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NEW JERSEY REGISTER

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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 15, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 17, 1989

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **August 16, 1989.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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REORGANIZATION PLAN

OFFICE OF THE GOVERNOR

Governor Thomas H. Kean

Notice of a Plan for the Reorganization and Coordination of Responsibility for Certain Energy Matters Within the Board of Public Utilities

Take notice that on June 15, 1989, Governor Thomas H. Kean hereby issues the following Reorganization Plan (No. 002-1989) to provide for the increased coordination and integration of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities.

GENERAL STATEMENT OF PURPOSE

Based on present statutory authority, it is the responsibility of the Division of Energy Planning and Conservation, among other things, to gather, analyze and evaluate energy data, prepare the State Energy Master Plan for adoption by the Energy Master Plan Committee, determine the need for and proper siting of energy facilities, administer the Certificate of Need process for electric facilities, administer the Energy Conservation Bond Fund, administer energy emergency planning and enforce the Comprehensive Energy Conservation Program.

The purpose of this reorganization is to coordinate the energy supply policies of this State with the regulation of energy companies as public utilities. This integration will ensure that all sectors of the State's economy are supplied with the most reasonably priced sources of energy consistent with maintaining environmental standards. This Plan will also unite the planning and regulatory functions of State government with respect to cogeneration and independent power producers to create a more predictable environment for investment decisions in energy facilities by the public utilities and private sector. This Plan will help create an active process for the planning of how to meet energy needs in the State.

In accordance with the provisions of the Executive Reorganization Act of 1969, P.L. 1969, (N.J.S.A. 52:14C-1 et seq.), I find with respect to each reorganization element included in this Plan, and detailed herein, that each is necessary to accomplish the purposes set forth in section 2 of that Act and that the reorganization will accomplish the following purposes:

1. Promote more effective management of the Executive Branch and its departments because it will coordinate the planning and regulation of energy in one agency;
2. Reduce expenditures by more closely aligning similar functions;
3. Eliminate duplication and overlapping of certain functions; and
4. Result in the integration of energy, economic and environmental planning and coordination.

The provisions of the Reorganization Plan are as follows:

I. 1.a. The Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development created pursuant to P.L. 1977, c. 146 (N.J.S.A. 52:27F-7), and amended by P.L. 1978, c. 140, §1 (N.J.S.A. 52:27H-20.1) together with all its existing functions, powers and duties, including those established by P.L. 1983, c. 115; P.L. 1983, c. 559; P.L. 1987, c. 365; P.L. 1987, c. 231; P.L. 1981, c. 302; P.L. 1980, c. 68; P.L. 1971, c. 198, §15 (N.J.S.A. 40A:11-15) as amended by P.L. 1981, c. 551; P.L. 1977, c. 146, §16 (N.J.S.A. 52:27F-18); P.L. 1977, c. 146, §12 (N.J.S.A. 52:27F-14); P.L. 1977, c. 146, §13 (N.J.S.A. 52:27F-15); N.J.S.A. 18A:18A-42 as amended by P.L. 1984, c. 49, is continued and this Division is transferred to and designated the Division of Energy Planning and Conservation within the Board of Public Utilities.

b. The Division of Energy Planning and Conservation shall be under the supervision of the Director appointed pursuant to N.J.S.A. 52:27H-20.1, who shall administer the work of the Division under the supervision and direction of the Board of Public Utilities and perform such other functions as the Board of Public Utilities may prescribe.

c. Whenever in any statute, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise reference is made to the Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development, the same shall mean the Division of Energy Planning and Conservation within the Board of Public Utilities.

I find that this reorganization is necessary to accomplish the purposes set forth in P.L. 1969, c. 203, §2. Specifically, as mentioned before, this reorganization will coordinate the energy supply policies of this State with environmental goals, utility rates and tariffs. Some of the functions, powers and duties transferred include:

a. The responsibility and authority of the Division of Energy Planning and Conservation to intervene in proceedings of State instrumentalities which regulate energy producers or distributors as set forth in P.L. 1977, c. 146, §13 (N.J.S.A. 52:27F-15);

b. The responsibility and authority requiring the periodic reporting by energy industries of energy information, set forth in P.L. 1977, c. 146, §16 (N.J.S.A. 52:27F-18); and

c. The responsibility and authority for energy emergency planning and preparedness.

II. 1.a. The Advisory Council on Energy Planning and Conservation to the Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development created by P.L. 1977, c. 146 (N.J.S.A. 52:27F-12), together with all its functions, powers and duties set forth in P.L. 1977, c. 146, §11 (N.J.S.A. 52:27F-13), is continued and transferred to and designated the Advisory Council on Energy Planning and Conservation within the Division of Energy Planning and Conservation in the Board of Public Utilities.

b. Whenever, in any law, rule, regulation, order, contract, document, judicial proceeding or otherwise reference is made to the Advisory Council on Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development, the same shall mean the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation within the Board of Public Utilities.

I find that this reorganization is necessary to accomplish the purposes set forth in P.L. 1969, c. 203, §2. Specifically, as a result of this reorganization, the Advisory Council on Energy Planning and Conservation will continue to advise the Director of the Division of Energy Planning and Conservation with respect to the regulated and nonregulated elements of energy supply and demand.

III. 1. The responsibility of the Commissioner of the Department of Commerce, Energy and Economic Development to serve on and act as chairperson for the Energy Master Plan Committee established by P.L. 1987, c. 365, §14, is hereby transferred to the President of the Board of Public Utilities. Assistance provided to the Energy Master Plan Committee by the Division of Energy Planning and Conservation within the Department of Commerce, Energy and Economic Development shall hereinafter be provided by the Division of Energy Planning and Conservation within the Board of Public Utilities.

I find that this reorganization is necessary to accomplish the purposes set forth in P.L. 1969, c. 203, §2. Specifically, this reorganization will ensure that the Energy Master Plan will continue to guide all sectors of the State in planning and implementing least-cost planning strategies for meeting our energy service needs.

IV. 1. All property, records and personnel of the Division of Energy Planning and Conservation shall be transferred with the

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Division of Energy Planning and Conservation to the Board of Public Utilities.

I find that this reorganization is necessary to accomplish the purposes set forth in P.L. 1969, c. 203, §2. Specifically, this transfer will ensure the continued efficient operation of the Division of Energy Planning and Conservation.

V. 1. All unexpended balances of appropriations, and of other funds, shall be transferred with the Division of Energy Planning and Conservation to the Board of Public Utilities. Furthermore, all unexpended balances so transferred may only be used for the purposes originally appropriated.

I find that this reorganization is necessary to accomplish the purposes set forth in P.L. 1969, c. 203, §2. Specifically, this transfer will ensure that monies appropriated for either projects, programs, planning or other endeavors may be spent for those purposes originally appropriated.

VI. 1. The enforcement and penalty authority section set forth in section 19 (N.J.S.A. 52:27F-21), section 21 (N.J.S.A. 52:27F-23) and section 22 (N.J.S.A. 52:27F-24) of P.L. 1977, c. 146, is hereby transferred to the Board of Public Utilities.

I find that this reorganization is necessary to accomplish the purposes set forth in P.L. 1969, c. 203, §2. Specifically, the transfer of this enforcement authority is necessary to best administer and execute effectively the other powers and responsibilities transferred to the Board of Public Utilities by this Plan.

VII. 1. All transfers directed by this Act shall be made in accordance with the "State Agency Transfer Act," P.L. 1971, c. 375 (N.J.S.A. 52:14D-1 et seq.).

All acts and parts of acts inconsistent with any of the provisions of the Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan was filed on June 15, 1989 with the Secretary of State and the Office of Administrative Law. The Plan shall become effective in 60 days, on August 14, 1989, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Reorganization Plan, or that at a date later than August 14, 1989, should the Governor establish such a later date for the effective date of the Plan by Executive Order.

Take notice that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Pamphlet Law under a heading of "Reorganization Plans."

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RULE PROPOSALS

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session

Take notice that the following agenda items are scheduled for Notice of Proposal in the August 21, 1989 New Jersey Register and are, 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.

Wednesday, August 16, 1989 from 4:00 P.M. and 6:00 P.M.
State Board Conference Room
Department of Education
225 West State Street
Trenton, New Jersey

To reserve time to speak call Joan Boggs at (609) 292-0739 by 12:00 noon Friday, August 11, 1989.

Rules proposed for comment:
N.J.A.C. 6:21—Pupil Transportation
N.J.A.C. 6:22-1.1 and 2.5—School Facilities Amendments
N.J.A.C. 6:26 and 27—Elementary and Secondary Education
N.J.A.C. 6:30—Bilingual Education

Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the July 6, 1989 monthly public meeting.

(b)

STATE BOARD OF EDUCATION

Filing and Certification of Charges Against Tenured Employees in the Departments of Human Services and Corrections

Proposed New Rule: N.J.A.C. 6:24-5.4

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-9, 18A:6-10 et seq. and 18A:29-14.
Proposal Number: PRN 1989-362.

Submit written comments by August 16, 1989 to:
Irene Nigro, Rules Analyst
NJ Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule defines the process for the filing and certification of charges against tenured teaching staff members employed by the Departments of Human Services and Corrections.

Public Law 1986, Chapter 158 (N.J.S.A. 18A:60-1) affords tenure to ". . . teachers and other certified persons employed in State institutions within the Department of Corrections or the Department of Human Services, with the exception of the Director of Educational Services. . . ." Since the process for the filing and certification of charges against tenured teaching staff members contained within N.J.S.A. 18A:6-11 and N.J.A.C. 6:24-5 deals solely with the filing and certifying of charges against employees of boards of education, it has become necessary to develop a rule which defines the process for those persons accorded the benefits of tenure by virtue of N.J.S.A. 18A:60-1.

This proposed new rule essentially provides for the same steps to be followed in filing and certifying charges for tenured persons serving in the Departments of Human Services, Corrections and Education as those which prevail for the filing and certifying of charges against persons employed by district boards of education except that charges and answers to charges shall be filed with the Director of Employee Relations in the Department of Human Services and the Director of the Office of Educational Services in the Department of Corrections in the manner and time frame prescribed by N.J.A.C. 6:24-5.1(b).

The above-named directors are required, within the manner and time frame prescribed by N.J.A.C. 6:24-5.1(b)4, to determine whether there is probable cause to credit the evidence in support of the charges to warrant dismissal or reduction in salary and certify the charges to the Commissioner after having notified the employee of his or her determination in the manner prescribed by N.J.A.C. 6:24-5.1(b)5. Charges of inefficiency are to be filed in conformity with the procedures and timelines prescribed in N.J.A.C. 6:24-5.1(c) except that all required actions, transmissions, notifications, determinations and certifications are to be carried out by the respective directors.

Social Impact

The proposed new rule will impact only upon the personnel acquiring tenure under N.J.S.A. 18A:60-1 and will not have a general societal effect. The persons so impacted will benefit by being explicitly informed of the process for the formal filing of tenure charges.

Economic Impact

The economic impact of this rule will be limited to the legal services provided by the respective agencies who will be required to prosecute the tenure charges and the respondent parties who must defend against the charges.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses. The rule impacts solely upon the Departments of Human Services, Corrections and Education.

Full text of the proposed new rule follows.

6:24-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services and Corrections

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6:24-5.1(b) except as herein noted. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections or by an individual within the Department of Education designated by the Commissioner of Education. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6:24-5.1(b).

(b) The Director of Employee Relations, the Director of the Office of Educational Services or individual designated by the Commissioner of Education shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15 day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of his/her determination in writing in the manner prescribed by N.J.A.C. 6:24-5.1(b)5.

(c) In the event that the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then he or she shall file such charges and the required certification with the Commissioner of Education together with proof of service upon the employee.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6:24-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of Employee Relations for charges arising in the

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Department of Human Services, the Director of the Office of Educational Services for charges arising out of the Department of Corrections or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education:

1. That the director or responsible person has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and

3. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(f) The filing and service of an answer to written charges pursuant to the Tenure Employees Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

(a)

STATE BOARD OF EDUCATION

Library Network Services

Proposed Readoption with Amendments: N.J.A.C. 6:70

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

Authority: N.J.S.A. 18A:4-15 and 18A:73-35a et seq., specifically 18A:73-35.

Proposal Number: PRN 1989-363.

Submit written comments by August 16, 1989 to:
Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset provisions" of Executive Order No. 66(1978), N.J.A.C. 6:70, Library Network Services, is due to expire on January 25, 1990.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:73-35a et seq., specifically 18A:73-35, proposes to readopt this chapter with amendments. These rules have been reviewed by the Board, and are considered necessary, reasonable and proper for the reasons for which they were originally promulgated.

N.J.A.C. 6:70 was adopted by the State Board of Education, effective February 19, 1985, pursuant to N.J.S.A. 18A:73-35a et seq. after the enactment of the Library Network Law (P.L. 1983, c.486) on January 17, 1984. P.L. 1986, c.174 amended and supplemented the Library Network Law.

The rules provide for the establishment of a regional multitype library network and for the sharing of resources and services of New Jersey libraries of all types—academic, institutional, public, school and special. The goal of the network has been to provide the State's residents with full and equal access to library materials and programs not currently available within their communities and to help control the cost of maintaining local libraries.

Libraries within six designated regions in the State have formed regional library cooperatives which operate under a service plan developed by their membership and approved by the State Librarian. The rules mandate that each regional library cooperative provide the following services: reference, interlibrary loan, delivery and citation/location. Each cooperative may also provide a variety of additional services to meet regional needs which they have identified.

As part of the readoption, amendments are being proposed to add necessary definitions and clarify existing definitions, to remove unnecessary rules, to clarify intent and to address the amendments to the Library Network Law made in P.L. 1986, c.174.

The following amendments are proposed:

N.J.A.C. 6:70-1.1 is amended to provide for the establishment of Statewide library services per P.L. 1986, c.174.

N.J.A.C. 6:70-1.2 is amended to add necessary definitions, clarify existing definitions and delete unnecessary definitions.

N.J.A.C. 6:70-1.4 has been revised to incorporate the present N.J.A.C. 6:70-1.4(b) and (c) and N.J.A.C. 6:70-1.5(a).

N.J.A.C. 6:70-1.5 is amended to add provisions which ensure eligibility of network members to receive and participate in regional and Statewide services and to detail the review process for application for membership in a regional library cooperative.

N.J.A.C. 6:70-1.6 is amended to clarify voting representation for academic, institutional, public, school and special libraries and library-related agencies for the council of members.

N.J.A.C. 6:70-1.8 is amended to require that lay representatives be elected in accordance with bylaws adopted by the regional library cooperative and to require that board meetings adhere to the Open Public Meetings Act. The rule is also amended to change the term "coordinator" to "executive director" and to clarify details on reporting requirements.

N.J.A.C. 6:70-1.11 is amended to change the term "incorporation" to "establishment and designation," to clarify details on documents required for submission to the State Library and to remove unnecessary language. The rule is also amended to specify how services will be made available to residents and to add local library cooperatives and individuals to the agencies with which the regional library cooperative may contract.

N.J.A.C. 6:70-1.13 is amended to give the State Librarian authority to revoke designation of a regional library cooperative when it is not in compliance with law and regulation and to determine the distribution of assets and handling of liabilities of a regional library cooperative.

N.J.A.C. 6:70-1.14 is amended to allow local library cooperatives to receive contracts for services and to clarify eligibility for membership in the regional library cooperative.

N.J.A.C. 6:70-1.16 is amended to remove unnecessary language regarding terms of office for library network review board members.

N.J.A.C. 6:70-1.17 is a new rule which clarifies the allocation of library network funds.

Social Impact

The proposed readoption and amendments will have a positive impact on library users since the structure for providing library service to State residents will be strengthened. Items in the code that may have been unclear in intent have been clarified to ensure consistent enforcement of the regulations.

The regional library network has provided New Jersey residents with greater access to materials and resources of all types of libraries. It has also assisted libraries in their response to the increasingly diverse informational needs of library users for resources and services of varying levels of complexity. The network has provided faster response to requests for information and materials through shared use of new technology and improved regional and Statewide delivery systems.

Through the new network, New Jersey libraries and library-related agencies have joined together in a common program to efficiently and effectively serve all New Jersey residents.

Economic Impact

The regional library network has provided residents with more cost effective access to the collective resources of New Jersey libraries through increased sharing of resources and better coordination of materials and services. Needless duplication has been eliminated, permitting better use of library funds. Increased flexibility and responsiveness to user needs, shared use of new technology, and faster delivery of materials and information have enabled library users to be served better. Beginning with an initial appropriation of $125,000 in Fiscal Year (FY) 1984 for planning and startup costs, funding for the library network, which includes Statewide and regional services, has been as follows:

FY 1984	$ 125,000
FY 1985	$ 769,432
FY 1986	$1,415,000
FY 1987	$4,160,978
FY 1988	$4,934,457

In 1987, the law authorizing area and research library appropriations was amended to transfer the programs and $3.3 million in appropriated funds to the Library Network Law. The appropriated funds were included in the FY 1988 appropriation.

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Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed readoption with amendments does not impose reporting, record keeping or other compliance requirements for small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The readoption with amendments impacts only upon New Jersey libraries and State funded regional library cooperatives.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:70.

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

CHAPTER 70
LIBRARY NETWORK SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

6:70-1.1 Scope and purpose

The rules set forth in this chapter provide for the establishment **and designation** of regions **and regional library cooperatives** designed to promote the cooperative use of services and materials of all types of libraries in the [region] **State through the provision of library services on a regional as well as a Statewide basis**, pursuant to the provisions of [Chapter 486, Laws of 1983] **P.L. 1983, c.486** (N.J.S.A. 18A:73-35a et seq.), known as the Library Network Law.

6:70-1.2 Definitions

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

. . . .

["Area library" means a library with which the State contracts for specialized services pursuant to N.J.S.A. 18A:74-2 and 18A:74-4.]

"Citation and location services" means a specialized bibliographic information service. Citation service is the process of verifying, completing, and/or correcting the bibliographic information about a specific work. Location service is the process of identifying libraries that own a specific work or, in some instances, the process of identifying other agencies through which the work may be obtained or consulted.

"Council of members" means the voting representatives of the members of the regional library cooperative.

. . . .

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

"Lay representative" means a New Jersey resident who is not [a librarian or school media specialist] **eligible for a certificate as a professional librarian, associate educational media specialist or educational media specialist** and is not in the employ of any New Jersey library or library-related agency defined in this chapter. Members of library boards of trustees shall be considered lay representatives.

. . . .

"Library network" means all libraries in all regional library cooperatives, the State Library, and any other libraries providing services to other libraries.

"Library region" means a multi-county area designated by the State Librarian as the geographic area [to be served by] **within which libraries may establish** a regional library cooperative.

"Library-related agency" means a county audio-visual aids commission established under N.J.S.A. 18A:51; [educational information and] **learning** resource center [established under N.J.S.A. 18A:6-95]; regional curriculum services unit; or any other nonprofit organization meeting the criteria for membership in the regional library cooperative in accordance with N.J.A.C. 6:70-1.5(b).

. . . .

"Multitype [library network]" means [a group of] libraries of more than one type ([for example,] academic, institutional, public, school and special) and library-related agencies [whose cooperative activities are specified in a plan approved by the State Librarian].

. . . .

"Reference service" means the response to user needs by either mediated question handling or non-mediated access to information. A mediated reference transaction involves the use, recommendation or instruction in the use of one or more information sources, or referral to such sources elsewhere, by a member of the reference/information staff. A non-mediated reference transaction is the use of on-site resources without the assistance of reference/information staff.

. . . .

"Regional library cooperative" means **a membership organization of libraries and library-related agencies within a library region organized as** a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. [composed of libraries and library-related agencies which agrees to receive funds for the provision of library services on behalf of the residents of a library region as specified in the five-year plan for library network development approved] **which has agreed to provide and receive cooperative service and which has been designated a regional library cooperative** by the State Librarian.

"Residents" means persons residing, employed or attending school in the library region.

. . . .

"State contract library" means a library, library-related agency, **local library cooperative,** or commercial vendor with which the State **Library** contracts for the purpose of providing library services.

6:70-1.3 Designation of library regions

(a) The State Librarian, with the approval of the State Board of Education, shall designate no more than seven library regions within the State. No county shall be divided among two or more **library** regions. The **library** regions shall be established on the basis of, but not limited to, the following considerations:

1.-6. (No change.)

(b) (No change.)

(c) After the first review by the State Librarian, [which will occur at least every five years or sooner,] members of a regional library cooperative located within the same county may request that the county be transferred to a different library region when a majority of [those] **the** members **in that county** vote for such a transfer.

(d) If a request for a transfer from one **library** region to another has been denied, the appeals and hearing process **as specified in** [may be followed. (See N.J.A.C. 6:70-1.19).] **N.J.A.C. 6:70-1.18 shall be followed.**

6:70-1.4 Regional library cooperative; formation

(a) Upon approval by the State Librarian of the plan for service and the plan and budget for the first year of operation of the regional library cooperative, the State Librarian shall establish **and designate** the regional library cooperative.

[(b)]**1.** Each duly **established and** designated regional library cooperative shall be eligible for a grant not to exceed $50,000 to fund the first year of operation of the regional library cooperative, in accordance with a plan and budget submitted to, and approved by, the State Librarian.

[(c)]**2.** Applicants whose request to be designated as a regional library cooperative has been denied may proceed with the appeals and hearing process described in N.J.A.C. 6:70-[1.19]**1.18.**

(b) The established and designated regional library cooperative shall constitute a council of members and shall be incorporated as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. The council of members shall organize, elect an executive board, and adopt bylaws within six months.

6:70-1.5 Regional library cooperative; organization and membership

[(a) The regional library cooperative shall constitute a council of members and shall be incorporated as a nonprofit corporation pursuant to N.J.S.A. 15A:1-1 et seq. It shall organize, adopt bylaws within six months, and elect an executive board from its membership.]

(a) All members of a regional library cooperative are members of the New Jersey Library Network and shall be eligible to receive and participate in the regional and Statewide services of the Network.

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(b) To be eligible [as] **to become** a member of a regional library cooperative, a library or library-related agency shall have explicit service objectives, a fixed location and regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and qualified and responsible staff. Its organizational structure shall be identifiable with a legal basis for operation and an established funding pattern. It shall be willing and able to contribute to the appropriate services and programs as determined by the regional library cooperative, and mutually agreed upon.

[(c) Each campus library of an academic institution is eligible to be a member of the regional library cooperative.

(d) Each library of a multi-location business is eligible to be a member of the regional library cooperative.]

[(e)]**(c)** The board of governance or the appropriate administrative authority for each eligible [academic library, institutional library, public library, school library, special] library and library-related agency that wishes to become a member of the regional library cooperative shall take official action as specified by the State Librarian to join the regional library cooperative.

(d) The executive board of the regional library cooperative shall review each application for membership in the regional library cooperative and shall take official action by approving or disapproving membership. If an application for membership is disapproved by the executive board, the appeals and hearing process as specified in N.J.A.C. 6:70-1.18 shall be followed.

6:70-1.6 Voting

(a) Each academic library, institutional library, public library, special library, and each library-related agency which is a member of a regional library cooperative shall have one vote[.] **in the council of members except as specified in (a)1 and 2 below. The voting representative shall be appointed by the board of governance or the appropriate administrative authority of the library or library-related agency.**

1. The academic libraries which are members of a regional library cooperative and are located on a single campus shall have one vote in the council of members. The board of governance or the appropriate administrative authority for the campus shall appoint one voting member to the council of members.

2. The institutional libraries which are members of the regional library cooperative and which are part of a single institution shall have one vote in the council of members. The board of governance or the appropriate administrative authority for each institution shall appoint one voting member to the council of members.

(b) The public school libraries **which are members of a regional library cooperative and are** located within [each] **a single** operating public school district [which are members of a regional library cooperative] shall be considered a single entity and shall **have one vote in the council of members. They shall** elect one voting representative from among themselves, whose appointment shall be subject to the approval of the chief school administrator and the district board of education.

(c) The private and parochial school libraries **which are members of a regional library cooperative and are** located within [each] **a single** operating public school district [which are members of a regional library cooperative] shall be considered a single entity and shall **have one vote in the council of members. They shall** elect one voting representative from among themselves.

6:70-1.7 Duties **of council of members**

(a) The duties of the [voting] **council of** members of the regional library cooperative shall include, but not be limited to, the following:

1. Review and adopt bylaws**, which are subject to approval by the State Librarian**;

2.-4. (No change.)

6:70-1.8 Executive board; organization and duties

(a) The executive board shall be composed of a minimum of nine and a maximum of 15 members to include at least:

1. Five members elected by the **council of members of the** regional library cooperative [from its voting representatives]: one each from an academic library, an institutional library, a public library, a school library and a special library[.];

2. Two members at large elected by the **council of members of the** regional library cooperative [from its voting representatives];

3. Two lay representatives [appointed by the State Librarian,] **elected in accordance with the bylaws adopted by the regional library cooperative.** [each of whom] **Each** must reside within the designated area of the regional library cooperative; **and**

4. Additional members, up to a maximum of six, who [may] **shall** be elected in accordance with bylaws adopted by the **council of members of the** regional library cooperative.

(b) The executive board shall be governed by the bylaws adopted by **the council of members of** the regional library cooperative **and all board meetings shall be conducted in accordance with the Open Public Meetings Act pursuant to N.J.S.A. 10:4-6.**

(c) The duties of the executive board shall be to:

1. Hire [a regional library coordinator] **an executive director** and any necessary additional staff, fix their compensation and establish terms and conditions of employment;

2. Develop the five-year plan and submit it to the **council of members of the** regional library cooperative for approval;

3. Develop the annual operating program and budget **and any revisions to the five-year plan** and submit them **in writing** to the **council of members of the** regional library cooperative for approval;

4. Contract with libraries, library-related agencies, **local library cooperatives,** commercial vendors, individuals, or any other designated regional library cooperative as may be necessary to implement the five-year plan for the regional library cooperative;

5. Receive and disburse all income;

6. Submit **quarterly** a written report **including a financial report** to the **membership of the** regional library cooperative **and to the State Librarian** [at least on a quarterly basis];

7. Submit the five-year plan, the annual update, and the annual budget to the State Librarian for review and approval; **and**

8. Submit to the State Librarian an annual report, including a program evaluation and financial audit, and any additional reports as the State Librarian may require.

6:70-1.9 Executive board; term of office

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

(c) Vacancies shall be filled for the unexpired term [only] **in accordance with the provisions of the bylaws.** [Vacancies occurring among the representatives of the regional library cooperative shall be filled by the regional library cooperative. Vacancies occurring among representatives appointed by the State Librarian shall be filled by the State Librarian.]

6:70-1.10 [Regional library coordinator] **Executive director**; appointment and duties

(a) The [regional library coordinator] **executive director** hired by the executive board of the regional library cooperative shall be eligible for certification as a professional librarian or educational media specialist by the State Department of Education **or have graduated from a master's degree program in library science**.

(b) The duties of the [regional library coordinator] **executive director** shall include, but not be limited to, the following:

1. Coordinate **and administer** the activities, programs and services of the regional library cooperative;

2. Supervise the staff of the regional library cooperative;

3. Assist in developing the five-year plan for executive board review and [regional library cooperative] **council of members'** approval;

4. Assist in developing the annual program and budget for review by the executive board and approval of the **council of members of the** regional library cooperative;

5. Negotiate all contracts for executive board approval; **and**

6. Attend meetings of the executive board and of the regional library cooperative.

6:70-1.11 Regional library cooperative; responsibilities and services

(a) Within one year following [incorporation] **establishment and designation** as a regional library cooperative and receipt of an establishment grant, each regional library cooperative shall submit for approval by the State Librarian a five-year plan for regional library cooperative [development] **services** and an annual program and operating budget in support of the plan.

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(b) Annually thereafter, each regional library cooperative shall submit for approval by the State Librarian any revisions to its five-year plan and an annual program and operating budget in support of the plan.

[(b)]**(c)** The goals, objectives, programs, and activities specified in [the] **a** five-year plan for regional library cooperative [development] **services** shall provide that:

1. All contracts [services] meet applicable Federal and State rules;

2. The terms and conditions of all [service] contracts [with regional contract libraries, other libraries, other regional library cooperatives, library-related agencies, commercial vendors of library services, and individuals,] be part of and made consistent with the goals, objectives, programs and activities of the plan;

3. All contract services be provided to member libraries, library-related agencies and residents of the library region in accordance with the plan; **and**

[4. For the first year of the operation of a regional library cooperative, area libraries located within the region shall be offered regional contracts for regional library services;]

[5]**4.** In general, each regional library cooperative shall contract with at least two different types of libraries to provide regional library service.

[(c)]**(d)** In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the following services are provided in each region:

1. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the library region;

2. Interlibrary loan services on behalf of residents of the library region;

3. Delivery services for library materials; **and**

4. Citation and location services for library materials.

[(d)]**(e)** Each regional library cooperative shall include the services listed in [(c)]**(d)** above in its five-year plan and **specify how the services will be provided to residents of the region.** [underwrite them in its annual operating budget. The State Library may contract with libraries, library-related agencies, or commercial vendors to provide any or all of these services on a Statewide basis.] The regional library cooperatives may contract with libraries, library-related agencies, **local library cooperatives,** [or] commercial vendors [to provide] **or individuals for the provision of** any or all of these services on a regional basis.

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

[(f)]**(g)** The five-year plan for regional library cooperative [development] **services** shall be reviewed and evaluated **by the executive board** on an annual basis and amended as appropriate to reflect any change [in policy] approved by the **council of members of the** regional library cooperative, and to provide for an annual program and operating budget. Any amended five-year plan [for regional library cooperative development] and the annual program and budget shall be submitted to the State Librarian for review and approval [90 days prior to the expiration date of the last approved plan].

6:70-1.12 Withdrawal from regional library cooperative

Any [participating] member may withdraw from a regional library cooperative when the **board of governance or the** appropriate administrative [body] **authority** determines by resolution or other recorded act to withdraw. Notification of intent to withdraw shall be submitted by the **board of governance or the appropriate** administrative [body] **authority** to the executive board of the regional library cooperative, with a copy to the State Librarian. The notice shall be filed on or before April 1 of any year, and withdrawal shall take place on or before June 30 of the ensuing year. Upon discontinuing membership, the member relinquishes its rights to any funds, supplies, materials, equipment or property held by or belonging to the regional library cooperative. Upon receipt of such notification and the satisfaction of all obligations by the withdrawing member, the executive board of the regional library cooperative shall officially note the withdrawal and shall file notice of this action with the State Library.

6:70-1.13 Dissolution of regional library cooperative

(a) The regional library cooperative may submit an application for dissolution to the State Librarian when:

1. The [membership] **council of members** receives a resolution for dissolution from the executive board; or

2. A petition to dissolve is signed by 40 percent of the **council of** members of the regional library cooperative; and

3. The governing bodies of a majority of the **council of** members approve the dissolution.

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

(e) Each duly established and designated regional library cooperative shall remain in existence until such time as the State Librarian either revokes its designation as a regional library cooperative or approves a plan for dissolution of the regional library cooperative.

1. Revocation of designation as a regional library cooperative will occur when the appeals and hearing process specified in N.J.A.C. 6:70-1.18 has been completed and a regional library cooperative's five year plan, annual revision of the five year plan, annual program or annual budget are not approved by the State Librarian.

2. Upon revocation of the designation as a regional library cooperative the State Librarian will determine if the area of service can be allocated to other adjoining regional library cooperatives and whether the assets and liabilities of the regional library cooperative can be assumed and absorbed by adjoining regional library cooperatives or by a new regional library cooperative, and will take into consideration any other factors which relate to the operation and function of the regional library cooperative.

6:70-1.14 Local library cooperatives

Any group of academic, institutional, public, school, or special libraries or library-related agencies, or any combination thereof, may organize as a nonprofit organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., and apply for designation to [the appropriate] **one or more** regional library cooperatives as a local library cooperative for the provision of cooperative or reciprocal library services among themselves on behalf of their collective library patrons. [the] **The** local library cooperative may include members from more than one regional library cooperative **and may receive regional or Statewide contracts for services. Local library cooperatives are not eligible for membership in a regional library cooperative.**

6:70-1.15 Statewide library services

(a) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the services listed in N.J.A.C. 6:70-1.11[(c)] **(d)** are provided. The State Library may contract with libraries, library-related agencies, or commercial vendors to provide any or all of these services on a Statewide basis.

(b) Other services [, as listed in N.J.A.C. 6:70-1.11(e)] also may be provided Statewide.

6:70-1.16 Library network review board

(a) A library network review board shall be appointed to advise the State Librarian with respect to:

1. (No change.)

2. The percentage of the network budget allocation to be expended on Statewide and on regional services;

Existing 2.-6. renumbered as **3.-7.** (No change in text.)

(b) Membership of **the** library network review board shall be established as follows:

1. Each regional library cooperative shall elect two members from its [voting representatives] **council of members in accordance with the bylaws adopted by the regional library cooperative; and**

2. The State Librarian shall appoint five members including library users.

(c) [Initially, one elected member from each regional library cooperative, and two members appointed by the State Librarian shall serve for a term of one year; one elected member from each regional library cooperative and three members appointed by the State Librarian shall serve for a term of two years. Thereafter, each] **Each** member of the library network review board shall serve for a term of two years. No member of the library network review board shall

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serve for more than two consecutive terms. Upon serving two consecutive terms, a member may serve again only after an interim of at least two years. Vacancies shall be filled for the unexpired term only. Vacancies occurring among the members [of] **elected by** the regional library cooperatives shall be filled by the regional library cooperative in which the vacancies occurred. Vacancies occurring among the members appointed by the State Librarian shall be filled by the State Librarian.

6:70-1.17 Allocation of [Statewide] library [services] **network** funds

(a) Each year the State Librarian shall determine the amount of the network budget allocation to be expended on Statewide and regional library services. The State Librarian shall also determine the amounts to be allocated to base funding and program development funding for regional library services.

(**b**) Each year the State Librarian shall identify the services to be provided on a Statewide basis and expend the amount [allocated] **needed** for this purpose.

[6:70-1.18 Allocation of regional library services funds]

[(a)] (**c**) Each year the State Librarian shall determine the amount required to provide [a] base [grant] **funds** to each regional library cooperative according to the following formula:

1.-3. (No change in text.)

[(b)] (**d**) Each year the State Librarian shall determine the amount required to provide [a] program [grant] **development funds** to each regional library cooperative in accordance with requirements established by the State Librarian. However, no program [grants] **development funding** shall be awarded unless each regional library cooperative has received [a] base [grant] **funds**.

[(c) For the calendar year subsequent to the effective date of the establishment of a regional library cooperative, area libraries within a designated region which have agreed to serve as regional contract libraries shall receive by contract an amount of money not less than the amount they received as an area library in the year prior to the establishment of the regional library cooperative. Thereafter, the regional library cooperative may contract with such former area libraries to provide regional services. An area library choosing not to contract for services as a regional contract library shall receive for the calendar year subsequent to the effective date of the establishment of the regional library cooperative up to 75 percent of the area money it received in the year prior to the establishment of the regional library cooperative to provide area library services.]

[(d)] (**e**) No less than 40 percent of the funds made available for the regional library cooperative shall be allocated in the annual operating budget of a regional library cooperative, and expended as necessary, to reimburse regional contract libraries for services to residents of the library region.

6:70-[1.19]**1.18** Appeals and hearing process

Appeals arising from any action of the State Librarian in administering the rules of this chapter may be requested, and an opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such an informal hearing, appellants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24, and 18A:6-27. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Worker And Community Right To Know Regulations

Proposed Readoption: N.J.A.C. 7:1G

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

Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 34:5A-1 et seq., specifically N.J.S.A. 34:5A-30.

DEP Docket Number: 029-89-06.

Proposal Number: PRN 1989-380.

A **public hearing** concerning the proposed readoption will be held on:
August 11, 1989 at 10:00 A.M.
Capital Plaza
15th Floor Conference Room
240 W. State Street
Trenton, New Jersey

Submit written comments by August 31, 1989 to:
Gary J. Brower, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:1G expires on October 1, 1989. The Department has reviewed these rules and has determined they are necessary and reasonable for the purposes for which they were originally promulgated.

The Department of Environmental Protection proposes to readopt, without change, the Worker and Community Right to Know Regulations, N.J.A.C. 7:1G (the "rules"). The Department finds that the rules, which cover the reporting of hazardous substances inventories and releases of hazardous substances, continue to be necessary to provide the community with necessary information about hazardous materials and support various programs to protect the public health and environment of the State.

The Department is in the process of studying the rules to determine what amendments may be appropriate to make the State community right to know program more compatible and coordinated with the requirements of the Federal Superfund Amendments and Reauthorization Act, Title III—Emergency Planning and Community Right to Know, 42 U.S.C. 11001 et seq. It is anticipated that this process will be completed and any changes deemed necessary will be proposed as amendments to the rules in 1990. These anticipated amendments will not significantly change the operation of the community right to know program and the current readoption without change is necessary to assure uninterrupted authority for the operation and implementation of the community right to know program, as required by the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. (the "Act").

The Act requires selected employers to provide information about hazardous substances produced, used, and stored at their facilities. This information is made accessible for public review, and is, in addition, provided to emergency planners, emergency responders and health care personnel when necessary.

Since August 1984, the Department has collected and processed hazardous substance information from approximately 35,000 employers. Each covered employer group has been required to complete an inventory report at least twice. All of the reported information is being incorporated into a database with records for more than 48,000 facilities. Also, the Department has incorporated into the forms required for Federal toxic chemical release reporting State requirements and has received reports from over 800 facilities. The Department is developing an additional release report which selected employers who do not meet the Federal reporting thresholds will be required to complete as part of their environmental survey requirements. This will assure release information will be obtained from all necessary businesses. The data collected is being made available to the Department's emergency response personnel through a 24-hour computer database. Inventories from the database are made available to the county right to know coordinators and emergency

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management personnel on a regular basis. Public requests for information are submitted on both an individual facility basis and by municipality, and have exceeded 200 requests in the past year.

The readoption of these rules will allow the Department to continue to collect this information and make it available for use.

The rules proposed for readoption consist of the following seven subchapters:

N.J.A.C. 7:1G-1, "General Provisions", which describes the scope of the chapter and contains definitions pertaining to this chapter.

N.J.A.C. 7:1G-2, "Environmental Hazardous Substance List", contains the list of substances found in the State, that have been determined by the Department to be potential health hazards and environmental contaminants.

N.J.A.C. 7:1G-3, "Environmental Survey", requires employers to report inventory and releases of environmental hazardous substances on Part I or Part II of the Environmental Survey. Employers are required to provide the Department with clarifying information about the Environmental Survey if requested by the Department. Also employers must update the Environmental Survey on a regular basis.

N.J.A.C. 7:1G-4, "Hazardous Materials List", adopts the U.S. Department of Transportation's Hazardous Materials Table and Optional Materials Table (49 CFR 162.101 & 172.102) as the Hazardous Materials List, and describes how notice is provided on amendments to the Hazardous Materials List.

N.J.A.C. 7:1G-5, "Emergency Services Information Survey", requires employers to report inventory information about hazardous materials from the Hazardous Materials List for use by local police and fire departments. Employers are required to provide clarifying information about the Emergency Services Information Survey if requested by the Department. Also employers must update the survey on a regular basis.

N.J.A.C. 7:1G-6, "Trade Secrets", establishes the procedures for filing trade secrecy claims when completing any of the surveys required by the Act or rules. It describes the review process used by the Department to determine the validity of trade secret claims and defines which information cannot be claimed as a trade secret. It further provides a procedure for appeal of a Department determination and describes when restricted access to trade secret information is allowed and the procedures used to safeguard this information when such access is provided. Lastly, the penalties for unauthorized disclosure of this information are stated.

N.J.A.C. 7:1G-7, "Assessment of Civil Administrative Penalties", establishes procedures and schedules to penalize employers who do not submit their survey or submit incomplete or inaccurate information. Further, procedures for appealing a penalty determination and mitigating a penalty assessment are outlined.

Social Impact

The readoption of N.J.A.C. 7:1G will have a positive social impact by continuing to make available, for a variety of purposes, information about hazardous substances used and stored in the State.

Inventory and release information concerning hazardous substances is valuable for many purposes. It can help the general public to become more aware of hazardous substances in the community. Also it can help them to make more informed lifestyle and employment decisions. The inventory reports can assist emergency responders on scene at a hazardous materials incident by providing ready information concerning the materials on site and also can help in planning and developing safety and response programs. Community officials can use the information to support local planning decisions about growth and land use. Information on hazardous substances is used to support environmental enforcement actions and in the development of legislative and regulatory programs. Strategies for monitoring programs and research studies can be enhanced by using the data as background information to support the development of such programs. Finally, the information can be valuable in assisting health professionals in performing medical surveillance studies and in diagnosing health conditions.

