and N.J.A.C. 10:122E, Removal of Foster Children and Closure of Foster Homes is intended to be expanded to include other chapters on foster care services, all of which will be in the series of N.J.A.C. 10:122B et seq.

10:122B-1.4 Definitions

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

"Adult" means a person 18 years of age or older.

"Case goal" means a specific goal selected for a person receiving services from the Division which defines and guides case activity to maintain or achieve an appropriate permanent plan for a child.

"Child" means a person under 18 years of age.

"Corporal punishment" means any type of physical punishment.

"Department" means the New Jersey Department of Human Services.

"Dispositional conference" means a formal review of a Division decision, which is made by Division administrative personnel not involved in making or approving the original decision.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Division representative" means a professional employee of the Division of Youth and Family Services.

"Division *[director]* ***Director***" means the Director of the Division of Youth and Family Services.

"Foster child" means a child under the care or custody of the Division of Youth and Family Services who is placed in a foster home because he or she cannot live with his or her own family due to neglect, abuse or other circumstances, and who is either under 18 years of age or who meets the criteria set forth in N.J.S.A. 9:17B-2(f).

"Foster home" means a private residence approved by the Division for the temporary substitute family care of children.

"Foster parent" means any person approved by the Division for the general placement of children in his or her own home. Unless otherwise indicated, "foster parent" includes those persons who have applied to be foster parents.

"Foster parent applicant" means any person who has applied to be a foster parent.

"Goal" means the result toward which effort is directed.

"Household member" means an adult or child, other than the foster parent or foster child, who resides full-time or part-time in the foster parent's household.

"Office manager" means a Division employee charged with the direction of a field office of the Division.

"Primary caretaker" means an adult household member who provides care for a foster child regularly or for significant periods of time.

10:122B-1.5 Service limitations

(a) The Division shall provide needed services within the limits of legislative appropriations to all eligible foster children and their families in similar circumstances. The provision of services shall also be subject to limitations due to actual ability of the *[division]* ***Division*** to provide such services directly or by purchasing such services from *[approprite]* ***appropriate*** privately sponsored agencies or institutions.

(b) The demand for social services *[frquently]* ***frequently*** exceeds the funds available to provide them. Therefore, in accordance with N.J.S.A. 30:4C-13, the Division Director may establish Division-wide service limitations based upon the need to focus *[fine]* ***finite*** resources to serve those individuals most in need. Service limitations shall be published within 90 days of imposition in the Public Notices section of the New Jersey Register.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Approval of Foster Homes

Adopted New Rules: N.J.A.C. 10:122C

Proposed: December 16, 1991 at 23 N.J.R. 3696(a).

Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 9, 1992 as R.1993 d.16, **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. 30:4C-4(h) and 30:4C-26a.

Effective Date: January 4, 1993;
Operative Date: July 1, 1993.
Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

No comments were received, but see the notice of adoption of N.J.A.C. 10:122B published elsehwere in this issue of the New Jersey Register for general comments from the Association for Children of New Jersey.

Summary of Agency-Initiated Changes:

In N.J.A.C. 10:122C-1.3, the correct title of N.J.A.C. 10:122B, Requirements for Foster Care, has been inserted.

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In N.J.A.C. 10:122C-1.7, a new subsection (e) has been added to clarify that a foster parent or household member shall not have a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq. This information is stated elsewhere in the rules, in N.J.A.C. 10:122C-2.13(b) and 2.15(b), and is being re-stated here for clarification.

In N.J.A.C. 10:122C-2.6(c), the disclosure of disorderly persons convictions has been added. This brings this subsection into agreement with other references throughout the chapter. For example, see N.J.S.A. 10:122C-1.7 and 2.13.

In N.J.A.C. 10:122C-2.11, the Division has reorganized the material to indicate clearly that the Division uses criteria imposed by statute (N.J.S.A. 30:4C-26.8) and criteria imposed by these rules to decide whether to grant provisional approval of a foster home. Originally proposed text at N.J.A.C. 10:122C-2.11(b)3, 4 and 5 is being deleted as it is contained within the referenced statute, and the Division believed it to be redundant.

In N.J.A.C. 10:122C-2.13(b), the text of proposed subsection (d) has been more appropriately included as paragraph (b)3.

In N.J.A.C. 10:122C-2.13(d), the term "foster child" has been replaced by "applicant," which was the intended term.

In N.J.A.C. 10:122C-2.15(a) and (b), references to the concurrently published N.J.A.C. 10:122E-3.4(b) and 3.7(c) have been added to assist the reader to locate related information.

In N.J.A.C. 10:122C-2.16(a), a reference is provided to N.J.A.C. 10:122C-2.15(b), which was inadvertently omitted in the proposal. Both N.J.A.C. 10:122C-2.15(a) and (b) provide for closure of foster homes in certain circumstances.

In N.J.A.C. 10:122C-2.18(b)2, the sentence "(T)his is a final agency determination" has been added to indicate a consistent approach by the Division to similar situations, as noted in N.J.A.C. 10:122E-2.7(c) and N.J.A.C. 10:122E-3.12(d).

In the appendix, a Spanish version of a DYFS form already listed, 26-15A, has been included, and the English version is identified as being in English. In addition, an updated version of the Medical Reference form, DYFS 5-2c, has been included in the adoption.

Also, several spelling, typographical and grammatical corrections have been made, and a duplicated sentence has been removed from N.J.A.C. 10:122C-2.7(f).

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 122C
APPROVAL OF FOSTER HOMES

SUBCHAPTER 1. FOSTER HOME STANDARDS

10:122C-1.1 Purpose

The purpose of this chapter is to ensure that each child requiring foster care shall reside in a safe home with a nurturing substitute family who can meet the child's individual needs. Any person who resides either full-time or part-time in the home shall be considered a household member.

10:122C-1.2 Scope

(a) The provisions of this chapter shall apply to all persons approved by the Division to provide foster care services and to each household member; to all persons making application to the Division to be foster parents for the general placement of children and to each household member; and to each Division representative responsible for studying***,*** reevaluating or approving foster parents and their families.

(b) These rules provide a process for a foster parent applicant and the Division to determine whether an applicant and the applicant's family meet the Division's standards to provide suitable foster care for children, provide a process for the annual reevaluation of each foster home previously approved, assist the Division in carrying out its responsibilities for children in placement, and use the agency's services for the best interests of children and families.

10:122C-1.3 Definitions

The definitions in N.J.A.C. 10:122B, Requirements for Foster *[Homes]* ***Care***, are hereby incorporated into this chapter by reference.

10:122C-1.4 Compliance

(a) Unless provisional approval is granted under the provisions of N.J.A.C. 10:122C-2.11, a prospective foster family shall comply with all standards in this chapter which can be assessed prior to approval and the placement of a child. The foster family also shall agree to comply with those standards in this chapter which cannot be assessed until after approval and the placement of a child.

(b) Once approved, the foster family shall continue to comply with all standards in this chapter or meet the provisions of N.J.A.C. 10:122C-2.17 and 2.18.

10:122C-1.5 Age

(a) The foster parent shall be 21 years of age or older and shall provide verification of age. The office manager may waive the age requirement for a foster parent who is between 18 and 21 years of age, if the spouse or partner of the foster parent is 21 years of age or older and living in the home.

(b) There shall be no upper age limit for foster parents.

10:122C-1.6 Personal and family requirements

(a) The foster parent shall be able to care effectively for a foster child. The Division shall make this determination by a review of personal and professional references; observation of the foster parent's interactions in the pre-service training; observation during the home visit of the foster parent's interaction with household members; and discussion with the foster parent. The Division shall assess the following areas:

1. Motivation for taking a foster child into the home;
2. Relationships among immediate and extended family members;
3. Expectations of children;
4. Impact a foster child might have on the family's functioning and the resources available to moderate that impact;
5. Attitude of the foster parent applicant's own children toward accepting a foster child;
6. Foster parent's willingness to accept and care for a foster child despite the child's possible limitations, changing needs and problems;
7. Foster parent's understanding of the positive and negative aspects of foster parenthood;
8. Foster parent's willingness to work through problems and difficult behavior with a foster child;
9. Foster parent's willingness to advocate for a foster child's needs;
10. Foster parent's willingness to accept a foster child's relationship with his or her family and the need to promote the positive aspects of such a relationship;
11. Foster parent's utilization of community resources; and
12. Foster parent's willingness to help a foster child return to his or her own home or be adopted.

(b) Each foster parent applicant and household member shall provide the Division with a medical reference completed by a physician.

(c) A foster parent must be free of any physical, mental or emotional illness which, in the judgment of the Division, would impair his or her ability to assume and carry out the responsibilities of a foster parent.

(d) A handicap in and of itself shall not disqualify an individual from eligibility as a foster parent.

(e) Each foster parent applicant and household member shall be free of serious contagious diseases which may put a foster child at risk.

(f) A foster parent or other household member shall not abuse alcohol or drugs.

(g) Each child living in the foster home shall have all age appropriate inoculations.

(h) The Division shall evaluate the effect of any disability or disease on the family's ability to care for a foster child.

(i) The foster parent shall provide the necessities of life for the foster parent's family.

(j) The foster parent shall have income or other means of financial support that makes the family economically independent of the expected foster care maintenance payment.

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(k) The foster parent shall use all the money received in the name of the foster child for that foster child's care.

10:122C-1.7 Criminal and child abuse and neglect history

(a) A foster parent or household member shall not evidence personal conduct that may present a potential danger to the foster child.

(b) A foster parent or household member shall not have caused risk or injury to a child through abuse or neglect.

(c) A foster parent or household member shall not have been convicted of a crime of violence against any child or against a family member or a crime of sexual nature or any other act of a similarly serious nature.

(d) A foster parent or household member shall not have been convicted of being a disorderly person on the basis of an act involving violence against any child or against a family member or any other act of a similarly serious nature.

(e) A foster parent or household member shall not have a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq.

10:122C-1.8 Marital status of a foster parent

(a) A foster parent may be married, co-habiting, single, separated, widowed or divorced.

(b) When a couple lives together, both partners shall be considered to be foster parents who shall meet the standards contained in this chapter.

10:122C-1.9 Family size

(a) The foster family shall be able to provide sufficient time and attention to each foster child placed in their home without causing other family members' needs to go unmet, causing the quality of care to be substantially diminished, or over-burdening the foster parent.

(b) The Division representative and the foster family shall agree mutually on the number of foster children who may be placed in the foster home. The determination shall be based upon the following criteria:

1. The home shall meet requirements of the State Uniform Construction Code, N.J.A.C. 5:23, when more than five foster children live in the home. The specific approval of the Assistant Director of Program Operations of the Divsion of Youth and Family Services is required for the total number of foster children in the foster home to exceed five;

2. The foster home is large enough to *[accomodate]* ***accommodate*** the number of foster children and meets the standards of N.J.A.C. 10:122C-1.16, concerning sleeping space;

3. The foster family has met and continues to meet the needs of each foster child placed in the home; and

4. The foster family has the ability to meet the needs of each additional foster child needing placement.

10:122C-1.10 Citizenship

(a) A foster parent may be a citizen of any country.

(b) If not a United States citizen, a foster parent applicant shall present a visa or U.S. Immigration and Naturalization Service documentation as evidence of legal residency. The Division shall consider how long the foster parent applicant is authorized to remain in this country to determine if the applicant can complete the approval process and serve as a foster parent.

10:122C-1.11 Religion

(a) The foster parent may be of any religion or be of no religion.

(b) The foster parent's religious practices shall not interfere with a foster child receiving medical care.

(c) The foster parent and the Division representative shall establish a plan to provide the foster child with reasonable opportunities to exercise religious practices in accordance with the foster child's preference and the wishes of the parents.

10:122C-1.12 Foster parent's employment and supervision or child care for the foster child

(a) Either or both foster parents may be employed.

(b) If a single foster parent is, or both foster parents are, employed outside the home, the foster parent shall develop with the Division representative, as part of the case plan, a plan for the care and supervision of each foster child. The plan shall be appropriate to the age and needs of the foster child and shall be subject to supervisory approval.

1. If the plan is to use a day care center or a family day care home, the day care center shall be licensed, according to N.J.A.C. 10:122, and the family day care home shall be registered, according to N.J.A.C. 10:126 and N.J.A.C. 10:126A.

2. If the plan is approved, the Division shall pay for child care arrangements as outlined in the case plan, according to established rates.

3. The foster parent shall provide the Division representative with a telephone number through which the foster parent can be reached at work in an emegency, where possible.

(c) The participants of the Division's internal placement review shall review the child care plan.

10:122C-1.13 Foster parent's responsibilities to a foster child

(a) A foster parent shall have the ability to provide for a foster child's basic nutritional, developmental, educational, and health needs. The Division shall provide the foster parent with information on nutrition and child health needs through consultation and training. The foster parent shall be responsible for arranging to meet the child's health needs, including an annual medical and dental checkup, as agreed to with the *[Divison]* ***Division***.

(b) The foster parent shall use fair, reasonable, and consistent discipline to enhance or modify behavior, based on an understanding of the individual foster child's needs, behavior and stage of development. The foster parent shall not use corporal punishment or words or actions which inflict pain or are emotionally damaging to a foster child as a form of discipline. The Division shall provide the foster parent with consultation and training about appropriate disciplinary practices.

(c) If there is a need for the foster child to transfer to a different school, the Division representative shall obtain the school transfer card promptly and give it to the foster parent. The foster parent shall register the foster child in school, as negotiated with the Division representative, and ensure that the foster child attends regularly according to school regulations. The foster parent shall encourage good study habits, be involved with the foster child's academic progress, attend school conferences and meet with school personnel when there are problems or for periodic reviews. The foster parent shall advise the Division representative about the child's academic progress. The foster parent shall request that the Division representative attend school conferences and other meetings with school personnel when necessary.

(d) A foster parent, with the assistance of the Division representative, shall support and encourage the foster child to engage in recreational and social activities appropriate to the age, interests and abilities of the foster child.

(e) A foster parent shall provide or arrange for the routine transportation needs of a foster child. The Division representative shall identify with the foster parent a foster child's special transportation needs, if any, and how they will be met. Transportation for special needs which is provided by the foster parent shall be reimbursed by the Division with prior office manager approval. Transportation for special needs may include transportation for the treatment of physical, emotional, mental or cognitive conditions or to comply with a court summons or court order.

(f) The foster parent shall ensure the opportunity for the continuity of the cultural and ethnic growth and cultural and ethnic education of any foster child placed in his or her home.

(g) The foster parent shall cooperate with any activities as specified in the case plan, see, for example, N.J.A.C. 10:122C-1.12(b), for the foster child such as counseling, therapy or court sessions or visits with the foster child's family.

10:122C-1.14 Relationship of the foster family to the community

The foster family shall indicate to the Division the components of their support system, such as family members, friends and neighbors.

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10:122C-1.15 Relationship between a foster parent and the Division

(a) The foster parent and the Division representative shall develop and maintain a cooperative relationship.

(b) The foster parent shall demonstrate reasonable and mature attitudes toward professional figures and institutions, as determined by a review of references and an assessment of the foster parent's interactions in the pre-service training and during the home visit(s).

(c) The foster parent shall be bound by the same standards of confidentiality regarding a foster child and his or her family as the Division and its employees. The Division shall inform the foster parent of the standards of confidentiality contained in N.J.S.A. 9:6-8.10a and 45 CFR 205.50.

(d) The foster parent and the Division representative shall advise each other of any vacation plans, emergencies, unusual occurrences or significant problems involving the foster child.

(e) The Division representative shall provide the foster parent with a means of access to the Division on a 24-hour basis.

(f) The foster parent shall notify the Division of any change in address, telephone number, living situation, employment or number of persons residing in the household, whenever possible, prior to the change or immediately thereafter. The Division shall assess the changes using the standards set in this subchapter. Any new primary caretaker or spouse of a foster parent shall be required to complete pre-service training within four months of becoming a household member.

(g) The foster parent shall notify the Division within one working day of any change in the health of a foster parent or household member which may adversely affect the foster family's ability to care effectively for a foster child.

(h) The foster parent shall notify the Division representative within one working day of any civil or criminal charges brought against the foster parent, foster child or any household member.

(i) The foster parent shall comply with the Division's system for receipt of reimbursement. The Division shall comply with the system for payment of reimbursement. The foster parent and the Division shall comply with the provision**s** of the agreement between the foster family and the Division, see N.J.A.C. 10:122C-2.10, Foster home approval.

(j) The foster parent shall participate with the Division representative in establishing the role of the foster parent in working with the parent to achieve the case goal, including parent-child and sibling visitation, and how the Division shall support the foster parent in fulfilling his or her role.

10:122C-1.16 Sleeping space

(a) The foster parent shall provide each foster child with his or her own bed which is located in a bedroom, along with adequate space for personal possessions.

(b) When a foster child shares a bedroom with one or more children, the bedroom shall be of adequate size to accommodate the number of children sleeping there, with adequate ventilation and clear access to and from the room.

(c) The foster parent shall allow no foster child to sleep in the same room with a child of the opposite sex, when any of the children, including the foster child, is more than five years old.

(d) The foster parent shall allow no foster child over the age of two to share a bedroom with an adult, except temporarily during periods of illness or in emergencies.

10:122C-1.17 Life safety factors

(a) The foster parent shall maintain all indoor and outdoor areas of the foster home in a safe and sanitary manner which does not create any condition of poor hygiene or physical hazard. The foster parent's home shall comply with all local and State laws, including the State Uniform Construction Code, N.J.A.C. 5:23, regarding occupancy of a dwelling and health and fire standards. When a foster home is in a building designated as R-1 or R-2, three or more family living units, as designated by the State Uniform Construction Code, the building shall have:

1. A Certificate of Occupancy; and
2. A fire safety certificate.

(b) The Division representative shall assess sanitary and safety conditions in all areas of the home, including basements, attics, grounds and outbuildings.

(c) The foster parent shall ensure that each basement or attic which is used as a bedroom for a foster child is in compliance with all standards for indoor safety and sanitation, as listed in this section, and, in addition, shall meet the following requirements:

1. Two independent means of *[exist]* **exit* shall exist, at least one of which is an operable window or door suitable for emergency escape or rescue which leads directly outside;
2. The area shall have finished surfaces on walls, floors, ceilings, etc.;
3. A minimum of one window per room shall open for ventilation and shall have screening; and
4. The room shall have an area of no less than 70 square feet with at least one dimension no less than seven feet. The room shall have a height of no less than seven feet.

(d) The foster parent's daily practices regarding indoor sanitation and safety shall meet the following standards:

1. Insect or rodent infestation shall not be evident;
2. Major plumbing, drains, sewer lines, and septic systems shall be operable. Hot and cold running water shall be available in the residence;
3. Garbage shall be kept in receptacles. Garbage storage and removal from the house shall not present a health risk;
4. Indoor and outdoor pets, kept by the foster family, shall not present a health risk or danger to a child. The foster parent shall provide proof that each cat and dog has a current vaccination against rabies;
5. The home shall have at least one smoke detector on each floor, an operable five pound ABC fire extinguisher, and an unobstructed means of exit in case of fire. Combustible and flammable materials shall not be stored adjacent to or near a furnace or other heat source or accumulated in the attic, basement or other parts of the residence in an unsafe manner;
6. Emergency telephone numbers shall be posted by the telephone;
7. Lighting shall be sufficient to prevent accidents. There shall be no observable electrical hazards;
8. The home shall have a stove and refrigerator which are clean and in working order;
9. Firearms, other weapons and potentially dangerous implements shall be stored in a locked area out of the reach of children. Poisons, drugs and dangerous cleaning supplies shall be labeled and stored in places inaccessible to children;
10. Windows in living and sleeping areas shall be intact and allow for adequate ventilation. Doors and windows used for ventilation shall have screening;
11. The foster home shall have central heat. The temperature in the living areas used by any foster child shall be maintained at a minimum of 65 degrees Fahrenheit during waking hours when any foster child is present;
12. Paint on interior surfaces shall not be flaking, peeling or chipped;
13. The home shall be generally clean, in good repair and free of clutter which would present a hazard; and
14. All areas or equipment which present a high risk for accidents shall be safeguarded.

(e) The foster parent's daily practices regarding outdoor sanitation and safety shall meet the following standards:

1. Garbage shall be kept in receptacles, with organic garbage kept covered. Garbage storage shall not present a health risk;
2. The exterior of the residence shall provide protection against infestation from rodents, insects, etc.;
3. The land, including the outdoor play area, shall be free of standing surface water;
4. Each pet or domestic animal shall not present a health risk or danger to any child;
5. Paint on exterior surfaces which are accessible to any child shall not be flaking, peeling or chipped;

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6. The exterior of the residence shall be generally free of hazards and clutter. Entrance ways and stairways shall be lighted. Each stairway, balcony, landing and porch shall be maintained to minimize the possibility of tripping or falling; and

7. Every outdoor area and piece of equipment which present a high risk for accidents shall be safeguarded.

(f) The foster home shall be accessible to the Division representative by motor vehicle. A foster family shall have a telephone in the residence so that the Division can contact the foster family directly and immediately when necessary.

SUBCHAPTER 2. STUDY AND APPROVAL OF FOSTER HOMES

10:122C-2.1 Inquiry requirements

(a) The Division shall respond to an inquiry from any individual who requests information about becoming a foster parent within one week of receipt by the Division.

(b) As part of the response, the Division representative shall collect and record identifying information from the individual, provide the individual with the basic standards for becoming a foster parent, screen the individual and offer to schedule the individual for pre-service training.

(c) When the individual indicates an interest and the Division representative has no reason to screen out the individual, the Division representative shall mail to the individual, within one week of contact, a written confirmation of the initial pre-service training session.

(d) When the individual does not attend the first pre-service training session, the Division representative shall mail him or her an invitation to the next initial pre-service training session.

10:122C-2.2 Division employees and relatives as foster parents

(a) A Division employee or a Division employee's relative may apply to become a foster parent. For the purpose of this subsection, the term "relative" is defined as a person connected to a Division employee by blood, marriage, or adoption.

(b) The study of an employee's home shall be conducted by the county office which serves the geographic area where the employee lives, except when the employee works in that office. In this situation, the county office in an adjacent county shall conduct the study of *[an]* ***the*** employee's home.

(c) The Division shall take every measure to prevent any undue influence by the Division employee on the study process and decision-making, as well as to prevent the appearance of influence.

10:122C-2.3 Forms to be completed

(a) During the initial phase of the study process the Division representative shall give the applicant the following forms which the applicant or household member shall complete accurately (see Appendix, incorporated herein by reference);

1. An application to provide foster care, if not given previously;

2. Release of information forms for State and Federal criminal history checks;

3. Release of information forms for a local criminal history check, when obtainable;

4. Release of information forms to obtain the following references; personal, medical, employment, school and day care, child care and any other placement agency with whom the applicant is affiliated; and

5. A home study form.

(b) Each applicant and potential primary caretaker shall complete release of information forms, as indicated in (a) above.

(c) Each new household member who is identified as a potential primary caretaker shall complete release of information forms for personal, employment, school and day care and child care references.

(d) These forms, which are incorporated herein by reference as an Appendix, are not reproduced herein but are available from:

Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

10:122C-2.4 Medical reference

(a) The applicant shall provide a medical reference from a physician on each applicant and household member. The Division shall send a medical reference form to each physician, which shall request the following information:

1. Whether the individual is free from serious contagious disease;

2. Whether the individual has any conditions or residual effects resulting from a particular disease;

3. Whether the individual is in good physical health;

4. The inoculations given to each child living in the home;

5. To the physician's knowledge, whether the individual is in good emotional health;

6. To the physician's knowledge, whether the individual uses any substance, such as tobacco, alcohol or drugs, in a way which affects his or her ability to function;

7. Whether the individual should not care for or associate with a foster child;

8. How long the individual has been a patient of the physician; and

9. The date the physician last examined the individual.

(b) The applicant may request reimbursement of the cost of a physical examination necessary to provide the information required in this section. The office manager shall approve reimbursement at a rate determined by the Division, if the family has a verified income below 150 percent of the Federal Poverty Income Guidelines, as published in the Federal Register, and the examination is not available free of charge.

(c) The foster parent shall provide the Division with a medical reference completed by a physician for each new household member.

10:122C-2.5 Other references

(a) Each applicant and potential primary caretaker shall provide three personal references from persons unrelated to the applicants. Applicants from the same household may provide the same personal reference, provided that the reference has knowledge of both applicants.

1. At least one personal reference shall have known the applicant for five years.

2. At least one personal reference shall have been a neighbor of the applicant within the last six months.

(b) Each applicant and potential primary caretaker shall provide employment, school and day care, and child care references, as appropriate, including a reference from any other placement agency with whom the applicant is or has been affiliated. The Division shall send a reference request to each entity named.

1. If the applicant states that a current job reference will jeopardize the applicant's employment status, the applicant shall provide a reference from a previous employer.

2. If a previous employer is not available, the applicant shall provide a reference from an appropriate alternative such as a former teacher or the applicant's supervisor in a volunteer activity.

(c) The Division shall obtain all references and assess all information obtained.

10:122C-2.6 Record checks

(a) The Division shall arrange for or take fingerprints for State and Federal criminal history checks, pursuant to N.J.S.A. 30:4C-26.8, to be conducted for each applicant and each adult household member. The Division shall obtain State and Federal criminal history checks for each new adult household member including all children who reach 18 years of age.

(b) The Division may request a local criminal history check on each foster parent applicant and adult household member. The Division may request a local criminal history check for each new adult household member.

(c) The foster parent shall disclose any criminal convictions ***and disorderly persons convictions*** of any household member, 14 years of age or older.

(d) The Division shall keep confidential all information obtained regarding the applicant and each household member.

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(e) The Division shall conduct a review of its internal records to determine whether the foster parent applicant or any household member has neglected or abused a child.

10:122C-2.7 Pre-service training

(a) Each foster parent applicant and adult household member who is identified as a potential primary caretaker shall complete the pre-service training and evaluation program.

(b) The Division shall conduct pre-service training on a monthly basis in various locations throughout the State.

1. The Division shall develop the standardized pre-service training curriculum used.

2. The Division may provide the pre-service training at the applicant's home if the applicant demonstrates a compelling need to receive the training in his or her home.

(c) A professional Division representative shall conduct the pre-service training program and shall utilize an experienced foster parent who is approved by the Division as a co-trainer, as resources permit.

(d) During the initial phase of the pre-service training, the Division representative shall provide information about the standards for becoming a foster parent, the home study process, the foster home resource needs of the Division, and the Division's policies and procedures related to foster care, as specified in this chapter. The pre-service training shall include an explanation of the difference between the Division's foster care and adoption programs and the Division's requirements for becoming a foster parent, as outlined in N.J.A.C. 10:122C-1 and 2.

(e) The applicant and Division representative shall mutually assess the applicant's interest and ability to become a foster parent during the pre-service training program.

(f) The applicant may file for reimbursement for transportation, parking and babysitting costs incurred by the applicant which are directly related to attendance at the pre-service training sessions. The Division shall establish rates of reimbursement for this purpose. The applicant may file for reimbursement after completing the entire pre-service training program. *[The applicant may file for reimbursement after completing the entire pre-service training program.]*

10:122C-2.8 Home visit

(a) The Division representative shall visit the applicant's home at least one time as part of the study process.

(b) Each applicant and every household member shall be present at the home visit.

(c) During the home visit, the Division representative shall:

1. Assess compliance with the sleeping space and life safety standards, as outlined in N.J.A.C. 10:122C-1.16 and 1.17;

2. Interview each household member who is not participating in the pre-service training;

3. Discuss any inconsistencies or concerns by any party regarding any information gathered during the assessment process;

4. Verify identifying information about each family member and household member listed on the application;

5. Discuss the type of child acceptable and the impact of foster care on the family; and

6. Discuss any other questions raised by the applicant or any household member.

10:122C-2.9 Foster home study *[dispostion]* ***disposition***

(a) The Division representative and supervisor shall determine whether to approve, provisionally approve, reject or consider the application withdrawn.

(b) The determination shall be made through a supervisory conference held within one week of:

1. Obtaining all references and forms;

2. Completing the pre-service training; and

3. Completing the home visit.

10:122C-2.10 Foster home approval

(a) The Division shall approve a foster home when the foster parent applicant and each primary caretaker completes the mandatory pre-service training and study process, and the family meets all foster home standards.

(b) The Division shall send the foster parent applicant a formal written notice of acceptance as a foster parent for one year, subject to annual reevaluation. The foster parent shall sign an agreement with the Division (see Appendix).

10:122C-2.11 Foster home provisional approval

(a) The Division office manager or county supervisor may grant provisional approval to a foster home when all components of the home study process are completed but only one parent of a two-parent or two-primary caretaker family has completed mandatory pre-service training and no approved home is available and appropriate for the placement of *[a]* ***the*** child.

1. The Division representative shall make a home visit prior to the placement of a foster child in order to discuss the placement with the parent or caretaker who has not completed the training.

2. The second parent or primary caretaker shall attend and complete the training within three months.

3. If the second parent or primary caretaker fails to complete the training during the three month exception period, no other foster child shall be placed and the foster home shall be closed when the original placement ends, unless the second parent or primary caretaker has subsequently completed the training.

(b) The Assistant Director of Program Operations may grant provisional approval of a foster home for up to six months or until the Federal criminal history record check is received, whichever is sooner*[, per N.J.S.A. 30:4C-26.8, only when:]***.***

(c) The Assistant Director of Program Operations shall follow the provisions of N.J.S.A. 30:4C-26.8 when granting provisional approval. In addition, the Assistant Director of Program Operations shall grant provisional approval only when:

1. There is a compelling need to utilize the specific home for the placement of a specific child; ***and***

2. The Federal criminal history ***record*** check has been pending for more than 45 days or the fingerprints for the Federal criminal history ***record*** check have been rejected and resubmitted*[;]***.***

*[3. All the other foster home standards and requirements of the study and approval process have been met;

4. The results of the State criminal history record check have not revealed a criminal history; and

5. The applicants and other adult household members have signed affidavits swearing that they do not have a criminal history.]*

*[(c)]***(d)*** The office manager or county supervisor may grant provisional approval of a foster home before the abatement of minor life safety hazards, see N.J.A.C. 10:122C-1.17, provided that the foster parents can provide assurances that interim safety measures will be taken and that hazards will be corrected within 30 days of notification by the Division of the violations.

*[(d)]***(e)*** The Division representative shall notify the foster parent in writing of the conditions of the provisional approval.

10:122C-2.12 Foster home withdrawal

(a) A foster parent applicant may withdraw his or her application at any time during the study and approval process.

1. The Division shall consider that the applicant has withdrawn if he or she fails to respond to at least two invitations to attend group training sessions.

2. The applicant may withdraw due to a decision that it is not in his or her best interest to continue.

(b) The Division shall give the applicant a formal written notice acknowledging the withdrawal and informing the applicant that he or she may reapply at any time.

10:122C-2.13 Foster home rejection and waivers

(a) The Division may reject an applicant at any time during the study process. The decision is made in a supervisory conference. An applicant shall be rejected if the applicant does not meet the requirements of this chapter.

(b) An applicant shall be rejected immediately under the following circumstances:

1. The Division's records indicate that the applicant or anyone living in the applicant's household has caused risk or injury to a child through neglect, abuse or emotional trauma;

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2. The applicant or any household member has been convicted of a crime of a sexual nature or a crime of violence against any child or a family member or a disorderly persons offense involving similar acts or any other act of a similarly serious nature; *[or]*

3. Should information come to the Division during the study process that a foster parent applicant or household member has a finding of domestic violence pursuant to N.J.S.A. 2C:25-1 et seq. against him or her; or

*[3.]***4.*** The applicant falsifies or intentionally provides significant misleading information or omits significant information to the Division about himself or herself or any household member or who allows a household member to do the same.

(c) An applicant shall not be rejected automatically when the applicant or a household member has a criminal conviction not listed in (b)2 above. The criminal record shall be discussed with the applicant or the involved household member. The criminal record shall then be evaluated in relation to the ability of the applicant to care for, protect and influence a foster child. Based upon the affirmative recommendation of both the office manager and the regional administrator, the Division Director shall decide whether to approve the application of a foster parent who:

1. Has a criminal record, but who is not rejected immediately according to (b)2 above; or

2. Has a household member who has a criminal record, but who is not rejected immediately according to (b)2 above.

[(d) Should information come to the Division during the study process that a foster parent applicant or household member has a finding of domestic violence pursuant to N.J.S.A. 2C:25-1 et seq. against him or her, the Division shall reject the applicant.]

*[(e)]***(d)*** The Division representative shall inform the applicant in writing of a rejection, summarizing the reasons for rejection, based on the standards set in this chapter, and informing the applicant that he or she may request a review of the decision by the office manager or the county supervisor responsible for the *[foster child]* ***applicant*** within one month of receiving the letter. If the applicant requests such a review, the office manager or the county supervisor responsible for the *[foster child]* ***applicant*** shall review the decision and make a recommendation to the regional administrator whether to uphold or change that decision. The regional administrator shall make the decision and inform the applicant in writing of the decision, summarizing the reasons for the decision, based on the standards set in this chapter, within one month of the applicant's request. The regional administrator's decision is the final administrative determination of the Division.

10:122C-2.14 Reevaluation of a foster home

(a) A Division representative shall reevaluate annually each approved foster home based on the standards in this chapter. The reevaluation of an employee's foster home shall be conducted by the county office which supervises the employee's foster home, except when the employee works in that county office. In this situation, the county office in an adjacent county shall conduct the reevaluation.

(b) The Division representative shall notify the foster parent within 10 working days in writing of the outcome of the reevaluation and of the right to request a meeting with administrative personnel to discuss the outcome if the foster parent does not agree with the reevaluation.

10:122C-2.15 Closure at reevaluation

(a) When the Division reevaluates a foster home which does not meet the requirements of N.J.A.C. 10:122C-1.7 regarding disorderly persons offenses or crimes of violence or of a sexual nature, or other act of a similarly serious nature, or in which the foster parent or any household member has caused injury through child abuse or neglect, the Division shall close the foster home. ***See N.J.A.C. 10:122E-3.4(b) and 3.7(a).***

(b) Should information come to the Division that a foster parent or household member has a finding of domestic violence pursuant to N.J.S.A. 2C:25-1 et seq. against him or her, the Division shall close the foster home. ***See N.J.A.C. 10:122E-3.7(c).***

(c) The Division may close the foster home when it determines that the foster parent has falsified or intentionally provided significant misleading information or omitted significant information or has allowed a household member to do so.

(d) The Division may close a foster home when it determines that the foster home does not meet any of the requirements of this chapter. See N.J.A.C. 10:122E, Removal of Foster Children and Closure of Foster Homes.

10:122C-2.16 Division action when a foster home does not meet standards after reevaluation

(a) When the Division reevaluates a foster home which does not meet the provisions of this chapter, other than those covered in N.J.A.C. 10:122C-2.15(a) ***or (b)***, the Division shall assess if there is immediate danger to any foster child placed in the foster home, if the foster child should be removed and assess whether the foster home should be closed or whether the foster family may be able to correct the violations and meet the standards within six months or less.

1. The Division shall provide protection to each child in the home, as necessary.

2. The Division may use available allocated funds to assist the foster family to meet the foster home standards when a foster child is placed in the foster home or refer the foster family to appropriate community resources to retain the foster home as a placement resource.

10:122C-2.17 Agreement to meet standards after reevaluation

(a) After assessing that there is no danger to any foster child and that it is possible for the foster family to meet the standards contained in this chapter, with office manager approval, the Division and the foster parent shall agree in writing on a time frame for meeting the standards, which shall not exceed six months. The Division shall make no additional placements until the standards in this chapter are met.

1. Approval of the office manager is required to permit a foster child to remain in the foster home during this time.

2. Approval by the Division Director shall be required to permit a child to remain in the foster home when the criminal history or child abuse and neglect standards are not met. See N.J.A.C. 10:122C-1.7 and 2.13(b). This approval shall be based on a determination by the office manager and regional administrator that it is in the foster child's best interest to remain in the foster home.

10:122C-2.18 Division action when a foster home does not comply with written agreement

(a) The Division representative shall close the foster home if the foster family does not meet the standards set in this chapter at the end of the time frame stated in the written agreement. See N.J.A.C. 10:122C-2.17(a). The Division representative shall send written notice to the foster parent stating the reasons for closing the home.

(b) Approval by the regional administrator shall be required to permit a foster child to remain in the foster home if the foster home does not meet the standards of this chapter in accordance with the written agreement. This approval shall be based on a determination by the office manager that it is in the foster child's best interests to remain in the foster home. The Division shall not place any more foster children in the foster home unless the foster home meets all the standards of this chapter.

1. The Division representative shall notify the foster parent in writing of the conditions under which the foster home will be permitted to remain open.

2. The Division shall inform the foster parent in writing that he or she may request a meeting with the office manager if the foster parent disagrees with the conditions under which the foster home will be permitted to remain open. If the foster parent requests such a meeting, the office manager shall hold a meeting, make a decision and notify the foster parent in writing of the decision, the reasons for the decision, and that to appeal the decision, the foster parent may request a meeting with the regional administrator. If the foster parent requests a meeting with the regional administrator, the regional administrator shall hold a meeting and shall make the decision

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and notify the foster parent in writing of the regional administrator's decision and the reasons for the decision within one month of the foster parent's request. ***This is a final agency determination.***

APPENDIX

FORMS

The following forms to be completed by the foster care applicant (see N.J.A.C. 10:122C-2.3) or the applicant and DYFS (see N.J.A.C. 10:122C-2.10) are incorporated by reference in this chapter:

Authorization for Release of Information, DYFS 26-15 (rev. 8/85) ***(English)* *DYFS 26-15A (rev. 7/85) (Spanish)***

Employment Reference, DYFS 5-24 (new 5/85)

Background Check Consent Form, DYFS 5-31 (new 1/86)

The Home Study, DYFS 5-26 (new 5/85) (English)
DYFS 5-26A (new 5/85) (Spanish)

Police Reference, DYFS 5-25 (rev. 9/88)

Personal Reference, DYFS 5-6a (rev. 5/85) (English)
DYFS 5-6a(A) (rev. 4/86) (Spanish)

School/Day Care Reference, DYFS 5-2e (rev. 4/86)

Medical Reference, DYFS 5-2c (rev. *[5/85]* ***3/92***)

Foster and Adoptive Home Study Application, DYFS 5-2 (rev. 4/86)

Child Care Reference, DYFS 14-202*[(f)]* (new 4/86)

Foster Family Care Agreement, DYFS 5-5 (rev. 6/90) (English)
DYFS 5-5A (rev. 6/90) (Spanish)

While these forms are not reproduced in the Administrative Code, they are available from DYFS or from the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 049, Trenton, New Jersey 08625.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Foster Care Services

Adopted New Rules: N.J.A.C. 10:122D

Proposed: December 16, 1991 at 23 N.J.R. 3703(a).

Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 9, 1992 as R.1993 d.17, **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. 30:4C-4(h) and 30:4C-26a.

Effective Date: January 4, 1993.

Operative Date: July 1, 1993.

Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

Comments on the proposed new rule were submitted by Ciro A. Scalera and Cecilia Zalkind of the Association for Children of New Jersey (see the adoption of N.J.A.C. 10:122B for their general comments).

COMMENT: Permanency services for children in foster care are important. As they are to be addressed in a separate, proposed section, this section should be cross-referenced here.

RESPONSE: As rules on permanency services have not been drafted, the Division can not cross-reference them at present.

COMMENT: Are the regulations consistent with the Child Placement Bill of Rights, which was signed by the Governor in September, 1991?

RESPONSE: The rules are in accord with the Child Placement Bill of Rights. No change to the rules is necessary.

COMMENT: The child or a guardian ad litem representing the child should be able to appeal a denial, reduction, suspension or termination of services.

RESPONSE: The Division drafted this section of the rules in conjunction with the Attorney General's Office and the Office of Administrative Law. The Division is interested in exploring the feasibility of the proposed change with the other involved agencies. The Division will adopt the rules as proposed in order to put in place the opportunity for the parent or foster parent to appeal. If agreement to an addition of the child or guardian ad litem is made, the Division will amend the rules accordingly.

Summary of Agency-Initiated Changes:

In N.J.A.C. 10:122D-2.1(a), the Division has changed the introductory text in its Purpose section to describe accurately what are the goals of the Division on behalf of children in foster care. The language as originally proposed was inappropriate because it implied that the Division can guarantee the outcome of its service provision.

At N.J.A.C. 10:122D-2.5(a), Health care services, and 10:122D-2.6(a), Educational services, because the Division does not directly provide health care and educational services, it has added the qualifying phrase " 'make every reasonable effort to' assure ..." to the rule text. The Division depends on the availability of services provided by numerous health care and educational providers throughout the State and therefore is not the sole guarantor of such services. The word "representative" was removed from N.J.A.C. 10:122D-2.6(a) to clarify that the responsibility to assure an appropriate education applies to all levels of the Division.

In N.J.A.C. 10:122D-2.8(d) and (e), the word "available" was added to modify the word "services." The first use of the term in subsection (d) is "available services." The word available is added throughout for consistency.

The proposed rule stated that a parent or foster parent who disagreed with the denial, reduction, suspension or termination of services subject to a court order or pending decision of the court, may bring the matter directly before the court. A foster parent is not necessarily entitled to intervene in litigation. In some situations the Division may oppose this person's intervention. The statement, as published, might be interpreted as a waiver by the Division of any objections. The Division is adopting a wording change at N.J.A.C. 10:122D-2.8(f) to clarify the meaning; that is, "... at the option of the parent or foster parent, he or she may seek to bring the matter directly before the court."

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 122D
FOSTER CARE SERVICES

SUBCHAPTER 1. VISITS BETWEEN THE FOSTER CHILD AND THE FOSTER CHILD'S FAMILY

10:122D-1.1 Purpose

(a) The purpose of this subchapter is to ensure that each child placed in a foster home approved by the Division shall have the opportunity to visit with parents, siblings and interested relatives. Visits with parents, siblings and other relatives may serve to:

1. Reinforce the foster child's identity;
2. Promote the foster child's need for stability and consistency;
3. Maintain or establish family relationships;
4. Assess the parent's and other relative's motivation and ability to care for the foster child; and
5. Provide an opportunity to model appropriate parenting behavior and skills.

(b) The frequency and duration of visits is dependent on the purpose of the visits, the case goal and case plan and practical considerations of all parties. Visits which are frequent and of long duration are beneficial for most children placed in foster care and facilitate movement toward achieving the case goal of family reunification. The frequency and duration specified in each foster child's visitation schedule is a professional social work decision which shall be made by the Division with full input from all those affected by the visitation plan. Unless otherwise limited by conditions set forth in N.J.A.C. 10:122B-1.5 and N.J.A.C. 10:122D-1.15, for most children in foster care, the goal is to hold a visit every week for a period as long in duration as possible.

10:122D-1.2 Scope

The provisions of this subchapter shall apply to each foster child, his or her parents, siblings, interested relatives, foster family, and the Division.

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10:122D-1.3 Definitions

The definitions in N.J.A.C. 10:122B-1.4 are hereby incorporated in this subchapter by reference.

10:122D-1.4 Visitation plan

(a) A written visitation plan shall be developed to identify the type and frequency of visits to be instituted for every child in foster care unless otherwise directed by the court.

(b) The visitation plan may exclude specific persons from having visits.

(c) The visitation plan shall give full consideration to the foster child's safety.

(d) The visitation plan shall include visits with siblings, if any. Sibling visits may take place with parental visits or separately.

10:122D-1.5 Developing the visitation plan

(a) The visitation plan for the first visit shall be developed and written prior to the date of placement or as soon as possible after the placement.

(b) The visitation plan for ongoing visits shall be completed within five working days of the initial date of placement.

(c) The visitation plan shall be evaluated and adjusted as needed and submitted in time for the first 45 day Child Placement Review, pursuant to N.J.S.A. 30:4C-50 et seq.

(d) The visitation plan shall be developed through negotiation and agreement by the Division representative, the parents, the foster child, and other parties involved, such as relatives, a former foster family interested in visiting the foster child, siblings, and their representatives.

(e) Sections of the visitation plan shall be negotiated separately with the siblings or their representatives and other interested relatives.

(f) The Division representative shall encourage the foster parent to participate in developing the visitation plan.

(g) The foster parent shall be consulted for information pertinent to visitation.

10:122D-1.6 Distribution of the visitation plan

The Division representative shall give a copy of the visitation plan to the parent, the foster parent, the foster child, when of an appropriate age, and other parties, including siblings, who are involved in developing the visitation plan, and their representatives.

10:122D-1.7 Renegotiation of the visitation plan

(a) The Division shall renegotiate the visitation plan with all parties involved no less often than every six months.

(b) The Division shall also renegotiate the visitation plan:

1. When the case goal changes;
2. When circumstances change; or
3. Whenever any of the parties to the plan requests renegotiation.

10:122D-1.8 Components of the visitation plan

(a) The visitation plan shall include the following:

1. The goal of the visits;
2. The location of visits;
3. The frequency and regularity of visits;
4. Who will participate in the visits;
5. The roles of participants other than the foster child;
6. Who will provide needed transportation;
7. The date and time of visits;
8. The length of visits;
9. Whether the visit will be supervised, and, if so, by whom; and
10. What each party shall be expected to do in order to change or cancel a visit.

10:122D-1.9 Locations for visits

(a) Visits shall take place in the least restrictive, most comfortable setting possible. For example, visits may take place in the home of the parents, relatives or friends or in other suitable locations.

(b) Visits may also take place in the foster home, with the foster parent's permission.

(c) Visits may take place in a Division office when:

1. Necessary to protect the foster child;
2. For the convenience of those participating in the visit; or
3. When other suitable locations are not available.

10:122D-1.10 Determination of whether visit is to be supervised

(a) The parent or other visitors and the Division representative shall discuss the need for supervised visits at the time the visitation plan is negotiated or renegotiated.

(b) Unless the Division or the Family Court finds a need for supervision, visits shall be unsupervised.

(c) If visits will be supervised, the plan shall contain a statement of the reason supervision is required. Reasons for the supervision of visits may include:

1. Facilitating interactions between the parent and the foster child;
2. Modeling positive parenting behavior;
3. Mediating conflict between the parent and the foster child; and
4. Providing protection for the foster child.

10:122D-1.11 Supervision of visits

(a) Family, friends or others with whom the visitor and foster child feel comfortable may provide supervision with the agreement of all parties.

(b) Providers with whom the Division has contracts to supervise visitation may also be utilized.

(c) A Division representative may supervise visitation only under the following circumstances:

1. The Division finds that supervision by the Division is necessary to protect the foster child;
2. Supervision is needed and there is no other person appropriate to provide it;
3. The parent or foster child wants supervision by the Division;
4. The Division does not have enough information to determine that supervision is not needed; or
5. The Division does not have enough information to determine that the individual suggested by the parent or others to provide supervision is acceptable.

10:122D-1.12 Division participation in visits

(a) Where the Division is not involved in supervising visitation, a Division representative shall participate in visits as necessary to formally assess the progress of visits and family relationships for the purpose of case planning.

(b) Whenever possible, the Division representative shall inform the participants in the visit in advance when he or she will participate.

10:122D-1.13 Transportation for visits

(a) The Division shall provide or arrange for transportation of the foster child to the visit.

(b) The Division shall provide or pay for transportation when the parent or other relative lives in New Jersey and verifies that he or she cannot obtain or pay for his or her own transportation.

10:122D-1.14 Standards for the visitation plan

(a) Except as limited in N.J.A.C. 10:122D-1.15(a), the visitation plan shall establish that:

1. The first visit between the foster child and parent shall be scheduled to occur as soon as possible, within five working days of the date of initial placement;
2. The frequency and duration of the visits shall be consistent with the purpose of visits as set forth in N.J.A.C. 10:122D-1.1;
3. The frequency and length of each visit shall be based upon the needs of the foster child, the parent, and other involved parties. Special consideration shall be given to the need for pre-school foster children to have frequent visits since their sense of time is different than that for older children or adults;
4. Overnight and weekend visits with the family shall be scheduled to occur frequently when the family can assume the increased child care responsibility and when the plan is to return the foster child to them;
5. Holiday visits shall be negotiated and addressed in the plan; and
6. When a scheduled visit is missed due to the inability of the person providing supervision or the Division representative not being

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able to participate in the visit, the visit shall be rescheduled whenever and as soon as possible.

10:122D-1.15 Reasons to limit visits

(a) A reduction to the visitation schedule may be made for any of the following reasons:

1. The visit will be physically or psychologically harmful to the foster child even with supervision. This determination shall be based on:

i. A Division representative's direct observation of harm or potential harm;

ii. A report of harm to the Division in which the harm has been verified by a Division representative;

iii. A mental health therapist's recommendations;

iv. A pending or ongoing Division investigation of allegations that the foster child has been harmed by the visitor; or

v. The foster child's report of a harmful or potentially harmful situation;

2. The foster child requests limited visits when the case goal is not family reunification, whether or not the visits are seen as harmful;

3. The parent requests limited or no visits despite the Division's efforts to explain the importance of visiting and the Division's offer to assist in arranging the visits;

4. The parent chronically misses scheduled visits despite the Division's efforts to advise of the importance of attending visits for the parent and the foster child; or

5. A court order prohibits visits or specifies a different schedule of visits.

(b) A supervisor shall review and approve or disapprove any reduction in the frequency or duration of visits.

(c) The Division representative shall inform the parent, foster child, and any other affected person in writing of the reason for the reduction.

(d) The Division shall assist the family or other parties to eliminate the causes for the limitation of visits when the conditions can be changed in order to increase the visits.

10:122D-1.16 Disagreements

(a) When a parent disagrees with a provision of a visitation plan adopted by the Division that results in a denial, suspension, reduction or termination of visitation, the parent shall be informed in writing by the Division representative that he or she has a right to appeal, pursuant to the procedures set forth in N.J.A.C. 10:122D-2.8(d), (e) and (f), except that in cases involving this subchapter the foster parent will not be involved in the appeal process.

(b) When a foster parent disagrees with a visitation plan, he or she shall be informed in writing by the Division representative that he or she may request a review by the office manager. Upon the request of the foster parent, the office manager shall meet with the foster parent, shall make a decision and shall notify the foster parent in writing of the decision and the reasons for the decision.

SUBCHAPTER 2. SERVICES TO CHILDREN IN FOSTER HOME PLACEMENT

10:122D-2.1 Purpose

(a) The purpose of this subchapter is to identify the services that the Division shall provide to a child in foster home placement in *[order]* ***its efforts*** to:

1. Provide the foster child with safe home care;

2. Meet the foster child's physical, psychological, and other developmental needs;

3. Assure the foster child's well-being;

4. Help the child to understand the reasons for his or her foster home placement, the case goal, and to adjust to being a child in a foster home; and

5. Achieve the case goal.

10:122D-2.2 Scope

The provisions of this subchapter shall apply to each foster child, his or her foster family, his or her family and the Division.

10:122D-2.3 Definitions

The definitions in N.J.A.C. 10:122B-1.4 are hereby incorporated into this subchapter by reference.

10:122D-2.4 Case management

(a) The Division representative shall have face-to-face and other contact with the foster child, foster parent, parent and other interested parties according to established schedules which are written in the case plan in order to:

1. Develop, implement and update a case plan by assessing case needs, identifying services to meet those needs, including the role and responsibility of each party regarding the services, and establishing the case goal and assessing progress toward achieving the case goal in a timely manner;

2. Provide advocacy and support services to all parties, within program and fiscal parameters;

3. Assist the foster child and foster family to establish and maintain an ongoing and supportive relationship for the duration of the foster child's placement;

4. Update the foster child, foster family, parents and other parties on the progress toward achieving the case goal;

5. Facilitate visits in accordance with the case plan between the foster child, parent, siblings and other interested relatives. See N.J.A.C. 10:122D-1, Visits between the foster child and the foster child's family; and

6. Meet the requirements of the Child Placement Review Act, N.J.S.A. 30:4C-50 et seq.

(b) The Division representative shall have face-to-face contact with the parent, when applicable, foster parent and foster child within one week of the foster child's placement in the foster home.

10:122D-2.5 Health care services

(a) The Division shall ***make every reasonable effort to*** assure that each child in foster home placement receives appropriate and necessary health care, including mental health services.

(b) For each child initially entering foster home placement, the Division shall obtain a medical examination at the time of placement. The Division shall establish a health care record for each foster child and shall provide the foster parent with a health care record which documents health information concerning the foster child, including, but not limited to:

1. The names and addresses of the foster child's health care providers;

2. A record of the foster child's immunizations;

3. The foster child's known medical problems, if any;

4. The foster child's medications, if any; and

5. The foster child's allergies, if any.

(c) The Division shall maintain a health care record for each foster child. The Division shall review and update the foster child's health record at the time of each placement into a foster home and shall provide the updated record to the foster parent.

(d) The Division shall assure that the foster child receives a medical and a dental examination at least annually after the initial medical examination performed at the time of placement. The type and frequency of the examinations shall be based on the foster child's age and medical needs.