Economic Impact

Employers who file an initial survey will have associated costs, such as, computing inventory, consultant's fees, and staff hours. The exact cost associated will be dependent on the complexity of the business's activities and magnitude of its hazardous substances inventory. Therefore, an exact estimate of costs is not possible. The costs could range between $100.00 and $5,000.00.

After the initial reporting, costs should be reduced because subsequent surveys essentially update the initial hazardous substances inventory.

The Act designates the covered employer groups, and the Department collects hazardous substances inventory information from each employer in those groups. Based on these reports, the rules require certain facilities, which by the nature of their operations pose potential hazards to public health and the environment, to provide additional information regarding releases of toxic chemicals. In this way, the Department is able to obtain all necessary information and does not impose unnecessary costs on other facilities.

Further, a positive economic impact should result from employers providing complete and accurate hazardous substances information. This increases the ability of the employer's community to respond correctly and promptly to any emergency that might occur on site at the facility, thus reducing possible emergency response costs and potential property losses.

Environmental Impact

The proposed readoption of these rules will have a positive environmental impact by continuing to provide information about hazardous substances which impact the State's environment. The rules provide information necessary for proper planning, monitoring, and response to environmental emergencies. For the Department's regulatory and enforcement operations it is essential to know what hazardous substances, in what quantities, are present in the State and where they are located. It is also important to know the disposition of these hazardous substances. The inventory and release information is being incorporated into several databases that meet the needs of different users for a variety of environmental protection and public health and safety programs.

Regulatory Flexibility Statement

Currently, approximately 35,000 employers are subject to reporting requirements under the Community Right to Know Program. About 75 percent of these employers are small businesses as defined by N.J.S.A. 52:14B-16 et seq. For these businesses there will be expenses associated with computing inventory and completing the initial survey. These expenses may include the hiring of consultants where the hazardous substances inventory is complex or taking staff from regular work assignments to complete the survey. The extent of these costs will be dependent on a number of factors including the complexity of the businesses' activities. Therefore, an exact estimate is not possible, but costs could range between $100.00 and $1,000.00. In most instances the expenses should be minimal for subsequent surveys which update the initial one that an employer submits.

In order for the rules to serve their purpose of providing information about hazardous substances in the community to assist individuals in decision making on employment and living conditions and agencies on all levels in the development and implementation of environmental protection and public health and safety programs, it is essential that the most complete information possible be collected. The Department has balanced the need to protect public health and the environment against the economic impact of the rules and has determined that to minimize the impact of the rule on small businesses would endanger the environment, public health and public safety. Therefore, no exemption from coverage is provided.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1G.

(a)

DIVISION OF WATER RESOURCES

Safe Drinking Water Act Rules

Proposed Readoption: N.J.A.C. 7:10

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

Authority: N.J.S.A. 13:1D-1 et seq., 58:12A-1 et seq., 58:11-64 et seq., 58:11-23 et seq., 58:11-9.1 et seq., and 58:10A-1 et seq.

DEP Docket Number: 030-89-06.

Proposal Number: PRN 1989-360.

A **public hearing** concerning this proposal will be held on:
August 8, 1989 from 10:00 A.M. to 12:00 P.M.
Department of Environmental Protection
401 East State Street
3rd Floor Conference Room 003
Trenton, New Jersey

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Submit written comments by August 16, 1989 to:
Mark Benevenia, Esq.
Department of Environmental Protection
Division of Regulatory Affairs
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of this proposal is to readopt, without change, existing rules known as the Safe Drinking Water Act Regulations, N.J.A.C. 7:10-1 through 7, 11 and 14 through 16; the rules for the permitting of Physical Connections, N.J.A.C. 7:10-10; the rules for the Standards for the Construction of Public Non-Community and Non-Public Water Systems, N.J.A.C. 7:10-12; and the rules for the Licensing of Superintendents or Operators, N.J.A.C. 7:10-13, (all of N.J.A.C. 7:10 shall hereinafter be referred to as "rules"). The current text of the rules shall expire on September 4, 1989 pursuant to the provisions of Executive Order No. 66 (1978), commonly referred to as the "sunset" executive order.

The Legislature declared in the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. ("State Act") that "it is a paramount policy of the State to protect the purity of the water we drink . . ." (see N.J.S.A. 58:12A-2). The Bureau of Safe Drinking Water within the Division of Water Resources has successfully administered the State's safe drinking water program since the rules became effective on July 13, 1979. After internal review of our safe drinking water program experience, the Department finds that continuation of the rules shall be required to assure the provision of safe drinking water to the citizens of the State of New Jersey.

The Federal Safe Drinking Water Act, P.L. 93-523, 42 U.S.C. 300 et seq. (hereinafter "Federal Act"), establishes a comprehensive regulatory scheme for providing potable water in the United States. The Federal Act applies to each "public water system" defined as "a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals." The National Primary Drinking Water Regulations, 40 CFR Part 141 (hereinafter "Federal regulations"), promulgated pursuant to the Federal Act further defines public water systems as either "community water systems" which serve year-round residents or "non-community water systems" which serve non-resident or transient users. The Federal Act allows individual states to assume primary enforcement responsibility provided their rules are no less stringent than the Federal regulations. The rules meet the Federal standards and represented the final step in the process by which New Jersey qualified to assume primary enforcement responsibility as of December 30, 1979. The Legislature declared in the State Act that "it is in the best interests of the people of the State for the State, through its Department of Environmental Protection, to assume primary enforcement responsibility under the Federal Safe Drinking Water Act" (see N.J.S.A. 58:12A-2). Furthermore, the Legislature directed the Department to promulgate "State primary drinking water regulations that at any given time shall be no less stringent than the complete interim or revised national primary drinking water regulations in effect at that time" (see N.J.S.A. 58:12A-4(a)1). Expiration of the rules would seriously jeopardize New Jersey's enforcement primacy and the Department's funding grants under the Federal Act.

A brief description and explanation of the substantive sections of the rules follows:

Subchapter 1 titled, "General Provisions", covers the authority, scope, applicability, purpose, definitions of the rules, and provides authority and procedures for conducting inspections and sanitary surveys.

Subchapter 2 titled, "General Requirements," contains N.J.A.C. 7:10-2.1, 2.2 and 2.3 which require the Department to maintain a current inventory of all public water systems in the State, to keep records, and to maintain a plan for the provisions of safe drinking water under emergency circumstances. These requirements are imposed by the Federal Act and the Federal regulations upon States like New Jersey, with primary enforcement responsibility. N.J.A.C. 7:10-2.4 requires notification to the Department by a supplier of water in the event of planned changes or emergencies which may tend to lessen the quality of delivered water or increase the likelihood of delivery of polluted or impure water. N.J.A.C. 7:10-2.5 provides for the Commissioner to prohibit, by order and subject to a hearing if such is requested, additional service connections to any public water system if such connections may result in a degradation of service to existing users. This is required to prevent the expansion of water systems that are deficient in prime source, distribution or storage capacities, or pressure and volume.

Subchapter 3 concerns enforcement and penalties. N.J.A.C. 7:10-3.1 provides the administrative procedures for the institution of civil and administrative enforcement actions, in accordance with the provisions of the State Act, for violations of the State Act and rules.

Subchapter 4, titled "Disinfection", continues the longtime State requirement that all public community water systems shall be disinfected prior to distribution but, in addition, allows an option for a public water system serving 100 or fewer dwellings to forego disinfection provided it increases the bacteriological sampling frequency. This provision accommodates very small water systems that find difficulty in financing the cost of chlorination facilities and a licensed treatment plant operator but, at the same time, assures the continued bacteriological quality of the delivered water by more frequent bacteriological testing. N.J.A.C. 7:10-4.1(b), however, does not permit this option for systems that utilize surface water because of greater likelihood that such water is bacterially contaminated. N.J.A.C. 7:10-4.1(c) retains the right of the Department to require the disinfection of any public water system if deemed necessary.

Subchapter 5, titled "State Primary Drinking Water Regulations", constitutes the vital element of the Department's efforts to provide safe drinking water. N.J.A.C. 7:10-5.1 adopts, as New Jersey's primary drinking water regulations, the most current Federal regulations, except for those sections of the latter where discretionary authority has been permitted. The Federal Act requires that the rules be no less stringent than those promulgated by the Federal Environmental Protection Agency.

The Federal regulations allow the Department discretion in the manner and method of implementing certain provisions of the Federal regulations.

N.J.A.C. 7:10-5.2 describes the options the Department has followed in implementing the Federal regulations. At N.J.A.C. 7:10-5.2 the Department:

1. Establishes a monthly average turbidity of up to five turbidity units for specific water systems that have been evaluated and adjudged "safe" at the higher levels. This is a relaxation of the Federal requirement to maintain a monthly average turbidity of less than one turbidity unit in the absence of any further documentation which would demonstrate safeness of supply at turbidity levels of up to five units on a monthly average.

2. Permits microbiological sampling compliance on a three-month sampling period for those public systems required to take less than four samples per month as opposed to compliance based on a monthly period. The three-month period represents a more practical way of determining compliance for very small systems.

3. Disallows small public water systems from reducing the microbiological sampling frequency or to permit any utility to substitute chlorine residual monitoring in the place of microbiological sampling as allowed in specific instances by the Federal regulations. The microbiological sampling frequency is minimal to insure confidence in the safety of supplies and any reduction in sampling frequency is considered counterproductive.

4. Requires non-community water systems to repeat analyses for nitrate, and community systems utilizing surface courses to repeat analysis for organic pesticides and herbicides, both at a minimum frequency of once every three years. The Department considers any reduction in sampling frequency below this minimum to be inadequate to determine the quality of delivered water in respect of these parameters.

5. Requires community water systems which purchase all their water in bulk from other community systems to monitor microbiological quality, inorganics, and radionuclides with the same frequencies as those which would be required if the primary source was their own; and those systems that purchase more than 50 percent of their annual water requirements from another community system that utilizes surface water to monitor organics with the same frequency as would be required if the primary source was their own surface water supply. A water purveyor can only be assured that its water quality meets the requirements at the consumer's taps, as required by the rules, by conducting appropriate sampling.

N.J.A.C. 7:10-5.3 establishes a maximum contaminant level of 2.0 mg/l for fluoride based upon the annual average of the maximum daily air temperature in New Jersey, and follows the requirements of the Federal regulations. This section also prescribes maximum contaminant levels for coliform bacteria in non-public water systems (which are not covered by the Federal regulations), and extends maximum contaminant levels for turbidity, inorganics, organics, and radionuclides to all water systems upon findings by the Department that such is necessary for the protection of health.

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N.J.A.C. 7:10-5.4 prescribes the specific methods whereby suppliers of water shall make reports to the Department as required by the Federal regulations, and the method whereby a public non-community water system shall inform consumers of violations.

Subchapter 6, titled "Variances and Exemptions" provides for the granting of variances and exemptions in a manner no less stringent than in the Federal Act, and specifies procedures.

Subchapter 7, titled "Secondary Drinking Water Regulations" applies to substances in water which are not directly health related, but which may adversely affect the taste, odor, or appearance, or otherwise adversely affect the public welfare. These standards may be required to be met by any water supply when the administrative authority having jurisdiction finds a need therefor. Subchapter 7 reflects Federal guidelines on those substances which, though they do not have a significant impact on the health of consumers, may discourage the utilization of a public drinking water supply by the consumer. N.J.A.C. 7:10-7.3 specifies monitoring requirements in respect of the secondary standards.

Subchapters 8 and 9 are reserved for future use.

Subchapter 10, titled "Physical Connections", is designed to protect a public community water system from backflow from a contaminated or questionable supply over which the water purveyor has little or no control. N.J.A.C. 7:10-10.2 requires that an approved physical connection installation must be provided where dual physically separate piping from a public community water system and an unapproved water system enter a common building. This is necessary to protect against accidental or hidden interconnections between the two systems. N.J.A.C. 7:10-10.5 sets forth the application procedures to be followed to obtain a physical connection permit. N.J.A.C. 7:10-10.6, in general, sets forth the testing requirements and procedures concerning inspections of reduced pressure zone backflow preventers. N.J.A.C. 7:10-10.7 contains the procedures to be followed to obtain permission to make facility changes or to remove the physical connections. These procedures are necessary to assure protection of the public water supply and to enable the Department to keep its records up to date.

Subchapter 11, titled "Standards for Construction of Public Community Water Systems", constitutes the rules by which the Department shall conduct the review and approval, with appropriate conditions, of plans and specifications for the design and construction of new or substantially modified public community water systems. No such system or part thereof shall be constructed except in compliance with Subchapter 11.

Subchapter 12, titled "Standards for the Construction of Public Non-Community and Non-Public Water Systems", constitutes the rules of the Department governing the construction of non-community and non-public water systems, excluding water supply systems serving State and county owned facilities. Departmental experience with the standards set forth in Subchapters 11 and 12 clearly demonstrate that the continuation of the rules remain vital to protect the citizens of New Jersey.

Subchapter 13, titled "Water Supply and Waste Water Collection and Treatment Systems: Examining and Licensing of Operators", contains the Department's rules governing the licensing of superintendents or operators of public water distribution systems, public water treatment systems, public wastewater collection systems, public wastewater treatment systems, and industrial wastewater treatment systems.

Subchapter 14, titled "Interim Safe Drinking Water Testing Schedule for Hazardous Contaminant by Public Community Water Systems" contains the Department's rules that implement the statutory requirement of N.J.S.A. 58:12A-1 (Section 1 of P.L. 1983, c.443). The Commissioner established an initial and periodic testing schedule for the owner or operator of each public community water system to undertake testing to determine the presence of hazardous contaminants identified pursuant to N.J.S.A. 58:12A-13(a) (Section 2(a) of P.L. 1983, c.443).

The testing schedule specifies the date for completion of the initial testing and establishes a semi-annual testing schedule for all water systems, except those water systems which bulk purchase all their water from other systems. The latter water systems are subject to a different schedule also contained in N.J.A.C. 7:10-14. N.J.A.C. 7:10-14.6 identifies the hazardous contaminants whose presence must be determined in all public community water systems. N.J.A.C. 7:10-14.12 mandates that the initial or periodic tests to determine the presence of hazardous contaminants required by this subchapter be conducted at a certified laboratory. N.J.A.C. 7:10-14.13 requires all public community water systems to report to the Department the results of any tests required by this subchapter. Additionally, N.J.A.C. 7:10-14.14 requires any owner or operator of a public community water system to retain records of all initial and periodic tests conducted in accordance with this subchapter. Any violation of the Act or the rules promulgated pursuant thereto is subject to the violations and penalty provisions of N.J.A.C. 7:10-14.15.

Subchapter 15, titled "Fees" contains the Department's rules that establish fees for the Safe Drinking Water Program. The fees are based upon the estimated cost of regulating, monitoring, administering and enforcing the Safe Drinking Water Program.

Subchapter 16, titled "Safe Drinking Water Act Maximum Contaminant Levels for Hazardous Contaminants", contains the Department's rules that implement the establishment of maximum contaminant levels as authorized by N.J.S.A. 58:12A-1 et seq. as amended by P.L. 1983, c.443.

The Maximum Contaminant Levels ("MCL") were established based upon recommendations of the New Jersey Drinking Water Quality Institute ("Institute"). Three basic factors were considered in recommending the MCL's within the statutory framework of N.J.S.A. 58:12A-1 et seq.: Health effects, technological ability to measure the contaminant levels and the ability of existing treatment technology to meet the MCL's. The Department accepted the recommendations of the Institute and adopted MCL's which are in some cases more stringent than those adopted by the United States Environmental Protection Agency.

N.J.A.C. 7:10-16.8 mandates that the owner or operator of a public community water system shall analyze for each contaminant listed at N.J.A.C. 7:10-16.7 for which there is a MCL. The owner or operator shall, upon receipt of an analysis which reports an exceedance of the MCL for one or more of the hazardous contaminants set forth in N.J.A.C. 7:10-16.7, take action in accordance with N.J.A.C. 7:10-16.8(b). Additionally, there are requirements for public notification of any MCL violation (N.J.A.C. 7:10-16.10), remediation procedures (N.J.A.C. 7:10-16.11) and recordkeeping (N.J.A.C. 7:10-16.12).

Social Impact

The Safe Drinking Water Act regulations provide the regulatory framework necessary to assure the availability of and maintenance of high quality potable water which the Legislature declared essential in order to safeguard the health and welfare of the citizens of New Jersey. The rule directly affects any water system classified as a public water system and indirectly affects all citizens of the State. The rule sets drinking water quality standards, covers the testing frequency for assessing drinking water quality against the standards, and provides design standards for water systems. The rules are constantly being assessed by both the general public and the New Jersey Drinking Water Quality Institute created by the 1984 amendments to the State Act. The Department, without this proposed readoption, would be without the means of protecting the purity of the water we drink. The continuation of the rules allows the Department to insure the provisions of safe drinking water to consumers and the maintenance of New Jersey's primary enforcement responsibility under the Federal Act.

Economic Impact

Expenses incurred due to the rules have become standard business expenses for public water systems. However, any added expenditures by public water systems over the years must be balanced against the paramount policy of the State—protection of the purity of the water we drink. The overall economic impact of the rules, considering the benefits, shall not be significant.

The expenses incurred as a result of the rules fall into the following three categories:

1. Testing Expenses—which every water system must incur in order to routinely test the quality of the drinking water. The annual costs of such testing range from $.05 to $10.00 per household depending upon the size of the water system.

2. Compliance Expenses—incurred by those water systems whose quality or facilities are in need of improvement in order to meet the standards of these regulations. The annual cost of these improvements can vary widely among water systems; from $1.00 to $50.00 per household. The estimated total cost of compliance statewide is approximately $100 million.

3. Water Tax, Permit and Operational Fee—expenses of water systems to support the administration of the Safe Drinking Water program. The cost is approximately $3.5 million annually which averages approximately $1.00 per household.

The total economic impact is minimal considering the total cost of water provided. The statewide annual average is approximately $200.00 per household and regulatory expenses average less than $5.00 per household.

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The rules are necessary for the continued economic viability of the program.

Environmental Impact

The readoption of the rules will provide the Department with the authority to assure the provision and maintenance of high quality potable water necessary to safeguard the health and welfare of the citizens of New Jersey. The Legislature has declared that the water resources of New Jersey are also essential to the economic welfare, recreational and aesthetic enjoyment and general welfare of the people of New Jersey (see N.J.S.A. 58:1A-2). The rules provide the Departmental mechanism to protect this important environmental matter.

Regulatory Flexibility Statement

The readoption of the rules allow for some regulatory flexibility; however, small businesses which make up a large number of public water systems must provide safe drinking water and therefore must meet the same basic standards of water quality and testing as large water systems in order to protect the health of the public. Most of the flexibility for small systems is reflected in the construction requirements which are generally reflective of the special needs of small systems concerning financial resources. The Department strongly believes that all drinking water should be of uniformly high quality.

The small businesses affected by these rules are of two basic types: small water companies regulated by the Board of Public Utilities and mobile home parks which provide water as part of rental agreements. There are approximately 200 water systems which can be classified as "small businesses".

These rules are designed to minimize impacts on small water systems through lower fees, reduced design criteria, and reduced testing frequency requirements. Although efforts have been made to minimize impacts on small businesses, many of these systems which are created by developers are poorly managed and therefore cause much of the water quality problems experienced by the State program.

The Department has made every effort to reduce the requirements of these rules as they apply to small businesses. However, certain requirements must be met by all water systems to assure the provision of safe drinking water to the citizens of the State of New Jersey.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:10.

(a)

DIVISION OF WATER RESOURCES

Sewage Infrastructure Improvement Act Grants

Proposed New Rules: N.J.A.C. 7:22A-1, 2, 3 and 6.

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

Authority: N.J.S.A. 58:25-23 et seq., 58:10A-1 et seq., 58:11A-1 et seq., 13:1D-1 et seq., 40:55D-93 et seq.

DEP Docket Number: 031-89-06.

Proposal Number: PRN 1989-386.

A **public hearing** concerning these proposed new rules will be held on:
August 14, 1989 at 1:00 P.M.
Ocean County Administration Building, Rm. 119
101 Hooper Avenue
Toms River, New Jersey

Submit written comments by August 16, 1989 to:
Thomas A. Borden, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection ("Department") is proposing new rules to implement the New Jersey Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. ("Act"). The Act, which became effective on August 3, 1988, is designed to address nonpoint and point sources of pollution which discharge from stormwater sewer systems and combined sewer overflow points. The New Jersey Legislature has declared that these sources of pollution contribute greatly to the biological and chemical degradation of coastal and surface waters of the State. The Act recognizes that nonpoint sources of pollution create public health dangers and mandate beach closings by contributing high levels of bacteria to surface waters through stormwater sewer systems. The Act also recognizes that overflows of raw sewage from combined sewer systems are another major source of surface water pollution.

The Act requires all municipalities with stormwater sewer systems discharging into the salt waters of Monmouth, Ocean, Atlantic or Cape May counties ("affected municipalities") to adopt a final map of their stormwater sewer system on or before February 3, 1990. The final map should locate all stormwater sewer and sanitary sewage lines within the geographical boundaries of the municipality, which are part of any stormwater sewer system that discharges into surface waters. The final maps shall also identify all cross-connections and known interconnections between stormwater and sanitary sewer systems and indicate whether the cross-connections have received a permit from the Department.

The affected municipalities, upon completion of the final map, shall monitor at least every three months the water quality at the outfall locations for any stormwater sewers discharging into salt waters. The Act additionally requires the affected municipalities to eliminate or cause to be eliminated all unpermitted cross-connections and interconnections between stormwater sewer systems and sanitary sewer systems within the municipalities before February 3, 1991. The affected municipalities shall also take measures to abate nonpoint sources of pollution directly entering salt waters of the State.

In order to abate pollution from combined sewer overflow points, the Act requires any public entity, including any local government unit, operating a combined sewer system to provide abatement measures by February 3, 1991 at any combined sewer overflow point where a permit is required. Although the Act's requirements for mapping, monitoring, planning and designing stormwater pollution abatement measures are limited to the affected municipalities with stormwater sewer systems which discharge into the waters of Monmouth, Ocean, Atlantic or Cape May counties, provision of abatement measures for combined sewer overflow points is a requirement for any public entity, including any local government unit, within the State operating a combined sewer system.

Grant moneys will be made available from the Act's "Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund" (the "Fund"). The Legislature has appropriated $33.5 million towards the Fund, $2 million of which was reallocated to Operation Clean Shores for a program where prisoners remove debris from the State's beaches. Any local government unit which operates or controls a combined sewer or any affected municipality may submit an application to the Department for up to 90 percent of the allowable inventory, mapping, planning, or design costs to be incurred. A grant applicant is responsible for providing at least 10 percent of the total project costs.

These new rules will set forth the general provisions, procedures and requirements for all the grants that are available under the Act (see N.J.A.C. 7:22A-1 and 2). In addition, the new rules set forth the Department's procedures which will be used to provide grant moneys to the affected municipalities and establish standards for the preliminary mapping and inventory of stormwater sewer systems (see N.J.A.C. 7:22A-3) and those procedures used to provide grant moneys to public entities and local government units authorized to control or operate combined sewer systems (see N.J.A.C. 7:22A-6).

Although the Act requires only the adoption of a final map, the Department encourages all affected municipalities to apply for a preliminary mapping and inventory grant in order to begin the mapping of their stormwater sewer systems. The Department has allocated approximately $6.5 million of the Fund's $31.5 million for the mapping of stormwater sewer systems. Of that $6.5 million, $1,045,400 has been allocated for preliminary mapping and inventory. Grant recipients are required to perform an inventory of all existing maps, studies, surveys and reports concerning the affected municipality's stormwater sewer system and sanitary sewer system. The recipient must also prepare a map of all stormwater outfalls and all stormwater management basins. A narrative description of the characteristics of the outfalls and basins must accompany the preliminary map.

In subsequent rulemaking, the Department will propose rules which will establish the Department's requirements and standards for final stormwater sewer system mapping, stormwater outfall monitoring, and planning and designing abatement measures for nonpoint source pollution and cross-connections between sanitary and stormwater sewers. Grant moneys not distributed during the inventory and preliminary mapping phase will be available for subsequent stormwater pollution abate-

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ment phases including the costs for final mapping and costs for the planning and design of the abatement of cross-connections.

Of the Fund's $31.5 million, the Department has allocated approximately $17,395,000 for the planning and design of combined sewer overflow abatement facilities. Any public entity or local government unit authorized to control or operate a combined sewer system may apply for a grant for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points in accordance with the procedures in N.J.A.C. 7:22A-6. The Department has determined that serious problems are associated with combined sewer systems, particularly dry weather overflow and the discharge of solids and floatables from combined sewer overflow points. Dry weather overflow from a combined sewer overflow point occurs not as a result of stormwater but rather as a result of malfunctions or design flaws in the combined sewer system. The reduction of solids and floatables are another priority at combined sewer overflow points because solids and floatables are presently being discharged directly into the surface waters of the State during combined sewer overflow events.

The following is a summary of each proposed subchapter in N.J.A.C. 7:22A:

SUBCHAPTER 1. GENERAL PROVISIONS

In N.J.A.C. 7:22A-1, the Department sets forth the purpose, scope and definitions for the entire chapter. Subchapter 1 also includes the Department's procedures governing noncompliance with grant agreements and administrative hearing requests. The definitions and procedures are intended to be broad in scope in order to encompass those grant programs which the Department will propose at a later date for final mapping, stormwater outfall monitoring, and the planning and design of cross-connection abatement.

The definitions for N.J.A.C. 7:22A are found in N.J.A.C. 7:22A-1.4. The Department wishes to clearly distinguish a "cross-connection" from an "interconnection." A cross-connection includes any physical connection of a wastewater line to a stormwater sewer line, with the exception of pipes or conduits which solely discharge stormwater. Under the Act, the affected municipalities are required to adopt a final map which identifies all cross-connections and known interconnections and indicates whether they are permitted by the Department. The cross-connection definition includes any physical connections where pollutants enter a stormwater sewer line and excludes those connections which only discharge stormwater. Interconnections, on the other hand, are non-physical connections of a sanitary sewer system with a stormwater sewer system and thus include any flow, leak or overflow from a stormwater or sanitary sewer system into the other.

The Department, in N.J.A.C. 7:22A-1.8 through 1.13, proposes to establish noncompliance procedures for those grant recipients who fail to comply with the provisions of the Act, the chapter or any executed grant agreement. Section N.J.A.C. 7:22A-1.7 is being reserved for an enforcement rule not yet proposed. The Department's noncompliance procedures include noncompliance notices, withholding of funds, stop-work orders, grant agreement termination, grant fund rescission and administrative orders. N.J.A.C. 7:22A-1.16 contains the Department's procedures for those who wish to contest the Department's actions under this chapter and request an administrative hearing. The Department additionally sets forth, in N.J.A.C. 7:22A-1.18, the requirements for access to the facilities and records related to the project.

SUBCHAPTER 2. GRANT AGREEMENT PROCEDURES AND REQUIREMENTS

This subchapter establishes the general procedures and requirements for executing a grant agreement with the Department. It also includes the general conditions of a grant agreement and provisions for modifying a grant agreement. Although the rules in N.J.A.C. 7:22A-2 are generally applicable to any grant agreement executed pursuant to this chapter, applicants and recipients shall also comply with any specific procedures and requirements in other subchapters as may be applicable. For example, whoever applies or receives grants for the preliminary mapping and inventory of a stormwater sewer system must also comply with the specific grant agreement procedures in N.J.A.C. 7:22A-3. N.J.A.C. 7:22A-2.4 includes the specific requirements applicable to each grant agreement. Once a grant agreement is executed, the agreement may be modified pursuant to N.J.A.C. 7:22A-2.5 through 2.8. When procedures and standards for final mapping are established by the Department, those affected municipalities who receive a grant for preliminary mapping and inventory may amend their grant agreements pursuant to the provisions of N.J.A.C. 7:22A-2.5 in order to incorporate a scope of work and budget for a final mapping grant. The procedures for disbursement of grant moneys, in N.J.A.C. 7:22A-2.9, require recipients to submit appropriate cost documentation acceptable to the Department prior to the disbursement of any grant moneys therefor.

SUBCHAPTER 3. PRELIMINARY MAPPING AND INVENTORY

This subchapter sets forth the specific application procedures and substantive requirements for a grant to prepare a preliminary map and inventory of a municipal stormwater sewer system. N.J.A.C. 7:22A-3.2 establishes the eligibility criteria to apply for a preliminary mapping and inventory grant. The Department, in Appendix A, has compiled a list of affected municipalities, those municipalities with stormwater sewer systems which discharge into the salt waters of Atlantic, Cape May, Monmouth or Ocean counties. The affected municipalities listed in Appendix A may submit an application for a grant to the Department. Any municipality, not listed in Appendix A, which considers itself eligible for a grant may petition the Department to be included as an affected municipality by submitting proof that their stormwater sewer system discharges into the salt waters of Atlantic, Cape May, Monmouth or Ocean counties. In order to obtain a grant, the Act requires affected municipalities to provide at least 10 percent of the total allowable cost for the preliminary map and inventory. The Department's grant, on the other hand, may cover up to 90 percent of the cost for the preliminary map and inventory. Appendix A includes the maximum amounts that the Department may provide for each affected municipality. Thus, if an affected municipality's maximum grant amount in Appendix A is $10,000 and the project costs are estimated at $11,000, the Department will only provide a $9,900 grant award because the recipient is obligated to pay 10 percent, or in this case, $1,100 of the project costs.

The maximum grant amount available for each affected municipality under this subchapter is determined by the total number of public road miles within each municipality. The Department believes that roads are a good indicator of the extent of stormwater sewer infrastructure and best represent the relative needs of the affected municipalities. The information on public road miles utilized by the Department was provided by the New Jersey Department of Transportation. These 1982 numbers represent the most recent uniform assessment of public road miles in the State which could be used by the Department to equitably distribute the available funds for preliminary mapping and inventory. The Department calculated the maximum grant awards in Appendix A for each affected municipality by dividing the road miles in each affected municipality by the total road mileage of all affected municipalities and multiplying that percentage by $1,000,000. The Department established a base grant award of $5,000 and a grant award cap of $45,000; all resulting numbers were then rounded to the nearest $50 amount. The resulting total amount of grant moneys available for preliminary mapping and inventory is $1,045,400.

N.J.A.C. 7:22A-3.5 through 3.7 sets forth the application procedures for the preliminary mapping and inventory grant. Applicants must submit a resolution authorizing a signatory, committing the applicant to provide at least 10 percent of the project costs and committing the applicant to conform with the standards for the preliminary mapping and inventory as set forth in N.J.A.C. 7:22A-3. The Department has established an application deadline of October 6, 1989 for preliminary mapping and inventory grants; however, the Department will accept applications filed anytime after July 17, 1989.

N.J.A.C. 7:22A-3.8 through 3.11 establish the preliminary mapping and inventory standards. Grant recipients shall inventory all existing stormwater and sanitary sewer system maps, studies, reports and surveys. The recipient shall also locate, number and map all stormwater outfalls and stormwater management basins within the geographical boundaries of the municipality. Additional narrative information about the stormwater outfalls and stormwater management basins shall be submitted.

Subchapters 4 and 5 are being reserved at this time for future rulemaking.

SUBCHAPTER 6. COMBINED SEWER OVERFLOW FUND PROCEDURES AND REQUIREMENTS

This subchapter prescribes the procedures and requirements for a grant from the Combined Sewer Overflow Fund to plan and design for the elimination of dry weather overflows and for the reduction of the discharge of solids and floatables from combined sewer overflow points. N.J.A.C. 7:22A-6.2 and 6.3 contain a description of the Combined Sewer Overflow Fund and the terms of financial assistance therefrom. The

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Combined Sewer Overflow Fund is a component of the Fund and has been allocated approximately $17,395,000 for the planning and design of combined sewer abatement facilities.

N.J.A.C. 7:22A-6.4 through 6.6 contain the criteria for project priority, restrictions on eligibility for project funding and the procedures for project bypassing. The Department plans to use the ranking criteria of the Priority System, described in N.J.A.C. 7:22A-6.4, as a basis for the distribution of grant moneys from the Combined Sewer Overflow Fund. Although the Project Priority List includes all wastewater treatment projects which have requested inclusion thereon, only the sponsors of combined sewer overflow abatement facilities shall be eligible for Combined Sewer Overflow Fund moneys. Any local government unit or public entity sponsoring combined sewer overflow abatement facilities which are not already included in the existing Project Priority List may include the information required in N.J.A.C. 7:22A-6.4(b) as provided in N.J.A.C. 7:22A-6.8(a). Those local government units and public entities which do not submit a complete application run the risk of being bypassed on the Project Priority List as set forth in N.J.A.C. 7:22A-6.6.

The pre-application and application requirements for grants for combined sewer overflow abatement facilities are set forth in N.J.A.C. 7:22A-6.7 and 6.8. The Department has established an application deadline of October 6, 1989 for combined sewer abatement grants (however, the Department will accept applications filed anytime after July 17, 1989) and may establish an application deadline for grants for future funding cycles as specified in N.J.A.C. 7:22A-6.8. The Department's procedures for the evaluation of applications and the requirements for the submission of supplemental information are included in N.J.A.C. 7:22A-6.9 and 6.10.

The procedures for the disbursement of grant moneys from the Combined Sewer Overflow Fund are set forth in N.J.A.C. 7:22A-6.11. Finally, N.J.A.C. 7:22A-6.12 through 6.15 contain the requirements and conditions for project initiation, allowable project costs, force account work and value engineering. The Department will provide grant moneys from the Combined Sewer Overflow Fund for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points and, to the extent that any grant moneys remain, will establish rules for the award of planning and design grants for water quality based treatment measures at combined sewer overflow points.

Social Impact

The Department's proposed new rules will have a beneficial social impact. The stormwater mapping requirements will give the municipalities a technical data base on which to subsequently implement pollution abatement measures for their stormwater sewer systems. There will be $1,045,400 available to the affected municipalities for the preliminary mapping and inventory grants. The requirement to provide abatement measures at combined sewer overflow points will significantly reduce bacteria, toxics and sediment levels and lead to an improvement in surface water quality. There will be approximately $17,395,000 in grants available to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points. The citizens of New Jersey along with the State's many seasonal visitors will benefit through an improvement in the aesthetic value, health, safety and recreational usability of the surface waters of the State.

Economic Impact

The proposed new rules, by providing a total of $1,045,400 in grants for preliminary mapping and inventory, will enable the affected municipalities to identify and begin to map their stormwater sewer systems. The affected municipalities may apply for a grant to cover up to 90 percent of the preliminary mapping costs but in turn will be responsible for at least 10 percent of the project costs in order to fulfill the requirements of the Act. Although preliminary mapping is only the first step in eliminating stormwater sewer system pollution sources, these rules will provide a positive economic impact by providing funding to begin the process of upgrading estuarine and coastal water quality. By maintaining the unique recreational and aesthetic value that a clean coastal environment creates, real estate and tourism income will not be adversely affected.

By providing approximately $17,395,000 to eligible local government units and public entities, the proposed new rules will help to defray the local government unit's cost for the planning and design of combined sewer overflow abatement facilities and, thus, reduce the costs that would be passed on to the users of the system. While it is the responsibility of local government units and public entities to provide adequate wastewater treatment at combined sewer overflow points, the State has established the Combined Sewer Overflow Fund to provide financial assistance to local government units and public entities in abating their combined sewer overflows. The elimination of the combined sewer overflows will significantly reduce ocean and surface water pollution and promote enhanced protection of public health and safety.

Environmental Impact

The proposed rules will have a positive environmental impact by providing the affected municipalities with money for identifying stormwater sewer system pollution sources. Untreated sewage and nonpoint source pollution are discharged from stormwater sewer systems during and after storm events. The coastal waters of the State are, in turn, subject to elevated levels of bacteria, nutrients, toxics, oil and grease, and other pollutants. Controlling these pollution sources by eliminating, or causing to be eliminated, unpermitted point and nonpoint sources of pollution introduced into a stormwater sewer system will result in coastal water quality improvements. The improvement in water quality will benefit the coastal environment through improvements in the health and preservation of the aquatic ecosystem. This will preserve the natural value of coastal resources including shellfisheries, finfisheries and other aquatic life. The proposed new rules for combined sewer overflow grants promote an environmentally sound strategy for the abatement of combined sewer overflows and are necessary for the enhanced protection of public safety and the preservation of the State's surface waters. The elimination of dry weather overflows and the reduction of solids and floatables at combined sewer overflow points will result in significant water quality improvements.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules will not impose reporting, record keeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The purpose of these new rules is to provide certain municipalities with grants for the preliminary mapping and inventory of stormwater sewer systems and local government units and public entities with grants for the planning and design of combined sewer overflow abatement facilities.

Full text of the proposal follows:

CHAPTER 22A
SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

SUBCHAPTER 1. GENERAL PROVISIONS

7:22A-1.1 Purpose

(a) This chapter prescribes the rules of the Department for the distribution of grant moneys to affected municipalities and other local government units to implement the requirements of the Act. The purpose of these measures is to prevent, control and abate water pollution caused by the discharge of untreated sewage and point and nonpoint source pollutants from stormwater sewer systems and combined sewer systems.

(b) In addition, this chapter is established to assure that the distribution and use of the moneys in the Fund is consistent with the Act and the policies of the State.

7:22A-1.2 Scope

(a) This chapter shall constitute the rules governing the Department's implementation of the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq.

(b) The Act requires all affected municipalities to adopt a map of their stormwater sewer system, monitor stormwater outfall pipes and take appropriate abatement measures for interconnections, cross-connections and nonpoint sources of pollution.

(c) The Act requires any local government unit controlling or operating a combined sewer system within the State to provide appropriate pollution abatement measures at combined sewer overflow points.

(d) Any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory of their stormwater sewer system.

(e) Any local government unit authorized to control or operate a combined sewer system may apply to the Department for a grant

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for the planning and design of dry weather overflow elimination and/or solids/floatables reduction at combined sewer overflow points.

7:22A-1.3 Construction of rules

This chapter shall be liberally construed to permit the Department to discharge its statutory functions under the Act.

7:22A-1.4 Definitions

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

"Act" means the New Jersey Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq.

"Affected municipality" means any municipality with a stormwater sewer system discharging directly into the salt waters of Monmouth, Ocean, Atlantic or Cape May counties.

"Allowable costs" means those costs that are eligible, reasonable, necessary and allocable to the project, permitted by generally accepted accounting principles, approved by the Department in the grant agreement, and/or otherwise determined to be allowable pursuant to this chapter.

"Applicant" means any local government unit or affected municipality that applies for financial assistance pursuant to the provisions of this chapter.

"Certified mail" means any means of delivery where proof of delivery is obtained and date of receipt is recorded.

"Combined sewer system" means a sewer system which carries wastewater at all times and which also serves as the collector and transporter of stormwater from streets or other sources, thus serving a combined purpose.

"Combined sewer overflow" means the excesss flow from a combined sewer system which is not conveyed to the plant for treatment, but transmitted by pipe or other channel directly to waters of the State.

"Combined sewer overflow abatement facilities" includes, but is not limited to, any equipment, plants, structures, machinery, or apparatus, or any combination thereof, acquired, used, constructed, or operated by or on behalf of a local government unit for storage, collection, reduction, recycling, disinfection, reclamation, disposal, separation or other treatment essential to the abatement of combined sewer overflows. Such abatement measures include the elimination of dry weather overflows and the reduction of solids/floatables at combined sewer overflow points.

"Combined Sewer Overflow Fund" means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund as determined by the Department specifically dedicated to providing grants to local government units for the planning and design of combined sewer overflow abatement facilities.

"Combined sewer overflow point" means a discrete point in a combined sewer system which provides for the release of combined sewer overflows.

"Cross-connection" means the permitted or unpermitted physical connection of a wastewater line to a stormwater sewer system. A cross-connection shall not include a physical connection where the wastewater line carries only stormwater.

"Department" means the New Jersey Department of Environmental Protection.

"Design" includes, but is not limited to, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications and other action necessary to design appropriate abatement facilities.

"Director" means the Director of the Division of Water Resources.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A-3.3 which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

"Division" means the Division of Water Resources in the Department.

"Dry weather overflow" means a type of combined sewer overflow which is not the direct result of an increase in wastewater flows due to an event of precipitation.

"Economically disadvantaged individuals" as defined in 15 U.S.C. 637(a)(6) means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged individuals.

"Facilities" means any component or appurtenance of any sanitary or stormwater sewer system.

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendments or supplements thereto.

"Final map" means the map, required by N.J.S.A. 58:25-25, adopted by the affected municipality that locates, lists and numbers all stormwater sewer and sanitary sewer lines within the geographical boundaries of the municipality, which are part of any stormwater sewer system that discharges into surface waters. The map shall also identify all cross-connections and known interconnections between stormwater and sanitary sewer systems, and indicate whether the cross-connections have received a permit from the Department.

"Force account work" means the use of the recipient's own employees or equipment for approved planning or design related activities.

"Fund" means the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund established by N.J.S.A. 58:25-23 et seq.

"Grant agreement" means a legal instrument executed between the State and a grant recipient which authorizes financial assistance and establishes the terms and conditions thereof to implement the provisions of this chapter.

"Grant modification" means any written alteration of the terms or conditions, budget or project method or other administrative, technical or financial provisions of the grant agreement.

"Ground water" means water below the land surface in a zone of saturation.

"Governing body" means chief legislative body of a local government unit or affected municipality.

"Interconnection" means the non-physical connection of sanitary sewer system with a stormwater sewer system. Interconnections may include, but are not limited to, leaks, flows or overflows from the sanitary sewer system into the stormwater sewer system, or vice versa.

"Local government unit" means a county, municipality, or county sewerage or utility authority, municipal sewerage district, joint meeting, or any other political subdivision of the State or public entity authorized to control or operate a combined sewer system.

"Municipality" means a city, town, borough, county, village, parish, district, association or other public body created by or under State law.

"Planning" includes, but is not limited to, the preliminary planning to determine the economic and engineering feasibility of appropriate abatement facilities.

"Preliminary map" means the map which identifies the locations of stormwater outfalls and stormwater management basins within the geographical boundaries of an affected municipality in accordance with the requirements in N.J.A.C. 7:22A-3.10.

"Priority System, Intended Use Plan and Project Priority List" means the document through which projects are evaluated and ranked for funding eligibility by the Department in conformance with State law and the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

"Project" means the defined services as approved by the Department in the grant agreement.

"Recipient" means any applicant which has received financial assistance pursuant to this chapter.

"Salt waters" means waters having salinities generally greater than 3.5 parts per thousand at mean tigh tide.

"Sanitary sewer system" means a network of pipes, conduit or other physical facilities used to carry wastewater to a wastewater

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treatment facility. A sanitary sewer system shall not include a system which carries only stormwater.

"Scope of work" means the detailed description of the extent of services required to complete the project as specified in the grant agreement.

"Socially disadvantaged individuals" as defined in 15 U.S.C. 637(a)(5) means those individuals who have been subjected to racial and ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. 15 U.S.C. 637(d)(3) presumes that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities.

"Solids/floatables" means any wastes or debris floating, suspended or otherwise contained in wastewater or waters of the State.

"State" means the State of New Jersey.

"Stormwater" means waters which result primarily from surface runoff and includes street wash water and drainage.

"Stormwater management basin" means a basin which temporarily impounds stormwater runoff and discharges it through a hydraulic outlet structure or through infiltration to the surrounding soil. A stormwater management basin shall include but not be limited to detention basins, retention basins and infiltration basins.

"Stormwater outfall" means the endpoint of a stormwater sewer system, or any portion thereof, where there is a direct discharge to surface waters.

"Stormwater sewer" means a sewer intended to carry only stormwater.

"Stormwater sewer system" means the designed features within a municipality which collect, convey, channel, hold, inhibit or divert the movement of stormwater.

"Subagreement" means a written agreement between a recipient and another party and any lower tier agreement for services or supplies necessary to complete the project.

"Surface waters" means any waters of the State which are not ground water.

"Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

"Wastewater" means residential, commercial, industrial, or agricultural liquid waste, septage, stormwater runoff or any combination thereof, or other residue discharged or collected into a sanitary or stormwater sewer system, or any combination thereof.

"Wastewater treatment facilities" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed, or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage overflows, sewage collection systems, and other equipment, personal property and appurtenances necessary thereto.

"Water Quality Management Plans" means the plans prepared pursuant to Section 208 and 303 of the Clean Water Act (33 U.S.C. 1251 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

7:22A-1.5 Fund procedures

(a) The moneys appropriated pursuant to the Act and any interest earned thereon shall be deposited in a separate interest bearing account known as the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund. This non-lapsing fund shall terminate upon disbursement of all moneys appropriated pursuant to the Act.

(b) The Department may provide grants to affected municipalities and other local government units to implement the requirements of this chapter.

(c) Prior to awarding any grant money from the Fund, the Department shall, in writing, notify the presiding officers of both houses of the State Legislature of the applications received, the grant recipients, the amounts requested, the amounts to be awarded and the purposes for which the grants shall be used.

7:22A-1.6 Administration and performance of grant agreements

The grant recipient is responsible for the administration and success of the project, notwithstanding any subagreements made by the recipient for accomplishing grant objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Department. Moneys awarded pursuant to this chapter shall be used in conformance with the Act, this chapter and the provisions of the grant agreement to achieve the grant objectives and to insure that the purposes set forth in the Act are fully executed.

7:22A-1.7 Enforcement (Reserved)

7:22A-1.8 Noncompliance

(a) In addition to any other remedies as may be provided by law or by the grant agreement, in the event of noncompliance with any provision of the Act, any condition of the grant agreement or any requirement of this chapter, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22A-1.9;

2. Withhold grant moneys pursuant to N.J.A.C. 7:22A-1.10;

3. Order suspension of project work pursuant to N.J.A.C. 7:22A-1.11;

4. Terminate the grant agreement or rescind the grant moneys pursuant to N.J.A.C. 7:22A-1.12 or N.J.A.C. 7:22A-1.13; and/or

5. Issue administrative orders of enforcement pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

7:22A-1.9 Notice of noncompliance

Where the Department determines that the recipient is not in compliance with any provision of the Act, any condition of the grant agreement, or any requirement of this chapter, it will notify the recipient of the noncompliance. The Department may require the recipient, its engineer and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the corrective action is not taken or the action taken is inadequate, then the Department may issue a stop-work order, withhold disbursement or seek other relief. The Department may, however, withhold disbursement or issue a stop-work order pursuant to N.J.A.C. 7:22A-1.10 and 1.11 without the prior issuance of a notice pursuant to this section.

7:22A-1.10 Withholding of funds

The Department may withhold, upon written notice to the recipient, grant disbursements or any portion thereof where it determines that a recipient has failed to comply with any provision of the Act, any condition of the grant agreement or any requirement of this chapter.

7:22A-1.11 Stop-work orders

(a) The Department may order work to be stopped for good cause, which shall include, but not be limited to the following:

1. Default by the recipient; or

2. Noncompliance with any provision of the Act, any requirement of this chapter or any provision of the grant agreement.

(b) The Department shall limit the use of stop-work orders to those situations where it is advisable to suspend work on the project or portion or phase of the project for important Department considerations.

(c) Prior to issuance of a stop-work order, the Department shall afford the recipient an opportunity to discuss the stop-work order

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with the Department. The Department shall consider such discussions in preparing the order.

(d) Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;

2. A clear description of the work to be suspended;

3. Instructions as to the issuance of further orders by the recipient for materials or services;

4. The duration of the stop-work order; and

5. Other suggestions from the Department to the recipient for minimizing costs.

(e) The Department may, by written order to the recipient (certified mail, return receipt requested), require the recipient to stop all, or any part of, the project work for a period of not more than 45 days after the recipient receives the order, and for any further period to which the parties may agree.

(f) The effects of a stop-work order are as follows:

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the period of the stop-work order or within any extension of that period to which the parties shall have agreed, the Department shall either:

i. Rescind the stop-work order, in full or in part;

ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22A-1.12; or

iii. Authorize resumption of work.

2. If a stop-work order is rescinded or the period of the order or any extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the project schedule, and/or the project, and the grant agreement shall be modified if necessary. However, additional project costs as a result of the stop-work order shall be the responsibility of the recipient.

7:22A-1.12 Termination of the grant agreement

(a) Termination of the grant agreement by the Department shall be conducted as follows:

1. The Department may terminate the grant agreement in whole or in part for good cause, which shall include but not be limited to:

i. Substantial failure to comply with the terms and conditions of the grant agreement;

ii. Default by the recipient;

iii. A determination that the grant moneys were obtained by fraud;

iv. Substantial performance of the project work has not occurred;

v. Gross abuse or corrupt practices in the administration of the project have occurred; or

vi. Grant moneys have been used for unallowable costs.

2. The Department shall give a written notice to the recipient (certified mail, return receipt requested) of its intent to terminate the grant agreement in whole or in part, at least 30 days prior to the intended date of termination.

3. The Department shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the grant agreement in whole or in part.

(b) Termination of the grant agreement by the recipient shall be conducted as follows:

1. A recipient shall not unilaterally terminate the project work for which grant moneys have been awarded except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Director of any complete or partial termination of the project work by the recipient or intent thereof. The term "good cause" shall include, but not be limited to, circumstances beyond the control of the recipient such as fire, flood, riot or strike.

2. If the Department determines that there is good cause for the termination by the recipient of all or any portion of a project for which the grant moneys have been awarded, the Department may enter into a termination agreement or unilaterally terminate the grant agreement effective with the date of cessation of the project work by the recipient. The determination of whether there is sufficient good cause shall be solely within the discretion of the Department. If the Department determines that there is not sufficient good cause, the recipient shall remain bound by the terms and conditions of the grant agreement.

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant agreement pursuant to this section or rescind the grant pursuant to N.J.A.C. 7:22A-1.13.

(c) The Department and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of financial assistance.

(d) Upon termination by either the Department or the recipient, the recipient may be required to immediately refund or repay the entire amount of the grant moneys received from the State and waive the undistributed balance. The Department may, at its discretion, require the immediate repayment of a specific portion of the grant and allow the remainder to be repaid in accordance with a repayment schedule. The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of grant moneys awarded under the grant agreement. The recipient, upon termination, shall make no new commitment without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(e) In addition to any termination action, the Department retains the right to pursue other remedies as may be available under State law as warranted.

7:22A-1.13 Rescission of grant funds

(a) The Department may, in writing, rescind the grant if it determines that:

1. Without good cause therefor, substantial performance of the project work has not occurred;

2. The grant was obtained by fraud; or

3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 30 days prior to the intended date of rescission, the Department shall give a written notice to the recipient (certified mail, return receipt requested) of its intent to rescind the grant. The Department shall afford the recipient an opportunity for consultation prior to rescission of the grant. Upon rescission of the grant, the recipient shall return all grant funds previously paid to the recipient. The Department shall make no further payments to the recipient. In addition, the Department retains the right to pursue such remedies as may be available under State law.

7:22A-1.14 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer moneys pursuant to this chapter and the grant agreement and award subagreements pursuant to those funds free from bribery, graft and corrupt practices. The recipient has the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State shall also have the right to pursue administrative or other legally available remedies.

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Department when such allegation or evidence comes to its attention and shall periodically advise the Department of the status and ultimate disposition of any related matter.

7:22A-1.15 Debarment

(a) No recipient shall enter into a subagreement for work on a project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Recipients shall insert in every subagreement for work on a project a clause stating that any party to any subagreement may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the party commits any of the acts listed in N.J.A.C. 7:1-5.2.

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(c) The recipient, after executing the grant agreement but prior to the acceptance of grant moneys, shall certify that no party to any subagreement is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency in addition to that of the Department. If the grant moneys are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate the grant agreement pursuant to N.J.A.C. 7:22A-1.12 and/or to take such other action pursuant to this subchapter as may be appropriate.

(d) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any subagreement which is or shall be funded from the Fund under this chapter, may present information to the Department why this section should not apply to such a person. If the Commissioner determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contractor in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22A-1.16 Administrative hearings

(a) To request an administrative hearing on a contested case, an affected municipality, local government unit or other municipality aggrieved by a decision or action of the Department may, within 20 calendar days from receipt of the decision or action, submit a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the party requesting the hearing and its authorized representative, if any;
2. The position of the requester on each question of law and fact at issue and its relevance to the Department's decision;
3. Information supporting the requester's position and copies of other written documents relied upon to support the request for a hearing;
4. An estimate of the time required for the hearing (in days and/or hours); and
5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the requester of the decision or within 20 days of the Department's action being challenged shall be denied by the Department.

(c) If the requester fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) During the pendency of the review and hearing, the challenged Department decision or action shall remain in full force and effect, unless a stay has been requested in writing and granted by the Director.

(e) Following receipt of request for a hearing pursuant to (a) above, the Department may attempt to settle the dispute by conducting such proceedings, meetings, and conferences as deemed appropriate.

(f) If it grants the request for a hearing, the Department will file the request for a hearing with the Office of Administrative Law. The hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:22A-1.17 Use and disclosure

All applications and submissions, when received by the Department, constitute public records of the Department. The Department shall make them available to persons who request their release to the extent required by State law.

7:22A-1.18 Access

(a) The recipient and any party to a subagreement shall provide to the Department and any authorized representative of the Department access to the facilities, premises and records related to the project. All subagreements executed by the recipient shall contain provisions allowing the Department access to the facilities, premises and records related to the project.

(b) The recipient shall submit to the Department such documents and information as requested by the Department.

(c) The recipient, and all parties to a subagreement which contract directly with the recipient to receive a portion of State moneys, may be subject to a financial audit.

(d) All records pertinent to the grant agreement shall be retained and available to the Department for a minimum of three years after issuance of the final payment by the Department, until the final audit has been made by the Department or until otherwise required by law.

7:22A-1.19 Publicity

Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State financial assistance.

7:22A-1.20 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this chapter are declared to be severable.

SUBCHAPTER 2. GRANT AGREEMENT PROCEDURES AND REQUIREMENTS

7:22A-2.1 Applicability

This subchapter establishes the Department's procedures and requirements governing the execution of every grant agreement pursuant to the Act. Any affected municipality or local government unit applying for a grant or having received a grant pursuant to the Act shall at a minimum conform with the requirements of this subchapter, as applicable.

7:22A-2.2 Grant award agreements

(a) Subsequent to the receipt of an application, the Department shall prepare and transmit the grant agreement for the grant award to the applicant.

(b) The grant agreement shall set forth the terms and conditions of the grant award, approved project scope, allowable costs, disbursement schedule, and approved commencement and completion dates for the project.

(c) The applicant shall execute the grant agreement within such period of time and pursuant to such terms and conditions as the Department may determine in its sole discretion.

(d) The grant agreement shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the grant agreement. A certified, true sealed copy of the authorizing resolution shall also be submitted to the Department at this time.

(e) The grant agreement shall be deemed to incorporate all requirements, provisions and information in documents or papers submitted to the Department in the application process.

(f) After the State has completed its internal processing and execution of the grant agreement, the Department shall transmit a copy of the executed grant agreement to the recipient.

(g) The State shall not execute a grant agreement if the applicant is in current default on any State loan.

7:22A-2.3 Effect of grant awards

(a) At the time of the execution of the grant agreement by the Department and the recipient, the grant award for the project shall become effective and shall constitute an obligation of moneys in the amount and for the purposes stated in the grant agreement.

(b) Cost overruns shall be the sole responsibility of the recipient. The award of funds shall not commit or obligate the Department to award any continuation or supplemental funds to cover cost overruns of the project.

(c) The award of funds by the State shall not be used as a defense by the recipient to any action by any agency for the recipient's failure to comply with the Act or to obtain all requisite permits, licenses and operating certificates.

7:22A-2.4 Grant conditions

(a) The following requirements, as well as such statutes, rules, terms and conditions which may be applicable, are conditions of each grant, and conditions to each disbursement under the grant agreement:

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1. The recipient shall comply with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.;

2. The recipient shall certify that it and any party to a subagreement maintain their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

3. The recipient shall comply with the rules for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, N.J.A.C. 7:22-9;

4. The recipient shall comply with the permit requirements of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., N.J.A.C. 7:14A and any applicable New Jersey Pollutant Discharge Elimination System permit;

5. The Department shall not be liable for and the recipient shall pay the unallowable costs of the project and shall pay the allowable costs not covered by the grant agreement;

6. The grant agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Department requirements. The recipient shall comply with any special conditions which the Department requires in the grant agreement or any amendment thereto;

7. The recipient shall comply with all applicable requirements of federal, State, and local laws, ordinances, rules and with the requirements of the grant agreement;

8. An amount of any grant disbursement equal to 100 percent of any unpaid portion of a State assessed civil administrative penalty pursuant to N.J.A.C. 7:14-8 shall be withheld until said penalty is paid in full;

9. The recipient shall certify that it has not and shall not enter into any subagreement with, nor has any subagreement been or shall be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of project work;

10. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the grant agreement or approved amendments thereto;

11. The recipient must submit proof that it and any party to a subagreement shall comply with all insurance requirements of the grant agreement and, when appropriate, certify that the insurance is in full force and effect and that the premiums have been paid;

12. The recipient shall certify that it and any party to a subagreement shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. and the rules promulgated pursuant thereto including but not limited to N.J.A.C. 17:27;

13. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11; and

14. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any grant agreement for the project in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq.;

15. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) governing public bodies or utilities created pursuant to New Jersey law to treat wastewater within the territorial boundaries of a service area;

16. The recipient shall comply with the Environmental Assessment Requirements for State Assisted Projects (N.J.A.C. 7:22-10);

17. No Fund moneys shall be disbursed to a local government unit which is in current default on any State loan. In order to facilitate full or partial payment of such defaulted loan obligation, the Department may, at its discretion, make a Fund disbursement where it determines that the affected municipality or local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such defaulted loan.

(b) The recipient shall certify that it is in compliance with all other requirements and conditions of the grant agreement.

(c) The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Act.

(d) Recipients shall include the following statement in each subagreement awarded pursuant to this chapter:

"This contract or subcontract is or may be funded in part with funds from the New Jersey Department of Environmental Protection. Neither the State of New Jersey nor any of its departments, agencies, or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the requirements contained in N.J.A.C. 7:22A."

(e) The recipient shall insert into any subagreements, and shall ensure that their contractor includes within their subcontracts, the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26, the contractor (subcontractor) agrees to comply with all of the provisions of N.J.A.C. 7:22-9."

7:22A-2.5 Project changes and modifications to grant agreements

(a) Due to the limited amount of funds available, there shall be no grant modification increasing the grant amount. Increased costs resulting from a grant modification shall be the responsibility of the recipient.

(b) The recipient shall promptly notify the Division in writing (certified mail, return receipt requested) of events or proposed changes which may require modifications, including but not limited to:

1. Rebudgeting;

2. Changes in approved technical plans or specifications for the project;

3. Changes which may affect the approved scope or objectives of the project;

4. Significant, changed conditions at the project site;

5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and

6. Changes which may increase or decrease the total cost of a project.

(c) If the Department decides a formal amendment is necessary, the recipient shall be notified and a formal grant amendment shall be processed in accordance with N.J.A.C. 7:22A-2.6. If the Department decides a formal grant amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22A-2.7 or 2.8, as applicable.

7:22A-2.6 Formal grant amendments

(a) The Department shall require a formal grant amendment to change principal provisions of a grant agreement where project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof.

(b) The State and recipient shall effect a formal grant amendment only by a written amendment to the grant agreement executed by the State and the recipient.

7:22A-2.7 Administrative changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the recipient, or a nonsubstantial alteration of the disbursement schedule for grant moneys, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient from the Department as specified in the grant agreement.

7:22A-2.8 Other changes

All other project changes, which do not require formal grant amendments as stated in N.J.A.C. 7:22A-2.6, shall be undertaken only upon written approval of the Department.

7:22A-2.9 State disbursements

Disbursement of grant funds shall be made as indicated in the grant agreement at intervals as work progresses and expenses are incurred

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by the recipient and approved by the Department. Total disbursements shall not exceed the cumulative grant moneys indicated in the disbursement schedule of the grant agreement or the allowable costs which have been incurred at that time. No disbursement, other than an advanced payment for preliminary mapping and inventory pursuant to N.J.A.C. 7:22A-3, shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department.

7:22A-2.10 Assignment

The right of a recipient to receive disbursements from the State under a grant agreement may not be assigned.

7:22A-2.11 Unused funds

Where the total amount disbursed under a grant agreement is less than the initial grant award, the grant agreement amount shall be adjusted and the difference retained by the Fund to be reallocated to other projects.

SUBCHAPTER 3. PRELIMINARY MAPPING AND INVENTORY

7:22A-3.1 Applicability

(a) All affected municipalities shall adopt a final map as required by N.J.S.A. 58:25-25.

(b) To facilitate the preparation of a final map, any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory.

7:22A-3.2 Applicant eligibility

(a) Subject to (b) below, any affected municipality, a list of which is included in Appendix A, may apply for a grant to prepare a preliminary map and inventory.

(b) Any municipality may petition the Department's inclusion or omission from Appendix A by submitting documentary evidence which proves to the Department's satisfaction that the municipality's stormwater sewer system either does or does not directly discharge into the salt waters of Atlantic, Cape May, Monmouth or Ocean counties. A municipality may contest the Department's decision on the petition in accordance with N.J.A.C. 7:22A-1.16(b).

7:22A-3.3 Funding

Grant amounts from the Department for preliminary mapping and inventory are based on the applicant's estimated project costs and shall not exceed the maximum amounts listed in Appendix A. The Department may agree to provide up to 90 percent of the allowable project costs (subject to the maximum grant amounts set forth in Appendix A) and the applicant shall provide at least 10 percent of the allowable project costs.

7:22A-3.4 Pre-application procedures

(a) Applicants may request a pre-application conference to discuss application procedures, prior to submission of a grant application. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

(b) Unless otherwise specified, any questions concerning the preliminary mapping and inventory requirements of this subchapter should be directed to the Department of Environmental Protection, Division of Water Resources, Planning and Standards Element, CN-029, Trenton, New Jersey 08625, (609) 633-7010.

7:22A-3.5 Application procedures

(a) Each application for preliminary mapping and inventory grant moneys shall be received by the Department by October 6, 1989 or as otherwise extended by the Department.

(b) Each applicant shall include full and complete documentation in the application, including but not limited to:

1. A brief description of how the grant shall be used and the method of accomplishing those purposes;

2. A description of how the applicant plans to pay for its share of the project costs, including those costs in excess of the grant award necessary to fully complete the project;

3. A description of the steps the applicant plans to take before receivng grant moneys that shall guarantee that at the time of signing of the grant agreement that the applicant shall be irrevocably committed to pay its share of the project costs;

4. An estimated budget of the applicant's project costs;

5. A list of the salt waters into which the applicant's stormwater sewer system discharges; and

6. Any other supplementary materials the Department requires.

(c) Each applicant shall submit a certified true sealed copy of a resolution passed by the applicant. The resolution shall:

1. Authorize the filing of an application for grant moneys for preliminary mapping and inventory;

2. Specify the individual, by name or title, authorized to sign the application on behalf of the applicant;

3. Commit the applicant to providing at least 10 percent of the project costs; and

4. Commit the applicant to comply with the Department's standards for the preliminary mapping and inventory as specified in N.J.A.C. 7:22A-3.

(d) The governing body of any applicant may contract with the county health department or other county health agency to conduct the inventory and prepare the preliminary map in accordance with the requirements of this subchapter.

7:22A-3.6 Application evaluation

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. Incomplete applications will be returned to the applicant with a letter detailing the deficiencies. Incomplete applications which are not amended to conform to the comments of the Department and resubmitted within the timeframe established by the Department may be denied;

2. Budget evaluation to ensure that the proposed project costs are reasonable, applicable and allowable; and

3. Final administrative evaluation.

(b) During the evaluation process, the recipient shall, upon the request of the Department, submit supplemental documents or information necessary for the Department to complete its full review of the application. The Department may suspend its evaluation until the additional information or documents have been received. Failure to submit the additional information or documents may be grounds for denial of the grant application.

7:22A-3.7 Department approval or disapproval

(a) After a final evaluation of a completed application, the Department shall take one of the following actions:

1. Approve the application for a grant and initiate the preparation of a grant agreement; or

2. Disapprove the application.

(b) The applicant shall be notified in writing of the Department's decision to disapprove an application.

(c) An applicant may amend and resubmit an application disapproved by the Department within the timeframe established by the Department.

7:22A-3.8 Reporting requirements

As specified in the grant agreement, the recipient shall submit a copy of the preliminary base map prepared in accordance with N.J.A.C. 7:22A-3.10, a copy of the narrative information prepared in accordance with N.J.A.C. 7:22A-3.11 and a narrative detailing the inventory information gathered in accordance with N.J.A.C. 7:22A-3.9.

7:22A-3.9 Inventory

(a) The recipient shall inventory all existing maps, where available, showing locations of stormwater and sanitary sewer systems. The maps may include tax maps, road maps, paper topographic maps, or other maps or combination of maps.

(b) The recipient shall inventory all existing studies, surveys and reports of the stormwater and sanitary sewer systems.

(c) All maps, studies, surveys, and reports gathered during the inventory shall be maintained on file at one central location that will be identified for the Department by the recipient.

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7:22A-3.10 Preliminary mapping

(a) The preliminary map shall locate and number all stormwater outfalls and all stormwater management basin locations within the geographical boundaries of the affected municipality.

(b) At a minimum, stormwater outfalls and stormwater management basins shall be plotted on the March, 1986 quarter-quad mylar transparent 1:12,000 scale air photo maps and necessary overlays which are available through the Department. The recipient shall include street names for reference purposes.

(c) The recipient shall map all outfalls as a cross at the end of the pipe. Stormwater management basins shall be mapped as a cross within a circle at the outlet point.

7:22A-3.11 Additional information

(a) The recipient shall include the following narrative information in the format provided by the Department with the preliminary map:

1. Information regarding all numbered stormwater outfall locations, including:

i. The diameter of each outfall;

ii. The approximate drainage area to each outfall, in acres;

iii. Accessibility to each outfall;

iv. The number and type of any regulating or treatment structures at each outfall (flow gauges, overflows, etc.);

v. The pipe material of each outfall;

vi. The presence of dry weather discharges from each outfall;

vii. The general land use of the drainage area to each outfall;

viii. The name of the receiving water for each outfall;

ix. The owner of each outfall;

x. The latitude and longitude of each outfall; and

xi. A descriptive location of each outfall.

2. Information regarding all numbered stormwater management basins, including:

i. The size of the basin in acre-feet;

ii. The type of basin;

iii. The type of spillway (if applicable);

iv. The general land use of the drainage area to each basin;

v. The name of the receiving water for each basin;

vi. The owner of each basin;

vii. The latitude and longitude of the outlet point of each basin; and

viii. A descriptive location of each basin.

7:22A-3.12 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by this chapter and the grant agreement. Allowable project costs may include:

1. Work performed by the recipient's personnel, or any party to a subagreement after the effective date of this chapter including salaries and fringe benefits for the recipient's personnel or persons hired to complete the project; and

2. Equipment and supplies necessary used solely to complete the project which shall include, but not be limited to, graphic materials, maps, vehicle operating costs, and protective clothing.

(b) Notwithstanding (a) above, the Department shall not participate in costs for work that the Department determines is not in compliance with this chapter or the specifications or requirements of subagreements or grant agreements. Costs for work not in compliance with this chapter, the subagreements or grant agreements are unallowable.

SUBCHAPTER 6. COMBINED SEWER OVERFLOW FUND PROCEDURES AND REQUIREMENTS

7:22A-6.1 Applicability

This subchapter shall constitute the rules of the Department governing the award of grants pursuant to the Act to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points throughout the State. These rules prescribe the procedures for the award of grants from the Combined Sewer Overflow Fund.

7:22A-6.2 Combined Sewer Overflow Fund

(a) The moneys in the Combined Sewer Overflow Fund shall be available for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points pursuant to the provisions of this subchapter.

(b) Any local government unit authorized to control or operate a combined sewer system shall be eligible to receive grant moneys from the Combined Sewer Overflow Fund. Grant moneys shall be provided to the extent available to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points based on the points awarded to the project in accordance with the Priority System ranking criteria and the submittal of the complete application within the prescribed time frames. As a component of the proposed Priority System, the Department may establish application deadlines for applicable funding cycles and a deadline by which new applications for planning and design grants for dry weather overflow elimination and solids/floatables reduction shall no longer be accepted or acted upon. Any remaining moneys in the Combined Sewer Overflow Fund would be available for other authorized purposes under the Act.

(c) The consideration for a grant award from the Combined Sewer Overflow Fund shall not be used as a defense by the local government unit to any action by any agency for the local government unit's failure to comply with the Act or to obtain and comply with all requisite permits, licenses and operating certificates.

7:22A-6.3 Terms of financial assistance from the Combined Sewer Overflow Fund

(a) The Department may offer grants from moneys made available pursuant to the Act for up to 90 percent of the allowable costs for the planning and/or design of combined sewer overflow abatement facilities.

(b) Moneys will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved by the Department unless otherwise restricted by N.J.A.C. 7:22A-6.11 or unless otherwise indicated in the grant agreement. Local government units shall submit vouchers and other documentation as may be required by the Department in support of their request for disbursement of funds.

(c) The specific terms and conditions of the financial assistance shall be incorporated into the grant agreement to be executed by the recipient and the State.

7:22A-6.4 Criteria for project priority

(a) Each year, the Division shall develop a Priority System, Intended Use Plan and Project Priority List for the forthcoming federal Fiscal Year. The Priority System shall provide the ranking methodology which evaluates wastewater treatment facilities (including combined sewer overflow abatement facilities) individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions.

(b) Each year, the proposed Priority System, Intended Use Plan and Project Priority List shall be the subject of at least one public hearing, including a public comment period. Local government units desiring to be included on the Project Priority List shall make their request for inclusion before the close of the public comment period, except as provided for in N.J.A.C. 7:22A-6.8(a). The following shall be submitted by the authorized representative of the local government unit when requesting inclusion in the Project Priority List:

1. Brief description of the project;

2. Brief description of receiving water classification, existing water quality characteristics and existing water quality deficiencies;

3. Estimated costs associated with planning and design of the project;

4. Estimated costs associated with building the project; and

5. An estimate of population served by the combined sewer.

(c) All requests for inclusion on the Project Priority List shall be sent to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

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(d) Only those local government units committing to the project document submittal or application deadlines shall have their project considered for financial assistance in the forthcoming funding cycle.

7:22A-6.5 State and federal funding

Local government units which receive grants from the Combined Sewer Overflow Fund shall be ineligible to receive financial assistance for the same scope of work (planning or design) for the project in the form of a federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those local government units which receive financial assistance in the form of a federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive grant moneys for the same scope of work (planning or design) for the project pursuant to this subchapter.

7:22A-6.6 Project bypassing

(a) The Department shall consider a local government unit's failure to submit the complete application within the time period specified as a decision to not pursue a grant for the project during the applicable funding cycle. Project applications which do not substantially comply with the requirements of N.J.A.C. 7:22A-6.8 shall be bypassed.

(b) Written notice of a bypass action shall be forwarded to the local government unit. As a result of such action, the project on the Project Priority List shall become ineligible to receive Combined Sewer Overflow Fund moneys in the applicable funding cycle. This action may allow the next highest ranked project to fall within the fundable range on the Project Priority List. A bypassed project shall remain on the Project Priority List for consideration of financial assistance in future funding cycles.

7:22A-6.7 Pre-application procedures

(a) Local government units are urged to be familiar with the requirements of this subchapter and to contact the Department prior to the initiation of the planning process so that their projects are in a position to proceed in a timely manner.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for Combined Sewer Overflow Fund moneys. During the conference, the Department shall identify and explain all application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

(c) Questions concerning the administration of the Combined Sewer Overflow Fund and requests for a pre-application conference should be directed to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
NJ Department of Environmental Protection
CN-029
Trenton, NJ 08625
(609) 292-8961

7:22A-6.8 Application procedures

(a) For the initial funding cycle, completed applications by local government units requesting Combined Sewer Overflow Fund moneys must be received by the Division by October 6, 1989 or as otherwise extended by the Department. Since the project's rank on the Project Priority List is the first step in determining eligibility for Combined Sewer Overflow Fund moneys, sponsors of projects which are not on the current Project Priority List shall provide the information listed in N.J.A.C. 7:22A-6.4(b) before or concurrently with the complete application and in conformance with the applicable deadlines.

(b) For all future funding cycles, sponsors of combined sewer overflow projects shall be required to have their project placed and ranked on the Project Priority List prior to the close of the comment period for the proposed Priority System, Intended Use Plan and Project Priority List. Sponsors shall be notified of applicable application deadlines through the Priority System proposal.

(c) The Department may establish a date by which new applications for combined sewer overflow abatement measures in future funding cycles (i.e., dry weather overflow elimination and solids/floatables reduction) shall no longer be accepted or acted upon.

(d) Any local government unit, which sponsors a project in a jurisdiction in which it is not the governmental entity responsible for the wastewater conveyance and treatment facilities pursuant to the Water Quality Management Plans, to which the combined sewer system contributes shall obtain a resolution from such governmental agency consenting to the undertaking of the local government unit's project prior to or concurrently with the application for Combined Sewer Overflow Fund moneys.

(e) Each application for Combined Sewer Overflow Fund moneys shall be submitted to the Division in conformance with the time period specified or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(f) Submissions which do not substantially comply with this subchapter shall not be processed further and will be bypassed.

(g) The following shall be submitted when applying for a Combined Sewer Overflow Fund grant for the planning of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow Fund grant for planning activities. Each application shall constitute an agreement to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow Fund moneys and specifying the individual authorized to sign the application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.A.C. 10:5) (CGA Form LP-5);

4. A plan of study representing:

i. The proposed planning area;

ii. An identification of the entity or entities that will be conducting the planning;

iii. The nature and scope of the planning of the proposed project including a schedule for the completion of certain tasks and a proposed public participation program (as appropriate); and

iv. A description of the anticipated construction required for abatement and an estimate of anticipated design and construction costs;

5. Comments or approvals of relevant State, local and federal agencies;

6. Draft engineering agreements and related cost documentation associated with specific planning activities. Project sponsors must receive authorization to award any subagreement from the Municipal Wastewater Assistance Element within the Division prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved subagreements prior to or concurrently with the award of a Combined Sewer Overflow Fund grant for planning activities;

7. Adequate information to ensure compliance with the regulations governing the award of contracts to socially and economically disadvantaged individuals (N.J.A.C. 7:22-9);

8. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;

9. A schedule for initiation and completion of the design and building of the project including milestones; and

10. Certification from the local government unit that at least 10 percent of the planning costs for the project will be provided by the local government unit.

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(h) In addition to evidence of planning documentation approval (including evidence of compliance with appropriate Water Quality Management Plans and the Environmental Assessment Regulations (N.J.A.C. 7:22-10)), the following shall be submitted when applying for a Combined Sewer Overflow Fund grant for the design of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow Fund grant for design activities. Each application shall constitute an offer to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow Fund moneys and specifying the individual authorized to sign the application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.A.C. 10:5) (CGA Form LP-5);

4. A plan of study representing:

i. The proposed project area;

ii. An identification of the entity or entities that will be conducting the design;

iii. The nature and scope of the design of the proposed project including a schedule for the completion of certain tasks and a proposed public participation program (as appropriate); and

iv. A description of the estimated building costs for the project;

5. Comments or approvals of relevant State, local and federal agencies;

6. Draft engineering agreements and related cost documentation associated with specific design activities. Project sponsors must receive authorization to award any subagreement from the Municipal Wastewater Assistance Element within the Division prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved subagreements prior to or concurrently with the award of a Combined Sewer Overflow Fund grant for design activities;

7. Adequate information to ensure compliance with the regulations governing the award of contracts to socially and economically disadvantaged individuals (N.J.A.C. 7:22-9);

8. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;

9. A schedule for initiation and completion of the construction of the project including milestones; and

10. Certification from the local government unit that at least 10 percent of the design costs for the project will be provided by the local government unit.

(i) All submittals shall be made in a format compatible with the Department's geographical information system (GIS).

(j) All applications shall be sent to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
NJ Department of Environmental Protection
CN-029
Trenton, NJ 08625

7:22A-6.9 Evaluation of application

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application;

2. Technical and scientific evaluation to determine the merit and relevance of the project to the Department's objectives and the objectives of the Act;

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Division shall either certify the project for funding or bypass the project for funding in the funding cycle for which the application was submitted.

(c) The Division shall promptly notify an applicant by certified mail if its project has been bypassed. As a result of a project bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.

7:22A-6.10 Supplemental information

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete its full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22A-6.11 Combined Sewer Overflow Fund disbursements

(a) For dry weather overflow elimination and solids/floatables reduction planning or design grants, disbursements shall be limited as follows:

1. Disbursements for allowable planning costs shall not exceed 50 percent of the allowable planning costs prior to the submission of complete planning documentation to the Department;

2. Disbursements for allowable planning costs shall not exceed 75 percent of the allowable planning costs prior to the issuance of an environmental assessment in accordance with N.J.A.C. 7:22-10;

3. Disbursements for allowable design costs shall not be made until all planning requirements have been completed to the Department's satisfaction;

4. Disbursements for allowable design costs shall not exceed 50 percent of the allowable design costs prior to the submittal of plans, specifications, contract documents and an engineer's technical design report for the project;

5. Disbursement for allowable design costs shall not exceed 75 percent of the allowable design cost prior to receiving approval of the contract documents for the building of the project from the Municipal Wastewater Assistance Element within the Division.

7:22A-6.12 Project initiation

(a) The recipient shall initiate and complete the project in accordance with the project schedule contained in the grant agreement.

(b) The recipient shall not award any subagreement for planning or design of the project until authorization to award has been given by the Municipal Wastewater Assistance Element within the Division.

7:22A-6.13 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. Allowable project costs may include:

1. The costs of subagreements for planning or design of the project; and

2. The costs for establishing or using small, minority, and women's business liaison services.

(b) Notwithstanding (a), above, unallowable project costs shall include, but not be limited to:

1. The costs for water quality monitoring to obtain a NJPDES permit or Discharge Allocation Certificate;

2. The costs for subagreements for which authorization from the Department to award was not received in advance of the subagreement;

3. The costs for work that the Department determines is not in compliance with the approved scope of work for the project identified in the grant agreement; and

4. The costs for work not in compliance with this subchapter or the subagreements.

7:22A-6.14 Force account work

(a) A recipient can not use force account work for activities related to the scope of work for which the grant was awarded where costs shall exceed $25,000 unless the recipient has received the Division's prior written approval therefore.