(e) The foster parent shall be responsible for arranging and providing care to meet the foster child's health needs, including, but not limited to, medical and dental examinations as agreed to with the Division, and shall provide the Division with information concerning the foster child's health care and needs.

(f) The Division shall share health care information concerning the foster child with the foster child's parents and the foster parents.

10:122D-2.6 Educational services

(a) The Division *[representative]* shall ***make every reasonable effort to*** assure that every child in foster home placement receives an education appropriate to his or her abilities as provided for under State laws governing compulsory education and education for disabled children.

(b) The Division shall develop an education record for each child initially entering foster home placement, who is subject to the State

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laws governing compulsory education, see N.J.S.A. 18A, generally. This record shall include, but not be limited to:

1. The names and addresses of the foster child's educational providers;
2. The foster child's grade level performance;
3. The foster child's school record; and
4. Assurance that the foster child's placement in the foster home takes into account proximity to the school in which the foster child was enrolled at the time of placement.

(c) The Division shall provide the foster parent with the foster child's education record at the time of initial placement.

(d) The Division shall review and update the foster child's education record at the time of each placement into a foster home and shall provide the updated record to the foster parent.

(e) The foster parent shall:

1. Make every effort to ensure that the foster child attends school regularly;
2. Encourage good study habits;
3. Monitor the foster child's academic progress; and
4. Inform the Division of the foster child's academic progress.

(f) The Division representative shall:

1. Ensure that the foster child is enrolled in school, if age appropriate. If necessary, the Division representative shall give the foster parent authorization to enroll the foster child in school;
2. Maintain and update the education record regarding the foster child's progress in school;
3. Coordinate, as appropriate, activities among the school personnel, the foster parent, and the parent;
4. Inform the parent of the foster child's school progress and of the parent's right and responsibility to be involved in the foster child's education; and
5. Refer the foster child for a child study team evaluation, as needed, in accordance with N.J.A.C. 6:28-3.3(g), Referral.

10:122D-2.7 Self-sufficiency of adolescent foster child

(a) The Division representative, in consultation with the foster parent, the foster child, the parent and other significant adults, shall develop a written plan to prepare the foster child for self-sufficient living and shall reevaluate the plan at least yearly.

(b) The plan shall be developed for each child in foster home placement;

1. Within six months of the date of placement for those entering foster home placement at age 16 or older; or
2. No later than age 16, for those already in foster home placement.

(c) The plan shall be based upon an assessment of the foster child's strengths, resources, interests and needs.

(d) The plan shall outline the necessary skills the foster child must master to achieve self-sufficiency and the responsibilities of the Division and other parties to assist the child to develop these skills.

(e) The Division representative shall identify at least one significant adult in the foster child's life who will function as an adult advisor to the foster child to assist in the development of the plan and the life skills needed by the foster child. The adult advisor may be the foster parent.

(f) The Division representative shall refer the foster child to resources for post-secondary educational opportunities, as requested by the foster child and in accordance with N.J.S.A. 9:17B-2.

10:122D-2.8 Other services to children in foster home placement

(a) In addition to the basic services of case management, food, clothing, shelter, education, health care, and self-sufficiency, the Division may use other services which meet a foster child's individual needs.

(b) When specific service needs are identified, the Division representative shall arrange for appropriate community resources to provide the service to the foster child in a timely fashion, as the services are available.

(c) When there are insufficient child welfare services available to meet the foster child's needs, the Division is responsible for encouraging and promoting the development of the needed services in accordance with the provisions of N.J.S.A. 30:4C-1, 3 and 4.

(d) When there is a decision to deny, reduce, suspend or terminate an available service, the parent or foster parent shall be informed in writing by the Division representative of the reasons for the decision, that the parent or foster parent has a right to appeal, and that to *[excerise]* ***exercise*** that right, the parent or foster parent may request a local dispositional conference. Upon the request of a parent or foster parent who disagrees with the decision to deny, reduce, suspend or terminate services the office manager responsible for the foster child shall hold the local dispositional conference. The office manager shall make a decision and shall inform the parent and the foster parent in writing of the decision, the reasons for the decision, and that if the decision results in a denial, suspension, reduction or termination of *[a]* ***an available*** service, the parent or the foster parent has a right to appeal this decision, and that to exercise this right, the parent or the foster parent may request that the regional office hold a regional dispositional conference.

(e) Upon the request of the parent or foster parent who disagrees with the results of the local dispositional conference, the regional administrator shall hold a regional dispositional conference, make a decision and inform the parent or foster parent in writing of the decision and the reasons for the decision. When the decision of the regional dispositional conference results in a denial, reduction, suspension, or termination of ***available*** services, the regional administrator shall also inform the parent or foster parent in writing that the parent and foster parent has a right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, Administrative hearings.

(f) Notwithstanding the provisions of (d) or (e) above, if the services denied, reduced, suspended or terminated have been the subject of a court order or are pending the decision of a court, the parent or foster parent who disagrees with the denial, reduction, suspension, or termination of services shall be informed in writing by a Division representative that the parent or foster parent may request local and regional dispositional conferences, but that such conferences are not required, and that, at the option of the parent or foster parent, *[they]* ***he or she*** may ***seek to*** bring the matter directly before the court. There is no right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, if the services denied, reduced, suspended or terminated have been the subject of a court order or are pending the decision of a court.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Removal of Foster Children and Closure of Foster Homes

Adopted New Rules: N.J.A.C. 10:122E

Proposed: December 16, 1991 at 23 N.J.R. 3708(a).
Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: December 9, 1992 as R.1993 d.18, **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. 30:4C-4(h) and 30:4C-26a.

Effective Date: January 4, 1993.
Operative Date: July 1, 1993.
Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:
No comments were received, but see the notice of adoption of N.J.A.C. 10:122B, published elsewhere in this issue of the New Jersey Register for the Association for Children of New Jersey's general comments.

Summary of Agency-Initiated Changes:
At N.J.A.C. 10:122E-2.4(b), the material has been reorganized to improve its clarity. Subsection (c) has been added to clarify that the Division Director's approval is required in this situation.

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Proposed N.J.A.C. 10:122E-2.7(e) stated that a foster parent who disagreed with the removal of a foster child subject to a court order or pending decision of the court may bring the matter directly before the court. A foster parent is not necessarily entitled to intervene in litigation. The statement, as published, might be interpreted as a waiver by the Division of any objections. The Division is adopting a wording change at N.J.A.C. 10:122E-2.7(e) to clarify the meaning; that is, "... at the option of the foster parent, he or she may seek to bring the matter directly before the court."

Text at N.J.A.C. 10:122E-3.1(b)5 and 3.2(a)9 has been revised upon adoption to reflect current agency practice and to achieve consistency with the provisions set forth at subsections (a) and (b) at N.J.A.C. 10:122E-3.7. At N.J.A.C. 10:122E-3.1(b)5, the Division is deleting the qualifier that the crime must involve violence against the child, because in the instance of such a situation the home must be closed in accordance with N.J.A.C. 10:122E-3.7(a). The rules at N.J.A.C. 10:122E-3.1(b), however, address areas to examine when considering closing. At N.J.A.C. 10:122E-3.2(a)9, text is added regarding consideration of other unlisted convictions of the foster parent or household member when closure of the home is being proposed. The additional text maintains consistency with the requirements of N.J.A.C. 10:122E-3.7(b) and the change upon adoption at N.J.A.C. 10:122E-3.1(b)5.

A statement about the Division Director's approval to continue use of certain foster homes has been clarified at N.J.A.C. 10:122E-3.7(c), by including a reference to N.J.A.C. 10:122E-3.7(b).

Also, the full title of the Interstate Compact on Placement of Children has been added to N.J.A.C. 10:122E-3.10(a)2 for clarification.

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 122E
REMOVAL OF FOSTER CHILDREN AND CLOSURE OF FOSTER HOMES

SUBCHAPTER 1. GENERAL PROVISIONS

10:122E-1.1 Authority

Pursuant to N.J.S.A. 30:4C-4(h) and 30:4C-26a, the Division of Youth and Family Services, Department of Human Services, is authorized to establish rules for the removal by the Division of a foster child from a foster home and for the closure of a foster home. Under the above statute, the Division has the discretionary authority to remove a foster child from a foster home at any time with or without the consent of the foster parent, parent or foster child.

10:122E-1.2 Purpose

(a) The first purpose of this chapter is to describe when it is appropriate for the Division to remove a foster child from a foster home. A foster child may be removed from a foster home in order to protect the foster child from risk of harm, to ensure that the case goal is implemented, and to ensure that the interests of the Division, the foster child, the parents and the foster parent are considered.

(b) The second purpose is to ensure that quality foster home resources are retained for the placement of children. Accordingly, clear guidelines are provided for the closure of a foster home when circumstances exist or develop which indicate that the foster parents cannot provide proper and safe care to children placed in the home or do not wish to continue to provide foster care.

10:122E-1.3 Scope

The provisions of this chapter shall apply to each foster child, his or her family, each foster family approved by the Division and the Division.

10:122E-1.4 Definitions

The definitions in N.J.A.C. 10:122B-1.4 are hereby incorporated in this chapter by reference.

SUBCHAPTER 2. REMOVING THE CHILD FROM THE FOSTER HOME

10:122E-2.1 Removal in emergency situations

(a) The Division representative shall remove a foster child from a foster home when the Division determines that the foster child is at imminent risk of harm in the foster home.

(b) When abuse or neglect of any child in a foster home is substantiated, the office manager may consult with the Institutional Abuse Investigation Unit of the Division, when that unit conducted the child abuse and neglect investigation.

(c) When abuse or neglect of any child in a foster home is substantiated, the office manager shall:

1. Determine whether to remove any foster child in the foster home and, if necessary, direct a Division representative to remove the foster child; or

2. Recommend to the Division Director that a foster child continue to be placed in the foster home, based upon the consideration set forth in N.J.A.C. 10:122E-2.5(a).

(d) A foster parent may request an emergency removal of a foster child and the Division shall remove the foster child when:

1. The foster child is at risk of harm if he or she remains in the foster home; or

2. The foster family is at risk of harm if the foster child remains in the foster home.

(e) A foster parent may request an emergency removal of a foster child when the foster family is experiencing a personal emergency and is unable to make alternate appropriate plans for the foster child. The Division shall respond promptly and shall remove the foster child when necessary.

(f) A foster child may request emergency removal from his or her foster home and the Division shall remove the foster child when the foster child is at imminent risk of harm in the foster home.

(g) In all emergency cases, the Division shall document in the foster child's case record and the foster home record, the decision to remove or not remove the foster child and shall inform the foster parent, the foster child, the parents and other interested parties of the outcome.

10:122E-2.2 Removal in non-emergency situations

(a) The Division may remove a foster child from a foster home for any of the following reasons:

1. The foster child's case goal is furthered or achieved by the move or a court order is being followed, for example, return to family, placement in an adoptive home or uniting a foster child with siblings.

2. The foster child has a need which cannot be met by the current foster family.

3. There is documented evidence that the foster family engages in behavior which is detrimental to any foster child.

4. There is documented evidence that the foster family disagrees with the approved case plan and repeatedly fails to cooperate with the Division or to make the foster child available for visits or services which are part of the approved case plan, despite the Division's attempts to involve the foster family in remediating the situation.

5. The foster family has a pattern of violating any Division rules, which may have a negative impact on any foster child, despite attempts by the Division to ensure compliance.

(b) A foster parent may request that a foster child be removed, giving the Division 15 days notice to make suitable alternate arrangements. The foster parent shall state the reason for the request.

(c) A foster child may request to be removed from a foster home. The foster child shall state the reason for the request.

(d) The parent of a foster child may request that the foster child be removed from the foster home. The parent shall state the reason for the request.

10:122E-2.3 Procedures prior to a non-emergency removal

(a) Prior to a non-emergency removal, the Division representative shall interview the foster child, the foster parent, and any appropriate collateral contacts, including the parent, to determine:

1. Information from the foster child about any problems with the placement and his or her preferences;

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2. Information from the foster parent about any problems with the placement and his or her preferences;

3. Information from the parent about any problems with the placement and his or her preferences, when the parent requests removal; and

4. Whether support services can remedy the problem.

(b) The Division representative shall inform the foster child, the foster parent, the parent, and any appropriate contacts at least 30 days prior to the move when the foster child will be removed to further or achieve the case goal or as soon as possible when a court order is being followed.

(c) The Division representative shall inform the parent of the need to change placement, if he or she is available.

(d) The Division representative shall remove the foster child within 15 days of the foster parent's request.

(e) When the foster child or parent has requested removal, the Division representative shall discuss the request with supervisory staff. The Division shall make the decision within five days of the request. The Division representative shall inform the foster child or parent of the decision and shall remove the foster child within 15 days of the original request when it is determined that removal will occur.

(f) The Division representative shall document in the child's record and foster home record, the decision to remove or not remove the foster child, including the reasons.

10:122E-2.4 Removal due to criminal conviction or domestic violence

(a) The Division shall remove the foster children from the foster home when any foster parent or household member has a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq., or when any foster parent or household member has been convicted of a crime of violence or a disorderly persons offense on the basis of an act of violence against any child or against a family member, or of a crime of a sexual nature or of any other act of a similarly serious nature.

(b) The office manager shall determine whether to *[remove the foster children from the foster home when any foster parent or household member has been convicted of a criminal or disorderly persons offense involving crimes not cited in (a) above, or to recommend to the Division Director that the foster children continue to be placed in the foster home.]***:

1. Remove the foster children from the foster home when any foster parent or household member has been convicted of a criminal or disorderly persons offense involving crimes not cited in (a) above; or

2. Recommend to the Division Director that the foster children continue to be placed in the foster home.

(c) Only the Division Director may approve continued placement of foster children in the foster home under the circumstances listed in (b) above.

(d)* The determination ***made by the office manager in (b) above and by the Division Director in (c) above*** shall be based upon the criteria listed in N.J.A.C. 10:122E-2.5(a).

10:122E-2.5 Considerations in deciding whether or not to remove

(a) The Division shall consider the following points when deciding whether to remove a foster child, in emergency and non-emergency situations:

1. The age of the foster child;

2. The length of stay in this foster home;

3. The relationship between the foster child and the foster family;

4. The number and impact of prior moves on the foster child;

5. The foster child's adjustment to the extended foster family and community;

6. The foster child's expressed wishes;

7. The foster family's history with the Division and of successful parenting;

8. The availability of support services to maintain the placement;

9. The willingness of the foster family and the foster child to work to overcome problems;

10. The abused or neglected child's injuries for which neither the foster family nor the abused or neglected child can offer a reasonable explanation;

11. The foster family's cooperation or lack of cooperation with any child abuse and neglect investigation;

12. The abused or neglected child's allegations or report of the situation; and

13. The location of the foster child's siblings and the ability to keep them together or reunite them or facilitate visits.

(b) A foster child may be removed temporarily from a foster home before or during a child abuse or neglect investigation. If the allegation of child abuse or neglect is not substantiated, the Division shall use the criteria listed in (a) above to determine whether the foster child who has been removed will be returned to the foster home.

10:122E-2.6 Notification

(a) The Division representative shall notify each parent who retains legal rights to the child and any relative who visits, when the foster child will be removed or has been removed in an emergency.

(b) The Division representative shall notify the Deputy Attorney General responsible for the case when a foster child will be removed or has been removed in an emergency when:

1. The foster child is the subject *[in]* ***of*** a case in litigation; or

2. Commencement of guardianship litigation for the foster child is imminent.

(c) The Division representative shall notify the Child Placement Review Board and the family part of the Chancery Division of the Superior Court when there is a change in placement of any foster child known to the court. The Division representative shall notify the foster child's Law Guardian, if any, when the foster child is removed from a foster home.

(d) The Division representative who removes the foster child shall notify each other Division representative who supervises a foster child in the foster home about the removal.

(e) The Division representative shall inform the foster parent immediately of the removal and the reasons for removal if the foster child was not removed directly from his or her physical care. The Division representative shall also inform the child's parent as soon as possible after the child is placed. If there is a difference of opinion between the foster parent and the Division regarding the removal, the Division representative shall inform the foster parent and the parent in writing of the reasons for the decision, whether the foster parent may have the right to appeal, and that to appeal the removal, the procedures in N.J.A.C. 10:122E-2.7 shall be followed.

10:122E-2.7 Disagreements

(a) The Division representative, the foster child and the foster family shall try to resolve any disagreement before the foster child is removed, unless an emergency removal is necessary.

(b) When a foster parent disagrees with a decision to remove the foster child, the foster parent shall be informed in writing by a Division representative whether the foster parent has a right to appeal the decision and that the foster parent may request a local dispositional conference. Upon such request, the office manager shall hold a local dispositional conference, inviting the Institutional Abuse Investigation Unit, if appropriate. The office manager shall make a decision and shall inform the foster parent, in writing, of the decision, the reasons for the decision and that, to appeal the decision the foster parent may request a regional dispositional conference. The office manager shall inform the parent, in writing, of the results of the conference and the reasons for the decision, if the foster child is removed from the foster home.

(c) Upon the request of a foster parent who disagrees with the results of the local dispositional conference, the regional administrator shall hold a regional dispositional conference. The regional administrator shall make a decision and shall inform the foster parent, in writing, of the decision, the reasons for the decision, and that, if the foster parent is eligible under (d) below, the foster parent has a right to further reviews. If the foster parent is not eligible

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under (d) below, the foster parent shall be advised that the regional administrator's decision is a final administrative determination of the Division.

(d) A foster parent who disagrees with the results of the regional dispositional conference has a right to an administrative hearing, pursuant to the povisions of N.J.A.C. 10:120-2, Administrative Hearings, to contest the removal of a foster child, if the foster child has been in the foster home continuously for two years or more and if the foster child is not being returned to the parent. See N.J.S.A. 30:4C-26.7.

(e) Notwithstanding the provisions of (b) through (d) above, if the placement of the foster child after removal is the subject of an existing court order or is pending the decision of a court, the foster parent who disagrees with the removal of a foster child shall be informed in writing by a Division representative that the foster parent may request local and regional dispositional conferences, but that such conferences are not required, and that, at the option of the foster parent, he or she may ***seek to*** bring the matter directly before the court. There is no right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, if the placement of the foster child after removal has been the subject of a court order or is pending the decision of a court.

SUBCHAPTER 3. CLOSURE OF A FOSTER HOME

10:122E-3.1 Reasons for closure of a foster home

(a) The Division shall close a foster home when it is determined that the foster home cannot provide proper and safe care to children or is no longer a viable placement resource for children.

(b) The determination for closure shall be based upon at least one of the following:

1. The foster parent requests that the home be closed;
2. The Division substantiates abuse or neglect of a child in the foster home by a foster parent or household member;
3. The foster family violates any Division rule through action or inaction which may cause or has caused physical or emotional harm to a foster child;
4. The foster family does not meet the requirements of N.J.A.C. 10:122C, Approval of Foster Homes;
5. A foster parent or household member has a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq., or is convicted of a crime or disorderly persons offense *[of violence against any child or against a family member or a crime of a sexual nature or any other act of a similarly serious nature]*;
6. The Division learns that the foster parent has given false information on the foster home application or other documents which impacts on the Division's ability to assess or reassess the foster home;
7. The foster home has been inactive for a period of one year;
8. The foster family has not met the standards agreed to by the end of an established time frame. See N.J.A.C. 10:122C-2.18(a), Division action when a foster home does not comply with written agreement; or
9. The foster family moves out of the State of New Jersey.

10:122E-3.2 Considerations for closing a foster home

(a) Before closing a foster home, the Division shall consider the reasons for the proposed closure, the Division's role in those circumstances and the feasibility of maintaining the home as a resource, and shall specifically consider the following:

1. The foster parent's desire to continue foster parenting;
2. Recommendations concerning closure made by Division representatives and others who have knowledge of the foster family based upon formal consultation and discussion, including those directly responsible for the supervision of the children placed in the foster home and responsible for the assessment of the foster home;
3. The circumstances surrounding the incident or conditions that led to the proposed closure, including any mitigating factors and any contributions that the Division may have made to creating, perpetuating or exacerbating the situation;
4. The willingness of the foster family to work with the Division to ameliorate factors contributing to the problem, and the feasibility of doing so;
5. The foster family's history with the Division as it relates to their cooperativeness, forthrightness, ability to resolve problems based upon previous problems in the foster home, and history of successful parenting;
6. The quality of care provided to current and former children placed in the foster home;
7. The length of time that the children currently in foster care have been in the foster home; *[and]*
8. The potential impact of closure and removal on the well-being of any foster child currently placed in the foster home, based upon consultation with all Division representatives directly responsible for providing supervision to the foster children*[.]****; and**
9. Other unlisted convictions of the foster parent or a household member.*

(b) Whenever the Division considers closing a foster home and children are in placement at the time, a determination is made whether to remove all or some of the children in placement prior to the final decision concerning closure based upon the provisions of N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

10:122E-3.3 Request for closure by the foster parent

(a) A foster parent may request that his or her foster home be closed at any time and for any reason.

(b) When the foster parent requests that his or her foster home be closed, the Division shall determine the basis for the request and whether assistance can be provided by the Division to ameliorate the condition or circumstances which led to the request for closure.

(c) The Division representative shall discuss with the foster family how the circumstances which led to the request for closure might be remedied.

(d) The Division shall close the foster home upon the request of the foster parent, if the foster parent chooses not to continue in the program after this discussion.

(e) If the foster parent chooses to continue in the program, the Division shall determine, in consultation with the foster parent, whether additional placements will be made or current children in placement will be removed during the period in which the foster parent's concerns are being addressed. This determination shall be based on the foster family's ability and willingness to provide proper care for foster children during this period.

(f) The Division may make, with the foster family's approval, referrals for appropriate services or provide direct services to the foster family, during this period.

10:122E-3.4 Closure due to substantiated abuse or neglect in the foster home

(a) When it has been substantiated that any child in the foster home has been abused or neglected by the foster parent or a household member, the office manager may consult with the Institutional Abuse Investigation Unit of the Division when that unit conducted the investigation and determine whether to close the foster home or to recommend to the Division Director that the foster home continue to be used for the placement for children. The determination shall be based upon:

1. The circumstances of the abuse or neglect as described in the protective service investigation report;
2. The specific type of abuse or neglect;
3. Documentation of previously reported incidents of abuse or neglect, whether or not substantiated, and the circumstances pertaining to the incidents;
4. Special circumstances which caused the abuse or neglect and whether these are not likely to be repeated;
5. The feasibility of addressing problems in the foster home that led to the abuse or neglect;
6. The remedial action which may be taken by the foster family or the Division to resolve the problems; and
7. The considerations set forth in N.J.A.C. 10:122E-3.2.

(b) Only the Division Director may approve the continued use of a foster home for the placement of children when abuse or neglect

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of a child in the foster home has been substantiated. This approval may be given only when conditions which led to the abuse or neglect have been resolved. See N.J.A.C. 10:122C-2.17, Agreement to meet standards after reevaluation.

10:122E-3.5 Closure due to violation of Division rules

(a) The Division may close a foster home when any Division rule has been violated by the foster family and the violation impacts on the care or potential care of a child in the home.

(b) The Division shall assist the foster family to resolve a violation, when possible.

(c) The office manager shall decide whether to close the foster home based upon the nature of the violation, its impact or potential impact on foster children in the home and the considerations set forth in N.J.A.C. 10:122E-3.2.

10:122E-3.6 Closure due to non-compliance with foster home standards

(a) The Division may close a foster home when the foster home does not meet the requirements of N.J.A.C. 10:122C, Approval of Foster Homes.

(b) The Division may assist the foster family to meet the standards in order to preserve the foster home as a placement resource. See N.J.A.C. 10:122C-2.16, Division action when a foster home does not meet standards after reevaluation.

1. The Division representative shall determine whether the non-compliance impacts on the proper care and safety of children currently in placement and determines whether removal is warranted in accordance with N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

2. The Division representative shall inform the foster parent verbally and in writing of the standard that is not being met.

3. The Division representative shall identify with the foster parent methods to achieve compliance with the standard. The Division and foster family shall develop a written agreement which outlines the actions necessary to achieve compliance, including time frames which shall not exceed a six month period. The Division may assist the foster family to achieve compliance by providing information and referral services and special funding. See N.J.A.C. 10:122C-2.16 and 2.17.

4. The Division shall close the foster home when the home does not achieve compliance in accordance with the written agreement, unless the provisions of N.J.A.C. 10:122C-2.18(b) are met.

(c) The Division regional administrator may approve continued use of a foster home which does not comply with the written agreement to enable a foster child to continue placement in the foster home. This approval shall be based upon the provisions of N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

10:122E-3.7 Closure due to criminal conviction or domestic violence

(a) The Division shall close a foster home when a foster parent or household member has a finding of domestic violence, as defined in N.J.S.A. 2C:25-1 et seq., or has been convicted of a crime of violence or a disorderly persons offense on the basis of an act of violence against any child or against a family member or a crime of a sexual nature or any other act of a similarly serious nature.

(b) The office manager shall determine whether to close a foster home when a foster parent or household member has been convicted of a criminal or disorderly persons offense involving other crimes not cited in (a) above or to recommend to the Division Director that the home continue to be used for the placement of children. The determination shall be based upon:

1. The nature of the crime or disorderly persons offense committed and possible impact of the offense on the care and safety of foster children in the home;

2. The amount of time that has passed since the crime or disorderly persons offense was committed;

3. Whether the crime or disorderly persons offense was an isolated or repeated incident;

4. Whether the foster parent or household member successfully completed some course of rehabilitation or treatment related to the criminal or disorderly persons offense; and

5. The age of the person when the crime or disorderly persons offense was committed.

(c) Only the Division Director may approve continued use of the foster home *[when a foster parent or household member has been convicted of a criminal or disorderly persons offense as cited in (a) above.]* ***under the circumstances listed in (a) and (b) above.***

10:122E-3.8 Closure due to false statement made on the foster home application

(a) The Division may close a foster home at any time when the Division determines that information provided by the foster parent on the application or some other document is false and the information is pertinent to the Division's assessment or reassessment of the foster home.

1. The Division representative shall discuss the false information with the foster parent in order to obtain an explanation of how and why the false information was provided.

2. The Division shall assess the information provided to determine whether the falsification contributes to the harm or risk of harm to a foster child placed in the home.

(b) The office manager shall be responsible for approving continued use of the foster home when a foster parent has falsified information on the application or other document. The office manager shall give consideration to the provisions of N.J.A.C. 10:122E-3.2.

10:122E-3.9 Closure due to foster home being inactive for a period of one year

(a) The Division may close a foster home when no placements have been made in the foster home for a period of one year because either:

1. The foster family has requested no placements; or

2. They have repeatedly rejected placements of the type requested.

(b) The Division shall make reasonable efforts to assist a foster family to ameliorate conditions which discourage or preclude the foster family from accepting children for placement.

10:122E-3.10 Closure due to foster family moving out of the State of New Jersey

(a) The Division shall close a foster home when the foster family moves out of the State of New Jersey, unless:

1. Provisions have been made for a foster child already in the foster home to move with the foster family; or

2. The requirements of the N.J.S.A. 9:23-10 through 17, Interstate Compact on ***Placement of*** Children, have been met.

10:122E-3.11 Notice of outcome of consideration for closure

(a) The Division shall inform the foster family in writing when a determination has been made to close the foster home, or the foster home has been considered for closure and a determination has been made to keep the foster home open with or without remedial actions. The notification shall include:

1. The anticipated date of closure, when applicable;

2. The reason for closure or consideration for closure;

3. A summary of actions taken by the Division to preclude closure, when applicable;

4. Identification of remedial actions required and the persons responsible for these in order for the foster home to remain open, when applicable; and

5. Information about appealing the decision to close the foster home.

(b) The office manager shall inform verbally and in writing each Division representative who either supervises a foster child in the foster home or is responsible for ongoing assessment of the home when a decision is made to either close a foster home or special approval is given to keep a foster home open.

10:122E-3.12 Disagreements

(a) The Division representative and the foster family shall try to resolve any disagreement before a foster home is closed.

(b) When a foster home is closed, the Division representative shall inform the foster parent in writing of the decision to close the foster

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home, the reasons for closing the home and that the foster parent may request a local dispositional conference.

(c) Upon the request of a foster parent who disagrees with the office manager's decision to close his or her foster home, the office manager shall hold a local dispositional conference, inviting the Institutional Abuse Investigation Unit of the Division, if appropriate, and including the foster parent. The office manager shall make a decision and shall inform the foster parent in writing of the decision, the reasons for the decision, and that, to appeal the decision, the foster parent may request that the regional office hold a regional dispositional conference.

(d) Upon the request of a foster parent who disagrees with the decision of the office manager, the regional administrator shall hold a regional dispositional conference, shall make a decision and shall inform the foster parent in writing of the decision and the reasons for the decision. The decision of the regional administrator is the final administrative determination of the Division.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Initial Response and Service Delivery General Provisions

Adopted New Rules: N.J.A.C. 10:133

Proposed: December 16, 1991 at 23 N.J.R. 3714(a).
Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: December 9, 1992 as R.1993 d.19, **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. 30:4C-44 and 9:6-8.15.

Effective Date: January 4, 1993.
Operative Date: July 1, 1993.
Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:
No comments were received, but see the notice of adoption of N.J.A.C. 10:122B published elsewhere in this issue of the New Jersey Register for the Association for Children of New Jersey's general comments.

Summary of Agency-Initiated Changes:
In N.J.A.C. 10:133-1.4(g)6, the Division has revised the wording about an applicant's or client's ability to appeal to reflect the wording used in N.J.A.C. 10:133-1.8, Appeals.

The Division has replaced reference to a court order with reference to a statute, N.J.S.A. 9:6-8.10a, which includes court orders, but is broader in scope, at N.J.A.C. 10:133-1.4(h).

The Division has clarified that its responsibility is to help ensure that children are protected from abuse or neglect, at N.J.A.C. 10:133-1.6(a)2.

The proposed rule stated that one of the things the Division tells a family is "what collateral contacts will be made and for what purpose." The Division may have good reason not to give this information and may be prohibited from so doing by N.J.S.A. 9:6-8.10a during a child abuse investigation. The wording has been changed and a reference to N.J.S.A. 9:6-8.10a has been added to N.J.A.C. 10:133-1.6(a)10.

In N.J.A.C. 10:133-1.8(b), the Division has added a line to clarify the process of obtaining a regional dispositional conference.

The proposed rule stated that an applicant or client who disagreed with the denial, reduction, suspension or termination of services subject to a court order or pending decision of the court, may bring the matter directly before the court. Such a person is not necessarily entitled to intervene in litigation. In some situations the Division may oppose this person's intervention. The statement, as published, might be interpreted as a waiver by the Division of any objections.

The Division is adopting a wording change at N.J.A.C. 10:133-1.8(d) to clarify the meaning; i.e., "at the option of the applicant or client, he or she may seek to bring the matter directly before the court."

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 133
INITIAL RESPONSE AND SERVICE DELIVERY GENERAL PROVISIONS

SUBCHAPTER 1. GENERAL PROVISIONS

10:133-1.1 Purpose

(a) The purpose of the series of chapters on initial response and service delivery is to describe certain services provided by the Division, the processes used by the Division to determine what actions to take in response to a referral or application for those services, what applicants and clients may expect of the Division, and any standards and requirements for applicants, clients, and the Division related to those services.

(b) The purpose of this chapter is to provide certain general provisions and to define certain words and terms to be used throughout the chapters on initial response from the Division and service delivery by the Division which follow, so as to provide standardization and ease of accessibility to the user of the New Jersey Administrative Code.

10:133-1.2 Scope

The provisions of this chapter and this series of chapters apply to all Division representatives, all applicants for services from the Division, all clients receiving services from the Division, all persons referred for Division services, and all persons making referrals to the Division.

10:133-1.3 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Abused or neglected child" means a child:

1. Less than 18 years of age:

i. Whose parent or guardian inflicts, or allows to be inflicted upon such child, physical injury by other than accidental means, which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

ii. Whose parent or guardian creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;

iii. Whose parent or guardian commits or allows to be committed an act of sexual abuse against the child;

iv. Whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his or her parent or guardian to exercise a minimum degree of care:

(1) In supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so, or though offered financial or other reasonable means to do so; or

(2) In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;

v. Who has been willfully abandoned by his or her parent or guardian;

vi. Upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to herself or himself, others or property; or

vii. Who is in an institution other than a day school, and:

(1) Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being; or

(2) Has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

2. No child who in good faith is under treatment by spiritual means alone, through prayer in accordance with the tenets and

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practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall for this reason alone be considered to be abused or neglected.

"Applicant" means a person, either adult or minor, who requests services from the Division, for himself or herself or his or her family; or a person referred by another person or agency for non-protective services. For the purposes of N.J.A.C 10:133 through 133G, the term "applicant" does not include those people who request or need information only, nor does it include persons applying to become foster parents, adoptive parents or other providers of service.

"Assessment" means the gathering of *[informaiton]* ***information***, evaluation of the information gathered to determine the client's service needs, and the determination of who shall provide the needed services.

"Child" means any person less than 18 years of age, except as otherwise provided by N.J.S.A. 9:17B-2f.

"Child welfare services" or "welfare services" or "services" means consultation, counseling, and referral to or utilization of available resources, for the purpose of determining and correcting or adjusting matters and circumstances which are endangering the welfare of a child, and for the purpose of promoting his or her proper development and adjustment in the family and the community; also, as defined under Title IV-B of the Social Security Act, 42 U.S.C. 620 et seq., as from time to time amended.

"Client" means any person including an applicant receiving a service from the Division or any person referred to the Division for services.

"Collateral contact" means a contact made with a person other than the referral source or those who are subject(s) of the referral in order to collect additional information.

"Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

"Director" means the Director of the Division of Youth and Family Services in *[The]* ***the*** Department of Human Services.

"Dispositional conference" means a formal review of a Division decision, which is made by Division administrative*[s]* personnel not involved in making the original decision.

"Division" or "DYFS" means the Division of Youth and Family Services in the Department of Human Services.

"Division representative" means a professional or paraprofessional employee of the Division of Youth and Family Services.

"Foundling" means an infant or young child found abandoned, who cannot be identified and whose family cannot be identified.

"Information only" means the provision of information in response to an inquiry, when the person making the inquiry is not alleging or in any way indicating that a child is an abused or neglected child.

"Information and referral" means the activity of informing an applicant or person referred for Division services about services available from public and private sources, based on a determination of need, knowledge of Division and community resources, and follow up where indicated.

"Parent" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care.

"Parent or guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school.

"Referral" means a verbal or written statement made to the Division by a referral source which indicates a possible need for a child protective service investigation or child welfare services for a child or family.

"Referral source" means a relative, agency, association, public official, or anyone having a special interest in a child or family, or the child himself or herself who makes a referral or application to the Division.

"Response" means all those activities conducted by the Division between application or referral and the initiation of an assessment or child protective service investigation and includes the provision of any services needed on an emergency basis.

"Screening" means the introductory information gathering activity which takes place during the initial contact or during contact subsequent to a referral or request for services regarding a client between the Division and the applicant or the referral source and collateral contacts to determine whether the referral or application for service is appropriate for the Division.

10:133-1.4 Rights of applicants and clients during initial response

(a) Any person who currently resides in New Jersey shall have the right to apply for any child welfare services or child protective services provided by the Division.

(b) Any person within New Jersey may apply for child welfare services or protective services as specified in N.J.S.A. 30:4C-11.

(c) Anyone requesting in person to apply for services shall be given the opportunity to do so immediately.

(d) An applicant or client may orally or in writing authorize a representative to speak and act on his or her behalf. If the applicant or client is incompetent or incapacitated or in an emergency, the application may be signed for him or her by someone determined by the Division to be able to act responsibly on his or her behalf, including a Division representative. The Division shall help the client, applicant, or representative complete the application, if necessary.

(e) The applicant, client, or representative requesting or requiring services shall have the right to make application in writing.

(f) The applicant, client, or representative shall receive a copy of the completed application.

(g) The applicant or client shall receive written information about:

1. The Division's authority to provide service and conduct protective service investigations;
2. Services available through the Division;
3. The Division's mission;
4. The role of the Division representative;
5. The rights of applicants and clients including their right to consult an attorney;
6. *[The availability of administrative reviews and notices of appeal]* ***When and how an applicant or client may appeal an action taken by or decision made by the Division***;
7. The definition of an abused or neglected child;
8. The purpose and general procedures for a child protective service investigation;
9. The purpose and general procedures for an assessment;
10. Parental financial responsibilities when receiving Division services;
11. How to reach the Division by telephone during normal working hours and after working hours; and
12. Child Placement Review and internal placement reviews when placement has been requested or is otherwise indicated.

(h) The applicant or client shall have the right to have the information collected about his or her family considered confidential. The applicant has a right to know that information will be released, only with his or her written consent or *[a court order]* ***pursuant to N.J.S.A. 9:6-8.10a***. In addition, he or she has the right to know that he or she may have access to information about his or her family not otherwise protected by law, for example, under N.J.S.A. 9:6-8.10a, or 42 U.S.C. 5101 et seq.

(i) The Division shall not discriminate against an applicant or client on the basis of race, color, national origin, handicapping condition, gender, religion, or marital, parental, or birth status.

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(j) The applicant, client or referral source, if a request is made, shall have the right to receive a written disposition from the Division as soon as practical but not later than 45 calendar days from date of application or referral.

(k) Each applicant or client shall be informed of:

1. The Division's responsibilities, as listed in N.J.A.C. 10:133-1.6;
2. Eligibility factors used by the Division;
3. The Division's legal responsibility to investigate certain referrals;
4. Other resources in the community or courses of action, which might meet his or her needs;
5. Why the Division is involved with him or her and the family, if the person did not ask for help;
6. What the Division expects from him or her and the child; and
7. What services can be provided.

(l) An applicant or client shall have the right to have the rules of this chapter followed.

(m) The applicant or client shall have the right to refuse any involvement or services not wanted, unless a court order requires the Division to provide them, and the court order requires the applicant or client to utilize the service.

10:133-1.5 Responsibilities of applicants and clients

(a) A person applying for or receiving certain social services shall provide information necessary to determine his or her eligibility for social services including requested financial information.

(b) A person applying for or receiving social services shall report within seven days to the Division representative any changes in the number or relationship of family members, changes in address or residence, changes in financial circumstances, changes in employment or any other change in circumstances which may affect eligibility for services.

10:133-1.6 Responsibilities of the Division

(a) The Division, through a Division representative, is responsible for:

1. Explaining why the Division is involved with a family;
2. Helping ensure that the family's children are protected ***from abuse or neglect***;
3. Telling the applicant what is expected from him or her and his or her children;
4. Explaining to the family the procedures to obtain the services requested;
5. Providing only those services agreed upon unless there is a court order or otherwise authorized in N.J.S.A. 30:4C-12 and 15 and N.J.S.A. 9:6-8.18 and 29;
6. Listening and offering to help find solutions to problems;
7. Discussing progress on a regular basis;
8. Informing the client of changes in services that may affect the family;
9. Explaining when and under what circumstances the Division will terminate its involvement with the family;
10. Explaining *[what]* ***that*** collateral contacts will be made and for what purpose ***within the provisions of N.J.S.A. 9:6-8.10a***; and
11. Explaining that, depending upon the service received and the client's financial circumstances, the client may have a responsibility to reimburse the agency or pay directly for the service.

10:133-1.7 Service limitations

(a) The Division shall provide needed services within the limits of legislative appropriations to all eligible children and families in similar circumstances. The provision of services shall also be subject to limitations due to actual ability of the Division to provide such services directly or by purchasing such services from appropriate privately sponsored agencies or institutions.

(b) The demand for social services frequently exceeds the funds available to provide them. Therefore, in accordance with N.J.S.A. 30:4C-13, the Division Director may establish Division-wide service limitations based upon the need to focus finite resources to serve those individuals most in need. Service limitations shall be published within 90 days of imposition in the Public Notices section of the New Jersey Register.

10:133-1.8 Appeals

(a) An applicant or client who disagrees with an action taken by a Division representative may ask to speak with the supervisor and, if the disagreement is unresolved, with the office manager.

(b) An applicant whose request for Division services has been denied, or a client who is informed that services will be denied, reduced, suspended or terminated, shall be informed in writing by the Division representative of the reasons for the decision, that he or she has a right to appeal the decision, and that to exercise that right he or she may request a local dispositional conference. Upon such a request, the office manager shall hold a local dispositional conference, make a decision, and shall inform the applicant or client in writing of the decision and the reasons for the decision. When the decision of the local dispositional conference results in a denial, reduction, suspension, or termination of services, the office manager shall also inform the applicant or client in writing that the applicant or client has a right to ***appeal this decision, and to do so, he or she may request that the regional office hold*** a regional dispositional conference.

(c) Upon the request of an applicant or client who disagrees with the results of the local dispositional conference, the regional administrator shall hold a regional dispositional conference. The regional administrator shall make a decision, shall inform the applicant or client in writing of the decision and the reasons for the decision. When the decision of the regional dispositional conference results in a denial, reduction, suspension, or termination of services, the regional administrator shall also inform the applicant or client in writing that the applicant or client has a right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, Administrative hearings.

(d) Notwithstanding the provisions of (b) and (c) above, if the services denied, reduced, suspended, or terminated are the subject of an existing court order or are pending the decision of a court, the applicant or client who disagrees with the decision to deny, reduce, suspend or terminate such services shall be informed in writing by a Division representative that the applicant or client may request local and regional dispositional conferences, but that such conferences are not required, and that, at the option of the applicant or client, he or she may ***seek to*** bring the matter directly before the court. There is no right to an administrative hearing, pursuant to the provisions of N.J.A.C 10:120-2, if the services denied, reduced, suspended or terminated are the subject of an existing court order or are pending the decision of a court.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Initial Response

Adopted New Rules: N.J.A.C. 10:133A

Proposed: December 16, 1991 at 23 N.J.R. 3717(a).

Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 9, 1992 as R.1993 d.20, **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. 30:4C-44 and 9:6-8.15.

Effective Date: January 4, 1993.

Operative Date: July 1, 1993.

Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

No comments were received, but see the notice of adoption of N.J.A.C. 10:122B published elsewhere in this issue of the New Jersey Register for the Association for Children of New Jersey's general comments.

Summary of Agency-Initiated Changes:

The Division has removed a portion of the Purpose section, N.J.A.C. 10:133A-1.1 which is not applicable to this chapter.

At N.J.A.C. 10:133A-1.5(a)4, the Division has added a reference to a related rule, N.J.A.C. 10:129-2.1(d), regarding confidentiality, which

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had been inadvertently omitted at proposal. The referenced rule text at N.J.A.C. 10:129-2.1(d) states that the identity of the referent shall not be disclosed by the Division to legally authorized persons or agencies when disclosure would be likely to result in endangering the referent's life or safety or in discharge or discrimination against the referent with respect to his or her employment.

The Division has added an additional point to the determinations which must be made at screening, that the Division will determine if a child abuse referral is about an adult, age 18 to 21 years, who is under the supervision of the Division and lives in an out-of-home placement. The Division already accepts these cases, so the addition accurately reflects current practice, N.J.A.C. 10:133A-1.6(a)6.

The Division has corrected the reference to the Interstate Compact on Juveniles, N.J.S.A. 9:23-1, at N.J.A.C. 10:133A-1.6(b).

At N.J.A.C. 10:133A-1.8(b), the Division added that collateral contacts may be made by written request, as well as by telephone or in person, in order to fully represent standard case work practice.

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 133A
INITIAL RESPONSE

SUBCHAPTER 1. INITIAL RESPONSE AND SCREENING

10:133A-1.1 Purpose

The purpose of this chapter is to make known the rights and responsibilities of applicants and clients of the Division and the process used by the Division to determine what action to take when a referral or application is made.

10:133A-1.2 Scope

The provisions of this chapter apply to all Division representatives, all applicants for services from the Division, all persons referred for Division services, and all persons making referrals to the Division.

10:133A-1.3 Definitions

The definitions in N.J.A.C. 10:133, General Provisions of Initial Response and Service Delivery, are hereby incorporated into this chapter by reference.

10:133A-1.4 Referrals and applications

The Division shall screen all referrals and applications made by telephone, in person, or in writing from any referral source or applicant as stipulated in N.J.A.C. 10:133A-1.7 and 1.8. The Division shall provide information to the referral source as stipulated in N.J.A.C. 10:133*[A]*-1.4(j) and N.J.A.C. 10:133A-1.5.

10:133A-1.5 Information given to referral source

(a) The Division representative shall inform each referral source of:

1. The responsibilities of the Division under State law;
2. The kinds of services provided by the Division;
3. The Division's ability to accept a referral if the referral source decides to remain anonymous;
4. The referral source's right to have his or her name kept confidential unless he or she gives the Division permission to use it *[or]***,* court procedures require disclosure***, or the Division releases the referral source's name pursuant to N.J.A.C. 10:129-2.1(d)***; and
5. Other resources in the community.

10:133A-1.6 Determinations made at screening

(a) The Division representative shall determine that any person who applies to or is referred to the Division currently resides in New Jersey and that his or her circumstances are such that he or she falls into one or more of the categories listed below:

1. A person from birth to age 18 and his or her family;
2. An unaccompanied refugee minor or entrant minor and other non-U.S. citizen minor;
3. A pregnant woman of any age, on behalf of her unborn child;
4. An adult who requires services on behalf of or in relation to a child; *[or]*
5. A minor living in adult circumstances, known as an "emancipated minor," either through court action or without court action*[.]***; or***
6. An adult, age 18 to 21 years, who lives in an out-of-home placement and is under the supervision of the Division and for whom a referral of child abuse is made to the Division.

(b) The Division representative shall determine if a runaway child is a non-New Jersey resident from another state who is located in New Jersey and is either under age 18, or is younger than the age of majority stated in the Interstate Compact on *[the Placement of Children]* ***Juveniles*** in effect in his or her home state (see N.J.S.A. 9:23-1), whichever is older*[; or]***.***

(c) In accordance with the provisions of N.J.S.A. 9:23-5 et seq., the Interstate Compact on the Placement of Children, the Division representative shall screen a request for services from another state on behalf of a child:

1. Who is a resident of the other state;
2. Who has not yet reached the age of majority in the other state; and
3. Who is located in the State of New Jersey.

10:133A-1.7 Screening of referrals and applications

(a) The Division representative shall screen each referral or application to determine whether the referral or application for service is appropriate for the Division.

(b) Screening shall be completed within three working days of receiving the referral unless the referral requires a more prompt response as stipulated in N.J.A.C. 10:133A-1.10(b) and (c).

10:133A-1.8 Contacts made during screening

(a) The initial screening contact between the Division representative and the applicant or referral source may be by telephone or in person and shall serve to:

1. Elicit basic identifying information;
2. Elicit a statement of the problem, allegation, or request for service;
3. Determine *[eligbility]* ***eligibility***;
4. Assess the type of response necessary based on the information received;
5. Determine whether services are needed on an emergency basis;
6. Provide basic information about the Division's services and agency mandates and other relevant services; and
7. Document the referral or request for services.

(b) The Division representative shall make collateral contacts as necessary to obtain additional information and to clarify the presenting problem. Collateral contacts may be made in person *[or]***,* by telephone ***or by written request***.

(c) Referrals and applications received by letter shall require an acknowledgment in the form of telephone or in person contact to complete the screening activity where a telephone number or address has been provided.

10:133A-1.9 Decision following screening

(a) Following screening, the Division representative, with supervisory approval shall:

1. Conduct a child welfare services assessment to determine how or if the Division can provide child welfare services;
2. Conduct a child protective services investigation in order to determine whether a child is an abused or neglected child; or
3. Provide the applicant with information and referral to another resource and end the Division's involvement.

10:133A-1.10 Responding to referrals and applications

(a) The Division representative shall respond in person.

(b) The response shall begin immediately upon receipt of the referral when the allegation is that:

1. A child is currently being physically or sexually abused;
2. A child has been physically injured by abuse or neglect;
3. A child has died under suspicious circumstances and there are other children in the home;
4. A child has physical trauma or physical evidence of sexual interaction which may be lost if not documented immediately;

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5. A child may need immediate medical treatment due to abuse or neglect;

6. A child is without adult supervision and is not competent to provide for his or her own care;

7. A child is in the hospital and in protective custody in the hospital;

8. A child or family is in severe psychological crisis or actively calling for help which cannot be resolved over the telephone or by referral to another appropriate community resource;

9. The severity of a referral situation is in doubt; or

10. A foundling is discovered, unless the child is already receiving appropriate medical care and the police are actively investigating.

(c) The response shall begin within 24 hours of receiving a referral when the allegation is that:

1. A child has been physically abused in the past, evidence of the physical abuse is no longer present, and there is evidence that no abuse is likely to occur within 24 hours because the perpetrator has no access to the victim; or

2. A foundling is already receiving appropriate medical care and the police are involved.

(d) The response shall begin within 72 hours or, with the approval of the office manager, within three working days of receiving a referral unless an immediate or 24 hour response is required as outlined in (b) or (c), above when:

1. The referral indicates present or past physical neglect;

2. The referral indicates emotional abuse or neglect;

3. The referral is from the Family Court, Crisis Intervention Unit or Court Intake;

4. The referral alleges domestic violence which is threatening the safety of the child; or

5. The referral of sexual abuse does not indicate current abuse or physical trauma, as stated in (b) above or does not require an extension as described in (e) below.

(e) The response to an allegation of sexual abuse may begin more than 72 hours after receiving a referral when a credible source, for example, the child's mental health practitioner, indicates that the child is not at risk and extending the time frame for response allows the Division representative to plan his or her response without compromising the child or the investigation. The Division representative shall document the reason for the extension of the time frame for response and obtain office manager approval. The response shall begin within 10 working days of the referral.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Information and Referral

Adopted New Rules: N.J.A.C. 10:133B

Proposed: December 16, 1991 at 23 N.J.R. 3720(a).

Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 9, 1992 as R.1993 d.21, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4C-44 and 9:6-8.15.

Effective Date: January 4, 1993.

Operative Date: July 1, 1993.

Expiration Date: January 4, 1998.

Summary of Public Comments and Agency Responses:

No comments were received, but see adoption of N.J.A.C. 10:122B published elsewhere in this issue of the New Jersey Register for the Association of Children of New Jersey's general comments.

Two typographical corrections have been made at N.J.A.C. 10:133B-1.4(b)2 and 1.6.

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 133B
INFORMATION AND REFERRAL

SUBCHAPTER 1. GENERAL PROVISIONS

10:133B-1.1 Purpose

The purpose of this chapter is to make known the actions the Division shall or may take on behalf of anyone who expresses a need for services or information for himself or herself or for a family or on behalf of a child.

10:133B-1.2 Scope

The provisions of this chapter apply to all Division representatives, all applicants for services from the Division, all persons referred for Division services, and all persons making referrals to the Division.

10:133B-1.3 Definitions

The definitions in N.J.A.C. 10:133, General Provisions of Initial Response and Service Delivery, are hereby incorporated into this chapter by reference.

10:133B-1.4 Information and referral services

(a) The Division shall provide information and referral services within 72 hours to anyone who expresses a need for services or information for himself or herself or for a family or on behalf of a child.

(b) The Division may provide information and referral instead of an assessment and provision of services when:

1. The applicant requests or needs more than information only, as defined in N.J.A.C. 10:133-1.3; or

2. Abuse or neglect *[are]* ***is*** not alleged, and the Division is not legally required to provide the requested service, and another part of the social service system is responsible for providing the service.

10:133B-1.5 Help for the applicant

The Division representative shall help the applicant make the referral when the applicant wants this help or the need for this help is otherwise indicated.

10:133B-1.6 Follow-up

When the Division representative does not provide help with the referral, the Division representative shall follow up with the applicant or the source/service to which the applicant was referred to determine whether the applicant continues to need a service from the Division when the applicant requests follow-up or the need for this follow***-***up is otherwise indicated. The Division representative shall provide the applicant with the Division representative's name and telephone number and inform the applicant that the applicant may recontact the Division at any time for help in obtaining the needed services.

10:133B-1.7 County information and referral plan

Division representatives in each county shall work with community agencies and county government to develop a county information and referral plan.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Assessment

Adopted New Rules: N.J.A.C. 10:133C-3

Proposed: January 21, 1992 at 24 N.J.R. 217(a).

Adopted: December 9, 1992 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: December 9, 1992 as R.1993 d.22, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4C-4(h).

Effective Date: January 4, 1993.

Operative Date: July 1, 1993.

Expiration Date: January 4, 1998.

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Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
The phrase "or her" has been inserted in N.J.A..C 10:133C-3.5(a)3 for clarification.
The Division has added additional references to related statutes, N.J.S.A. 30:4C-11 and 12, at N.J.A.C. 10:133C-3.7(b).

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 133C
ELIGIBILITY AND ASSESSMENT

SUBCHAPTER 1. PRINCIPLES OF SERVICE DELIVERY (RESERVED)

SUBCHAPTER 2. ELIGIBILITY FOR SERVICES (RESERVED)

SUBCHAPTER 3. ASSESSMENT

10:133C-3.1 Purpose
The purpose of this subchapter is to specify when the Division shall conduct an assessment of a family's service needs and the elements of this assessment.