(b) The recipient shall demonstrate that:

1. The work can be accomplished cost effectively by the use of force account; or

2. Emergency circumstances necessitate its use.

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7:22A-6.15 Value engineering

(a) Recipients of Combined Sewer Overflow Fund design grants shall conduct value engineering for the project if the total estimated building cost exceeds $10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

APPENDIX A

Affected Municipalities	Road Mileage	Maximum Grant Amount
ATLANTIC COUNTY		
Absecon City	47.29	$ 8,600
Atlantic City	104.91	$19,100
Brigantine City	59.76	$10,900
Corbin City	9.85	$ 5,000
Egg Harbor City	54.81	$10,000
Egg Harbor Township	222.52	$40,500
Estell Manor City	55.57	$10,100
Galloway Township	223.75	$40,750
Hamilton Township	250.41	$45,000
Linwood City	39.88	$ 7,250
Longport Borough	13.40	$ 5,000
Margate City	40.99	$ 7,450
Pleasantville City	66.99	$12,200
Port Republic City	19.26	$ 5,000
Somers Point City	51.29	$ 9,350
Ventnor City	35.82	$ 6,500
Weymouth Township	34.09	$ 6,200
CAPE MAY COUNTY		
Avalon Borough	41.73	$ 7,600
Cape May City	28.58	$ 5,200
Cape May Point Borough	7.67	$ 5,000
Dennis Township	81.06	$14,750
Lower Township	152.53	$27,750
Middle Township	147.53	$26,850
North Wildwood City	35.35	$ 6,450
Ocean City	107.23	$19,500
Sea Isle City	32.34	$ 5,900
Stone Harbor Borough	23.93	$ 5,000
Upper Township	102.23	$18,600
West Cape May Borough	12.90	$ 5,000
West Wildwood Borough	5.75	$ 5,000
Wildwood City	33.60	$ 6,100
Wildwood Crest Borough	31.87	$ 5,800
MONMOUTH COUNTY		
Aberdeen Township	58.77	$10,700
Allenhurst Borough	5.04	$ 5,000
Asbury Park City	35.81	$ 6,500
Atlantic Highlands	23.33	$ 5,000
Avon-By-The-Sea Borough	12.95	$ 5,000
Belmar Borough	24.34	$ 5,000
Bradley Beach Borough	14.42	$ 5,000
Brielle Borough	24.05	$ 5,000
Deal Borough	18.04	$ 5,000
Fair Haven Borough	23.37	$ 5,000
Hazlet Township	65.37	$11,900
Highlands Borough	16.82	$ 5,000
Keansburg Borough	26.99	$ 5,000
Keyport Borough	22.69	$ 5,000
Little Silver Borough	32.22	$ 5,850
Loch Arbor Village	2.05	$ 5,000
Long Branch City	87.00	$15,850
Manasquan Borough	26.38	$ 5,000
Matawan Borough	31.18	$ 5,700
Middletown Township	318.13	$45,000
Monmouth Beach Borough	13.87	$ 5,000
Neptune City	18.32	$ 5,000
Neptune Township	121.23	$22,050
Oceanport Borough	27.03	$ 5,000
Red Bank Borough	29.75	$ 5,400
Rumson Borough	48.22	$ 8,800
Sea Bright Borough	6.66	$ 5,000
Sea Girt Borough	16.74	$ 5,000
Shrewsbury Borough	17.49	$ 5,000
Spring Lake Borough	28.79	$ 5,250
Spring Lake Heights	16.87	$ 5,000
Tinton Falls Borough	60.81	$11,050
Union Beach Borough	24.47	$ 5,000
Wall Township	152.79	$27,800
OCEAN COUNTY		
Barnegat Light Borough	9.80	$ 5,000
Barnegat Township	80.81	$14,700
Bay Head Borough	10.52	$ 5,000
Beach Haven Borough	20.41	$ 5,000
Beachwood Borough	52.10	$ 9,500
Berkeley Township	206.84	$37,650
Brick Township	282.16	$45,000
Dover Township	392.86	$45,000
Eagleswood Township	22.31	$ 5,000
Harvey Cedars Borough	9.24	$ 5,000
Island Heights Borough	11.42	$ 5,000
Lacey Township	166.84	$30,350
Lavallette Borough	16.94	$ 5,000
Little Egg Harbor Township	95.96	$17,450
Long Beach Township	66.20	$12,050
Mantoloking Borough	6.36	$ 5,000
Ocean Gage Borough	12.80	$ 5,000
Ocean Township	48.98	$ 8,900
Pine Beach Borough	14.98	$ 5,000
Point Pleasant Beach	23.64	$ 5,000
Point Pleasant Borough	77.03	$14,000
Seaside Heights Borough	12.27	$ 5,000
Seaside Park Borough	17.18	$ 5,000
Ship Bottom Borough	16.16	$ 5,000
South Toms River Borough	15.49	$ 5,000
Stafford Township	140.40	$25,550
Surf City Borough	17.80	$ 5,000
Tuckerton Borough	18.92	$ 5,000

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Control and Prohibition of Air Pollution by Volatile Organic Substances

Proposed Amendment: N.J.A.C. 7:27-16.3

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

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

Proposal Number: PRN 1989-381.

DEP Docket Number: 028-89-06.

A **public hearing** concerning the proposed amendment will be held on:

August 16, 1989 at 10 a.m.
New Jersey Records Storage Center
2300 Stuyvesant Avenue
Trenton, New Jersey 08628

Submit written comments by August 31, 1989 to:

Gary J. Brower, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

Copies of this notice and of the proposed amendments are being deposited and will be available for inspection during normal office hours until August 31, 1989 at:

Middlesex County Air Pollution Control Program
280 Hobart Street, Room 578
Perth Amboy, New Jersey 08861

Warren County Health Department
108 West Moore Street
Hackettstown, New Jersey 07840

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New Jersey Department of Environmental Protection
Division of Environmental Quality
401 East State Street, Second Floor
Trenton, New Jersey 08625

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Northern Regional Office
1259 Route 46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Twin Rivers Professional Building, Route 33
East Windsor, New Jersey 08520

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Southern Regional Office
20 Clementon Road, 3rd Floor North
Gibbsboro, New Jersey 08026

These amendments will become operative 60 days after adoption by the Commissioner. (See N.J.S.A. 26:2C-8.)

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing amendments to N.J.A.C. 7:27-16, "Control and Prohibition of Air Pollution by Volatile Organic Substances", hereinafter referred to as Subchapter 16. This subchapter controls the emission of volatile organic substances (VOS) by stationary sources to the atmosphere. On December 30, 1988, amendments were made to N.J.A.C. 7:27-16.3, requiring the use of vapor control when gasoline is loaded into marine vessels. The adoption of these amendments appeared in the New Jersey Register at 21 N.J.R. 321(a). The original proposal of these amendments, which appeared August 1, 1988 at 20 N.J.R. 1866(a), required compliance beginning February 28, 1990. This deadline anticipated case-by-case review by the United States Coast Guard (USCG) for its required approval before equipment necessary for compliance can be installed. Subsequent to this proposal, the USCG determined case-by-case review would not be provided and therefore, approval could not be given until uniform safety rules are in place. These Federal rules are not expected to be finalized until February of 1990. In the light of the safety concerns involved, the portion of the rule relating to the compliance deadline was not adopted and motions were made to the court in the case of *American Lung Ass'n* v. *Kean,* Civ. No. 87-288, to determine the most appropriate compliance deadline. The Department is now proposing to incorporate the compliance date of February 28, 1991 established by the court into N.J.A.C. 7:27-16.3. These amendments are proposed as part of the Department's continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone.

Volatile organic substances, in the presence of sunlight, participate in the formation of ozone and other reactive pollutants. Ozone is a known respiratory irritant seriously affecting those persons with chronic respiratory illnesses, such as emphysema and bronchitis. Further, it significantly reduces the yield of important food crops and causes degradation of plastics and rubber. Control strategies for reducing ground-level ozone concentrations are primarily directed toward the control of VOS emissions.

The concentration of ozone in the ambient air in New Jersey during the late spring and summer often exceeds the NAAQS for ozone established by the Federal government to protect human health and welfare. This standard was exceeded in New Jersey on 45 days between May and September, 1988. The highest recorded concentration of ozone for that time period was 0.22 parts per million (ppm), nearly twice the NAAQS of 0.12 ppm average for one hour.

Subchapter 16 controls the emission of VOS from a wide variety of stationary sources. The proposed amendments will establish February 28, 1991 as the date by which controls on the emission of VOS from the loading of gasoline into marine vessels must be operating. Control of this source of emissions will result in emission reductions of 8,100 tons of VOS per year.

A date of December 22, 1989, by which time air pollution control permit applications must be submitted to the Department is also being proposed in these amendments. This date has been established to allow sufficient time for review and issuance of a permit, while leaving the facility adequate time for procurement, installation, and start up. The Department believes that because the safety requirements usually do not affect the efficiency of the control apparatus, review and approval for air pollution control purposes can proceed prior to USCG safety review.

Social Impact

The proposed compliance date is designed to provide sufficient time for industry to complete the design, permitting procurement, installation and testing necessary to implement the use of vapor control during the loading of gasoline into marine vessels. When these controls are used, they will reduce emissions of VOS which are part of a mixture of pollutants that react to form ozone at ground level. The Federal government has established an NAAQS of 0.12 ppm averaged hourly for ozone. Attainment of this standard will have a positive social impact by alleviating the effects on the inhabitants of New Jersey from exposure to elevated ozone concentrations.

Decreased pulmonary function in humans is caused by exposure to ozone concentration higher than the NAAQS. Such exposure may also cause lung damage. Ozone increases the ability of an inhaled infectious virus to survive within the lung. In light of recent evidence that the NAAQS for ozone may not be set low enough to prevent damage to human health, it is even more important to achieve a reduction in the ambient ozone concentration in New Jersey. A reduction in the ground-level ozone concentration will produce a corresponding reduction of respiratory problems associated with exposure to current levels of ozone.

Economic Impact

The proposed compliance date of February 28, 1991 has been set at 12 months from the expected promulgation of the USCG's safety regulations for marine vapor control. This time period has been established by the Federal District Court.

A permit application deadline of December 22, 1989 has been proposed to allow the Department sufficient time for reviewing the applications. Permit applications need not include complete engineering details, but only those details necessary for determination of the control efficiency of the equipment. The Department believes such application can be completed prior to the adoption of safety requirements by the USCG.

The design and installation of vapor recovery equipment will require the use of special facilities. Marine vessels will need dry dock facilities capable of doing the kind of construction work necessary for the installation of vapor recovery lines. There are several dry docks on the east coast, and the USCG has estimated that it would take eight months to a year to retrofit the fleet that services New Jersey. Shoreside facilities may need engineering consultants to help in the design of the vapor recovery equipment.

The technical aspects of the air pollution control requirements for marine vapor recovery have already been adopted. The proposed permit application deadline of December 22, 1989, and compliance date of February 28, 1991, will not impose any increased costs on shoreside facilities. However, in addition to costs previously estimated for installation of required piping on barges, there may be costs associated with loss of business during the out of schedule dry dock period which may be required due to the final compliance schedule proposed. These costs depend on the ability of the barge to find business, the length of contract, and the normal dry dock schedule for a given barge, making it impossible to estimate these additional costs.

Environmental Impact

When the marine vapor recovery program reaches full implementation in February, 1991, approximately 8,100 tons of VOS per year will be prevented from entering the atmosphere. This is higher than the estimate of 6,570 tons of VOS per year which appeared in the August 1, 1988 proposal at 20 N.J.R. 1966(a). New information obtained from the United States Army Corps of Engineers showed a higher volume of gasoline was transferred into marine vessels than originally believed. The resulting 8,100 tons of VOS per year is an average of 22 tons of VOS reductions per day, or twice the 11 tons originally projected for this source category in the 1982 State Implementation Plan.

The reduction in statewide emissions of VOS provided by marine vapor recovery will provide significant progress towards achieving attainment with the NAAQS for ozone. This will alleviate the effects on the environment of New Jersey from exposure to elevated ozone concentrations.

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Foliar damage to sensitive plants is one of the earliest and most obvious manifestations of ozone injury in the environment. Additional effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve damage to plants and thereby improve agricultural productivity and support healthier growth of both natural vegetation and ornamental plantings.

Materials such as rubber, textiles, and dyes and paints can be susceptible to ozone degradation. The damaging effect of ozone is due to its strong oxidizing ability. For example, natural rubbers and synthetic polymers become hard and brittle at a faster rate because of oxidation when exposed to air with an elevated ozone concentration than when exposed to atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate such degradation of natural and man-made materials.

Regulatory Flexibility Statement

This amendment will require marine loading facilities to achieve compliance with the previously adopted technical requirements by February 28, 1991. These facilities are further required to submit the necessary permit applications for previously required equipment by December 22, 1989. Approximately six of the marine loading facilities would be considered "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with this proposal, the small businesses can either rearrange their shipping schedule, if possible, to avoid loading gasoline into barges during the ozone season, or install the necessary control apparatus. To install control apparatus, it is likely that small businesses will need consultants to help in the design of the system. The Department believes the establishment of this permit application deadline and this compliance date will not impose any costs above those estimated in the August 1, 1988 proposal which appeared at 20 N.J.R. 1866(a). Therefore, no further exemption from coverage is provided.

The adoption of this amendment will also affect barge and tankship owners. Petroleum is transported in marine vessels owned by three different entities: oil companies, independent shipping companies, and the government. Of the United States fleet, approximately 30 percent of the tonnage is owned by oil companies, 55 percent by independent shipping companies and 15 percent by the government. Based on information in a 1987 report by Booz, Allen and Hamilton, fifty companies operate roughly 70 percent of all barges nationwide. These companies include major oil companies and large transport companies. Therefore, approximately 15 percent of barge operators could be considered "small businesses" as defined in the New Jersey Regulatory Flexibility Act. These percentages are assumed to be true in New Jersey, and thus 15 barges of a total fleet of 100 can be assumed to be owned by small businesses.

In order to comply with this proposal, the small businesses will need to install vapor collection piping on their barges. To do so, small businesses will need to go to shipyards to have the work performed. Based on USCG estimates of the time necessary to retrofit this equipment, the Department does not anticipate compliance within the proposed timeframe to be a problem.

However, in addition to costs previously estimated for installation of the required piping by small businesses on their barges, there may be costs associated with loss of business during the out of schedule dry dock period which may be required due to the final compliance schedule proposed. Factors such as the ability of the barge to find business, the length of contract, and the normal dry dock schedule for a given barge make it impossible to estimate these additional costs.

Virtually all tankers are owned by major oil companies or national shipping companies. Therefore, none of the owners or operators of tankers are small businesses.

The effectiveness of this amendment is dependent on the vapors generated on board a marine vessel being captured and routed to a shoreside control apparatus. If any vessel is exempted from the requirement to install vapor collection equipment, on an ownership basis, the full effect of this amendment will not be achieved. In balancing the need to protect the environment and human health against the economic impact of this rule on small businesses, it has been determined that no exemption can be provided.

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

7:27-16.3 Transfer operations

(a)-(d) (No change.)

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any substance into any gasoline vapor laden delivery vessel or marine delivery vessel at a gasoline loading facility unless such facility is equipped with and operating a control apparatus in accordance with the following provisions:

1.-3. (No change.)

4. For facilities transferring or loading gasoline into marine delivery vessels, only (d) above, and (k) below, and the following shall apply:

i. Effective [(date to be determined)] **February 28, 1991**, any facility with an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline into marine delivery vessels shall be equipped with and operating a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.

ii. Effective [(date to be determined)] **February 28, 1991**, any facility loading 60,000 gallons (227,100 liters) of gasoline or greater into marine delivery vessels in a single day between May 1 and September 15 shall be equipped with and operating a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.

iii. Effective [(date to be determined)] **February 28, 1991**, any marine delivery vessel receiving gasoline at a facility subject to the provisions of (e)4i or ii above shall have vapor collection piping and connections which route displaced vapors to the control apparatus.

5. **For facilities subject to (e)4i or ii above, by December 22, 1989, the applicant shall submit to the Department a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" pursuant to the provisions of N.J.A.C. 7:27-8. This application shall demonstrate the equipment's ability to reduce the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.**

(f)-(u) (No change.)

HIGHER EDUCATION

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Guaranteed Student Loan Program
Educational Institution Compliance; Corrective Measures
Proposed Amendment: N.J.A.C. 9:9-11.1

Authorized By: New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.

Authority: N.J.S.A. 18A:72-10.

Proposal Number: PRN 1989-358.

Submit comments by August 16, 1989 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority (the Authority) is statutorily responsible for the supervision of Federally guaranteed student loan programs in New Jersey. This proposed amendment supplements N.J.A.C. 9:9-11.1 as amended by an adoption published in the July 3, 1989 New Jersey Register. The rules amended by that adoption set forth requirements for participating institutions administrating the Stafford Loan Program to ensure compliance with procedures, standards by which institutions would be evaluated, corrective measures, and provision for appeals. Recently, the volume of other types of loans under the supervision of the Authority, such as Supplemental Loans for Students (SLS), has increased significantly. For this reason, it is essential that the previously noticed requirements, standards, corrective measures, and appeals provision be extended to encompass all of the student loan

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programs. In this manner, the Authority will be able to more effectively supervise the student loan programs in New Jersey.

Social Impact

The proposed amendment will help ensure that schools are providing proper administration to all New Jersey Higher Education Authority insured loans by requiring compliance with established standards. By requiring this compliance for all loan programs, schools are encouraged to increase the effectiveness of support services provided to student loan borrowers. Strengthening administration and support services of the institutions helps to provide students with stronger student loan programs.

Economic Impact

The proposed amendment extends the school evaluative criteria to all Authority guaranteed loans. In this way, the Authority can assure itself that proper administrative procedures are being followed for all student loan programs. As with the recently amended rules, the proposed amendment does not have a direct economic impact upon the State's institutions of higher education. It does, however, impact on these institutions in the following sense. In order for schools to meet the required standards and procedures of the loan programs, often they must dedicate employees, materials, equipment, or other resources to ensure compliance with the requirements. The amount of monies necessary to meet the standards obviously varies from institution to institution.

Regulatory Flexibility Analysis

The proposed amendment impacts upon certain proprietary schools which are considered to be small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

As stated above, the proposed amendment extends the administrative criteria requirements of schools to all loan programs guaranteed by the Authority. Extending these requirements will help ensure the quality of student loan programs in New Jersey. In order to meet these requirements, the schools must dedicate certain employees, materials, equipment, or other resources. However, the proposed amendment does not place any recordkeeping, bookkeeping, or compliance requirements on such businesses which are not elsewhere imposed by other Federal or State regulations. These schools are held to the same standards as other institutions in the administration of Authority guaranteed student loan programs. The standards cannot be lessened for small businesses of this nature without seriously diluting the quality of student loan programs.

Full text of the proposal follows (additions shown in boldface **thus**):

9:9-11.1 Standards

(a)-(d) (No change.)

(e) **All references to the Stafford Loan Program within this subchapter shall include all New Jersey Higher Education Assistance Authority (NJHEAA) guaranteed loans. These shall include, but not be limited to, the Supplemental Loans for Students (SLS) and Parent Loans for Undergraduate Students (PLUS) Programs.**

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Duration of Student Eligibility

Proposed Amendment: N.J.A.C. 9:11-1.8

Authorized By: Board of Directors of the Educational Opportunity Fund, Judith Cambria, Chairperson.

Authority: N.J.S.A. 18A:71-33.

Proposal Number: PRN 1989-356.

Submit comments by August 16, 1989 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund Program is open to students from educationally and economically disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services for attending institutions of higher education in New Jersey. The Board of Directors of the Educational Opportunity Fund (EOF) determines the income levels for which eligibility to participate in the program is based. The proposed amendment removes the current requirement that institutions must submit a formal written request and await approval by the Executive Director of EOF for students to receive additional term awards up to the maximum available; that is, 12 terms for students at four-year institutions and eight terms for students at two-year institutions.

Social Impact

The proposed amendment will allow institutions to determine whether their students are eligible to receive the maximum number of EOF term payments allowed. This amendment will also expedite the student grant payment process, as well as extend the amount of time basic skills students need to complete their graduation requirements.

Economic Impact

The proposed amendment does not increase the costs of the EOF Program since the appropriations for the program will not be increased as a result of the amendment. The amendment will allow institutions to exercise a greater degree of administrative flexibility, by eliminating the requirement that they formally request the additional term awards from the Executive Director. This should expedite the processing and awarding of student grants.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis since it does not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendment provides institutions with the flexibility to determine students' eligibility for additional semesters of EOF funding.

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

9:11-1.8 Duration of student eligibility

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

(c) Students attending four-year institutions will receive ten terms of E.O.F. payment to complete four class levels. Additional term awards up to the maximum allowable terms are available [upon formal written request from the institution and approval by the Executive Director of E.O.F.] **to students who are making satisfactory academic progress as stipulated in N.J.A.C. 9:1-1.10 and will be able to meet the institution's graduation requirements in these two additional semesters.**

(d) Students attending two-year institutions will be eligible to receive six terms of E.O.F. payment to complete two class levels. Additional term awards up to the eight maximum allowable terms are available [upon formal request from the institution and approval by the Executive Director of E.O.F.] **to students who are making satisfactory academic progress as stipulated in N.J.A.C. 9:1-1.10 and will be able to meet the institution's graduation requirements in these two additional semesters.**

(e) **Formal written request from the institution and approval by the Executive Director of E.O.F. is required for students in an established five year course of study who require additional terms awards up to the 14th maximum allowable term.**

[(e)](f) Graduating seniors in their last semester of study, and sophomores in their last semester at a county college, may take less than 12 credits (full-time status) and remain eligible for E.O.F.

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INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Long-Term Care Insurance

Proposed New Rules: N.J.A.C. 11:4-34

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1 and 17:1C-6(e)

Proposal Number: PRN 1989-385.

Submit comments by August 16, 1989 to:

Verice M. Mason
Assistant Commissioner
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

A major focus of attention on the part of State and Federal governments, consumer groups and the insurance industry is long-term care insurance. Changing demographics, the potentially devastating financial impact of long-term care costs on individuals and families, and the current strain on state Medicaid budgets has fueled the need to develop mechanisms to provide and finance long-term care.

Policies providing long-term care coverage have been available in the United States for the past 15 years. By 1985, fewer than 20 insurers had sold approximately 150,000 policies. In 1989, more than 100 insurers are offering long-term care insurance products nationwide, with about one million policies in force. In addition, at least 11 Blue Cross and Blue Shield plans are now marketing long-term care insurance plans throughout the country.

In New Jersey, five insurers are offering six individual policies, with 2,053 policies in force. Additionally, it is estimated that approximately 5,000 New Jersey residents now have group long-term care coverage.

Compared with other states, these numbers are low. It is believed that a major reason for this is that New Jersey's loss ratio requirement of 65 percent for insureds over age 65 is among the highest in the country. In other words, people in the over 65 age category (where most long-term care purchases fall) can expect a return in benefits of 65 cents for every premium dollar spent. To date, such a high loss ratio requirement has contributed to a reluctance on the part of many insurers to market their long-term care policies in New Jersey.

A significant upswing in marketing activity relating to long-term care insurance is now occurring (24 long-term care submissions are now pending review by the Department) and the development of long-term care products continue to evolve. During the past few years, the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act and Model Regulation have undergone a series of amendments. These changes have occurred because of the relative newness and evolutionary nature of the product.

These proposed rules define long-term care insurance for groups and individuals as providing coverage outside an acute care unit of a hospital for not less than 24 consecutive months. Although studies show that one-fifth of nursing home admissions stay less than 30 days, the 24-month requirement is consistent with the National Center for Health Statistics' finding that the average length of stay is an additional two and a half years for those whose stay lasts longer than three months.

The New Jersey proposal prescribes disclosure and performance standards for long-term care insurance coverage: terms relating to renewability, pre-existing condition limitations, continuation and conversion of group coverage. Cancellation and non-renewal due to age or deterioration in a policyholder's health are specifically prohibited by the proposal. The proposal also prohibits a new waiting period before benefits will be paid if coverage is converted to or replaced by a new policy within the same company, unless the insured voluntarily requests an increase in benefits.

New Jersey's proposal prohibits conditioning eligibility for benefits on prior hospitalization or higher level nursing home care. Many long-term care policies that are currently being sold will not pay nursing home benefits unless the nursing home admission is preceded by a three-day hospital stay. Many policies will also not pay benefits for intermediate or custodial level nursing home care without a prior skilled nursing home stay of specified duration. These limitations severely reduce the likelihood of receiving benefits from the policy.

One of the insurance industry's concerns in developing long-term care products is "adverse selection"—the purchase of insurance by people who are most likely to use it (for example, a person just diagnosed as having Alzheimer's disease; a person who has just been admitted to a nursing home). Recognizing the validity of their concern, insurers are permitted to screen applicants by using applications that elicit a complete medical history.

The New Jersey proposal limits the pre-existing condition waiting period to six months from the effective date of coverage. A pre-existing condition is defined as any condition for which advice or treatment was received in the six-month period prior to purchasing the coverage.

Providing potential buyers of long-term care insurance with policy-specific information is a key component of this proposal. An "Outline of Coverage" describing benefits, exclusions, limitations, renewability, and the conditions under which the insurer can change premiums must be provided at the time of application for coverage, or when the policy is delivered (in the case of insurers selling directly to consumers, not through agents).

Policyholders are also permitted a 30-day "free look", from the date the policy is delivered, to review it and return it for a full refund. To ensure that policyholders are aware of this right, the "free look" provision must be printed on or attached to the first page.

Among the main purposes of the proposed new rules, as indicated in N.J.A.C. 11:4-34.1, is the protection of consumers and, at the same time, allowance for innovation and flexibility in the development of long-term care insurance products. 11:4-34.2 specifies the entities to whom these rules apply, including insurers, health service corporations, fraternal benefit societies, prepaid health plans and health maintenance organizations. Definitions of terms found in the new rules are set forth at N.J.A.C. 11:4-34.3. N.J.A.C. 11:4-34.4 protects New Jersey residents against long term care policies issued in other states to groups which are not recognized in New Jersey. Terms used in long-term care policies are defined in N.J.A.C. 11:4-34.5. Policy practices, provisions and prohibitions are set forth in detail at N.J.A.C. 11:4-34.6. N.J.A.C. 11:4-34.7 contains provisions relating to continuation or conversion of group coverage. Disclosure requirements are stated at N.J.A.C. 11:4-34.8 and replacement requirements are described at N.J.A.C. 11:4-34.9. N.J.A.C. 11:4-34.10 specifies certain discretionary powers available to the Commissioner of Insurance regarding modification or suspension of these rules. Detailed outline of coverage requirements are set forth at N.J.A.C. 11:4-34.11. N.J.A.C. 11:4-34.12 provides for severability and N.J.A.C. 11:4-34.13 requires that long-term care forms be in compliance with these new rules.

Social Impact

Long-term care insurance has been available for approximately 15 years. However, the number of insurers offering long-term care policies nationwide has grown sixfold since 1984 and tripled in the last two years. In addition, the number of policies in force has increased from about 150,000 in 1985 to over one million in 1988. In this same period, policies have changed. A new "generation" has been developed and marketed in each of the last four years.

In the absence of minimum standards, there has been no consistency in policy benefits, definitions, and limitations and restrictions which, in the policies, considerably reduce the likelihood of ever receiving benefits.

The same potential for abuses exists with long-term care insurance as existed with Medicare supplements prior to enactment of the Baucus Amendment and adoption of states' minimum standards earlier in this decade. It is inappropriate, however, to evaluate long-term care insurance by standards developed for Medicare supplements.

Medicare supplements are designed to coordinate with Medicare by paying Medicare eligible, front-end costs associated with acute care. Long-term care policies are designed to cover catastrophic costs associated with chronic conditions; costs that Medicare will not pay.

Most adult New Jersey consumers will benefit from promulgation of these rules. Although most insurers currently selling long-term care offer it to people beginning at age 50, newer policies are being offered to consumers at younger ages.

The new rules will provide consumer safeguards in terms of policy renewability, relationship of premiums to benefits (loss ratio), policy limitations and exclusions, and conversion or continuation of group coverage. These rules will also establish definitions for eligible covered services which will enable interested consumers to effectively compare policies.

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Some insurers may not benefit from the proposed new rules. Insurers offering products which don't comply with the prescribed standards would not be permitted to continue marketing their products as "long-term care" policies. However, most insurers currently developing long-term care products are designing them to comply with the NAIC Model Act and Regulation upon which this proposal is based, and upon which at least 19 states have already based their adopted statutes and/or regulations.

Economic Impact

In 1987, the Health Care Financing Administration (HCFA) reported that national expenditures for nursing home care totaled about $38 billion. Medicaid paid 41.1 percent of these costs; Medicare, the Veterans Administration, and other State programs 6.4 percent; indivuduals and families 51 percent; and private insurance one percent.

With nursing home costs ranging from $25,000 to $50,000 per year, the House Select Committee on Aging reports that over half of the couples with one spouse in a nursing home become impoverished within six months, and 70 percent of single elderly patients reach the poverty level after 13 weeks in a nursing home.

In New Jersey, in Fiscal Year 1987, 36 percent of Medicaid expenditures ($473 million) were for nursing home care, whereas less than three percent ($32 million) were for home health care.

Adoption of these new rules will ensure that future long-term care insurance policies will pay benefits for a variety of services, not covered by most health insurance policies or Medicare, without certain policy exclusions and limitations that previously reduced the likelihood of receiving benefits. With the availability of viable long-term care insurance products, it is possible to reduce costs to some State Medicaid programs and to reduce long-term care out-of-pocket costs to individuals and families.

Promulgation of these rules should not result in additional costs to any state agency. Since the Department of Insurance already has prior approval authority with respect to long-term care insurance products, regulatory costs to the Department should remain constant.

Regulatory Flexibility Statement

The Department believes that few, if any, insurers subject to the proposed new rules are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, the new rules impose no undue burden or adverse economic impact upon insurers which may qualify as "small businesses."

Small companies can expect to incur modest additional administrative expenses, but compliance with the proposed new rules requires only minimal additional reporting and should impose little or no change in the companies' present operations. It is anticipated that the insurers presently maintain, or otherwise provide for, all services which may be required in order to comply with the new rule. All companies should be able to easily absorb these costs.

Because the cost of compliance with these proposed new rules is minimal, and represents no adverse economic impact upon small businesses, no exceptions for compliance by small insurers have been incorporated into the rules.

Full text of the proposal follows:

SUBCHAPTER 34. LONG-TERM CARE INSURANCE

11:3-34.1 Purpose

The purpose of this subchapter is to implement the insurance laws of this State, to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

11:4-34.2 Applicability and scope

Except as otherwise specifically provided, this subchapter applies to all long-term care insurance policies delivered or issued for delivery in this State on or after the effective date hereof, by insurers; fraternal benefit societies, nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

11:4-34.3 Definitions

Unless the context requires otherwise, the definitions in this section shall apply throughout this subchapter.

"Applicant" means:

1. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits, and

2. In the case of a group long-term care insurance policy, the proposed certificate holder.

"Certificate" means, for the purposes of these rules, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this State.

"Commissioner" means the Commissioner of Insurance.

"Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this State and issued to:

1. A group conforming to one of the descriptions set forth in N.J.S.A. 17B:27-2 to N.J.S.A. 27-8 inclusive.

2. A group other than as described in paragraph 1, subject to a finding by the Commissioner that:

i. The issuance of the group policy is not contrary to the best interests of the public;

ii. The issuance of the group policy would result in economies of acquisition or administration; and

iii. The benefits are reasonable in relation to the premiums charged.

Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide benefits for not less than 24 consecutive months for such covered person on an expense incurred, indemnity, prepaid or other basis; for one or more medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations or any similar organization. Long-term care insurance shall not include any insurance policy which is offered primarily to provide life insurance coverage, term of care coverage of less than 24 months, basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, mental health or substance abuse coverage, or limited benefit health coverage.

"Policy" means, for the purposes of these rules, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery, in this State by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization or any similar organization.

11:4-34.4 Filing requirement

No group long-term care insurance coverage may be offered to a resident of this State under a group policy issued in another state to a group described in paragraph 2 of the definition of "group long-term care insurance" (N.J.A.C. 11:4-34.3), unless it has been submitted to and filed by the Commissioner, in accordance with the laws and regulations of this State.

11:4-34.5 Policy definitions

(a) No long-term care insurance policy delivered or issued for delivery in this State shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements.

1. "Medicare" shall be 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 Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

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2. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disorder.

3. "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

4. All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

11:4-34.6 Policy practices, provisions and prohibitions

(a) No long-term care insurance policy shall:

1. Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

2. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

3. Provide coverage for skilled nursing care only, or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care, or provide coverage that conditions eligibility for benefits for levels of care on the receipt of higher levels of care.

4. Require prior institutionalization to condition, limit or restrict eligibility for benefits.

(b) Preexisting condition limitations in long-term care insurance policies or certificates shall not exclude coverage for more than six months after the effective date of coverage under the policy for a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage. Nothing however, shall prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.

(c) The loss ratio standards set forth in N.J.A.C. 11:4-18.5; the minimum standards provisions set forth in N.J.S.A. 17B:26-45 and N.J.A.C. 11:4-16, 17 and 18; and the reserve requirements set forth in N.J.S.A. 17B:19-5 and N.J.A.C. 11:4-6 are hereby incorporated by reference and shall apply to long-term care insurance, to the extent that such standards, provisions and requirements are not inconsistent with these rules.

(d) Individual long-term care insurance policyholders shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation shall have the right to return the policy within 30 days of its delivery and to have the premium refunded, if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(e) A certificate issued pursuant to a group long-term care insurance policy delivered or issued for delivery in this State shall include:

1. A description of the principal benefits and coverage provided in the policy;

2. A statement of the principal exclusions, reductions and limitations contained in the policy; and

3. A statement that the group master policy determines governing contractual provisions.

(f) The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language, in accordance with the disclosure requirements of N.J.A.C. 11:4-34.8(a).

1. No such policy issued to an individual shall contain renewal provisions less favorable to the insured than "guaranteed renewable."

2. The term "guaranteed renewable" shall be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

3. The term "noncancellable" shall be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(g) No policy shall be delivered or issued for delivery in this State as long-term care insurance, if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except in the case of the following:

1. Preexisting conditions or diseases, in accordance with (b) above and N.J.A.C. 11:4-34.8(d);

2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;

3. Alcoholism and drug addiction;

4. Illness, treatment or medical condition arising out of:

i. War or act of war (whether declared or undeclared);

ii. Participation in a felony, riot or insurrection;

iii. Service in the armed forces or units auxiliary thereto;

iv. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

v. Aviation (this exclusion applies only to non-fare-paying passengers); or

5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

6. This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(h) Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization, if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(i) No policy may be advertised, marketed or offered as long-term care or nursing home insurance unless it complies with the provisions of these rules.

11:4-34.7 Continuation or conversion of group coverage

(a) Group long-term care insurance issued in this State on or after the effective date of these rules shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.

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(c) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of this group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(d) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. If the policy from which conversion is made restricts provision of benefits and services to named providers or facilities, and the circumstances of termination make continued use of these providers or facilities impossible or impractical, the converted policy shall provide coverage on an indemnity or expense incurred basis with benefits determined by the Commissioner to be substantially equivalent to the reasonable cost of services provided by the named providers or facilities, and shall not restrict provision of benefits and services to any named providers or facilities.

(e) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(f) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

1. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

2. The terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

i. Providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

ii. The premium for which is calculated in a manner consistent with the requirements of subsection (f).

(h) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

11:4-34.8 Required disclosure provisions

(a) Individual long-term care insurance policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

(c) A long-term insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(e) A long-term care insurance policy or certificate containing any limitations or conditions for eligibility, other than those prohibited by these rules, shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

11:4-34.9 Requirements for replacement

(a) Individual and direct response solicited long-term care insurance application forms shall include a question designed to elicit information as to whether the proposed insurance policy is intended to replace any other accident and health or long-term care insurance policy presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer (other than an insurer using direct response solicitation methods, or its agent) shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and health or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND HEALTH OR LONG-TERM CARE INSURANCE

According to [(your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits

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under the new policy, whereas a similar claim might have been payable under your present policy.

2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest, to make sure you understand all the relevant factors involved in replacing your present coverage.

3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

(c) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and health or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH OR LONG-TERM CARE INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under this new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

3. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

_____
(Company Name)

11:4-34.10 Discretionary powers of the Commissioner

(a) The Commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of these rules, with respect to a specific long-term care insurance policy or certificate upon a written finding that:

1. The modification or suspension would be in the best interest of the insureds; and

2. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

3. The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

i. The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

ii. The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

11:4-34.11 Outline of coverage

(a) An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. Such outline of coverage shall include:

1. A description of the principal benefits and coverage provided in the policy;

2. A statement of the principal exclusions, reductions and limitations contained in the policy;

3. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums; and

4. A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

(b) The outline of coverage shall be a free-standing document, using no smaller than ten point type.

(c) The outline of coverage shall contain no material of an advertising nature.

(d) Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.

(e) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(f) The format for the outline coverage shall be as follows:

[COMPANY NAME]
[ADDRESS—CITY & STATE]
[TELEPHONE NUMBER]
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

i. [Provide a brief description of the right to return—"free look" provision of the policy.]

ii. [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

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ii. [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY.

i. [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

ii. [Institutional benefits, by skill level.]

iii. [Non-institutional benefits, by skill level.] [Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.]

7. LIMITATIONS AND EXCLUSIONS.

[Describe:

i. Preexisting conditions;

ii. Non-eligible facilities/provider;

iii. Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

iv. Exclusions/exceptions;

v. Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

i. That the benefit level will *not* increase over time;

ii. Any automatic benefit adjustment provisions;

iii. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

iv. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

v. And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

[i. Describe the policy renewability provisions;

ii. For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;

iii. Describe waiver of premium provisions or state that there are not such provisions;

iv. State whether or not the company has a right to change premium and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

i. [For agents] Neither [insert company name] or its agents represent Medicare, the federal government or any state government.

11. PREMIUM

[i. State the total annual premium for the policy;

ii. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

12. ADDITIONAL FEATURES

[i. Indicate if medical underwriting is used;

ii. Describe other important features.]

11:4-34.12 Severability

If any provision or clause of this subchapter or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application 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 severable.

11:4-34.13 Compliance

Approval of all forms not in compliance with this subchapter is hereby withdrawn as of December 1, 1989. No such form may be issued after this date unless it has been submitted to and filed by the Commissioner subsequent to January 1, 1990, or unless a rider approved subsequent to such date has been attached bringing such form into compliance with this subchapter.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Notice of Comment Period Extension

Technical Sufficiency Standards for Solar Energy Devices or Systems for the Purposes of Qualifying for a Sales and Use Tax Exemption

Proposed New Rules: N.J.A.C. 12A:55

Take notice that the public comment period for proposed new rules N.J.A.C. 12A:55, Technical Sufficiency Standards for Solar Energy Devices or Systems for the Purposes of Qualifying for a Sales and Use Tax Exemption, published in the February 6, 1989 New Jersey Register at 21 N.J.R. 282(a), has been extended to August 15, 1989.

Submit comments by August 15, 1989 to:

Edward J. Linky, Esq.
Chief Regulatory Officer
Division of Energy Planning and Conservation
101 Commerce Street
Newark, New Jersey 07102

LAW AND PUBLIC SAFETY

(b)

STATE BOARD OF MEDICAL EXAMINERS

Pronouncement of Death and Completion of Death Certificate

Proposed Repeal and New Rule: N.J.A.C. 13:35-6.2

Authorized By: Frank J. Malta, M.D., President, New Jersey Board of Medical Examiners.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1989-369.

Submit comments in writing by August 16, 1989 to:

Charles A. Janousek, Executive Director
Board of Medical Examiners, Room 602
28 West State Street
Trenton, New Jersey 08608

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The agency proposal follows:

Summary

The New Jersey Board of Medical Examiners proposes to repeal the current text of N.J.A.C. 13:35-6.2, a rule concerning the pronouncement of death and replace it with a new rule providing new direction regarding the obligations of a physician when a patient dies. The proposed new rule establishes a working definition of the term "attending physician" for the limited purpose of death pronouncements and completion of death certificates and delineates those acts covered by the term "pronouncement of death." The most significant difference from the current rule is that the new rule removes the former absolute requirement that the pronouncement of death be made at the actual death scene; the physician may now direct the transfer of the body to another location, such as a hospital or the physician's own office. The rule retains the requirement in the prior text that where the decedent has an attending physician, that physician shall be responsible for providing the final services of pronouncement and certification, either personally or through a designee. The new rule also mandates cooperation with the county Medical Examiner in supplying such details as may be required for determination as to whether the Medical Examiner has jurisdiction in the case, and it provides guidelines for statement of the cause of death on the death certificate.

The proposal makes clear that a physician who is covering a practice is obligated to fulfill all pronouncement duties incumbent upon the physician for whom he or she is substituting.

Social Impact

New Jersey law requires that before a human being shall be considered dead—with all the legal, social, medical and practical consequences of that statement—the person must be officially pronounced dead by one authorized by law to do so: currently, a licensed physician, a registered professional nurse, or if there is no attending physician or attending registered professional nurse, the county medical examiner, (N.J.S.A. 26:6-8). State law also requires that within a reasonable time but not exceeding 24 hours after the official pronouncement, a death certificate shall be completed and signed by specific categories of licensed professionals. The proposed new rule provides guidance as to the acts expected of the Medical Board's licensees in meeting these statutory duties.

The change from the prior text requiring the pronouncement of death to be made at the actual site of death is expected to be beneficial to the public as well as to physicians. In recent years, families and friends of decedents have reported increasing difficulty in finding someone who is both authorized to make the official pronouncement of death and willing to travel to the place of death in order to make that pronouncement. This appears to be the result of one or more of the following factors: (1) In today's mobile society, many individuals do not have a personal attending physician. (2) Even where the individual has had some contact with a physician, it may have been with a doctor who has a large practice and for whom the task may be extremely inconvenient or disruptive to that doctor's responsibilities to be available for his or her living patients waiting to be treated. (3) Similarly, the patient may have chosen to travel to a physician whose office is geographically distant, sometimes even in another state. It would be unreasonable to expect that the physician will travel at any hour of the day or night to perform the last professional service of making a pronouncement of death.