10:133C-3.2 Scope
The provisions of the subchapter shall apply to all Division representatives, applicants for services and persons referred for Division services who require an assessment of their service needs on the basis of a screening, see N.J.A.C. 10:133A-1, and to all clients of the Division.

10:133C-3.3 Definitions
The definitions in N.J.A.C. 10:133-1.3, Definitions, are hereby incorporated into this subchapter by reference.

10:133C-3.4 Assessment required
(a) An assessment of the family's service needs shall be conducted during or following a child abuse investigation or when child welfare services are requested.
(b) An assessment shall begin promptly based upon an initial determination of the immediacy of the needs of the child and his or her family for the service sought or required, according to time frames established in 10:133A-1.10, Responding to referrals and applications.
(c) The Division shall complete an assessment no less frequently than every six months during the period of service delivery.

10:133C-3.5 Purpose of assessment
(a) The purpose of an assessment is to:
1. Evaluate the circumstances of the child, his or her family and the community, including the child's need for protection;
2. Identify whether child welfare services are needed;
3. Identify which specific services can meet the needs of the child and his ***or her*** family; and
4. Identify who shall provide those services.

10:133C-3.6 Assessment elements
(a) The Division representative shall conduct an assessment of:
1. The child welfare service needs of the child and family;
2. Whether services are needed on an emergency basis;
3. What child welfare services the child and family want;
4. Whether any services already provided are alleviating the family's problems;
5. Whether the child and family will accept or continue to accept services;
6. What services are needed or continue to be needed to prevent out-of-home placement; and
7. What services are needed to reunify a child with his or her family when the child is in out-of-home placement.
(b) In making the assessment provided for in (a) above, the Division representative shall consider, at a minimum, the following:
1. Whether a child has been abused or neglected and the risk of child abuse or neglect;
2. The child's medical, physical, educational, and psychological strengths and problems;
3. The parents' own strengths and weaknesses and their problems related to the child;
4. The willingness of the family to provide care and protection, relative to the child's needs;
5. The ability of the family to provide care and protection relative to the child's needs;
6. The appropriateness of the requested or provided services and the projected outcome if the parent and child receive or do not receive the requested or indicated service;
7. The availability of appropriate supports from relatives;
8. The availability of appropriate community and social service supports;
9. The ability of the family to pay for or contribute to the cost of the services; and
10. The degree to which the parent and child understand their rights, responsibilities, and services they may receive and their impact upon the family.

10:133C-3.7 Information gathering
(a) The Division representative shall gather identifying information about the family members. The Division shall gather the majority of the information necessary to make an assessment through personal interviews with family members who are available.
(b) The Division representative may request written information from agencies and others who may have information about the family which is necessary to determine the family's need for child welfare services, in accordance with the provisions of N.J.S.A. 9:6-8.40***, and 30:4C-11 and 12, as applicable***.
(c) The Division representative may interview any person who, by virtue of his or her relationship to the child, family, perpetrator or incident, can reasonably be determined to have information necessary to complete the assessment.

10:133C-3.8 Determination of service provision
(a) The Division representative, in conjunction with the family and service providers, shall determine what services are needed to meet the family's needs.
(b) The Division representative shall determine whether the services are available and whether the services will be provided by the Division or other service providers.
(c) The Division representative and the family shall develop a case plan if the Division provides any service to the family, including case management. See N.J.A.C. 10:133D-2, Case plan.
(d) The Division shall provide information and referral or information only to the family for identified services which are not provided by the Division.
(e) The Division shall terminate involvement with the family when services are no longer needed from the Division.

10:133C-3.9 Information provided to client
(a) The Division representative shall inform the family of the steps, listed in N.J.A.C. 10:133C-3.6 and 3.7, which the Division will take in order to complete the assessment.
(b) The Division representative shall inform the family in writing within 45 days from the date of application or from the initial contact in response to a referral whether services will be provided and who will provide the services.

10:133C-3.10 Documenting the assessment
(a) The Division shall prepare a written initial assessment within:
1. Forty-five calendar days of receipt of a referral or application; or
2. Thirty days of a child entering placement, whichever comes sooner.
(b) The Division shall further document the assessment in writing at least once every six months after the initial documentation (see (a) above).

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10:133C-3.11 Appeals

A client who is informed that Division services will be denied, reduced, suspended or terminated may appeal that decision, in accordance with the provisions of N.J.A.C. 10:133-1.8, Appeals.

INSURANCE

(a)

DIVISION OF FINANCIAL SOLVENCY

Relief from Insurer Obligations under the Fair Automobile Insurance Reform Act of 1990

Adopted New Rules: N.J.A.C. 11:2-35.5 and 11:2-35.6.

Adopted Amendments: N.J.A.C. 11:2-35.1, 11:2-35.2, 11:2-35.3, and 11:2-35.4.

Proposed: September 21, 1992 at 24 N.J.R. 3212(a).

Adopted: December 9, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: December 10, 1992 as R.1993 d.24, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:33B-1 et seq.

Effective Date: January 4, 1993.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received written comments from Hannoch Weisman (on behalf of Farmers' Mutual Fire Insurance Association of New Jersey) and the Alliance of American Insurers.

COMMENT: One commenter objected to the provision in N.J.A.C. 11:2-35.5(c)1, which provides that any obligation deferred shall be deemed to be an exemption two years from date the obligation was originally due, unless the Commissioner of Insurance (Commissioner), prior to that date, determines that the insurer's financial condition has improved so that payment of the obligation will not result in the insurer's financial condition being or becoming unsafe or unsound. The commenter stated that this provision is not fair to other insurers who will be required to bear the burden of paying the obligations of the exempted insurer. The commenter suggested that the rules be revised to provide that if the insurer's financial condition improves in the future so that it is again a "viable" company, the Department may seek payment for the deferred sums to be used to pay some of the deficits incurred such as those in the Market Transition Facility of New Jersey.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The Department recognizes that to the extent an insurer's obligations to pay assessments pursuant to N.J.S.A. 17:30A-8a(9) are deferred, exempted, or abated, the liability of remaining insurers is increased. The Department believes, however, that the standards set forth in the rules are reasonable and appropriate. The rules provide that an insurer should not be granted a general exemption from payment of assessments and surtaxes, except when the insurer is in an unsafe or unsound financial condition before payment of the assessment or surtax. Nevertheless, the rules recognize that an insurer whose financial condition has not improved sufficiently in three years is unlikely to improve in the future (and the more so if these obligations accumulated indefinitely), and should be granted an exemption for the earliest year's obligations. Moreover, the Department believes that these procedures equitably balance the goals expressed by the Legislature both of requiring that all insurers pay applicable surtaxes and assessments and of ensuring that payment of such obligations will not result in an insurer's financial condition being or becoming unsafe or unsound.

COMMENT: One commenter noted that N.J.A.C. 11:2-35.5(c)2 provides the specified circumstances in which the Commissioner will exempt an insurer from its obligation to pay assessments or surtaxes pursuant to N.J.S.A 17:30A-8a(9) or 17:33B-49, and in all other cases, the Commissioner will defer an insurer's obligation. The commenter suggested that a deferral should be based on a factual finding of a future ability to pay, particularly since an insurer is required to submit five year projections as part of its request for relief pursuant to N.J.A.C. 11:2-35.4(a)4. The commenter believes that the Commissioner should exempt an insurer's obligation to pay assessments and surtaxes unless he makes a finding of a future ability to pay based on these projections.

RESPONSE: Upon review of the commenter's concerns, the Department has determined that no change is required. The Department initially notes that the requirement that an insurer seeking relief submit five year projections has been deleted through amendment to N.J.A.C. 11:2-35.4. Moreover, the Department believes that the rules as drafted currently provide that the Commissioner shall either defer or exempt an insurer's obligation to pay assessments of surtaxes based on a future ability to pay. N.J.A.C. 11:2-35.5(c)2 specifically provides that the Commissioner shall grant an exemption if payment of the obligation would result in the insurer being in a hazardous financial condition as determined in accordance with N.J.A.C. 11:2-27. As noted in the response to the previous comment, the Department believes that these standards are reasonable and appropriate in that they equitably balance the goals expressed by the Legislature.

COMMENT: One commenter stated that N.J.A.C. 11:2-35.5(c), which provides the standards by which the Commissioner will either defer, exempt or abate an insurer's obligation to pay assessments and surtaxes, does not provide standards governing when deferred obligations would become due. The commenter stated that this makes financial planning "impossible." The commenter thus suggested that the Commissioner develop standards which govern when a company will be required to pay a deferred obligations. The commenter suggested that the Commissioner could adopt guidelines indicating that an insurer will not pay a deferred obligation until its premium to surplus ratio reached some level considered prudent. The commenter believes that this would provide an insurer a basis upon which it could determine when and how its payment obligations would arise.

RESPONSE: The Department believes that the rules as drafted provide adequate guidelines for an insurer to determine when a deferred obligation would become due. Initially, the Department notes that a deferral shall be deemed to be an exemption two years from the date the obligation was originally due, unless the Commissioner, prior to that date, determines that the insurer's financial condition has improved such that payment of the obligation would not result in the insurer's financial condition being or becoming unsafe or unsound. In determining whether an insurer's financial condition had improved within the two year period, the Commissioner shall consider the same factors and standards upon which the Commissioner based the original deferral and which would have been set forth in the Commissioner's order granting the deferral. The factors considered reflect the standards set forth in N.J.S.A. 17:33B-52, 17:33B-53, 17:33B-55, and 17:33B-56 for exempting, deferring, or abating an insurer's obligations to pay assessments or surtaxes. The Department therefore believes that since any insurer granted a deferral of its obligations to pay assessments and surtaxes is fully apprised of the standards upon which such deferral was granted, it would be fully apprised of the basis upon which such deferral would be revoked.

COMMENT: One commenter stated that an obligation which has been deferred should be deemed to be an exemption one year from the date the obligation was originally due, rather than two years as is provided in the rules. The commenter stated that the effect of a contingent liability based on one year's deferral is much less "problematic" on the insurer's ability to do business. Moreover, the commenter stated that the Property-Liability Insurance Guaranty Association assesses insurers on an annual basis. The annual assessments include amounts which were unpaid in the prior year as a result of relief granted by the Commissioner. Accordingly, the commenter believes that the Commissioner should determine whether the insurer can meet a deferred obligation before the deferred liability is reassessed to other insurers.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The Department believes that the two-year period is reasonable, appropriate and consistent with the examination cycle for property/casualty insurance conducted pursuant to N.J.S.A. 17:23-4. The Department currently conducts an examination of insurers authorized to transact property/casualty business in the State at least once every three years. The Department does not believe that one year is sufficient time for the Commissioner to determine whether an insurer's financial condition is likely to improve in the future. As previously noted, the rules provide that an insurer should not be granted a general exemption from payment of assessments and surtaxes, but recognize that an insurer whose financial condition has not improved sufficiently over a three year period is unlikely to improve in

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the future. The Department believes that this procedure equitably balances the goals expressed by the Legislature. The Department also notes that while the commenter stated that the effect of a contingent liability based on one year's deferral is "much less problematic," it failed to provide any support for this assertion.

COMMENT: One commenter stated that where the Commissioner finds that an insurer is able to pay a portion of its assessment obligation previously deferred, that amount should be applied toward the insurer's most recent obligation and not a prior, deferred obligation.

RESPONSE: The Department disagrees. Adoption of the commenter's suggestion essentially would result in all deferred obligations being deemed an exemption regardless of whether the Commissioner determines that the insurer is able to pay either all or part of such deferred obligation within the two year period, thus obviating the purpose and goal of these procedures. Adoption of the commenter's suggestion also would be inconsistent with the goals expressed by the Legislature in permitting the Commissioner to defer an insurer's obligations. To "defer" means "to put off or delay" and "implies a deliberate putting off to a later time," (Webster's Ninth New Collegiate Dictionary, 1988, p. 333). Accordingly, the deferral of an obligation is merely a delay or postponement of the payment of that obligation. The Department thus believes it reasonable and appropriate to require that payment of amounts previously deferred be paid towards the particular obligation which was originally deferred.

Summary of Agency-Initiated Change:

N.J.A.C. 11:2-35.6 has been revised to clarify that a timely request for a hearing in the proper form shall stay the effect of a denial of relief until the Commissioner's final disposition of the matter made pursuant to that section. This procedure is consistent with current Department practice that a request for a hearing also acts to stay the effect of the denial of relief without separate application.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***):

11:2-35.1 Purpose and scope

(a) The purpose of this subchapter is to establish the informational and procedural requirements for insurer requests for exemption, abatement, deferral, suspension of or excuse from an insurer's obligation, as the case may be, under the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

(b) (No change.)

11:2-35.2 Definitions

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

"Applicant" means the insurer seeking an exemption, abatement, deferral, suspension of or excuse from its obligations pursuant to the FAIR Act.

. . .

"Relief" means an exemption, abatement, deferral, suspension of or excuse from the obligations imposed pursuant to the FAIR Act.

"Unsafe or unsound financial condition" is as defined in N.J.S.A. 17:33B-19, 17:33B-20, 17:33B-23, 17:33B-24, 17:33B-27, 17:33B-28, 17:33B-52, 17:33B-53, 17:33B-55 and 17:33B-56, as applicable. For purposes of relief from obligations imposed pursuant to N.J.S.A. 17:30E-14g, 17:33B-9c, and 17:33B-11c(5), "unsafe or unsound financial condition" shall have the same meaning as in N.J.S.A. 17:33B-19 and 17:33B-20, and the same procedures therein shall be followed depending on whether the relief sought is immediate or discretionary.

11:2-35.3 Application procedures and filing format

(a) Any insurer seeking immediate relief from any FAIR Act obligation pursuant to N.J.S.A. 17:30E-14g, 17:33B-9c, 17:33B-11c(5), 17:33B-19, 17:33B-23, 17:33B-27, 17:33B-52 or 17:33B-55 shall submit a request for such relief no more than 45 days and not less than 15 days prior to the due date for payment or fulfillment of such obligation.

(b) Any insurer seeking discretionary relief from any FAIR Act obligation pursuant to N.J.S.A. 17:30E-14g, 17:33B-9c, 17:33B-11c(5), 17:33B-20, 17:33B-24, 17:33B-28, 17:33B-53 or 17:33B-56 shall submit a request for such relief no later than the due date of such obligation.

(c) All requests outlined in this subchapter shall be accompanied by a statement averring a need for immediate or discretionary relief from such obligation, as the case may be, including supporting documentation, as set forth in N.J.A.C. 11:2-35.4 and shall specify the statutory basis for such relief. A single filing may request relief from any number of FAIR Act obligations.

(d) (No change.)

(e) All insurers requesting relief pursuant to this subchapter shall submit five copies of each request in the format set forth in (d) above.

(f) A request which is untimely, which is not submitted in the proper format, or which does not contain all of the information required by N.J.A.C. 11:2-35.4 or this section, may be rejected on such grounds by the Commissioner.

(g) If a request fails to contain all of the information required by N.J.A.C. 11:2-35.4 or this section, the Department shall notify the insurer that its request for relief is deficient and is denied for inadequate documentation. The notice shall also set forth the information required to cure the deficiency. The insurer shall submit the additional information within 30 days of receipt of the Department's notice of deficiency. Failure to submit within 30 days the information necessary to cure the deficiency may result in the insurer's request being rejected as untimely.

11:2-35.4 Informational filing requirements

(a) When requesting immediate or discretionary relief pursuant to the FAIR Act, an insurer shall provide with its request the following information in a clear, concise and complete manner.

1. (No change.)

2. Exhibits for the latest preceding calendar quarter ending at least 45 days prior to the date of the request, and, unless otherwise indicated, on a statutory accounting basis that show:

i. Balance sheet;

ii. Profit and loss statement, containing information as set forth in the statutory annual statement page 4, Underwriting and Investment Income Exhibit, Statement of Income; and

iii. Cash flow page;

3. Exhibits by each line of business written in New Jersey that show:

i. (No change.)

ii. Profit and loss statements containing information as set forth in (a)2ii above by line of business from the period beginning January 1 in the year of filing to date of the filing as reported in the NAIC quarterly statement filed immediately preceding the date of the filing; and

iii. A detailed description of the method of allocation of expenses by line of business;

4. A detailed explanation, with supporting documentation, of the projected effect that fulfillment of the obligation would have on the immediate and long term financial condition of the company unless relief is granted as requested;

5. The most recent financial examination report conducted by the state of domicile;

Recodify existing 9.-12. as 6.-9. (No change in text.)

10. A report signed by the certifying actuary referred to in (a)9 above, which includes in summary form, if necessary, all data utilized by him or her, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

i.-iii. (No change.)

Recodify existing 14. and 15. as 11. and 12. (No change in text.)

(b) If the applicant is a member of a pooling operation among affiliates, all information requested in items (a)2 and 3 above shall be provided on a pre-pooled and post-pooled basis. The applicant shall indicate the names of other members in the pool that are also filing for exemption, abatement, deferral or suspension of, or excuse from an obligation, as the case may be, under the FAIR Act.

(c) (No change.)

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11:2-35.5 Relief

(a) When the Commissioner determines that fulfillment of a FAIR Act obligation or obligations set forth at N.J.A.C. 11:2-35.3(a) or (b) will result in the insurer being or becoming in an unsafe or unsound financial condition, or that an insurer is currently in an unsafe or unsound financial condition, the Commissioner shall order relief from the obligation(s) as set forth in (b) and (c) below.

(b) Except as provided at (c) below, the Commissioner shall order that insurer's duty to fulfill the applicable FAIR Act obligation be suspended or excused pending quarterly review of the insurer's financial condition.

(c) Where the Commissioner has granted an insurer relief from payment of assessments or surtaxes pursuant to N.J.S.A. 17:30A-8a(9) or 17:33B-49, as applicable, the Commissioner shall order that the insurer's obligation be exempted, abated or deferred, as follows:

1. Except as provided at (c)2 below, the Commissioner shall in all cases order that the insurer's obligation be deferred pending a quarterly review of the insurer's financial condition. The deferral shall be deemed to be an exemption two years from the date the obligation was originally due, unless the Commissioner, prior to that date, determines that the insurer's financial condition has improved such that payment of the obligation, or a portion thereof, will not result in the insurer's financial condition being or becoming unsafe or unsound. If an insurer is required to pay a portion of its obligation prior to the expiration of the two-year period, the remainder shall be deferred, and shall be deemed exempt at the expiration of the two-year period in the same manner as provided in this paragraph for deferred obligations.

2. The Commissioner shall order that the insurer's obligation be exempted, and thus no obligation thereafter shall be deemed to exist for the particular obligation for which the exemption was granted, if the insurer is in liquidation pursuant to N.J.S.A. 17:30C-8, or similar statute of the insurer's state of domicile, at the time the request is made. The Commissioner shall also grant an exemption if the insurer is in rehabilitation or conservation pursuant to N.J.S.A. 17:30C-6 or 17:30C-11, or similar statute of the insurer's state of domicile. The Commissioner shall also grant an exemption if payment of the obligation would result in the insurer being in a hazardous financial condition as determined in accordance with N.J.A.C. 11:2-27. An exemption granted under this paragraph to an insurer shall be for the entire obligation and no obligation thereafter shall exist for the particular obligation for which the exemption was granted; provided that the determination whether to grant an exemption from a future obligation shall be considered at the time such obligation becomes due based on the insurer's financial condition at that time.

3. The Commissioner shall order that the insurer's obligation to pay the full amount of the assessment or surtax be abated if he or she determines that payment of some amount will not result in the insurer's financial condition being or becoming unsafe or unsound. The amount which is not abated shall be deferred in the same manner provided by (c)1 above.

11:2-35.6 Hearings

(a) If the Commissioner denies an insurer's request for relief made pursuant to this subchapter, or if the insurer objects to the form of relief granted, the insurer may request a hearing on the Commissioner's determination within seven days from the date of such receipt of determination as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, and daytime telephone number of a contact person familiar with the matter;

ii. A copy of the order involved;

iii. A statement requesting a hearing; and

iv. A concise statement describing the basis for which the insurer believes that the Commissioner's findings of fact are erroneous.

2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the insurer and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. If the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner shall notify the applicant in writing as to the final disposition of the matter.

ii. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Receipt of a timely request for a hearing in the form set forth in (a)1 above shall stay the effect of a denial of relief until the Commissioner's final disposition of the matter made pursuant to this section.

(a)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor Bus Medical Expense Insurance

Adopted Amendments: N.J.A.C. 11:3-29.1, 29.2 and 29.4

Proposed: October 19, 1992 at 24 N.J.R. 3605(a).

Adopted: December 9, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: December 10, 1992 as R.1993 d.25, **without change.**

Authority: N.J.S.A. 39:6A-4.6; as amended by P.L. 1991, c.154, section 6, enacted June 7, 1991.

Effective Date: January 4, 1993.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 29. MEDICAL FEE SCHEDULES: AUTOMOBILE INSURANCE PERSONAL INJURY PROTECTION AND MOTOR BUS MEDICAL EXPENSE INSURANCE COVERAGE

11:3-29.1 Purpose and Scope

(a) This subchapter implements the provisions of N.J.S.A. 39:6A-4.6 to establish medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expenses benefits for which payment is required to be made by automobile insurers under PIP coverage and by motor bus insurers under medical expense benefits coverage.

(b) This subchapter applies to all insurers who issue policies of automobile insurance containing PIP coverage and policies of motor bus insurance containing medical expense benefits coverage.

(c) These fee schedules do not apply to the following:

1. Other coverages contained in an automobile or motor bus insurance policy such as coverage for bodily injury liability;

2. Any other kind of insurance including health insurance, even when the health insurer may be required pursuant to its health insurance contract to pay benefits to, or on behalf of, a person who sustained bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile or motor bus, or as a pedestrian, caused by an automobile or motor bus or an object propelled by or from an automobile or motor bus; and

3. Medical services or equipment provided outside of the geographic boundaries of New Jersey except as set forth in N.J.A.C. 11:3-29.4(d)2.

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11:3-29.2 Definitions

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

. . .

"Motor bus" means motor bus as defined in N.J.S.A. 17:28-1.5.

"Motor bus insurer" includes any insurer issuing a policy of insurance on a motor bus the owner, registered owner, or operator of which is required to maintain medical expense benefits coverage pursuant to N.J.S.A. 17:28-1.6.

. . .

11:3-29.4 Application of Medical Fee Schedules

(a) Every policy of automobile insurance and motor bus insurance issued in this State shall provide that the automobile insurer's limit of liability for medically necessary expenses payable under PIP coverage, and the motor bus insurer's limit of liability for medically necessary expenses payable under medical expense benefits coverage, is the fee set forth in this subchapter. Nothing in this subchapter shall, however, compel a PIP insurer or a motor bus insurer to pay more for any service or equipment than the provider's usual, customary and reasonable fee, even if such fee is well below the automobile insurer's or motor bus insurer's limit of liability as set forth in the fee schedules. Insurers will not be required to pay for services or equipment which are not medically necessary.

(b)-(e) (No change.)

(f) The following shall apply to multiple treatment procedures:

1-2. (No change.)

3. Nothing in this subchapter shall be construed to prevent PIP insurers or motor bus insurers from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same visit.

(g) (No change.)

(a)

DIVISION OF ACTUARIAL SERVICES

Minimum Standards for Medicare Supplement Coverage

Adopted New Rules: N.J.A.C. 11:4-23.7, 23.8, 23.9, 23.20 and 23.21 and Exhibits D, E, F, and G to the Appendix to Subchapters 16 and 23.

Adopted Amendments: N.J.A.C. 11:4-16.8, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 23.10, 23.11, 23.12, 23.13, 23.14, 23.15, 23.16, 23.17, and Exhibits A, B, and C to the Appendix to Subchapters 16 and 23.

Adopted Repeal: N.J.A.C. 11:4-25 and Appendix A

Proposed: January 6, 1992 at 24 N.J.R. 12(a).

Adopted: December 9, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: December 10, 1992 as R.1993 d.26, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22A-1 et seq., 17:35C-1 et seq., 17B-26A-1 et seq., and 17B:30-1 et seq.

Effective Date: January 4, 1993.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from two commenters: an insurance agency, Paul S. Bunkin, Inc., and a trade association, the Health Insurance Association of America.

COMMENT: One commenter expressed a belief that the 10 Medicare supplement plan designs developed by the National Association of Insurance Commissioners ("NAIC") under authority of the Omnibus Budget Reconciliation Act of 1990 ("OBRA 90") may create confusion for policyholders, rather than simplifying the Medicare supplement marketplace. The commenter stated a belief that it would be in the consumer's best interest for the Department of Insurance ("Department") to limit the plan designs available in New Jersey to a much smaller selection, possibly only three. The commenter suggested allowance of a very basic plan which pays only for Medicare Part A copayments after the 61st day in a hospital, the Medicare copayments for skilled nursing facility care, and the Medicare Part B copayments for approved doctor charges. The commenter also suggested allowance of a richer Medicare supplement plan which covers all of Medicare's required deductibles and copayments, pays for any physician charges above the Medicare-approved amounts, and has a provision for coverage of some or all prescription drugs. This plan, or a third plan might also cover certain at-home care, and have extended benefits for nursing facility care. The commenter suggested that all allowed plans should include foreign travel emergency care coverage since the risk to insurers and costs to consumers for this benefit is relatively small.

RESPONSE: The Department acknowledges that it had some concerns as to whether allowance of all 10 NAIC plan designs would create confusion for New Jersey consumers or would simplify the process of choosing coverage. Unlike some states where a plethora of Medicare supplement products have been available for some time, New Jersey's marketplace has tended to be very limited. However, the lack of choice in available products in this State has always been a criticism leveled at this Department. This criticism led the Department to believe that expansion of the marketplace, and choice in products is what both consumers, agents and insurers desire. Thus, the Department is not inclined to restrict the plan designs available for sale in this State at this time.

Furthermore, the Department notes that Federal law requires that only those plan designs developed by the NAIC are permissible for sale in any State on or after July 30, 1992. The plan designs suggested by the commenter do not fit squarely into any one of the 10 NAIC plan designs. This is not to say that the Department necessarily disagrees with the commenter's suggested plans; however, given the Federal law on this issue, the commenter's suggestions are not practical alternatives.

It should be noted that the NAIC's 10 plan designs were developed through a working group consisting of consumer representatives, insurance industry representatives and some regulatory representatives. Also, the NAIC commissioned the consulting and research firm of Towers Perrin to survey senior citizens to determine what benefits most appealed to them. So arguably, the NAIC's 10 plan designs are highly representative of what Medicare eligible consumers want and believe themselves able to afford, and are representative of what insurers are willing to insure at prices Medicare-eligibles are willing to pay.

COMMENT: One commenter stated that Exhibit E of the Appendix to Subchapters 16 and 23, Replacement of Medicare Supplement Coverage, provides insufficient consumer information, and suggested that space be included in which the agent should list the difference in benefits between the existing Medicare supplement policy and the suggested replacement.

RESPONSE: The Department believes the commenter's suggestion is sound, but disagrees that such a change to the form at Exhibit E is necessary. Agents may always elect to attach a separate sheet of paper to the Replacement form, citing the differences between the two policies, and the Department would encourage such customer service. However, the Department is not inclined to mandate a substantive change in the form itself because it would create a new area of nonconformity with other states, and add to printing and administrative costs for both insurers and agents. It is not the Department's intention to add to such costs when other means of achieving a suggested goal are available.

COMMENT: One commenter suggested that the interest rate calculation, as set forth at N.J.A.C. 11:4-23.11(b)5v, not have to vary with "new money interest rates" because of the additional administrative work involved in tracking each rate and the associated contributions. The commenter stated that since Medicare supplement policies do not develop any substantial reserves, the use of the appropriate valuation interest rate based on the policy issue data should be satisfactory.

RESPONSE: N.J.A.C. 11:4-23.11(b)5v establishes the interest rate for purposes of discounting benefits and premiums on an **initial** submission of rates. The reference to recent, current and future new money rates does not impose a recordkeeping or tracking requirement; rather, it provides a basis for an actuarial assumption of future interest earnings.

The Department disagrees that the valuation interest rate based on the policy issue data is satisfactory. Valuation interest rates are intended to be conservatively low, and are not necessarily appropriate for premiums or loss ratios.

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COMMENT: One commenter stated that the demonstration of "fairness" of the premium scale, as required by N.J.A.C. 11:4-23.11(b)7, should be revised to stipulate that variations which must be maintained for refund or credit calculation purposes are not limited by N.J.A.C. 11:4-23.11(b)7, given that each benefit package is to stand on its own. The commenter noted that, while there is no problem with the age difference example, per se, there are many other items within the premium scale, especially benefit packages, which may create an appearance of "unfairness" when the experience creates premium differences which appear unreasonable in relation to the benefit differences.

RESPONSE: The Department believes the commenter has either misunderstood N.J.A.C. 11:4-23.11(b)7, or misstated its objections. Since each benefit package must satisfy the loss ratio requirements separately from every other benefit package, it is unclear to the Department how variations between the benefit packages could lead to perceived unfairness.

It must be understood that the demonstration required by N.J.A.C. 11:4-23.11(b)7 must be provided at the time of the **initial** rate filing. Given that the calculation is performed initially, the Department does not know how refund or credit calculations could affect the demonstration.

COMMENT: One commenter suggested that, instead of the requirement that a certification specified at N.J.A.C. 11:4-23.11(b)8 be signed by an actuary who is a member of the Society of Actuaries or Casualty Actuarial Society, a certifying actuary be a member of the American Academy of Actuaries, since members of this group are subject to the standards of practice developed by the Actuarial Standards Board.

RESPONSE: The Department's intent is that the certification be signed by an actuary qualified to do these calculations. It is the Department's belief that the educational and professional standards of the Society of Actuaries and the Casualty Actuarial Society satisfy this intent.

COMMENT: One commenter stated that New Jersey should support the use of standard NAIC reporting requirements and forms for Medicare supplement policies, referencing N.J.A.C. 11:4-23.11(c). Additionally, the commenter requested that it be clarified that N.J.A.C. 11:4-23.11(c) is replaced by N.J.A.C. 11:4-23.11(d) with respect to policies issued on or after the effective date of the adopted new rules and rule amendments of N.J.A.C. 11:4-23.

RESPONSE: The reporting requirements stated at N.J.A.C. 11:4-23.11(c) represent information necessary for the effective supervision of rates on these policies. No format or form for reporting this information is specified. To the extent that any NAIC requirements or forms meet this requirement, they will be acceptable.

N.J.A.C. 11:4-23.11(d) does not replace N.J.A.C. 11:4-23.11(c) with respect to any Medicare supplement policies. Rather, both provisions regulate all Medicare supplement policies and certificates issued in this State, regardless of the date of issue. The Department notes that section 13C of the NAIC model, upon which N.J.A.C. 11:4-23.11(c) and (d) are patterned, specifies that annual rate filings apply to all Medicare supplement policies and certificates issued, and provides no exceptions regarding rate revisions.

COMMENT: One commenter stated that it should be clarified that the refund and credit provisions at N.J.A.C. 11:4-23.11(e) apply only to policies issued on or after the effective date of these adopted new rules and rule amendments to N.J.A.C. 11:4-23.

RESPONSE: The Department has used the NAIC's language at Section 13B of its model upon which to pattern the language of N.J.A.C. 11:4-23.11(e). Technically, neither the NAIC, nor Section 4355(a)(1) of OBRA 90, limits the refund or credit calculation to policies issued in compliance with OBRA 90 (that is, policies and certificates issued on or after the effective date of these adopted new rules and rule amendments). The Department assumes that by use of the (undefined) phrase "standard Medicare supplement benefit plan," the NAIC intended the refund and credit calculation provision to apply only to policies issued in accordance with OBRA 90. (Most current Medicare supplement policies do not fit squarely into any one of the 10 standard Medicare supplement plan designs.) Until the NAIC clarifies its own language in this regard, the Department is not inclined to do so. A clarification such as that suggested by the commenter could cause the Department to be in the untenable position of being less stringent than the NAIC.

COMMENT: One commenter stated that it should be clarified that N.J.A.C. 11:4-23.11(g), regarding credibility of experience, applies only to Medicare supplement policies and certificates issued before the effective date of the adopted new rules and rule amendments, and then only until the refund and credit calculation provisions of N.J.A.C. 11:4-23.11(e) are not applied to those policies and certificates. The commenter stated that it is clearly the intent of the Health Care Financing Administration and the NAIC that each state be considered separately, even if this reduces the credibility of the results and thus delays the time when full credibility is reached.

RESPONSE: The Department agrees that the definitions of N.J.A.C. 11:4-23.11(g) are not intended to be used in the refund and credit provisions of N.J.A.C. 11:4-23.11(e). The rule has been modified upon adoption to clarify this. However, it should be understood that these definitions still apply to policies and certificates issued after the effective date of these rules to the extent that N.J.A.C. 11:4-23.11(c) and (d) apply to these policies and certificates.

Summary of Agency-Initiated Changes:

The Department has made several nonsubstantive changes to the new rules and rule amendments upon adoption. Most such changes are grammatical in nature. Some changes have been made for purposes of clarification. One substantive change to a definition has been made upon adoption to conform with the NAIC models.

At N.J.A.C. 11:4-23.1, "facilities" has been changed to "facilitates."

At N.J.A.C. 11:4-23.2(a)1, "medicare" has been changed to "Medicare."

At N.J.A.C. 11:4-23.3, under the definition of "coverage," "indemnity" has been changed to "indemnify".

At N.J.A.C. 11:4-23.4(a)4, the definition of "health care expenses" has been revised substantively. As originally proposed, the definition would have recognized certain differences in the financial arrangements of different health maintenance organization ("HMO") models. The NAIC model language does not recognize such differences. Prior to submitting the proposed rules to the Health Care Financing Administration ("HCFA") for review and approval, the Department agreed to substitute the NAIC's definition. Although the Department discussed with HCFA the value of maintaining certain aspects of the proposed rules that were inconsistent with, but not less stringent than the NAIC model, in order to accommodate peculiarities or vagaries of the New Jersey insurance marketplace, such peculiarities or vagaries did not exist in this instance sufficient to support the inconsistent proposed definition. For purposes of accreditation, HCFA has accepted the NAIC's definition of "health care expenses."

The Department does not believe that the change in the definition increases the burden for HMOs. Rather, to the extent that reporting of expenses for HMOs operating in New Jersey becomes more uniform with that required by other states, or HCFA in the alternative, the Department believes the burden upon the majority of HMOs will be lessened, inasmuch as most of the HMOs operate in other states as well. For these reasons the Department believes the change, while substantive, may be made upon adoption without additional public notice and comment. Further, the Department notes that all carriers have been on notice regarding this and all other changes being made upon adoption, via Bulletin 92-16, issued by the Department on July 31, 1992, at HCFA's request.

At N.J.A.C. 11:4-23.4(a)6, at the end of the definition of "Medicare," "of" has been changed to "or."

At N.J.A.C. 11:4-23.7(a) and (b), the phrase "the effective date of this subchapter" has been changed to "January 4, 1993." Additionally, "certificates" has been added in several places for purposes of clarification.

At N.J.A.C. 11:4-23.8(a), the phrase "the effective date of this subchapter" has been changed to "January 4, 1993."

At N.J.A.C. 11:4-23.8(g)1, the indefinite article "a" has been inserted at appropriate points.

At N.J.A.C. 11:4-23.8(g)iii(3), the spelling of "proteinuria" has been corrected.

At N.J.A.C. 11:4-23.9, as proposed, the Department deviated from the specific language of the NAIC regarding its provisions on open enrollment. The content of the Department's rule and the NAIC model is substantially the same, but after reconsideration, the Department has determined it is worthwhile to pattern the language of this rule more closely with that of the NAIC model to avoid potential confusion.

At N.J.A.C. 11:4-23.10(a), reference to Section 4081(b)(2)(c) has been corrected to read as Section 4081(b)(2)(C).

At N.J.A.C. 11:4-23.11(b)5iii, the word "model" has been changed to "modal."

The Department has made numerous changes to Exhibit A of the Appendix to Subchapter 16 and 23, "Bridging the Medicare Gaps: A Guide to Medicare Supplements." Some changes are for grammatical

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purposes, and some changes involve clarifications. Additionally, the Department has changed the chart of the 10 standard Medicare supplement plans which it will include in the booklet; the Department will now use the NAIC's chart.

Changes have been made in Exhibit D of the Appendix to Subchapter 16 and 23, Part Three—Plan Charts. Two of the changes are strictly grammatical. Two additional specific changes to Plan Charts D and J have been made to correct errors or missing language in those charts.

A grammatical correction has been made to Exhibit E of the Appendix to Subchapter 16 and 23, "Notice to Applicant Regarding Replacement of Medicare Supplement Coverage," at the subparagraph numbered as (2).

A correction has been made to Exhibit F of the Appendix to Subchapter 16 and 23, which contains the annual Medicare supplement refund calculation form, and the reporting forms for calculation of the benchmark ratio since inception for individual and group policies. The correction is to clarify which benchmark ratio calculation reporting form is to be used for individual policies and which is to be used for group policies.

Several additional changes have been made upon the request of the Health Care Financing Administration upon its review of the proposed rules.

At N.J.A.C. 11:4-23.3, definitions for the terms "certificate form" and "policy form" have been added. Also, the definition of "Medicare supplement policy" has been revised to exclude certain types of contracts which otherwise serve to supplement Medicare benefits, such as risk and cost contracts provided through a health maintenance organization under contract with Medicare to Medicare beneficiaries. HCFA stated that the types of contracts, which have not previously been regulated as Medicare supplement contracts by the states, are not now to be regulated as such either. The change in this definition maintains the status quo. Failure to make this change would result in nonaccreditation of New Jersey's regulatory program.

At N.J.A.C. 11:4-23.6(b)3, the phrase "and out of pocket maximums" has been deleted. A holdover from the rules implemented under the now-repealed Medicare Catastrophic Coverage Act, the phrase currently has no meaning or effect.

At N.J.A.C. 11:4-23.6(c), the phrase "except as may be authorized by the Commissioner," has been deleted. HCFA stated that to provide for the possibility of cancellations or nonrenewals for reasons other than those set forth by the NAIC's model, whether upon the Commissioner's discretionary approval or otherwise, was inconsistent with Federal mandates, and thus, totally unacceptable. Failure to make this change would result in nonaccreditation of New Jersey's regulatory program. Although this is an apparently substantive change, the Department does not believe additional public notice or comment is required, inasmuch as it is the right of the Commissioner to act upon a discretionary basis that has been removed, rather than any rights of a regulated entity. No additional burdens upon carriers are created by this change.

At N.J.A.C. 11:4-23.8(d), the phrase "no more than" has been replaced by the term "only."

At N.J.A.C. 11:4-23.8(g)3, the phrase "90 percent of eligible expenses if a DRG is not applicable" has been replaced by the phrase "or other appropriate standard of payment as set forth by the Health Care Financing Administration of the United States Department of Health and Human Services for Medicare payments when DRG day outlier payment is not appropriate." Additionally, the phrase "outlier day" has been changed to read as "day outlier." With respect to payment of expenses when the DRG amount is not appropriate, HCFA indicated that the phraseology originally employed by the NAIC was inappropriately inflexible. (The NAIC altered its language, but the Department did not become aware of the change until after the proposal.) This change, while apparently substantive, is not expected to create a greater burden for carriers (rather, the burden will probably be decreased in most instances); therefore, the Department does not believe additional public notice or comment is necessary. This change was required to obtain accreditation from HCFA.

At N.J.A.C. 11:4-23.8(g)7, a definition of emergency care has been added for use within the benefit for medically necessary emergency care in a foreign country.

At N.J.A.C. 11:4-23.14(c), the phrase "Such notice is not required for: Medicare supplement policies; policies of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members of former members, or combination thereof, of the labor organization, or policies issued pursuant to a contract under Section 1876 or Section 1833 of the Federal Social Security Act (42 U.S.C. 1395 et seq.)" has been added. Although this language was included in the NAIC model, the Department considered it unnecessary, inasmuch as the excluded policies (other than Medicare supplement policies) are statutorily excluded from oversight by the Department's Medicare supplement regulatory program. (The notice requirement, of course, makes no sense if applied to a Medicare supplement policy.) The Department thought the language was superfluous. However, HCFA stated that the language serves to clarify to whom the notice requirements are and are not applicable. Inclusion of the language was required by HCFA for purposes of accreditation. (Note that current practice is not affected by the change.) In this same vein, the phrase "other than a Medicare supplement policy" has been deleted, and the phrase "except as specified by this subsection" has been added.

At N.J.A.C. 11:4-23.15(a)(2)(i), the phrase "If so, with which company?" has been added. This phrase was inadvertently left out of the Department's proposal, but is clearly intended as part of the nonduplication monitoring criteria mandated by the Federal government via the NAIC's models. The Department added the statement upon request of HCFA in order to assure accreditation.

At Exhibit E, the following has been added above the agent signature line, as paragraph (4): "Do not cancel your present (policy) (contract) (coverage) until you have received your new (policy) (contract) (coverage) and are sure that you want to keep it." Again, the Department inadvertently failed to include NAIC language, and inserted this language upon the request of HCFA in order to assure accreditation. The language furthers consumer protection goals, and is consistent with language required in current notice statements on individual policies, as a general principle.

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

SUBCHAPTER 16. MINIMUM STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

11:4-16.8 Required disclosure provisions

(a) (No change.)

(b) Outline of coverage-general rules include:

1. No individual health insurance policy shall be delivered or issued for delivery in this State unless the appropriate outline of coverage in (c) through (n) below is completed as to such policy and:

i. For policies offered for sale as Medicare supplement policies, the outline meets the requirements set forth at N.J.A.C. 11:4-23.14; and

ii. (No change.)

2.-8. (No change.)

9. For the outline of coverage prescribed by N.J.A.C. 11:4-16.8(i), (k) and (n), the following instructions apply:

i.-iii. (No change.)

(c)-(k) (No change.)

(l) An outline of coverage regarding Medicare supplement coverage shall be issued in connection with policies in compliance with N.J.A.C. 11:4-16.6(j). The outline of coverage shall meet the requirements of N.J.A.C. 11:4-23.14.

SUBCHAPTER 23. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT COVERAGE

11:4-23.1 Purpose

This subchapter provides for the reasonable standardization of coverage and the simplification of terms and benefits of Medicare supplement policies; *[facilities]* ***facilitates*** comparison of such policies in order to increase public understanding; eliminates provisions which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims and provides for full disclosure in the sale of health care service benefits and insurance to persons eligible for Medicare.

11:4-23.2 Applicability and scope

(a) This subchapter shall apply to:

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1. All *[medicare]* ***Medicare*** supplement policies, as defined by this subchapter, delivered or issued for delivery in this State;

2. All certificates, as defined by this subchapter, issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this State.

(b) This subchapter shall apply to all carriers, as defined in this subchapter, delivering or issuing for delivery Medicare supplement policies in this State, or delivering or issuing for delivery certificates in this State, which certificates were issued under a group Medicare supplement policy.

11:4-23.3 Definitions

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

"Aggregate loss ratio" means the ratio of the accumulated value of past benefits (from the original effective date of the form to the date as of which the ratio is determined) and the present value of future benefits to the accumulated value of past premiums (from the original effective date of the form to the date as of which the ratio is determined) and the present value of future premiums. Benefits shall not be increased nor premiums reduced by actual or anticipated dividends, and interest shall be included in the accumulated and present values on the same basis as in the present values of the anticipated loss ratio.

"Anticipated loss ratio" means the ratio of the present value of the expected benefits, not including dividends, to the present value of the expected premiums, not reduced by dividends, over the entire period for which rates are computed to provide coverage. For purposes of this ratio, the present values must incorporate realistic rates of interest which are determined before Federal taxes but after investment expenses. Benefits and premiums shall be discounted from the year of payment, with reasonable assumptions as to time of payment within the year.

"Applicant" means:

1. In the case of a group policy, the proposed certificate holder;

2. In the case of an individual policy, the person who seeks to contract for coverage.

"Carrier" means any person who contracts to provide health services, reimburse the cost of health services in whole or in part, or provide an indemnity in the event that health services are used, in return for a prepaid or postpaid premium or other consideration, including insurance companies, fraternal benefit societies, hospital, medical and health service corporations, health maintenance organizations and such other similar entities.

"Certificate" means any certificate or other document which sets forth or summarizes the essential features of the coverage issued under a group policy, which certificate or other document has been delivered or issued for delivery in this State.

Certificate form" means the form on which a certificate is delivered or issued for delivery by a carrier.

"Coverage" means:

1. Any arrangement whereby a carrier agrees to *[indemnity]* ***indemnify*** or reimburse an individual or group member for some portion or part of the health related costs incurred by that individual or member, subject to the terms of the written agreement and law; and

2. Any arrangement whereby a carrier agrees to provide direct or indirect health care services to the individual or group member, subject to the terms of the written agreement and law.

"Insured" means any applicant provided coverage by a carrier.

. . .

"Medicare supplement policy" means a group or individual policy which is advertised, marketed or designed primarily as, or is otherwise held out to be a supplement to reimbursements under Medicare***, other than a policy issued pursuant to a contract under Section 1876 or Section 1833 of the Federal Social Security Act (42 U.S.C. 1395 et seq.), or a contract or policy issued under a demonstration project pursuant to amendments to the Federal Social Security Act***. This term does not include a policy or certificate of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or combination thereof, of the labor organization.

"Policy" shall mean any policy, contract, certificate or other document which sets forth or summarizes the essential features of the coverage issued to an individual or group by a carrier, for the purpose of providing Medicare supplement coverage, including any such policy issued pursuant to a conversion privilege to an individual 65 years of age or older, except as otherwise provided in this subchapter or Federal law.

"Policy form" means the form on which a policy is delivered or issued for delivery by a carrier.

11:4-23.4 Policy definitions and terms

(a) No policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms which conform to the requirements of this section.

1.-2. (No change.)

3. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined by the Medicare program.

4. "Health care expenses" means expenses of health maintenance organizations which expenses are associated with the delivery of health care services and are analogous to incurred losses of insurers. Such expenses shall not include the following costs *[unless these costs would be considered consistent with the requirements set forth by Federal regulation at Title 42 of the Code of Federal Regulation, section 417.243(f)(2), or unless these costs would be allowable under Title 42 of the Code of Federal Regulation, section 417.243(f)(1) or any successor provisions related to allowable expenses]*:

i. Home office and overhead costs;

ii. Advertising costs;

iii. Commissions and other acquisition costs;

iv. Taxes;

v. Capital costs;

vi. Administrative costs; and

vii. Claims processing costs.

5. "Hospital" may be defined in relation to its status, facilities, and available services or to reflect accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined by the Medicare program.

6. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Laws 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," *[of]* ***or*** words of similiar import.

7. "Medicare eligible expense" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

8. "Physician" shall not be defined more restrictively than as defined by the Medicare program.

Recodify existing 10.-12. as 9.-11. (No change in text.)

11:4-23.5 Policy provisions

(a) No policy or certificate shall be advertised, solicited, delivered or issued for delivery in this State as a Medicare supplement policy if such policy or certificate contains limitations or exclusions that are more restrictive than those of Medicare, except with respect to preexisting condition limitations.

(b) No Medicare supplement policy or certificate shall provide benefits which duplicate benefits provided by Medicare.

(c) No Medicare supplement policy or certificate shall use waiver endorsements or riders to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

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11:4-23.6 General minimum benefit standards

(a) No policy or certificate shall be advertised, solicited or issued for delivery in this State as a Medicare supplement policy if it does not meet the minimum standards contained in this section.

(b) The following general standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this subchapter.

1. A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred as a result of a preexisting condition after six months from the effective date of coverage, nor shall a preexisting condition be defined more restrictively than as set forth at N.J.A.C. 11:4-23.4(a)9.

2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amounts and copayment percentage factors *[and out of pocket maximums]*, if any, in response to which premiums may be correspondingly modified subject to the requirements of N.J.A.C. 11:4-23.11.

4. A Medicare supplement policy or certificate shall not:

i. (No change.)

ii. Provide for termination of a covered persons' coverage by the carrier solely on the grounds of age or deterioration of health.

5. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy or certificate was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the covered person limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

6. Existing Medicare supplement policies and certificates shall be appropriately amended or endorsed to eliminate benefit duplications with Medicare which are caused by Medicare benefit changes. Any riders or endorsements shall specify the benefits deleted, or shall otherwise result in a clear description of the Medicare supplement benefits provided by the policy. Such riders or endorsements shall be submitted for filing by the Commissioner.

(c) *[Except as may be authorized by the Commissioner, a]* ***A*** carrier shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation. With respect to terminations of group policies, or membership in a group, the following standards shall apply:

1. If a group policyholder terminates the group Medicare supplement policy without replacing that policy as provided in (c)3 below, the carrier shall offer individuals covered under group policies at least the following two coverage choices:

i. (No change.)

ii. An individual Medicare supplement policy which provides only such benefits as otherwise are required to meet N.J.A.C. 11:4-23.8.

2. If membership in a group is terminated, the carrier shall:

i.-ii. (No change.)

3. If a group policyholder replaces one group Medicare supplement policy by another group Medicare supplement policy, the succeeding carrier shall offer coverage to all persons who were covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusions for preexisting conditions that would have been covered under the group policy which was replaced.

11:4-23.7 Minimum benefits for policies ***and certificates*** delivered or issued for delivery prior to *[the effective date of this subchapter]* ***January 4, 1993***

(a) All policies delivered or issued for delivery in this State prior to *[the effective date of this subchapter]* ***January 4, 1993***, and all certificates delivered or issued for delivery in this State on or after July 15, 1991 but prior to *[the effective date of this subchapter]* ***January 4, 1993*** as a Medicare supplement policy ***or certificate***, shall meet the minimum standards set forth at N.J.A.C. 11:4-23.6 in addition to the minimum standards set forth below. The standards of N.J.A.C. 11:4-23.6 and those below are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(b) Benefit conversion requirements for the transition of policy compliance between the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) and the Medicare Catastrophic Coverage Repeal Act of 1989 (P.L. 101-234) are as follows:

1. Effective January 1, 1990, no Medicare supplement policy in force in this State shall contain benefits provided by Medicare.

2. Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.

3. For Medicare supplement policies subject to the minimum standards adopted by this State pursuant to the Medicare Catastrophic Coverage Act of 1988, and all policies and certificates delivered or issued for delivery on or after April 16, 1990 but prior to *[the effective date of this subchapter]* ***January 4, 1993***, the minimum benefit standards for Medicare supplement policies are:

i. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

ii. Coverage of the Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

iii. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

iv. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

v. Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under Federal regulations) unless replaced in accordance with Federal regulations or already paid for under Part B;

vi. Coverage of Part B Medicare eligible expenses to the extent not covered by Medicare regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

vii. Coverage under Medicare Part B for the reasonable cost of the first three pints (or equivalent quantities of packed red blood cells, as defined under Federal regulations), unless replaced in accordance with Federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

(c) Medicare supplement policies shall be guaranteed renewable.

11:4-23.8 Minimum benefit standards for policies and certificates delivered or issued for delivery on or after *[the effective date of this subchapter]* ***January 4, 1993***

(a) No policy or certificate shall be advertised, solicited, delivered or issued for delivery in this State as a Medicare supplement policy on or after *[the effective date of this subchapter]* ***January 4, 1993*** unless it complies with the standards of N.J.A.C. 11:4-23.6 and the benefit standards set forth below.

(b) Medicare supplement policies shall be guaranteed renewable.

(c) A Medicare supplement policy or certificate shall provide that benefits and premiums shall be suspended for a period of up to 24 months upon the request of a policyholder or certificateholder who has applied for and been determined entitled to medical assistance under Title XIX of the Social Security Act (that is, Medicaid), during or at the end of which period of suspension, the policy or certificate shall be reinstituted automatically upon notice to the carrier by the policyholder or certificateholder.

1. Benefits and premiums shall not be suspended unless the policyholder or certificateholder provides the carrier notice of entitlement to medical assistance under Title XIX of the Social Security Act within 90 days following the date the policyholder or certificateholder was determined to be so entitled.

2. Upon receipt of a notice of entitlement to medical assistance, the carrier shall return to the policyholder that portion of the

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premiums already paid which are attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.

3. Upon loss of entitlement to medical assistance within the period of suspension, or upon the date following the final day of the period of suspension, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, or effective as of the day following the final day of the period of suspension, if within 90 days following the date of entitlement termination or the final day of the suspension period, the policyholder or certificateholder provides notice to the carrier for reinstitution of the policy or certificate, and pays the premium required by the carrier, which premium shall be for a period of coverage not exceeding six months, inclusive of the 90 day notice period, but exclusive of any period during which the policyholder or certificateholder was entitled to medical assistance pursuant to Medicaid.

4. The coverage under the policy or certificate reinstated:

i. Shall not be subject to any waiting period with respect to treatment of preexisting conditions;

ii. Shall be substantially equivalent to coverage which was in effect prior to the date of suspension of the policy or certificate; and

iii. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(d) All carriers delivering or issuing for delivery in this State Medicare supplement policies or certificates of group Medicare supplement policies shall offer to all applicants a policy or certificate providing *[no more than]* ***only*** the core benefits defined at (g) below. A policy or certificate providing only core benefits shall be designated as standardized Medicare supplement benefit plan A.

(e) Carriers may offer to all applicants policies or certificates providing the core benefits and additional benefits defined at (g) below. Only those additional benefits defined at (g) below may be included in Medicare supplement policies or certificates delivered or issued for delivery in this State. Policies or certificates providing additional benefits shall be structured and designated as follows:

1. Standardized Medicare supplement benefit plan B shall provide:

i. The Core Benefit; and

ii. The Medicare Part A Deductible benefit.

2. Standardized Medicare supplement benefit plan C shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The Medicare Part B Deductible benefit; and

v. The Medically Necessary Emergency Care in a Foreign Country benefit.

3. Standardized Medicare supplement benefit plan D shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The Medically Necessary Emergency Care in a Foreign Country benefit; and

v. The At-Home Recovery Benefit.

4. Standardized Medicare supplement benefit Plan E shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The Medically Necessary Emergency Care in a Foreign Country benefit; and

v. The Preventive Medical Care benefit.

5. Standardized Medicare supplement benefit plan F shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The Medicare Part B Deductible benefit;

v. The One-Hundred Percent (100%) of the Medicare Part B Excess Charges Benefit; and

vi. The Medically Necessary Emergency Care in a Foreign Country benefit.

6. Standardized Medicare supplement benefit plan G shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The Eighty Percent (80%) of the Medicare Part B Excess Charges benefit;

v. The Medically Necessary Emergency Care in a Foreign Country benefit; and

vi. The At-Home Recovery Benefit.

7. Standardized Medicare supplement benefit plan H shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The Basic Outpatient Prescription Drug Benefit; and

v. The Medically Necessary Emergency Care in a Foreign Country benefit.

8. Standardized Medicare supplement benefit plan I shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The One-Hundred Percent (100%) of the Medicare Part B Excess Charges Benefit;

v. The Basic Outpatient Prescription Drug Benefit; and

vi. The Medically Necessary Emergency Care in a Foreign Country benefit; and

vii. The At-Home Recovery Benefit.

9. Standardized Medicare supplement benefit plan J shall provide:

i. The Core Benefit;

ii. The Medicare Part A Deductible benefit;

iii. The Skilled Nursing Facility Care benefit;

iv. The Medicare Part B Deductible benefit;

v. The One-Hundred Percent (100%) of the Medicare Part B Excess Charges Benefit;

vi. The Extended Outpatient Prescription Drug Benefit;

vii. The Medically Necessary Emergency Care in a Foreign Country benefit;

viii. The Preventive Medical Care benefit; and

ix. The At-Home Recovery Benefit.

(f) No groupings, packages or combinations of Medicare supplement benefits shall be offered which differ from the standardized Medicare supplement benefit plans specified in (d) and (e) above, except as an Innovative Benefit which may be approved by the Commissioner. Benefit plans shall be uniform in structure, language, designation and format to the standardized Medicare supplement benefit plans A, B, C, D, E, F, G, H, I and J as set forth in (d) and (e) above. For purposes of this section, "structure," "language," and "format" means style, arrangement and overall content of a benefit.

(g) The following terms and phrases, as used in this section, shall have the following meanings:

1. "At-Home Recovery Benefit" means coverage for services to provide short term, at-home assistance with activities of daily living for persons recovering from an illness, injury or surgery. At-home recovery services shall be services which are designed primarily to assist with activities of daily living.

i. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services prescribed are necessary due to a condition for which a home care plan of treatment was approved by Medicare.

ii. Coverage shall be limited to:

(1) The number and type of at-home recovery visits certified as necessary by the insured's attending physician, received during the period the insured is receiving Medicare-approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit, the total number of

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which shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;

(2) Care furnished on a visiting basis in the insured's home by a care provider as defined at (g)1v below for up to seven visits in any one week; and

(3) Actual charges up to $40.00 per visit to a maximum per calendar year benefit of $1,600.

iii. Coverage shall be excluded for home care visits reimbursed by Medicare or other government programs and for care provided by family members, unpaid volunteers, or providers who do not otherwise meet the definition of a care provider, to the extent Medicare would exclude coverage for care provided by such individuals.

iv. Activities of daily living shall include, but not be limited to, bathing, dressing, personal hygiene, eating, ambulating, assistance with drugs that are normally self-administered, and changing of bandages or other dressings.

v. A care provider shall be ***a*** duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or a licensed nurses registry.

vi. Any place used by the insured as a place of residence shall be the insured's home, provided that such place would qualify as a residence for home health care services under Medicare. A hospital or skilled nursing facility shall not be considered the insureds' place of residence.

vii. An at-home recovery visit shall be that period of a visit required to provide at-home recovery care. The duration of any such visit shall not be limited, but each consecutive four hours in a 24 hour period of services provided by ***a*** care provider shall constitute one visit for purposes of this section.

2. "Basic Outpatient Prescription Drug Benefit" means coverage for 50 percent of outpatient prescription drug charges to the extent not covered by Medicare, subject to a $250.00 calendar year deductible and a maximum per calendar year benefit per insured of $1,250.

3. "Core Benefit" means coverage of:

i. Medicare Part A eligible expenses for hospitalization from the 61st day through the 90th day in any Medicare benefit period, to the extent not covered by Medicare;

ii. Medicare Part A eligible expenses for hospitalization for each Medicare lifetime inpatient reserve day used, to the extent not covered by Medicare;

iii. Medicare Part A eligible expenses for hospitalization upon exhaustion of Medicare hospital inpatient coverage, including lifetime reserve days, up to a maximum lifetime benefit of 365 days, to be paid at the Diagnostic Related Group (DRG) *[outlier]* day ***outlier*** per diem, or *[90 percent of eligible expenses if a DRG is not applicable]* ***or other appropriate standard of payment as set forth by the Health Care Financing Administration of the United States Department of Health and Human Services for Medicare payments when DRG day outlier payment is not appropriate***;

iv. The reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined by Federal regulations) under Medicare Parts A and B, unless replaced in accordance with Federal regulation; and

v. The coinsurance amount of Medicare Part B eligible expenses, regardless of hospital confinement, subject to the Medicare Part B deductible.

4. "Eighty Percent (80%) of the Medicare Part B Excess Charges" means coverage for 80 percent of the difference between the Medicare-approved Part B charge and the actual Medicare Part B charge billed, up to but not exceeding any charge limitation established by the Medicare program or this State's law, if any.

5. "Extended Outpatient Prescription Drug Benefit" means coverage for 50 percent of outpatient prescription drug charges to the extent not covered by Medicare, subject to a $250.00 deductible per calendar year, and a maximum per calendar year per insured benefit of $3,000.

6. "Innovative Benefits" means benefits that are in addition to the benefits specified for standardized Medicare supplement benefit plans A, B, C, D, E, F, G, H, I and J, that are appropriate to Medicare supplement insurance and do not duplicate any benefit provided by Medicare, and that are otherwise unavailable, cost effective, and offered in a manner consistent with simplification of Medicare supplement policies. No carrier shall include an Innovative Benefit in a policy or certificate offered for delivery in this State without the prior approval of the Commissioner.

7. "Medically Necessary Emergency Care in a Foreign Country" means coverage of 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if received in the United States, and which care began during the first 60 consecutive days of each trip outside the United States, to the extent billed charges are not covered by Medicare, and subject to a calendar year deductible of $250.00 and a lifetime maximum benefit of $50,000. ***For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.***

8. "Medicare Part A Deductible" means coverage of all of the Medicare Part A inpatient hospital deductible amount per benefit period.

9. "Medicare Part B Deductible" means coverage of all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

10. "One Hundred Percent (100%) of the Medicare Part B Excess Charges" means coverage for all of the difference between the Medicare Part B approved charge and the actual Medicare Part B billed charge, up to but not exceeding any charge limitation established by the Medicare program or this State's law, if any.

11. "Preventive Medical Care Benefit" means coverage of the following services not otherwise covered by Medicare in the calendar year for the actual charges up to 100 percent of the Medicare-approved amount for each service (as if Medicare were to cover the service as identified in the American Medical Association Current Procedural Terminology Codes), subject to a maximum benefit of $120.00 per calendar year:

i. An annual clinical preventive medical history and physical examination that shall include patient education to address preventive health care measures and any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(1) Fecal occult blood test and/or digital rectal examination;

(2) Mammogram;

(3) Dipstick urinalysis for hematuria, bacteriuria, and *[proteninauria]* ***proteinuria***;

(4) Pure tone (air only) hearing screening test administered or ordered by a physician;

(5) Serum cholesterol screening (every five years);

(6) Thyroid function test; and

(7) Diabetes screening;

ii. Influenza vaccine administered at any appropriate time during a calendar year;

iii. Tetanus and diphtheria booster (every 10 years); and

iv. Other tests or preventive measures determined appropriate by the attending physician.

12. "Skilled Nursing Facility Care" means coverage for the actual billed charges up to the Medicare coinsurance amount from the 21st day through the 100th day in a Medicare benefit period, for posthospital skilled nursing facility care eligible under Medicare Part A.

11:4-23.9 Open Enrollment

(a) *[Applicants qualified for Medicare shall not be denied coverage under a Medicare supplement policy or certificate because of the applicant's age.

(b) With respect to applicants aged 65 years or older, carriers]* ***Carriers*** shall not deny or condition the effectiveness or issuance, nor discriminate in the pricing of Medicare supplement policies or certificates based on the health status, claims experience, receipt of health care by, or medical condition of an applicant if the *[applicant applies]* ***application is submitted*** for Medicare supplement cov-

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erage *[within]* ***during*** the six month period *[following the applicant's enrollment date]* ***beginning with the first month in which the applicant (who is 65 years of age or older) first enrolled for benefits*** under Medicare Part B. ***Each Medicare supplement policy and certificate shall be made available to all applicants who qualify under this section without regard to age.***

[(c) Neither (a) nor (b)] ***(b) Nothing in (a)*** above shall be construed to prohibit or limit a carrier's use of permissible preexisting condition exclusion provisions in any Medicare supplement policy or certificate ***as set forth in this subchapter***.

11:4-23.10 Standards for claims payment

(a) Every carrier providing Medicare supplement policies and certificates shall comply with Section 1882(c)(3) of the Social Security Act as enacted by Section 4081 (b)(2)*[(c)]***(C)*** of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) by:

1. Acceptance of notice from a Medicare-Carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits under the Medicare supplement policy or certificate as sufficient claim notice without requiring other or additional claims forms to be submitted, and making a payment determination based on the information contained in the notice from the Medicare-Carrier;

2. Notification of the participating physician or supplier, and the beneficiary, of the payment determination, and making payment directly to the participating physician or supplier;

3. Providing each enrollee, at the time of enrollment, a card listing the policy name, policy number, and a mailing address to which notices from a Medicare-Carrier may be sent;

4. Payment of user fees for claim notices that are transmitted electronically or otherwise; and

5. Providing to the Secretary of Health and Human Services at least annually, a central mailing address to which all claims may be sent by the Medicare-Carrier.

(b) Compliance with the requirements set forth in (a) above shall be certified on the Medicare supplement experience reporting form.

(c) (No change.)

11:4-23.11 Loss ratio standards, annual filing of premium rates and refund or credit calculation

(a) Medicare supplement policy forms or certificate forms shall be expected to return to policyholders and certificateholders in the form of aggregate benefits under the policy or certificate (exclusive of any anticipated refund or credit), for the entire period for which rates are computed to provide coverage, calculated on the basis of paid claims experience (or paid health care expenses for coverage provided by a health maintenance organization on a service rather than reimbursement basis) and written premiums for such period and with adjustment for interest to reflect the timing of payments:

1.-2. (No change.)

(b) Each carrier shall include with the initial submission of rates for a new Medicare supplement policy an actuarial memorandum which includes the following:

1. The number of years for which the policy is expected to be delivered or issued for delivery in this State, and the number of policies expected to be delivered or issued for delivery for each form in each such year;

2. The anticipated loss ratio calculated over the life of the policy form, with separate disclosures of the present value of future paid benefits and the present value of future paid or written premiums utilized in the calculation of the anticipated loss ratio, where any statutorily required additional actuarial active life reserve is neither reflected in the future benefits nor the future premiums in the calculation;

3. The future benefits on both a paid and incurred basis and the future premiums on both a written and earned basis for each of the years recognized in the calculation of the anticipated loss ratio, where neither the future benefits nor the future premiums include, or are adjusted for, any statutorily required additional actuarial active life reserve;

4. The expected incurred/earned loss ratio for each of the years recognized in the calculation of the anticipated loss ratio, wherein:

i. The expected incurred claims shall equal expected paid claims adjusted for changes in the expected claim liabilities and claim reserves and in any expected statutorily required additional actuarial active life reserve for each such year; and

ii. The expected earned premiums shall equal premiums expected to be received adjusted for any changes in expected advance premiums and in expected unearned premium reserves for each such year, but changes in any expected statutorily required additional actuarial active life reserves shall not be included in the adjustment of premiums expected to be received;

5. The realistic assumptions used in the calculation of the loss ratios for each benefit provision wherein the premiums are determined separately including the following:

i. The annual claim costs (ultimate) by attained age and sex;

ii. The select and/or antiselect morbidity factors by policy duration (year) by issue age and sex;

iii. The lapse and mortality rates, or total termination rates, by policy duration by issue age and sex, and any skewing of those rates occurring within a policy year resulting from *[model]* ***modal*** premium payments;

iv. The secular trend factors by policy duration by issue age and sex, which secular trend factors, when used in the calculation of the anticipated loss ratio, shall not be applied for a period greater than the number of years for which trending is reflected in the calculation of premiums;

v. The interest rates by policy duration, which rates shall equal an insurer's recent, current and future expected new investment return rates (after investment expenses, but before Federal income taxes);

vi. Expenses by policy duration, including commission, override and bonus rates, other marketing expense rates, other maintenance expenses rates, any new-market expense rates, other acquisition expense rates, and the explicit profit margin or risk charge, provided on a per policy issue, per policy in force, per dollar of claim, per dollar of premium, and any other applicable bases;

vii. The distribution of expected policy issues by policy and rider benefits by issue age and sex;

viii. The percentage of policies expected to be issued with extra premiums for any physical, mental or medical conditions which result in substandard morbidity; and

ix. A summary statement of the underwriting standards (for example: short form medical and risk questionnaire, long form medical and risk questionnaire, medical examination), the marketing distribution system, and the market for the policy form (that is, the segment(s) of the general public to which the form will be marketed: middle income based on predetermined ZIP code selections for example);

6. The cell and cell weights, when a model office is used in the calculation of the anticipated loss ratio;

7. A demonstration evidencing that unfair pricing discrimination is not utilized by or incorporated within the policy form's premium table or structure.

i. The demonstration shall show that the recognition or nonrecognition or the homogenization of the elements of any insurance construct will not result in an anticipated loss ratio which would differ by more than 10 percent from the anticipated loss ratio of any element of the construct if the elements of the construct were not recognized or separately recognized, as the case may be.

ii. For the purpose of this paragraph, construct shall mean the risk variables which significantly affect the cost of the coverage. For example, age could be a construct wherein its elements would be age 65, age 66, age 67 and so forth. (Of particular concern are anticipated loss ratios by issue age or issue age groupings.); and

8. A certification signed by an actuary who must be a member of the Society of Actuaries or Casualty Actuarial Society, stating that the assumptions are appropriate to the policy form, reasonably represent the expected experience for the policy form and fully disclose the basis of the calculation of the anticipated loss ratio.

(c) Every carrier shall submit annually for filing by the Commissioner its rates. Supporting documentation, including ratios of incurred losses to earned premiums by policy duration shall be

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submitted annually with the rates. Any revision of rates is subject to the requirements of (d) below. The supporting documentation shall demonstrate, using reasonable assumptions, that the anticipated and aggregate loss ratio are at least as great as the originally anticipated loss ratio. Such demonstration shall exclude active life reserves.

(d) Carriers shall submit for filing by the Commissioner in accordance with N.J.A.C. 11:4-23.12 all rate revisions. No carrier shall implement any rate revision until such rate revision has been filed. Submission of rate revisions for filing shall demonstrate that both the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage and the aggregate loss ratio are at least as great as the originally anticipated loss ratio.

1. Prior to the effective date of enhancements in Medicare benefits, carriers shall:

i. Submit for filing appropriate premium adjustments required to produce loss ratios commensurate with the loss ratios anticipated for the current premium for the applicable policies or certificates, with accompanying documentation sufficient to justify the adjustment, in the opinion of the Commissioner; and

ii. Make such premium adjustments as are necessary to produce an expected loss ratio for a policy or certificate in accordance with the appropriate loss ratio standards of (a) above, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the carrier for such policies and certificates. No premium adjustment which would modify the loss ratio experience under the policy, other than the adjustments described herein, shall be made at any time other than upon the policy renewal or anniversary date.

2. Every carrier shall submit for filing by the Commissioner a rate reduction whenever the expected aggregate loss ratio reported for a policy or certificate is less than the anticipated loss ratio for that policy or certificate, and the requirements of (c) above may not be met.

3. When a rate adjustment is requested pursuant to a change in the policy or certificate necessary to eliminate benefit duplication with Medicare, the submission for a rate change shall include any riders, endorsements, policy and certificate forms needed to accomplish the Medicare supplement coverage modification necessary to eliminate benefit duplications with Medicare. All such forms shall result in a clear description of the Medicare supplement benefits provided by the policy.

4. If a carrier does not make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the appropriate loss ratio.

(e) Carriers shall submit for filing with the Commissioner annually on or before May 31 reports in accordance with the reporting form contained in the Appendix to subchapters 16 and 23 of this chapter, Exhibit F, completed for each type in a standard Medicare supplement benefit plan.

1. If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), a refund or credit calculation shall be required.

i. The refund calculation shall be done on a Statewide basis for each type in a standard Medicare supplement benefit plan.

ii. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

2. A refund or credit shall be made by carriers whenever the benchmark loss ratio exceeds the adjusted experience loss ratio, and the amount to be refunded or credited exceeds a de minimis level.

i. A refund or credit against premiums due shall be made no later than September 30 following the experience year upon which the refund or credit is based.

ii. Refunds and credits shall include interest accruing from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of the United States Department of Health and Human Services, which in no event shall be less than the average rate of interest for 13-week Treasury notes.

(f) The Commissioner may conduct a public hearing, in his or her discretion, to gather information regarding a request by a carrier for an increase in a rate for a policy or certificate form, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard of (a) above. The determination of compliance shall be made without consideration of any refund or credit for such reporting period. Public notices of the hearing shall be in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(g) For purposes of *[this section]* ***complying with (c) and (d) above***, premiums and claims shall refer to premiums and claims for insured residents of this State under a specific policy form. However, if the experience is based on fewer than 1,000 life years of exposure for residents of this State, then the premiums and claims shall be a weighted average of the premiums and claims for this State and national experience, where the weighting factor applied to the State experience is the square root of the ratio of "a" to 1,000 ("a" being the number of the life years of exposure).

11:4-23.12 Filing requirements for policies, certificates and premium rates

(a) No carrier shall deliver or issue for delivery in this State any Medicare supplement policy or certificate, any written application therefor, or any printed rider or endorsements to be applied thereto, unless the forms thereof have been submitted to and filed by the Commissioner.

1.-4. (No change.)

(b) (No change.)

(c) No carrier shall use or revise premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been submitted to and filed by the Commissioner in accordance with (a) and (b) above.

(d) The Commissioner shall not file, and carriers shall not submit for filing, more than one Medicare supplement policy or certificate form of each type for each standard Medicare supplement benefit plan, except as the Commissioner may otherwise approve in accordance with (d)2 below.

1. For the purposes of this subchapter, "type" shall mean an individual policy, and a group policy, and at such time as a Medicare Select program shall become effective in this State, an individual Medicare Select policy, and a group Medicare Select policy.

2. The Commissioner may approve carriers, individually, to offer up to four additional policy or certificate forms of the same type for the same standard Medicare supplement benefit plan. Such forms shall be subject to the filing requirements of this section. The four additional policy or certificate forms of the same type shall be limited to one additional form of the same type for:

i. The inclusion of Innovative Benefits;

ii. The addition of either a direct response or an agent marketing method;

iii. The addition of either guaranteed issue or underwritten coverage; and

iv. The offering of Medicare supplement coverage to persons eligible for Medicare by reason of disability.

(e) A carrier shall not discontinue offering any policy or certificate form filed by the Commissioner on or after the effective date of this subchapter unless such form has been withdrawn from filing pursuant to (a)4 above, or the carrier provides notice of discontinuance of offer to the Commissioner at least 30 days prior to such discontinuance, in writing.

1. Discontinuance subject to notice to the Commissioner shall include the following:

i. Failure to actively offer for sale a policy or certificate form for more than 12 consecutive months;

ii. Sale or transfer of Medicare supplement policies or certificates to another carrier; and

iii. Revisions in the rating structure or methodology applicable to a Medicare supplement policy or certificate form which has not been otherwise submitted to and filed by the Commissioner in accordance with N.J.S.A. 11:4-23.11.

2. Carriers shall not submit for filing a new form for any Medicare supplement plan of the same type for which the carrier has discon-

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tinued issue of a policy or certificate for a period of five years following the notice of discontinuance to the Commissioner. The Commissioner may waive some or all of the five year period, in his or her discretion.

(f) Except for policies or certificates assumed under an assumption reinsurance agreement, the experience of all policy or certificate forms of the same type for a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation set forth at N.J.S.A. 11:4-23.11(d).

11:4-23.13 Compensation arrangements

(a) No carrier or other entity shall provide to any producer a first year commission or first year compensation for the sale of Medicare supplement policies or certificates in an amount which exceeds 200 percent of the commission to be provided by that carrier or other entity for the selling or servicing of that policy or certificate in the second year or period of that policy or certificate.

(b) The commission or other compensation which may be provided in subsequent renewal years shall be, for no fewer than five renewal years, the same as that commission or compensation provided in the second year or period.

(c) No carrier or other entity shall provide compensation or commission to any producer, nor shall any producer receive commission or other compensation, greater than the renewal commission or compensation payable by the replacing carrier on renewal policies or certificates when an existing policy or certificate is replaced.

(d) (No change.)

11:4-23.14 Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1. Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specification of such provision shall be consistent with the type of policy or certificate to be issued. Such provision shall appear on the first page of policies and certificates, and shall include any reservation by the carrier of a right to change premiums and any automatic renewal premium increases based on the policyholder's or certificateholder's age.

2. Except for riders or endorsements by which the carrier effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy or certificate, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits:

i. (No change.)

ii. After the date of the policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium or subscription charges during the policy or certificate term, shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by the minimum standards of this State for Medicare supplement coverage, or if required by other law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth clearly.

3. A Medicare supplement policy or certificate shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

4. If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitation shall appear as a separate paragraph in the policy or certificate and be labeled as "Preexisting Condition Limitations."

5. Medicare supplement policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium or subscription charge or fees refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

6. Carriers issuing policies or certificates which provide hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide for delivery to all applicants an informational brochure, which is intended to improve the buyer's ability to select the most appropriate coverage, and to improve the buyer's understanding of Medicare. Delivery of the informational brochure shall be made whether or not policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as set forth by this subchapter. The full text of the approved guide appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit A, and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements."

7. To ensure uniformity in the content, form and printing of the guide, each carrier shall comply with the following requirements:

i. Carriers and their printers shall use only the printing negatives authorized by the Department of Insurance. Information concerning the purchase of the negatives is available from the Department of Insurance, Division of Public Affairs;

ii. (No change.)

iii. A chart entitled "Medicare Deductibles and Co-payments for 19__" shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit B. To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Enforcement and Consumer Protection, Senior Health Insurance Program, will provide sample copies of the chart to carriers to the format of which carriers shall adhere exactly.

8. Except in the case of direct response carriers, delivery of the guide shall be made to the applicant at the time of application, and acknowledgement of receipt of the guide shall be obtained by the carrier. Direct response carriers shall deliver the guide to the applicant upon request but in no instance shall delivery of the guide occur later than the time of policy or certificate delivery.

9. Except as provided in (c) below, the terms "Medicare Supplement," "Medigap," and words of similar import shall not be used unless the policy or certificate is issued in compliance with N.J.S.A. 11:4-23.8 and all other sections of this subchapter.

(b) Outline of Coverage requirements for Medicare supplement policies and certificates include:

1. Carriers issuing Medicare supplement policies or certificates for delivery in this State shall provide an outline of coverage to all applicants at the time the application is presented to the prospective applicant. Except for direct response policies or certificates, acknowledgement of receipt of such outline shall be obtained by the carrier from the applicant.

2. (No change.)

3. The outline of coverage provided to applicants pursuant to (b)1 above shall be in the language and format prescribed in Exhibit D of the Appendix to subchapters 16 and 23 of this chapter, incorporated herein by reference, in no less than 12 point type. The outline of coverage shall consist of a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the carrier. All plans A through J shall be shown on the cover page, and the plan(s) offered by the carrier shall be prominently identified. Premium information for the plan(s) offered by the carrier shall be provided on the cover page, or immediately following the coverage page, clearly and prominently, specifying both the premium and the mode. All possible premiums for the applicant on all plans offered to the applicant by the carrier shall be illustrated.

(c) All health and disability income policies, *[other than a Medicare supplement policy]* ***except as specified in this subsection***, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy. ***Such notice is not required for: Medicare supplement policies; policies of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or members or former members, or combination thereof, of the labor organization; or policies issued pursuant to a contract under Section 1876 or Section 1833 of the Federal Social Security Act (42 U.S.C. 1395 et seq.).*** Such notice shall either be printed or attached to the first page of the outline of coverage delivered to the insureds under the policy, or, if no

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outline of coverage is delivered, to the first page of the certificate or policy delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

"THIS IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide, available from the company."

(d) At least 30 days prior to the effective dates of any Medicare benefit changes, notice shall be provided by carriers to New Jersey insureds describing the revisions of the Medicare program and the resulting modifications made by the carrier to an insured's Medicare supplement policy or certificate to eliminate duplication of Medicare benefits.

1. (No change.)

2. No modification shall be made to an existing Medicare supplement policy or certificate when notices are sent except those modifications necessary to eliminate duplication of Medicare benefits.

3. Notices shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate.

4.-6. (No change.)

7. No notice shall contain benefits and premium information for more than one policy or certificate form.

11:4-23.15 Requirements for application forms and replacement coverage

(a) Application forms shall include the following questions designed to elicit information as to whether a Medicare supplement policy or certificate is intended to replace any Medicare supplement or other health policy or certificate in force, or is intended to be additional to any such policies or certificates. A supplementary application or other form to be signed by the applicant and agent may be used. In the case of a direct response carrier, a copy of the application or supplemental application, signed by the applicant and acknowledged by the carrier, shall be returned to the applicant by the carrier upon delivery of the policy or certificate. The application form or supplementary application form shall contain the questions and statements set forth below.

1. Statements shall be as follows:

i. You do not need more than one Medicare supplement policy.

ii. If you are 65 or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

iii. The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

iv. Counseling services may be available in your State to provide advice concerning your purchase of Medicare supplement coverage and concerning Medicaid.

2. Questions, numbered 1, 2, 3 and 4, shall be as follows and shall be prefaced by the statement "To the best of your knowledge":

i. Do you have another Medicare supplement policy or certificate in force, including any health care service contract or health maintenance organization contract? ***If so, with which company?***

ii. Do you have any other health insurance coverage that provides benefits which this Medicare supplement policy would duplicate?

(1) If so, with which company?

(2) What kind of coverage?

iii. If the answer to question 1 or 2 is yes, do you intend to replace these medical or health coverages with this policy (certificate)?

iv. Are you covered by Medicaid?

(b) (No change.)

(c) Upon determination that a sale will involve replacement of Medicare supplement coverage, a carrier or its agent shall furnish to the applicant, prior to the issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of such notice signed by the applicant and agent, except where coverage is sold without an agent, shall be provided to the applicant, and an additional signed copy shall be retained by the carrier. A direct response carrier shall deliver to the applicant at the time of the issuance of the policy (certificate) the notice regarding replacement of Medicare supplement coverage.

(d) Carriers shall include a waiver of all preexisting condition exclusion clauses, waiting periods, elimination periods or probationary periods in a replacement policy for at least that same period of duration of the conditional clause(s) in the applicant's existing policy which has expired at the time of issuance of the replacement policy, to the extent of the benefits of the existing policy.

(e) The notice required by (c) above shall be provided in substantially the form set forth in Exhibit E of the Appendix to Subchapters 16 and 23 of this chapter, incorporated herein by reference, in no less than 10 point type. Item (1) of the notice set forth in Exhibit E may be omitted or modified if preexisting conditions are covered under the new coverage. If the policy or certificate is guaranteed issue, item (3) of the notice in Exhibit E may be omitted.

11:4-23.16 Filing requirements for advertising

(a) Every carrier providing Medicare supplement policies or certificates in this State shall file with the Commissioner a copy of all advertisements to which residents of this State will have access, and through which the carrier intends, or by implication purports to the reasonable targeted consumer its intent, to make its Medicare supplement product(s) available for purchase or enrollment in this State, whether through written, radio, television or other electronic media, at least 30 days prior to the date on which the advertisement is to be used in this State, or made accessible to residents of this State.

(b) All advertisements shall be in accord with the standards set out in N.J.A.C. 11:2-11 and any other disclosure and advertising rules which may be applicable to carriers.

(c) (No change.)

(d) The Commissioner may institute any and all procedures and penalties available pursuant to the Medicare Supplement Acts of this State and the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., against a carrier which is determined by the Commissioner to be in violation of this rule.

(e) (No change.)

11:4-23.17 Standards for marketing

(a) Every carrier, directly or through its producers, shall:

1. (No change.)

2. Establish marketing procedures to assure excessive coverage is not sold or issued to any consumer;

3. Establish procedures for determining whether a replacement policy contains benefits clearly and substantially greater than the benefits provided under the replaced policy and thereby institute guidelines as to when first year commissions or replacement commissions are appropriate pursuant to N.J.A.C. 11:4-23.13;

4. Display prominently by type, stamp or other appropriate means, on the first page of the policy or certificate the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

5.-6. (No change.)

(b) Practices which are prohibited in this State, in addition to those set forth in the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., include, but are not limited to, the following:

1. Twisting; that is, knowingly making any misleading representations or incomplete or fradulent comparisons of any policies or carriers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convey any policy or certificate or to purchase any policy or certificate with another carrier;

2. (No change.)

3. Cold lead advertising; that is, making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance or other similar coverage, and that further contact with the consumer will be made by an insurance agent, other producer or carrier.

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11:4-23.18 Appropriateness of recommended purchase and excessive coverage

(a) (No change.)

(b) Any sale of Medicare supplement coverage which will provide an individual with more than one Medicare supplement policy or certificate is prohibited.

11:4-23.19 Reporting of multiple policies

(a) Every carrier shall report annually, on or before March 1, to the Commissioner, the policy and certificate number and date of issuance of each policy or certificate, grouped by individual insureds for every individual resident of this State for which the carrier has in force more than one Medicare supplement policy or certificate.

(b) Carriers shall submit reports of multiple policies on a form substantially similar to that form set forth in Exhibit G of the Appendix to Subchapters 16 and 23 of this Chapter, incorporated herein by reference. Carriers shall submit separate forms for each insured for which multiple policies or certificates are being reported. No form shall contain information relevant to more than one insured. In any instance in which one form provides insufficient reporting space for an insured's policies or certificates, additional pages should be attached containing the additional information.

11:4-23.20 Addresses for submissions for filing

(a) All forms, rates, loss ratio reporting and advertisements submitted for filing with or by the Commissioner shall be submitted to the Division of Life and Health Actuarial Services, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625-0325, directed to specific bureaus as follows:

1. Health Care Plan Bureau, for submissions from health maintenance organizations and such other similar entities;

2. Service Corporation Bureau, for submissions from health, hospital and medical service corporations; and

3. Statutory Compliance Bureau—Health, for submissions from all other carriers.

(b) Annual reports of multiple policy issues submitted for filing with the Commissioner shall be submitted to the Division of Legislative and Regulatory Affairs, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625-0325, to the attention of Medicare Supplement Multiple Policy Report.

11:4-23.21 Penalties

Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties available in accordance with the laws of this State.

11:4-23.22 (No change in text.)

APPENDIX TO SUBCHAPTERS 16 and 23

EXHIBIT A

BRIDGING THE MEDICARE GAPS:
A GUIDE TO MEDICARE SUPPLEMENTS

INTRODUCTION

Medicare. The word can be both a comfort and a puzzle. A comfort because Medicare is a program which provides good, basic health coverage at minimal cost. A puzzle because the program's structure makes it look harder to understand than it really is.

Medicare historically has paid a relatively stable share of health care costs for older citizens, ranging from about 40 percent in 1977, 45 percent in 1984 and 40.1 percent in 1988, according to the U.S. House of Representatives Select Committee on Aging.

But health care costs have been rising faster than inflation—which means higher medical bills. So even though older people have been paying a relatively constant percentage of their medical bills, the bills themselves are larger. The bottom line is that older citizens are paying more total dollars for their share of health care costs.

Before making a decision about which insurance *[policy]* ***coverage*** to buy to supplement Medicare, everyone should do two things. First, know what Medicare does and does not cover. Second, assess his or her own needs and financial situation.

Assessing the need for additional protection is easier if one understands the basic structure of Medicare. The first *[section]* ***part*** of this booklet is designed with that in mind. The rest of this booklet will tell you what other types of insurance are available to fill some of Medicare's gaps.

MEDICARE

What Is It?

Medicare is a federal health insurance program for people 65 or older, people of any age with permanent kidney failure, and certain disabled people under age 65. The program is administered by the Health Care Financing *[Administrative]* ***Administration*** (HCFA) of the U.S. Department of Health and Human Services. The Social Security Administration provides information about the program. Persons who are not automatically enrolled in Medicare may enroll at their local Social Security Office.

Basic Structure of Medicare

Medicare coverage comes in two parts—Part A, hospital insurance, and Part B, medical insurance.

The two parts of the program parallel the division*[s]* in the medical community between hospitals and physicians. Although hospitals are filled with doctors, few doctors actually work for hospitals. Most physicians are independent business people. So, if you go to the hospital with the flu, you receive separate bills—one for the things the hospital provides such as a room, nurses, food and drugs; and another for the doctors who treat you. Similarly, Medicare has two parts—A, which pays inpatient hospital bills, and B, which pays doctors' bills and other outpatient medical expenses.

Part A, the hospitalization portion of Medicare, is funded ***for most individuals*** through employee contributions to FICA taxes ***while they are employed***. This amount goes into the Part A trust fund and pays for the Part A premiums for most people. A very small percentage of seniors must purchase Part A and pay a monthly premium. ***This includes persons who have not contributed sufficiently to FICA taxes while employed; those who have not worked and do not have a spouse who has contributed to the Social Security system; and, persons from outside the country who have lived in the United States for five or more continuous years.**

Individuals who purchase the hospital insurance (Part A) coverage are also required to purchase medical insurance (Part B).

Those who must pay for, but cannot afford Medicare's premiums should contact their local Social Security Office or Board of Social Services, since they may qualify for other assistance programs.*

Persons already receiving monthly Social Security or Railroad benefits receive their Medicare card automatically ***without the need to file an application***. All others must file an application in order to be covered by Medicare.

Part B, the medical portion, *[requires a monthly premium]* ***is paid for by the consumer on a monthly basis***, which, for most people, is deducted from *[the]* ***their*** Social Security check. *[You're]* ***You are*** automatically enrolled in Part B when you enroll in Part A, unless you specifically state you *[don't]* ***do not*** want it. If you choose not to enroll in Part B ***when*** you sign up for Medicare, you can join this *[protion]* ***portion*** of the program later. However, ***if for some reason*** you ***choose to*** wait ***to sign up for Part B***, the ***Medicare*** premiums may be higher *[if either you or your spouse is not working and enrolled in an employer group health plan]*. *[If you]* ***Persons who*** wait because *[you're]* ***they or their spouse are*** still working and *[you're still]* covered under *[your]* ***the*** employer's group health plan, *[you]* will not have to pay the higher Part B premium *[when you do sign up as long as you]* ***if they*** sign up within seven months of the date when employment ceases.

Each of the two parts has a deductible, an amount *[of money which]* you ***have to*** pay before Medicare starts paying.

Each also *[require]* ***requires*** a copayment, *[a]* ***that*** part of each bill *[you're]* ***you are*** required to pay.

And each has its own rules about when these payments are required. The specific dollar amounts can change from year to year. The chart in the back pocket of this booklet shows this year's deductible and copayment amounts.

Medicare Part A—Hospital Insurance

The hospital insurance portion of Medicare, Part A, pays hospital room and board fees. It also pays for some goods and services (such as

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laboratory costs, physical therapy and prescription medications) while you're a patient in the hospital.

Part A does not cover all hospital bills. It covers a portion of them, depending on how long you are in the hospital*,* and on the basis of benefit periods***, which determine the number of days of coverage you still have available.*** (*[see]* ***See a discussion of benefit periods on*** page ____.)

Drawn on a graph like the one on page ____, the system resembles a three-step staircase. First you pay the Part A hospital deductible (which is roughly equal to the average national cost of one day in a hospital).

Then, for 60 days, Medicare pays 100 percent of the covered hospital expense.

After 60 days, you take the first step down. For days 61 through 90, Medicare covers most of the hospital bills, but you have to pay a co-payment for each day *[you're]* ***you are*** there. (The co-payment is about 25 percent of the average national cost of a day in the hospital.)

If, after the 90 days, *[you're]* ***you are*** still in the hospital, you have to make a decision. You either begin *[playing]* ***paying*** all the hospital bills yourself, or you take a half-step and dip into the lifetime reserve days that Medicare provides.

Your lifetime reserve is a "bank" with 60 days of partial coverage. The daily co-payment rises to about 50 percent of the average national daily hospital charge. You can use all or some of the 60 days for any hospitalization between 91 and 150 days. Once you use up all 60 lifetime reserve days, however, you *[can't]* ***cannot*** get them back.

Although the increases in co-payments may seem steep, the odds of experiencing a prolonged hospital stay are small. Only 2 percent of Medicare subscribers exhaust their coverage in any given year, according to HCFA. *[And]* ***In fact*** national statistics indicate that the average hospital stay for a person *[on]* ***with*** Medicare is approximately 14 days.

[What] ***Additional*** Part A *[Also Covers]* ***Coverage***

Medicare also pays for three of the newer, less expensive alternatives to hospitalization—skilled nursing facility care, home health care and hospice care.

[Let's say you've] ***Suppose, for example, you have*** had a stroke and have been in the hospital for several weeks. You no longer need the intensive care a hospital provides, but you do need rehabilitative therapy on a daily basis before going home. Your doctor may refer you to a skilled nursing facility, where you will get professional nursing care and rehabilitation services. Although there are some restrictions, Medicare will generally pay all the facility's bills for the first 20 days and a portion of the bills for days 21 through 100, providing the care is reasonable and necessary.

Medicare will also pay for covered home health care services, if your condition meets certain requirements, *[among them]* ***such as*** a need for part-time skilled nursing care, physical therapy or speech therapy while homebound.

In addition, Medicare covers hospice care for terminally ill patients who want to stay home during their final weeks of life. Hospices (special organizations which help dying patients and their families) will supply doctors' services, nursing care, home health aides, homemaker services, counseling, and medical appliances and supplies. There are some restrictions and some minimal co-payments for a few services, but Medicare will pick up the majority of the bills.

How Often Can You Collect?

Medicare Part A pays hospital expenses on the basis of benefit periods. A benefit period starts when you enter a hospital and ends when you have been out of the hospital or skilled nursing facility for 60 days in a row.

Benefit periods determine whether you have to pay a deductible and how much of the hospital bill Medicare will pay. *[Let's say, for]* ***For*** instance, *[that]* ***suppose*** you were in the hospital 60 days, went home for two weeks and then went back to the hospital for another two weeks. You would only have to pay one deductible because both hospitalizations occurred in the same benefit period. You would, however, have to pay a co-payment for each day of the two weeks you were hospitalized the second time, because you exhausted your 100 percent coverage during the first 60 days of the benefit period.

When Will Medicare Refuse to Pay?

[There] ***As you may already know, there*** are several levels of nursing home care***: skilled, intermediate and custodial***.

Medicare *[only]* covers services ***only*** at the skilled level in ***Medicare-approved*** skilled nursing care facilities, which are sometimes called nursing homes. ***Persons at this level require daily skilled, professional care which, as a practical matter, can only be provided in a skilled nursing facility on an inpatient basis.***

[But] Medicare does not cover ***care at the*** intermediate or custodial care levels*[, which provides]**. ***The reason is that persons receiving care at these levels are provided*** only intermittent professional care or only a place to live and help with personal needs such as bathing, feeding, dressing and taking medicine.

[Usually] ***You should be aware of the fact that*** Medicare pays hospitalization, skilled nursing facility and home health ***care*** agency fees only *[when the facility or agency is Medicare-approved]* ***for Medicare-approved facilities or agencies***. *[Although all]* ***All*** New Jersey hospitals are ***Medicare-***approved, ***but*** some hospitals and treatment centers in other states may not be. *[And even if]* ***Also, note that although*** a skilled nursing facility or home health ***care*** agency is licensed by the state, it may not be Medicare-approved.

Medicare may also refuse to pay for experimental or controversial procedures.

Except under certain very limited conditions in Canada and Mexico, Medicare will not cover care received outside the United States.

If you plan to travel, or if *[you're]* ***you are*** not sure whether the treatment or hospital you are considering has Medicare approval, check ahead of time with your ***local*** Social Security Office to see if benefits are available.

Medicare Part B—Medical Insurance

Medicare Part B, medical insurance, is the *[section]* ***portion*** that helps to pay your doctor, whether you are in or out of the hospital. It also serves as a catch-all for the wide-range of services people use when they are not patients in hospitals—***such as*** outpatient visits to hospitals, physical therapy, laboratory tests, medical equipment (like wheelchairs or oxygen), and medically necessary home health ***care*** visits.

The medical insurance portion, Part B, has an annual deductible, an amount which you must pay once each year before Medicare will pay any bills related to Part B. The chart in the pocket on the back page shows the deductible amount for this year.

How Much Does It Pay?

The medical insurance portion of Medicare was designed to pay 80 percent of the cost of most covered services. You pay the other 20 percent, which is the Part B co-payment.

However, you could wind up paying more than 20 percent. Fees charged by doctors, therapists, suppliers and hospitals may vary, even within one town. But Medicare has a fixed schedule of fees, known as the "approved amount," for procedures done in your area. Medicare will pay only 80 percent of the approved amount. So, if your bill from the doctor or hospital outpatient clinic is higher than the approved amount, you are responsible for the difference.

Example: Suppose the Medicare-approved amount for a medical procedure is $100, but your doctor charges you $110. Medicare will pay 80 percent of the $100 approved amount, or $80; you pay the 20 percent co-payment, or $20. But you also must make up the difference between the $110 bill and Medicare's $100 approved amount ($10). So the total out-of-pocket cost to you is $30.

Some doctors "accept *[assignments]* ***assignment***." This means the doctor agrees to accept the Medicare-approved amount for the services provided. *[You still have to pay the 20 percent co-payment, or $20.]* ***After Medicare pays its portion of the approved amount, 80 percent, you are responsible for the balance, the 20 percent co-payment.***

Some doctors accept assignment some of the time*[,]***;*** some accept it all the time*[, while]***; and,*** others never accept it *[at all]*. Find out, before treatment, whether your doctor will accept assignment. Each year, doctors and medical service suppliers can sign agreements to become Medicare-participating doctors or suppliers. This means they agree in advance to accept assignment for all Medicare claims. The "Medicare-Participating Physician/Supplier Directory", which is available in Social Security offices and county Offices on Aging, gives the names and addresses of Medicare-participating doctors and suppliers. You can also get this free directory from Pennsylvania Blue Shield, the Medicare carrier for New Jersey.

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For a detailed description of the Medicare program, ask your local Social Security office for a free copy of "Your Medicare Handbook."

FILLING IN THE GAPS

By now you are aware that Medicare coverage has three general gaps:

1. the deductibles and co-payments;
2. the difference between what Medicare pays and what the doctor charges; and
3. the services ***and items which*** Medicare *[doesn't]* ***does not*** cover at all (for example: most nursing home care, prescription drugs, hearing aids, care outside the U.S.***, etc.***).

[People try] ***Consumers attempt*** to fill these gaps in a variety of ways. ***There are different policies and medical assistance programs which fill gaps in Medicare coverage. Some of these are outlined in the following sections of this booklet.*** *[Below you'll read about some of the kinds of insurance consumers purchase in an attempt to plug these holes, but first it]* ***It*** is important to note *[that since different policies tend to plug different holes in the Medicare program]*, ***however,*** it isn't likely you will find one *[policy, or a combination of policies,]* ***type of coverage, or combination of coverage,*** that will fill all of Medicare's gaps.

The word "medigap" is an umbrella term. This means that it *[doesn't]* ***does not*** refer to any one specific type of *[policy]* ***insurance***, but rather to several kinds of insurance that may help to fill in some of the gaps *[of]* ***in*** Medicare. Following are *[seven]* different kinds of coverage that consumers often consider adding to their Medicare coverage.

To decide which *[policy]* ***type of insurance coverage*** suits you best, begin by evaluating your needs and financial circumstances. *[How]* ***You should first decide how*** much you can afford to pay for insurance. ***Then decide which benefits are important to you, for example, "first dollar"*** *[do you want first dollar]* coverage that will *[help]* pay Medicare's deductibles and co-payments*[? Or are you]**; **or, perhaps you are*** more concerned about *[covering]* ***having benefits for*** things that Medicare does not ***cover, such as*** *[—for example,]* doctors' bills that go beyond the Medicare-approved amount or care outside the United States*[? Will you]**; **or, perhaps you would*** find it easier to budget regular insurance payments than to worry about *[later]* ***future*** medical bills ***which*** you might not be able to pay*[?]**.*

Medicaid

For some people, *[paying]* ***having to pay*** even small amounts *[of]* ***for*** medical expenses or another health insurance policy may be a real hardship. If you are one of them, check with your ***local*** Social Security Office or County Board of Social Services/Welfare Agency to see if you are eligible for Medicaid a free health care program for low-income people funded by the state and federal governments.

Points to Consider. Although the combination of Medicare and Medicaid pays many of your health care costs, you should consider the following points before *[dropping]* ***discontinuing*** any Medicare supplement *[policy]* ***coverage*** you may already have:

1. a Medicare supplement policy may cover services not paid by Medicaid, such as private duty nursing, care outside the United States*[,]* ***or*** a private room in a hospital;
2. if your Medicaid eligibility ends, ***and you apply for a Medicare supplement policy, the insurer may require that you wait up to six months*** *[you may have a six month waiting period]* before a new policy will pay benefits for health conditions you already have*[:]**;*
3. if you enter a nursing home, Medicaid will pay the premium for your Medicare supplement policy;
4. if you cancel Medicare supplement coverage that has been available to you at no charge as a retirement benefit or through your *[spouse]* ***spouse's employer group health plan***, it may not be renewable if you no longer qualify for Medicaid*[; and]**.*

[5. recent federal legislation now requires insurers to suspend Medicare supplement insurance benefits and premium payments for up to a 2-year period upon the request of the policyholder during the policyholder's entitlement to benefits under Medicaid, and to reinstate these insurance benefits upon request of the policyholder when Medicaid entitlement ends.]

***If you purchased a Medicare supplement policy on or after November 5, 1991, and you have since become eligible for Medicaid, there is a recent federal law which applies to you.**

The law requires that, at your request and as long as you are entitled to Medicaid, the insurance company must suspend your Medicare supplement policy benefits and premiums for up to a two year period. Also, the insurer must reinstate your Medicare supplement coverage, upon your request, if your entitlement to Medicaid ends during that time.

Other State Assistance Programs*

New Jersey *[also]* has a variety of health care programs available to certain needy residents who may not qualify for the traditional Medicaid Program. Each program has its own eligibility requirements. Contact your County Welfare Agency or Board of Social Services to see if you qualify for any of the following:

New Jersey Care
Medically Needy
Community Care Program for the Elderly and Disabled (CCPED)
AIDS Community Care Alternative Program (ACCAP)

State Assistance Programs for Prescriptions and Hearing Aids

Outpatient prescription medications are not generally covered under Medicare. The exception is that Medicare pays a percentage of the costs for immunosuppressive drugs, for one year, following an organ transplant.

New Jersey has a program that will help pay for prescription drugs, and another that will help pay for hearing aids. ***Both programs require applicants to meet certain eligibility criteria.***

The Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program helps pay for prescription medicines and some pharmacy items such as insulin syringes and needles.

The Hearing Aid Assistance to the Aged and Disabled (HAAAD) Program reimburses $100 to eligible residents of New Jersey who buy a hearing aid.

To qualify for PAAD or *[HAAD]* ***HAAAD***, you must be at least 65 or be receiving Social Security Disability and you must meet certain income limits. The limits, which are higher than those for Medicaid, can change.

For more information about *[each program]* ***the prescription or hearing aid program*** call the toll-free hotline at *[(800)]* ***1-800-*** 792-9745.

What Does Your Employer Offer?

The ideal time to start thinking about how you will supplement Medicare is several months before you reach age 65, particularly since you may be able to take advantage of insurance coverage you have as an employee.

If you are covered by a health plan at work, your employer may allow you to remain insured under the group plan after you retire and continue to pay all or part of the premium. This is sometimes referred to as "continuation."

Your employer may offer a different arrangement called "conversion." This permits you to buy an individual policy from the same insurance company you had at work, but *[doesn't]* ***does not*** necessarily mean your new policy will have the same benefits. Nor does it mean the policy will be cheaper than *[similar]* policies you may find by shopping around on your own.

Continuation and conversion offer two advantages: you will probably not be required to produce a medical history or undergo a medical examination; and, you will not have to wait to receive benefits.

One kind of insurance you may be able to *[keep]* ***maintain*** through continuation or conversion is a major medical policy.

As the name implies, major medical coverage is designed to cover very large medical bills, usually after you have paid a substantial deductible. The deductibles for major medical can be as high as $1,000 or more, depending on the policy, but the coverage can amount to as much as $1 million.

Continuation of a major medical plan through a former employer may help pay for some costs after Medicare stops paying or for costs Medicare will not pay at all—for example, medical bills that exceed the Medicare allowed amount.

There are no hard and fast rules*[,]* about continuation or conversion policies. Ask your employer's personnel office to explain your options. *[Can you continue or convert? How much will the coverage cost? Will the policy cover your spouse? (Some do and some don't.) What will the policy pay for?]* ***Be sure to discuss whether you can continue or convert; how much the coverage will cost; whether the policy will cover your spouse (some do and some do not); and what benefits are included in the plan.**

If you are required to pay some or all of the premiums for your retirement health benefits, you may find it to your advantage to shop

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around for less expensive health insurance which will adequately supplement your Medicare coverage.*

Health Maintenance Organizations

Membership in a health maintenance organization—HMO—is another way to fill the gaps in Medicare. HMOs are prepaid health care programs. Like insurance policies, HMOs cover certain health care costs. Unlike insurance policies, HMOs actually provide health care services. Some HMOs have a contract with Medicare. As a Medicare beneficiary, *[you're]* ***you are*** eligible to join an HMO if you participate in both Parts A and B of Medicare and live in a county where an HMO that contracts with Medicare is available. Persons with Part B only of Medicare are also eligible to enroll in a Medicare-contracting HMO, however, coverage is limited.

If you join an HMO, you *[don't]* ***do not*** have to pay the Medicare deductibles or co-payments or file claims. You pay a monthly premium to the HMO, which provides *[doctor's]* ***doctors'*** services and most other health care. You may have to pay a co-payment of $1 to $10 for some services.

The trade-off is that you have to use the HMO participating doctors and facilities. If you need a specialist, you must go to one recommended by the HMO. If you choose to see a non-HMO physician on your own, you *[will]* ***may*** have to pay all or some of the bills yourself.

HMOs can have one of two types of contracts with Medicare: either a "cost" or a "risk" contract. You should learn which type of contract the HMO has with Medicare before enrolling.

Members of an HMO having a cost contract with Medicare have a bit more flexibility with regard to reimbursement when they ***choose to*** go outside ***of*** the HMO network. The reason is that when Medicare has a cost contract with an HMO***,*** it will still pay 80 percent of its approved amount for services rendered to a member out of the HMO network.

When Medicare has a risk contract with an HMO, however, it will not pay any portion of the bill for services received outside the HMO network except under very specific circumstances (for example, life-threatening emergencies).

There are different kinds of HMOs. Some have all their doctors located in facilities owned by the HMO. Some are networks of physicians who maintain their own offices and service HMO patients as a part of their regular practice.