The Board has determined that this problem can be alleviated by permitting the pronouncement of death (including physical examination) to be made at a more convenient location than the actual scene of death, and the proposed rule allows transfer of the body for that purpose. This measure should decrease the strain on family or friends of the decedent by eliminating a pressured search for someone authorized to make the pronouncement who is willing to go to the site of death.

Since the rule also affirms a physician's responsibility, if unavailable, to make arrangements in advance to delegate to another physician the obligations of pronouncement and provision of death certificate information, patients and their families will be assured of the availability of a qualified person to handle these death services.

Economic Impact

The new rule is expected to have some economic impact on private physicians and on families of decedents, as the attending physician or his/her designee will find it easier to comply with the responsibility to perform the pronouncement of death (including examination) and to complete the death certificate at a convenient location, such as the funeral home, without the stress of the very short time constraint imposed by the prior rule, which mandated that the body could not be moved until the doctor had actually arrived at the scene. The resultant savings in physician time may be reflected in slightly reduced medical costs borne by the decedent's estate or family.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, physicians are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed rule imposes certain reporting, record keeping and other compliance requirements on licensees of the Board of Medical Examiners, 27,783 of whom are plenary licensed physicians.

The proposed requirements relate to actions to be undertaken by a licensee upon notification of a patient's death. The rules must obviously apply to all of the Board's licensees, without differentiation as to size of practice, since they concern duties mandated by statute.

There are no compliance costs beyond those presently incurred in the standard practice of medicine.

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

[13:35-6.2 Pronouncement of death

(a) The official pronouncement of death is a medical determination and the primary responsibility of the decedent's attending physician or designated covering physician.

(b) A Certificate of Death shall be prepared and completed by a physician. The factual date set forth in the Certificate shall be based to the greatest extent possible, upon the personal knowledge of the physician preparing the Certificate. The physician may, however, exercise reasonable professional judgment and incorporate in the Certificate factual assertions ascertained by another health care professional, as set forth below.

(c) Upon notification of an apparent death, the attending physician or designated covering physician shall proceed without inordinate delay to the location of the presumed decedent and shall make the proper determination and pronouncement of the death.

(d) Where the apparent death has occurred outside a licensed hospital and the attending or covering physician has been notified but is unable to go to the location to make the determination and pronouncement, said physician may specify another physician or may arrange with a professional nurse (R.N.) or a paramedic certified by the Board of Medical Examiners to attend the presumed decedent and make the determination and pronouncement. In every such instance a written record, which may be contained within a police record, shall be prepared describing the circumstance and identifying the physician and any other person designated as above to perform the death pronouncement responsibility. Such report shall be promptly communicated orally to the attending physician for use in preparation of the death certificate. A copy of the report shall be provided to the physician as soon as practicable.

(e) Where the probable death has occurred outside a licensed hospital and the attending or covering physician is known but cannot be reached after exercise of reasonable diligence, or no attending physician is known, then any physician, professional nurse or paramedic may proceed to the scene and make the determination and pronouncement of death. A written record shall be prepared as set forth in (d) above. Following pronouncement of death, the information shall be promptly communicated to the physician for preparation of the death certificate and a copy of the report provided as soon as practicable. If no attending physician is known, the death shall be immediately reported to the County Medical Examiner.

(f) In cases of death within the jurisdiction of the County Medical Examiner, the examiner shall without inordinate delay require the proper and established means for the determination and pronouncement of death, and shall arrange for the removal of the body and completion of the death certificate.

(g) Nothing contained in this section shall be deemed to impose an obligation upon any person not licensed by the Board of Medical Examiners to pronounce death.]

13:35-6.2 Pronouncement of death and completion of death certificate

(a) The following terms shall have the following meaning unless the context in which they appear indicates otherwise:

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"Attending physician" means any Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) who, within the six months prior to the person's death, had attended, supervised or directed ongoing medical treatment of that patient for a significant medical illness which could lead to death. A physician providing such ongoing treatment, who has issued a prescription to the person within that six month period will be deemed to be an attending physician, regardless of whether the physician has personally examined the person within the period.

"Certificate of Death" means an official document prepared for filing pursuant to N.J.S.A. 26:6-6 et seq., which is signed by a physician and includes an immediate cause of death and contributing cause(s).

"Licensee" means any person licensed or authorized to engage in a health care profession regulated by the Board of Medical Examiners.

"Pronouncement of Death" means the act of conducting an inquiry concerning the circumstances of a death, the performance of which includes a complete external examination of the unclothed body and the rendition of an opinion as to whether the death appears to have resulted from unlawful or accidental means.

(b) Every physician licensed by the Board and engaged in the active practice of medicine in this State shall take measures to assure that he or she can meet obligations set forth herein as they may relate to his or her patients. If the physician is unavailable, he or she shall arrange for another physician to assume these responsibilities. Any physician who assumes the responsibility for covering a practice shall be obligated to fulfill these responsibilities.

(c) Licensees who are made aware that a patient died in any setting other than a hospital shall notify the Medical Examiner in the county in which the death occurred.

(d) Licensees with knowledge concerning the physical scene of the death and/or the condition of the body, shall cooperate with the Medical Examiner, providing verbal information (or a subsequent written submission, if requested) as may be needed by the Medical Examiner to determine whether the County Medical Examiner has jurisdiction over the case.

(e) Should the Medical Examiner determine that the case does not fall within his or her jurisdiction, he or she may, at their discretion, release the body.

(f) Upon being contacted, the attending physician, with reasonable dispatch, must pursue one of the following courses of action:

1. Proceed to the scene of the death to perform a pronouncement of death; or

2. Direct that the body be transported to another location (for example, hospital, physician's office, funeral home, morgue); or

3. In the event that the death has occurred in the home or place of residence of the deceased or in a hospice, long term facility or nursing home, request that the responsibility for performing a pronouncement be undertaken by a registered nurse who has agreed to accept this responsibility.

(g) The attending physician performing a pronouncement shall so indicate in the space provided for that information on the Certificate of Death. When that task has been performed by a registered nurse at the attending physician's request, he or she shall ensure that the nurse's signature has been obtained.

(h) In the event that the attending physician, in the course of performing the pronouncement, has reason to believe that the death resulted from unlawful or accidental means, he or she shall contact the Medical Examiner and so advise.

(i) Within 24 hours of having received notification of the death, the attending physician shall sign the Certificate of Death, providing an immediate cause of death as well as such contributing causes as the physician can best determine from the medical history obtained from other physicians, family or friends of the decedent, the condition of the body when pronounced and the circumstances known concerning the death. If the physician lacks sufficient information to provide a specific immediate cause of death, he or she may indicate an underlying potentially fatal medical condition.

(a)

DIVISION OF CONSUMER AFFAIRS

State Board of Mortuary Science

Proposed Readoption: N.J.A.C. 13:36

Authorized By: Stephen J. Scillieri, President, State Board of Mortuary Science.

Authority: N.J.S.A. 45:7-38.

Proposal Number: PRN 1989-364.

Submit comments in writing by August 16, 1989 to:
Maurice W. McQuade, Executive Director
State Board of Mortuary Science, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 13:36 is scheduled to expire on November 19, 1989. The current rules have been reviewed pursuant to the Executive Order and the Board has found them to continue to be reasonable, necessary and effective for the purposes for which they were originally promulgated. Therefore, they are being proposed for readoption without changes to the current text.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the mortuary science profession by enabling the Board to have in place procedures which serve and protect the public's best interests. Chapter 36 contains nine subchapters. Subchapter 1 describes administration of the Board, a schedule which outlines Board fees, and record keeping rules for funeral homes. Subchapter 2 describes internship requirements. Subchapter 3 contains examination requirements and procedures. Subchapter 4 describes license and funeral home registration generally. Subchapter 5 contains requirements to operate a mortuary. Subchapter 6 contains embalming procedures. Subchapter 8 contains general rules of practice. Subchapter 9 contains rules for the prevention of unfair or deceptive acts and practices. Subchapter 7 is reserved.

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operations and the conduct of examinations in order to ensure that truly qualified morticians are licensed and funeral homes are suitable for public use. The fees contained in N.J.A.C. 13:36-1.6 are reasonable.

Economic Impact

The readoption of the rules will have no unfavorable economic impact upon candidates or licensees, since the fees have been the same for several years. Due to the fact that funding of the Board's operation is partially attained by the fee structure now in place, failure to readopt would place the Board's operation in jeopardy.

Regulatory Flexibility Statement

It is unclear whether the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., was intended to cover individual practicing professional licensees, but on the assumption that it is applicable, the following statement is relevant:

The State Board of Mortuary Science currently has registered approximately 800 funeral homes and approximately 2,000 licensed individual practitioners. The rules proposed for readoption do contain reporting (N.J.A.C. 13:36-4.2 and 5.16), record keeping (N.J.A.C. 13:36-1.8 and 9.18), and compliance requirements relating to licensure and practice which may affect licensees who practice as small businesses. Because these rules seek to promote and protect the public health and welfare through regulation of practitioners of mortuary science, no differentiation in compliance based upon business size is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:36.

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(a)

NEW JERSEY RACING COMMISSION

Horse Racing; Admittance of Children to Racetrack

Proposed Amendment: N.J.A.C. 13:70-3.40

Authorized By: Charles K. Bradley, Deputy Director, New Jersey Racing Commission.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1989-378.

Submit comments by August 16, 1989 to:
Charles K. Bradley, Deputy Director
c/o New Jersey Racing Commission
CN 088, 200 Woolverton Street
Trenton, New Jersey 08626

The agency proposal follows:

Summary

The proposed amendment would allow for the admittance of children, at night, to a racetrack when they are accompanied by an adult, parent or guardian.

Economic Impact

The proposed amendment would have a minimal impact on the track associations for paid admissions.

Social Impact

The social impact of the proposed rule amendment is considered to be positive in that many patrons visit seasonal racetracks with their family and under the present rules they would not be allowed to bring children in for nighttime racing. The Commission has experimented with allowing children in at nighttime races for selected meets and have not encountered any serious problems with the admittance of children. Several of the racetracks are contemplating having designated areas where children should be.

Regulatory Flexibility Statement

The proposed amendment would lift the ban on admittance of children to a racetrack during nighttime racing. The proposal therefore imposes no compliance requirements on a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

13:70-3.40 Admission; age

(a) Any child under 16 years of age must be accompanied by an adult, parent or guardian to be admitted to any [daytime] racetrack enclosure as a spectator during the hours when the running of races is being conducted.

[(b) Any child between the ages of 12 and 16 must be accompanied by an adult, parent or guardian to be admitted to any nighttime racetrack enclosure as a spectator during the hours when the running of races is being conducted. No child under 12 years of age shall be admitted to any nighttime racetrack enclosure as a spectator during the hours when the running of races is being conducted.]

[(c)]**(b)** No person under the age of 18 shall be permitted to wager or in any manner participate in any pari-mutuel pool or system.

(b)

NEW JERSEY RACING COMMISSION

Harness Racing; Admittance of Children to Race Tracks

Proposed Amendment: N.J.A.C. 13:71-5.18

Authorized By: Charles K. Bradley, Deputy Director, New Jersey Racing Commission.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1989-376.

Submit comments by August 16, 1989 to:
Charles K. Bradley, Deputy Director
c/o New Jersey Racing Commission
CN 088, 200 Woolverton Street
Trenton, New Jersey 08626

The agency proposal follows:

Summary

The proposed amendment would allow for the admittance of children, at night, to a racetrack when they are accompanied by an adult, parent or guardian.

Economic Impact

The proposed amendment would have a minimal impact on the track associations for paid admissions.

Social Impact

The social impact of the proposed rule amendment is considered to be positive in that many patrons visit seasonal racetracks with their family and under the present rules they would not be allowed to bring children in for nighttime racing. The Commission has experimented with allowing children in at nighttime races for selected meets and has not encountered any serious problems with the admittance of children. Several of the racetracks are contemplating having designated areas where children should be.

Regulatory Flexibility Statement

The proposed amendment would lift the ban on admittance of children to a racetrack during nighttime racing. The proposal therefore imposes no compliance requirements on a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

13:71-5.18 Age limits

Any child under 16 years of age must be accompanied by an adult, parent or guardian to be admitted to any [daytime] race track enclosure as a spectator during the hours when the running of races is being conducted. [Any child between the ages of 12 and 16 must be accompanied by an adult, parent or guardian to be admitted to any nighttime race track enclosure as a spectator during the hours when the running of races is being conducted.] No person under the age of 18 shall be permitted to wager or in any manner participate in any pari-mutuel pool or system.

TRANSPORTATION

(c)

CONSTRUCTION AND MAINTENANCE

Division of Construction and Maintenance Engineering Support

Bureau of Construction

Construction Control

Contractor Claims; Substantial Completion

Withdrawal of Proposed Repeal: N.J.A.C. 16:33

Withdrawal of Proposed New Rules: N.J.A.C. 16:45

Proposed Repeals: N.J.A.C. 16:33

Proposed New Rules: N.J.A.C. 16:45

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1 to 2-8
Proposal Number: PRN 1989-379.

Submit comments by August 16, 1989 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules and repeals will effect administrative changes and necessary recodification to comply with the recent Reorganization Plan (see 20 N.J.R. 937), and the Department's ongoing process of updating its rules.

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The rules were reviewed by the staff of the Division of Construction and Maintenance Support and reflect the present practices and procedures within that respective unit. After legal review and analysis, portions of the rule are being repealed because they were considered as being procedural rather than regulatory.

The portions being repealed are outlined in the Department's Standard Specifications and the Supplementary Specifications for specific projects.

A summary of Chapters and/or Subchapters being repealed follows:

Subchapter 1. Subletting of Contract Work.

N.J.A.C. 16:33-2.1 Definitions
N.J.A.C. 16:33-2.3 Notice of intent to present claim
N.J.A.C. 16:33-2.4 Negotiations prior to presentation of claim
N.J.A.C. 16:33-2.5 Content of claim
N.J.A.C. 16:33-2.6 Processing
N.J.A.C. 16:33-2.7 Disposition
N.J.A.C. 16:33-2.8 Appeal

Rules concerning said new rules and repeals were published in the New Jersey Register on May 15, 1989 at N.J.R. 1284(b). The rules were further reviewed for legal sufficiency and substantially changed, requiring additional public notice and comment. As a result of this review and revision, the Department is withdrawing the proposal PRN 1989-223 and reproposing the repeal of N.J.A.C. 16:33 and new rules N.J.A.C. 16:45.

The changes to the rule as originally proposed are as follows:

N.J.A.C. 16:45-1.2 "Contractor compliance" was changed to "Contractor obligations", and consists of language changes throughout with the addition of new paragraphs (c) and (d).

N.J.A.C. 16:45-1.3 "Disposition", was substantially revised in paragraph (b).

Social Impact

The proposed new rules will reflect current procedural and administrative changes to comply with the recent Organization Plan (see 20 N.J.R. 937). Additionally, the rules being repealed appear in the Department's Standard Specifications and the Supplementary Specifications for specific projects, since they are considered to be procedural in nature and not regulatory. Contractors are provided copies of the Department's Standard Specifications in their performance of contracts with the Department.

Economic Impact

The Department will incur direct and indirect costs for personnel and equipment requirements, in the updating of the rule and the need to reprint forms required in the contractual process. There will be no added economic impact on contractors as a result of this proposed new rule.

Regulatory Flexibility Statement

The proposed new rule does not place any bookkeeping or recordkeeping requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are still compliance requirements for small businesses, in the case of a subcontractor performing for the prime contractor. The proposed new rule primarily effects administrative changes.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 16:33.

Full text of the proposal follows:

CHAPTER 45
CONSTRUCTION CONTROL

SUBCHAPTER 1. CLAIMS COMMITTEE

16:45-1.1 Claims committee

(a) The claims committee is an administrative body available to review and resolve claims that arise under the contract. At the option of the contractor, claims may be presented to the claims committee for administrative resolution. The presentation of a claim to the claims committee shall in no way alter or affect other rights of the contractor, including the right, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. Said presentation to the claims committee shall in no way alter or affect the applicable statute of limitations.

(b) The claims committee is comprised of the following:

1. Chairman—Director, Division of Construction and Maintenance Engineering Support (Chief Engineer, Construction and Maintenance);
2. Director, Division of Regional Design (Chief Engineer, Regional Design);
3. Director, Division of Accounting and Auditing;
4. Deputy Attorney General (non-voting member);
5. Secretary for the claims committee—(non-voting member to be designated by the chairman).

16:45-1.2 Contractor obligations

(a) The contractor shall comply with the provisions of the applicable NJDOT standard specifications and the supplementary specifications which govern the documentation and submission of claims for the specific contract.

(b) The claims committee will accept for consideration all claims which have been properly presented and reserved under the applicable NJDOT standard specifications and supplementary specifications and which have not been resolved prior to the completion of the contract.

(c) The contractor shall notify the secretary of the claims committee in writing of its desire to have unresolved claims reviewed by the committee. This written notice shall be given within 30 days of the completion of the contract and a copy of this notice shall be sent by the contractor to the regional director. The regional director shall forward to the secretary of the claims committee all information previously submitted by the contractor in support of its claims. Failure by the contractor to give such written notice within 30 days of the completion of the contract shall bar review by the claims committee.

(d) Within 45 days of the receipt of the contractor's written request for claims committee review, the claims committee will schedule a meeting for review of the claims submitted. The contractor may appear at the meeting and make an oral presentation in support of its claims. If the contractor does not appear at the meeting, the claims committee will base its review of the claims on the written information previously supplied by the contractor and forwarded to the committee by the regional director.

(e) The procedure set forth herein establishes a method of reviewing contractual disputes and in no way constitutes a waiver by the State of New Jersey of its sovereign immunity from suit.

16:45-1.3 Disposition

(a) The deputy commissioner shall make final determination on all claims reviewed by the Department's claims committee. There shall be no further departmental review of the claims.

(b) The secretary of the claims committee shall notify the contractor of the deputy commissioner's decision and the contractor shall accept or reject the decision within 60 days. If the disposition of the claim is acceptable to the contractor, the Department will pay any amount due the contractor upon execution by the contractor of a release of the State, the Commissioner and the Department, their agents, officers and employees as to all claims. Such payment will be made pursuant to the terms of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq. If the contractor rejects the deputy commissioner's decision, no further departmental action will be taken. If the disposition of the claim is not acted upon by the contractor within the 60 day time limit, the Department will consider its decision to have been rejected and no further departmental action will be taken.

SUBCHAPTER 2. SUBSTANTIAL COMPLETION

16:45-2.1 Purpose

The following definition of "substantial completion" is adopted pursuant to N.J.S.A. 27:7-34. This definition will be incorporated into contracts on Department of Transportation construction projects in substantially the same form as herein presented.

16:45-2.2 Definition of substantial completion

(a) "Substantial completion" as used herein, means the point at which the performance of all work on the project; except landscaping items, including the planting of trees, shrubs, vines, ground covers and seedlings; final clean-up and repair of work performed but not accepted; has been completed, provided the engineer has determined, in his sole discretion, that:

1. The project is safe and convenient for use by the public;

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2. Failure to complete the work and repairs excepted above does not result in the deterioration of other completed work; and

3. Provided that the value of landscape work remaining to be performed, repairs and clean-up, is less than two percent of the total adjusted contract price.

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Transportation of explosives and other dangerous articles
Proposed Amendment: N.J.A.C. 19:8-1.12

Authorized By: New Jersey Highway Authority, George P. Zilocchi, Executive Director.

Authority: N.J.S.A. 27:12B-5(a), (j) and (t).

Proposal Number: PRN 1989-365.

Submit comments by August 16, 1989 to:
George P. Zilocchi
Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, NJ 07095

The agency proposal follows:

Summary

The proposed amendment clarifies the Authority's existing rule governing the transportation of explosives and other dangerous articles by adding a subsection which incorporates amendments to applicable United States and New Jersey statutes, laws and regulations which currently apply.

Social Impact

The proposed amendment will have a positive social impact on the public by strengthening the Authority's rule dealing with the transportation of explosives and other dangerous articles and bringing the rule into conformity with currently applicable United States and New Jersey statutes, laws and regulations.

Economic Impact

No direct economic impact on the general public is expected to result from the proposed amendment. The proposed amendment merely brings the Authority's rules governing transportation of explosives and other dangerous articles into full conformity with applicable United States and New Jersey statutes, laws and regulations.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. As noted in the Summary, the amendment merely incorporates applicable Federal and State laws and regulations governing the transportation of explosives and other dangerous articles. Reporting, recordkeeping or other compliance requirements on persons transporting explosives and other dangerous articles are established by the referenced United States and New Jersey statutes and regulations—not the Authority's rule.

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

19:8-1.12 Transportation of explosives and other dangerous articles

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

(d) Additionally, transportation of hazardous materials on the Garden State Parkway shall be in conformance with all United States and New Jersey statutes, laws and regulations as amended or modified, which are referenced in this subchapter or applicable to the transportation of hazardous materials.

(b)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Special Permits for Oversize Vehicles
Proposed Amendment: N.J.A.C. 19:8-8.1

Authorized By: New Jersey Highway Authority, George P. Zilocchi, Executive Director.

Authority: N.J.S.A. 27:12B-5 (a), (j) and (t).

Proposal Number: PRN 1989-366

Submit comments by August 16, 1989 to:
George P. Zilocchi
Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, NJ 07095

The agency proposal follows:

Summary

The proposed amendment deletes the phrase "toll portions" from that portion of the Authority rules dealing with special permits for oversize vehicles. Heretofore, the rule advised that the special permits for oversize vehicles were valid on the toll portions of the Parkway only and consequently of no effect on those portions of the Garden State Parkway previously owned by the New Jersey Department of Transportation. Since July 1, 1987, the New Jersey Highway Authority has assumed responsibility for all portions of the Garden State Parkway including the non-toll sections previously owned and operated by the New Jersey Department of Transportation.

Social Impact

Although the proposed amendment should have little or no impact on the public at large, it may have an effect on a limited number of individual oversize vehicle drivers who may or may not have had to seek permits in the past for those portions of the Parkway formerly owned by the N.J. Department of Transportation. Those individuals will now have to seek a permit from the New Jersey Highway Authority which may grant or deny a permit based on requirements at N.J.A.C. 19:8-1.9, limiting the dimensions of vehicles using the Parkway. The rule regarding permits has previously pertained only to the portions of the Parkway owned by the New Jersey Highway Authority.

Economic Impact

No direct economic impact on the general public is expected to result from the proposed amendment. However, for those individuals who may not have had to seek permits in the past, the $10.00 fee as prescribed in N.J.A.C. 19:8-8.4, will be incurred.

Regulatory Flexibility Analysis

The rule requiring a permit to drive an oversize vehicle on all or any part of the Garden State Parkway applies equally to both the individual driver who may be considered a small business and the driver of a vehicle owned and operated by a large corporation. The permit fee of $10.00 is not viewed as overly burdensome on either a large or small business. And, the safety factors afforded the driving public by the inclusion of all portions of the Parkway in the rule, are felt to outweigh any need to apply differing standards.

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

19:8-8.1 Scope

(a) Special permits for oversize vehicles issued by the Authority are valid on the [toll portions of the] Parkway only.

(b) (No change.)

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(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Procedure for Filing a Rulemaking Petition
Proposed New Rules: N.J.A.C. 19:8-12

Authorized By: New Jersey Highway Authority, George P. Zilocchi, Executive Director.

Authority: N.J.S.A. 52:14B-3(1), 52:14B-4(f), 27:12B-5(a), (j), (t), N.J.A.C. 1:30-3.6(d).

Proposal Number: PRN 1989-367.

Submit comments by August 16, 1989 to:
George P. Zilocchi, Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, NJ 07095

The agency proposal follows:

Summary

The Administrative Procedure Act ("the Act"), at N.J.S.A. 52:14B-4(f), authorizes interested persons to petition a State agency "to promulgate, amend or repeal any rule." The Act also directs State agencies to "prescribe the form for the petition and the procedure for the submission, consideration and disposition" of any such petition. N.J.A.C. 1:30-3.6(d) also requires that each agency prescribe by rule the form of a petition and the procedures for its submission. The Authority proposes the following rulemaking petition procedures in order to satisfy this mandate.

The proposed new rules provide that all petitions must be in writing and contain the substance or nature of the rulemaking which is requested, the reasons for the request and the petitioner's interest in the request, and reference to the authority of the agency to take the requested action.

Within 15 days of receipt of a petition, the Authority will file a notice, stating the name of the petitioner and the nature of the request, with the Office of Administrative Law for publication in the New Jersey Register.

The proposed new rules further require that the agency take action on the petition within 30 days of its receipt. The action taken by the Authority may consist of either a denial of the petition; action upon the petition, which may include the initiation of a formal rulemaking proceeding; or referral of the matter to the appropriate unit within the Authority for further deliberation.

Social Impact

The proposed new rules will have a positive social impact on the public by establishing procedures for the filing and consideration of rulemaking petitions.

Economic Impact

No direct economic impact on the general public is expected to result from the proposed new rules.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, record keeping or other compliance requirements on small businesses. The basis for concluding that these rules do not impact on small businesses is that the sole purpose of the rules is to establish a procedure whereby interested persons may petition the New Jersey Highway Authority to promulgate, amend or repeal any rule. The proposed rules do not impose reporting, record keeping or other compliance requirements on any person or group.

Full text of the proposal follows:

SUBCHAPTER 12. PETITIONS FOR RULES

19:8-12.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the New Jersey Highway Authority, hereafter "Authority", pursuant to N.J.S.A. 52:14B-4(f).

19:8-12.2 Procedure for petitioner

(a) Any person who wishes to petition the Authority to promulgate, amend or repeal a rule must submit to the Executive Director, in writing, the following information:

1. Name of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the Executive Director of the Authority to take the requested action.

(b) Petitions shall be sent to the following address:

Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, N.J. 07095

(c) Any document submitted to the Authority which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further department action pursuant to N.J.S.A. 52:14B-4(f).

19:8-12.3 Procedure after receipt of petition

(a) Upon receipt of a petition in compliance with N.J.A.C. 19:8-12.2, the Authority will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Authority will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include:

1. The name of the petitioner;
2. The Register citation for notice of petition, if that notice appeared in a previous Register;
3. Certification by the Executive Director that the petition was duly considered pursuant to law;
4. The nature or substance of the Authority's action upon the petition; and
5. A brief statement of reasons for the Authority's action.

(c) Authority action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to petitioner and submitted to the OAL for publication in the Register.

(b)

CASINO CONTROL COMMISSION

General Provisions
Applications
Petitions for Rulemaking
Proposed Readoption with Amendments: N.J.A.C. 19:40
Proposed Amendments: N.J.A.C. 19:41-8, 19:41-10 and 19:42-8

Authorized by: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 5:12-69(c), 5:12-69(e), 5:12-70(a), 5:12-70(b), 5:12-70(d), and 5:12-70(k).

Proposal Number: PRN 1989-370.

Submit comments by August 16, 1989 to:
Mary LaMantia, Assistant Counsel
Casino Control Commission
3131 Princeton Pike
CN 208
Trenton, N.J. 08625

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 19:40 will expire on September 26, 1989. The Casino Control Commission has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Chapter 40 provides a description of the Commission's organization, its operations and procedures and the methods whereby the public may obtain information or make submissions or requests, as mandated by the Administrative Procedure Act at N.J.S.A. 52:14B-3. The proposed amendments to the readoption clarify and expand upon these provisions.

The proposal reorganizes subchapter 1, Practices and Procedures, into three subchapters. The scope of subchapter 1 is limited to construction and application of the rules. Definitions at N.J.A.C. 19:40-1.2 are amended to conform with amendments to the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq. Subsection (g) is added to N.J.A.C. 19:40-1.3 to provide for temporary rulemaking experiments by the Commission as authorized by N.J.S.A. 5:12-69(e).

Rules concerning Commission operations are recodified in a new subchapter 2, Organization and Operation of the Commission. Proposed new rule N.J.A.C. 19:40-2.1 describes the organization of the Commission and the Commission's staff.

Rules concerning information and filings are recodified at subchapter 3. Proposed new rules N.J.A.C. 19:40-3.4 outlines information available from the Commission's Public Information Office; N.J.A.C. 19:40-3.5 specifies locations for the filing of petitions and applications with the Commission; and N.J.A.C. 19:40-3.6 prescribes the forms and procedures for the submission, consideration and disposition of a petition for rulemaking from an interested person, in compliance with N.J.S.A. 5:12-69(c) and 52:14B-4(f).

Confidential information regulations are recodified at subchapter 4. N.J.A.C. 19:41-10, Professional practice, is recodified to N.J.A.C. 19:40-5. N.J.A.C. 19:40-5.2 is amended to clarify the requirements for representation before the Commission and admission pro hac vice, and to conform to New Jersey Court Rule 1:21-1, which requires that an attorney maintain a bona fide office for the practice of law in this State regardless of where the attorney is domiciled.

The proposed amendments to N.J.A.C. 19:41-8 clarify that the receipt and processing of applications may be handled by the Commission staff through delegated authority.

The proposed amendments to N.J.A.C. 19:42-8.1 outline the procedures for the conduct of hearings concerning the adoption, amendment or repeal of Commission rules.

Social Impact

N.J.A.C. 19:40 provides the casino industry, the regulated public and other interested persons with information as to Commission operations and procedures. Licensees, applicants, petitioners and those seeking general information regarding Commission business will benefit from the proposed amendments to the readoption, which reorganize and clarify such information.

The proposed amendments to N.J.A.C. 19:41-8 and N.J.A.C. 19:42-8 also serve this beneficial informational purpose by clarifying procedures for the processing of applications and for hearings on rules.

Economic Impact

The proposed readoption and proposed amendments are not anticipated to have any significant economic impact since these provisions merely serve to provide information on Commission procedures and operations.

Regulatory Flexibility Statement

The proposed readoption and proposed amendments do not impose any reporting, recordkeeping or compliance requirements upon small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., except for the procedural requirements placed on all persons filing petitions for rulemaking. These requirements are minimal in nature, and will cause no capital costs to be incurred or professional services to be engaged.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:40.

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

CHAPTER 40
GENERAL PROVISIONS

SUBCHAPTER 1. [PRACTICES AND PROCEDURES] **CONSTRUCTION AND APPLICATION OF RULES**

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules and regulations as defined in that Act. The following words and terms, when used in these rules and regulations, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Applicant" means any person who on his own behalf or on behalf of another has applied for permission to engage in any act or activity which is regulated under the provisions of [this] **the** Act.

"Application" means a written request for permission to engage in any act or activity which is regulated under the provisions of [this] **the** Act.

"Authorized game" or "authorized gambling game" means roulette, baccarat, blackjack, craps, big six wheel, slot machines, **mini-baccarat** and any variations or composites of such games, provided that such variations or composites are found by the Commission suitable for casino use after an appropriate test or experimental period under such terms and conditions as the Commission may deem appropriate.

"Casino" means a single room of at least 15,000 square feet in which casino gaming is conducted pursuant to the provisions of [this] **the** Act.

"Casino employee" means any natural person employed in the operation of a licensed casino, including, without limitation, boxmen; dealers or croupiers; floormen; machine mechanics; casino security employees; [and bartenders, waiters and waitresses] **count room personnel; cage personnel; slot machine and slot booth personnel; collection personnel; casino surveillance personnel; and data processing personnel;** or **any** other [persons] **natural person** whose employment duties require or authorize access to [the casino but who are not included in the definition of casino hotel employee, casino key employee, or principal employee as hereinafter stated] **restricted casino areas, including, without limitation, appropriate maintenance personnel; waiters and waitresses; and secretaries**.

"Casino hotel employee" means any natural person employed [by a casino hotel licensed under this Act] to perform [service] **services** or [custodial] duties [not directly related to operations of the casino, including, without limitation, bartenders, waiters, waitresses, maintenance personnel, kitchen staff, but whose employment duties do not require or authorize access to the casino.] **in the conduct of the business of an approved hotel but who is not included within the definition of casino employee or casino key employee as stated in this section.**

"Casino key employee" means any natural person employed in the operation of a licensed casino in a supervisory capacity or empowered to make discretionary decisions which regulate casino operation, [and who is not within an employee category defined elsewhere in this Act,] including, without limitation, pit bosses [,]; shift bosses [,]; [supervisors, and cashiers;] **credit executives; casino cashier supervisors;** casino managers and assistant managers; managers or supervisors of casino security employees; **or any other natural person empowered to make discretionary decisions which regulate the management of an approved hotel, including, without limitation, hotel managers; entertainment directors; and food and beverage directors;** [and] **or** any other employee so designated by the Casino Control Commission **for reasons consistent with the policies of the Act**.

"Casino license" means any license issued pursuant to [this] **the** Act which authorizes the holder thereof to own or operate a casino.

. . .

"Casino service industry" means any form of enterprise which provides [casinos] **casino applicants or licensees** with goods or services **regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility** on a regular or continuing basis, including, without limitation, security businesses, gaming schools, manufacturers, distributors and servicers of gaming

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devices or equipment, garbage haulers, maintenance companies, food purveyors, [or any other enterprise which does business with licensed casinos on a regular or continuing basis] **and construction companies**. Notwithstanding the foregoing, any form of enterprise engaged in the manufacture, sale, distribution or repair of slot machines within New Jersey, other than antique slot machines as defined in N.J.S.A. 2C:37-7, shall be considered a casino service industry for the purposes of the Casino Control Act regardless of the nature of its business relationship, if any, with licensed casinos in this State. **For purposes of this section, "casino applicant" includes any person required to hold a casino license pursuant to section 82 of the Act who has applied to the Commission for a casino license or any approval required under the Act.**

"Chairman" **or "Chair"** and [commissioner] **"Commissioner"** or "member" means the [chairman] **Chair** and any member of the Casino Control Commission, respectively.

. . .

"Complimentary service ["] or ["] item" means a service or item provided at no cost or at a reduced price. The furnishing of a complimentary service or item by a casino licensee shall be deemed to constitute the indirect payment for the service or item by the casino licensee, and shall be valued in an amount based upon the retail price normally charged by the casino licensee for the service or item. The value of **a** complimentary service or item not normally offered for sale by a casino licensee or provided by a third party on behalf of a casino licensee shall be the cost to the casino licensee of providing the service or item as determined in accordance with the rules of the Commission.

. . .

"Equal employment opportunity" means equality in opportunity for employment by any person licensed pursuant to the provisions of [this] **the** Act.

. . .

"Gross revenue" means the total of all sums, including checks received by a casino licensee pursuant to section 101 of [this] **the** Act, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and a deduction for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or four percent of the total of all sums including checks, whether collected or not, less the amount paid out as winnings to patrons. **For purposes of this section, any check which is invalid and unenforceable pursuant to subsection 101(f) of the Act shall be treated as cash received by the casino licensee from gaming operations.**

"Hearing examiner" means a [commissioner] **Commissioner** or other person authorized by the [commission] **Commission** to conduct hearings.

. . .

"Hotel" or "approved hotel" means a single building located within the limits of the city of Atlantic City as said limits were defined as of November 2, 1976, and containing not fewer than 500 sleeping units, each of at least 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges; each containing private bathroom facilities; and each held available and used regularly for the lodging of tourists and convention guests and conforming in all respects to the facilities requirements contained in [this] **the** Act. For the purpose of exceeding the maximum casino size specified in section 83 of [this] **the** Act, an approved hotel may, by means of physical connection, annex additional buildings or facilities to increase the amount of its qualifying meeting, exhibition, dining, entertainment, sports and kitchen support facilities space, but not to increase its number of qualifying sleeping units. "Physical connection" for the purposes herein means an enclosed permanent pedestrian passageway. In no event shall the main entrance or only access to an approved hotel be through a casino.

. . .

"License" means any license required by [this] **the** Act.

"License["] or ["]registration fee" means any moneys required by law to be paid for the issuance or renewal of a casino license, or any other license or registration required by [this] **the** Act.

"Licensed casino operation" means any casino licensed pursuant to the provisions of [this act] **the Act**.

"Licensee" means any person who is licensed under any of the provisions of [this act] **the Act**.

"Operation" means the conduct of gaming as [herein] defined **in the Act**.

"Operation certificate" means a certificate issued by the [commission] **Commission** which certifies that operation of a casino conforms to the requirements of [this act] **the Act** and applicable regulations and that its personnel and procedures are efficient and prepared to entertain the public.

. . .

"Principal employee" means any employee who, by reason of remuneration or of a management, supervisory or policy-making position or such other criteria as may be established by the [commission] **Commission** by regulation, holds or exercises such authority as shall in the judgment of the [commission] **Commission** be sufficiently related to the operation of a licensee so as to require approval by the [commission] **Commission** in the protection of the public interest.

. . .

"Registrant" means any person who is registered pursuant to the provisions of [this act] **the Act**.

"Registration" means any requirement other than one which requires a license as a prerequisite to conduct a particular business as specified by [this act] **the Act**.

. . .

"Regulation" or "rule" means the regulation adopted by the [commission] **Commission** pursuant to the [act] **Act**.

. . .

"Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or **any** thing of value **whatsoever** [or a token to be exchanged for any merchandise or thing of value], whether the payoff is made automatically from the machine or in any other manner whatsoever[.] **, except that:**

1. No merchandise or thing of value shall be offered as part of a payoff of any slot machine unless such merchandise or thing of value has a cash equivalent value of at least $5,000; and

2. The cash equivalent value of any merchandise or other thing of value, as defined by N.J.A.C. 19:45-1.40A(b), shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenues as defined by section 24 of the Act or be included in determining the payout percentage of any slot machine.

"Statement of compliance" means a statement by the [commission] **Commission** which may be issued to an applicant indicating satisfactory completion of a particular stage or stages of the license consideration process, and which states that unless there is a change of any material circumstance pertaining to such particular stage or stages of license consideration involved in the statement, such applicant has complied with requirements mandated by [this act] **the Act** and by the [commission] **Commission** and is therefore approved for license qualification to the stage or stages for which the statement has been issued.

. . .

"Transfer" means the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security [of] **or** otherwise [;]. [the] **The** retention of a security interest in property delivered to a corporation shall be deemed a transfer suffered by such corporation.

"Work permit" means [a writing provided by the commission] **an authorization granted** to a casino licensee [which authorizes] **for** the

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employment of a particular casino hotel employee, casino employee or casino key employee in a particular capacity by a casino licensee.

19:40-1.3 Construction and amendments

(a) (No change.)

(b) These rules shall be liberally construed to permit the [commission] **Commission** and the [division] **Division** to effectively carry out their respective statutory functions and to secure a just and expeditious determination of issues properly presented to the [commission] **Commission**.

(c) (No change.)

(d) In special cases and for good cause shown, the [commission] **Commission** may relax or permit deviations from these rules.

(e) These rules may be amended by the [commission] **Commission** from time to time in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

[(f) In order to conduct tests and experiments pursuant to N.J.S.A. 5:12-5 to determine whether or not a variation or composite of an authorized game may be found suitable for casino use, the Commission may authorize terms and conditions which may be in conflict with the provisions of N.J.A.C. 19:45-46 and 47, if the Commission deems such terms and conditions necessary or appropriate to the conduct of the tests or experiments.]

(f) Whenever any provision of these rules requires that an act or event occur on a specified day or date, and such day or date falls upon a Saturday, Sunday or legal holiday, such provision shall be construed to refer to the next business day immediately following such day or date.

(g) Pursuant to N.J.S.A. 5:12-69(e), the Commission may authorize the temporary adoption, amendment or repeal of any rule concerning the conduct of gaming or the use or design of gaming equipment for an experimental period not to exceed 90 days, for the purpose of determining whether such rules should be adopted on a permanent basis. Any interested person may file a petition for temporary rulemaking with the Commission in accordance with N.J.A.C. 19:40-3.6.

1. The Commission shall file notice of any temporary rulemaking with the Office of Administrative Law for publication in the New Jersey Register at least seven days prior to initiation of the experiment, and shall prominently post such notice in each casino participating in the experiment.

2. The Commission shall post the text of any temporary rule in each casino participating in the experiment and shall make copies of such text available upon request to the Commission.

[19:40-1.5 Meetings: order of business

(a) Regular meetings of the commission shall be held at least once per month on such dates and at such times and places as the chairman or the commission shall establish.

(b) Special meetings of the commission will be held from time to time on such dates and at such times and places as the chairman or the commission may deem convenient. Special meetings of the commission may be called at the discretion of the chairman; but the chairman shall call a special meeting at the request of any three members of the commission.

(c) The annual reorganizational meeting of the commission shall be the first meeting of the commission in January of each year.

(d) All meetings of the commission shall be in compliance with the New Jersey Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.).