HMO plans and premiums vary. A "low option" HMO plan generally covers at least the services included under the regular Medicare program. A "high option" plan ususally includes additional services not covered by Medicare, for example, eye care.

For further information on Medicare-contracting HMOs, write the New Jersey Department of Insurance, Enforcement and Consumer Protection, Senior Health Insurance Program, CN 325, Trenton, NJ 08625.

Medicare Supplement Policies

If you are looking for a policy specifically designed to coordinate with Medicare, you may want to consider a Medicare supplement policy. The phrase "Medicare supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. ***You must have both Parts A and B of Medicare to purchase this kind of policy.***

Because people *[looking]* ***who want*** to purchase health insurance coverage to supplement Medicare come from varying backgrounds, there is no one "best" policy for everyone. *[Coverage should be purchased only after an individual has assessed what he or she can afford to pay]* ***You should first decide what you can afford***, and what *[his or her]* ***your*** individual needs and wants are in the way of insurance benefits ***before you purchase coverage***.

For example, someone who can only afford to pay $50 per month for a policy has already eliminated any plan that costs over that each month and will need to choose from those plans available in his or her price range.

Also, just because an individual can afford a $100 per month policy does not mean he or she should not consider a less expensive policy. If the more expensive plan contains one or more benefits the person does not want, (for example, Care Outside the United States and At-Home Recovery) then a less expensive plan without these benefits may be a better buy.

Until recently, there were hundreds of Medicare supplement policies being sold throughout the country. The benefits provided by these policies varied greatly, which created much confusion on the part of consumers. In 1990, however, the federal government, under the *[OBRA]* ***Omnibus Budget Reconciliation Act (OBRA)*** '90 law, made a move to *[consolidate]* ***reduce*** the number of Medicare supplement policies being sold. *[This resulted in the approval of]* ***As a result,*** 10 policy designs*[, which simplifies the process of selecting a policy by consumers]* ***were approved***. ***This makes it easier for a consumer to compare Medicare supplement policies. These 10 plans are labelled "A" through "J".***

Plan A is known as the "Core" plan, and all of its benefits are found in each of the other nine plans*[, B through J,]* ***("B" through "J")*** as well.

The Core plan's benefits pay for:

—Part A co-payments: days 61-90 in a hospital;
days 91-150 in a hospital;

—100% of hospital expenses after 150 days (when Medicare runs out), up to a total of 365 days in a lifetime;

—Part B co-payments: 20% of Medicare's approved amount; and

—Costs for the first three pints of blood each year.

In addition to the Core plan benefits, plans B through J include various other benefits, such as coverage for the Part B deductible, prescription drugs and preventive health care.

The 10 Medicare supplement policy designs, A through J, are shown in the following chart:

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	PLANS									
*[BENEFITS	A	B	C	D	E	F	G	H	I	J
CORE BENEFITS—Part A copayments, Part B copayments, three pints of blood replacement	x	x	x	x	x	x	x	x	x	x
PART A DEDUCTIBLE—All of the inpatient hospital deductible amount per benefit period.		x	x	x	x	x	x	x	x	x
PART B DEDUCTIBLE—All of the deductible amount per calendar year regardless of hospital confinement.			x			x				x
SKILLED NURSING FACILITY CARE—All of the Medicare copayment amount for days 21-100 in a benefit period			x	x	x	x	x	x	x	x
MEDICALLY NECESSARY EMERGENCY CARE IN A FOREIGN COUNTRY—80% of the billed charges subject to a calendar year deductible and a lifetime maximum benefit.			x	x	x	x	x	x	x	x
AT-HOME RECOVERY—Up to seven (7) visits per week for a maximum calendar year benefit of $1600, for assistance with activities of daily living.				x			x		x	x
PREVENTIVE MEDICAL CARE—Up to the Medicare-approved amount for specified services for a maximum amount of $120 per calendar year.					x					x
100% OF PART B EXCESS CHARGES—All of the difference between the Medicare-approved amount and appropriate billed charges.						x			x	x
80% OF PART B EXCESS CHARGES—80% of the difference between the Medicare-approved amount and appropriately billed charges.							x			
BASIC OUTPATIENT PRESCRIPTION DRUGS—50% of charges subject to a calendar year deductible and a per year per insured maximum.								x	x	
EXTENDED OUTPATIENT PRESCRIPTION DRUGS—50% of charges subject to a calendar year deductible and a per year per insured maximum (exceeding the Basic Outpatient Prescription Drugs maximum).										x]*

***TEN STANDARD MEDICARE SUPPLEMENT PLANS**

BASIC BENEFITS (Included in All Plans)
HOSPITALIZATION: Part A Coinsurance Plus Coverage for 365 Additional Days in a Lifetime After Medicare Benefits End
MEDICAL EXPENSES: Part B Coinsurance (20% of Medicare-Approved Expenses)
BLOOD: Cost of First Three Pints of Blood Each Year

A	B	C	D	E	F	G	H	I	J
BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS	BASIC BENEFITS
		SKILLED NURSING CO-INSURANCE	SKILLED NURSING CO-INSURANCE	SKILLED NURSING CO-INSURANCE	SKILLED NURSING CO-INSURANCE	SKILLED NURSING CO-INSURANCE	SKILLED NURSING CO-INSURANCE	SKILLED NURSING CO-INSURANCE	SKILLED NURSING CO-INSURANCE
	PART A DEDUCTIBLE	PART A DEDUCTIBLE	PART A DEDUCTIBLE	PART A DEDUCTIBLE	PART A DEDUCTIBLE	PART A DEDUCTIBLE	PART A DEDUCTIBLE	PART A DEDUCTIBLE	PART A DEDUCTIBLE
		PART B DEDUCTIBLE			PART B DEDUCTIBLE				PART B DEDUCTIBLE
					PART B EXCESS (100%)	PART B EXCESS (80%)		PART B EXCESS (100%)	PART B EXCESS (100%)
		FOREIGN TRAVEL EMERGENCY	FOREIGN TRAVEL EMERGENCY	FOREIGN TRAVEL EMERGENCY	FOREIGN TRAVEL EMERGENCY	FOREIGN TRAVEL EMERGENCY	FOREIGN TRAVEL EMERGENCY	FOREIGN TRAVEL EMERGENCY	FOREIGN TRAVEL EMERGENCY
			AT-HOME RECOVERY			AT-HOME RECOVERY		AT-HOME RECOVERY	AT-HOME RECOVERY
							BASIC DRUGS ($1,250 PER YEAR LIMIT)	BASIC DRUGS ($1,250 PER YEAR LIMIT)	EXTENDED DRUGS ($3,000 PER YEAR LIMIT)
				PREVENTIVE CARE					PREVENTIVE CARE*

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New Jersey law allows all 10 plan designs to be sold in the state. Consumers, however, may not find all 10 plan designs available to them*[. The reason is that]* ***because*** insurance companies selling Medicare supplement policies have *[an]* ***the*** option *[of which plans, if any, they would like to sell]* ***to sell which plans they choose***. If an insurance company does choose to sell one or more Medicare supplement policies, the Core plan must be one of these plans.

The Department of Insurance maintains a list of the individual Medicare supplement polices for sale in New Jersey. If you need a copy of the list, send a self-addressed, stamped envelope to the Department of Insurance, Enforcement and Consumer Protection, Senior Health Insurance Program, CN 325, Trenton, New Jesey 08625.

Limited Benefit Policies

Policies that do not pay all the benefits or do not pay the dollar amounts of the benefits that are required of Medicare supplement policies are called "limited benefit" policies.

These plans can provide some limited coverage when added to your Medicare insurance. However, the coverage provided is not considered adequate to fill gaps in Medicare.

Limited benefit policies that are designed to be added to your Medicare coverage may be called by different names, which may be confusing to an uninformed consumer. These plans may be referrred to as "complements" or "supplemental" policies—different than Medicare supplement policies.

[Advertising] ***Also, a consumer may be confused by advertising*** literature***.*** *[for this kind of insurance coverage may be misleading in that a]* ***The*** consumer may believe that the policy adequately covers the gaps in Medicare; however, coverage is generally limited to in-hospital services.

[In] ***With*** some policies, both *[in-patient]* ***inpatient*** and *[out-patient]* ***outpatient*** coverage may be available, but benefits are usually limited to eligible services and/or limited amounts payable per calendar year.

These policies are often less costly than most Medicare supplement policies and therefore may be attractive to *[Medicare beneficiaries]* ***persons on Medicare*** looking to purchase additional insurance coverage. If you can afford a Medicare supplement policy, there is no need to have a "limited benefit" policy.

Examples of limited benefit policies are discussed below.

Blue Cross and Blue Shield Coverage

Blue Cross and Blue Shield of New Jersey, Inc., a non-profit health service corporation, *[offers two limited benefit]* ***has offered*** plans designed to *[coordinate with]* ***complement*** Medicare***, in addition to Super 65, a Medicare supplement policy***. ***These are:***

"65"—*Blue Cross and Blue Shield 65 is designed to provide basic hospitalization coverage. It pays the Part A deductible and co-payments, and costs for care outside the United States. It also pays the Part B deductible and 20 percent of Medicare's approved amount for doctors who *[see]* ***treat*** you while *[you're]* ***you are*** hospitalized. Blue Cross and Blue Shield 65 pays 20 percent co-payments for some services outside a hospital but there are annual dollar maximums. It does not pay for hospitalization after 150 days (when Medicare runs out) and it does not cover physician home or office visits.

"65 Select"—Blue Cross and Blue Shield 65 Select is primarily aimed at covering the costs for a long hospital stay. You pay the everyday health care costs—the Part A and B deductibles and some medical co-payments—yourself. 65 Select pays the ***Part A hospitalization co-payments, the*** Part B co-payment for physician care in the hospital, *[the Part A hospitalization co-payments,]* and 90 percent of hospital costs after Medicare runs out. It pays for some services performed outside a hospital, subject to annual dollar maximums, and for health care costs while traveling outside the United *[Staes]* ***States***. 65 Select does not cover physician home or office visits.

[You can apply for Blue Cross and Blue Shield 65 or 65 Select within 31 days of your 65th birthday, or your Medicare effective date if you're disabled. If more than 31 days have passed since your 65th birthday, you can apply during the open enrollment period from February 1 through April 30 of each year. Your coverage will take effect on July 1.]

Hospital Indemnity Policies

Frequently advertised by celebrities, indemnity policies pay a fixed amount of money per day, week or month while you are in the hospital. They are not designed, however, to fill Medicare's gaps. ***Therefore, you should not buy a hospital indemnity policy as your only additional health coverage to supplement Medicare.***

The advantages are that they pay you regardless of whether you have other hospital coverage, and the money is yours to spend as you see fit.

The disadvantage is that they pay only if *[you're]* ***you are*** hospitalized. No matter what your medical bills are, you *[can't]* ***cannot*** collect unless *[you're]* ***you are*** in the hospital. ***And, depending on the policy you choose, you may not collect much even then. Under New Jersey's minimum standards, the laws which set out the basic benefits that policies must provide, hospital indemnity policies must begin paying by day four of your hospital stay. But they do not have to pay before the fourth day. Therefore, if you leave the hospital after day three, they may not pay you anything. In addition, some policies stop paying after 31 days.***

[And depending on the policy you choose, you may not collect much even then: Under New Jersey's minimum standards, policies must begin paying by day four of your hospital stay. But they don't have to pay before the fourth day, so if you go home after three, you may not see a dime. Some policies stop paying after 31 days.]

[Other things you] ***You*** should ***also*** be aware of ***the fact that*** *[are]* the payments made to you may be much lower than your bills*[—]* *(*even though ***individual*** policies sold in New Jersey are required to pay at least $40 a day*[; and]***)***. ***Moreover***, the amount of the *[benefit]* ***benefits*** can remain the same year after year, so ***,*** unless you update your coverage occasionally, inflation will take its toll on the value of the payments. ***(That is, the medical costs will increase, but your benefits will not.) Therefore, if*** *[If]* you do buy a hospital indemnity policy, try to update it every few years.

[Don't buy a hospital indemnity policy as your only additional health coverage to supplement Medicare.]

[Accidents] ***Accident-*** Only ***Policies***

[Accident-only] ***These*** policies provide coverage for death, dismemberment, ***disability*** or hospital and medical care due to an accident. They are not designed to pay routine health care costs. Since Medicare pays regardless of whether the reason for medical attention is an illness or an accident, it is very likely that having one of these policies is a duplication of benefits you already have.

Therefore, do not buy an accident-only policy as your only additional health coverage to supplement Medicare.

Specified Disease Policies

You may have received advertisements in the mail for "dread-disease policies"—policies that will cover you for specific diseases, like cancer. They are such a bad buy that they are banned for sale in New Jersey, buy may still be *[accessible]* ***available*** to some consumers as members of an organization headquartered outside *[this]* ***the*** state.

Specified disease policies are a bad buy because they pay in so few situations that odds are heavily stacked *[against]* ***in favor of*** the company *[ever paying]* ***never having to pay*** you anything.

As with accident-only policies, it is very likely that a specified disease policy duplicates benefits which are ordinarily covered under Medicare. Since specified disease policies generally ***pay*** only *[pay]* for services related to the specific disease for which they *[were]* ***have been*** designed, you would have more comprehensive coverage with Medicare and a Medicare supplement policy.

Long Term Care Policies

Long-term care refers to a wide range of medical and non-medical services people need for a long period of time due to a chronic illness, disability, or physical or mental handicap. Long-term care can be provided in a nursing home, at home or in a community facility, such as an adult day care center.

Long-term care insurance policies cover different levels of nursing home care—skilled, intermediate*[,]* and custodial. Some will also help pay for alternatives to nursing home care*[:]***;*** for example, home care and adult day care.

Before you buy a long-term care policy, be sure to read the policy provisions carefully. *[Will the policy pay]* ***For example, check to see whether the policy pays*** benefits for skilled, intermediate and custodial nursing home care*[? Will]***; ***whether*** it *[cover]* ***covers*** home health care ***services***[? What is the]***; ***what its*** definition ***is*** for each level of care*[? Is]***; ***whether*** there ***is*** a waiting period (a period

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of time you have to be in the nursing home or receive home care before the policy will pay benefits)*[? Does]***; **whether*** the policy specifically *[exclude]* ***excludes*** coverage for any conditions*[? How]***; **how*** long *[will]* the policy ***will*** pay benefits*[? Under]***; **and, under*** what conditions *[can]* the company ***can*** cancel or refuse to renew the policy.

Long-term care insurance is generally purchased to fill some additional gaps in Medicare which are not filled by your other supplement coverage. It should be purchased only after you have adequate supplement coverage under another type of health insurance plan.

For a copy of our "Buyer's Guide to Long-Term Care Insurance", send a self-addressed legal size envelope to: Long Term Care Buyer's Guide, Public Affairs Division, Department of Insurance, CN 325, Trenton, New Jersey 08625.

AUTO INSURANCE *[(]*PERSONAL INJURY PROTECTION*[)]* ***(PIP)***

Most New Jersey residents now have the option of selecting their health coverage provider, rather than their auto insurance company, to pay for their no-fault medical expense claims. *[Note:]*

Medicare and Medicaid will NOT provide primary coverage. If your primary health benefits are provided by either Medicare or Medicaid, you cannot choose this option. Medicare will *[only]* consider payment of claims ***only*** after you have submitted them to the primary carrier(s).

BE AN EDUCATED CONSUMER

Now that you know what Medicare does not cover, and what *[kind]* ***kinds*** of *[policies]* ***coverages*** are *[out there]* ***available***, you are ready to set your strategy.

If *[you're]* ***you are*** concerned about day-to-day expenses, look for a policy that *[pays]* ***provides coverage*** in as many situations as possible. Generally speaking, *[your money would be better spent on something like]* ***it is better to buy*** a Medicare supplement policy which covers a broad spectrum of medical expenses than *[on]* a hospital indemnity policy which pays ***you*** only a small amount for days you spend in the hospital, but nothing toward your actual hospital or medical bills.

Do Not Duplicate Coverage

[Don't duplicate coverage.] It is a federal crime for someone to knowingly sell you a policy that duplicates Medicare or any private health policy you already have.

If you already are covered under more than one health policy***,*** you should review these for duplication of benefits. *[It's]* ***It is*** better to have the most comprehensive policy you can afford than several policies that duplicate coverage. Some policies will not pay for an expense already covered under another policy. So if you have two of the same kind of policy, you can wind up with two sets of payments but only one set of benefits.

Watch Out for Key Phrases

Policies are contracts, and like other legal documents, they use special vocabulary, including:

[Waiting Periods. If you're buying a new policy, you may have to wait up to 30 days before you will be eligible to collect anything. Some policies also have waiting periods of up to six months for specific conditions (for example, varicose veins) unless the conditions are considered a medical emergency and treated as such.]

Preexisting Condition Exclusions. Policies may not pay bills for a health condition you had before you bought the policy. This usually *[isn't]* ***is not*** a problem with coverage extended by employers, and in New Jersey, Medicare supplement policies must pay for any conditions after *[you've]* ***you have*** had the policy for six months. But policies that are not ***called*** Medicare supplement policies, such as hospital indemnity policies, can have pre-existing condition *[exclusions]* ***waiting periods*** of up to two years.

Maximums. A policy may have a maximum dollar amount that it will pay under the entire policy, a maximum it will pay within a given period of time or a limit on what it will pay for specific treatments. Hospital indemnity policies, for instance, may pay a specific amount per day, $40 for example, up to a maximum amount per month.

Renewal. Find out if and when a company can refuse to renew the policy. There are three common types of renewal conditions:

Guaranteed renewable. This means that the company agrees to renew each year until you reach a certain age or for life as long as you pay the premium.

You may see policies that are:

Conditionally renewable. This means that the company agrees to renew as long as the company continues to insure people in the state with the same kind of policy. If the company decides to discontinue selling that kind of policy here, the coverage can be non-renewed at the end of the policy year or the next premium due date.

Renewable at company option. A policy with this provision can be non-renewed for any reason at the end of the policy year. This kind of clause is prohibited in New Jersey for individual policies, but you may see sales materials for policies with this type of renewal clause from ***groups*** outside the state.

A Word of Caution

[Outline of Coverage. Don't be pressured or frightened into buying something you may not ever be able to use, like a cancer policy. If the literature you have doesn't discuss the important items mentioned here, ask for an Outline of Coverage, which companies are required to supply.]

[A Few Cautions]

[Don't] ***Do not*** be fooled into thinking that a company or agent represents Medicare or any other federal or state sponsored insurance program. The New Jersey Department of Insurance sets minimum standards for policies and companies, but it does not endorse or sell policies.

Do not be pressured or frightened into buying something you may not ever be able to use, like a cancer policy. If the literature you have does not discuss the important items mentioned here, ask for an Outline of Coverage.

Be honest on the insurance application. If you lie or *[don't]* ***do not*** give a complete medical history, the company can refuse to pay. If someone else helps you fill out the application, check it before signing. It is your claim that will be denied if incorrect medical history is on the application.

[Don't] ***Do not*** pay in cash. Use a check, money order or bank draft and be sure it is payable to the company, not the agent or anyone else. Remember, even a guaranteed renewable policy can be cancelled if you *[don't]* ***do not*** pay your premium, so you want a record of your payments.

Some Final Notes

By law, depending on the type of insurance policy you are considering, you may have a 10 to 30-day "free-look" period in which to review the policy and return it for a full refund if you are not satisfied. (Medicare Supplement and *[Long-Term Care Policies]* ***Long-term care policies*** have a 30-day free look period.)

If you *[don't]* ***do not*** receive the policy within 30 days after applying, contact the company and obtain in writing a reason for the delay. If 60 days go by without information, ***you can*** *[call or]* write the Department of Insurance***, Enforcement and Consumer Protection, CN 325, Trenton, NJ 08625; or, call (609) 292-5360****.

It is a violation of state regulations for your doctor to charge you a fee for filling out your claim form. If your doctor does charge you, you can file a complaint with the State Board of Medical Examiners, 28 W. State Street, Room 602, Trenton, NJ 08608.

Claim payments should be mailed promptly. *[So if]* ***If*** you experience delays, *[don't]* ***do not*** be afraid to assert your rights. Insurance companies sometimes make mistakes; your inquiry or complaint may help to bring a faster or fairer claim settlement.

Getting Help

To get help filling out claim forms, evaluating policies and finding answers to your health insurance questions, you can contact the Senior Health Insurance Program (SHIP). SHIP is a free service designed to help you with your health insurance problems or questions. You can contact the New Jersey Division on Aging at 1-800-792-8820 for the number of the SHIP office in your county.

If you need other help, write the Department of Insurance, Enforcement and Consumer Protection, Senior Health Insurance Program, CN-325, Trenton, New Jersey 08625.

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EXHIBIT B
MEDICARE DEDUCTIBLES AND CO-PAYMENTS FOR 1992

Medicare Part A

Service	Length of Stay	You Pay	Medicare Pays
Hospitalization	First 60 days	$652 deductible	Balance
	61st-90th day	$163 co-payment per day	Balance
	91st-150th day	$326 co-payment per day	Balance
	Beyond 150 days	All costs	Nothing
Post-hospital Skilled Nursing Facility Care	First 20 days	Nothing *provided all conditions are met (see Your Medicare Handbook)	All Costs
	21st-100th day	$81.50 co-payment per day	Balance
Home Health Care		Nothing *provided all conditions are met (see Your Medicare Handbook)	All Costs
Hospice Care *Nursing care, physician's services, physical/occupational therapy, medical supplies, home health aide services, counseling services (except for bereavement counseling).		Nothing *provided all conditions are met (see Your Medicare Handbook)	All Costs
*Drugs and Biologicals		5% co-payment	Balance
*Respite Care		5% co-payment	Balance
Medicare Part B			
Medical Expenses		$100 annual deductible 20% of Medicare-approved amount after deductible	80% of Medicare-approved amount after deductible

EXHIBIT C
(COMPANY NAME)
NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE

THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!

(A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.)

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In (Current Calendar Year) Medicare Pays Per Calendar Year	Effective January 1 (Coming Calendar Year) Medicare Will Pay	In (Current Calendar Year) Your Coverage Pays	Effective January 1 (Coming Calendar Year) Your Coverage Will Pay
MEDICARE PART A SERVICES AND SUPPLIES				
Inpatient Hospital Services	All but $_____ for first 60 days/ benefit period	All but $_____ for first 60 days/ benefit period		
Semi-Private Room & Board	All but $_____ a day for 61st-90th days/benefit period	All but $_____ a day for 61st-90th days/benefit period		

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Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room	All but $_____ a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)	All but $_____ a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)
BLOOD	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period
SKILLED NURSING FACILITY CARE		100% of costs of 1st 20 days (after a 3 day prior hospital confinement) benefit period
	100% of costs for 1st 20 days (after a 3 day prior hospital confinement)/benefit period	All but $_____ a day for 21st-100th days/benefit period
	All but $_____ a day for 21st-100th days/benefit period	
	Beyond 100 days—Nothing/benefit period	Beyond 100 days—Nothing/benefit period
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after $_____ deductible)	80% of allowable charges (after $_____ deductible/calendar year)
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immuno-suppressive drugs during the first year following a covered transplant (after $_____ deductible/calendar year)	Inpatient prescription drugs. 80% of allowable charges for immuno-suppressive drugs during the first year following a covered transplant (after $_____ deductible/calendar year)
BLOOD	80% of all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period (after $_____ deductible/calendar year)	80% of all costs except nonreplacement fees (blood deductible) for first 3 pints in (after $_____ deductible/calendar year)

(Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage. If there are corresponding Medicare benefits, they should be shown.)

(Describe any coverage provisions due to Medicare modifications.)

(Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.)

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY (COMPANY) ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT (Policy) CONTACT:

(COMPANY OR FOR AN INDIVIDUAL POLICY—NAME OF AGENT) (ADDRESS/PHONE NUMBER)

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EXHIBIT D
PART ONE—COVER PAGE(S)

(COMPANY NAME)
OUTLINE OF MEDICARE SUPPLEMENT COVERAGE
BENEFIT PLAN(S): (insert letter(s) of plan(s) being offered)

Medicare supplement insurance may be sold in only ten (10) standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your State.

BASIC BENEFITS: Included in All Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (20% of Medicare-approved expenses).

Blood: First three (3) pints of blood each year.

A	B	C	D	E	F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

PREMIUM INFORMATION (Boldface type)

We, (carriers name), may only raise your premium if we raise the premium for all policies like yours in this State. (If the premium is based on the increasing age of the insured, include information specifying when premiums will change.)

PART TWO—DISCLOSURE PAGE(S)

DISCLOSURES (Boldface type)

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY (Boldface type)

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY (Boldface type)

If you find that you are not satisfied with your policy, you may return it to (Carrier's address). If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT (Boldface type)

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE (Boldface type)

This policy may not fully cover all of your medical costs.
(for agents:)
Neither (Carrier's name) nor its agents are connected with Medicare.
(for direct response carriers:)
(Carrier's name) is not connected with Medicare.
This outline of coverage does not give all the details of Medicare. Contact your local Social Security Office or consult "The Medicare Handbook" for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT (Boldface type)

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The compay may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

PART THREE—PLAN CHARTS

(Include for each plan prominently identified on the cover page, a chart illustrating the services, Medicare payments, plan payments and *[insured payment]* ***insured's payments*** for each plan using the same language, in the same order*, **using*** uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. Include an explanation of any Innovative Benefits on the cover page and in the appropriate chart as specified below.)

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PLAN A
MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$0	$628 (Part A Deductible)
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	$0	Up to $78.50 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All Costs
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

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PLAN B
MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A Deductible)	$0
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	$0	Up to $78.50 a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All Costs
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

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PLAN C

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A Deductible)	$0
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All Costs
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0

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OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of Charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN D
MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A Deductible)	$0
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All Costs
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

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PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies —Durable medical equipment First $100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 100% $0 80%	 $0 $0 20%	 $0 $100 (Part B Deductible) $0
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan —Benefit for each visit —Number of visits covered (must be received within 8 weeks of last Medicare Approved visit) —Calendar year maximum	 $0 $0 $0	 Actual Charges to $40 a visit Up to the number of Medicare Approved visits, not to exceed 7 each week $1,600	 Balance

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year Remainder of Charges	 $0 $0 benefit of $50,000	 $0 80% to a lifetime maximum $50,000 lifetime maximum	 $250 20% and amounts over the ***$50,000 lifetime maximum***

PLAN E

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st through 90th day 91st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the Additional 365 days	 All but $628 All but $157 a day All but $314 a day $0 $0	 $628 (Part A Deductible) $157 a day $314 a day 100% of Medicare Eligible Expenses $0	 $0 $0 $0 $0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st through 100th day 101st day and after	 All approved amounts All but $78.50 a day $0	 $0 Up to $78.50 a day $0	 $0 $0 All costs
BLOOD First 3 pints Additional amounts	 $0 100%	 3 pints $0	 $0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	 All but very limited coinsurance for outpatient drugs and inpatient respite care	 $0	 Balance

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MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All Costs
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of Charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
PREVENTIVE MEDICAL CARE BENEFIT—NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diptheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All Costs

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PLAN F

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A Deductible)	$0
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0

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OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of Charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN G
MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A Deductible)	$0
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	80%	20%
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

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PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan —Benefit for each visit	$0	Actual Charges to $40 a visit	Balance
—Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
—Calendar year maximum	$0	$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year	$0	$0	$250
Remainder of Charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN H
MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days	All but $628	$628 (Part A Deductible)	$0
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after: —While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used: —Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

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MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	$0	All Costs
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0

OTHER BENEFITS—NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of Charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS—NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50%—$1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All Costs

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PLAN I

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $628	$628 (Part A Deductible)	$0
61st through 90th day	All but $157 a day	$157 a day	$0
91st day and after:			
—While using 60 lifetime reserve days	All but $314 a day	$314 a day	$0
—Once lifetime reserve days are used:			
—Additional 365 days	$0	100% of Medicare Eligible Expenses	$0
—Beyond the Additional 365 days	$0	$0	All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st through 100th day	All but $78.50 a day	Up to $78.50 a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

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PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES —Medically necessary skilled care services and medical supplies —Durable medical equipment First $100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	 100% $0 80%	 $0 $0 20%	 $0 $100 (Part B Deductible) $0
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan —Benefit for each visit —Number of visits covered (must be received within 8 weeks of last Medicare Approved visit) —Calendar year maximum	 $0 $0 $0	 Actual Charges to $40 a visit Up to the number of Medicare Approved visits, not to exceed 7 each week $1,600	 Balance

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year Remainder of Charges	 $0 $0	 $0 80% to a lifetime maximum benefit of $50,000	 $250 20% and amounts over the $50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS—NOT COVERED BY MEDICARE First $250 each calendar year Next $2,500 each calendar year Over $2,500 each calendar year	 $0 $0 $0	 $0 50%—$1,250 calendar year maximum benefit $0	 $250 50% All Costs

PLAN J

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st through 90th day 91st day and after: —While using 60 lifetime reserve days —Once lifetime reserve days are used: —Additional 365 days —Beyond the Additional 365 days	 All but $628 All but $157 a day All but $314 a day $0 $0	 $628 (Part A Deductible) $157 a day $314 a day 100% of Medicare Eligible Expenses $0	 $0 $0 $0 $0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st through 100th day 101st day and after	 All approved amounts All but $78.50 a day $0	 $0 Up to $78.50 a day $0	 $0 $0 All costs
BLOOD First 3 pints Additional amounts	 $0 100%	 3 pints $0	 $0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

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MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
Part B Excess Charges (Above Medicare Approved Amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All Costs	$0
Next $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES—BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$0	$0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B Deductible)	$0
Remainder of Medicare Approved Amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES—NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
—Benefit for each visit	$0	Actual Charges to $40 a visit	Balance
—Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
—Calendar year maximum	$0	$1,600	

OTHER BENEFITS

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL—NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of Charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS—NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	50%—*[$1,250]* **$3,000* calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All Costs
PREVENTIVE MEDICARE CARE BENEFIT—NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All Costs

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(INNOVATIVE BENEFIT)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
(Description of benefit) (Description of conditions, limitations, exclusions, including any applicable deductible and coinsurance requirements)	(Per day or per benefit period, as applicable)	(Per day or per benefit period, as applicable)	(Per day or per benefit period, as applicable)

EXHIBIT E

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT COVERAGE
(Carrier's Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to (your application) (information you have furnished), you intend to terminate existing Medicare supplement coverage and replace it with coverage issued by (Carrier's Name). Your new (policy) (certificate) (coverage) provides thirty (30) days within which you may decide without cost whether you desire to keep the coverage.

You should review this new coverage carefully. Compare it with all accident and sickness and other health coverage you may have. Terminate your present coverage only if, after due consideration, you find that purchase of this coverage is a wise decision.

STATEMENT TO APPLICANT BY CARRIER, AGENT (BROKER OR OTHER REPRESENTATIVE):

I (We) have reviewed your current medical or health coverage. The replacement involved in this transaction does not duplicate coverage, to the best of my (our) knowledge. The replacement policy is being purchased for the following reason(s) (check one):

☐ Additional benefits
☐ No change in benefits, but lower premiums
☐ Fewer benefits and lower premiums
☐ Other (please specify):

(1) Health conditions which you presently may have (preexisting conditions) may not be immediately or fully covered under the new (policy) (certificate) (coverage). This could result in denial or delay of a claim for benefits under the new (policy) (certificate) (coverage) whereas a similar claim may be payable under your present coverage.

(2) State law provides that your replacement (policy) (certificate) (coverage) may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods in the new (policy) (certificate) (coverage) for similar benefits to the extent such time had *[Partially]* ***partially*** or fully expired under the original policy.

(3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to answer truthfully and completely all questions on the application concerning your medical and health history. Failure to include all material medical information on the application may provide a basis for (Carrier's Name) to deny any future claims and to refund your payments as though your (policy) (certificate) (coverage) had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded.

(4) Do not cancel your present (policy) (contract) (coverage) until you have received your new (policy) (contract) (coverage) and are sure that you want to keep it.

_____
Signature of Agent, Broker or Other Representative
(Direct response carriers may omit this signature line.)

_____
Typed Name and Address of Agent, Broker or Other Representative
(Direct response carriers may omit this signature line.)

The above "Notice to Applicant" was delivered to me on:

_____
Date

_____
Applicant's signature

_____
Carrier's Name

EXHIBIT F

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR _____

TYPE _____ SMSBP (w) _____

For the State of _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

Person Completing This Exhibit _____

Title _____ Telephone Number (___) _____

Line	(a) Earned Premium (x)	(b) Incurred Claims (y)
1. Current Year's Experience		
a. Total (all policy years)		
b. Current Year's issues (z)		
c. Net (for reporting purpose = 1a – 1b)		
2. Past Year's Experience (All Policy Years)		
3. Total Experience (Net Current Year + Past Years' Experience)		
4. Refunds last year (Excluding Interest)		
5. Previous Since Inception (Excluding Interest)		
6. Refunds Since Inception (Excluding Interest)		
7. Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1)		
8. Experienced Ratio Since Inception		

Total Actual Incurred Claim (line 3, col. b) / Total Earned Premiums (line 3, col. a) – Refunds Since Inception (line 6) = Ratio 2

9. Life Years Exposed Since Inception

If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

10. Tolerance Permitted (obtained from credibility table) _____

11. Adjustment to Incurred Claims for Credibility

Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than benchmark ratio, then proceed.

12. Adjusted Incurred Claims =

(Total Earned Premiums (line 3, col. a)—Refunds Since Inception (line 6)) × Ratio 3 (line 11)

13. Refund = Total Earned Premiums (line 3, col. a)—Refunds Since Inception (line 6)) – (Adjusted Incurred Claims (line 12)/Benchmark Ratio (Ratio 1))

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If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

Medicare Supplement Credibility Table

Life Years Exposed Since Inception	Tolerance
10,000+	0.0%
5,000–9,000	5.0%
2,500–4,999	7.5%
1,000–2,499	10.0%
500–999	15.0%

If less than 500, no credibility.

(w) "SMSBP" = Standardized Medicare Supplement Benefit Plan

(x) Includes model loadings and fees charged.

(y) Excludes Active Life Reserves

(z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

Signature _____

Name—Please Type _____

Title _____

Date _____

Reporting Form for the Calculation of Benchmark Ratio Since Inception for Individual Policies for Calendar Year _____

TYPE _____ SMSBP (p) _____

FOR THE STATE OF _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

Address _____

Person Completing This Exhibit _____

Title _____ Telephone Number (____) _____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss ratio	(j) (h)x(i)	(o) Policy Year Loss ratio
1		2.770		0.442		0.000		0.000		0.4
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception = (l + n) / (k + m)

(a): Year 1 is the current calendar year minus 1; Year 2 is the current calendar year minus 2; ... etc. ... (Example: If current year is 1991, then Year 1 is 1990; Year 2 is 1989; etc.)

(b): For calendar year(s) in column (a), the premium earned during each year for policies issued in each specific year.

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios, but are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown for informational purposes only.

(p): "SMSBP" means Standardized Medicare Supplement Benefit Plan.

Reporting Form for the Calculation of Benchmark Ratio Since Inception for *[Individual]* ***Group*** Policies for Calendar Year _____

TYPE _____ SMSBP (p) _____

FOR THE STATE OF _____

Company Name _____

NAIC Group Code _____ NAIC Company Code _____

Address _____

Person Completing This Exhibit _____

Title _____ Telephone Number (____) _____

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(a) Year	(b) Earned Premium	(c) Factor	(d) (b)x(c)	(e) Cumulative Loss ratio	(f) (d)x(e)	(g) Factor	(h) (b)x(g)	(i) Cumulative Loss ratio	(j) (h)x(i)	(o) Policy Year Loss ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception = (l + n) / (k + m)

(a): Year 1 is the current calendar year minus 1; Year 2 is the current calendar year minus 2; . . . etc. . . . (Example: If current year is 1991, then Year 1 is 1990; Year 2 is 1989; etc.)

(b): For calendar year(s) in column (a), the premium earned during each year for policies issued in each specific year.

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios, but are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown for informational purposes only.

(p): "SMSBP" means Standardized Medicare Supplement Benefit Plan.

EXHIBIT G

FORM FOR REPORTING MULTIPLE MEDICARE SUPPLEMENT POLICIES

Company Name _____

Address: _____

_____

Phone Number: (_____) _____

Due: March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

_____
Signature

_____
Name and Title (please type)

_____
Date

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(a)

DIVISION OF THE REAL ESTATE COMMISSION

Special Accounts for the funds of others: commingling

Adopted Amendment: N.J.A.C. 11:5-1.8

Proposed: October 5, 1992 at 24 N.J.R. 3483(a).
Adopted: November 10, 1992 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Filed: December 3, 1992 as R.1993 d.8, **without change.**
Authority: N.J.S.A. 45:15-6.
Effective Date: January 4, 1993.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Response:
The Real Estate Commission received one public comment from the New Jersey Association of Realtors on this proposal, which supported the adoption of the proposal as published.

Full text of the adoption follows.

11:5-1.8 Special accounts for the funds of others; commingling
(a)-(d) (No change.)
(e) Within the meaning of this section, the word "promptly" means not more than five business days next following the receipt of the money or property of another. However, where monies are received by a licensee as provided in (c)2 above as a good faith or earnest money deposit accompanying an offer to buy or lease property, if during the five business day period next following the date of the licensee's receipt of those funds the offer is withdrawn prior to acceptance by the offeree or is rejected with no counter-offer made by the offeree, the licensee need not deposit those funds into an escrow or trust account but may, upon the request of the offerer, return them in the same form in which they were received to the offerer. In all other cases, the licensee must deposit such monies within five business days of receipt. Examples of such cases include transactions where negotiations are ongoing, or if a contract or lease is being reviewed by an attorney, or if subsequent to the rejection of an offer the offerer has requested the licensee to retain the monies in the event that the offerer determines to submit another offer on the same or a different property.
(f)-(g) (No change.)

(b)

DIVISION OF THE REAL ESTATE COMMISSION

Advertising Rules

Adopted Amendment: N.J.A.C. 11:5-1.15

Proposed: October 5, 1992 at 24 N.J.R. 3484(a).
Adopted: November 10, 1992 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Filed: December 3, 1992 as R.1993 d.9, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).
Effective Date: January 4, 1993.
Operative Date: May 4, 1993.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:
The Commission received one public comment from the New Jersey Association of Realtors on this proposal which supported its adoption as proposed.

Summary of Changes Between Proposal and Adoption:
1. Upon reviewing this proposal and the comment received on it, the Commission discerned that through a typographical error the word "their" appeared in the concluding phrase of subsection (a)2 of the rule. That error is being corrected through replacement of the word "their" with the word "the."

2. Upon reviewing the proposal, the Commission determined that the requirement contained in the proposed amendment to subsection (b) that all advertising by salesperson and broker-salesperson licensees had to include an indication of their licensed status would place a substantial and undue financial burden upon such licensees. Consequently, the Commission revised the amendment to the rule to leave it to the discretion of salesperson and broker-salesperson licensees whether they include a reference to their license status in their advertisements. However, the revised amendment goes on to provide that where such advertisements do include an indication of the license status of the person placing the ad, that information must be accurately stated through the use of appropriate terminology as provided in subsection (e), and that salespersons may not represent in their advertisements that they are licensed as broker-salespersons.

Finally, in an effort to assist licensees in complying with paragraph (a)2 as amended, the Commission has determined to affirm in this notice of adoption that in order to be in compliance with that paragraph, corporate or partnership licensees need not have every sign, nor the most prominent sign on the exterior of their office locations include their regular business name and the name of their broker of record accompanied by the words "Licensed Real Estate Broker." It is sufficient if one such sign contains the two names and the phrase "Licensed Real Estate Broker."

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

11:5-1.15 Advertising rules
(a) Unless otherwise set forth herein, subsection (b) through (n) below shall apply to all categories of advertising including all publications, radio or television broadcasts, business stationery, business cards, business and legal forms and documents, and signs and billboards.
1. Individuals operating as sole proprietors and licensed as employing brokers shall conspicuously display on the exterior of their maintained place of business their name and the words "Licensed Real Estate Broker".
2. Firms licensed as corporate or partnership brokers shall conspicuously display on the exterior of their maintained place of business their regular business name and the name of the individual licensed as their broker of record and *[their]* ***the*** words "Licensed Real Estate Broker".
(b) All advertising of any licensed individual, partnership, firm, or corporate broker shall include their regular business name which, for the purposes of these rules, shall mean the name in which that individual, partnership, firm or corporation is on record with the Commission as doing business as a real estate broker. All advertising by a salesperson or broker-salesperson shall include the name in which they are licensed*[, and an indication of their licensed status as provided in (e) below,]* and the regular business name of the individual, partnership, firm or corporate broker through whom they are licensed. ***If such advertisements contain a reference to the licensed status of the person placing the ad, their status as a salesperson or broker-salesperson must be indicated through inclusion of a descriptive term as provided in (e) below. A salesperson may not indicate in any advertisement or otherwise that he or she is licensed as a broker-salesperson.***
(c)-(d) (No change.)
(e) The business card of any licensed salesperson shall indicate that this licensee is a salesperson by the use of the words salesperson or sales representative, or sales associate, or where permitted by law, realtor-associate or realtist associate. The business card of any licensed broker-salesperson shall indicate that this licensee is a broker-salesperson by the use of any of the aforementioned words or by the use of the words broker-salesperson. The business card of any licensed broker shall indicate that this licensee is a broker by use of the word broker or, where permitted by law, Realtor or Realtist.
(f)-(i) (No change.)
(j) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or public utterance, either by a single licensee or any group of licensees, which suggests or

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otherwise implies common ownership or common management among such licensees, shall be prohibited except in the case of branch offices controlled by a single broker or licensee and duly licensed as branch offices pursuant to the provisions of N.J.S.A. 45:15-1 et seq. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any licensee provided that such licensee is a member of such trade association.

1. Any franchised licensee using in any advertising the trade name of the franchisor shall include in such advertising in a manner reasonably calculated to attract the attention of the public the franchised licensee's regular business name.

2.-3 (No change.)

(k)-(n) (No change.)

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Contracts of Sale, Leases and Listing Agreements

Adopted Amendment: N.J.A.C. 11:5-1.16

Proposed: October 5, 1992 at 24 N.J.R. 3485(a).

Adopted: November 10, 1992 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: December 3, 1992 as R.1993 d.10, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Effective Date: January 4, 1993.

Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The Commission received two public comments from the New Jersey Association of Realtors on this proposal.

COMMENT: The first comment suggested that N.J.A.C. 11:5-1.16(a)5ii be revised to provide that the attorney review of licensee-prepared changes or additions to contracts or leases already in effect would be limited to the changes or additions themselves, and that the entire contract or lease then in effect would not again be subject to attorney review.

RESPONSE: The Commission recognizes the reasoning underlying this comment and the suggested revision to the proposed amendment contained in the comment. However, the Commission is very sensitive to its limitations as a regulatory agency when dealing with the process through which certain contracts and leases prepared by New Jersey real estate licensees are subject to attorney review. In *Carmagnola v. Hahn,* 223 *N.J. Super.* 547 (App. Div. 1989), a rule adopted by the Commission which was deemed to impact upon the attorney review process was declared void by the court. Based upon that decision, the Commission has concluded that it does not have the legal authority to adopt a rule as suggested in this comment. Consequently, the Commission determined not to revise the proposed amendment as suggested by this commenter.

COMMENT: The Commission received a second comment which suggested that in order to avoid any possible confusion on the part of licensees, N.J.A.C. 11:5-1.16(a)3 should be supplemented by a statement indicating that for the purposes of this rule, the term "instrument" does not include any listing agreements.

RESPONSE: The Commission recognized the wisdom of this suggestion and has added language to paragraph (a)3 clarifying that the term instrument as used in the amended rule is not intended to include listing agreements and buyer brokerage agreements.

Summary of Changes Between Proposal and Adoption:

As noted above, for the sake of clarity the Commission revised N.J.A.C. 11:5-1.16(a)3 to indicate that the term instrument as used in subsection (a) does not apply to listing agreements, nor to buyer brokerage agreements. In addition, the word "property" had been included in paragraph (a)3 through an error in the drafting of the notice of proposed amendment. That word is redundant, following as it does the phrase "an interest in real estate." Therefore, that word has been removed from the text of the amendment as adopted.

Finally, as a further effort to clarify the obligations of licensees with regard to "instruments" as that term is used in this rule and with regard to listing agreements, a sentence has been added to paragraph (a)4. That sentence reiterates the statutory requirement found at N.J.S.A. 45:15-17(f) that licensees must provide their clients with a fully executed copy of any sale, exclusive sale or rental listing agreement at the time such agreements are executed. It was decided that this statutory requirement should be reiterated in this rule so as to make clear to licensees that while such agreements may not be considered "instruments" as that term is used in this rule, the requirement in the rule that licensees immediately deliver to parties copies of fully executed instruments with original signatures should not be read as relieving licensees of their obligation to provide copies of fully executed listing agreements to their clients at the time such agreements are executed.

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

11:5-1.16 Contracts of sale, leases and listing agreements

(a) The following paragraphs specify licensees' obligations to obtain written confirmation of the intentions of, and to deliver copies of documents to, parties to a real estate transaction.

1. Where a licensee memorializes the terms of an offer or counter-offer on a writing which will itself become an "instrument" as defined in (a)3 below, the licensee shall deliver to the maker of such an offer or counter-offer a clear copy of the executed offer or counter-offer immediately upon its being signed, and initialled if necessary as provided in this section, by the maker of the offer or counter-offer. Any addition, deletion, or other change in any such offer or counter-offer shall be initialled by the party proposing such a revision and, if accepted, by the other party to the transaction.

2. Where a licensee records the terms of an offer or counter-offer on a writing which is not intended to be binding upon either party, and which so states on its face, in the event that the licensee secures the signature and/or initials of any party on such a writing, the licensee shall provide to the signing and/or initialling party a clear copy of the writing as signed and/or initialled by them.

3. *[For the purposes of this rule]* ***As used in this subsection***, the term "instrument" means any complete and fully executed written contract of sale, lease, option agreement, or other writing affecting an interest in real estate *[property]*, or any complete and fully executed addendum or amendment to any such contract, lease, option agreement or writing. ***The term instrument as used in this subsection does not include listing agreements and buyer brokerage agreements.***

4. Licensees shall immediately deliver to all parties to any fully executed instrument a clear copy with original signatures of any such fully executed instrument. ***Licensees shall provide their clients with a fully executed copy of any sale or exclusive sale or rental listing contract at the time of execution thereof.***

5. Licensee-prepared revisions or additions reflected on the instrument itself shall be initialled by all parties to the transaction. Licensee-prepared revisions or additions to an instrument not memorialized by changes on the instrument itself shall be reflected on amendments or addenda to the instrument signed by all parties to the transaction.

i. Licensees shall immediately deliver to the party proposing a revision or addition to an instrument a clear copy of any proposed revised instrument initialled by that party and a clear copy of any proposed amendment or addendum signed by that party.

ii. All revisions, amendments and addenda to any fully executed instrument which are prepared by licensees must comply with New Jersey law as it pertains to the attorney review of contract and lease documents prepared by real estate licensees.

6. This rule is to ensure prompt communication of the executed evidence of a transaction to all interested parties.

(b)-(g) (No change.)

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(a)

DIVISION OF THE REAL ESTATE COMMISSION

Approved Schools; Requirements

Adopted Amendment: N.J.A.C. 11:5-1.28

Proposed: October 5, 1992 at 24 N.J.R. 3488(a).
Adopted: November 10, 1992 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Filed: December 3, 1992 as R.1993 d.11, **without change**.

Authority: N.J.S.A. 45:15-6.

Effective Date: January 4, 1993.
Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Response:
COMMENTS: The New Jersey Real Estate Commission received three public comments on this proposal, all of which supported the adoption of the proposal as published. The commenters were the New Jersey Association of Realtors, Pasquale J. Loiacono and Patricia J. Miller, licensed broker and director of the Meadowlands School of Real Estate.
RESPONSE: The Commission appreciates the input received from these commenters and has determined to adopt this amendment as originally proposed.

Full text of the adoption follows.

11:5-1.28 Approved schools; requirements
(a)-(d) (No change.)
(e) (Reserved.)
(f)-(x) (No change.)

LABOR

(b)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees General Standards and Standards for Firefighters

Adopted Amendments: N.J.A.C. 12:100-4.2, 17.1 and 17.3

Adopted New Rules: N.J.A.C. 12:100-10

Proposed: January 6, 1992 at 24 N.J.R. 73(a).
Adopted: December 10, 1992 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: December 10, 1992 as R.1993 d.28, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 34:20-1, 34:1A-3(e), and 34:6A-25 et seq., specifically 34:6A-30, 31, and 32.

Effective Date: January 4, 1993.
Expiration Date: September 22, 1994.

Summary of Public Comments and Agency Responses:
A public hearing was held on January 27, 1992 at the Richard J. Hughes Justice Complex, Trenton, New Jersey. El-Rhonda Williams served as hearing officer, and, after reviewing the hearing testimony and other comments received, recommended the adoption of the rules and amendments, with the minor changes shown in this notice of adoption. Approximately 30 individuals attended the hearing, 12 of whom offered their comments both orally and in writing. These comments were added to other written comments received and all were evaluated by the agency. The public hearing record may be inspected or a copy obtained by contacting Linda Flores, Special Assistant for External and Regulatory Affairs, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Written comments were received from the following:

C. Kenneth Anderson
Tom Canzanella
Theodore K. Cashel
P.J. Eckhardi
John C. Flanagan
Anthony J. Gresko
Jeffrey Cymanski
Robert J. Davidson
Richard Duffy
John A. D'Ascensio
Joseph A. Marini
Leonard Marks
Eric Mauer
John A. Mauro
Thomas McIngyre
Calvin Miller
Philip A. Morris
Kenneth Kandrac
Dennis M. Keenan
Batt. Chief Kelley
William Lewis, Jr.
John Mullins
Gerald J. Naylis
Darry Platt
Jim Stickney
Peter M. Sylvester
Stephen E. Triboli, Esq.

Comments were also received by way of answers to a questionnaire which had been provided by the Department of Community Affairs, Bureau of Fire Safety, to the various fire companies in the State. The completed questionnaires are also part of the public record. The following submitted completed questionnaires:

C. Kenneth Anderson
Bamber Lake Volunteer Fire Department
Bayonne Fire Department
Belcoville Volunteer Fire Department
Belmar Fire Department
Bloomsbury Fire Department
Board of Fire Commissioner, Fire District #33
Borough of Bergenfield
Brenton Wood Fire Company #1
Bureau of Fire Safety, Department of Community Affairs
Butler Park Volunteer Fire Company
Carlstadt Fire Department
Cherry Hill, District 5
City of Burlington Fire Department
City of Camden Fire Department
City of Elizabeth, Department of Fire
Collingswood Fire Department
Colonial Manor Fire Association
Cranford Bureau of Fire Safety
Cranford Fire Department
Deer Park Fire Department
Delran Fire Company #1
East Freehold Fire Company
Elizabeth Fire Department
Fairlawn Fire Department
Fire District #1, Aberdeen
Fire District #3, Cherry Hill
Franklin Boro Fire Department
Garfield Fire Department
Good Will Fire Company #1
Haddon Fire Company #1
Harmony Township Volunteer Fire Company
Harrington Park Fire Department
Hazmat, Cranford Fire Department
Highland Park Fire Department
High Point Fire Company
Hope Horse Company #1 Summit Fire Company
Lanoka Harbor Volunteer Fire Company
Law Counsel for the City of Jersey City
Lincoln Park Fire Department
Louden Volunteer Fire Company
Lower Bank Volunteer Fire Company
Madison Fire Department
Magnolia Road Fire Company #2
Martinsville Volunteer Fire Department
Middletown Township Fire Company
Milltown Fire Department
Mine Safety Appliances Company
Mizpah Volunteer Fire Department
Monmouth County Fire Academy
Monroe Fire Department
Morristown Fire Department
Mt. Holly Fire Department
Mt. Lakes Volunteer Fire Department
Mystic Island Volunteer Fire Department
North Bergen Fire Department
North Plainfield Fire Department
Nutley Fire Department
NJ State FMBA, Health and Safety Committee

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NJSFC Safety and Health Advisory Council
Ocean City Fire Company
Orange Fire Department
Paterson Fire Department
Pennington Fire Department
Pine Beach Fire Company, Station 38
Pine Beach Volunteer #1 Station 38
Pine Brook, Tinton Falls Fire District One (1)
Plainfield Fire Division
Plainsboro Volunteer Fire Company
Princeton Fire Company
Princeton Junction Fire Company
Prospect Park Volunteer Fire Department
Ringwood Volunteer Fire Company #1
Secaucus Fire Department
Sparta Township, Fire Prevention Bureau
Teaneck Fire Department
Tenafly Company
Trenton Fire Department
Trenton Fire Department—Engine 6
Trenton Psychiatric Hospital Fire Department
Union City Fire Department
Ventnor City Fire Company
Vincent Fire Company #1
Vineland Fire Department
Villas Volunteer Fire Company
Wall Fire Company #1, West Belman Station
Warren Township Fire Department
Washington Borough Fire Department
White Horse Fire Company
Woodbridge Fire Department

COMMENT: Many commenters expressed support for the proposal.