(e) The Commission may prepare an agenda describing the order of business for public meetings, which agenda shall include, but not be limited to:

1. Presiding officer's statement of compliance with the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.
2. Roll call;
3. Ratification of the minutes of prior meetings;
4. Consideration of applications for licenses;
5. Consideration of complaints against licensees;
6. Consideration of petitions for Commission action or approval; and
7. Questions and comments from the public.]

[19:40-1.6 Quorum; votes

(a) A majority of the full commission shall constitute a quorum at any meeting of the commission.

(b) The vote on any matter before the Commission shall be taken in a manner to be determined by the Commission. The names of the members voting for or against or abstaining shall be entered in the minutes of the meeting.]

[19:40-1.7 Resolutions and minutes

(a) The records of the Commission shall include a minute book and a resolution book. The vote on any matter before the Commission shall be set forth in the minutes in accordance with the requirements of (b) below. If the Commission determines to memorialize the vote on a particular matter by the preparation of a formal resolution, the resolution shall be prepared in accordance with the requirements of (c) below and shall be recorded in the resolution book.

(b) Every vote of the Commission recorded in the minutes shall include the following information:

1. The substance of the matter considered;
2. The vote of the Commission, including the names of any commissioners dissenting or abstaining;
3. If appropriate, reference to the existence of a formal resolution concerning the matter; and
4. Certification by the Executive Secretary.

(c) Every formal resolution of the Commission shall include the following information:

1. A concise statement of the issues presented and the relevant procedural history;
2. The precise statutory authority for the action taken;
3. A precise statement of the action taken by the Commission, including any terms or conditions attached thereto; and
4. Certification by the Executive Secretary.]

[19:40-1.8 Officers

(a) The officers of the commission shall include a chairman and a vice-chairman who shall be members of the commission, and an executive secretary who shall not be a member of the commission.

(b) The chairman, as chief executive officer of the Commission, shall schedule and preside at all meetings of the Commission; shall appoint the members of the Commission to such committees as the Commission may, from time to time, establish; shall have the authority to accept for filing all applications; shall have the authority to incur on behalf of the Commission such expenses as the Commission shall have approved in its operating budget; shall have general supervision, direction and control of the affairs of the Commission; and shall perform such other duties as are incidental to the office and as may be assigned, from time to time, by the Commission.

(c) The vice-chairman shall be elected annually at the organizational meeting of the commission by a majority of the full commission. He shall be a member of the commission other than the chairman. He shall possess such powers and shall perform such duties as may be assigned, from time to time, by the commission. In the absence or inability of the chairman to serve or in the event of a vacancy in the office of chairman, the vice-chairman shall be empowered to carry out all of the responsibilities of the chairman.

(d) The executive secretary shall be appointed by the Commission and shall serve at the pleasure of the Commission. Under the supervision of the chairman, the executive secretary shall be responsible for the conduct of the administrative affairs of the Commission and shall have custody of the Commission's seal and its official records. The executive secretary shall keep a record of the proceedings at all meetings of the Commission in a minute book and a resolution book or both, to be kept for the purpose, which shall be open at all reasonable times to inspection by any member of the Commission. He shall cause a verbatim transcript to be made of the public meetings of the Commission, according to law. He shall affix the seal of the Commission to all papers authorized to be executed by the Commission requiring such seal to be affixed. He shall cause copies to be made of the verbatim transcript of the public meetings, and of all minutes, resolutions and other records and shall cause such copies to be filed with the appropriate authorities according to law. He shall give certificates under the seal of the Commission to the

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effect that such copies are true copies and all persons dealing with the Commission may rely on such certificates. He shall perform such other duties as are incident to his office or as may be assigned, from time to time, by the Commission or by the chairman.]

[19:40-1.9 Offices; hours

(a) The main offices of the Commission, including the Offices of the Commissioners, and the Legal, Financial and Administrative divisions of the Commission's staff, are located at:

3131 Princeton Pike
Building 5, CN-208
Trenton, NJ 08625

(b) The License Division of the Commission's staff maintains an office at:

Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

(c) The Commission's Affirmative Action and Planning Division, and the Commission's Inspection Unit are located at:

1300 Atlantic Avenue
Atlantic City, N.J. 08401

(d) The offices of the Commission are open for the filing of papers and for other business (except for public inspection of documents) from 9:00 A.M. to 5:00 P.M., Monday through Friday, unless otherwise authorized by the Commission. The offices of the Commission are open for public inspection of documents from 10:00 A.M. to 4:00 P.M., Monday through Friday, unless otherwise authorized by the Commission. The offices of the Commission are closed on legal holidays.

(e) The Division of Gaming Enforcement maintains offices at:

Richard J. Hughes Justice Complex
CN-047
Trenton, NJ 08625]

[19:40-1.10 Official records; fees for copies

(a) No original official record of the commission shall be released from the custody of the commission except upon express direction of the chairman or the executive secretary, or upon the order of a court of competent jurisdiction.

(b) Copies of the official records of the commission which are required by law to be made available for public inspection will be made available during the hours provided for in section 9 of this subchapter, upon the payment of appropriate fees.

(c) No person shall, directly or indirectly, procure or attempt to procure from the records of the commission or the division or from other sources, information of any kind which is not made available by proper authority.

(d) No application, petition, notice, report, document or other paper will be accepted for filing by the chairman and no request for copies of any forms, pamphlets, records, documents, or other papers will be granted by the commission, unless such papers or requests are accompanied by the required fees, charges, or deposits.

(e) Any person may subscribe to the commission's meeting notices, minutes, or notices of rule-making hearings by written request accompanied by a check or money order in accordance with the subscription rates established by the commission. All subscriptions shall be on a calendar year basis only, and rates for subscriptions commencing during a calendar year will be prorated accordingly. At the discretion of the commission, no payment may be required when the request is made by the governor of the State of New Jersey or by a member of the Legislature or by any newspaper, television station or radio station regularly serving New Jersey.

(f) Copies of official records of the Commission which are required by law to be made available for public inspection shall be made available according to the following fee schedule:

1. First page to 10th page	$0.50 per page;
2. Eleventh page to 20th page:	0.25 per page;
3. All pages over 20:	0.10 per page;

(g) All checks for payment of fees, deposits and charges shall be made payable to the order of the "Casino Control Fund" and delivered or mailed to the main office of the Commission.]

[19:40-1.11 Communications; notices

(a) All papers, process or correspondence relating to the commission should be addressed to or served upon the New Jersey Casino Control Commission at the commission's main office. All papers, process or correspondence relating to the division should be addressed to or served upon the Division of Gaming Enforcement at the division's main office.

(b) All such papers, process or correspondence shall be deemed to have been received or served when delivered to the main office of the commission or the division as the case may be, but a commissioner or such individual members of the commission's staff as the chairman may designate, or the director or such individual staff members of the division's staff as the director may designate, may in his discretion receive papers or correspondence or accept service of process.

(c) Except as otherwise provided by law, notices and other communications will be sent to an applicant or licensee by ordinary mail at the address of the establishment as shown in the application or license. Notices shall be deemed to have been served upon their deposit, postage prepaid, in the United States mails, and the time specified in any such notice shall commence to run from the date of such mailing. Any applicant or licensee who desires to have notices or other communications mailed to an address other than that of the establishment as specified in the application or license shall file with the commission and the division a specific request for that purpose, and notices and other communications will, in such case, be sent to the applicant or licensee at such address. An applicant or licensee will be addressed under the name or style designated in the application or license, and separate notices or communications will not be sent to individuals named in such application or license unless a specific request for that purpose is filed with the commission and the division. In the absence of such a specific request, a notice addressed under the name or style designated in the application or license shall be deemed to be notice to all individuals named in such application or license. Applicants and licensees shall immediately notify the commission and the division of any change of address, and shall specifically request that all notices or other communications be sent to the new address.]

19:40-[1.12] **1.5** Severability and preemption

(a) If any clause, sentence, subparagraph, paragraph, subsection, section, [article] **chapter** or other portion of these rules or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these rules or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, [article] **chapter** or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

(b) (No change.)

19:40-[1.13] **1.6** (No change in text.)

SUBCHAPTER 2. [(RESERVED)] **ORGANIZATION AND OPERATION OF THE COMMISSION**

19:40-2.1 Organization

(a) The Commission consists of five members appointed by the Governor with the advice and consent of the Senate.

(b) The officers of the Commission shall include a Chair and a Vice-chair who shall be members of the Commission, and an Executive Secretary who shall not be a member of the Commission.

1. The Chair, as chief executive officer of the Commission, shall schedule and preside at all meetings of the Commission; shall appoint the members of the Commission to such committees as the Commission may, from time to time, establish; shall have the authority to accept for filing all applications; shall have the authority to incur on behalf of the Commission such expenses as the Commission shall have approved in its operating budget; shall have general supervision, direction and control of the affairs of the Commission; and shall perform such other duties as are incidental to the office and as may be assigned, from time to time, by the Commission.

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2. The Vice-chair shall be elected annually at the organizational meeting of the Commission by a majority of the full Commission. The Vice-chair shall be a member of the Commission other than the Chair. He or she shall possess such powers and shall perform such duties as may be assigned, from time to time, by the Commission. In the absence or inability of the Chair to serve or in the event of a vacancy in the office of Chair, the Vice-chair shall be empowered to carry out all of the responsibilities of the Chair.

(c) The Commission's staff is comprised of the following divisions and units:

1. The Administrative Division provides the personnel, budget, data processing and administrative services necessary for operation of the Commission, and maintains the official records of the Commission and a record of all Commission proceedings. The Administrative Division consists of the following units:

i. Budget and Fiscal Office;
ii. General Administrative Services Unit;
iii. Personnel Office; and
iv. Systems Analysis and Design Unit.

2. The Affirmative Action and Planning Division monitors compliance by casino licensees, gaming schools and casino service and construction industries, with State equal employment, affirmative action, and minority and women's business enterprise requirements and evaluates the environmental, social, economic, and demographic impact of casinos on the Atlantic City region. The Affirmative Action and Planning Division consists of the following units:

i. Casino Unit;
ii. Industry and Construction Unit; and
iii. Planning Unit.

3. The Division of Financial Evaluation and Control reviews and evaluates petitions and submissions related to accounting and internal controls, gaming equipment and rules of the games; conducts casino gross revenue audits; analyzes the financial position and operating performance of casino licensees; assesses and collects fees and gross revenue taxes; monitors compliance with regulations regarding accounting and internal controls, gaming equipment and rules of the games; and receives casino patron complaints. The Division of Financial Evaluation and Control consists of the following units:

i. Accounting Unit;
ii. Audit Unit;
iii. Casino Operations Unit;
iv. Financial Evaluation Unit; and
v. Inspection Unit.

4. The Legal Division acts as legal counsel to the Commission and staff; represents the Commission in litigation; drafts and reviews proposed legislation and regulations; participates in license issuance and renewal hearings; and processes contested case matters. The Legal Division consists of the following units:

i. Hearings and Litigation Unit;
ii. Legal Advisory Unit;
iii. Legislation and Regulation Unit;
iv. License Advisory Unit; and
v. Special Projects Unit.

5. The License Division processes casino employee and junket representative license applications and renewals; monitors relationships between casino licensees and the enterprises with which they do business; and reviews matters relating to casino facilities and casino hotel alcoholic beverage licenses. The License Division consists of the following units:

i. Document Control Unit;
ii. Employee Licensing Unit; and
iii. Enterprise Licensing Unit.

19:40-2.2 Meetings

(a) Regular meetings of the Commission shall be held at least once per month on such dates and at such times and places as the Chair or the Commission shall establish.

(b) Special meetings of the Commission will be held from time to time on such dates and at such times and places as the Chair or the Commission may deem convenient. Special meetings of the Commission may be called at the discretion of the Chair; but the Chair shall call a special meeting at the request of any three members of the Commission.

(c) The annual reorganizational meeting of the Commission shall be the first meeting of the Commission in January of each year.

(d) All meetings of the Commission shall be in compliance with the New Jersey Open Public Meetings Act (N.J.S.A. 10:46-6 et seq.).

(e) The Commission may prepare an agenda describing the order of business for public meetings, which agenda shall include, but not be limited to:

1. Presiding officer's statement of compliance with the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;
2. Roll call;
3. Ratification of the minutes of prior meetings;
4. Consideration of applications for licenses;
5. Consideration of complaints against licensees;
6. Consideration of petitions for Commission action or approval; and
7. Questions and comments from the public.

19:40-2.3 Quorum; votes

(a) A majority of the full Commission shall constitute a quorum at any meeting of the Commission.

(b) The vote on any matter before the Commission shall be taken in a manner to be determined by the Commission. The names of the members voting for or against or abstaining shall be entered in the minutes of the meeting.

19:40-2.4 Resolutions and minutes

(a) The records of the Commission shall include a minute book and a resolution book. The vote on any matter before the Commission shall be set forth in the minutes in accordance with the requirements of (b) below. If the Commission determines to memorialize the vote on a particular matter by the preparation of a formal resolution, the resolution shall be prepared in accordance with the requirements of (c) below and shall be recorded in the resolution book.

(b) Every vote of the Commission recorded in the minutes shall include the following information:

1. The substance of the matter considered;
2. The vote of the Commission, including the names of any commissioners dissenting or abstaining;
3. If appropriate, reference to the existence of a formal resolution concerning the matter; and
4. Certification by the Executive Secretary.

(c) Every formal resolution of the Commission shall include the following information:

1. A concise statement of the issues presented and the relevant procedural history;
2. The precise statutory authority for the action taken;
3. A precise statement of the action taken by the Commission, including any terms or conditions attached thereto; and
4. Certification by the Executive Secretary.

SUBCHAPTER 3. INFORMATION AND FILINGS

19:40-3.1 Offices; hours

(a) The main offices of the Commission, including the Offices of the Commissioners, the Legal Division, the Division of Financial Evaluation and Control's Accounting Unit and Evaluation Unit, and the Administrative Division, are located at:

3131 Princeton Pike, Building 5
CN 208
Trenton, N.J. 08625

(b) The License Division and the Affirmative Action and Planning Division are located at:

Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

(c) The Division of Financial Evaluation and Control's Audit Unit, Casino Operations Unit and Inspection Unit are located at:

Citicenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, N.J. 08401

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(d) The offices of the Commission are open for the filing of papers and for other business (except for public inspection of documents) from 9:00 A.M. to 5:00 P.M., Monday through Friday, unless otherwise authorized by the Commission. The offices of the Commission are open for public inspection of documents from 10:00 A.M. to 4:00 P.M., Monday through Friday, unless otherwise authorized by the Commission. The offices of the Commission are closed on legal holidays.

(e) The Division of Gaming Enforcement maintains offices at:

Richard J. Hughes Justice Complex
CN-047
Trenton, NJ 08625

19:40-3.2 Official records; fees for copies

(a) No original official record of the Commission shall be released from the custody of the Commission except upon express direction of the Chair or the Executive Secretary, or upon the order of a court of competent jurisdiction.

(b) Copies of the official records of the Commission which are required by law to be made available for public inspection will be made available during the hours provided for in N.J.A.C. 19:40-3.1 upon the payment of appropriate fees.

(c) No person shall, directly or indirectly, procure or attempt to procure from the records of the Commission or the Division or from other sources, information of any kind which is not made available by proper authority.

(d) No application, petition, notice, report, document or other paper will be accepted for filing by the Chair and no request for copies of any forms, pamphlets, records, documents, or other papers will be granted by the Commission, unless such papers or requests are accompanied by the required fees, charges, or deposits.

(e) Any person may subscribe to the Commission's meeting notices, minutes, or notices of rule-making by written request accompanied by a check or money order in accordance with the subscription rates established by the Commission. All subscriptions shall be on a calendar year basis only, and rates for subscriptions commencing during a calendar year will be prorated accordingly. At the discretion of the Commission, no payment may be required when the request is made by the governor of the State of New Jersey or by a member of the Legislature or by any newspaper, television station or radio station regularly serving New Jersey.

(f) Copies of official records of the Commission which are required by law to be made available for public inspection shall be made available according to the following fee schedule:

1. First page to 10th page: $0.50 per page;
2. Eleventh page to 20th page: 0.25 per page;
3. All pages over 20: 0.10 per page;

(g) All checks for payment of fees, deposits and charges shall be made payable to the order of the "Casino Control Fund" and delivered or mailed to the main office of the Commission.

19:40-3.3 Communications; notices

(a) Except as otherwise provided at N.J.A.C. 19:40-3.5, all papers, process or correspondence relating to the Commission should be addressed to or served upon the New Jersey Casino Control Commission at the Commission's main office. All papers, process or correspondence relating to the Division should be addressed to or served upon the Division of Gaming Enforcement at the Division's main office.

(b) All such papers, process or correspondence shall be deemed to have been received or served when delivered to the main office of the Commission or the Division as the case may be, but a Commissioner or such individual members of the Commission's staff as the Chair may designate, or the Director or such individual staff members of the Division's staff as the Director may designate, may in his or her discretion receive papers or correspondence or accept service of process.

(c) Except as otherwise provided by law, notices and other communications from the Commission or Division will be sent to an applicant or licensee by ordinary mail at the address shown in the application or license. Notices shall be deemed to have been served upon their deposit, postage prepaid, in the United States mails, and the time specified in any such notice shall commence to run from the date of such mailing. Any applicant or licensee who desires to have notices or other communications mailed to an address other than that specified in the application or license shall file with the Commission and the Division a specific request for that purpose, and notices and other communications will, in such case, be sent to the applicant or licensee at such address. An applicant or licensee will be addressed under the name or style designated in the application or license, and separate notices or communications will not be sent to individuals named in such application or license unless a specific request for that purpose is filed with the Commission and the Division. In the absence of such a specific request, a notice addressed under the name or style designated in the application or license shall be deemed to be notice to all individuals named in such application or license. Applicants and licensees shall immediately notify the Commission and the Division of any change of address, and shall specifically request that all notices or other communications be sent to the new address.

19:40-3.4 Public information office

(a) Requests for information regarding the Casino Control Commission may be directed to:

Casino Control Commission
Public Information Office
3131 Princeton Pike, Building 5
CN 208
Trenton, New Jersey 08625

(b) Any person may, upon payment of the appropriate fee pursuant to N.J.A.C. 19:40-3.2, obtain a copy of the Monthly Statements, Quarterly Reports and Annual Reports to the Commission from each casino licensee. Copies of the Commission's Annual Report are available to the public at no charge. Such requests should be directed to the address in (a) above.

(c) Access to information and data furnished to or obtained by the Commission or Division from any source is subject to the provisions of N.J.S.A. 5:12-74(d) and (e) and N.J.A.C. 19:40-4.

19:40-3.5 Filing of petitions and applications

(a) Petitions for formal action by the Commission should be mailed to:

Casino Control Commission
Records Administrator
Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

(b) Applications for the issuance or renewal of any license or registration required by the Act should be mailed to:

Casino Control Commission
Document Control Unit
Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

(c) Applications for the issuance or renewal of employee and casino service industry licenses may be hand delivered to:

Casino Control Commission
Casino Employee License Information Unit
Arcade Building, 2nd Floor
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

19:40-3.6 Petitions for rulemaking

(a) Any interested person may file a petition with the Commission for the adoption, amendment or repeal of any rule, pursuant to section 69(c) of the Act and N.J.S.A. 52:14B-4(f). Such petition shall be in writing, be signed by the petitioner, and include the following information:

1. The name and address of the petitioner;
2. The substance or nature of the requested rulemaking;
3. The reasons for the request;
4. The specific legal rights, duties, obligations, privileges, benefits or other specific legal relations of the interested person which are affected by the requested rulemaking; and
5. Reference to the statutory authority under which the Commission may take the requested action.

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(b) Any document submitted to the Commission which is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further action. Such document shall be returned to the petitioner with instructions as to the steps necessary to correct any defects or omissions in accordance with this section.

(c) Within 15 days of receipt of a petition in compliance with this section, the Commission shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register in compliance with N.J.A.C. 1:30-3.6(a).

(d) A petition for rulemaking shall be scheduled for consideration at a regularly scheduled public meeting of the Commission. The petitioner shall be given an opportunity to make a statement in support of the requested rulemaking.

(e) Within 30 days of receipt of a petition which is in compliance with this section, the Commission shall mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition in compliance with N.J.A.C. 1:30-3.6(b), which shall include the nature or substance of the Commission's action upon the petition and a brief statement of reasons for the Commission's actions.

(f) In accordance with N.J.A.C. 1:30-3.6(c), Commission action on a petition for rulemaking may include:

1. Denial of the petition;

2. Filing a notice of proposed rule or a notice of a pre-proposal for a rule with the Office of Administrative Law; or

3. Referral of the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

[SUBCHAPTER 3.]**SUBCHAPTER 4.** CONFIDENTIAL INFORMATION

19:40-[3.1 and 3.2]**4.1 and 4.2** (No change in text.)

19:40-[3.3]**4.3** Access

Except as otherwise provided in N.J.A.C. 19:40-[3.4]**4.4** and N.J.A.C. 19:40-[3.8]**4.8**, access to confidential information within the possession of the Commission or Division shall be restricted to authorized personnel who require such information in the performance of their official duties.

19:40-[3.4]**4.4** State Records Storage Center: retention schedule; storage; destruction

(a) (No change.)

(b) Confidential information considered to be inactive by the Commission or Division but required to be retained pursuant to the provisions of (a) above, may be transferred to the possession of the State Records Storage Center in accordance with N.J.S.A. 47:3-8.1 et seq., as implemented by N.J.A.C. 6:66, provided that:

1. (No change.)

2. A log is maintained of all authorized personnel who are granted access to or who remove confidential information stored with the State Records Storage Center, which log shall include the information required by N.J.A.C. 19:40-[3.6]**4.6**(b);

3.-4. (No change.)

(c) (No change.)

19:40-[3.5 and 3.6]**4.5 and 4.6** (No change in text.)

19:40-[3.7]**4.7** Copies

A hard copy of confidential information stored on computer or magnetic media, or any other copy of confidential information within the possession of the Commission or Division, shall only be made where absolutely necessary to the administration of the Act, or where an authorized release of the confidential information is made pursuant to the provisions of N.J.A.C. 19:40-[3.8]**4.8**.

19:40-[3.8]**4.8** (No change in text.)

19:40-[3.9]**4.9** Penalties

(a) Any direct or indirect willful disclosure of confidential information by authorized personnel of the Commission under circumstances other than those identified in N.J.A.C. 19:40-[3.8]**4.8** shall be a violation of the Commission's Code of Ethics and shall subject such person to the penalties provided by N.J.S.A. 52:13D-23(d). Such violations shall be heard by the Executive Commission on Ethical Standards in accordance with N.J.S.A. 52:13D-21(h).

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

SUBCHAPTER 5. PROFESSIONAL PRACTICE

19:40-5.1 General provisions

No person shall practice law, accountancy, architecture, professional engineering, land surveying or any other profession or occupation regulated by the laws of this State before the Commission or Division in any manner other than in accordance with law, the ethical standards applicable to the particular profession and the regulations of the Commission. "Practice" shall be deemed to comprehend any matter connected with the presentation of the interest of a client including the making of any appearance and the preparing or filing of any necessary written document, correspondence or other paper relative to such interests.

19:40-5.2 The practice of law

(a) No person, other than a natural person practicing law on his or her own behalf, shall practice law or represent another person before the Commission or Division unless he or she is an attorney authorized to practice law in this State, or a non-attorney authorized by the Commission to appear pursuant to New Jersey Court Rule R. 1:21-1(e) and N.J.A.C. 1:1-5.

(b) Notwithstanding (a) above, an attorney admitted in this State who is in good standing but who does not maintain in this State a bona fide office for the practice of law, or an attorney of any other jurisdiction who is in good standing there, may in the discretion of the Commission be admitted to practice in connection with a particular matter by complying with the requirements of N.J.A.C. 1:1-5.2 and provided that an attorney authorized to practice law in this State who is in good standing shall also appear of record in and thereby be responsible for the conduct of the admitted attorney in the particular matter and that both such attorneys shall sign all papers submitted or filed in accordance with the regulations of the Commission.

19:40-5.3 Notice of appearance by attorney

Each attorney practicing before the Commission or Division shall promptly file with the Commission a notice of appearance in each matter and on behalf of each client represented and may be required to file evidence of his authority to act in such capacity.

19:40-5.4 Other professions and occupations

No person shall practice accountancy, architecture, professional engineering or land surveying before the Commission or Division unless he is a certified public accountant, licensed architect, licensed professional engineer or licensed land surveyor of this State. No person shall practice any other profession or occupation regulated by the laws of this State which authorizes the licensure, certification or any other governmental approval of persons practicing same unless such person is so licensed, certified or approved.

19:41-8.1 Receipt

All application papers, unless otherwise directed by the Chair[man], shall initially be submitted to and received by the Chair[man], **or such members of the Commission staff as the Chair may designate**, who shall cause to be endorsed thereon the date of such receipt.

19:41-8.2 Filing

(a) The Chair[man]**, or such members of the Commission staff as the Chair may designate,** shall determine the date of filing as to each application received and shall cause to be endorsed thereon the date of such filing. No application shall be deemed filed until the applicant shall satisfy the Chair[man] **or his or her designee**:

1.-5. (No change.)

19:41-8.3 Processing

(a) Upon [his] **a** determination that [the aforesaid] **all** prerequisites for filing have been met the Chair[man] **, or such members of the Commission staff as the Chair shall designate**, shall:

1.-4. (No change.)

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5. Have the authority to, in his **or her** discretion and at the expense of the applicant, publish once a week for two weeks successively in the official newspaper of the Commission and any other newspapers of the Chair[man] may designate, a notice of the fact that an application has been filed identifying the applicant, containing a concise statement as to the nature of the applicant's proposed activity or employment and including the further statement that "Objections to licensure or registration of this applicant, if any, should be made immediately in writing to the Chair[man] of the Casino Control Commission".

19:41-8.5 Amendment

It shall be the duty of each applicant to promptly file with the Chair[man] **, or such members of the Commission staff as the Chair shall designate,** a written amendment to his application explaining any changed facts or circumstances whenever any material or significant change of facts or circumstances shall occur with respect to any matter set forth in the application or other papers relating thereto. Any applicant may be permitted by the Chair[man] **or his designee** to file any other amendment to his application at any time prior to final action thereon by the Commission.

SUBCHAPTER 10. [PROFESSIONAL PRACTICE] **(RESERVED)**

[19:41-10.1 General provisions

No person shall practice law, accountancy, architecture, professional engineering, land surveying or any other profession or occupation regulated by the laws of this State before the Commission or Division in any manner other than in accordance with law, the ethical standards applicable to the particular profession and the regulations of the Commission. "Practice" shall be deemed to comprehend any matter connected with the presentation of the interest of a client including the making of any appearance and the preparing or filing of any necessary written document, correspondence or other paper relative to such interests.]

[19:41-10.2 The practice of law

No person, other than a person practicing on his own behalf, shall practice law before the Commission or Division unless he is an attorney holding a plenary license to practice in this State who is in good standing and who maintains either his domicile or his principal office for the practice of law in this State. Notwithstanding the aforesaid, an attorney admitted in this State who is in good standing but neither maintains his domicile nor his principal law office in this State and an attorney of any other jurisdiction who is in good standing there, may in the discretion of the Commission be permitted to so practice in connection with a particular matter provided that an attorney holding a plenary license to practice in this State who is in good standing and who maintains either his domicile or his principal office for the practice of law in this State shall also appear of record in and thereby be responsible for the conduct of the admitted attorney in the particular matter and that both such attorneys shall sign all papers submitted or filed in accordance with the regulations of the Commission.]

[19:41-10.3 Notice of appearance by attorney

Each attorney practicing before the Commission or Division shall promptly file with the Commission a notice of appearance in each matter and on behalf of each client represented and may be required to file evidence of his authority to act in such capacity.]

[19:41-10.4 Other professions and occupations

No person shall practice accountancy, architecture, professional engineering or land surveying before the Commission or Division unless he is a certified public accountant, licensed architect, licensed professional engineer or licensed land surveyor of this State. No person shall practice any other profession or occupation regulated by the laws of this State which authorizes the licensure, certification or any other governmental approval of persons practicing same unless such person is so licensed, certified or approved.]

SUBCHAPTER 8. HEARINGS ON REGULATIONS

19:42-8.1 Hearings on regulations

(a) (No change.)

(b) Consistent with the requirements of the Casino Control Act and the Administrative Procedure Act, **N.J.S.A. 52:14B-1 et seq.,** the Commission may**, in its discretion,** conduct hearings concerning the adoption, amendment or repeal of its regulations[;] **.** [provided, however, that pursuant to section 69(c) of the Act any interested person may file a petition with the Commission requesting the adoption, amendment or repeal of a regulation. Such petition shall state clearly and concisely:

1. The substance and nature of the regulation, amendment or repeal requested; and

2. The reason for the request; and

3. Reference to the authority of the commission to take the action requested; and

4. The specific legal rights, duties, obligations, privileges, benefits or other specific legal relations of the interested person which are affected by the regulation, amendment or repeal requested.

(c) Upon receipt of a proper petition, the Commission shall schedule the matter for hearing within 90 days and shall render a decision within 30 days after the completion of said hearing.]

(c) Any public hearing held in connection with a proposed regulation shall be conducted in accordance with N.J.S.A. 52:14B-4(g).

(d) The Commission shall provide at least 15 days notice of any public hearing conducted in connection with a proposed regulation. Such notice shall be published in the New Jersey Register or provided in a manner reasonably calculated to reach the interested public in accordance with N.J.A.C. 1:30-3.3(b).

(e) When a hearing is held in connection with a proposed regulation, all interested parties shall be afforded the opportunity to attend and to appear before the Commission to submit oral argument in support of or in opposition to the proposed regulation. Such participation does not include the right to present evidence or to cross-examine witnesses, which may be permitted solely in the discretion of the Commission.

1. The Commission may require notice in advance of the date of the proceedings of any individual's intent to participate.

2. This section shall not be construed to establish a right of any individual to appear before the Commission in the event that the Commission may act at a subsequent date to adopt the proposed regulation.

BANKING

(a)

DIVISION OF BANKING

Consumer Loan Act Rules

Proposed Repeals and New Rules: N.J.A.C. 3:17-2.1 and 6.10

Proposed Amendments: N.J.A.C. 3:17-2.2, 6.1, 6.2, 6.6 and 7.1

Proposed New Rule: N.J.A.C. 3:17-3.9

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:10-23.

Proposal Number: PRN 1989-383.

Submit comments by August 16, 1989 to:

Robert M. Jaworski
Deputy Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend and supplement its rules regarding small loan lenders. These amendments are necessary to comply with recent amendments to the Small Loan Law, N.J.S.A. 17:10-1 et seq., P.L. 1989, c. 38, approved March 9, 1989 (the "Act"). The Act

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changes the name of this law to the "Consumer Loan Act."

Section 3 of the Act permits the Department to charge by regulation: (1) an application fee not to exceed $500.00; (2) an initial investigation fee not to exceed $1,000; and (3) a fee not to exceed $1,000 for investigating additional locations of licensees. By these proposed amendments and new rules, the Department sets the application fee at $250.00 and the investigation fees at $300.00. The Act also explicitly authorizes the Department to charge for examinations, and proposed new rule N.J.A.C. 3:17-3.9 indicates that licensees will be charged for examinations on a per diem basis. The Department will set license fees as authorized in a separate rule setting fees for all licensees.

The Act increases the dollar amount of a loan that licensees are permitted to make from $5,000 to $15,000. In accordance with this increase, the proposal makes corresponding changes in the rules. Consumer loan lenders will now be able to make loans under the Act for up to $15,000 at an interest rate agreed to by the lender and the borrower. This means that the usury rate on loans made by licensees to include between $5,000 and $15,000 increases to 30 percent, pursuant to N.J.S.A. 2C:21-19. This change will cause a corresponding increase in the availability of credit.

The Act changes the factors the Department is to consider when evaluating an application. Pursuant to these changes, the Department is no longer directed to consider whether allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted. Instead, the Department shall consider (1) whether the applicant has adequate financial responsibility, experience, character and general fitness; and (2) whether the applicant has a net worth of at least $100,000.

Consistent with these changes, the proposed amendments and new rules remove the regulatory provision which allows an applicant who is denied a license to re-file within six months after rejection when the application is accompanied by figures or statistics indicating considerable growth in the area. Since promoting the convenience and advantage of the community is no longer a criteria for licensure, this data is not pertinent. Accordingly, the proposed amendments provides that a person whose application is rejected may not re-file for six months.

The other changes, reflected in the proposed amendments and new rules, are intended to bring the rules into conformity with existing statutory law.

Social Impact

The proposed amendments and new rules set the fees charged applicants and licensees. To the extent that fees are increased, a beneficial social impact will result from the shift of financial responsibility for the regulation of these institutions from the general taxpaying public to those who benefit financially from conducting these businesses in New Jersey.

The Act removes the "convenience and advantage" standard for evaluating applications, and the rules make corresponding changes consistent therewith. Removal of this standard is intended to encourage applicants to enter this field and increase the number of facilities available to the public.

Economic Impact

Pursuant to the proposed amendments and new rules, the fees charged applicants and licensees will increase. The investigation fee increases from $150.00 to $300.00 and an application fee of $250.00 is imposed. The Department has determined that these increases will have minor economic impact. To the extent that these increased costs exclude persons from entering the industry, this impact is consistent with the Legislature's mandate of restricting licensure to those persons with more liquid assets.

Regulatory Flexibility Analysis

Most consumer lenders are small businesses. However, the proposed amendments and new rules will impose no additional reporting, recording or compliance requirements on applicants or licensees. The amendments and rules will have an economic impact on small businesses by increasing the cost of applying for and maintaining a license. The Department deems these fees necessary to reimburse the State for the cost of reviewing each application and regulating and examining each licensee. To the extent that small businesses require less time to examine, the per diem examination fee will correspondingly be less.

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

CHAPTER 17
[SMALL LOAN LAW]
CONSUMER LOAN ACT REGULATIONS

3:17-2.1 Requirements

(a) **An applicant for a consumer loan license shall include with the completed application form a non-refundable application fee of $250.00.** [An application for a small loan license will not be accepted for filing within a six-month period following the rejection of a small loan application for the same municipality unless the application can be supported by official figures or statistics which indicate considerable growth in population, retail sales or demand for service.]

(b) **In addition to the application fee, the applicant shall pay to the Department an investigation fee of $300.00. The applicant shall also pay this investigation fee when applying to change location of a place of business within the same municipality in accordance with N.J.S.A. 17:10-8.** [The word "official", as used in this Section, means figures or statistics prepared and published by the Federal Government, the State of New Jersey or recognized national organizations engaged in the business of estimating population or retail sales.]

3:17-2.2 Number of applications allowed

(a) The Department will not accept for filing more than one application for a license by any applicant or affiliated applicants for an original or newly created location within a single 90-day period.

(b) **When the Commissioner denies an application, the applicant may not reapply for at least six months from the date of the denial.**

3:17-3.9 Examinations

The Department may, at any time and as often as the Commissioner deems necessary, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, copartnership, association, and corporation engaged in the consumer loan business. The entity examined shall pay to the Commissioner the actual cost of the examination on a per diem basis.

3:17-6.1 Maximum term of loan

(a) No loan in an amount of $1,000 or less shall be made for a greater period of time than 36 months and 15 days.

(b) No loan in an amount in excess of $1,000, **but not exceeding $2,500,** shall be made for a greater period of time than 48 months and 15 days.

(c) **No loan in an amount in excess of $2,500, shall be made for a greater period of time than 60 months and 15 days.**

3:17-6.2 Monthly installments

All loans, **except variable rate loans permitted pursuant to N.J.S.A. 17:10-14,** shall be repaid in substantially equal monthly installments of principal and interest computed on unpaid balances sufficient to liquidate the principal thereof, except as provided in [section 3 of this subchapter] **N.J.A.C. 3:17-6.3**.

3:17-6.6 Reduction of interest to usury rate

When a licensee knows or has reason to know that the proceeds of loan of [$2,500] **$15,000** or less are to be delivered by the borrower to an individual already indebted to such licensee on a loan of [$2,500] **$15,000** or less, then such loans shall be construed as a single loan to such individual for the purpose of interest computations, and if the aggregate of such loans ever exceeds [$2,500] **$15,000**, interest on such accounts shall be restricted to the rate authorized by Title 31, the Interest and Usury Law, and the rules and regulations promulgated by the commissioner pursuant thereto, on unpaid principal balances from the date such excess occurred.

3:17-6.10 Payment on installment loans

[(a) By reason of the provision of section 14 of the Small Loan Law which requires all loans of $2,500 or less be paid in installments and interest to be computed at the annual rate on unpaid principal balances, the following interpretations shall be given:

1. A month or calendar month shall be from one day in one month to the corresponding day in the succeeding month, if any, and if none, to the last day in the succeeding month;

2. Interest for one month or calendar month shall not exceed 1/12 of 24 per cent per annum on that part of the unpaid principal not exceeding $500.00, 1/12 of 22 per cent per annum on that part of

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the unpaid principal balance exceeding $500.00 but not exceeding $1,500 and 1/12 of 18 per cent per annum on any remainder of such unpaid principal balance;

3. If a fraction of a month is involved in any interest computation, a day shall be considered 1/30 of a month;

4. All computations of interest shall be made at a monthly rate as defined in paragraph 2 of this subsection if one or more months, as defined herein, are involved in the interest period, and where a fraction of a month is involved, the daily rate shall be 1/30 of the monthly rate. A daily rate shall be used only in computing interest for fractions of a month.]

(a) Notwithstanding the provisions of N.J.S.A. 31:1-1 or any other law to the contrary, a licensee may loan any sum of money not exceeding $15,000, repayable in installments, and may charge, contract for and receive thereon interest at an annual percentage rate or rates agreed to by the licensee and the borrower not exceeding the limits set in N.J.S.A. 2C:21-19.

(b) A licensee may not charge or receive interest in advance. A licensee shall not compound interest and may compute interest only on unpaid principal balances.

(c) For the purpose of computing interest, a licensee shall apply all installment payments no later than the next day, other than a public holiday, after the day of receipt, and shall charge interest for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

3:17-7.1 Permissible other business

(a) A [small loan] licensee may engage in certain other types of business as permitted in this subchapter. Such other types of businesses may be conducted by the [small loan] licensee in the same office, room or place of business where the licensee conducts the business of making loans under the [Small Loan Law] **Consumer Loan Act**.

(b) Upon obtaining any necessary license or authorization, a [small loan] licensee may engage in the following other types of businesses:

1.-8. (No change.)

9. First lien loans on real property;

i. Any such business shall be conducted in accordance with the provisions of N.J.S.A. [3:1-1] **31:1-1** et seq., N.J.A.C. 3:1[-1 et seq.], or Section 501, et seq., of the Federal Depository Institutions Deregulation and Monetary Control Act of 1980.

10.-12. (No change.)

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

License Fees

Proposed Amendments: N.J.A.C. 3:18-10.1, 3:23-2.1 and 3:38-1.1 and 1.2

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1, 17:10-3, 9 and 23; 17:11A-38; 17:11B-5 and 13; 17:15-1; 17:15A-4 and 6; 17:15B-7 and 17; 17:16C-7, 8, 82(a) (b) and (c); 17:16D-4 and 8; and 45:22-4 and 11.

Proposal Number: PRN 1989-382.

Submit comments by August 16, 1989 to:

Robert M. Jaworski
Deputy Commissioner
Department of Banking
CN-040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Legislature, in P.L. 1981, c.321, in P.L. 1981, c.18, and in P.L. 1987, c.230, gave the Commissioner of Banking the authority to establish license fees for certain persons conducting business pursuant to statutes administered and supervised by the Department of Banking. These proposed amendments seek to set forth a revised schedule of license fees. The revised schedule increases fees to keep pace with increased administrative costs and to raise certain other fees which experience has shown are set at levels which are substantially below those needed to cover associated administrative costs.

The amended license fees proposed for all licensees except mortgage bankers and mortgage brokers will become effective for any license issued or renewed for the biennial license period commencing January 1, 1990. The amended license fees proposed for mortgage bankers and mortgage brokers will become effective for any license issued 60 days after the adoption of these amendments and for any license renewed for the biennial license period commencing July 1, 1991.

Social Impact

These proposed amendments will increase the license fees charged for persons conducting business pursuant to various licensing statutes administered and enforced by the Department of Banking. The proposed amendments impact upon new license applicants and all licensees who are currently regulated by the statutes cited in the authorities. There is no direct impact on consumers who deal with these licensees.