RESPONSE: The Department appreciates the support.

COMMENT: The regulations should not be dependent on the adoption of NFPA standards which are developed by committees which are heavily representative of manufacturers and suppliers of equipment.

RESPONSE: The Department utilizes NFPA standards because of the universal approval enjoyed by this national consensus standards body. Moreover, the composition of the NFPA committees and subcommittees is strictly set by NFPA by-laws to be truly representative of firefighters, industry, manufacturers, employers and the public.

COMMENT: There are no criteria within the rules which establish the meaning of "physically capable of performing duties assigned to them."

RESPONSE: The responsibility for the development of the necessary criteria and job descriptions lies with the employer who must make hiring decisions and determine work assignments.

COMMENT: The proposed rule is inconsistent with Federal and state laws regarding handicap discrimination especially under the Americans with Disabilities Act of 1990 which forbids asking specifically if the employee or applicant suffers from conditions such as those listed in the proposal.

RESPONSE: While the Department does not believe that the proposal is inconsistent with this Federal law, it will nonetheless address this concern over possible infringement of the Act by revising proposed N.J.A.C. 12:100-10.4(b) to require conformity with the Americans with Disabilities Act of 1990 in complying with the new rules.

The Department also thanks those commenters for being aware of the impending NFPA Standard 1582 which addresses medical requirements for firefighters.

COMMENT: As a municipality, we are obligated to fund an annual uniform allowance for firefighters from which the firefighters are expected to purchase the required protective clothing. Under these circumstances, if the regulation at N.J.A.C. 12:100-10.5 through N.J.A.C. 12:100-10.9 is adopted, the city is compelled to pay twice for the same item. Similarly, another municipality asked that the rule be amended to expressly allow any of several methods for providing the required apparel, specifically including the payment of an adequate clothing allowance. Since the allowance is currently paid, the city is paying twice for the protective equipment.

RESPONSE: The Department must abide by the proposed rules which state at N.J.A.C. 12:100-10.5(a) that the employer is responsible for providing at no cost to the employee the protective clothing required by regulation. This requirement is essential in order to effectively protect and safeguard firefighters in the performance of their duties.

The payment of the clothing allowance to the employee is a contractual matter negotiated by the city and its employees. The Commissioner is not empowered to interfere with collective bargaining agreements. Finally, since the inception of the program in 1984, the PEOSHA regulations have consistently reflected the policy that the cost associated with the provision of protective gear is the responsibility of the employer. The rule continues this policy.

COMMENT: NFPA 1974, Protective Footwear, used the 1987 edition not the 1992 edition.

RESPONSE: The 1987 edition was the edition in force when the proposed regulation was developed and published.

COMMENT: There should be a time frame for the volunteer service to meet the foot and leg protection section of the standard. Volunteers and career firefighters face the same risks.

RESPONSE: The regulation requires the volunteer service to provide replacement gear as required, which could be within the two year grace period allowed for the career service to comply. The input given to the Department during the development of this regulation was that the frequency with which the volunteer service meets the same hazards as the career service is less, hence the anticipated life of current equipment is longer. The difference between volunteer and career firefighters in this area is, therefore, based upon this difference in their experience.

COMMENT: Boots should have a more resistant sole to protect against penetration by sharp objects.

RESPONSE: The NFPA Standards Committee developed this standard, NFPA 1974, to meet a certain level of puncture resistance which the committee found to provide adequate protection for the firefighters.

COMMENT: If bunker pants are required, then the firefighters should have the option of deciding the height of the boots they will wear.

RESPONSE: The subject of boot height vis a vis bunker pants received by far the greatest number of comments. The Department carefully considered the suggestion; however, the Department has determined that bunker pants can not be worn with three-quarter length boots because these boots will not properly fit over the bunker pants.

COMMENT: The new state of the art construction and materials in the newly-approved turn-out gear are producing a sense of overconfidence and false sense of security. Accordingly, the new gear should not be so quickly accepted for use.

RESPONSE: The Department is aware of the concern that a false sense of security may be developing in some firefighters as a result of the improved gear. The Department is relying on the entire fire service to prevent this false sense of security through training and education available to firefighters throughout the state, in order to take full advantage of the protection offered by the protective clothing and equipment.

COMMENT: We should have a fire resistive station uniform. It should not be an option that it shall be a material such as cotton.

RESPONSE: The regulation mandates at N.J.A.C. 12:100-10.7(c)1 that the apparel issued to the firefighters be of a non-meltable material. Cotton is utilized as an example of a non-meltable material. There is no option to use a meltable material. The only choice allowed for this material is from among available non-meltable materials. The specific wording used was arrived at by members of the Advisory Board, the Fire Safety Bureau, the fire service representatives, and PEOSHA personnel.

COMMENT: Firefighters should be issued two sets of gloves to allow one set to be used while the other is drying out.

RESPONSE: The standards reflect the absolute minimum deemed necessary to insure the protection and safety of the State's firefighters. However, there is nothing in the rules that prevents a fire service from requiring two or more pairs of gloves if administratively deemed advisable.

COMMENT: Our Fire Department found that the gloves meeting the NFPA requirements delivered poor results in field application due to loss of dexterity.

RESPONSE: The Department has determined that, in light of harm caused by the use of non-standard gloves in recent years, the gloves made to NFPA specifications provide the acceptable level of protection. While these gloves may impede dexterity, the protection they afford to firefighters from burns can not be sacrificed in any measure in order to accommodate a greater level of dexterity.

COMMENT: It is suggested that the regulations provide for the use of the applicable NFPA standard for firefighter helmets, not OSHA

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standard helmets. All the manufacturers are producing to the NFPA standards.

RESPONSE: The Department agrees that there is a considerable amount of dissatisfaction with the NFPA helmets; however, a solution to the problems encountered is expected in the not too distant future. In light of these developments and because the OSHA helmet is considered acceptable by a significant number of the individuals affected, the Department has amended the regulation to allow the use of either OSHA or NFPA (NFPA Standard 1972-1987 edition) compliant helmets.

COMMENT: There should be clarification on the use of SCBA in interior firefighting and at car and truck fires where the fire is exterior to a building.

RESPONSE: The Department has determined that the tactical methods of firefighting are best left to the fire service both because of its experience in firefighting and its ability to effectively communicate these methods to its members through both initial and refresher training.

COMMENT: Each firefighter should have his own face piece to ensure a proper fit.

RESPONSE: The regulation provides the minimum requirements for a properly fitted face piece. However, there is nothing in the rules which prevents the fire service from acquiring an individual face piece for each firefighter if administratively deemed advisable.

COMMENT: The PASS device should not be restricted to being worn only on the SCBA since there are situations where an SCBA is not used, but where a PASS device is valuable.

RESPONSE: The Department's rule requires the use of the PASS device at all times, whether or not the SCBA is being utilized. Only the placement of the PASS device is left to the discretion of the fire service in those limited situations where the SCBA is not being used. N.J.A.C. 12:100-10.13(d)5 has accordingly been modified to clarify the Department's intention.

COMMENT: It is unsafe to use hearing protection because the firefighter can not hear verbal commands from the service officer.

RESPONSE: The proposed rules take this into account at N.J.A.C. 12:100-10.12(b) by mandating the use of hearing protection except in situations where the use of hearing protection devices would create an additional hazard to the user.

COMMENT: CGA C7.1-1973 has been superseded by ANSI/CGA C7.1-1989.

RESPONSE: The Department appreciates the information and has made the necessary title change in the documents referred to by reference at N.J.A.C. 12:100-17.1.

COMMENT: In N.J.A.C. 12:100-10.14(c) and 10.14(d), the use of the words "changing station" may be construed to require that cylinders be filled only in fragmentation tanks.

RESPONSE: The regulation as proposed does not restrict the filling of air cylinders to fragmentation tanks, but also allows cylinders to be filled in water baths or any other proprietary device.

COMMENT: Restraining devices should be installed within 90 days rather than within five years. Such devices are not difficult to procure and install.

RESPONSE: The fire departments are at liberty to install such devices at any time within the five year period as their schedule and internal priorities permit. This flexibility is deemed necessary to insure that the Department does not inadvertently place vehicles out of commission at an inappropriate time for any fire department. Accordingly, the Department has determined that this flexibility is necessary to accommodate local needs and conditions.

COMMENT: What is meant by interior structural firefighting? What gear should be used in ladder operations or massive stream operations?

RESPONSE: "Interior structural firefighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. This meaning is provided in the definitions section of the rules, N.J.A.C. 12:100-10.2. Regarding operations, the regulations are not intended to address the tactical methods of firefighting. This is a matter best addressed by the command unit of the local fire service and through the education and training delivered to the firefighter.

COMMENT: The regulation should be expanded to cover municipal employees such as fire inspectors and fire investigators who must enter burning buildings during the course of their duty.

RESPONSE: The protections afforded by the rules apply only to firefighters defined by the regulation as a member of the fire service who engages in the physical activity of rescue, fire suppression or both, in buildings, enclosed structures, vehicles, vessels or like properties that are involved in a fire or emergency situation. Employees other than fire service personnel should advise their employers of their desire for such coverage and inclusion. The Department does not encourage unprotected participation during firefighting.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, with the amendments published in the Federal Register through March 6, 1989 with certain exceptions noted in (b) and (c) below are adopted as occupational safety and health standards and shall include:

1.-9. (No change).

10. Subpart L—Fire Protection except that:

i. Paragraph 1910.155(a) and Section 1910.156 are not adopted.

11.-19. (No change.)

(b) and (c) (No change.)

SUBCHAPTER 10. STANDARDS FOR FIREFIGHTERS

12:100-10.1 Scope; standards information

(a) This subchapter shall apply to all public employment as provided below:

1. Standards for personal protective equipment, respiratory protective equipment and other requirements for the fire service (both career and volunteer).

(b) This subchapter shall not be applicable to:

1. Construction, agriculture and maritime employment;

2. Airport crash rescue; or

3. Forest firefighting operations.

(c) The ANSI, CGA and NFPA standards incorporated in this subchapter by reference may be obtained by contacting the issuing entities at the addresses listed in N.J.A.C. 12:100-17.3.

12:100-10.2 Definitions

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

"ANSI" means American National Standards Institute.

"Approved" means the term as defined at N.J.A.C. 12:100-2.1.

"CGA" means Compressed Gas Association.

"Career firefighter" means any person who has his or her primary employment as a firefighter, who ordinarily works at that employment at least 20 hours per week and who is enrolled as a firefighter in a public retirement system.

"Career fire service" means a fire department or fire brigade which is composed of persons who have chosen firefighting or related duties as their occupation in paid, part paid fire departments or fire districts.

"Confined space" means the term as defined at N.J.A.C. 12:100-9.2.

"Damaged equipment" means equipment which has been affected by external forces such as, but not limited to, mechanical, thermal, chemical or hydraulic, to an extent whereby the equipment no longer performs its original function to the extent required for the users' safety.

"Education" means the process of imparting knowledge or skill through systematic instruction.

"Employee" means the term as defined at N.J.A.C. 12:100-2.1.

"Employer" means the term as defined at N.J.A.C. 12:100-2.1.

"Enclosed structure" means a structure with a roof or ceiling and at least two adjacent walls which may present fire hazards to employees.

"Fire brigade" means an organized group of firefighters who are public employees who have an obligation to fight fires but who may be assigned to other duties.

"Fire department" means an organized group of employees organized by the public employer who are knowledgeable, trained and skilled in basic firefighting operations.

"Firefighter" means a member of the fire service who engages in the physical activity of rescue, fire suppression or both, in build-

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ings, enclosed structures, vehicles, vessels or like properties that are involved in a fire or emergency situation.

"Fire service" means a fire department or fire brigade.

"Helmet" means a head protective device consisting essentially of a shell, an energy absorbing system, a retention system, fluorescent retro-reflective markings, ear covers and faceshield.

"Interior structural firefighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

"NFPA" means the National Fire Protection Association.

"Overhaul" means the final control of a fire with suppression of the main body of the fire and other pockets of fire, searching for victims and performing salvage operations.

"Positive-pressure apparatus" means an open or closed-circuit apparatus in which the pressure inside the face piece in relation to the immediate environment is positive during both inhalation and exhalation.

"Quick disconnect valve" means a hand-operated device which provides a means for connecting and disconnecting the air cylinder to the self-contained breathing apparatus.

"Respiratory protective device" means a breathing device designed to protect the wearer from an oxygen-deficient or hazardous atmosphere.

"SCBA" means self-contained breathing apparatus.

"Self-contained breathing apparatus" means a portable device that includes the supply of respirable breathing gas for the firefighter.

"Service life" means the period of time that a respirator has been rated to provide protection to the wearer.

"Unserviceable" means past useful life of garment or protective gear, or those that have been declared unsafe.

"Vapor-barrier" means that material used to substantially prevent or inhibit the transfer of water, corrosive liquid, steam or other hot vapors from the outside of a garment to the wearer's body.

"Volunteer firefighter" means any person other than a career firefighter who serves as a firefighter in a public or private firefighting agency or organization.

"Volunteer fire service" means a fire department or brigade composed of persons who provide their services without compensation in the public interest.

12:100-10.3 Organization

(a) The employer shall prepare and maintain a statement or written policy which contains the following:

1. The basic organizational structure of the fire service;
2. The expected number of members in the fire service; and
3. The functions that the fire service is to perform.

(b) The organizational statement shall be available for inspection by the Commissioner of Labor and by the employees or their designated representative.

12:100-10.4 Personnel; limitations on ability to perform

(a) The employer shall assure that employees who are expected to do interior structural firefighting are physically capable of performing duties which may be assigned to them during emergencies.

(b) *[The employer shall not permit employees with known heart disease, epilepsy or emphysema to participate in firefighting or emergency activities unless a physician's certificate of the fitness of the employee to participate in such activities is provided.]* ***The employer shall assure that compliance with (a) above shall be accomplished in conformity with the provisions of the Americans with Disabilities Act of 1990.***

12:100-10.5 Protective clothing

(a) The employer shall provide, at no cost to the employee, and assure the use of, protective clothing which complies with this subchapter.

(b) Firefighters performing interior structural firefighting and overhaul shall be provided with the equipment covered in this subchapter.

(c) The employer shall assure that:

1. Protective clothing protects the head, body and extremities, and consists of at least the following components: body protection, eye, face and head protection;
2. Protective clothing ordered or purchased after the effective date of this subchapter shall comply with this subchapter; and
3. All firefighters wear protective clothing complying with this subchapter except that existing protective clothing meeting the previous OSHA standards that are superseded by this subchapter may continue to be worn until such time as the existing protective clothing becomes unserviceable.

12:100-10.6 Protective clothing; foot and leg protection

(a) Foot and leg protection shall comply with this section *[within two years of the effective date of this subchapter]* ***by January 4, 1995*** for all career firefighters, and as replacement of existing foot and leg protection is required for the volunteer firefighters.

1. Protective footwear shall comply with NFPA 1974-1987, Protective Footwear for Structural Firefighting.

i. The use of three quarter length boots may continue as follows:

(1) Until bunker pants are purchased or not later than *[two years of the effective date of this subchapter]* ***January 4, 1995*** for career firefighter; and

(2) Until replacement of the boots is necessary for volunteer firefighters.

12:100-10.7 Protective clothing; body protection

(a) Body protection shall comply with this section *[within two years of the effective date of this subchapter]* ***by January 4, 1995*** for the career firefighters, and as replacement is required for the volunteer firefighters.

(b) Body protection shall be achieved by the wearing of a fire resistive coat and bunker pants, both of which shall be at least equivalent to NFPA 1971-1986, Protective Clothing for Structural Firefighting, incorporated herein by reference. For career firefighters, body protection must be worn in combination with a station/work uniform or apparel complying with (c) below.

(c) Station/work apparel shall be provided to the career firefighter *[within two years after the effective date of this subchapter]* ***by January 4, 1995*** as follows:

1. The performance, construction and testing of station/work uniforms shall be at least equivalent to NFPA 1975-1985, Station/Work Uniforms for Firefighters, incorporated herein by reference; or
2. Apparel issued to the firefighter must be of a non-meltable material, such as cotton.

12:100-10.8 Protective clothing; hand protection

(a) Hand protection shall consist of protective gloves or a glove system which will provide protection against cuts, punctures and heat penetration.

(b) The performance, construction and testing of gloves for structural firefighters shall be at least equivalent to NFPA No. 1973-1987, Gloves for Firefighters, incorporated herein by reference.

12:100-10.9 Protective clothing; head, eye and face protection

(a) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction and testing requirements of 29 CFR Part 1910.156(e)(5) ***or NFPA Standard 1972-1987 edition***.

(b) Full facepieces, helmets, hoods or breathing apparatus which comply with 29 CFR 1910.134 and N.J.A.C. 12:100-10.10 shall be deemed to comply with (a) above.

12:100-10.10 Respiratory protection devices

(a) The employer shall provide, at no cost to the employee, and shall assure the use of, respirators which comply with this section.

(b) The employer shall assure that all firefighters wear respiratory protective devices complying with this section and that such respirators are certified in accordance with 30 CFR Part 11, Respirators.

(c) Approved self-contained breathing apparatus with a full-facepiece, or with approved helmet or hood configuration, shall be provided to, and worn by, firefighters as follows:

1. While engaged in interior structural firefighting;

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2. While working in confined spaces where toxic products of combustion or an oxygen deficiency may be present;

3. During emergency situations involving toxic substances; and

4. During all phases of firefighting and overhaul.

(d) The employer shall assure that:

1. Respirators ordered or purchased after *[the effective date of this subchapter]* ***January 4, 1993*** shall be at least equivalent to NFPA no. 1981-1987, Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters; incorporated herein by reference; and

2. All firefighters shall wear respirators complying with this subchapter except that existing respirators meeting the previous OSHA standards that are superseded by this subchapter may continue to be worn until such time as the respirator becomes unserviceable.

(e) The employer shall establish and maintain a respiratory protection program which includes the requirements of ANSI Z88.5-1981, Practice for Respiratory Protection for the Fire Service, incorporated herein by reference, except that:

1. Self-contained breathing apparatus regulators shall be subject to overhaul and recalibration at least every two years or when damaged. Such overhaul shall be performed by the manufacturer or by personnel trained and certified by the self-contained breathing apparatus manufacturer to perform such repairs;

2. Negative-pressure self-contained breathing apparatus with a rated service life of more than two hours and which has a minimum protection factor of 5,000, as determined by an acceptable quantitative fit test performed on each individual, shall be acceptable for use only during those situations for which the employer demonstrates that long duration breathing apparatus is necessary.

i. Quantitative fit test procedures shall be available for inspection by the Commissioner of Health.

ii. Negative-pressure breathing apparatus shall continue to be acceptable for 18 months after a positive-pressure breathing apparatus with the same or longer rated service life is certified by the National Institute of Occupational Safety and Health (NIOSHA). After this 18-month period, all self-contained breathing apparatus used for these long duration situations shall be of the positive-pressure type.

(f) Existing respirators meeting the previous OSHA standards that are superseded by this Subchapter:

1. May be used with approved cylinders from other approved self-contained breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet the criteria of 49 CFR Parts 100 through 199 and 30 CFR Parts 11, 12, 13, 14 and 14a;

2. Can be switched from a demand to a positive pressure mode. However, such apparatus shall be in the positive pressure mode when firefighters are performing interior structural firefighting operations or overhaul.

(g) The employer shall have a written plan to assure that there are sufficient quantities of compressed air available to refill self-contained breathing apparatus tanks for all emergencies.

(h) Self-contained breathing apparatus shall be provided with an end of service time indicator which automatically warns the user when the remaining service time for the apparatus is reduced to a range of 20 to 25 percent of its rated service time.

12:100-10.11 Life-safety rope, harnesses and hardware

(a) This section is intended to apply to fire departments that train and perform rope rescue services. All employees that are required by the fire department to participate in such rescue services shall be provided with the proper equipment meeting the requirements of this section.

(b) The employer shall provide, at no cost to the employee, and assure the use of, life-safety rope, harnesses, and hardware which comply with this section.

(c) The employer shall assure that the life-safety rope, harnesses and hardware complying with this section are used to support fire service personnel during rescue, firefighting, and other emergency operations, or during training exercises, on a date not later than *[one year after the effective date of this subchapter]* ***January 4, 1994***.

(d) The performance, construction and testing of ropes, harnesses, and hardware for firefighters shall be at least equivalent to NFPA No. 1983-1985, Fire Service Life-Safety Rope, Harnesses and Hardware, incorporated herein by reference.

(e) Life-safety rope, harnesses and hardware need only be provided in those departments that perform rope rescue services and to employees who perform such services.

12:100-10.12 Personal alert safety system

(a) The employer shall provide, at no cost to the employee, and assure the use of, a personal alert safety system attached to every self-contained breathing apparatus (SCBA) which complies with this section.

(b) The employer shall assure that all firefighters wear personal alert safety systems that comply with this section *[within one year after the effective date of this subchapter]* ***by January 4, 1994***, except that personal alert safety systems complying with NFPA standard 1982-1983 may continue to be used until they become unserviceable.

(c) The performance, construction and testing of a personal alert safety system for a firefighter shall be at least equivalent to NFPA No. 1982-1988, Personal Alert Safety Systems (PASS) for Firefighters, incorporated herein by reference.

(d) Approved personal alert safety systems shall be provided and worn by the firefighter as follows:

1. While engaged in interior structural firefighting;

2. While working in confined spaces;

3. During all phases of overhaul; *[and]*

4. As an attachment to the SCBA device worn by the firefighter*[.]***; and***

5. In those limited situations where an SCBA device is not being worn by the firefighter, the placement of PASS device shall be determined by the individual in charge at the fire scene.

12:100-10.13 Hearing protection

(a) This section is intended to provide hearing protection to the firefighter in non-emergency situations. An example of a non-emergency situation requiring hearing protection to the employee would be during the testing of equipment creating a noise level exceeding 90 decibels (dBa). The hearing conservation program described should be in writing and may be incorporated into standard operating procedures (SOP).

(b) The fire department shall provide hearing protection for all members when they are exposed to noise in excess of 90 dBa from power tools or equipment, except for situations where the use of hearing protection devices would create an additional hazard to the user.

(c) The fire department shall engage in a hearing conservation program to identify and reduce or eliminate potentially harmful sources of noise in the work environment.

(d) The provisions of CFR 1910.95, Occupational Noise Exposure, incorporated at N.J.A.C. 12:100-4.2(a)5, Subpart g, Occupational Health and Environmental Control, is applicable to this subchapter.

12:100-10.14 Filling air cylinders

(a) Air cylinders shall be refilled in accordance with CGA P-15-1985, Filling of Industrial and Medical Nonflammable Compressed Gas Cylinders, incorporated herein by reference.

(b) Air cylinders for respiratory equipment shall be filled only by personnel trained pursuant to (a) above and (c) below.

(c) The charging station shall be equipped with proper facilities to ensure the safety of the charging station operator and nearby personnel.

(d) The charging station shall be equipped with proper facilities to ensure that the compressed air complies with Type 1 Grade D breathing air as described in CGA G7.1-1973, Commodity Specification for Air, incorporated herein by reference.

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12:100-10.15 Fire apparatus operations

(a) Whenever a fire apparatus leaves the fire station in response to an alarm, fire or other emergency, all firefighters, except the driver of the fire apparatus, shall have donned their protective clothing before the apparatus is in motion. All firefighters shall be prohibited from donning protective clothing while the apparatus is in motion. The term "fire apparatus" does not include an automobile.

(b) The employer shall provide restraining devices for all firefighters aboard a fire apparatus *[within five years after the effective date of this subchapter]* ***by January 4, 1998***. Restraining devices may include protective seating, seatbelts or vehicle harnesses for all firefighters aboard.

(c) All fire apparatus purchased and/or remanufactured after *[the effective date of this subchapter]* ***January 4, 1993*** shall provide enclosed seating with seatbelts for all personnel riding on the apparatus, complying with the following standards, incorporated herein by reference:

1. NFPA No. 1901-1991 Pumper Fire Apparatus;
2. NFPA No. 1902-1991 Initial Attack Fire Apparatus;
3. NFPA No. 1903-1991 Mobile Water Supply Fire Apparatus; and
4. NFPA No. 1904-1991 Aerial Ladder and Elevating Platform Apparatus.

12:100-10.16 Maintenance of firefighter equipment

Firefighting equipment required under this subchapter that is in damaged or unserviceable condition shall be removed from service and replaced.

12:100-17.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. (No change.)
2. ANSI Z88.5-1981, Respiratory Protection for the Fire Service;
3. ANSI Z88.6-1984, Respiratory Protection-Respiratory Use-Physical Qualifications for Personnel;

Recodify existing 3.-8. as 4.-9. (No change in text.)

10. *[CGA G7.1-1973]* ***ANSI/CGA G7.1-1989***, Commodity Specification for Air;
11. CGA P15-1985, Filling of Industrial and Medical Nonflammable Compressed Gas Cylinders;
12. NFPA No. 1971-1986, Protective Clothing for Structural Firefighting;
13. NFPA No. 1972-1987, Structural Firefighters Helmets;
14. NFPA No. 1973-1989, Gloves for Structural Firefighters;
15. NFPA No. 1974-1987, Standard on Protective Footwear for Structural Firefighting;
16. NFPA No. 1975-1985, Station/Work Uniforms for Firefighting;
17. NFPA No. 1981-1986, Self-contained Breathing Apparatus for Firefighters;
18. NFPA No. 1982-1988, Personal Alert Safety System for Firefighters (PASS);
19. NFPA No. 1983-1985, Fire Service Life-Safety Rope, Harnesses, and Hardware;
20. NFPA No. 1901-1991, Pumper Fire Apparatus;
21. NFPA No. 1902-1991, Initial Fire Apparatus;
22. NFPA No. 1903-1991, Mobile Water Supply Fire Apparatus;
23. NFPA No. 1904-1991, Aerial Ladder and Elevating Platform Apparatus;

Recodify existing 9.-13. as 24.-28. (No change in text.)

12:100-17.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:100-17.1.

ANSI (No change.)

. . .

CGA Compressed Gas Association Inc.
1235 Jefferson Davis Highway, Suite 509
Arlington, VA 22202

NFPA National Fire Protection Association
Batterymarch Park
Quincy, MA 02269

. . .

LAW AND PUBLIC SAFETY
(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF RESPIRATORY CARE
State Board of Respiratory Care Rules
Adopted New Rules: N.J.A.C. 13:44F

Proposed: July 6, 1992 at 24 N.J.R. 2336(a).

Adopted: November 29, 1992 by Emma N. Byrne, Director, Division of Consumer Affairs.

Filed: December 3, 1992 as R.1993 d.7, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14E-7(f).

Effective Date: January 4, 1993.

Expiration Date: June 15, 1997.

The Board of Respiratory Care afforded all interested parties an opportunity to comment on its proposed initial set of regulations, N.J.A.C. 13:44F. The official comment period ended on August 5, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 6, 1992, at 24 N.J.R. 2336(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Bergen Record, the New Jersey Society for Respiratory Care, the New Jersey Hospital Association, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Respiratory Care, Post Office Box 45031, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Nineteen letters were received during the 30-day comment period, eight from hospital representatives, five from representatives of health care professional associations, and six from other interested parties. The names and affiliations of the commenters follows:

John A. Rutkowski, Administrator, Cardiopulmonary Services, Jersey City Medical Center
Richard J. Kathrins, Administrator, Bacharach Rehabilitation Hospital
Kathleen M. Young, Cardiopulmonary Administrator, Rahway Hospital
George Solovay, RRT, Chief Respiratory Therapist, Overlook Hospital
R. Capone, M.D., Acting Medical Director; M. Pascal, RRT, Adm. Dir. Applied Clinical Technologies; and M. Collins, RRT, Manager, Resp. Care Services, Morristown Memorial Hospital
Gail Horn, Director, Respiratory Care/Pulmonary, Kennedy Memorial Hospitals, University Medical Center
Jean L. Wiarda, Coordinator, Pulmonary Rehabilitation, Dover General Hospital
Robert B. Sigler, RRT, Pascack Valley Hospital
Dorothy J. Flemming, Executive Director, New Jersey State Nurses Association
Pat Comoss, President, American Association of Cardiovascular and Pulmonary Rehabilitation
Louis P. Scibetta, President, New Jersey Hospital Association
Dennise Krencicki, President, American Physical Therapy Association, New Jersey Chapter
Robert Demers, President, American Association for Respiratory Care

Mark J. Atkins, M.D.
William F. Clark, RRT
Douglas Henigan, RRT
Patricia E. Stuart, Executive Director, State Board of Physical Therapy
Golden Bethune, President, State Board of Nursing
Sharon K. Williams-Colon, Program Director, Fairleigh Dickinson University Respiratory Therapy Program

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A summary of the comments received and the Board's responses follows:

N.J.A.C. 13:44F-2.1 Description of Board

COMMENT: Two commenters asked about the status of Board member appointments. Gail Horn of Kennedy Memorial Hospitals pointed out that although the regulation states the Board is to consist of 11 members, 18 months after the law was enacted five Board members have not yet been appointed. William Clark, RRT, stated the Board should charge the Director with the task of expediting the appointment process.

RESPONSE: The Board, through the Director of the Division of Consumer Affairs, has requested that the remaining Board members be appointed without further delay.

N.J.A.C. 13:44F-3.1 Scope of practice
Subsection (a)

COMMENT: Noting that the phrase "but not necessarily limited to" was included in the statutory scope of practice provision, three commenters suggested that that phrase should be included in the regulatory scope of practice provision so as not to restrict the current and future practice of respiratory care.

RESPONSE: The phrase "not limited to" in the statute relates only to testing techniques. Pursuant to the statute, respiratory care scope of practice is limited to those functions set forth in paragraphs (a)1 through 13 of N.J.A.C. 13:44F-3.1, plus testing techniques, listed as paragraph (a)14. Examples of testing techniques are set forth in paragraphs (a)15 through 17. To clarify the statutory intent, the Board is amending paragraph (a)14, testing techniques, to include the phrase "not limited to" and to recodify paragraphs(a)15 through 17 more appropriately as subparagraphs (a)14i through iii.

COMMENT: Two commenters stated that individuals trained in pulmonary function technology and no other aspect of respiratory care will be unable to acquire the needed education to qualify as licensed respiratory care practitioners. One of these commenters stated that inclusion of pulmonary function testing in the scope of practice will create situations where testing will no longer be able to be performed.

RESPONSE: To license as respiratory care practitioners cardiopulmonary technicians who neither hold nor are eligible for any respiratory care credential would not benefit consumers. Consequently, the Board is exploring a legislative initiative which would create a limited license for cardiopulmonary technicians. It is anticipated that some formal training and the CPFT credential will be required.

COMMENT: The Board of Nursing recommended that paragraph (a)4, "administration of drugs and medications," specify what types of medications may be administered, under what circumstances and the routes of administration. The Nursing Board also stated that administration should be limited to aerosols, inhalants and drugs integral to the provision of respiratory care.

RESPONSE: The Board agrees that the rule should be amended to clarify that a licensee may administer only drugs and medications related to the provision of respiratory care. However, creation of a "laundry list" of medications or protocols should be avoided, as such a list would be subject to constant change over time. The Board therefore is amending the rule upon adoption to specify that all duties included in the scope of practice may be performed only in connection with the rendering of respiratory care.

COMMENT: Robert B. Sigler of Pascack Valley Hospital stated that paragraph (a)5, "Use of apparatus for cardiorespiratory support and control," allows respiratory care practitioners to perform emergency cardiac defibrillation. He suggested that that duty should be stated in a separate paragraph with the phrase "provided the licensee is appropriately trained in this procedure."

RESPONSE: While the Board would not restrict an appropriately trained respiratory care practitioner from performing emergency cardiac defibrillation, the Board believes the scope of practice regulation should be limited to identifying only those duties and procedures in which all licensees are expected to be trained.

COMMENT: Kathleen M. Young of Rahway Hospital requested clarification of paragraph (a)14, Testing techniques to assist in diagnosis, monitoring, treatment and research. She stated that Department of Health regulation N.J.A.C. 8:43G-6.3(h) requires the presence of a critical care nurse to monitor a patient during a bronchoscopy procedure when I.V. conscious sedation is used. The commenter asked whether a respiratory care practitioner will now be allowed to perform this function.

RESPONSE: Nothing in these rules limits the obligation of respiratory care practitioners employed in settings regulated by the Department of Health to practice consistent with all Department of Health regulations.

COMMENT: The same commenter stated that the term "testing techniques" is extremely vague and should be defined by actual procedures.

RESPONSE: In order to avoid frequent rule amendments as techniques change, the Board has decided not to include a detailed list of testing techniques. The Board believes the examples set forth as subparagraphs (a)14i through iii in the scope of practice, as amended, provide sufficient guidance as to permissible testing techniques.

COMMENT: The Board of Nursing stated that paragraph (a)17, which permits establishment and maintenance of arterial lines, is contrary to the statute and therefore appears to be outside the respiratory care practitioner's scope of practice.

RESPONSE: Although not specifically included in the statute, the establishment and maintenance of arterial lines is a necessary function related to testing. This paragraph has been recodified upon adoption to codify it more appropriately as a subparagraph under paragraph (a) 14 relating to testing techniques.

COMMENT: Robert B. Sigler of Pascack Valley Hospital stated that this section does not require a skills check prior to performance of these procedures, nor does it specify continuing education requirements. The commenter believes this is an oversight. The American Association for Respiratory Care expressed its support for a continuing education requirement.

RESPONSE: A skills check is unnecessary because the qualifications for licensure, as reflected in these rules, are intended to ensure that only qualified individuals are licensed to practice respiratory care. The Board agrees that continuing education should be a requirement for continued licensure and is presently considering a legislative initiative requiring continuing education credits as a prerequisite to biennial license renewal.

COMMENT: Sharon K. Williams-Colon of Fairleigh Dickinson University stated that it is inappropriate for the Board to define authorized practice without physician input on the Board.

RESPONSE: The Board has not defined authorized practice; rather, the scope of practice regulations merely reflect the statute. Furthermore, no comments were received from the Board of Medical Examiners, which had an opportunity to comment upon the scope of practice during both the legislative and the regulatory public comment periods.

Subsection (b)

COMMENT: John A. Rutkowski of Jersey City Medical Center stated that in paragraph (b)1 it is unclear whether the phrase "to the extent that the treatment prescribed is within the scope of his or her practice" refers to the practice of the prescribing physician or the licensed respiratory care practitioner.

RESPONSE: Reference is to the physician. However, upon further consideration, the Board is deleting the phrase as unnecessary since a plenary licensed physician has no practice restrictions.

COMMENT: Representatives of Jersey City Medical Center and the American Association for Respiratory Care commented that the Board should provide, after consultation with the Medical Board, a list of authorized prescribers and any limitations on the prescriber's authority. More specifically, the commenters sought clarification with regard to limitations on the prescriptive powers of graduates of medical schools in the United States and abroad who are working in teaching hospitals in New Jersey.

RESPONSE: In the Board's opinion, such a list is not appropriate to rulemaking by this Board. Authorized prescribers and limitations on prescriptive practice are set by statutory law and implementing regulations. Furthermore, health care facilities licensed by the Department of Health are required to maintain written policies and procedures to include specifications for verbal orders, who may give verbal orders, who may receive them, and how soon they must be verified or countersigned in writing. See N.J.A.C. 8:43G-16.2. Information concerning authorized prescribers therefore should be readily available to the practitioner and to the public.

COMMENT: William Clark, RRT, questioned whether the phrase "to the extent the treatment prescribed is within the scope of his or her practice" gives the RCP the right to refuse an order or prescription and, if so, whether the Board has consulted with the Medical Board.

RESPONSE: As stated above, this phrase has been deleted as unnecessary. However, a licensee is obligated to know which health care

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professionals may order respiratory care and may accept prescriptions only from those professionals. Again, health care facilities licensed by the Department of Health are required to maintain written policies and procedures in this regard, and the Board assumes employers will make this information available to practitioners.

COMMENT: Gail Horn of Kennedy Memorial Hospitals stated that paragraph (b)1 requires the licensee to obtain a written order or prescription from a plenary licensed physician, which implies that an unlicensed PGY1, PGY2 or non-licensed physician cannot prescribe respiratory care.

RESPONSE: The rule also states that an order may be obtained from "such other health care practitioner authorized by law to prescribe or order respiratory care." Accordingly, a respiratory care practitioner may accept an order or prescription from a PGY1 or 2, as authorized by regulations of the Board of Medical Examiners and the Department of Health, or from any other authorized prescriber.

COMMENT: The President of the Board of Nursing stated that paragraph (b)3, which requires a licensee to have a verbal prescription memorialized within two weeks, appears to be written for home care but that it is not clear. The commenter stated that two weeks is a long time to wait to have an order memorialized; most orders can be communicated in writing within 72 hours.

RESPONSE: The commenter is correct that the two-week period was intended to apply to outpatient settings. A two-week period is consistent with the regulation of the Physical Therapy Board in this regard and was intended to avoid delay in patient treatment as well as to provide sufficient time for the licensee to obtain confirmation from the prescriber. The Board is amending this paragraph upon adoption to clarify that the two-week period applies in an outpatient setting and, consistent with Joint Commission on Accreditation of Hospitals standards (M.R. 2.2.8 through 2.2.8.2.1), to provide for a 24-hour memorialization period in an inpatient setting.

Subsection (d)

COMMENT: William Clark, RRT, stated that when an order is given through electronic communication, it may be several hours or even days before the physician is available to render assistance. The commenter suggested that it might be better to require a physician to be physically available when required.

RESPONSE: This Board has jurisdiction only over respiratory care practitioners and cannot place compliance requirements upon physicians. Availability through electronic communication was intended to provide the opportunity for a respiratory care practitioner to consult with the physician by telephone. However, as the rule states, the practitioner must ensure that the physician will be physically available when needed, not several days later.

N.J.A.C. 13:44F-3.2 Practice by individuals enrolled in a Board-approved training program

Subsection (a)

COMMENT: William Clark, RRT, stated he hoped the Board will accept JRCRCE approved schools (Joint Review Committee for Respiratory Care Education) as Board-approved training programs. The commenter stated that JRCRCE is specified in the next section but not designated as Board-approved.

RESPONSE: That JRCRCE is, in fact, the Board-approved accrediting body for training programs is clearly stated in N.J.A.C. 13:44F-4.1(b)2. Insertion of that information in this section would be redundant.

COMMENT: William Clark, RRT, stated that a supervisor of students in a training program should be close enough to render physical assistance within minimal time, rather than merely available by electronic communication.

RESPONSE: Again, permitting a supervisor to be available through electronic communication allows for telephone communication between the supervisor and the student but does not limit the obligation of the supervising licensee to be available at the time he or she is needed. The Board is confident that approved training programs provide adequate supervision of students, especially since all care rendered by the student must be co-signed by the supervisor, and that hospital policy requires close supervision of students. The Board is planning to explore the issue of student supervision further by meeting with representatives of traditional, cooperative and home study programs to determine whether more specific Board guidance and/or regulation in this area is appropriate.

Subsection (b)

COMMENT: George Solovay of Overlook Hospital stated that informing the patient of trainee status may give the impression that the trainee lacks confidence to treat the patient.

RESPONSE: The Board disagrees. Verbal notice of trainee status is an important consumer protection measure which will assure the patient's informed consent to treatment by the trainee.

N.J.A.C. 13:44F-3.3 Delegation by a respiratory care practitioner to unlicensed persons

COMMENT: Gail Horn of Kennedy Memorial Hospitals asked why a provision for aides is included in the regulations when none was included in the statute. She believes that this section should not prohibit aides from removing oxygen administering systems from patients, a function they are currently performing after inservice education. William Clark, RRT, also expressed the opinion that the duties of aides should not be limited.

RESPONSE: Delegation of duties to unlicensed assistants is an appropriate and necessary area of rulemaking for this as well as other licensing boards. Outlining permissible delegation enables the Board to fulfill its statutory obligation to protect the health and safety of the public and provides licensees with appropriate practice standards. Because the respiratory care practitioner needs to be aware of clinical signs as to appropriateness of oxygen removal, discontinuance of oxygen should not be delegated to an unlicensed aide. In the Board's opinion expansion of the duties permitted to unlicensed aides would compromise patient care and safety.

N.J.A.C. 13:44F-4.1 Eligibility for licensure

COMMENT: Sharon K. Williams-Colon of Fairleigh Dickinson University stated that the majority of respiratory care practitioners in the State have completed college level educational programs. This consumer and William Clark, RRT, stated that documentation of a high school diploma should not be required of applicants for permanent licensure who can provide documentation of a college degree.

RESPONSE: A college degree is not a prerequisite for the board-approved training program and, in the Board's experience, is not a credential held by the majority of applicants. Proof of a high school diploma is necessary to enable the Board to verify that the applicant has met the Board's minimum qualifications for licensure. For the reasons set forth below, the Board is unwilling to accept verification from secondary sources.

COMMENT: William Clark, RRT, stated that although this section requires proof of a high school diploma "or its equivalent," the Board will accept only a transcript. The commenter stated that many applicants are unable to obtain a high school transcript.

RESPONSE: This commenter misunderstands "equivalent" to mean the equivalent of a transcript. The equivalent of a high school diploma is a GED (graduate equivalency diploma). The Board is generally unwilling to rely on evidence other than a transcript; in one instance an individual who completed a training program was unable to document to this Board completion of a high school degree. Applications of individuals who cannot provide a high school transcript and who provide concrete evidence of efforts to comply will be considered on a case-by-case basis.

N.J.A.C. 13:44F-4.2 Nature of examination; passing grade

COMMENT: Sharon K. Williams-Colon of Fairleigh Dickinson University stated that the nature of the equivalent examination should be defined in terms of content, validity and reliability and should not be solely based upon subjective opinion of the Board.

RESPONSE: At present no equivalent examination has been approved by the Board. The phrase "or its equivalent" was included in this section to cover the possibility that an examination other than the NBRC may be approved by the Board at some later date. In any event, the Board is authorized by statute to approve examinations which shall be "in accordance with standards set by the Board." See N.J.S.A. 45:14E-12.

COMMENT: William Clark, RRT, requested that the Board publish the evidence which persuaded it that the ACBRT credential is equivalent to the NBRC examination for purposes of the "grandfather" provisions. The commenter stated that New Jersey is the only state to accept the ACBRT credential as equivalent and that credentialing agencies have denied that this credential can be considered equivalent. The commenter added that he hopes the Board has not made it difficult to have reciprocity with other states.

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RESPONSE: N.J.S.A. 45:14E-15 reads in pertinent part, "The Board shall issue a license to perform respiratory care to an applicant who, at the time of the effective date of this Act, has passed the administered Entry Level or Advanced Practitioner examination offered by the National Board for Respiratory Care, **or their equivalent**."

During the 1970's and early 1980's, respiratory care credentialing examinations were administered by the American Association of Inhalation Therapists ("AAIT") and by the American Certification Board of Respiratory Therapy ("ACBRT"). The AAIT issued the CRTT credential and the ACBRT issued the CRT credential. During the course of the legislative process which resulted in the Respiratory Care Practitioner Licensing Act, these two avenues for credentials were identified and discussed and the language included above is the result. Approximately 10 practitioners have applied for licensure and in each case licensure criteria have been met. Consequently, the Board has no reason not to recognize this credential. The Board does not anticipate that this provision will prohibit other states from offering reciprocity to licensees from this state.

N.J.A.C. 13:44F-5.1 Temporary six-month license

COMMENT: Representatives of Jersey City Medical Center, Kennedy Memorial Hospitals and the American Association for Respiratory Care stated that the definition of "direct supervision" should be clarified to reflect the difference between "on-site" presence and a transient presence or availability through electronic communication.

RESPONSE: As previously stated, the Board believes the definition is clear. The supervisor is permitted to be in a different part of the facility, in which case he or she must be available by telephone. However, the supervisor must always be on-site and available when needed.

N.J.A.C. 13:44F-6.1 Eligibility for licensure by endorsement

COMMENT: John A. Rutkowski of Jersey City Medical Center commented that paragraph (a)2, which states that an applicant for licensure by endorsement shall not have failed the Board-approved examination, is inconsistent with subsection (b), which states that the examination requirement is left to Board discretion. Robert B. Sigler of Pascack Valley Hospital and the American Association for Respiratory Care stated that licensure should not be denied based upon failure of the examination.

RESPONSE: This section merely repeats a statutory provision intended to give the Board discretion on a case-by-case basis in denying endorsement based upon an exam failure.

COMMENT: Robert B. Sigler of Pascack Valley Hospital stated that a temporary work permit should be established for those who do not qualify for endorsement. This would permit the individual to work while awaiting licensure and would allow employers to fill vacancies.

RESPONSE: The Board does not have statutory authority to issue temporary work permits. In any event, the endorsement process is not lengthy, particularly if the individual applies for endorsement prior to moving into this State.

N.J.A.C. 13:44F-7.2 Reinstatement

COMMENT: Louis P. Schibetta of New Jersey Hospital Association stated that requiring applicants for reinstatement to pay the biennial fee for the lapsed period and to retake the exam after two years of inactive licensure may be a financial hardship for practitioners who are out of active practice for a time but intend to return, such as those on maternity leave.

RESPONSE: Reinstatement requirements are set by statute, N.J.S.A. 45:14E-11.

N.J.A.C. 13:44F-8.2 Patient records

Subsection (a)

COMMENT: Representatives of the New Jersey Hospital Association and Overlook Hospital stated that these requirements are duplicative of Department of Health requirements and recommended limiting the applicability of this section to practice in settings not regulated by the Department of Health. Douglas Henigan, RRT, asked whether the records required by this section are "in addition to the already thorough patient chart."

RESPONSE: The Board of Respiratory Care is required by statute to regulate the practice of respiratory care, in all settings, for the protection of the public health and welfare. (N.J.S.A. 45:14E-1.) This section is based upon currently accepted hospital record requirements and, in the Board's opinion, includes the minimum requirements necessary to protect the public. The regulations are intended to apply in both inpatient and outpatient settings and are also necessary to aid Board enforcement efforts. A new subsection (b) has been added to clarify that licensees practicing in a setting regulated by the Department of Health are subject to the regulations of both the Board of Respiratory Care and the Department of Health. Of course, to the extent the requirements are duplicative, one entry on the patient chart would suffice.

COMMENT: Representatives of Morristown Memorial Hospital stated that the rule is too broad and unnecessarily requires detailed and costly documentation. These commenters asked whether a patient care plan was needed for an ABG or for a suction PRN order.

RESPONSE: As stated, the Board believes these patient record requirements are the minimum necessary for the protection of the patient. Care plans are not required for diagnostic procedures such as an ABG or a suction PRN order.

COMMENT: Eight commenters stated that respiratory care practitioners should not be required to include a discharge summary in the patient record because respiratory care is often terminated prior to the patient's discharge.

RESPONSE: The Board agrees and has amended the rule to require a discharge summary only in an outpatient setting.

COMMENT: Robert B. Sigler of Pascack Valley Hospital stated that the term "patient complaint" in paragraph (a)4 should be changed to "patient diagnosis."

RESPONSE: A patient complaint may be different from the diagnosis. To clarify this distinction, the Board has amended the rule to require documentation of both the complaint and the diagnosis.

COMMENT: The same commenter stated that initials should not be permitted on the patient record because, as in his institution, more than one individual may have the same initials.

RESPONSE: The Board does not believe it is necessary to prohibit initialing of records as long as the full signature appears at least once in the records. Facilities may, of course, institute their own policies with regard to the signing of patient records.

Subsection (b)

COMMENT: George Solovay of Overlook Hospital commented that this section should not apply to respiratory care departments, which are not involved in providing access to patient records.

RESPONSE: The Board agrees and is amending this section to clarify that it applies in outpatient settings only.

N.J.A.C. 13:44F-9.1 Acts amounting to unlicensed practice

COMMENT: Fifteen commenters stated that this section is inconsistent with the Act, which places no limitation on the practice of other licensed health care providers as long as the individuals do not represent themselves as respiratory care practitioners.

RESPONSE: Nothing in the rules was intended to limit the practice of other licensed health care providers authorized to render respiratory care, as is clearly provided in the statute. For clarification purposes, the Board is amending both this section as well as N.J.A.C. 13:44F-1.1 to reiterate the statutory exemption for other licensed health care professionals authorized to render respiratory care.

COMMENT: Mark Atkins, M.D., stated that polysomnography technologists should not be required to be licensed under the Act. The American Association of Cardiovascular and Pulmonary Rehabilitation requested clarification regarding the effect of the Act on practitioners of pulmonary rehabilitation, specifically on exercise specialists who are involved in training programs for patients in pulmonary rehabilitation programs.

RESPONSE: When properly certified and acting pursuant to the standards of their practices, these individuals would be exempt from licensure by this Board.

General Comments

COMMENT: Robert B. Sigler of Pascack Valley Hospital stated that the rules do not address the title to be used by licensed respiratory care personnel and suggested the use of "respiratory care practitioner."

RESPONSE: The professional designation of licensees of this Board is prescribed in the statute as "respiratory care practitioner." See N.J.S.A. 45:14E-3(d).

Summary of Agency-Initiated Changes:

For clarification, the Board has made minor editorial changes in N.J.A.C. 13:44F-3.1(b)2 and 8.2(a)6 and 9.

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

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CHAPTER 44F
STATE BOARD OF RESPIRATORY CARE

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:44F-1.1 Purpose and scope

(a) This chapter, as effective *[_____]* ***January 4, 1993***, is promulgated by the Director of the Division of Consumer Affairs. The rules contained in this chapter implement the provisions of the Respiratory Care Practitioner Licensing Act, P.L. 1991, c.31, and regulate the practice of respiratory care within the State of New Jersey.

(b) This chapter shall apply to all individuals who render respiratory care, as hereinafter defined, under the direction or supervision of a plenary licensed physician and to anyone within the jurisdiction of the Board of Respiratory Care.

(c) This chapter shall not apply to persons and health care providers licensed by appropriate agencies of the State of New Jersey, provided such duties are consistent with the accepted standards of the member's profession and the member does not present himself or herself as a respiratory care practitioner.

13:44F-1.2 Definitions

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

"Board" means the State Board of Respiratory Care.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardio-respiratory system, as further defined in N.J.S.A. 45:14E-3(c).

SUBCHAPTER 2. AGENCY ORGANIZATION AND ADMINISTRATION

13:44F-2.1 Description of Board

The State Board of Respiratory Care, created in the Division of Consumer Affairs of the Department of Law and Public Safety pursuant to P.L. 1991, c.31, shall consist of 11 members appointed by the Governor. Six board members shall be licensed respiratory care practitioners who have been actively engaged in the practice of respiratory care in this State for at least five years immediately preceding their appointment; one board member shall be an administrator of a hospital licensed pursuant to P.L. 1971, c.136; one board member shall be a physician licensed to practice medicine and surgery pursuant to chapter 9 of Title 45 of the Revised Statutes; two board members shall be public members; and one board member shall be a State executive department member appointed pursuant to P.L. 1971, c.60.

13:44F-2.2 Office location

The offices of the Board are located at 124 Halsey Street, Newark, New Jersey 07102

13:44F-2.3 Meetings of the Board

The Board shall meet twice per year and may hold additional meetings as necessary to discharge its duties.

13:44F-2.4 Election of officers

The Board shall annually elect from among its members a chairman and a vice-chairman.

SUBCHAPTER 3. AUTHORIZED PRACTICE

13:44F-3.1 Scope of practice

(a) ***For the purposes of treating, managing, controlling and caring for patients with deficiencies and abnormalities of the cardio-respiratory system, a*** *[A]* respiratory care practitioner may perform the following duties under the direction or supervision of a physician:

1. Use of medical gases, air and oxygen-administering apparatus;
2. Use of environmental control systems;
3. Use of humidification and aerosols;
4. Administration of drugs and medications;
5. Use of apparatus for cardio-respiratory support and control;
6. Postural drainage;
7. Chest percussion;
8. Vibration;
9. Breathing exercises;
10. Respiratory rehabilitation;
11. Performance of cardio-pulmonary resuscitation;
12. Maintenance of natural and mechanical airways;
13. Insertion and maintenance of artificial airways; ***and***
14. Testing techniques to assist in diagnosis, monitoring, treatment and research*[;]* ***including, but not limited to:***

*[15.]****i.*** Measurement of cardio-respiratory volumes, pressure and flow;

*[16.]****ii.*** Drawing and analyzing of samples of arterial, capillary and venous blood; and

*[17.]****iii.*** Establishment and maintenance of arterial lines, provided the licensee is appropriately trained in this procedure.

(b) For purposes of this subchapter, "under the direction of a physician" means that respiratory care shall not be rendered unless one of the following conditions is met:

1. The licensee has obtained a written order or prescription from a plenary licensed physician*[, to the extent that the treatment prescribed is within the scope of his or her practice,]* or from such other health care practitioner authorized by law to prescribe or order respiratory care;

2. The licensee has documented ***the*** physician***'s*** clearance for treatment of the patient, which may include the physician's countersigning of the respiratory care practitioner's proposed plan of treatment; or

3. The licensee has received a verbal ***order or*** prescription, in person or by telephone***.****[, which]* ***In an outpatient setting, the verbal order or prescription*** shall be memorialized by the prescriber in writing within two weeks. ***In an inpatient setting, the verbal order or prescription shall be memorialized by the prescriber within 24 hours.***

(c) In no case will physician direction be construed to have been provided on the basis of a patient's representation that he or she has obtained a physician's clearance.

(d) For the purposes of this subchapter, "under the supervision of a physician" means that respiratory care shall not be rendered unless a physician is constantly accessible, either on-site or through electronic communication, and available to render physical assistance when required.

13:44F-3.2 Practice by individuals enrolled in a Board-approved training program

(a) A person enrolled in a Board-approved respiratory care training program may perform those duties essential for completion of the trainee's clinical service, without having to obtain a license, provided the duties are performed under the supervision and direction of a physician, as defined in N.J.A.C. 13:44F-3.1, or under the direct supervision of a licensed respiratory care practitioner, as defined in N.J.A.C. 13:44F-5.1.

(b) The trainee shall, when performing duties pursuant to (a) above, wear a badge which identifies the person as a trainee. Additionally, the supervising licensee shall inform the patient that the person rendering care is a trainee.

13:44F-3.3 Delegation by a respiratory care practitioner to unlicensed persons

(a) Activities which a licensed respiratory care practitioner may delegate to individuals employed as respiratory assistants, respiratory aides or equipment technicians are limited to the following routine tasks relating to the cleanliness and maintenance of equipment:

1. Disassembling equipment;
2. Cleaning equipment;
3. Preparing equipment for sterilization;
4. Maintaining oxygen cylinder and other specialty gas cylinders; and
5. Making oxygen checks and charges.

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(b) Individuals engaged in the activities set forth in (a) above may use titles such as "respiratory aide" and "equipment technician."

(c) A licensee shall not authorize or permit an unlicensed person to engage in direct patient care.

SUBCHAPTER 4. APPLICANT QUALIFICATIONS; BOARD-APPROVED EXAMINATION

13:44F-4.1 Eligibility for licensure

(a) Applications for licensure may be obtained from the office of the Board of Respiratory Care.

(b) An applicant shall submit, with the completed application form and the required fee, satisfactory proof that the applicant:

1. Has a high school diploma or its equivalent;

2. Has successfully completed a training program accredited by the Joint Review Committee for Respiratory Care Education (JRCRCE) of the Council on Allied Health Education and Accreditation, or its successor; and

3. Has passed the examination specified in N.J.A.C. 13:44F-4.2, unless the applicant is pursuing one of the alternative pathways to licensure set forth in N.J.A.C. 13:44F-5.

13:44F-4.2 Nature of examintion; passing grade

(a) The examination shall be the National Board for Respiratory Care Entry Level Examination or the substantial equivalent thereof.

1. Applications for examination should be obtained from the National Board for Respiratory Care.

2. Examinations shall be held within the State at least twice per year at a time and place to be determined by the Board. The Board shall give adequate written notice of the examination to applicants for licensure and examination.

3. The passing score required in order to be licensed shall be the same as the passing score identified by the National Board for Respiratory Care or, if a substantially equivalent examination is used, the score identified by the body administering that examination.

(b) An applicant who submits satisfactory proof that he or she passed, prior to August 20, 1991, the National Board for Respiratory Care Entry Level Examination, or its equivalent, shall be deemed to satisfy the requirement of N.J.A.C. 13:44F-4.1(b)3. The burden of proof is on the applicant to show that an examination other than that administered by the National Board for Respiratory Care is equivalent to the National Board for Respiratory Care examination.

13:44F-4.3 Refusal to issue, suspension or revocation of license

The Board may refuse to issue or may suspend or revoke any license issued by the Board, after an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for any of the reasons set forth in N.J.S.A. 45:1-21.

SUBCHAPTER 5. TEMPORARY LICENSURE

13:44F-5.1 Temporary six-month license

(a) Any person deemed eligible to sit for the licensure examination by virtue of completion of an accredited training program may apply for the issuance of a temporary six-month license.

(b) All temporary license holders under this section shall be required to work under the direct supervision of a licensed respiratory care practitioner. For purposes of this section, "direct supervision" means continuous on-site presence of a licensed respiratory care practitioner or physician who is constantly accessible through electronic communication and available to render physical assistance as required.

(c) The temporary license holder shall advise the Board, in writing, of the name and permanent license number of the licensee(s) under whose direct supervision the temporary licensee is or will be working. The temporary licensee shall keep the Board advised, in writing, of any subsequent change in supervising licensee(s).

(d) Except in the case of undue hardship, as determined by the Board, the holder of a temporary license shall be required to take the next scheduled examination. The temporary license shall automatically expire upon the earlier of six months or notification to the temporary licensee by the Board that he or she has failed the examination.

(e) The temporary licensee may file for and pay the fee for a one-time renewal of the temporary license for an additional six-month period or until the date of the next examination.

(f) Except in the case of undue hardship, as determined by the Board, if the temporary license holder fails to appear on the scheduled date of the second examination, the temporary license shall automatically expire.

(g) The temporary license shall automatically expire upon notice to the temporary license holder that he or she has failed the second examination, and the temporary licensee shall surrender the license to the Board.

13:44F-5.2 Temporary licensure of individuals practicing respiratory care as of August 20, 1991

(a) The Board shall issue a temporary license to perform respiratory care to an applicant who has not passed the National Board of Respiratory Care Entry Level Examination, or its equivalent, as of August 20, 1991 but who presents proof satisfactory to the Board that he or she is presently functioning as a respiratory care practitioner. For purposes of this subsection, "presently functioning" means that the individual was employed on August 20, 1991 as a respiratory care practitioner performing the services set forth in N.J.A.C. 13:44F-3.1, in fact delivered services prior to August 20, 1991, and continues to deliver services.

(b) All temporary licenses under this section shall expire on February 20, 1993, and shall not be renewable.

(c) In order to be eligible for a permanent license to practice respiratory care, a temporary license holder under this section shall be required to successfully complete the National Board of Respiratory Care Entry Level Examination or its substantial equivalent.

(d) A temporary license holder under this section who has been practicing as a respiratory care practitioner for fewer than 24 months prior to August 20, 1991, shall be subject to the direct supervision requirement set forth in N.J.A.C. 13:44F-5.1(b).

SUBCHAPTER 6. LICENSURE BY ENDORSEMENT

13:44F-6.1 Eligibility for licensure by endorsement

(a) An applicant possessing a valid license issued by another state or possession of the United States or the District of Columbia shall be issued a license to practice respiratory care in New Jersey provided that:

1. The requirements for licensure in that state or possession of the United States or the District of Columbia are substantially equivalent to the requirements of this chapter; and

2. The applicant has not previously failed the Board-approved examination.

(b) Nothing herein shall preclude the Board, in its discretion, from deeming an applicant who possesses a license issued by another jurisdiction but who has failed the examination to be eligible for licensure.

13:44F-6.2 Application requirements for licensure by endorsement

(a) An applicant seeking licensure by endorsement shall submit the following to the Board:

1. An application form together with the required fee;

2. Proof satisfactory to the Board that the applicant is currently licensed in another state or possession of the United States or the District of Columbia and that the license is in good standing; and

3. An affidavit that the applicant has not failed the Board-approved examination.

SUBCHAPTER 7. LICENSE RENEWALS

13:44F-7.1 Biennial license renewal

(a) Prior to the expiration of the current biennial license period, the licensee shall submit an application for license renewal together with the biennial license renewal fee.

(b) If the licensee fails to renew his or her license on or before the date specified in the license renewal notice, the license shall automatically expire.

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13:44F-7.2 Reinstatement

(a) If a license expires due to nonpayment of the biennial renewal fee, it may be reinstated within two years upon application to the Board and payment of the current and any past due biennial renewal fee together with the pertinent late fee or reinstatement fee as set forth in N.J.A.C. 13:44F-8.

(b) The Board will not renew a license if the renewal application is submitted to the Board more than two years after the date of license expiration. In such event, the individual shall be required to apply for an initial license and to take the next scheduled examination.

SUBCHAPTER 8. GENERAL PROVISIONS

13:44F-8.1 (No change.)

13:44F-8.2 Patient records

(a) Respiratory care practitioners shall prepare contemporaneous, permanent treatment records which shall be maintained for a period of seven years from the date of the most recent entry. Such records shall include:

1. The dates and times of all treatments;
2. Findings of patient assessment;
3. A patient care plan which includes treatment goals;
4. The *[patient]* ***chief*** complaint ***and diagnosis***;
5. Progress notes;
6. Written prescription for care or a *[physician signed]* care plan ***signed by a physician,*** or a verbal ***order or*** prescription memorialized by the prescriber in writing *[within two weeks]* ***pursuant to the provisions of N.J.A.C. 13:44F-3.1(b)3***. The licensee shall document verbal prescriptions in the patient record contemporaneously with administration of treatment;
7. Results of appropriate tests;
8. *[A]* ***In an outpatient setting, a*** discharge summary which includes the outcome of respiratory care treatment and the status of the patient at the time of discharge; and
9. The signature or initials of the licensee who rendered the care. If the licensee chooses to sign by ***means of*** initials, his or her complete signature must appear at least once in the records.

(b) In addition to the requirements of (a) above, a licensee employed in a setting regulated by the Department of Health shall comply with all applicable Department of Health rules.

[(b) Access] ***(c) In an outpatient setting, access*** to patient treatment records by patients or duly authorized representatives shall be in accordance with the following:

1. Reports of all care and/or tests performed by respiratory care practitioners shall be provided no later than 30 days from the receipt of a written request from the patient or authorized representative. To the extent that the record is illegible or prepared in a language other than English, the licensee shall provide a typed transcription and/or translation at no cost to the patient.
2. Except where the complete record is required by applicable law, the licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, where the written request comes from an insurance carrier or its agent with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement.
3. A licensee shall provide copies of records in a timely manner to a patient or another designated health care provider where the patient's continued care is contingent upon their receipt. The licensee shall not refuse to provide a patient record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.
4. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44F-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of respiratory care:

1. Offering of any respiratory care services by any person other than a licensed respiratory care practitioner, an M.D., *[or]* a D.O. ***, or by any other health care provider not exempt from the provisions of this chapter pursuant to N.J.S.A. 45:14E-9(c)***;
2. The use of the words respiratory care, respiratory therapy, respiratory care practitioner, respiratory therapist, or such similar words or their related abbreviations in connection with the offering of measures or services which are utilized in the rendition of respiratory care by any person who does not hold a license as a respiratory care practitioner, an M.D. or a D.O.; or
3. Billing any patient or third party payor for "respiratory care" or "respiratory therapy," in connection with the use of respiratory care agents, measures or services, if the individual providing the services does not hold a license to practice respiratory care or is not a licensed physician.

13:44F-9.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person engaging in any of the practices identified at N.J.A.C. 13:44F-9.1.

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF SOCIAL WORK EXAMINERS

Fees

Adopted New Rule: N.J.A.C. 13:44G-14.1

Proposed: July 20, 1992 at 24 N.J.R. 2523(a).
Adopted: September 16, 1992 by the Board of Social Work Examiners, Joseph P. Bordo, President.
Filed: December 10, 1992 as R.1993 d.23, **without change**.
Authority: N.J.S.A. 45:15BB-11.
Effective Date: January 4, 1993.
Expiration Date: January 4, 1998.

The Board of Social Work Examiners afforded all interested parties an opportunity to comment on its proposed fee schedule, N.J.A.C. 13:44G-14.1. The official comment period ended on August 19, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 20, 1992, at 24 N.J.R. 2523(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Asbury Park Press, the National Association of Social Workers, the New Jersey Hospital Association, the New Jersey Society for Clinical Social Work, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Social Work Examiners, Post Office Box 45033, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Three letters were received during the 30-day comment period. A summary of the comments received and the responses of the Board follows:

COMMENT: Harriet Jernquist, M.S.W., stated on behalf of several co-workers at University Hospital that the fees seem high compared to New York's social worker licensing fees.

RESPONSE: As stated in the proposal, the Board has a statutory obligation to be self-funding; that is, Board operating costs must be met through licensing and other fees. Under this method of funding, licensing fees are based upon the number of licensees. Therefore, a comparison with jurisdictions which do not have a similar statutory requirement to be self-funding or which do not base fees upon the number of licensees is not relevant. However, as stated in more detail below, the Board is committed to keeping licensing costs at a minimum.

COMMENT: Edward P. O'Connor, Executive Director of the National Association of Social Workers ("NASW") stated that the NASW understands the requirement that fees cover the full cost of administering the Board but commented that the fees seem exorbitantly high. The commenter urged the Board to reduce licensing fees if any surplus funds are raised.

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RESPONSE: The Board recognizes the adverse impact upon social workers of any additional financial obligation, particularly in light of the current economic recession. It therefore is committed to keeping licensing fees as low as possible and, in fact, has a statutory obligation to assess fees which are estimated not to exceed the amount required to fund Board operations. The Board plans to carefully review its budget in the near future, and any excess funds raised will be carried over to the next biennial period.

COMMENT: The same commenter recommended that new applicants pay a lower fee for the first two years of licensure.

RESPONSE: This suggestion would require that higher fees be paid by all three categories of licensees, and the extra administrative staff time required to implement this suggestion would increase Board operating costs and perhaps further increase licensing fees.

COMMENT: James H. Berg, Executive Vice President of Riverview Medical Center, stated that, contrary to statements made in the Economic Impact Statement, the fee schedule will result in costs to the public. Specifically, Riverview Hospital pays at least a portion of new licensing board fees, which expense is added to the overall cost of providing care. Insurance companies in turn increase their rates to individual and group subscribers, who then increase the cost of their goods and services.

RESPONSE: The Board disagrees that the fee schedule will create the adverse economic impact foreseen by this commenter. First, the number of staff social workers practicing in New Jersey hospitals is, in the Board's opinion, modest when compared with the number of other licensed health care providers. Second, the employer is under no obligation to pay all or any portion of licensing fees for its employees. Moreover, if it chooses to do so it need not recoup these costs by increasing the overall cost of care. In any event, the Board believes the benefit to the hospital and to the public of professional licensure—increased access to and availability of quality mental health services—more than outweighs any economic impact upon a hospital which chooses to pay its employees' licensing fees.

COMMENT: Edward P. O'Connor stated that the NASW objected to the higher fee for clinical social workers for two reasons: (1) If the higher fee is based on the assumption that clinical social workers are more highly paid, that assumption is erroneous: the majority work in family health centers and are among the lowest paid; and while social workers in private practice have a higher income range, the median private practice income range falls within the income range of all social workers; and (2) A higher clinical license cost reinforces the erroneous perception that it is "better than the standard license."

RESPONSE: The higher clinical license fee is based upon anticipated greater administrative costs in processing and validating applications for clinical licensure and the fact that the clinical social worker is more experienced, not upon any assumption that the license is better. The Board notes that there is no "standard license" but rather three categories of licensure based upon educational and experiential requirements and type of professional practice. As stated above, the Board intends to carefully analyze its operating budget in the near future to determine whether modifications in any of licensing categories are necessary.

COMMENT: Harriet Jernquist, M.S.W., stated that this "extra certification" seems to be a duplication since the hospital verifies academic degrees before employment.

RESPONSE: Licensure under the Social Workers Licensing Act of 1991 is not an extra certification. Rather, licensure under the Act—which requires the Board to set standards of qualification, education, training and experience—is mandatory for individuals practicing as social workers in this State and is intended to promote high standards of professional performance.

Full text of the adoption follows.

SUBCHAPTER 14. FEES

13:44G-14.1 Fees

(a) Charges for licensure, certification and other services are:

1. Application fee	$75.00
2. Initial clinical license fee:	
i. If paid during the first year of a biennial renewal period	220.00
ii. If paid during the second year of a biennial renewal period	110.00
3. Initial license fee:	
i. If paid during the first year of a biennial renewal period	160.00
ii. If paid during the second year of a biennial renewal period	80.00
4. Initial certification fee:	
i. If paid during the first year of a biennial renewal period	100.00
ii. If paid during the second year of a biennial renewal period	50.00
5. Clinical license renewal fee, biennial	220.00
6. License renewal fee, biennial	160.00
7. Certification renewal fee, biennial	100.00
8. Late renewal fee	100.00
9. Reinstatement fee	150.00
10. Endorsement fee	75.00
11. Duplicate wall certificate	40.00
12. Change of address	25.00
13. Verification of licensure/certification	40.00
14. Verification of continuing education credits	40.00

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION

Merchandise Advertising

Adopted Amendments: N.J.A.C. 13:45A-9.2, 9.3 and 9.4

Proposed: March 2, 1992 at 24 N.J.R. 684(a).

Adopted: November 20, 1992 by Emma N. Byrne, Director, Division of Consumer Affairs.

Filed: December 8, 1992 as R.1993 d.6, **without change.**

Authority: N.J.S.A. 56:8-4 and 52:17B-1.24.

Effective Date: January 4, 1993.

Expiration Date: November 9, 1995.

Summary of Public Comments and Agency Responses:

One comment in support of the proposal was received from Richard B. Kelly, Esq., on behalf of the National Association of Catalog Showroom Merchandisers.

Full text of the adoption follows.

13:45A-9.2 General advertising practices

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

1.-10. (No change.)

11. The use, directly or indirectly, of a comparison to a suggested retail price, inventory price, invoice price or similar terms that directly or indirectly compare or suggest the comparison between the cost of supply and the price at retail for the advertised merchandise.

13:45A-9.3 Price reduction advertisements

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., in addition to those practices referred to in N.J.A.C. 13:45A-9.2, the following practices shall be unlawful with respect to price reduction advertisements:

1.-2. (No change.)

3. For any specifically advertised merchandise items advertised for sale at a price of $100.00 or more, the failure to conspicuously set forth a reference price or price range based upon either:

i. The advertiser's usual selling price or price range for the identical merchandise or for comparable merchandise of like grade or quality; or

ii. A usual selling price charged by competitors in the advertiser's trade area for the identical merchandise or for comparable merchandise of like grade or quality.

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4. The failure of the disclosure of the reference price or price range to adhere to the following conditions:

i.-iii. (No change.)

iv. With regard to the price comparison required by this subsection, the advertisement shall clearly and conspicuously disclose in close proximity to the reference price or price range the basis for such reference as set forth in (a)3 above. In this regard, terms such as "comparable value," "competitor's price," "our regular price" or words of similar import shall be used to designate the basis for the reference price.

5. The failure of an advertiser to prove the validity of its claim of a price reduction based on one of the bases therefor as set forth in (a)3 above to the Division or its designee, regardless of whether or not a reference price need be set forth in the advertisement. This substantiation shall adhere to the 60 day periods established by this section.

6. (No change.)

7. The use of the terms "cost," "wholesale" or other similar terms to describe an advertised price where such price is not equal to or less than the price per unit paid by the advertiser to the manufacturer or distributor of the merchandise. In the computation of the price per unit of the advertised merchandise, freight may be included if the advertiser pays for same and is not reimbursed therefor, but handling and all overhead or operating expenses shall be excluded.

8. (No change.)

13:45A-9.4 Application of regulation

(a) (No change.)

(b) An advertiser, a manufacturer, an advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertising seller shall be deemed an advertiser within the meaning of this subchapter, when such entity prepares or places an advertisement for publication. No such entity shall be liable for a violation of this subchapter when the entity reasonably relies upon data, information or materials supplied by an advertising seller for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the entity's control, including but not limited to, the post-publication performance of the advertising seller. Notwithstanding that an advertisement has been prepared or placed for publication by one of the aforementioned entities, the advertiser on whose behalf such advertisement was placed may be liable for any violation of this subchapter.

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

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Nuclear Generating Plant Decommissioning

Adopted New Rules: N.J.A.C. 14:5A

Proposed: November 4, 1991 at 23 N.J.R. 3239(b).

Adopted: October 28, 1992 by the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Filed: October 29, 1992 as R.1992 d.472, **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. 48:2-13 and 48:2-21.

BRC Docket Number: EX91020247.

Effective Date: January 4, 1993.

Expiration Date: January 4, 1998.

Summary of Rulemaking History:

On April 1, 1991, the Board of Regulatory Commissioners (Board or BRC) published, in the New Jersey Register at 23 N.J.R. 942(a), a rulemaking pre-proposal to solicit preliminary comments on a suggested format for a periodic review mechanism of nuclear plant decommissioning cost estimates. Comments were received from Public Service Electric & Gas Company (PSE&G), Atlantic Electric Company, Jersey Central Power & Light Company (JCP&L), and the Department of the Public Advocate, Division of Rate Counsel.

Based upon review of the comments received, as well as further deliberations by the Board concerning these and related issues, the Board proposed new rules, N.J.A.C. 14:5A, entitled "Nuclear Generating Plant Decommissioning" in BRC Docket Number EX91020247. Said proposal was published in the November 4, 1991 New Jersey Register at 23 N.J.R. 3239(b). In addition to rules on a suggested format for a periodic review mechanism of nuclear plant decommissioning cost estimates, the new rules included a requirement that electric utilities file annual decommissioning trust fund reports including information regarding fund asset value and portfolio mix, achieved returns on the trust funds, earnings indices used to benchmark trust fund performance and decommissioning investment manager and trustee fee structures and charges.

Written comments on the proposed rules were received through December 4, 1991 and an open public hearing was conducted on April 3, 1992, before the proposed rules were adopted by the Board at its open public meeting held on October 28, 1992.

Summary of Public Comments and Agency Responses:

Written comments on the proposed new rules were submitted by Mary O. Henderson, Clerk of Lower Alloways Creek Township; Charles F. Morgan, Jr., Manager of Rates of Atlantic Electric Co.; Kurt S. Lewandowski, Assistant Deputy Public Advocate of the New Jersey Department of Public Advocate, Division of Rate Counsel; Dennis Baldassari, Vice President of Jersey Central Power & Light Co.; and Francis E. Delany, Jr., Corporate Rate Counsel of Public Service Electric and Gas Co.

With the exception of the Clerk of Lower Alloways Creek Township, the commenters listed above appeared at a public hearing held in this matter on April 3, 1992 at the Board's Newark office. For the most part, those testifying at the public hearing reiterated those comments contained in their written submissions. The public hearing was presided over by Commissioner Carmen J. Armenti who, rather than making any conclusions, left the record to be considered by the entire Board. A copy of the transcript of that public hearing as well as the written comments are a part of the record in this matter and can be examined at the Board's offices located at 44 South Clinton Avenue, Trenton, New Jersey 08625.

1. COMMENT: Include definitions for "nuclear facilities" and "nuclear generating station."

RESPONSE: These terms are sufficiently clear as to need no specific definition in the rules.

2. COMMENT: There is no compelling need for BRC rules on decommissioning since the review of decommissioning plans, costs, investment performance and funding during a base rate case and by the Nuclear Regulatory Commission (NRC) is adequate.

RESPONSE: The timing of base rate filings can vary substantially and can be driven by factors that have little to do with developments related to nuclear plant decommissioning. The proposed rules ensure that a periodic review is undertaken. In addition, the rules require information not currently required by the NRC which can impact substantially the rates paid by utility customers and which should be periodically reviewed by the Board.

3. COMMENT: The proposed rules require the collection and analysis of extensive data, and the rules are technically complex and burdensome and should be withdrawn.

RESPONSE: The Board disagrees that the rules should be withdrawn.

It is the responsibility of the Board to implement a process that will provide sure and adequate funds for decommissioning activities. To the greatest extent possible, accurate and timely cost estimates are required if the Board is to properly balance the need for providing sufficient funds for the safe and timely decommissioning of nuclear facilities against the need to fairly assess current ratepayers for their share of these costs.

Accordingly, the Board believes that there is a need for a mechanism to ensure periodic review of decommissioning cost estimates. Moreover, it is the Board's intent to ensure that the electric utilities properly manage the decommissioning trust funds into which ratepayer monies are placed. Said management includes the selection of fund trustees and investment managers, as well as the establishment of investment guidelines.

The fact that the proposed rules require the collection and analysis of extensive data and are technically complex reflects the fact that the subject of decommissioning is a complex subject. The ultimate expenditure of hundreds of millions of dollars by the utilities for decommissioning warrants appropriate oversight by the Board.

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4. COMMENT: The proposed rules should be modified to specify that the reasonable cost of compliance with the rules by a utility should be borne by the utility's customers and that utilities are authorized to use deferred accounting for these costs.

RESPONSE: The Board disagrees that the rules should be modified. The level of costs to be received by a utility in rates and the appropriate accounting treatment for them should be determined in the context of a utility rate case as it is for the costs of compliance for other regulations to which a utility is subject.

5. COMMENT: The proposed rules should have as their objective the adjustment of rates to reflect the results of the periodic review and their adjustment should not be dependent on filing a base rate case.

RESPONSE: The Board agrees that the level of funding in rates is an important consideration; however, it disagrees that a change in rates should necessarily be the objective of the rule. The impact of decommissioning costs on rate design may need to be examined in the context of a rate case to ensure that no class of customers is unduly burdened. In addition, N.J.A.C. 14:5A-3.6 provides that the Board shall issue an Order following the hearings on decommissioning which will address proposed methods for revising funding levels where deemed appropriate.

6. COMMENT: The review procedures should only seek to determine the adequacy of decommissioning funding levels.

RESPONSE: The Board agrees. In addition, the proposed rules provide that the Board shall issue an Order which will address proposed methods for revising funding levels where deemed appropriate.

7. COMMENT: The time frame for the review process should be expanded from three years to five years.

RESPONSE: N.J.A.C. 14:5A-2.1(a) has been modified to require a four year filing requirement. This change in combination with the modifications to N.J.A.C. 14:5A-2.1 addressed in response to Comment Number 9, will be adequate to ensure timely periodic reviews while preventing unnecessary regulatory duplication.

8. COMMENT: The requirement for Decommissioning Cost Updates at 18 month intervals within 10 years of cessation of commercial operation of a nuclear generating station should be modified to reduce the number of filings required and to require those filings to begin closer to the time of cessation of commercial operation of the generating station.

RESPONSE: After consideration of this comment, the Board notes that the NRC currently requires the filing of a detailed decommissioning plan with a full cost breakdown within five years of the cessation of commercial operation of the generating station. Accordingly, the Board has modified N.J.A.C. 14:5A-2.1(b) to require the filing of a Decommissioning Cost Update to comport with the NRC requirement. Because of the need to file with the NRC and in light of the similarities between the Board and NRC reports, there will be no additional burden placed on the utilities to comply with this modification. In addition, no less information will be provided to the Board, since any detailed information will not be available prior to the five year filing with the NRC. In addition, the Board is of the opinion that requiring an update of the Decommissioning Cost Update on an 18 month basis is an unnecessary burden on the utilities as there may not be any significant changes within that timeframe. Therefore, the Board has further modified the rule to require updates only in the event of any significant changes.

9. COMMENT: If a utility has recently had the issue of decommissioning reviewed in a base rate case, the utility should be exempted from the filing of its next Decommissioning Cost Update.

RESPONSE: The primary intent of the proposed rules is to ensure timely and regular reviews of up-to-date decommissioning cost estimates in order to ensure that the level of funding is commensurate with the expected ultimate cost to dismantle nuclear generating plants. In order to avoid unnecessary regulatory duplication, N.J.A.C. 14:5A-2.1(d) has been added to permit that, in the event that a public electric utility has had the decommissioning cost issue fully reviewed in the context of a base rate case within three years of the required date of an Update filing, the utility has the option to certify that no material changes have occurred in the estimates since that review. However, the utility would still be required to file other information provided for in N.J.A.C. 14:5A-2.2 and not addressed in the base rate case review. In light of the recent reviews of the nuclear power plant decommissioning cost estimates which have occurred in the ongoing base rate cases of PSE&G and JCP&L (Docket Nos. ER911111698J and ER91121820J, respectively), scheduled for decision around January 1993, N.J.A.C. 14:5A-2.1(a) and 2.2(a)1 have been modified to require the initial update filing on January 1, 1996.

10. COMMENT: The filing dates of the required Decommissioning Cost Updates should be staggered.

RESPONSE: The proposed rules permit electric utilities to jointly file information with respect to generic industry activities and the co-owners of a nuclear facility to jointly file cost estimates to avoid the filing of duplicative information. Staggering the filing dates would negate this benefit.

11. COMMENT: Limits should be placed on the scope of the decommissioning process covered by the proposed rules to include only the removal of radiological contaminated structures and equipment. If a utility proposes to include the cost of removal of non-radiological structures in its Decommissioning Cost Update, additional information should be required by the proposed rules.

RESPONSE: The proposed rules provide that interested parties may comment to the Board on the Decommissioning Cost Updates filed with it. The Board feels that this will provide any interested parties with a sufficient opportunity to make their views known on any specific inclusion or omission by the utilities in their Decommissioning Cost Updates. Accordingly, the Board does not feel any additional limits should be placed on the scope of the decommissioning process in the proposed rules.

12. COMMENT: When a licensee of a nuclear generating station applies to the NRC for termination of its license, each owner of the nuclear generating station should submit to the Board a copy of the proposed decommissioning plan it is required to submit to the NRC under 10 CFR 50.82.

RESPONSE: N.J.A.C. 14:5A-2.1(c) has been added to the proposed rules to incorporate this comment. The inclusion of this modification will pose no additional burden on the affected utilities as it requires only that a utility supply the Board with a copy of the filing mandated by the NRC. This will allow the Board to ensure, with no additional burden to the affected parties, that the Decommissioning Cost Update submitted to the Board is consistent with that information made available to the NRC.

13. COMMENT: The inclusion of foreign costs of decommissioning will not produce any valid evidence regarding the expected costs of decommissioning nuclear plants in the United States.

RESPONSE: The Board believes that the information required in N.J.A.C. 14:5A-2.2(a)1i can prove useful. The utility is free to argue its validity or relevance within the update filing.

14. COMMENT: Additional information should be included on the state of high level and low level radioactive disposal sites.

RESPONSE: N.J.A.C. 14:5A-2.2(a)1iii in the proposed rules provides for the assessment of the development of both high level and low level radioactive waste disposal sites and their cost or pricing structures in the Decommissioning Cost Update with technical support sufficient to provide the Board with a basis to evaluate that information. In addition, the proposed rules provide that interested parties may comment to the Board on the Decommissioning Cost Updates filed with it. This provides a mechanism for those parties to request that additional information be provided. Accordingly, the Board does not feel that any additional specific requirements should be included in this section.

15. COMMENT: Transportation methods and hardware and insurance cost estimates which are required to be assessed by the utility need to be more clearly defined.

RESPONSE: N.J.A.C. 14:5A-2.2(a)1iv and (a)1vi have been modified to clarify these terms. The former subparagraph now states, "Transportation methods and hardware for transporting radioactive material"; the latter, "Insurance cost estimates to cover potential liabilities during decommissioning."

16. COMMENT: Definition of terms is needed as related to the status of any efforts by the utility to extend the date for cessation of commercial operation and changes in plant status.

RESPONSE: N.J.A.C. 14:5A-2.2(a)2ii of the proposed rules has been modified to eliminate all examples from the proposed rules, so as not to attempt to specify each possible scenario which could affect the facility. This modification will impose no material change to the rule as proposed in that the utility will still be required to report on the status of any effort on its part to extend the date of the cessation of commercial operations and changes in plant status irrespective of their causes.

17. COMMENT: The proposed rules should require that each Decommissioning Cost Update include a comparison of costs of each permitted decommissioning option.

RESPONSE: The Board does not feel that specific cost comparisons must be developed for all options if the utility justifies its choice of

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option. Accordingly, N.J.A.C. 14:5A-2.2(a)2iii has been modified to require the justification for the choice of a particular decommissioning option.

18. COMMENT: There is no need to file all previously performed site specific studies when a new study is filed.

RESPONSE: N.J.A.C. 14:5A-2.2(a)2iv(1) of the proposed rules has been modified to eliminate the requirement that previously performed site specific studies be filed when a new study is filed. The rationale behind this modification is that all prior site specific studies will have been filed with the Board and will be maintained in the Board's case files and will, therefore, be available for inspection and review by the Board and all other interested persons. In addition, this modification will result in a saving of time and expense to the utility in that these studies are voluminous.

19. COMMENT: Joint submissions of information should be permitted where the information to be filed is identical.

RESPONSE: N.J.A.C. 14:5A-2.3(a)2 of the proposed rules has been modified to permit joint submissions of identical information.

20. COMMENT: The proposed rules should not require that a copy of the Decommissioning Cost Update be provided to the NRC.

RESPONSE: N.J.A.C. 14:5A-3.1(b) of the proposed rules has been modified to eliminate this requirement in that, absent a specific request from the NRC, the burden of submitting a copy of the Cost Update to that agency should not be imposed on the regulated utilities. Should the NRC at some time in the future request a copy of the Cost Update, said copy could be made available from the Board's records.

21. COMMENT: The proposed rules should require that a copy of the Decommissioning Cost Update be provided to the municipality where the nuclear facility is located.

RESPONSE: N.J.A.C. 14:5A-3.1(b) of the proposed rules has been modified to provide that a copy of the Decommissioning Cost Update be provided to the municipality in New Jersey where the nuclear facility is located. The rationale behind this modification is that there are only two municipalities in New Jersey wherein nuclear generating plants are located. In light of the interest of these municipalities caused by the presence of the plant within their boundaries, the Board is of the opinion that the submission to these municipalities of a copy of the already produced Cost Update is not unreasonable, in part because the requirement to send a copy to the NRC has been eliminated.

22. COMMENT: The threshold for initiating a hearing under the proposed rules is too low.

RESPONSE: N.J.A.C. 14:5A-3.2(b)1 and 2, which set forth the consideration for a hearing of the proposed rules, have been deleted upon adoption. The Board does not consider this modification to be substantive in that it requires the Board to issue a formal opinion with specific findings. Included in such findings could be a determination by the Board as to the need to initiate a proceeding in which it may formally review the present funding level for any of the trusts. A direct result of this change will be the availability of a Board order from which all parties may seek any appropriate administrative or judicial relief.

Therefore, the procedure provided will not only provide the Board with flexibility regarding the need for hearings depending upon the issues raised by a particular Update filing, but will also further protect the rights of the parties by allowing them an avenue for relief subsequent to the Board's written Order.

23. COMMENT: There are no defined limits in the proposed rules on the scope of the evidentiary hearing.

RESPONSE: N.J.A.C. 14:5A-3.2(b) of the proposed rules has been modified to require that the Board issue an Order on its findings following its review of the Decommissioning Cost Update. If that Order calls for a hearing, the scope of that hearing will be set forth therein and further defined and shaped in the course of prehearing conferences.

24. COMMENT: What happens if the Board, following review of the Decommissioning Cost Update, determines that no formal proceeding is required?

RESPONSE: N.J.A.C. 14:5A-3.2(b) of the proposed rules has been modified to require that the Board issue an Order in which it must specifically set forth its findings. Any party aggrieved by such a determination will be able to seek any appropriate administrative or judicial relief.

25. COMMENT: It is unclear how the Board will review and assess the Decommissioning Cost Update submittals.

RESPONSE: Specific guidelines have not been provided because the review and assessment of Decommissioning Cost Update submittals must be conducted on a case-by-case basis. As a result, the Board must be afforded all reasonable and necessary flexibility in the course of its review and assessment process.

In order to ensure this flexibility, the Board has determined that a formal order supported by specific findings should be issued in all matters pertaining to decommissioning costs. This will also ensure more flexibility to all parties in that there will be a Board order to which they may react to, comment on or formally seek relief from.

To achieve this flexibility, the Board has eliminated upon adoption the more narrow language contained in N.J.A.C. 14:5A-3.2(b)1 and 2. This language was narrow in the sense that, if read literally, it would have restricted the initiation of a formal review to those situations in which there was a question as to the consistency of the present funding level with the most up-to-date estimates of decommissioning costs, and the absence of an alternative proceeding in which an appropriate review could be taken.

26. COMMENT: Each Decommissioning Cost Update should be transmitted to the Office of Administrative Law for review in a formal proceeding.

RESPONSE: The proposed rules require that an Executive Summary of each Decommissioning Cost Update be made available to interested parties and provide a period of 60 days for interested parties to comment to the Board. If any party feels that a Decommissioning Cost Update should be transmitted to the Office of Administrative Law for review in a formal proceeding, a request therefore can be made to the Board in the comment period. Pursuant to the provisions of N.J.S.A. 52:14F-8, it is for the Board to ultimately decide, within the context of each individual filing, whether a matter should be transmitted to the Office of Administrative Law for hearing or be retained for hearing directly before the Board.

27. COMMENT: No time limit is specified for the Board to issue its Nuclear Facility Decommissioning Report.

RESPONSE: It has always been the intent of the Board that the issuance of its determination would be consistent with the provisions set forth in the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. In order to eliminate any confusion as to the manner and timing of a Board decision, the Board has modified N.J.A.C. 14:5A-3.6(a) by stating that the Board will issue an order as opposed to a report.

28. COMMENT: It is inappropriate to involve the BRC in the selection of trustees and investment managers for decommissioning funds.

RESPONSE: The Board both disagrees and wishes to clarify. The Board has the responsibility to assure that the utilities subject to its jurisdiction provide safe, adequate, and proper service. In that regard, it is the Board's intent to insure that the electric utilities properly manage the hundreds of millions of dollars of decommissioning funds into which ratepayer monies are placed and which will be required in the future for the safe decommissioning of the utilities' nuclear power plants. The proposed rules will permit ongoing oversight of the utilities in that regard. Additionally, no other independent agency conducts a review of those funds to the degree specified by the proposed rules. Moreover, N.J.A.C. 14:5A-4.1 provides guidelines for procurement procedures to ensure that all interested and qualified investment managers are provided an opportunity to participate, and further requires, in various ways, that the Board be apprised all through the selection process. The subsection does not, however, directly involve the Board in the actual selection of investment managers or trustees.

29. COMMENT: Bidding procedures are not appropriate for the selection of decommissioning fund trustees and investment managers.

RESPONSE: The Board disagrees. Bidding procedures will help to assure that various qualified trustees and investment managers will be considered by a utility and will introduce a certain level of competition into the procurement process for trustees and investment managers. This should result in better service at lower costs to the utilities and consequently their ratepayers who ultimately pay those costs.

30. COMMENT: There is no need for public notification in the bidding procedure for the procurement of decommissioning fund trustees and investment managers.

RESPONSE: While the utilities have argued that this provision is unnecessary since the field of potential managers and trustees is highly specialized, the Board notes that no downside to public notice has been presented. Moreover, since the Board is interested in broadening the field and providing opportunities for small, local managers and trustees, the public notification may trigger a proposal from a qualified firm previously unknown to the utility. However, in order to lessen the

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reporting burden on the affected utilities, the Board has eliminated the requirement to file the specific manner of public notification, N.J.A.C. 14:5A-4.1(b)iii.

The Board is of the opinion that such a filing requirement is unnecessary as N.J.A.C. 14:5A-4.1(a)2 directs each utility to demonstrate to the Board that requests for proposals are made widely available to interested and qualified investment managers and trustees, both in- and out-of-State. Therefore if there was a problem in the manner that a utility gave notice, it would be quickly seen by the Board and corrected.

31. COMMENT: Sufficient assets or evidence of credit worthiness to ensure the value of the funds being managed or held in trust should be taken into account in the selection process for a decommissioning fund trustee or manager.

RESPONSE: The sufficiency of assets and evidence of credit worthiness of the investment manager or trustee are factors that are presently considered by the affected utilities even in the absence of rules. It is inconceivable that a utility would not consider these factors in the selection of an investment manager or trustee. Nevertheless, in order to eliminate any public concerns, the Board has included N.J.A.C. 14:5A-4.1(a)1ix upon adoption. Said inclusion will have no effect upon the utilities as they are, as stated above, presently considering these factors.

32. COMMENT: The date for filing the annual Decommissioning Trust Fund Report should be changed from February 15 to April 15.

RESPONSE: The rationale behind this request is that the utilities are presently geared up to file with the Board detailed financial and operational information within the context of their annual reports which are required to be filed by April 15. In addition, April 15 is the date on which the utilities compile financial information for the purpose of filing their federal income tax returns. Having the utilities file their annual Decommissioning Trust Fund Report on April 15, rather than on February 15, will lessen the burden on the utilities while still allowing the necessary information to be available to the Board and other interested parties in a timely manner that will in no way work to the prejudice of any party or compromise the effective and complete review of the data. Accordingly N.J.A.C. 14:5A-4.2(a) of the proposed rules has been modified to incorporate this change.

33. COMMENT: Quarterly rather than monthly return information on decommissioning funds should be required by the proposed rules.

RESPONSE: N.J.A.C. 14:5A-4.2(a)1ii of the proposed rules has been modified to require quarterly information. The reason for this modification is that investment managers and trustees presently supply to the utilities information on a quarterly rather than on a monthly basis. In order to avoid the financial and operational burdens that would be faced by the utilities if the information had to be submitted on a monthly basis, and as the Board is mainly concerned with figures on an annual basis, the Board finds this modification to be insignificant to the purpose of the rules.

34. COMMENT: Investment performance should be reported on a total return basis rather than an after tax basis as required by the proposed rules.

RESPONSE: After tax information is required to allow the Board to adequately judge the performance of the fund and this information is available only from the utility.

35. COMMENT: Cumulative earned returns should be reported beginning January 1, 1991, due to the unavailability of information prior to that date.

RESPONSE: N.J.A.C. 14:5A-4.2(a)1iii and ix of the proposed rules have been modified to incorporate this comment, by requiring quarterly returns beginning January 1, 1991, and cumulative return data in whatever form available prior to January 1, 1991 from inception of the fund. The Board is convinced that some information on returns must be available.

36. COMMENT: Generic investment guidelines should be developed prior to Board review of the trust fund investment guidelines of each electric utility as reported in the initial Annual Reports required pursuant to the proposed rules.

RESPONSE: The Board disagrees. Review of the guidelines presently being used by the utilities as reported in their initial annual reports must be made first. Such review may indicate that there is no need for generic guidelines or review of the annual reports may pinpoint specific areas where such guidelines are required which the Board would be unaware of until a review was conducted.

37. COMMENT: The proposed rules should not indicate a section regarding the Board's consideration of the apportionment of responsibility between electric utility shareholders and ratepayers for shortfalls or excesses in achieved returns on trust funds.

RESPONSE: Since the Board has the authority to raise this question unilaterally or on the motion of others in any proceeding instituted to review proposed adjustments to the nuclear decommissioning annuities embedded in customer rates, specific reference in the proposed rules is not needed. The Board is further of the opinion that to set forth only one of many issues that may be addressed within the context of this type of proceeding may be somewhat confusing and misleading. Accordingly, N.J.A.C. 14:5A-4.2(c) of the proposed rules has been eliminated in response to avoid such confusion.

38. COMMENT: The proposed rules should require that a copy of the Decommissioning Trust Fund Report be provided to the municipality where the nuclear facility is located.

RESPONSE: N.J.A.C. 14:5A-4.3 of the proposed rules has been modified to provide that a copy of the Decommissioning Trust Fund Report be provided to the municipality in New Jersey where the nuclear facility is located. The rationale behind this modification is similar to that dealing with Decommissioning Cost Updates set forth in the response to Comment 21 above. Namely, in light of the interest of the two affected municipalities caused by the presence of plants within their boundaries, the Board believes that the submission to these municipalities of a copy of the already produced Trust Fund Report is not unreasonable.

Summary of Agency-Initiated Changes Upon Adoption:

In N.J.A.C. 14:5A-1.2, the Board defines "DECON" as a method of decommissioning in which the plant and site of a facility "... containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use *shortly* after cessation of operations." (emphasis added). When referring to the decommissioning of a nuclear generating plant, the word "shortly" can easily reflect a period of at least several years which would be the period of time required for the removal of radioactive contaminants. As the word "shortly" in common use refers to a time period of much less duration, the Board has removed that term so as not to mislead the public.

In this section, the Board has also added definitions for the terms "non-qualified fund" and "qualified fund". As those terms are a part of the provisions of N.J.A.C. 14:5A-4.2(a)1i, the Board is of the opinion that their meaning should be clearly set out among the definitions.

At the time that these rules were published for comment, no review of an individual nuclear decommissioning cost update had been filed with the Board as there was no requirement to do so. In determining that a periodic review of decommissioning costs should be undertaken, the Board was of the opinion that the initial necessary information should be filed no later than January 1, 1993. Accordingly, that date was incorporated into the proposed rules at N.J.A.C. 14:5A-2.2(a)1.

During the ensuring period, the Board, within the context of appropriate rate proceedings, was able to review and consider the appropriateness of the decommissioning costs applicable to those utilities that will be affected by these proposed rules. Because of this recent review, the Board is of the opinion that the retention of the initial filing date of January 4, 1993 would not provide any additional relevant or competent information not already in the possession of the Board. Therefore, the Board intends to modify the date of the initial filing to January 1, 1996. In addition, in the course of its recent review of decommissioning costs, the Board has determined that a four year filing interval, rather than the three year interval initially proposed, is more reasonable in that it will still adequately provide the information required for the Board's purposes while lessening any burden imposed on the affected utilities.

The purpose of the proposed new rules is to allow the Board to evaluate decommissioning costs that will ultimately be included in an electric utility's customer charges. Toward that end, the Board has added language upon adoption to N.J.A.C. 14:5A-2.2(a)1ii for the sole purpose of making it clear that the information sought from the affected utilities pertaining to innovations should be limited to the decommissioning process and/or related costs. This will hopefully eliminate the submission of any information that is unrelated thereto.

Under N.J.A.C. 14:5A-2.2(a)1, the affected utilities are required to file assessments "... of the current status and developing trends on all activities that effect the costs of nuclear facility decommissioning." In that regard, N.J.A.C. 14:5A-2.2(a)1v requires the utilities to assess all applicable regulatory changes undertaken or specific clean up standards adopted by various governmental entities. As industry organizations, such

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as the Electric Power Research Institute, are funded by the electric utilities to conduct research into many areas including decommissioning methods, and in order to allow the inclusion of the broadest scope of information, the Board has included upon adoption recommendations by industry organizations in the information that should be assessed for the update filing. This addition will not cause any hardship on the affected New Jersey utilities as that information is readily available to them.

In N.J.A.C. 14:5A-2.2(a)2i, the Board has included among the data to be filed by the utility the projected date for the completion of decommissioning activities. As the projected completion date is as integral a part in estimating decommissioning costs and would, of necessity, have to be included with any filed data, this modification places no additional burden on the affected utilities and is only meant for clarification purposes.

In N.J.A.C. 14:5A-2.2(a)2v, the Board's intent was to receive data related to all decommissioning costs that previously had been reflected in a utility's rate structure. The Board has changed the term "base rates" to "rates" for clarification purposes only as decommissioning costs may be allowed to be flowed through to customer charges through appropriate rate proceedings other than a base rate case.

The Board has also eliminated the word "or" set out in N.J.A.C. 14:5A-2.3(a) and replaced it with the word "and" in order to make it clear that the affected utilities may jointly file the information set forth in both (a)1 and 2.

At N.J.A.C. 14:5A-2.3(a)2 referenced to N.J.A.C. 14:5A-2.2(a)2vii has been added upon adoption to maintain consistency with the Commission's requirement that information which is different for each co-owner must continue to be separately filed.

In 14:5A-3.2, which pertains to Board review, the intent of the Board was that, should the Board determine the need for a formal proceeding, the Division of Rate Counsel would be a statutory intervenor thereto. Accordingly, the Board has clarified this intent by including language in N.J.A.C. 14:5A-3.2(c) to identify those proceedings which may be needed to review funding levels which, as a result, may have an effect on utility rates. This modification does not prejudice any party as Rate Counsel has the right to intervene in any ratemaking proceeding.

With regard to the selection process for investment managers and trustees, the Board has modified N.J.A.C. 14:5A-4.1(a)1ii to read: "Performance record in their investment discipline including the fixed income area." This change is made merely to state the obvious; that is, that the utility should take into consideration any experience that the investment manager or trustee might have had in areas other than fixed income.

The Board has also clarified N.J.A.C. 14:5A-4.1(a)1vii to require that a potential management investor or trustee demonstrate their ability to ensure that the fund assets are identifiable and segregated for the benefit of the nuclear facility. The Board is of the opinion that the original language could be misread to imply that the managing or trustee institution had an ownership interest in the fund with a portion thereof pledged to the utility.

In N.J.A.C. 14:5A-4.1(a)1viii, the Board's intent was to request affected utilities to expand their search for qualified managers and trustee firms. The modification made by the Board is merely to state that in the course of that search, the utilities should include qualified New Jersey firms and small and minority firms. This in no way works to the prejudice of any firm that bids in that no preference is given to any firm or type of firm. It is also no burden to the utility in that any firm that publicly bids must be fairly and equally considered.

Sufficiency of assets and credit worthiness as well as the number of clients and the total dollar value of funds currently managed by the investor manager or trustee are factors that are presently considered by the affected utilities even in the absence of rules. It is inconceivable that a utility would not consider these factors in the selection of a managing or trustee firm. It is no different than if one were to hire a carpenter and ask what jobs he had performed. Nevertheless, in order to avoid any confusion and for the sake of consistency the Board has included N.J.A.C. 14:5A-4.1(a)1ix and x. Said inclusion will have no impact on the utilities as they are, as stated above, presently considering these factors.

In N.J.A.C. 14:5A-4.1(c)2, the affected utilities are required to report to the Board their final selection of the fund trustees and investment management firms and the reasons for their selection. These reasons are to include a discussion of all criteria set out in N.J.A.C. 14:5A-4.1(a). Therefore, utilities are free to select any firm, even if said firm does not meet all the criteria, as long as the utilities can explain the reasons as to why the firms did not meet specific criteria. Accordingly, the language originally set out in N.J.A.C. 14:5A-4.1(a)2 is redundant and should be eliminated.

N.J.A.C. 14:5A-4.1(a)2 requires that the utility demonstrate that requests for proposals are widely available to interested and qualified investment managers and trustees, both in- and out-of-State. The modifications made by the Board merely clarify that the required demonstration must be made to the Board. This makes the rule consistent with N.J.A.C. 14:5A-4.1(c).

The Board has modified N.J.A.C. 14:5A-4.1(c)1 to include the submission of the names of all firms that respond to a request for proposals. This will not be a burden for the utilities as that information will be on file with them and readily accessible.

The Board would further note that N.J.A.C. 14:5A-4.1(d) has been modified to require that all executed trust or fund management agreements and all, rather than only material, amendments thereto be filed with the Board. This will eliminate any potential disagreements regarding what is or what is not a material amendment.

Because of the addition in N.J.A.C. 14:5A-1.2 of the definitions of non-qualified and qualified trust funds, the term "Internal Revenue Service" in N.J.A.C. 14:5A-4.2(a)1i is no longer required and, accordingly, has been omitted.

The rules as proposed require that the affected utilities submit to the Board a Decommissioning Cost Update every four years. N.J.A.C. 14:5A-2.1(a). In that update the utilities are required to include their latest cost estimates for the decommissioning of each individual nuclear facility. N.J.A.C. 14:5A-2.2(a)2. The utilities are also required to provide the total end of year market value of the qualified and non-qualified trust funds. N.J.A.C. 14:5A-4.2(a)1i. In addition, the utility must provide the annual after tax return earned on each fund for the year. N.J.A.C. 14:5A-4.2(a)1ii. Since the utilities are already required to submit the aforementioned data, it will be no burden for them to manipulate the numbers in order to produce a projection of the shortfall or excess of the funds available for decommissioning. Accordingly, the Board has requested that this calculation be included by the addition of N.J.A.C. 14:5A-4.2(a)1xi.

In N.J.A.C. 14:5A-4.2(a)1vii, the Board has modified the language to provide that the annual decommissioning trust fund report should include an accounting of all "manager" and "trustee" fees, commissions and "taxes" incurred "in maintaining the decommissioning trust." The Board is of the opinion that this modification makes it clearer to the utilities as to what specific information they must provide.

The provisions of N.J.A.C. 14:5A-4.2(a) mandate that the required information be submitted to the Board by April 15. In recognition of the fact that New Jersey utilities may share the ownership of a nuclear generating facility with one or more out-of-State utilities, the Board has added a new N.J.A.C. 14:5A-4.2(b) which will allow the information to be filed as late as May 15 in order to provide the New Jersey utilities sufficient time in which to obtain the necessary information from the out-of-State joint owners. The proposed N.J.A.C. 14:5A-4.2(b) is recodified as (c).

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 5A
NUCLEAR PLANT DECOMMISSIONING COST AND TRUST FUND REVIEW

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

14:5A-1.1 Purpose and scope

The rules contained in this chapter are designed to provide a mechanism of periodic review of the estimated costs of decommissioning nuclear generating stations owned by New Jersey electric utilities for the purpose of assuring that adequate funds are available at the cessation of commercial operation of each of the facilities to assure completion of decommissioning activities. The rules also set forth decommissioning trust fund reporting requirements for electric utilities and procurement guidelines for the selection of investment managers and trustees, in order to provide the Board timely information related to its oversight of the utilities' management of the funds.