Economic Impact

The license fees collected shall offset part of the administrative costs connected with statutorily mandated supervision, examination, and investigation of new applicants and licensees. The license fees which these amendments seek to change have not been increased since 1982 in some cases and 1984 in others. The proposed license fee increases reflect an actual increase of about 33 1/3 percent or less over the license fees presently charged for all but four license categories. In those four instances the license fees which have been set in the past were unusually low and did not cover the Department's costs. These four fees have therefore been increased substantially to recertify the inequities. In only one instance is a license fee set at the maximum allowed by statute. The amendments therefore allow the Department the ability to increase fees further as economic conditions require. The proposed fee increases, in general, fairly represent the economic changes which have occurred since 1982 and 1984. The economic impact to the public, if any, should be minimal.

Regulatory Flexibility Analysis

Many applicants and licensees to be affected by these amendments are small businesses. However, in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments will imposed no new reporting, recording or compliance requirements on them.

The type of businesses subject to licensure was considered by the Legislature in the establishment of the statutory maximum allowable license fee for each category of licensure. The proposed fee increases are consistent with the differentiations originally made by the Legislature. The Department deems these license fee increases to be necessary to reimburse the State for a portion of the costs associated with application review, license issuance, record maintenance, supervision, examination and investigation. The costs associated with these areas are dependent upon the type of applicant or licensee and not the business size of the applicant or licensee. The Department, therefore, does not differentiate the license fees based upon the size of the business. There should be no significant economic impact on any applicant or licensee.

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

3:18-10.1 Initial license requirements

(a)-(d) (No change.)

(e) License and application fees are as follows:

1.-3. (No change.)

4. The license fee is $[600.00] **800.00** for each new branch secondary mortgage loan license applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $[300.00] **400.00**. There shall also be a $[100.00] **200.00** nonrefundable processing fee due for each new applicant at the time of application.

5. (No change.)

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3:23-2.1 Licenses

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

LICENSEES	STATUTORY MAXIMUM BIENNIAL FEE	BIENNIAL FEE		ANNUAL FEE	
[Small] **Consumer** Loan (N.J.S.A. 17:10-3 & 9)	$1,000.00	$[600.00]	**800.00**	$[300.00]	**400.00**
Foreign Money Remitter (N.J.S.A. 17:15-1)	$1,000.00	$[300.00]	**800.00**	$[150.00]	**400.00**
Check Casher (N.J.S.A. 17:15A-4)	$1,000.00	$[600.00]	**800.00**	$[300.00]	**400.00**
Check Seller (N.J.S.A. 17:15A-7)	$1,200.00	$1,200.00		$600.00	
Retail Installment Sales					
(a) Sales Finance Company (N.J.S.A. 17:16C-7)	$1,000.00	$[600.00]	**800.00**	$[300.00]	**400.00**
(b) Motor Vehicle Installment Seller (N.J.S.A. 17:16C-8)	$ 300.00	$[80.00]	**150.00**	$[40.00]	**75.00**
(c) Home Financing Agency (N.J.S.A. 17:16C-82(a))	$ 600.00	$[300.00]	**400.00**	$[150.00]	**200.00**
(d) Home Repair Contractor (N.J.S.A. 17:16C-82(b))	$ 300.00	$[80.00]	**150.00**	$[40.00]	**75.00**
(e) Home Repair Salesman (N.J.S.A. 17:16C-82(c))	$ 60.00	$[30.00]	**50.00**	$[15.00]	**25.00**
Insurance Premium Finance Company (N.J.S.A. 17:16D-4)	$1,000.00	$[600.00]	**800.00**	$[300.00]	**400.00**
Pawnbroker (N.J.S.A. 45:22-4)	$ 800.00	$[450.00]	**600.00**	$[225.00]	**300.00**

3:38-1.1 License requirements

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

(c) The license fee is $[700.00] **800.00** for each mortgage banker or mortgage broker for each **biennial** license period, or any part thereof provided, however, that if an initial license is issued [after the 10th month of any license period, the license fee is] **in the second year of any biennial licensing period, the license fee shall be** $400.00.

3:38-1.2 Applications

(a) Each applicant for a mortgage banker or mortgage broker license must submit to the Department of Banking a completed application in a form prescribed by the Commissioner together with the required license fee and a non-refundable application fee of $[125.00] **200.00**.

(b)-(e) (No change.)

(a)

DIVISIONS OF BANKING, SAVINGS AND LOAN, AND CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Assessments; Change of Name, Address or Employer; Home Mortgage Disclosure

Proposed New Rules: 3:1-7.4; 3:19-1.7

Proposed Amendments: N.J.A.C. 3:1-6.1, 6.2, 7.1, 7.2, 7.5, and 9.6; 3:13-3.2 and 3:38-1.8

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8, 17:16F-11

Proposal Number: PRN 1989-384.

Submit written comments by August 16, 1989 to:

Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend and supplement its rules regarding the charging of fees to reflect increasing administrative costs.

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In particular, N.J.A.C. 3:1-6.2 is amended to increase the assessment imposed on banks, savings banks and savings and loan associations. The current assessment is 0.30 of one cent per $100.00 of total assets, and the proposal increases this to 0.36 of one cent. This is the first increase in the assessment since the first half of calendar year 1978.

The fees the Department imposes when a licensee changes its name are increased from $20.00, $25.00 or $50.00 to a uniform charge of $75.00. In addition, a charge is imposed for the first time on mortgage bankers or brokers for this service. These fees were imposed on May 14, 1975, and have not been increased since. A licensee with more than one office which changes its name will be assessed an additional fee of $25.00 per additional office affected by the change to reimburse the Department for its administrative costs.

The proposed amendments standardize at $25.00 the fee the Department charges for issuing duplicate licenses. Similarly, the charge imposed on all licensees for changing an address is set at $75.00.

The fee imposed by the Department for reviewing home mortgage disclosure statements is increased from $25.00 to $50.00 and the per diem examination charge for the examination of a company which controls a bank is increased from $200.00 to $260.00. Finally, a home repair salesman changing his or her employer according to proposed new rule N.J.A.C. 3:19-1.7 must now submit a request form with the Department along with a $25.00 fee.

Social Impact

The proposed amendments and new rules will set the fees charged banks, savings banks and savings and loan associations and other licensees for various services performed by the Department of Banking. To the extent that fees are increased, a beneficial social impact will result from the shift of financial responsibility for the regulation of state chartered financial institutions from the general taxpaying public to those who benefit financially from conducting these businesses in New Jersey. These fees have not been modified for several years and their increase reflects a corresponding increase in the administrative costs of the Department.

Economic Impact

The increase of these fees will marginally increase the cost to the licensee of doing business in this State. Most of these charges are not for recurring services, so their economic impact will be minimal. The exception is the assessment on banks, savings banks and savings and loan associations. This assessment has not been increased for about 12 years.

Regulatory Flexibility Analysis

Many licensees affected by this proposal are small businesses. In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules and amendments impose the following reporting requirements. A licenses changing its location must submit a request form with the Commissioner. Similarly a home repair salesman must submit a change of employer request form when changing his affiliation. This information is necessary for the Department to maintain current records of its licensees and to ensure compliance. Accordingly, differentiation may not be made for small businesses.

In addition, the amendments and new rules marginally increase costs to all licensees, including small businesses. The costs of these services are dependent on the type of applicant and the service provided, not on the size of business. These increases are necessary to reimburse the State for the costs associated with the services provided. Accordingly, the Department does not differentiate the fees based on the size of the business. There should be no significant economic impact on any applicant or licensee.

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

3:1-6.1 Institutions to be assessed

Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of [0.30] **0.36** of one cent per $100.00 of total assets.

3:1-6.2 Assessed semiannually

The fee shall be assessed at a rate of [0.15] **0.18** of one cent per $100.00 of total assets as of December 31 and a rate of [0.15] **0.18** of one cent per $100.00 of total assets as of June 30 of each calendar year.

3:1-7.1 Name change

(a) Every licensee who shall change its name [within a license period] **at any time** shall, within 30 days of such change, submit proof of the name change to the commissioner, shall surrender its license or licenses for endorsement of such change and pay to the Department of Banking the fee or fees provided in schedule A of this subchapter.

1. Schedule A:

i. Motor vehicle installment seller [$20.00] **$75.00**
ii. Sales finance company [50.00] **$75.00**
iii. Home repair contractor [20.00] **$75.00**
iv. Home financing agency [50.00] **$75.00**
v. [Small] **Consumer** loan licensee [50.00] **$75.00**
vi. Pawnbroker [50.00] **$75.00**
vii. Foreign money remitter [50.00] **$75.00**
viii. Licensed casher of checks [50.00] **$75.00**
i[v]x. Foreign banks [25.00] **$75.00**
x. Secondary mortgage loan licensee [50.00] **$75.00**
xi. Insurance premium finance company [50.00] **$75.00**
xii. Licensed seller of checks [50.00] **$75.00**
xiii. Mortgage banker or broker $75.00

(b) For all licensees with more than one office, the Department shall impose a $25.00 fee for each license at a branch office affected by the name change.

3:1-7.2 Duplicate licenses and certificates

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

(c) The licensee shall pay to the Department of Banking the fee, or fees provided in Schedule B of this subchapter for such licenses or certificates.

1. Schedule B:

i. Motor vehicle installment seller—[$15.00] **$25.00**
ii. Sales finance company—[15.00] **$25.00**
iii. Home repair contractor—[15.00] **$25.00**
iv. Home financing agency—[15.00] **$25.00**
v. [Small] **Consumer** loan licensee—[15.00] **$25.00**
vi. Pawnbroker—[15.00] **$25.00**
vii. Foreign money remitter—[15.00] **$25.00**
viii. Licensed casher of checks—[15.00] **$25.00**
ix. Foreign banks—[15.00] **$25.00**
x. Secondary mortgage loan licensee—[15.00] **$25.00**
xi. Home repair salesmen—[5.00] **$25.00**
xii. Insurance premium finance company—[15.00] **$25.00**
xiii. Licensed seller of checks—[15.00] **$25.00**
xiv. Mortgage banker or mortgage broker—$25.00

3:1-7.4 Address change

Every licensee referenced in Schedule A or B which changes a licensed business address at any time shall, within 10 days of this change, submit information relative to the address change to the Commissioner; surrender the affected license or licenses for endorsement of the change; and pay to the Department an address change fee of $75.00.

3:1-[7.4]**7.5** (No change in text.)

3:1-9.6 Filing requirements; processing fee

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

(c) A processing fee of [$25.00] **$50.00** shall accompany each quarterly report. The fee shall be made payable to the Treasurer, State of New Jersey.

(d) (No change.)

3:13-3.2 Per diem per person examination charge

The individual per diem per person examination charge for an examination of a company which controls a bank shall be [$200.00] **$260.00**

3:19-1.7 Home repair salesmen; change of affiliation

A licensed home repair salesman must be employed by a licensed home repair contractor and may represent only that employer in the transaction of home repair financing business. A licensed home repair salesman who changes his or her employer shall, within 10 days of this change, submit to the Department a change of employer request form along with a $25.00 fee. When submitting this form, the salesman shall

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surrender the license indicating the affiliation with his or her prior employer.

3:38-1.8 Office requirements

(a)-(d) (No change.)

(e) A licensee changing its name or the address of one or more of its offices shall file the appropriate form with the Department in accordance with the requirements set forth in N.J.A.C. 3:1-7.

COMMUNITY AFFAIRS

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Controls on Affordability; Uniform Deed Restrictions and Liens

Proposed New Rule: N.J.A.C. 5:92-12 Appendix

Authorized By: New Jersey Council on Affordable Housing, William A. Angus, Jr., Acting Chairman.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1989-396.

Submit comments by August 16, 1989 to:
Douglas V. Opalski, Executive Director
NJ Council on Affordable Housing
CN 813
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 5:92-12 requires that each newly constructed low or moderate income sales unit be controlled by a uniform deed restriction and lien adopted by the Council that implements the provisions within the referenced rules. Any deviations from the uniform deed restriction and lien must be approved by the Council.

The Council is now proposing the uniform deed restriction and lien as an appendix to subchapter 12 of N.J.A.C. 5:92. These documents have been reviewed by lenders, title insurers, county clerks, attorneys, and Fannie Mae. The Council believes these documents will avoid confusion among all parties involved in monitoring low and moderate income housing.

Social Impact

The proposed appendix will have a positive social impact because the documents therein will avoid confusion regarding the requirements of monitoring low and moderate income housing.

Economic Impact

Since the documents will add clarity to the process, attorneys, lenders, title insurers, county clerks and municipal officials will become more efficient in monitoring low and moderate income housing. Therefore, the appendix should have a positive economic impact.

Regulatory Flexibility Statement

The proposed appendix imposes no reporting, recordkeeping or compliance requirements on small business, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed appendix implements the provisions within N.J.A.C. 5:92-12.

Full text of the proposal follows:

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING

AFFORDABLE HOUSING AGREEMENT

Prepared by:

_____

A DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this ____ day of ____ , ____ between _____ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and _____ hereafter "AUTHORITY" _____ , both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least _____ years beginning on _____ and ending at the first non-exempt transfer of title after _____ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units (unit) remain(s) affordable to low and moderate income-eligible households for that period of time described in Section III TERM OF RESTRICTIONS.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income-eligible households at a maximum resale price determined by the Authority for the specified period of time.

I. DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Affordable Housing" shall mean residential units that have been restricted for occupancy by Households whose total Gross Annual Income is measured at less than 80% of the median income level established by an authorized income guideline for geographic region and family size.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c.530 (C. 55:14K-1 et seq.).

"Agreement" shall mean this written Affordable Housing Agreement between the Authority and the owner of an Affordable Housing unit which places restrictions on Affordable Housing units so that they remain affordable to and occupied by Low and Moderate Income-Eligible Households for the period of time specified in this agreement.

"Assessments" shall mean all taxes, levies or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the Affordable Housing unit.

"Authority" shall mean the administrative organization designated by municipal ordinance for the purpose of monitoring the occupancy and resale restrictions contained in this Affordable Housing Agreement. The Authority shall serve as an instrument of the municipality in exercising the municipal rights to the collection of funds as contained in this Agreement.

"Base Price" shall mean the initial sales price of a unit produced for or designated as owner-occupied Affordable Housing.

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"Council" shall mean the Council on Affordable Housing (COAH) established pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Certified Household" shall mean any eligible Household whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received written certification as a Low or Moderate Income-Eligible Household from the Authority.

"Department" shall mean the New Jersey State Department of Community Affairs.

"Exempt Transaction" shall mean the following "non-sales" title transactions: (1) Transfer of ownership between husband and wife; (2) Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation (but not including sales to third parties); (3) Transfer of ownership through an Executor's deed to a Class A Beneficiary; and, (4) Transfer of ownership by court order. All other title transfers shall be deemed non-exempt.

"Fair Market Price" shall mean the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"First Purchase Money Mortgage" shall mean the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable Housing unit providing that such mortgage is not in excess of the applicable maximum allowable resale price and is payable to a valid First Purchase Money Mortgagee.

"First Purchase Money Mortgagee" shall mean an institutional lender or investor, licensed or regulated by the Federal or a State government or any agency thereof, which is the holder and/or assigns of the First Money Mortgage.

"Foreclosure" shall mean the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross Annual Income" shall mean the total amount of all sources of a Household's income including, but not limited to salary, wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on those sources of income reported to the Internal Revenue Service (IRS) and/or that can be utilized for the purpose of mortgage approval.

"Hardship Waiver" shall mean an approval by the Authority at a non-exempt transfer of title to sell an affordable unit to a household that exceeds the income eligibility criteria after the Owner has demonstrated that no Certified Household has signed an agreement to purchase the unit. The Owner shall have marketed the unit for 90 days after a Notice of Intent to Sell has been received by the Authority and the Authority shall have 30 days thereafter to approve a Hardship Waiver. The Hardship Waiver shall permit a low income unit to be sold to a moderate income household or a moderate income unit to be sold to a household whose income is at 80% or above the applicable median income guide. The Hardship Waiver is only valid for a single sale.

"Household" shall mean the person or persons occupying a housing unit.

"Index" shall mean the measured percentage of change in the median income for a Household of four by geographic region using the income guideline approved for use by Council.

"Low Income Household" shall mean a Household whose total Gross Annual Income is equal to 50% or less of the median gross income figure established by geographic region and household size using the income guideline approved for use by Council.

"Moderate Income Household" shall mean a Household whose total Gross Annual Income is equal to more than 50% but less than 80% of the median gross income established by geographic region and household size using the income guideline approved for use by Council.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular Affordable Housing unit. For purposes of the initial sales or rentals of any Affordable Housing unit, Owner shall include the developer/owner of such Affordable Housing units. Owner shall not include any co-signer or co-borrower on any First Purchase Money Mortgage unless such co-signer or co-borrower is also a named title holder of record of such Affordable Housing unit.

"Price Differential" shall mean the total amount of the restricted sales price that exceeds the maximum restricted resale price as calculated by the Index after reasonable real estate broker fees have been deducted. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Authority at the time a Notice of Intent to Sell has been received from the Owner.

"Primary Residence" shall mean the unit wherein a Certified Household maintains continuing residence for no less than nine months of each calendar year.

"Purchaser" shall mean a Certified Household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment" shall mean the Owner's obligation to the municipality for payment of 95% of the price differential between the maximum allowable resale price and the fair market selling price which has accrued to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Repayment Mortgage" shall mean the second mortgage document signed by the Owner that is given to the municipality as security for the payment due under the Repayment Note.

"Repayment Note" shall mean the second mortgage note signed by the owner that requires the repayment to the municipality of 95% of the price differential which has accrued to the low or moderate income unit during the period of resale controls at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Resale Price" shall mean the Base Price of a unit designated as owner-occupied affordable housing as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total Monthly Housing Costs" shall mean the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance.

II. PROPERTY DESCRIPTION

This agreement applies to the Owner's interest in the real property commonly known as:

Block _____ Lot ____ Municipality _____

County _____ # of Bedrooms _____

Complete Street Address & Unit # _____

City _____ State _____ Zip _____

If additional Affordable Housing units are to be covered by this Agreement, a description of each additional unit is attached as Exhibit A and is incorporated herein.

III. TERM OF RESTRICTIONS

A. The terms, restrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurrence of either of the following events:

1. At the first non-exempt sale after 10 (ten) years from the beginning date established pursuant to Paragraph A above for units located in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b); or at the first non-exempt sale after 20 (twenty) years from the beginning date established

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pursuant to Paragraph A above for units located in all other municipalities; or

2. The date upon which the event set forth in Section IX FORECLOSURE herein shall occur.

C. The terms, restrictions and covenants of this Affordable Housing Agreement may be extended by municipal resolution as provided for in N.J.A.C. 5:92.1 et seq. Such municipal resolution shall provide for a period of extended restrictions and shall be effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.

D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located.

B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.

C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTIONS shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.

1. If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Affordable Housing Agreement and a Repayment Lien for a period of up to twenty (20) years.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTIONS.

3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intent to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.

D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eligible Households throughout the duration of this Agreement.

V. REQUIREMENTS

A. This Agreement shall be recorded with the recording office of the county in which the Affordable Housing unit or units are located. The Agreement shall be filed no earlier than the recording of an applicable Master Deed and no later than the closing date of the initial sale.

B. When a single Agreement is used to govern more than one Affordable Housing unit, the Agreement shall contain a description of each Affordable Housing unit governed by the Agreement as described in Section II PROPERTY DESCRIPTION and/or Exhibit A of the Agreement and an ending date to be imposed on the unit as described in Section III TERM OF RESTRICTIONS of the Agreement.

C. A Repayment Mortgage and a Repayment Note shall be executed between the Owner and the municipality wherein the unit(s) is(are) located at the time of closing and transfer of title to any purchaser of an Affordable Housing Unit. The Repayment Mortgage shall provide for the repayment of 95% of the Price Differential at the first non-exempt transfer of title after the ending date of restrictions as specified in Section III TERM OF RESTRICTIONS. The Repayment Mortgage shall be recorded with the records office of the County in which the unit is located.

VI. DEEDS OF CONVEYANCE AND LEASE PROVISIONS

All Deeds of Conveyance and Contracts to Purchase from all Owners to Certified Purchasers of Affordable Housing units shall include the following clause in a conspicuous place.

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT dated _____ which was filed in the Office of the Clerk of _____ County in Misc. Book _____ at Page _____ on _____ and is also on file with the Authority".

Any Master Deed that includes an Affordable Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the Master Deed that differentiates the affordable unit from all other units covered in the Master Deed.

VII. COVENANTS RUNNING WITH LAND

The provisions of this Affordable Housing Agreement shall constitute covenants running with the land with respect to each Affordable Housing unit affected hereby, and shall bind all Purchasers and Owners of each Affordable Housing unit, their heirs, assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns for the duration of this Agreement as set forth herein.

VIII. OWNER RESPONSIBILITIES

In addition to fully complying with the terms and provisions of this Affordable Housing Agreement, the Owner acknowledges the following responsibilities:

A. Affordable Housing units shall at all times remain the Primary Residence of the Owner. The Owner shall not rent any Affordable Housing unit to any party whether or not that party qualifies as a Low or Moderate income household without prior written approval from the Authority.

B. All home improvements made to an Affordable Housing Unit shall be at the Owner's expense except that expenditures for any alteration that allows a unit to be resold to a larger household size because of increased capacity for occupancy shall be considered for a recalculation of Base Price. Owners must obtain prior approval for such alteration from the Authority to qualify for this recalculation.

C. The Owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

D. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, both public and private, assessed against such unit, or any part thereof, as and when the same become due.

E. Owners of Affordable Housing units shall notify the Authority in writing no less than ninety (90) days prior to any proposed sale of an intent to sell the property. Owners shall not execute any purchase agreement, convey title or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Authority.

F. An Owner shall request referrals of eligible households from pre-established referral lists maintained by the Authority.

G. If the Authority does not refer an eligible household within sixty (60) days of the Notice of Intent to Sell the unit or no Agreement to Purchase the unit has been executed, the Owner may propose a

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Contract to Purchase the unit to an eligible household not referred through the Authority. The proposed Purchaser must complete all required Household Eligibility forms and submit Gross Annual Income Information for verification to the Authority for written certification as an eligible sales transaction.

H. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was originally purchased (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. The Owner must personally certify that all other items of unaffixed personal property to be included in the resale are also included in the maximum allowable Resale Price or sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. Such transfer of funds shall also be certified by the Purchaser at the time of closing. In no event shall the purchase of any personal property be made a condition of unit resale.

I. The Owner shall not permit any lien, other than the First Purchase Money Mortgage, second mortgages approved by the Authority and liens of the Authority to attach and remain on the property for more than sixty (60) days.

J. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the Owner, in addition to paying any assessments required by the Master Deed of the Condominium or By-laws of an Association, shall further fully comply with all of the terms, covenants or conditions of said Master Deed or By-Laws, as well as fully comply with all terms, conditions and restrictions of this Affordable Housing Agreement.

K. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Certificate of Exemption. The Owner shall notify the Authority in writing of any proposed Exempt Transaction and supply the necessary documentation to qualify for a Certificate of Exemption. An Exempt Transaction does not terminate the resale restrictions or existing liens and is not considered a certified sales transaction in calculating subsequent resale prices. A Certificate of Exemption shall be filed with the deed at the time of title transfer.

L. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Hardship Waiver. The Owner may submit a written request for a Hardship Waiver if no Certified Household has executed an agreement to purchase within ninety (90) days of notification of an approved resale price and referral of potential purchasers. Prior to issuing a Hardship Waiver, the Municipality shall have 30 days in which to sign an agreement to purchase the unit at the approved resale price and subsequently rent or convey it to a Certified Household. The Municipality may transfer this option to the Department, the Agency, or a qualified non-profit organization as determined by the Council. For approval of a Hardship Waiver, an Owner must document efforts to sell the unit to an income eligible household. If the waiver is granted, the Owner may offer a low income unit to a moderate income household or a moderate income unit to a household whose income exceeds 80% of the applicable median income guide. The Hardship Waiver shall be filed with the deed at the time of closing and is only valid for the designated resale transaction. It does not affect the resale price. All future resales are subject to all restrictions stated herein.

M. The Owner shall be obligated to pay a reasonable service fee to the Authority at the time of closing and transfer of title in the amount specified by the Authority at the time a restricted resale price has been determined after receipt of a Notice of Intent to Sell. Such fee shall not be included in the calculation of the maximum resale price.

IX. FORECLOSURE

The terms and restrictions of this Agreement shall be subordinated only to the first Purchase Money Mortgage lien on the Affordable Housing property and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of any default of such mortgage as such remedies are set forth in the First Purchase Money Mortgage documents for the Affordable Housing unit.

Any Affordable Housing owner-occupied property that is acquired by a First Purchase Money Mortgagee by Deed in lieu of Foreclosure, or by a Purchaser at a Foreclosure sale conducted by the holder of the First Purchase Money Mortgagee shall be permanently released from the restrictions and covenants of this Affordable Housing Agreement. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to Foreclosure with regard to the First Purchase Money Mortgagee, a lender in the secondary mortgage market including but not limited to the FNMA, Federal Home Loan Mortgage Corporation, GNMA, or an entity acting on their behalf and all subsequent purchasers, Owners and mortgagees of that particular Affordable Housing unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this Agreement with respect to the Affordable Housing unit owned by such defaulting mortgagor at time of the Foreclosure sale).

Upon a judgment of Foreclosure, the Authority shall execute a document to be recorded in the county recording office as evidence that such Affordable Housing unit has been forever released from the restrictions of this Agreement. Execution of foreclosure sales by any other class of creditor or mortgagee shall not result in a release of the Affordable Housing unit from the provisions and restrictions of this Agreement.

In the event of a Foreclosure sale by the First Purchase Mortgagee, the defaulting mortgagor shall be personally obligated to pay to the Authority any excess funds generated from such Foreclosure sale. For purposes of this agreement, excess funds shall be the total amount paid to the sheriff by reason of the Foreclosure sale in excess of the greater of (1) the maximum permissable Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale pursuant to the rules and guidelines of the Authority and (2) the amount required to pay and satisfy the First Money mortgage, including the costs of Foreclosure plus any second mortgages approved by the Authority in accordance with this Agreement. The amount of excess funds shall also include all payments to any junior creditors out of the Foreclosure sale proceeds even if such were to the exclusion of the defaulting mortgagor.

The Authority is hereby given a first priority lien, second only to the First Purchase Money Mortgagee and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such excess funds. This obligation of the defaulting mortgagor to pay the full amount of excess funds to the Authority shall be deemed to be a personal obligation of the Owner of record at time of the Foreclosure sale surviving such sale. The Authority shall be empowered to enforce the obligation of the defaulting mortgagor in any appropriate court of law or equity as though same were a personal contractual obligation of the defaulting mortgagor. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure sale shall be responsible or liable to the Authority for any portion of this excess.

No part of the excess funds, however, shall be part of the defaulting mortgagor's equity.

The defaulting mortgagor's equity shall be determined to be the difference between the maximum permitted Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale as calculated in accordance with this Agreement and the total of the following sums. First Purchase Money Mortgage, prior liens, costs of Foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to Foreclosure, provided such total is less than the maximum permitted Resale Price.

If there are Owner's equity sums to which the defaulting mortgagor is properly entitled, such sums shall be turned over to the defaulting mortgagor or placed in an escrow account for the defaulting mortgagor if the defaulting mortgagor cannot be located. The First Purchase Money Mortgagee shall hold such funds in escrow for a period of two years or until such earlier time as the defaulting mortgagor shall make a claim for such. At the end of two years, if unclaimed, such funds, including any accrued interest, shall become

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the property of the Authority to the exclusion of any other creditors who may have claims against the defaulting mortgagor.

Nothing shall preclude the municipality wherein the Affordable Housing unit is located from acquiring an affordable property prior to foreclosure sale at the approved maximum Resale price and holding, renting or conveying it to a Certified Household if such right is exercised within 90 days after the property is listed for sale and all outstanding obligations to the First Purchase Money Mortgagee are satisfied.

X. VIOLATION, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the terms of this agreement by an Owner, the Authority shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties to this Agreement that a breach will cause irreparable harm to the Authority, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low and moderate income housing. Upon the occurrence of a breach of any of the terms of the Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the Agreement, injunctive relief to prevent further violation of the Agreement, ethics on the premises, and specific performance.

XI. RIGHT TO ASSIGN

The Authority may assign from time to time its rights, and delegate its obligations hereunder without the consent of the Owner. Upon such assignment, the Authority, its successors or assigns shall provide written notice to the Owner.

XII. INTERPRETATION OF THIS AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid financial speculation or circumvention of the purposes of the Fair Housing Act for the duration of this Agreement and to ensure, to the greatest extent possible, that the purchase price, mortgage payments and rents of designated Affordable Housing units remain affordable to Low and Moderate Income-Eligible Households as defined herein.

XIII. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested as follows:

To the Owner:

At the address of the property stated in SECTION II PROPERTY DESCRIPTION hereof.

To the Authority:

At the address stated below:

Attention:

Or such other address that the Authority, Owner, or municipality may subsequently designate in writing and mail to the other parties.

XIV. SUPERIORITY OF AGREEMENT

Owner warrants that no other Agreement with provisions contradictory of, or in opposition to, the provisions hereof has been or will be executed, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the Authority, and their respective successors.

XV. SEVERABILITY

It is the intention of all parties that the provisions of this instrument are severable so that if any provisions, conditions, covenants or restrictions thereof shall be invalid or void under any applicable federal, state or local law, the remainder shall be unaffected thereby.

In the event that any provision, condition, covenant or restriction hereof, is at the time of recording of this instrument, void, voidable or unenforceable as being contrary to any applicable federal, state or local law, both parties, their successors and assigns, and all persons claiming by, through or under them covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability or unenforceability, shall be deemed to apply retrospectively to this instrument thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein described as fully as if they had been in effect at the time of the execution of this instrument.

XVI. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of New Jersey.

XVII. OWNER'S CERTIFICATION

The Owner certifies that all information provided in order to qualify as the owner of the property or to purchase the property is true and correct as of the date of the signing of this Agreement.

XVIII. AGREEMENT

A. The Owner and the Authority hereby agree that all Affordable Housing units described herein shall be marketed, sold, and occupied in accordance with the provisions of this Agreement. Neither the Owner nor the Authority shall amend or alter the provisions of this Agreement without first obtaining the approval of the other party except as described in Section III, Paragraph C, TERM OF RESTRICTION. Any such approved amendments or modifications of this Agreement shall be in writing and shall contain proof of approval from the other parties and shall not be effective unless and until recorded with the County Clerk for the County in which the Affordable Housing units are situated.

Dated: _____

ATTEST: _____ By: _____
Signature (Owner)

_____
Signature (Co-Owner)

Dated: _____

ATTEST: _____ By: _____
Signature (Authority)

STATE OF NEW JERSEY)

_____)ss

COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 198___, before me, the subscriber, _____ personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Owner (Co-Owner) named in the within instrument; that is the Affordable Housing Agreement of the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me,
the date aforesaid.

EXHIBIT A
AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement also applies to the owner's interest in the real properties as further described below:

PROPERTY DESCRIPTION

Block _____ Lot _____ Municipality _____

County _____ # of Bedrooms _____

Complete Street Address & Unit # _____

City _____ State _____ Zip ___

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The restrictions contained herein shall be imposed on this Affordable Housing unit for a period of at least _____ years beginning on _____ and ending at the first non-exempt transfer of title after _____ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

Please add additional property descriptions as required including individual building or unit numbers for condominiums or townhouse complexes indicating a TERM OF RESTRICTION as applicable.

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING

SECOND REPAYMENT MORTGAGE

Prepared by:

_____

This Mortgage made on _____ , 19__ between _____ (referred to as "Borrower" and _____ (referred to as the "Authority"), which Authority is an instrumentality of _____ (referred to as the "Municipality")

REPAYMENT MORTGAGE NOTE

In consideration of value received by the Borrower in connection with the Property (described below) purchased by the Borrower, the Borrower has signed a note dated _____ . The Borrower promises to pay the amounts due under the Note and to abide by all promises contained in the Note.

MORTGAGE AS SECURITY

This Mortgage is given to the Authority as security for the payment due and the performance of all promises under the Note. The Borrower mortgages the real estate owned by the Borrower described as follows (referred to as the "Property"):

All of the land located in the _____ of _____ County of _____ and State of New Jersey, specifically described as follows:

Street Address: _____

Lot No.: _____ Block No.: _____

Also more particularly described as:

Together with:

1. All buildings and other improvement that now are or will be located on the Property.
2. All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the Property.
3. All rights which the Borrower now has or will acquire with regard to the Property.

BORROWER'S ACKNOWLEDGEMENTS

1. The Borrower acknowledges and understands that:

a) Municipalities within the State of New Jersey are required under the Fair Housing Act and regulations adopted under the authority of the Act to provide for their fair share of housing that is affordable to households of low and moderate income; and

b) The Property which is subject to this Mortgage has been designated as housing which must remain affordable to low and moderate income households for at least twenty years unless a shorter time period is authorized in accordance with rules established by any agency having jurisdiction (the "restricted period"); and

c) To ensure that such housing, including this Property, remains affordable to low and moderate income households during the restricted period, an Affordable Housing Agreement has been executed by the Borrower that constitutes covenants running with the land with respect to the Property and the Municipality has adopted procedures and restrictions governing the resale of the Property; and

d) The Authority to which the Property is mortgaged has been designated by the Municipality to administer the procedures and restrictions governing such housing.

2. The Borrower also acknowledges and understands that the Property has been purchased at a restricted sales price that is less than the fair market value of the Property.

BORROWER'S PROMISES

In consideration for the value received in connection with the purchase of the Property at a restricted sales price, the Borrower agrees as follows:

1. The Borrower will comply with all of the terms of the Note and this Mortgage which includes:

a) Within the restricted period starting with the date the Borrower obtained title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds the maximum allowable resale price as established by the Authority. In the event of breach of this promise, Borrower hereby assigns all proceeds in excess of the maximum allowable resale price to the Authority, said assignment to be in addition to any and all rights and remedies the Authority has upon default.

b) At the first non-exempt transfer of title of the Property after the ending date of the restricted period, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period to the Authority.

2. The Borrower warrants title to the premises (N.J.S.A. 46:9-2). This means the Borrower owns the Property and will defend its ownership against all claims.

3. The Borrower shall pay all liens, taxes, assessments and other governmental charges made against the Property when due. The Borrower will not claim any deduction from the taxable value of the Property because of this Mortgage. The Borrower will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

4. The Borrower shall keep the Property in good repair, neither damaging nor abandoning it. The Borrower will allow the Authority to inspect the Property upon reasonable notice.

5. The Borrower shall use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

CONTROLS ON AFFORDABILITY

The procedures and restrictions governing resale of the Property have been established pursuant to the Fair Housing Act and the regulations adopted under the authority of the Act, (all collectively referred to as "Controls on Affordability"). Reference is made to the Controls on Affordability for the procedure in calculating the maximum allowable resale price, the method of repayment described in item 1(b) of the section entitled "Borrower's Promises", and the definition of a "restricted sale" for purposes of determining when the Affordability Controls are applicable, and the determination of the restricted period of time.

RIGHTS GIVEN TO LENDER

The Borrower, by mortgaging the Property to the Authority, gives the Authority those rights stated in this Mortgage, all rights the law gives to lenders, who hold mortgages, and also all rights the law gives to the Authority and/or Municipality under the Affordability Controls. The rights given to the Authority and the restrictions upon the Property are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, the Authority will cancel this Mortgage at its expense.

DEFAULT

The Authority may declare the Borrower in default on the Note and this Mortgage if:

1. The Borrower fails to comply with the provisions of the Affordable Housing Agreement:

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2. The Borrower fails to make any payment required by the Note and this Mortgage;
3. The Borrower fails to keep any other promise made in this Mortgage;
4. The ownership of the Property is changed for any reason without compliance with the terms of the Note and Mortgage;
5. The holder of any lien on the Property starts foreclosure proceedings; or
6. Bankruptcy, insolvency or receivership are started by or against any of the Borrowers.

AUTHORITY'S RIGHTS UPON DEFAULT

If the Authority declares that the Note and this Mortgage are in default, the Authority shall have, subject to the rights of the First Mortgage, all rights given by law or set forth in this Mortgage.

NOTICES

All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Mortgage. Address changes may be made upon notice to the other party.

NO WAIVER BY AUTHORITY

The Authority may exercise any right under this Mortgage or under any law, even if the Authority has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Authority does not waive its right to declare the Borrower is in default by making payments or incurring expense on behalf of the Borrower.

EACH PERSON LIABLE

This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Authority may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

SECOND MORTGAGE

The lien on this Mortgage is inferior to and subject to the terms and provisions of the First Mortgage executed contemporaneously herewith.

NO ORAL CHANGES

This Mortgage can only be changed by an agreement in writing signed by both the Borrower and the Authority.

SIGNATURES

The Borrower agrees to the terms of this Mortgage by signing below.

WITNESS: _____

_____ _____

TO THE REGISTER OR CLERK, Record and return to:

County: _____

This mortgage is fully paid and satisfied.
I authorize you to cancel it of Record.

Lender: _____

I certify that the Lender's signature is genuine.

_____

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING

SECOND MORTGAGE REPAYMENT NOTE

_____ , 1989 _____ , New Jersey

FOR VALUE RECEIVED _____ (referred to as the "Borrower") promises to pay to _____ (referred to as the "Authority") an instrumentality of _____ (the "Municipality") the amounts specified in this Note and promises to abide by the terms contained below. This mortgage is subordinate to the first mortgage executed contemporaneously herewith.

REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Borrower is giving the Authority a Mortgage, dated
The Mortgage covers real estate (the "Property") owned by the Borrower, the legal description of such real estate being contained in the Mortgage.

BORROWER'S PROMISE TO PAY AND OTHER TERMS

1. The Property is subject to terms, restrictions and conditions that prohibit its sale at a fair market price for an established period of time. Within the restricted period, starting with the date the Borrower obtains title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds a maximum allowable resale price established by the Authority.

a. All proceeds received during the restricted period in excess of the restricted amount shall be paid to the Authority.

b. At the first non-exempt sale of the Property after restrictions have ended, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period of resale (the "Price Differential") to the Authority.

2. The amount due and payable to the Authority shall be calculated as follows:

FAIR MARKET PRICE less
MAXIMUM ALLOWABLE RESALE PRICE
equals
PRICE DIFFERENTIAL

BORROWER'S PROCEEDS
equals
MAXIMUM ALLOWABLE RESALE PRICE
plus 5% of PRICE DIFFERENTIAL

AMOUNT OF NOTE
equals
FAIR MARKET PRICE less
BORROWER'S PROCEEDS

WAIVER OF FORMAL ACTS

The Borrower waives its right to require the Authority to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

RESPONSIBILITY UNDER NOTE

All Borrowers signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Authority may enforce this Note against any one or more of the Borrowers or against all Borrowers together.

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SIGNATURES

The Borrower agrees to the terms of this Note by signing below.

WITNESSED:

_____ L.S.

_____ L.S.

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Notice of Comment Period Extension

N.J.A.C. 5:100, Ombudsman Practice and Procedure Public Notice Requirements

Take notice that the deadline for submission of comments regarding the New Jersey Office of the Ombudsman for the Institutionalized Elderly's proposed repeal of existing administrative rules and adoption of new administrative rules at N.J.A.C. 5:100, has been extended until September 5, 1989.

The full text of the proposed new rules appeared in the June 5, 1989 New Jersey Register, Vol. 21, No. 11 (21 N.J.R. 1510(d)), published by the New Jersey Office of Administrative Law.

Interested persons may submit comments on the proposed repeal and new rules by writing to the following by September 5, 1989, the extended deadline for submission of comments:

Steele R. Chadwell, General Counsel
New Jersey Office of the Ombudsman
for the Institutionalized Elderly
28 West State Street, Room 305
CN 808
Trenton, NJ 08625-0808

HUMAN SERVICES

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Community Residence Licensure Standards Policies and Procedures

Proposed Repeal and New Rules: N.J.A.C. 10:39

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.

Proposal Number: PRN 1989-357.

Submit comments by August 16, 1989 to:

Lynn Kiernan, Special Assistant to the Director
Division of Mental Health and Hospitals
CN 700
Trenton, NJ 08625

The agency proposal follows:

Summary

On April 24, 1987, the Department of Human Services, Division of Mental Health and Hospitals, was granted the authority by the State Legislature to license community residences for persons suffering from mental illness.