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14:5A-1.2 Definitions

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

"Board" means the New Jersey Board of Regulatory Commissioners or its successor.

"Decommissioning" means to remove a facility safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of NRC operating license.

"DECON" means the method of decommissioning in which the equipment, structures, and portions of a facility and site containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use *[shortly]* after cessation of operations.

"DEPE" means the New Jersey Department of Environmental Protection and Energy or its successor.

"DOH" means the New Jersey Department of Health or its successor.

"DOTNJ" means the New Jersey Department of Transportation or its successor.

"DOTUS" means the United States Department of Transportation or its successor.

"Electric public utility" means all electric public utilities as defined by N.J.S.A. 48:2-13, but does not mean municipally owned electric public utilities.

"ENTOMB" means the method by which radioactive contaminants are encased in a structurally long-lived material, such as concrete. The entombed structure is appropriately maintained, and continued surveillance is carried out until the radioactivity decays to a level permitting unrestricted release of the property.

"Non-qualified fund" means a segregated fund established and maintained in the United States pursuant to an arrangement that qualifies as a trust under State Law and under 10 CFR 50.75 for the purpose of providing funds for nuclear decommissioning. A utility under Section 468A of the Internal Revenue Code, as amended, is allowed no deduction from its taxable income for contributions to the non-qualified fund.

"NRC" means the United States Nuclear Regulatory Commission or its successor.

"Public Advocate" means the New Jersey Department of the Public Advocate or its successor.

"Qualified fund" means a segregated fund established and maintained in the United States pursuant to an arrangement that qualifies as a trust under State Law and under 10 CFR 50.75 for the purpose of providing funds for nuclear decommissioning in accordance with Section 468A of the Internal Revenue Code (IRC) of 1986, as amended. A utility under Section 468A is allowed to deduct from its taxable income, IRS-approved contributions to the qualified fund subject to certain limitations.

"SAFSTOR" means the method by which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

SUBCHAPTER 2. DECOMMISSIONING COST UPDATE

14:5A-2.1 Filing

(a) Every New Jersey electric public utility having an ownership interest in one or more nuclear generating stations shall file by January 1, *[1993]* ***1996***, and every *[three]* ***four*** years thereafter, unless otherwise directed by the Board, a "Decommissioning Cost Update" (Update) with the Board for its consideration.

(b) Notwithstanding the provisions of (a) above, *[at such time as]* ***at or about five years prior to*** the scheduled cessation of commercial operation of a nuclear generating station *[is within 10 years,]* a Decommissioning Cost Update shall be filed for that station(s) *[at 18 month intervals]* ***and a revised filing made thereafter to reflect any significant changes in the update as they become known***.

***(c) At such time as the licensee of a nuclear generating station, in which a New Jersey electric public utility has an ownership interest, applies to the NRC for termination of its license and submits a decommissioning plan under 10 CFR 50.82, that New Jersey electric public utility shall submit to the Board a copy of the decommissioning plan submitted to the NRC under 10 CFR 50.82.**

(d) In the event that an electric public utility has had the decommissioning cost issue fully reviewed before the Board outside of the context of this chapter within three years of the required date of an Update filing, the electric public utility may, in lieu of filing a "Decommissioning Cost Update" as required in (a) above, file a certification that no material changes have occurred in the estimates presented since that review. Nevertheless, the electric public utility shall file with its certification information required by N.J.A.C. 14:5A-2.2 that was not addressed in that review.*

14:5A-2.2 Update elements

(a) The Update filing shall consist of the following elements, each of which shall be accompanied by technical support sufficient to provide the Board with a basis to evaluate the filing:

1. For the initial filing on Janaury 1, *[1993]* ***1996***, a generic assessment of the current status and developing trends on all activities that affect the costs of nuclear facility decommissioning. For each subsequent filing made pursuant to this chapter, an update of the current status and trends which have developed concerning all activities that affect the cost of nuclear facility decommissioning since ***the latter of*** the previous ***Decommissioning Cost Update*** filing or *[more]* ***most*** recent base rate case review. The activities required to be assessed under this paragraph shall include, at a minimum, the following:

i. Actual facility decommissioning costs both foreign and domestic;

ii. Development and use of state of the art equipment and techniques such as robotics, heavy duty cutting methods, computer monitoring, remote observation systems and chemical cleaning methods which will increase efficiency and/or reduce radiation exposures, waste processing methods which reduce the volume of decommissioning wastes, and other innovations ***that will affect the decommissioning process and/or related costs*** which have been developed since the last estimate;

iii. Development of both high level and low level radioactive waste disposal sites and their cost or pricing structures;

iv. Transportation methods and hardware ***for transporting radioactive material***;

v. Applicable regulatory changes undertaken or specific clean up standards adopted by the NRC, DEP, DOH, DOTNJ, DOTUS or other appropriate governmental bodies ***and applicable recommendations by industry organizations***; and

vi. Insurance cost estimates ***to cover potential liabilities during decommissioning***.

2. For each nuclear generating facility owned in whole or in part by an electric public utility, the utility shall provide the latest cost estimate for decommissioning, along with all supporting documentation. In support of the information filed under this paragraph each utility shall indicate the following for each facility:

i. The current projected date for cessation of commercial operation and the current projected date for commencement ***and completion*** of decommissioning activities;

ii. The status of any efforts by the utility to extend the date for cessation of commercial operation, and changes in plant status *[including extended plant shutdowns, expected levels of contamination, life extension programs and plant operability after license termination]*;

iii. The planned decommissioning option to be employed upon cessation of commercial operation, from the following list of options ***and the justification for the choice of that particular option***:

(1) DECON;

(2) ENTOMB;

(3) SAFSTOR; or

(4) Other options as deemed appropriate by the NRC, electric public utility and/or other applicable entities;

iv. The source of and supporting data for the decommissioning cost estimate, either resulting from a site-specific study of the

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particular facility or via generic NRC guidelines or some other means:

(1) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon a site-specific study, the electric public utility must provide that study*[, as well as any such studies previously performed for that facility]*.

(2) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon generic NRC guidelines, the electric public utility must provide all information which led the utility to translate these guidelines into the particular cost estimate along with an explanation and supporting documents of all adjustments made to the NRC generic guidelines for each facility;

v. The decommissioning cost estimate and assumed commercial operation cessation date which formed the basis for the existing level of decommissioning funding in the public electric utility's *[base]* rates;

vi. A description of the specific manner in which the information filed pursuant to (a)1 above affects the decommissioning cost estimate provided pursuant to this chapter;

vii. An explanation of the method used to calculate the annual contribution to the external funds including inflation rates used to estimate future value and yield rates estimated for the external fund; and

viii. The remaining spent fuel storage capacity and need, if any, for expanded storage capacity.

14:5A-2.3 Joint submissions

(a) For purposes of avoiding the filing of duplicative information, the electric public utilities subject to this chapter may jointly file information with respect to the following:

1. The generic industry activities required in N.J.A.C. 14:5A-2.2(a)1; *[or]* ***and***

2. In the event of co-ownership of a nuclear facility, the information concerning cost estimates pursuant to N.J.A.C. 14:5A-2.2(a)2, excluding N.J.A.C. 14:5A-2.2(a)2v***,*** *[and]* vi ***and vii*** which is required to be filed by each public electric utility ***unless such information is identical***.

SUBCHAPTER 3. DECOMMISSIONING COST UPDATE PROCEDURES

14:5A-3.1 Public notification

(a) Concurrent with the filing with the Board as required in this chapter, each utility shall provide public notice of said filing in newspapers of general circulation in its service territory.

(b) A copy of the filing shall also be provided to the Public Advocate, *[NRC and]* DEPE ***and the municipality in New Jersey where the nuclear facility is located***.

(c) Each utility shall make available for distribution to members of the public upon request an Executive Summary of the filing made pursuant to this chapter. Said Executive Summary shall:

1. Summarize the information supplied pursuant to each section of N.J.A.C. 14:5A-1 and 2;

2. Indicate procedures for comment as set forth in N.J.A.C. 14:5A-3.2; and

3. Not exceed 10 pages in length.

14:5A-3.2 Comment period and Board review

(a) For a period ending 60 days from filing of the Update or as otherwise extended by action of the Board, interested parties may submit comments to the Board.

(b) *[Upon]* ***Following*** receipt and review of comments as well as the Update and other related additional information as requested, the Board shall ***issue a Board Order with its findings.*** *[make a determination as to the need to initiate a proceeding to formally review the present funding level for any of the trusts. Such a determination shall be set forth in a Board order and shall be based upon the following considerations:

1. A sufficient showing to provide a reasonable question as to the consistency of present funding levels with the most up-to-date estimates of decommissioning costs; and

2. The absence of an alternative proceeding or expected proceeding, such as a base rate case, in which a full review of the cost estimates is being or will be undertaken.]*

(c) In the event that the Board determines a need for a formal proceeding ***to review the present funding level for any of the trusts***, said proceeding shall follow the procedures set forth in N.J.A.C. 14:5A-3.3 through N.J.A.C. 14:5A-3.6.

1. Within 10 days of the Board's determination of the need for a formal proceeding ***pursuant to paragraph (c) above***, the utility shall file with the Board a proposed form of public notice.

14:5A-3.3 Party status and intervention

(a) The Public Advocate and the Department of Environmental Protection and Energy shall be granted party status.

(b) Any person may make a Motion for Intervention to the Board with respect to the Update proceeding. Such Motion shall be decided pursuant to rules set forth in N.J.A.C. 1:1-16.

14:5A-3.4 Discovery

(a) Any party or intervenor as established in N.J.A.C. 14:5A-3.3 may propound discovery upon any public electric utility regarding its respective filings.

(b) The schedule for the filing of supplemental information, or testimony or propounding discovery and for responses thereto shall be established by the Board subsequent to its determination as to the need for a formal proceeding.

14:5A-3.5 Public and evidentiary hearings

(a) Within 90 days of the initiation of a formal proceeding, the Board shall schedule and convene a public hearing, upon proper notice, at which members of the public and interested parties shall be provided the opportunity to submit comments with respect to the filing.

(b) The Board shall convene evidentiary hearings and additional public hearings as necessary concerning the filing, and entertain written position papers from the parties.

(c) All notices of public or evidentiary hearings shall be published by the utility in conformance with the requirements set out in N.J.S.A. 48:2-32.2 and 48:2-32.4 and N.J.A.C. 14:1-5.12(b) through (e).

14:5A-3.6 Findings

(a) Subsequent to the conclusion of hearings, the Board shall issue *[a Nuclear Facility Decommissioning Report (Report)]* ***an order*** which will address the following issues:

1. A summary of the state of industry experience and technology concerning nuclear facility decommissioning;

2. *[Proposed findings]* ***Findings*** as to the continued efficacy of present decommissioning funding levels for each of the nuclear facilities wholly or partly owned by New Jersey electric utilities and subject to the formal review; and

3. *[Proposed methods]* ***Methods*** for revising funding levels where deemed appropriate.

[(b) In the event evidentiary hearings are held and the Board determines that decommissioning costs and related funding should be changed, a Board order shall be issued.]

SUBCHAPTER 4. DECOMMISSIONING TRUST FUND REVIEW

14:5A-4.1 Investment manager and trustee procurement procedures

(a) In the procurement, by an electric utility, of any new decommissioning fund trustees and investment managers, bidding procedures which include public notification must be employed.

1. The selection process must take into account, but is not necessarily limited to, the following considerations:

i. Existing knowledge or demonstration of ability to obtain knowledge of Internal Revenue Service Rules relating to Nuclear Decommissioning Costs (26 CFR parts 1 and 602 SEC 468A);

ii. Performance record in ***their investment discipline including the*** fixed income area;

iii. Cash management capabilities;

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iv. Investment manager and trustee fee structures;

v. Organizational commitment to keep abreast and maintain a presence in issues related to nuclear decommissioning trust fund management;

vi. Demonstration of sufficient resources to satisfactorily service the fund;

vii. Demonstration of a firm's ability to ensure that the assets contained in the Fund are clearly *[pledged to the utility]* ***identifiable and segregated for the benefit of the nuclear facility*** and will not be considered assets of the managing or trustee institution; *[and]*

viii. The extent to which a particular firm expands the market of existing managers or trustees ***to include qualified New Jersey based firms and small and minority owned firms*** or otherwise provides a unique quality or creates a new and useful niche*[.]****;***

ix. Sufficient assets or evidence of creditworthiness to ensure the value of the funds being managed or held in trust; and

x. The number of clients and the total dollar value of funds currently managed, how long the firm has been in business, and the credentials of the fund managers.*

[2. The selection process employed pursuant to (a)1 above shall be designed such that any one criteria is not the sole basis for rejection of a firm if the firm offers other unique and offsetting benefits.]

*[3.]****2.*** Each electric utility must demonstrate ***to the Board*** that *[requests for proposals]* ***Requests For Proposals (RFPs)*** are made widely available to interested and qualified investment managers and trustees, both in and out of state.

(b) Electric utilities shall notify the Board at least four weeks prior to the solicitation of new investment managers or trustees. Said notification shall include:

*[i.]****1.*** A copy of the Requests for Proposals *[(RFPs)]* to be sent to potential investment managers and trustees; ***and***

*[ii.]****2.*** A list of firms that will be sent RFPs and the manner in which the utility chose the distribution*[; and]*****.***

[iii. The specific manner of public notification.]

(c) Further notification to the Board is required as follows:

1. Identification of the firms ***that responded to the RFP's, the firms*** chosen to be interviewed and the reason for selection; and

2. Final selection of the firms and the reason for selection including a discussion of the criteria as established pursuant to (a) above.

(d) Copies of all executed trust or fund management agreements, or *[material]* amendments thereto, shall be filed with the Board.

14:5A-4.2 Decommissioning trust annual reports

(a) *[Within 60 days of the effective date of this chapter]* ***By March 3, 1993***, and annually each *[February]* ***April*** 15 thereafter each electric utility shall file with the Board:

1. An annual decommissioning trust fund report which shall provide for each nuclear generating station in which the electric utility has an ownership interest:

i. The total end of year market value of the *[Internal Revenue Service]* qualified and non-qualified trust funds;

ii. The *[monthly]* ***quarterly and annual*** pretax and after tax return earned on each fund for the year as well as the cumulative returns from *[the inception of the decommissioning trust fund]* ***January 1, 1991,*** through the end of the calendar year for which the decommissioning annual report is being issued; ***from the inception of each fund through December 31, 1990, the cumulative annual returns of the funds or other cumulative return data as available;****

iii. A comparison of the information provided in (a)1ii above to an appropriate performance benchmark, as well as description and support for the benchmark;

iv. The utility's strategy for maximizing return while monitoring and managing portfolio risk and specific investment guidelines imposed on fund managers;

v. The portfolio's asset mix, indicating types of securities, durations and quality ratings where appropriate;

vi. A financial reconciliation from the beginning of the current 12 month investment period through the end of the current 12 month period reflecting each plant's qualified and non-qualified funding history listed separately for the year to date and *[since inception]* ***from January 1, 1991 to date***;

vii. An accounting of all ***manager and trustee*** fees, commissions and ***taxes*** *[other administrative costs]* incurred ***in maintaining the decommissioning trust*** for the year;

viii. A statement of the assumed return built into the calculation of the funding annuity built into present rates;

ix. For the prior calendar year and on a cumulative basis *[since the fund's inception]* ***from January 1, 1991***, a computation of the shortfall or excess between the actual market value of the fund and the value of the fund had the rate of return embedded in annual annuities built into rates been realized; and

x. For jointly-owned stations in which there is shared ownership with one or more out-of-State utilities, the present amount of funds set*[-]*aside by each out-of-State utility for decommissioning each station as well as the annual level of contribution toward a decommissioning fund; and

xi. Based on the fund balances, earnings rates and decommissioning cost updates as of the report date, for each nuclear generating station, a projection of the shortfall or excess of the funds available for decommissioning as of the date it is expected to occur.*

2. A copy of the utility's most recent *[annual]* certification reports to the NRC for each wholly or partially-owned station.

(b) For jointly-owned stations in which there is shared ownership with one or more out-of-State utilities the information required by (a) above may be filed as late as May 15, if necessary, to allow sufficient time to obtain that information from the out-of-State joint owners.*

*[(b)]*****(c)*** Upon receipt of the initial Annual Reports filed pursuant to (a) above, the Board shall review the trust fund investment guidelines of each electric utility and consider the need for establishment of definitive generic investment guidelines.

[(c) The apportionment of responsibility between electric utility shareholders and ratepayers for shortfalls or excesses in achieved returns on trust funds as reported pursuant to N.J.A.C. 14:5A-4.1(a)1ix shall be considered by the Board in its review of proposed adjustments to the nuclear decommissioning annuities embedded in customer rates.]

14:5A-4.3 Distribution of trust fund report

A copy of the reports required by N.J.A.C. 14:5A-4.2(a)1 and 2 shall also be provided, by each utility, to the Public Advocate*,* *[and]* DEPE***, and the municipality in New Jersey where the nuclear facility is located***.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications

Agreements to do Business with Casino Licensees

Presentation of the Agreement

Adopted Amendment: N.J.A.C. 19:41-11.1

Proposed: October 19, 1992 at 24 N.J.R. 3694(a).

Adopted: December 2, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: December 4, 1992 as R.1992 d.4, **without change**.

Authority: N.J.S.A. 5:12-63, 69, 70, 92 and 104.

Effective Date: January 4, 1993.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), the Sands Hotel & Casino (Sands) and Resorts International Hotel, Inc. (Resorts).

COMMENT: The Division supports the proposed amendment on the basis that the required vendor registration of each bus company doing business with a casino licensee, regardless whether any funds pass directly

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between the casino and the bus company, will assure that the Commission and Division can verify that such companies are not disqualified under the provisions of N.J.S.A. 5:12-86c.

RESPONSE: The Commission agrees with the Division view that it is vital to the regulation of casino gaming in this State to assure that all persons doing business with casino licensees meet the qualification requirements of the Casino Control Act, regardless whether any direct compensation passes between the parties to the agreement.

COMMENT: The Sands commented that it did not object to the adoption of the proposal.

RESPONSE: The Commission accepts the comment of the Sands.

COMMENT: Resorts objected to the proposed rule on the basis that casino licensees are not currently required to file vendor registration forms on behalf of bus companies which do not receive direct compensation from casino licensees. In Resorts' opinion, there is no legitimate regulatory interest in requiring the registration of such companies.

RESPONSE: The comments of Resorts are rejected. The first comment highlights the need for the proposed rule as a clarifying measure since the Commission has always maintained that vendor registration forms are required for any company doing business with a casino licensee, including the bus companies addressed by the current proposal. The fact that no direct compensation flows between the parties does not mean that there is not an agreement, and an exchange of consideration, within the intended scope of subsection 104b of the Act. In fact, several casino licensees have been filing vendor registration forms for such bus companies for years. The amendment to N.J.A.C. 19:41-11.1 will assure that all casino licensees are aware of the Commission's interpretation of the Act and the Commission's rules with regard to such agreements.

The Commission also disagrees with the second comment of Resorts for the reasons noted above in response to the Division's comment.

Full text of the adoption follows:

19:41-11.1 Presentation of the agreement

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

(c) Except as otherwise provided in (d) below, each casino licensee or applicant for a casino license shall file with the Commission no later than 20 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. Vendor registration shall be required for any enterprise which has entered an agreement which the Commission has determined is governed by subsection 104(b) of the Act and this section, regardless of whether any direct compensation is exchanged by the parties as a result of the agreement. Such agreements shall include, without limitation, any agreement pursuant to which a bus owner or operator agrees to transport passengers to the casino hotel facility of a casino licensee in exchange for an agreement by the casino licensee to provide the passengers with complimentary services or items upon arrival. Notwithstanding the foregoing, an incomplete vendor registration form shall be considered timely filed by the licensee or applicant in accordance with this subsection if:

1.-2. (No change.)

(d)-(h) (No change.)

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PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session Wednesday, January 20, 1993

Take notice that the following agenda item is scheduled for Notice of Proposal in the January 19, 1993 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, January 20, 1993 from 3:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 4:00 p.m. Thursday, January 14, 1993.

Rule Proposal: N.J.A.C. 6:9—Educational Programs for Pupils in State Facilities (New Rules).

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF PARKS AND FORESTRY HISTORIC PRESERVATION OFFICE

Notice of Availability of Grant Funds Fiscal Year 1993 Historic Preservation Fund Matching Grants

Take notice that the Historic Preservation Office (HPO) announces the following availability of funds.

A. Name of the grant program that has funds available: Fiscal Year 1993 Historic Preservation Fund.

B. Purpose for which the grant program funds shall be used: The Historic Preservation Office has funds available for historic resources survey, registration, historic preservation planning or education, and pre-development projects undertaken by Certified Local Governments (CLG). A limited amount of Non-CLG historic preservation survey, planning and pre-development funds are available to State agencies, county and municipal governments, academic institutions, private not-for-profit organizations, and individuals. Funding is available on a 60 percent Federal/40 percent local matching share basis.

C. Amount of money in the grant program: Approximately $57,000 of Federal matching funds is available for projects undertaken by Certified Local Governments (CLG). Between $25,000 and $50,000 in Federal Matching funds is available for Non-CLG projects undertaken by State agencies, county and municipal governments, academic institutions, private and not-for-profit organizations, and individuals. Availability of Grant funds for the Non-CLG program is contingent upon the Federal allocation of Fiscal Year 1993.

D. Groups or entities which may apply for the grant program: State agencies, county and municipal governments, academic institutions, private and not-for-profit organizations, and individuals are eligible to apply for grants under the program. Only municipalities participating in the Certified Local Government program may apply for grants under the Certified Local Government grants program.

E. Qualifications needed by an applicant to be considered for the grant program: The HPO uses a competitive selection process and awards grants to CLG and Non-CLG projects which best meet the criteria described in the application packet. The criteria for evaluating all grant applications is as follows:

Criteria for Evaluating Grant Applications:

1. Project demonstrates consistency with New Jersey State Development/Redevelopment Plan. (points 0-5)
2. Project's advancement of the goals and objectives of the New Jersey Historic Preservation Plan. Applicants must cite specific points from the Historic Preservation Plan. (points 0-5)
3. Project's degree of outreach as demonstrated by applicant's ability to involve and impact new audiences and special constituencies. (points 0-5)
4. The degree to which the project will involve minorities, handicapped and/or under-represented communities and interests. (points 0-3)
5. The applicant demonstrates that the results of the proposed project will serve as a model for other communities within the state. (points 0-5)
6. Inclusion of a relevant archaeological component within a cultural resource survey. (points 0 or 1)
7. Degree to which the project will identify or protect historic resources threatened by development pressures. Development pressures may be the result from one or more of the following:
   - New economic or development activity (residential, commercial, industrial)
   - Population growth
   - Abandonment or neglect
   - Inappropriate or insensitive alterations
   - Publicly funded encroachments such as transportation or public works projects (points 0-5)
8. The degree to which the project is actively linked to environmental protection, natural resource or open space preservation, and/or public education activities, goals and objectives. The degree to which the project is an active component of the land use, environmental or community development and redevelopment planning process or Main Street New Jersey Program. (points 0-5)
9. Applicant's assurance that **qualified** personnel and adequate time will be allocated to administer the project. Contract or in-kind personnel should include:
   - Project Coordinator
   - Chief Financial Officer
   - Clerical Staff (points 0-3)
10. Applicant's use of volunteers is not counted as part of the local project match. (points 0 or 1)
11. Applicant documents that within the past two years it has undergone a successful audit of its finance or accounting system. (points 0 or 1)
12. Evidence that the project goals can be reached within the proposed time-frame and that the budget is appropriate to the scope of the project. (points 0-2)
13. The applicant has a demonstrated ability to properly manage the grant, e.g., acceptable performance on prior subgrant or other historic preservation projects:
    - Fiscal documentation met program requirements
    - Completed the project on time and within budget
    - Interim reporting deadlines met consistently
    - Interim product deadlines met consistently (points -4 to +4)

HPO FUNDING PRIORITIES FOR FY 1993

District Funding priorities have been established for the Certified Local Government Program (CLG) and Non-CLG Survey and Planning grant programs

Certified Local Government (CLG) Program Priorities:

- Municipal Historic Resources Survey with a Preservation Plan. (points 25)
- Historic Preservation Education Projects promoting historic preservation activities, programs, and benefits and/or informing the public of historic preservation ordinances, policies and procedures (points 15)
- New Jersey and National Register Historic District Nomination. (points 10)
- Predevelopment Projects for National Register listed properties. (points 5)

Non-CLG Survey and Planning Grants Priorities:

- County-wide Historic Resources Survey with a Preservation Plan targeted specifically for Cape May, Camden, Cumberland, Essex, Hudson, Passaic, Salem or Sussex Counties. (points 25)
- Thematic Statewide Historic Resource Study (e.g., Education facilities, Health and Hospital facilities, Public Works Facilities, Military related resources). (points 15)
- Municipal Historic Resource Survey with a Preservation Plan. (points 10)

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F. Procedure for eligible entities to apply for grant funds: Application forms, guidelines, and information on applicant and project eligibility are available from:

Historic Preservation Office
CN 404
Trenton, New Jersey 08625
(609) 292-2028

G. Address of office receiving application:

Historic Preservation Office
CN 404
Trenton, New Jersey 08625

H. Deadline by which applications must be submitted to the office: The deadline for submission of Fiscal Year 1993 applications is 5:00 P.M., March 26, 1993.

I. Date by which applicants shall be notified whether they will receive funds under the grant program: The Historic Preservation Office will notify applicants of approval or disapproval by May 31, 1993.

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Action on Petition for Rulemaking Capital Sentence Unit Food Packages; Canteen N.J.A.C. 10A:5-4.10(a) and (b)

Petitioner: Robert O. Marshall, New Jersey State Prison.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 10A:1-1.2.

Take notice that on November 6, 1992, the New Jersey Department of Corrections received a petition for rulemaking from Robert O. Marshall, an inmate at the New Jersey State Prison. The petition seeks amendments to N.J.A.C. 10A:5-4.10(a) and (b) to allow inmates in the Capital Sentence Unit to use identity-hiding procedures in order to receive food packages from outside sources and to be permitted to order any New Jersey State Prison canteen foods, including canned goods. Notice of receipt of the petition was published in the December 21, 1992 New Jersey Register.

Capital Sentence Unit inmates are, of necessity, the most custody secure inmates within the State. As such, the Department of Corrections is required to greatly limit Capital Sentence Unit inmates' contact with the outside public. Permitting food packages to be received from outside sources, despite the use of any identity-hiding procedures, is considered to be a severe breach of security. Due to the notoriety of many of the inmates in the Capital Sentence Unit and the severe nature of their crimes, it is necessary that physical contact of any sort with the public at large be restricted. Also, many items from the canteen, such as canned goods, could violate the safe, secure and orderly operation of the Capital Sentence Unit.

Although currently none of the Capital Sentence Unit inmates are demonstrating aggressive behavior, either to themselves or to others, this could change in an instant. If items which have been shown to be potentially dangerous and easily secreted are permitted, the possibility of assault or suicide will increase, and will render such incidents more difficult to prevent. Therefore, the petition for formal rulemaking is accordingly being denied.

LAW AND PUBLIC SAFETY

(b)

BOARD OF MEDICAL EXAMINERS

Notice of Receipt of Petition for Rulemaking and Action Thereon Orders Not to Resuscitate

Petitioner: New Jersey Hospital Association.

Take notice that on September 24, 1992, the Board of Medical Examiners received a petition from John R. Heher, Esq. representing the New Jersey Hospital Association ("petitioner"), requesting the Board to promulgate a new rule to clarify certain questions raised by the Board's Policy Statement on Decisions to Withhold or Withdraw Medical Treatment. Specifically, petitioner seeks clarification with regard to "No Code" orders as follows.

1. Petitioner states that it is standard medical practice in New Jersey hospitals for physicians to write No Code orders when medically appropriate, in consultation with the patient (if competent) and next-of-kin. However, section 8 of the policy statement suggests, with two exceptions, that an attending physician need consult with a Prognosis Committee or two independent physicians prior to implementing a No Code order. Petitioner states that to require independent consultations is burdensome and unnecessary; that the first exception set forth within the policy statement is extremely limited in its application; and that the second exception set forth within the policy statement is now contrary to standards within the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.21.

2. Petitioner states that it is standard medical practice to permit communication of No Code orders by telephone in emergent situations. Typically, the order is communicated to two nurses simultaneously and countersigned within 24 hours. Petitioner considers communication of No Code orders by telephone in an emergency to be acceptable medical practice and of benefit to critically ill patients.

3. Citing Department of Health and Board of Pharmacy regulations providing for the transmission of physicians' orders by a facsimile communications system, petitioner states that electronic transmission of No Code orders, with proper documentation, should be permitted because it will enable physicians to provide more effective service to their patients within the bounds of acceptable medical practice.

Petitioner's proposed draft rule is set forth in its entirety below.

Take further notice that on October 14, 1992, the Board considered the petition for rulemaking and determined that additional time was needed to study and evaluate the petition. Accordingly, the Board referred the petition to a subcommittee for further review and evaluation. The Board anticipates that the subcommittee will conclude its deliberations and respond to the petition by the end of May 1993.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

EXHIBIT A

Petitioner requests that a new rule be promulgated in substantially the form set forth below:

A new section shall be added to subchapter 6 of Chapter 35 of Title 13 of the New Jersey Administrative Code:

13:35-6. Orders not to resuscitate ("DNR" or "No Code Orders")

(a) An attending physician possessing a plenary license to practice medicine and surgery may enter into his or her patient's medical record a do not resuscitate order upon proper documentation in the medical record by the physician of the following:

(1) a full assessment of the patient's condition and a statement that in the physician's medical judgment the initiation of cardiopulmonary resuscitation in this situation would be medically inappropriate; and

(2) where the patient is competent:

that the physician has discussed with the patient the nature of the patient's condition, the risks, benefits, burdens of and alternatives to the issuance of a do not resuscitate order and that the patient's informed consent to the do not resuscitate order has been obtained; or,

(3) that the patient has been determined to lack decision making capacity and:

(i) that the patient has clearly and unequivocally expressed his wishes that cardiopulmonary resuscitation not be initiated under these circumstances in a validly executed advance directive; or

(ii) that the physician has discussed with the patient's health care representative, next of kin or medical guardian the nature of the patient's condition and the risks, burdens and benefits of and alternatives to the issuance of a do not resuscitate order and that the physician has obtained the informed consent of the health care representative, next of kin or medical guardian to the do not resuscitate order; or

(iii) that a terminally ill patient has no next of kin, health care representative or guardian, that the patient's wishes are not known, and that in the attending physician's judgment cardio-pulmonary resuscitation is not appropriate under the circumstances.

(b) A physician may transmit a do not resuscitate order by a facsimile communications system (FAX) in accordance with N.J.A.C. 8:43G-15.2(B)2.

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(c) A physician may telephone a verbal do not resuscitate order to a registered nurse in accordance with the following procedures:

(i) a second registered nurse shall witness the do not resuscitate order via a telephone extension,

(ii) the registered nurse receiving the do not resuscitate order shall enter the order into the patient's medical record and both the registered nurse and the witness shall sign the order,

(iii) the verbal do not resuscitate order shall be countersigned by the responsible physician and documentation as set forth in N.J.A.C. [above] shall be entered in the medical record within 24 hours.

STATE

(a)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Application Process and Revised Deadlines

Organizational Grants in Aid to the Arts Fiscal Year 1994 (July 1, 1993-June 30, 1994)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces, in accordance with N.J.S.A. 52:14-34.4 et seq., the availability of the following grant program.

Name of program: Organizational Grants in Aid to the Arts, Fiscal Year 1994.

General Operating Support (for arts organizations)

Special Project Support (for arts projects)

Art Basic to Education Expansion Project Support (for arts organizations)

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations.

Eligible applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt as 501(c)(3) or (4) by determination of the Internal Revenue Service, or a unit of government; must have been in existence and active in presenting, producing or servicing the fine, performance or literary arts for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finance; and must comply with all existing State and Federal regulations and laws as described in the Guidelines and Application.

Ineligible applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for Fiscal Year (FY) 94.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions and indirect costs are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must be able to project a 4:1 match of applicant cash to NJSCA dollars; Special Project applicants who are arts organizations, a 1:1 match of applicant cash to NJSCA dollars and Special Project applicants who are **not** arts organizations, a 3:1 match of applicant cash to NJSCA dollars.

Projected deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than February 10, 1993 (5:00 P.M. if delivered in person to office). All prospective applicants that **are not** direct recipients of FY 93 NJSCA Grants must submit a Letter of Intent. **Projected deadline for letters of intent is** January 6, 1993 (5:00 P.M. Receipt). These deadlines are subject to change that would place them later in the year. The NJSCA urges all organizations interested in applying for FY 94 support to call the Grants Office immediately to discuss issues related to deadlines and eligibility.

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council reviews the evaluations of all applications as well as Council funding priorities and issues. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 27, 1993. Applicants are notified in writing of the Council's decision within six weeks following the annual meeting.

To receive a set of guidelines and application forms, call (609) 292-6130 or write GRANTS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the Third Quarters of 1992, Ending September 30, 1992

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the third quarter of 1992, accompanied by a Summary of the Quarterly Report.

At the conclusion of the third quarter of 1992, the Notices of Representation filed with this office reflect that 633 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the third calendar quarter of 1992, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

—The names of registered Agents, their registration numbers, their business addresses and whom they represent.

—A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.

—A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the third calendar quarter of 1992:

No. 794-1	Donald L. Fauerbach representing NJ Conference of Mayors
No. 795-1	Joseph M. Hunt representing American Federation of Teachers/NJ
No. 796-1	Francis A. Ferraro representing Wheelabrator Environmental Systems, Inc.
No. 797-1	Ciro Scalera representing Ass'n. for Children of NJ
No. 797-2	Reginald Dorsey representing Ass'n. for Children of NJ
No. 797-3	Cecilia Zalkin representing Ass'n. for Children of NJ
No. 762-3	J. Richard Tompkins representing Middlesex Water Co.
No. 558-2	Catherine St. John representing Prudential Ins. Co. of America
No. 798-1	Carol A. Reistetter representing NJ Center for Outreach & Services for the Autism Community
No. 798-2	Nancy G. Richardson representing NJ Center for Outreach & Services for the Autism Community
No. 799-1	Kathleen A. Davis representing American Water Works Services Co.
No. 551-6	Peter J. Lillo representing MWW/Strategic Communications, Inc.
No. 800-1	Christopher L. Daul, Independent Agent
No. 747-3	Frederick S. Title representing HIP/Rutgers Health Plan
No. 801-1	Raymond R. Tulli representing Ogden Projects, Inc.
No. 802-1	Susan Jacobson representing Educational Media Ass'n. of NJ

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No. 803-1	John L. Tweed representing Medical Transportation Users of NJ
No. 804-1	David Freedman representing Resorts International Hotel, Inc.
No. 805-1	Maria D. Laurino representing Hackensack Water Co.
No. 805-2	Kenneth E. Roberts representing Hackensack Water Co.
No. 805-3	Donald Hovan representing Hackensack Water Co.
No. 805-4	Joseph Simunovich representing Hackensack Water Co.
No. 806-1	Gary T. Weisner representing Manuel's Auto Parts, Inc.
No. 807-1	Barbara Dyer representing The Humane Society of the US
No. 808-1	Sidney L. Meyer, Esq. representing Multiplan, Inc.
No. 809-1	Alan H. Bogard, representing Exxon Chemical Americas
No. 809-2	Patrick J. Parsons, representing Exxon Chemical Americas
No. 810-1	Marguerite Schaffer representing The Sears Companies
No. 33-3	Stu Cameron representing NJ Bankers Assn.
No. 33-4	Lee O'Toole representing NJ Bankers Assn.
No. 784-2	Murray J. Kline, Independent Agent
No. 811-1	Gerard Thiers representing Assn. of Schools & Agencies for the Handicapped
No. 812-1	Marina Corodemus representing ATLA of NJ Branch
No. 813-1	Barbara Klag representing Schering Corp.
No. 813-2	Janet Regan representing Schering Corp.
No. 814-1	Patrick G. Hollister, Independent Agent
No. 814-2	Lester G. Damron, Independent Agent
No. 815-1	Cathy Frank-White representing Wakefern Food Corp.
No. 236-2	Michael J. O'Conner representing May Department Store
No. 49-2	Alexander L. Ellwood representing NJ Business and Industry Ass'n.
No. 19-6	Ronald B. Johnson representing NJ Chamber of Commerce
No. 816-1	Daniel Caramagno representing Schering Corp.
No. 817-1	Celso A. Balow representing Monsanto Co.
No. 818-1	Wayne E. Wirta representing NJ Council on Alcoholism & Drug Abuse

Following is a listing of all Legislative Agents who have filed Notices of Termination during the third calendar quarters of 1992.

Legislative Agents	Registration Number
Paul J. McGeady	326-1
James Wyerman	674-1
Frank Hirst-Storrs	229-3
Lee Pfister O'Toole	229-2
John J. Feketie	604-1
Margaret Stevenson	756-7
Raymond E. Makul	736-1
Lester Kurtz	113-1
Sanford Schnieder	566-1
Paul Forlenza	750-1
Stanley J. Wides	125-1
Dr. Bob Maurer	496-1
Robert Martinez	17-1
Samuel Convissor	313-1
Charles J. LaMotta	374-1
William Holzapfel	22-4
Ira Stern	524-1
Deborah Meek	718-2
John Lyttle	206-2
William E. Albers	236-1
Ronald Johnson	649-1
Peter J. Bridge	225-2
Alfred J. Luciani	588-1
Jeffrey E. Fogel	415-1
Edward Martone	415-2
Flavio L. Komuves	498-1
Stephen Rybka	749-1
Sheryl L. Vorberg	416-1
Mary Woodson	419-1

For further information, contact the staff of the Commission at (609) 292-8700.

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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 November 2, 1992 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.1993 d.1 means the first rule adopted in 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT OCTOBER 19, 1992

NEXT UPDATE: SUPPLEMENT NOVEMBER 16, 1992

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
24 N.J.R. 1 and 164	January 6, 1992	24 N.J.R. 2487 and 2650	July 20, 1992
24 N.J.R. 165 and 318	January 21, 1992	24 N.J.R. 2651 and 2752	August 3, 1992
24 N.J.R. 319 and 508	February 3, 1992	24 N.J.R. 2753 and 2970	August 17, 1992
24 N.J.R. 509 and 672	February 18, 1992	24 N.J.R. 2971 and 3202	September 8, 1992
24 N.J.R. 673 and 888	March 2, 1992	24 N.J.R. 3203 and 3454	September 21, 1992
24 N.J.R. 889 and 1138	March 16, 1992	24 N.J.R. 3455 and 3578	October 5, 1992
24 N.J.R. 1139 and 1416	April 6, 1992	24 N.J.R. 3579 and 3784	October 19, 1992
24 N.J.R. 1417 and 1658	April 20, 1992	24 N.J.R. 3785 and 4144	November 2, 1992
24 N.J.R. 1659 and 1840	May 4, 1992	24 N.J.R. 4145 and 4306	November 16, 1992
24 N.J.R. 1841 and 1932	May 18, 1992	24 N.J.R. 4307 and 4454	December 7, 1992
24 N.J.R. 1933 and 2102	June 1, 1992	24 N.J.R. 4455 and 4606	December 21, 1992
24 N.J.R. 2103 and 2314	June 15, 1992	25 N.J.R. 1 and 218	January 4, 1993
24 N.J.R. 2315 and 2486	July 6, 1992		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-1.5, App. A	Conduct of administrative law judges	24 N.J.R. 2755(a)	R.1992 d.430	24 N.J.R. 4028(a)
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
1:31-3.1	Conduct of administrative law judges	24 N.J.R. 2755(a)	R.1992 d.430	24 N.J.R. 4028(a)
Most recent update to Title 1: TRANSMITTAL 1992-4 (supplement September 21, 1992)				
AGRICULTURE—TITLE 2				
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7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
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8:43	Residential health care facilities: standards for licensure	24 N.J.R. 2506(a)	R.1992 d.502	25 N.J.R. 109(a)
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
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8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a))	24 N.J.R. 1674(a)	R.1992 d.462	24 N.J.R. 4260(b)
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8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		
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10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:53A	Hospice Services Manual	24 N.J.R. 2778(a)	R.1992 d.442	24 N.J.R. 4036(a)

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10:60-2.3, 3.15, 4.2	Home Care Services: personal care assistant services; eligibility for Home Care Expansion Program	24 N.J.R. 2687(c)	R.1992 d.438	24 N.J.R. 4054(a)
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual	24 N.J.R. 4479(a)		
10:69A-2.1, 4.1–4.4, 5.3, 5.5	PAAD prescription copayment	24 N.J.R. 4328(a)		
10:71-5.6	Medicaid Only income eligibility standards for hospice care	24 N.J.R. 2778(a)	R.1992 d.442	24 N.J.R. 4036(a)
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)	R.1992 d.484	24 N.J.R. 4378(a)
10:81-11.4, 11.9	Public Assistance Manual: provision of information regarding services to AFDC clients; legal representation in child support matters	24 N.J.R. 2327(a)	R.1993 d.1	25 N.J.R. 115(a)
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:83	Service Programs for Aged, Blind or Disabled Persons	24 N.J.R. 3074(a)	R.1992 d.477	24 N.J.R. 4379(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)	R.1992 d.488	24 N.J.R. 4379(b)
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:85-1.1, 2.1, 3.1–3.5, 4.1, 4.2, 5.1–5.8, 6.8, 7.2, App. D	General Assistance program: time-limited eligibility for employable persons; alien eligibility; payment of hospital medical services	24 N.J.R. 3075(a)	R.1992 d.503	24 N.J.R. 4538(a)
10:87-2.4, 2.6, 2.31, 2.39, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5,10, 6.9, 6.20, 10.3, 10.6, 10.18, 11.26, 11.29, 12.1	Food Stamp Program revisions	24 N.J.R. 3207(b)		
10:89-2.3, 3.1, 3.4, 3.6, 4.1	Home Energy Assistance	Emergency (expires 2-6-93)	R.1992 d.517	24 N.J.R. 4593(a)
10:97-1.3, 7.3	Business Enterprise Program for the blind and visually impaired: promotion and transfer	24 N.J.R. 2798(a)	R.1992 d.515	24 N.J.R. 4551(a)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)	R.1992 d.471	24 N.J.R. 4386(a)
10:121A	Manual of Requirements for Adoption Agencies	24 N.J.R. 3500(a)	R.1992 d.514	24 N.J.R. 4552(a)
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)	R.1993 d.15	25 N.J.R. 116(a)
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)	R.1993 d.16	25 N.J.R. 117(a)
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)	R.1993 d.17	25 N.J.R. 124(a)
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)	R.1993 d.18	25 N.J.R. 127(a)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	24 N.J.R. 3088(a)		
10:124	Children's Shelter Facilities and Homes: manual of standards	24 N.J.R. 3089(a)	R.1992 d.485	24 N.J.R. 4387(a)
10:124-5.1	Children's shelter facilities and homes: local government physical facility requirements	24 N.J.R. 4482(a)		
10:131	DYFS: Adoption Assistance and Child Welfare Act of 1980 requirements	24 N.J.R. 2522(a)	R.1992 d.437	24 N.J.R. 4055(a)
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)	R.1993 d.19	25 N.J.R. 132(a)
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)	R.1993 d.20	25 N.J.R. 134(a)
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)	R.1993 d.21	25 N.J.R. 136(a)
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)	R.1993 d.22	25 N.J.R. 136(b)
10:150	Organization of Division of the Deaf and Hard of Hearing	Exempt	R.1992 d.460	24 N.J.R. 4267(a)

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10A:1-1.2, 2.7	Petitioning for a rule and requesting rule exemptions: administrative corrections	———	———	24 N.J.R. 4390(a)
10A:6	Inmate access to courts	24 N.J.R. 2799(a)	R.1992 d.470	24 N.J.R. 4390(b)
10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)		

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11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)		

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11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-33	Public Advocate reimbursement disputes	24 N.J.R. 2706(a)		
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)	R.1992 d.493	24 N.J.R. 4391(a)
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)		
11:2-26	Insurer's annual audited financial report: extension of comment period	24 N.J.R. 2708(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:2-35.1–35.6	Insurer relief from FAIR Act obligations	24 N.J.R. 3212(a)	R.1993 d.24	25 N.J.R. 138(a)
11:3-2A	New Jersey Automobile Full Insurance Underwriting Association claims payment deferral for residual bodily injury	24 N.J.R. 3480(a)	R.1992 d.494	24 N.J.R. 4392(a)
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.12	Automobile insurance: filings reflecting paid, apportioned MTF expenses and losses	24 N.J.R. 4486(a)		
11:3-19.3, 34.3	Automobile insurance eligibility rating plans: incorporation of merit rating surcharge	24 N.J.R. 2332(a)		
11:3-28.8	Reimbursement of excess medical expense benefits paid by insurers	24 N.J.R. 3215(a)		
11:3-29.1, 29.2, 29.4	Motor bus medical expense benefits coverage	24 N.J.R. 3605(a)	R.1993 d.25	25 N.J.R. 140(a)
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
11:3-34.4	Automobile insurance coverage: eligible person qualifications	24 N.J.R. 3420(a)	R.1992 d.481	24 N.J.R. 4396(a)
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:3-42	Producer Assignment Program	24 N.J.R. 3421(a)	R.1992 d.482	24 N.J.R. 4397(a)
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)	R.1993 d.26	25 N.J.R. 141(a)
11:5-1.8	Real Estate Commission: deposit of monies paid to broker	24 N.J.R. 3483(a)	R.1993 d.8	25 N.J.R. 178(a)
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.15	Real Estate Commission: advertising by brokers and licensees	24 N.J.R. 3484(a)	R.1993 d.9	25 N.J.R. 178(b)
11:5-1.16	Real Estate Commission: documentation of offers and counter-offers	24 N.J.R. 3485(a)	R.1993 d.10	25 N.J.R. 179(a)
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)		
11:5-1.28	Real Estate Commission: surety bond posting by prelicensure schools	24 N.J.R. 3488(a)	R.1993 d.11	25 N.J.R. 180(a)
11:5-1.38	Real Estate Commission: fee cap for mortgage services	24 N.J.R. 1957(a)	R.1992 d.468	24 N.J.R. 4268(a)
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:13	Commercial lines insurance	24 N.J.R. 2830(a)	R.1992 d.492	24 N.J.R. 4408(a)
11:16-2	Reports to National Insurance Crime Bureau regarding motor vehicle theft or salvage	24 N.J.R. 3606(a)		
11:17-1.2, 2.3–2.15, 5.1–5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		
11:17A-1.3	Licensure as insurance producer or registration as limited insurance representative: compliance deadline	24 N.J.R. 3220(a)		
11:19-2	Financial Examination Monitoring System: data submission by domestic insurers	24 N.J.R. 2999(a)		
11:19-3	Financial Examination Monitoring System: data submission by surplus lines producers and insurers	24 N.J.R. 3003(a)		

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12:15-1.3–1.7	Unemployment Compensation and Temporary Disability: 1993 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test	24 N.J.R. 3014(a)	R.1992 d.454	24 N.J.R. 4269(a)

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12:16-4.8	Board and room, meals and lodging in lieu of wages: 1993 rates	———	———	24 N.J.R. 3182(a)
12:60-3.2, 4.2	Prevailing wages on public works contracts: telecommunications worker	24 N.J.R. 2689(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: extension of comment period	24 N.J.R. 3015(b)		
12:60-3.2, 4.2	Prevailing wages for public works: extension of comment period	24 N.J.R. 3607(a)		
12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)	R.1993 d.28	25 N.J.R. 180(b)
12:110	Public employee occupational safety and health: procedural standards	24 N.J.R. 4234(a)		
12:190	Regulation of explosives	24 N.J.R. 4235(a)		
12:235-1.6	Workers' Compensation: 1993 maximum benefit rate	24 N.J.R. 3015(a)	R.1992 d.467	24 N.J.R. 4270(a)
12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)		
12:235-9.4	Workers' Compensation appeal procedures regarding discrimination complaint decisions: extension of comment period	24 N.J.R. 3090(a)		

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12A:11	Certification of women-owned and minority-owned businesses: Waiver of Executive Order No. 66(1978) expiration provision	24 N.J.R. 4333(a)		

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13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:21-19.9	Motor Vehicle Franchise Committee: administrative hearing costs	24 N.J.R. 3015(c)		
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13:28-5.1, 6.35	Schools of cosmetology and hairstyling: use of annex classrooms	24 N.J.R. 2333(a)	R.1992 d.444	24 N.J.R. 4057(a)
13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
13:30-8.6	Board of Dentistry: professional advertising	24 N.J.R. 2801(a)		
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:32	Rules of Board of Examiners of Master Plumbers	24 N.J.R. 2334(a)	R.1992 d.457	24 N.J.R. 4270(b)
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.JR. 4010(a)		
13:35-6.13	Bio-analytical laboratory directorships: license fees	24 N.J.R. 4011(a)		
13:35-6.13	Physician assistant licensing fees	24 N.J.R. 4334(a)		
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13:35-6.17	Corporate medical practice: administrative correction regarding significant beneficial interest	———	———	24 N.J.R. 4409(a)
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:36-5.12, 5.20	Mortuary Science: licensee advertising; referral fee prohibition	24 N.J.R. 3016(a)		
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13:38-1.2, 1.3, 2.5	Practice of optometry: permissible advertising	24 N.J.R. 4237(a)		
13:38-2.4, 4, 5.1	Board of Optometrists: issuing prescriptions; certification by examination; fees	24 N.J.R. 2802(a)	R.1992 d.443	24 N.J.R. 4058(a)
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40A-1, 2, 2A, 3.6, 6.1, 6.2, 6.3	Board of Real Estate Appraisers: certified residential classification; general appraiser; temporary visiting license; fees and designations	24 N.J.R. 3489(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		
13:44-2.5, 2.7, 2.11	Veterinary Medical Examiners: referral fee prohibition; product endorsements; licensee advertising	24 N.J.R. 3017(a)	R.1992 d.478	24 N.J.R. 4409(a)
13:44B	Per diem compensation for members of professional and occupational licensing boards	24 N.J.R. 3019(a)	R.1992 d.480	24 N.J.R. 4410(a)
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)	R.1992 d.507	24 N.J.R. 4557(a)

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13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)	R.1993 d.6	25 N.J.R. 192(a)
13:45A-24	Toy and bicycle safety	24 N.J.R. 3019(b)		
13:45A-24	Toy and bicycle safety: extension of comment period	24 N.J.R. 3666(a)		
13:46-9.17	Boxing inspectors	24 N.J.R. 3492(a)	R.1992 d.511	24 N.J.R. 4557(b)
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)		
13:47A-1–8, 10, 11	Bureau of Securities rules	24 N.J.R. 2524(a)	R.1992 d.435	24 N.J.R. 4060(a)
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:54-1.15	Confidentiality of information regarding firearms permits, ID cards, licenses and registration	24 N.J.R. 3022(a)	R.1992 d.446	24 N.J.R. 4068(a)
13:70-4.1, 4.2, 4.15, 9.41, 22.5	Thoroughbred racing: licensure fees; partnership registration	24 N.J.R. 4021(a)		
13:70-12.4	Thoroughbred racing: claimed horse	24 N.J.R. 4022(a)		
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13:75-1.7	Violent Crimes Compensation Board: minimum compensable losses	24 N.J.R. 4491(a)		
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13:75-1.31	Violent Crimes Compensation Board: injury from crime of burglary	24 N.J.R. 4491(b)		
13:77	Division of Criminal Justice: distribution of forfeited property	24 N.J.R. 4492(a)		
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14:3-6.5	Public records	24 N.J.R. 1966(a)		
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
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14:6-5	Natural gas service: inspection and operation of master meter systems	24 N.J.R. 4494(a)		
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14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)		
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14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
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16:28A-1.5, 1.61, 1.71	Bus stop zones along Route 5, U.S. 9W, and Route 67 in Bergen County	24 N.J.R. 3673(a)	R.1992 d.504	24 N.J.R. 4558(a)
16:28A-1.19, 1.45, 1.57	Restricted parking and stopping zones along Route 28 in Roselle Park, Route 94 in Hardyston, and U.S. 206 in Lawrence Township	24 N.J.R. 4499(b)		
16:28A-1.27	Restricted parking and stopping along Route 38 in Burlington County	24 N.J.R. 3492(b)	R.1992 d.495	24 N.J.R. 4411(a)
16:28A-1.112	Restricted stopping and standing along Route 138 in Wall Township	24 N.J.R. 4334(b)		
16:53-7.25, 7.26, 7.27	Autobus trolleys: safety standards	24 N.J.R. 4500(a)		
16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
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