N.J.S.A. 30:11B-1 et seq., "Community Residences for the Developmentally Disabled and the Mentally Ill", requires that the Division set appropriate standards for community residences. Rules containing standards for group homes serving up to fifteen residents were adopted on February 21, 1989 (21 N.J.R. 504(a)). Those rules are now being proposed for repeal.

The new rules apply to Provider Agencies (PAs) which have contracted with the Division of Mental Health and Hospitals to provide facility based residential services, which include support services and housing. The standards set forth herein are proposed as minimum operating standards for group homes under contract with the Division and serving 15 or fewer mentally ill persons; family care homes serving up to five mentally ill persons, with an affiliation agreement with PA; and provider agency's apartments.

The standards have been revised with significant input from provider agencies which have contracted with the Division for residential service. The major changes in the rules have occurred in Subchapter Two, Initial Licensing Process; Subchapter 4, Residential Care Programs; and with the addition of Subchapter 8, Quality Assurance.

Subchapter Two deals with the licensing process. The Division has opted to license provider agencies which offer facility based residential services, including group homes, apartments, and family care homes.

Subchapter Four addresses residential programs and services to be provided to develop the client's life skills required to maximize individual functioning.

Subchapter Eight addresses Quality Assurance Standards to ensure the quality of care given to clients.

Facilities not under contract with the Division, those serving more than 15 persons, or family care homes not affiliated with a Provider Agency under contract with the Division will operate under the standards of the Rooming and Boarding Home Act (N.J.S.A. 55:13B-1 et seq.), at N.J.A.C. 5:27.

Social Impact

The proposed rules will provide all Division of Mental Health and Hospitals' community residence provider agencies with minimum standards to safeguard the health and welfare of their residents.

At present there are approximately 60 contracted group homes serving 374 clients, 694 clients living in apartment programs, and approximately 125 clients in family care programs. The supportive services offered in these community residences enable clients to remain in the community by providing them with mental health services in the least restrictive setting appropriate to their level of care. Without community residences as a resource, many clients would be institutionalized, a costly and more restrictive alternative; others would reside in community settings without necessary supportive services to sustain an appropriate quality of life; and some would be significantly at risk of homelessness.

The Department supports the need for a normalized environment which fosters the personal and emotional growth of the client.

The Department expects a positive response from the consumers and consumers' family members, since the community residences will be evaluated by staff with an expertise in mental health services.

A positive reaction is also expected from the general public because the Department will ensure that appropriate services occur in the community residence. There will be less likelihood of a burden on the community, due to appropriate supervision and services being offered to the client.

These rules will enhance the quality of care by providing a more comprehensive set of program standards. Since the rules were developed with substantial participation and input from the major residential providers in concert with the Division, a positive reaction is expected from providers.

Economic Impact

The Department expects that the rules will not have any economic impact on the Provider Agencies (PAs), since the agencies already comply with the physical standards as part of the Department of Community Affairs' licensing rules, N.J.A.C. 5:27-1, and the program standards contained in N.J.A.C. 10:37, or, in the case of group homes, N.J.A.C. 10:39.

Group homes are funded by the Department through a purchase of services contract with the provider agency. The Legislature has appropriated $75,000 for Fiscal Year 1989 for the implementation of these rules.

These rules have no economic impact on the residents of community residences and there will be no additional costs to the provider agencies.

The Department is requiring no licensing fees from the provider agencies.

Regulatory Flexibility Analysis

The proposed new rules apply to approximately 30 provider agencies (PAs) which have contracts with the Department to provide residential services for the mentally ill. Most of these agencies can be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. Since most of the regulated group consists of small businesses, the Department does not choose to set specific standards applicable only to small businesses. In addition, in the interest of the health, safety and welfare of the clients of the Division of Mental Health and Hospitals, the Department has chosen to apply the standards uniformly.

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The reporting and recordkeeping requirements imposed are minimum standards, generally followed by any prudent business, and do not require the services of professionals not ordinarily utilized by such a business. The PAs are already required to keep such records as part of their contract with the Division of Mental Health and Hospitals.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:39.

Full text of the proposed new rules follows:

CHAPTER 39
COMMUNITY RESIDENCE STANDARDS
POLICIES AND PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

10:39-1.1 Scope

(a) The Division of Mental Health and Hospitals' Provider Agencies (PA) shall comply with the physical and program standards contained within. The standards shall apply to all community residences. This includes group homes serving a maximum of 15 persons, provider agency apartments, and family care homes serving five or fewer persons with an affiliation agreement with the provider agency. These residences shall be approved for a purchase of service contract or an affiliation agreement pursuant to procedures established by the Department, and shall not be considered health care facilities within the meaning of N.J.S.A. 26:2H-1 et seq.

(b) The standards set forth in this chapter are minimum operating standards for community residences located in New Jersey serving persons suffering from mental illness.

10:39-1.2 Definitions

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

"Affiliation agreement" means a description of a program or service provided with or by a mental health agency in the community residence that includes responsibilities for both the PA and the provider of the program or service. Only the governing body (or its official designee) of the PA is authorized to make such agreements with service or program providers.

"Assessment and evaluation" means activities that analyze an individual client's functioning, requests, strengths, needs and environment to determine appropriate interventions.

"Bureau of Licensing and Inspections (BLI)" means the Bureau of Licensing and Inspections within the Division of Mental Health and Hospitals, Department of Human Services.

"Client" means a person suffering from mental illness who is served by a community residence program.

"Client service agreement" means a written agreement between the Provider Agency and client which includes responsibilities of both the PA and the client.

"Community integration and membership services" means services intended to foster a sense of belonging for clients. It is primarily designed to provide emotional support and comfort to clients in group environments and is intended to increase client motivation and participation. Activities may include: community meetings, community trips, newsletters, socials, and various awareness activities, etc.

"Community residence for the mentally ill" means any community residential facility approved by the Division which provides food, shelter, and personal guidance under such supervision as required, to not more than 15 mentally ill persons who require assistance, temporarily or permanently, in order to live independently in the community.

"Comprehensive service plan" means the periodic formulation of goals, objectives, and interventions for residential services based on a functional assessment which may include: psychological, medical, developmental, family, educational, social, cultural, environmental, recreational and vocational components. Treatment recommendations are included.

"Crisis intervention counseling" means an attempt to facilitate crisis stabilization through the use of specific, time-limited counseling techniques. Crisis intervention counseling focuses on the present, providing pragmatic solutions to identified problems.

"Crisis intervention services" means implementing the agency's written emergency policy and procedures focusing primarily on client and staff safety. This may include provision of residential counseling, crisis intervention counseling, behavior management techniques, and/or request for outside assistance.

"Daily living skills" means the activities or competencies which enable a person to perform functions for everyday living, that is, basic housekeeping, grooming, dressing, nutrition management, money management, maintaining schedules, social/recreational activities and medication management.

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health and Hospitals, within the Department of Human Services.

"Education" means instruction for clients in basic skills, including academics; and increasing learning capabilities, in the areas of psycho-education and health.

"Family care homes" means a private home or apartment in which the operator resides and provides services to as many as five clients who reside in the home. The PA provides mental health services to the client and consultation to the operator, based on the affiliation agreement.

"Group home" means any leased or owned single family residence or any structure containing two or more dwelling units, all of which are utilized for the provision of residential care services; wherein staff reside or are stationed either on-site or in immediate close proximity; and for which a contract or formal affiliation agreement exists with the Division of Mental Health and Hospitals. Group homes shall not include family care homes nor apartment facilities where individuals may receive regular or periodic staff supervision and/or training visits, except where such apartment facilities include those contained in a structure of two or more units and all units are operated under contract or affiliation agreement with the Division.

"Individual services coordination" means services aimed at linking the client to the service system and coordinating the various services to achieve a successful outcome. Activities include: coordinating the provision of appropriate services, intake and referral, admission and acceptance, placement, termination and follow-up, individual services planning and treatment reviews, advocacy with non-mental health systems and documenting of services provided.

"Initial service plan" means the initial formulation of goal(s), objectives, and interventions based on initial assessments which serve as a focus for staff and client activities.

"Life experience" means functioning in non-employment roles (e.g. homemaker) whose requirements are comparable to those of a residential counselor.

"Life support services" means activities that provide basic personal care to clients. These are generic human services provided by mental health providers to clients in need of these services to maintain community living. Activities may include:

Providing a safe, clean living environment that facilitates the client's treatment, providing transportation to clients, providing prepared meals and performing household tasks for clients or relocating client's belongings and providing direct assistance in securing household furnishings, utilities and other needed building services.

"Provider agency" (PA) means a public or private organization which has a mental health contract with the Division and has been licensed to provide residential services.

"PA apartment" means an apartment owned or leased by the PA in which clients reside and receive the services described in this chapter.

"Recreation" means a program of organized individual or group activities of a relaxing or entertaining nature designed to promote a person's ability to socialize and manage his or her leisure time. Activities and/or services may include social and/or recreational activities, ensuring appropriate space and equipment to facilitate client interaction without staff participation, assisting the client to plan recreational activities and encouraging leisure time planning and related monitoring.

"Staff support services" means on-site staff availability to provide needed interventions, which may include verbal support or behavior management, in accordance with the needs of the client(s).

"Residential counseling" means verbal interventions provided to

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clients and/or families to assist the client in accessing and utilizing all planned or assigned services. It may include problem solving, advice, encouragement and emotional comfort.

"Therapeutic training" means activities designed to develop behaviors, skills and attitudes to improve or maintain client functioning.

SUBCHAPTER 2. LICENSING PROCESS

10:39-2.1 Initial licensing process

(a) All inquiries related to licensure of community residences shall be made to:

New Jersey Division of Mental Health and Hospitals
CN 700
Trenton, NJ 08625

(b) To become a licensed provider agency, an agency must:

1. Demonstrate intent and capability to operate a community residence within the provisions of this chapter; and

2. Be a mental health services provider with a service contract with the Division of Mental Health and Hospitals. Such a service contract must include provisions for the operation of community residences.

(c) The provider agency shall be in substantial compliance with this chapter.

(d) The provider agency shall apply for licensure to the Division. Applications shall indicate the type or types of community residences intended, the specific geographical location in which residences would be located, and the number of residents to be served. Such application shall be made to the Division at the address in (a) above. There shall be no fee charged to the Provider Agency regarding licensing or application for licensing.

10:39-2.2 Licensing of group homes

(a) The Division shall inspect any proposed group home site, utilizing the physical and fire safety standards of N.J.A.C. 5:18 and shall review all program operations or descriptions for substantial compliance with the provisions of this chapter.

(b) The Division shall notify the Provider Agency (PA) in writing of any violations.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections are satisfactory and there is reasonable assurance that the residence shall be operated in the manner required by this chapter.

(e) The license shall be issued by the Department of Human Services, through the Division of Mental Health and Hospitals.

(f) The license shall be limited to a specifically identified facility, issued for a period of one year, and shall indicate the maximum number of persons to be served within that facility.

(g) The license shall be available on the agencies' premises, for review by the Division, or any interested members of the public, during normal business hours.

10:39-2.3 Licensing PA apartments

(a) The Division may inspect any proposed apartment site(s) based on the physical and fire safety standards contained in N.J.A.C. 5:18 and review all program operations or descriptions for substantial compliance with the provisions of this chapter.

(b) The Division shall notify the PA in writing of all violations, if any.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the apartment(s) shall be operated in a manner required by this chapter.

(e) The license shall be issued by the Department of Human Services through the Division of Mental Health and Hospitals.

(f) The license shall be issued to the PA for a specific number of apartment spaces within a defined geographic area for a period of one year. The Provider Agency shall have the right to relocate apartment spaces within the defined geographic area, as needed.

10:39-2.4 Licensing family care homes

(a) The PA shall develop a formal affiliation agreement with the family care home operator.

(b) The content of the affiliation agreement between the PA and family care home operator shall have been approved by the Division.

(c) The Division may inspect any proposed family care home based on the physical and fire safety standards of N.J.A.C. 5:18.

(d) The Division shall notify the provider agency in writing of any violations.

(e) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(f) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the family care home(s) shall be operated in a manner required by this chapter.

(g) The license shall be issued by the Department of Human Services through the Division of Mental Health and Hospitals.

(h) The license shall be issued to the PA for a period of one year and shall be limited to a defined number of family care homes within a defined geographic area and shall indicate the maximum number of persons to be served. No family care home shall serve more than five clients at any one time.

(i) The license shall be available on the PA's premises for review by the Division, and any members of the public, during normal business hours.

10:39-2.5 Provisional license

(a) A provisional license may be issued by the Department to a prospective provider agency which expresses interest in operating a community residence, indicates in writing an intent to comply with the guidelines contained in this chapter, and who applies to the Division for such Provisional Licensing. The application shall indicate the type or types of community residences desired, the specific geographical areas in which residences would be located, and the number of residents to be served.

(b) The Division shall review the application of the prospective PA, assess the fiscal, programmatic, and administrative capabilities of the PA, and determine whether a provisional license shall be issued. There shall be no fee charged for the issuance of a provisional license.

(c) The provisional license shall authorize a provider agency to secure a facility or facilities in which to provide services.

(d) A provisional license shall not authorize a provider agency to provide services to residents.

(e) The provisional license shall be issued for a time period not to exceed six months, and may be renewed in six months intervals by the Division if, in its judgement, the PA consistently made good faith efforts to establish the proposed residence(s).

(f) A Provider Agency issued a provisional license shall immediately make application for an annual renewable license under provisions of 10:39-2.1 when facility(s) have been secured and services to residents are ready to be initiated.

10:39-2.6 Applicability of standards

All PAs which have contracts with the Division of Mental Health and Hospitals prior to the date this chapter is adopted and all community residences in operation prior to the date this chapter is adopted shall be considered approved for licensing and shall not be subject to the initial or provisional licensing process. From the adoption date on, licensure shall depend on the annual inspection. Those PAs which do not have contracts with the Division on or before the date this chapter is adopted and those residences established subsequent to adoption of this chapter shall follow the initial licensing process and shall be subject to annual inspections.

10:39-2.7 Waiver of standards

(a) Requests for waivers shall be made to the Division, in writing, with supporting information justifying the request.

(b) Waivers of specific standards shall be considered, at the discretion of the Division, provided that one or more of the following conditions have been met:

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1. Where strict enforcement of the standard would result in unreasonable hardship on the clients; and/or

2. The waiver is in accordance with the particular need of a client(s) but does not adversely affect the health, safety, welfare, or rights of the client; and/or

3. There is a clear clinical and/or programmatic justification for such a waiver that will enhance a PA's effectiveness or efficiency without an adverse effect on any client's health, safety, welfare or rights.

10:39-2.5 License renewal

(a) The license shall be subject to an annual renewal.

(b) Determination of license renewal shall be based on the annual evaluation conducted by the Division's Bureau of Licensing and Inspections.

(c) The Division Director (or designee) shall make the determination of renewal.

(d) In the event that a license expires prior to the determination of renewal, the license shall remain in effect until such a determination is made.

(e) There shall be no fee charged to the PA for license renewal.

SUBCHAPTER 3. MONITORING COMPLIANCE

10:39-3.1 Evaluation

(a) The PA shall ensure, through its quality assurance program, that group homes, PA apartments, and family care homes meet the program and facilities requirements for licensure under N.J.S.A. 30:11B-4. QA visits to ensure physical life safety standards shall be conducted quarterly, at a minimum. The Division will audit the process annually.

(b) All PA and community residences shall be evaluated for program requirements annually by the BLI.

(c) All group homes shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(d) All PA apartments shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(e) All PA family care homes shall be evaluated annually by the BLI, and at the discretion of the Division, as needed.

(f) A formal report of program and facility evaluations, including all deficiencies and violations, shall be provided to the PA by the Division.

(g) No later than 40 days after receipt of the report, the PA shall provide written notice to the Division that specific violations have been corrected, and/or that actions have been taken to abate specific violations noted and that full correction is anticipated within the time frames noted in the report.

(h) For any violations cited by the Division as life-threatening, the PA shall correct them and/or remove the threat created by such deficiencies immediately and shall provide written notice, within 48 hours, to the BLI that such action has been taken.

(i) If the Division report identifies violations other than life-threatening deficiencies, representatives from the Division, as part of their ongoing monitoring responsibilities, shall visit the specified facility and/or program and provide a report to the Division on progress toward remediation of deficiencies every 60 days until substantial compliance is achieved.

1. When the PA is cited for a physical violation and the maintenance is the responsibility of another party, there must be documented evidence that the PA has informed the building owner of the need to correct any deficiencies. If such deficiencies are not corrected, the provider agency shall take further action as appropriate.

10:39-3.2 Appeal of the Division's findings

(a) The agency may appeal findings of the Division, with the exception of life-threatening violations.

(b) The appeal of findings shall be directed to the Division Director or designee within 20 days of receipt of the written report of findings.

(c) A response to the appeal shall be provided within 20 days of its receipt.

10:39-3.3 Administrative sanction

(a) In the event that the PA does not submit the written notice specified in N.J.A.C. 10:39-3.1(c) by the required date, or if violations have not been abated within time frames specified in the report, the Division shall have the option of suspension of payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the facility, revocation of the current license to operate the facility, or non-renewal of the license to operate the facility.

(b) In the event that the Division requires the revocation or non-renewal of the license and the relocation of the residents of the facility, a written order shall be directed to the PA's executive director or designee and to the President of the Board of Directors of the agency.

(c) Under the supervision of the Division, the PA shall be responsible for placement of residents when an order to vacate the premises and the revocation of a license has been issued by the Division.

10:39-3.4 Review of administrative sanctions

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the Division Director or designee for a review, which shall be afforded and a decision rendered by the Division Director or designee within five working days of the receipt of the written request for a review.

10:39-3.5 Administrative hearing of appeal

If the PA chooses to appeal a decision made pursuant to the provisions of N.J.A.C. 10:39-3.4, the PA may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:39-3.6 Emergency situation

The Division, when it determines that the health, safety and/or welfare of the residents warrant it, may immediately suspend the license, and take the necessary action to ensure the well-being of residents. Any hearing provided in such cases shall be on an expedited basis.

SUBCHAPTER 4. RESIDENTIAL CARE PROGRAM

10:39-4.1 Scope and purpose

(a) The Provider Agency shall provide a residential care program to all enrolled clients. Such a program shall consist of the services herein described and be provided in facilities owned or leased by the provider agency, or through affiliation agreements with private operators.

(b) Major goals shall be to develop the life skills required to maximize individual functioning and reduce reliance on institutional supports. Programming shall focus on increasing the clients' use of generic community supports to meet physical, psychological and social needs as a means to enhance their quality of life and emotional well being. Residents shall live in the most normalized and least restrictive environment possible to promote growth and assure safety.

(c) The residential care program and provided housing shall provide a therapeutic environment with a rehabilitation focus designed to improve or preserve current functioning.

(d) Residential housing and services shall be organized around the principles of client responsibility and participation.

10:39-4.2 Written policies and procedures

(a) The PA shall develop and implement written policies and procedures to ensure that the service delivery system complies with State law and rules governing community residences for the mentally ill as follows:

1. The policy and procedures manual shall be reviewed and revised as necessary, but at least annually.

2. Each policy and/or procedure shall be designed in accordance with the principles of normalization, age-appropriateness, and least restriction and shall be consistent with the PA's organizational structure and management philosophy.

10:39-4.3 Confidentiality

(a) In compliance with N.J.S.A. 30:4-24.3, the PA shall assure that all certificates, applications, records, and reports made pursuant to

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the provisions of this chapter which directly or indirectly identify any individual currently or formerly receiving services in a noncorrectional institution under this Title, or for whom services in a noncorrectional institution shall be sought under this chapter shall be kept confidential and shall not be disclosed by any person, except insofar as:

1. The individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or
2. Disclosure may be necessary to carry out any of the provisions of N.J.S.A. 30:4-24.3 or of N.J.S.A. 2A:82-9; or
3. A court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

(b) Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient's current medical condition to any relative or friend or to the patient's personal physician or attorney, if it appears that the information is to be used directly or indirectly for the benefit of the patient.

(c) Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health and Hospitals in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are defined in N.J.S.A. 30:4-27.1 et seq., from disclosing information that is relevant to a patient's current treatment to the staff of another such agency.

(d) The PA shall maintain confidentiality regarding information in client records as outlined in N.J.A.C. 10:37-6.79.

10:39-4.4 Population priorities

(a) First priority for admissions into group homes shall be given to persons with severe and persistent mental illness. These residences shall not house persons who have been assigned to a State psychiatric hospital after having been found not guilty of a criminal offense by reason of insanity or unfit to be tried on a criminal charge.

(b) The PA shall develop written policies and procedures for admission focusing on this priority group, taking into account the level of supervision required and service needs of clients.

(c) The PA shall have written admission and discharge criteria specific to the various types of residences provided. Such criteria shall reflect the priorities stated in 10:39-4.4(a).

10:39-4.5 Services to be provided

(a) The following services as defined herein shall be provided by the PA to all enrolled clients:

1. Assessment and/or evaluation;
2. Individual services coordination;
3. Therapeutic training in activities of daily living;
4. Residential counseling; and
5. Life support services to include, at a minimum, providing a safe, clean living environment.

(b) Services provided or arranged, based on individual client need, shall include, but not be limited to, the following services:

1. Other life support services;
2. Staff support services;
3. Crisis intervention services;
4. Community integration and membership services;
5. Recreation; and
6. Education.

(c) The PA shall monitor access and utilization of the services in (b) above, and all other needed treatment and generic human services. The monitoring shall be documented in the Initial and Comprehensive Service Plans, reflect service coordination and be ongoing. Services monitored shall include but are not limited to:

1. Partial care and/or hospitalization;
2. Outpatient treatment;
3. Vocational services;
4. Medical services;
5. Education programs;
6. Community activities participation, for example, YMCA, church;
7. Substance abuse counseling; and
8. Clinical case management.

(d) The services listed in section 10:39-4.5(c) may be offered by the PA directly when such services are unavailable in the community, when the current level of functioning of the clients temporarily precludes their participation in more normalized activities, or when the client's clinical needs are best served by such services being directly provided by the PA.

10:39-4.6 Settings to provide residential services

(a) Residential services may be provided in a variety of settings which may include but are not limited to:

1. Group homes;
2. PA apartments; and
3. Family care homes.

10:39-4.7 Client service agreements

(a) All clients enrolled in a community residence shall have a written client service agreement which shall include but not be limited to the following:

1. Services to be provided;
2. Expected duration of services;
3. Fees for services provided;
4. Clients rights and responsibilities;
5. Rules which may apply to service provision;
6. Signature of client and PA representative, and in family care homes, the home owner or operator; and
7. Service termination procedures.

10:39-4.8 Record maintenance

(a) The provider agency shall maintain a record for each client enrolled in the program, marked with the individual's name.

(b) The PA shall maintain the confidentiality of all records and shall store records in such manner as to provide access only to authorized persons.

(c) Each client record shall be maintained in an up-to-date, organized fashion to enable communication of all relevant information about the client.

10:39-4.9 Intake and assessment information

(a) An intake assessment shall be completed for each client. This assessment shall include identifying information; social, family, medical, and psychiatric history; presenting problem(s), and diagnosis, if available.

(b) An Initial Service Plan based on intake information shall be completed by the tenth day of the client's enrollment in the program. The Initial Service Plan shall be sufficiently specific to guide services until the Comprehensive Treatment Plan is completed.

(c) A comprehensive functional assessment shall be completed by the client's 45th day in the program. This assessment shall address the client's strength and needs in community living skills.

10:39-4.10 Comprehensive service plan

(a) A Comprehensive Service Plan (CSP) shall be formulated for each client by the client's 45th day in the program. The CSP shall be based on the intake assessment, the functional assessment, and all other relevant information.

(b) The CSP shall include goals for the client's continued participation in the PA services, measurable objectives (short-term steps) to reach the goals, and specific interventions that PA staff will make to assist the client to achieve the goals and objectives.

(c) The CSP shall be developed with the client's active participation and input, and shall contain his or her signature.

(d) The CSP shall be discharge-oriented, and shall specify functional levels to be achieved for reduction and/or termination of services, where possible.

(e) The CSP shall be reviewed and revised as necessary, by the 90th day of treatment and then no less frequently than every 90 days thereafter during the first year of treatment and every six months thereafter.

10:39-4.11 Progress notes

(a) The PA staff shall document in progress notes writing the client's clinical course of treatment while enrolled in a residential program.

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(b) The progress note shall:
1. Describe clinical interventions and services provided;
2. Describe monthly progress towards goals and objectives;
3. Record all significant clinical events;
4. Reflect a discharge orientation as clinically appropriate;
5. Document reviews and revisions to the treatment plan;
6. Provide justification for continued provision of service; and
7. Be authenticated by staff signatures, title and date.

(c) A progress note shall be written whenever services are provided, except that services provided more frequently than once a week may be documented by a weekly summary.

10:39-4.12 Staffing requirements

(a) The PA shall employ sufficient numbers of residential counselors and senior residential counselors to provide all needed residential services to all enrolled clients, based upon the numbers of clients served, the types of community residences utilized, and the geographical distribution of residential facilities. The staffing pattern approved by the Division shall be reflected in the annual contract.

(b) The PA shall employ at least one Residential Clinical Specialist.

(c) The PA shall employ one Residential Program Coordinator.

10:39-4.13 Residential counselor requirements, qualifications and duties

(a) Residential counselors shall have one of the following:
1. A baccalaureate degree from an accredited college or university in a mental health related discipline or;
2. A license as a Registered Nurse; or
3. Two years of college plus two years of related work and/or life experience; or
4. A license as a practical nurse plus two years of related work and/or life experience; or
5. A high school diploma or the equivalent, plus four years of related work and/or life experience.

(b) The duties of the residential counselor shall, at a minimum, include the following:
1. On-site client supervision;
2. Therapeutic training;
3. Functional assessment;
4. Supervising and organizing recreation and/or socialization activities;
5. Transportation;
6. Residential counseling; and
7. Crisis Intervention Services (but not including Crisis Intervention Counseling).

10:39-4.14 Senior residential counselor requirements, qualifications and duties

(a) Senior residential counselor shall have the qualifications as cited in N.J.A.C. 10:39-4.10(a) plus one year of experience in a residential mental health setting.

(b) The duties of the senior residential counselor shall, at a minimum, include the following:
1. Any duty listed in 10:39-4.10(b);
2. Development of initial and comprehensive service plans; and
3. Individual service coordination activities as defined in N.J.A.C. 10:39-1.2.

10:39-4.15 Residential clinical specialist requirements, qualifications and duties

(a) Residential clinical specialist shall have one of the following qualifications:
1. A Master's degree from an accredited college or university in a mental health related discipline; or
2. A bachelor's degree, or be licensed as a registered nurse, plus two years of relevant experience in a mental health setting.

(b) The duties of the residential clinical specialist shall minimally include the following:
1. Any function cited in N.J.A.C. 10:39-4.10(b) and 10:39-4.11(b); and
2. Clinical assessment;
3. Individual group and family counseling;
4. Clinical supervision of staff;
5. Staff training; and
6. Crisis intervention counseling.

10:39-4.16 Residential program coordinator requirements, qualifications and duties

(a) Residential program coordinator shall have the following:
1. Master's degree from an accredited college or university in a mental health related discipline;
2.Three years relevant experience in a mental health setting;
3. Previous supervisory and residential experience is desirable but not required.

(b) The duties of the residential program coordinator shall minimally include:
1. Program administration, supervision and direction;
2. Inter-agency coordination;
3. Program development and implementation;
4. Staff development and/or training and supervision;
5. Facility management; and
6. Quality assurance.

10:39-4.17 Waiver of staff requirements, qualifications and duties

All employees of a PA which has a contract with the DMH&H prior to the date this chapter is adopted shall be approved for employment and shall not be subject to the requirements cited in N.J.S.A. 10:39-4.10 through 4.13. PA residential employees hired after the adoption date shall be subject to the requirements of N.J.A.C. 10:39-4.10 through 4.13.

SUBCHAPTER 5. PHYSICAL PLANT

10:39-5.1 Scope

(a) The following physical plant standards shall apply to the following:
1. Group homes housing up to 15 clients;
2. Family care homes housing up to three clients; and
3. PA apartments.

10:39-5.2 Water supply

(a) Every residence shall be provided with a safe supply of potable water meeting the standards as set forth in the Safe Drinking Water Act rules, N.J.A.C. 7:10.

(b) The source of such water supply shall be approved by the New Jersey Department of Environmental Protection and/or the local health agency.

(c) The minimum rate of flow of hot or cold water issuing from a faucet or fixture shall not be less than one gallon per minute.

10:39-5.3 Facilities

(a) Every residence shall contain a kitchen sink of nonabsorbent impervious material.

(b) Every residence shall be provided with a minimum of one flush type water toilet, bathroom sink and a bathtub or shower.

(c) There shall be at least one toilet, sink and one bath or shower for each six residents.

(d) The bathroom sink shall be located in or adjoining the toilet area.

(e) Every toilet, bathroom sink and bathtub or shower shall be:
1. Accessible from within the building without passing through any part of any other rooming unit; and
2. Contained in a room or rooms which are separated from all other rooms by walls, doors or partitions that afford privacy.

(f) No one shall be required to go farther than one floor above or below his or her rooming unit to the bathroom.

(g) No resident shall be without ready access to a bathroom, bathtub or shower by reason of physical disability.

(h) Every plumbing fixture shall be connected to water and sewer/septic systems approved by the New Jersey Department of Environmental Protection and/or the local health agency, and shall be maintained in good working condition. Plumbing systems shall be well maintained.

(i) Every kitchen sink, bathroom sink and bathtub or shower required by this section shall be connected to both hot and cold water lines.

(j) Every residence shall have water heating facilities which are installed and connected with the hot water lines.

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(k) The water heating system must be capable of delivering water at a minimum temperature of not less than 120 degrees Fahrenheit and at a maximum temperature of not more than 140 degrees Fahrenheit at all times in accordance with anticipated needs.

10:39-5.4 Garbage and rubbish storage

Garbage, rubbish or other organic waste shall be stored in watertight receptacles. A sufficient number of garbage or rubbish receptacles shall be available, and shall conform to all applicable State regulations and local ordinances.

10:39-5.5 Lighting

(a) The lighting system must be in working order and sufficient for the appliances and/or equipment used.

(b) Every habitable room shall have at least one window or skylight facing directly to the outdoors.

(c) The minimum glazed area of the total windows or skylights shall be eight percent of the floor area of each room.

10:39-5.6 Electrical services

(a) Every residence shall be provided with electric service, which shall be adequately maintained.

(b) Every habitable room shall contain sufficient wall-type electric outlets and lamps or light fixtures to enable occupants to use the room for its intended function. Lighting in habitable rooms must be sufficient to read by.

(c) Every outlet and lamp shall be maintained in a good and safe condition and shall be connected to the source of electric power.

(d) No temporary wiring shall be used except extension cords which:

1. Run directly from portable electrical fixtures to convenient outlets;

2. Do not lie under rugs or other floor coverings; and

3. Do not extend through doorways, transoms, or other openings through structural elements.

(e) Every portion of each staircase, hall, cellar, basement, landing, furnace room, utility room, and all similar non-habitable space shall have either natural or artificial light available at all times, with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portions, and sufficient for safe use of the area for its intended purpose.

(f) Every portion of any interior or exterior passageway or staircase shall be illuminated naturally or artificially at all times with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portion of the normally traveled stairs and passageways. Lighting must be sufficient to prevent accidents.

(g) Every bathroom and water closet compartment shall have either natural or artificial light available at all times, with an illumination of at least three lumens per square foot (three foot-candles). The light shall be measured 36 inches from the floor at the center of the room. Artificial lighting shall be controlled by a wall switch so located as to avoid danger of electrical hazard. There must be sufficient light to use the room and/or area for its intended purpose.

10:39-5.7 Ventilation

(a) Means of ventilation shall be provided for every habitable room. The ventilation may be provided either by an easily operable window or skylight having an openable area of at least 50 percent of the minimum window area, or by other means acceptable to the Division, which will provide at least two air changes per hour.

(b) Means of ventilation shall be provided for every bathroom or water closet compartment. The ventilation may be provided either by an easily operable window or skylight having an operable area of at least 50 percent of the minimum window or by other means acceptable to the Division which will provide at least six air changes per hour.

(c) Ventilation shall be sufficient to remove odors.

10:39-5.7 Heating

(a) Every residence shall have heating facilities which are:

1. Properly installed;

2. Maintained in good and safe working condition; and

3. Capable of safely and adequately heating all habitable rooms and bathrooms located therein to a temperature of at least 68 degrees Fahrenheit when the outside temperature is zero degrees Fahrenheit.

(b) The temperature shall be read at a height of three feet above floor level at the center of the room.

(c) There shall be heat adequate to maintain a minimum inside temperature of 68 degrees Fahrenheit in all habitable rooms and bathrooms from October 1 of each year to the next May 1, and when the outside temperature is 57 degrees or less.

(d) Every space heater, except electrical, shall be properly vented to a chimney or duct leading to outdoors.

(e) Unvented portable space heaters, burning solid, liquid, or gaseous fuels shall be prohibited.

10:39-5.9 Structural safety and maintenance

(a) Every foundation, floor, wall, ceiling, door, window, roof, or other part of a residence shall be kept in good repair and capable of the use intended by its design, and any exterior part or parts thereof subject to corrosion or deterioration shall be kept well painted.

(b) Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.

(c) Every stairway having three or more steps shall be properly banistered and safely balustraded.

(d) Every porch, balcony, roof, and or similar place higher than 30 inches above the ground, used for egress or for use by occupants, shall be provided with adequate railings or parapets which are properly balustraded and be not less than three feet in height.

(e) Every roof, wall, window, exterior door and hatchway shall be free from holes or leaks that would permit the entrance of water within or be a cause of dampness.

(f) Every foundation, floor, and wall of each residence shall be free from chronic dampness.

(g) Every residence shall be free from rodents, vermin and insects. A provider agency of a residence located in an area found by the Division to be infested by rats, insects, or other vermin shall carry out such rodent and insect control, or other means of preventing infestations of said dwellings as may be required by the Division.

(h) Every openable window, exterior door, skylight, and other opening to the outdoors shall be supplied with properly fitting screens in good repair from May 1st until October 1st of each year. Screens shall have a mesh of not less than No. 16.

(i) Every residence, including all exterior areas of the premises, shall be clean and free from garbage or rubbish and hazards to safety.

(j) Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly.

(k) Fences shall be kept in good repair.

(l) The ground maintenance shall be consistent with that of the neighborhood, unless the condition of the neighborhood does not generally meet the minimum standards for maintenance set forth in this manual.

(m) The Division may require that the provider agency clean, repair, paint, whitewash, or paper such walls or ceiling, when a wall or ceiling within a dwelling has deteriorated so as to provide a harborage for rodents or vermin, or when such a wall or ceiling has become stained or soiled, or the plaster, wallboard, or other covering has become loose or badly cracked or missing.

(n) Every water closet compartment floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to water and shall be kept in a clean condition.

(o) No provider agency shall cause or permit any services facilities, equipment, or utilities which are required under this subchapter to be removed from, shut off, or discontinued in any residence or part thereof, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies, when discontinuance of service is authorized by the Division.

(p) In the event that any service or utility is discontinued, the provider agency shall take immediate steps to cause the restoration of such service or utility.

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(q) All residences must be clean and sanitary prior to occupation by any resident, and shall be maintained in a clean and sanitary condition.

(r) The provider agency shall ensure the orderly maintenance of the premises. The storage of objects or materials shall be done in an orderly manner so as to not constitute a health, safety, or fire hazard.

10:39-5.10 Kitchen facilities

(a) Kitchen storage space shall be clean and well ventilated.

(b) Major kitchen appliances shall minimally include a refrigerator with freezer compartment and a permanently installed stove with oven and cooktop.

(c) Containers of food shall be covered and appropriately stored at least 12 inches above the floor on shelves or other clean surfaces.

(d) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit. Freezer compartments shall operate at no more than 0 degrees Fahrenheit and must be maintained in good condition and without excessive ice build-up.

(e) All food and drink shall be safe for human consumption, clean, wholesome, and free of spoilage; and prepared and served in a sanitary manner. There shall be at least a two-day supply of food and drink at all times.

(f) All equipment and utensils used for eating, drinking, preparation and keep shall be:

1. Kept clean and in good condition;
2. Thoroughly washed after each use; and
3. In sufficient quantity for the number of occupants.

(g) Floors, walls and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

10:39-5.11 Occupancy and use of space

(a) Every rooming unit occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet of floor space for each occupant. Doors for privacy shall be provided and maintained. Means of egress to the rest of the home shall be direct and not through any other bedroom.

(b) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(c) Sufficient closet space for storage shall be provided. The storage space shall be uncluttered and sufficient for clothing and supplies.

(d) Rooms shall be of adequate size for the number of people, types of activities and storage.

(e) A room located in whole or in part below the level of the ground may be used for sleeping, provided that the following requirements are met:

1. The walls and floor which are in contact with the earth shall be dampproofed, in accordance with a method approved by the Division; and
2. All requirements generally applicable to habitable rooms shall be satisfied.

(f) No person unable to walk without assistance shall occupy a rooming unit on other than the ground floor at any residence, unless provisions have been made to assure evacuation of the premises within two minutes.

(g) In family care homes, clients shall be allowed to share sleeping rooms/accommodations only with other clients.

(h) Any matter or requirement essential for the structural safety of a residence or essential for the safety or health of the residents therein or of the public, and which is not covered by the provisions of these rules shall be the subject of determination by the Division Director (or designee) in specific cases.

SUBCHAPTER 6. FIRE SAFETY

10:39-6.1 Uniform Fire Code

The provisions of N.J.A.C. 5:18, the Uniform Fire Code, are hereby incorporated by reference.

10:39-6.2 Group homes with five or less residents not in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to group homes with five or less residents.

10:39-6.3 Group homes with six to fifteen residents not in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes with six to fifteen residents.

10:39-6.4 Group homes in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes in multiple unit dwellings.

10:39-6.5 Family Care Homes

The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to family care homes.

10:39-6.6 Apartments

The provisions of N.J.A.C. 5:18 which apply to apartments shall apply to PA apartments.

10:39-6.7 Smoke detectors

(a) Single station smoke detectors shall be installed at locations as follows:

1. Living room and bedroom;
2. Designated smoking areas;
3. Highest ceiling area in each stairwell; and
4. Basements and cellars located in the highest ceiling area of the first floor stair landing or other approved location where the earliest detection of fire would activate the alarm.

10:39-6.8 Fire drills in group homes

(a) A minimum of one unscheduled fire drill shall be conducted per month.

(b) Fire drills shall be conducted at night or in the evening hours at least 50 percent of the time.

(c) Evacuation should be completed in less than two minutes.

(d) For each fire drill the time, date, participants, problem areas, resolution of problems and timeliness of egress must be documented.

(e) The Division's Bureau of Licensing and Inspections shall review agency compliance with this procedure annually during the on-site inspection.

10:39-6.9 Kerosene heaters

The use of kerosene heaters is prohibited.

10:39-6.10 Fireplaces

All operable fireplaces shall be cleaned and inspected annually.

10:39-6.11 Variances

(a) Variances from N.J.A.C. 5:18 shall be permitted, in accordance with N.J.S.A. 52:27D-200.

(b) The PA shall provide the Division with a copy of all applications for variances and the action taken on them.

10:39-6.12 Administrative hearing

Administrative hearings will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 7. RESIDENT COMPLAINT PROCEDURES

10:39-7.1 Development of resident complaint procedures

All PAs shall establish internal complaint procedures which will be subject to the Division's review and approval at the time of the initial licensing and annual license renewal. Complaint procedures shall allow for a client of the PA to make known a grievance regarding services provided or which failed to be provided; to seek appropriate redress related thereto; and to have corrective action taken, as might be warranted.

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10:39-7.2 Appeal process; ombudsman

The provisions of N.J.A.C. 10:37-4.6 regarding client complaint agency ombuds and review procedures are incorporated by reference.

10:39-7.3 Client protection

No resident shall be subject to retaliation of any form by the PA because of the filing of any complaint.

SUBCHAPTER 8. QUALITY ASSURANCE

10:39-8.1 Quality assurance

(a) PA shall develop and implement policies and procedures for an ongoing quality assurance (QA) program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care, pursue opportunities to improve care and resolve identified problems.

(b) Areas to be monitored and evaluated through the program shall include, but are not limited to, the following:

1. Appropriateness of admissions;
2. Accuracy and completeness of assessments;
3. Effectiveness of treatment, to include, at a minimum:
i. Individual service planning;
ii. Coordination and integration of all service providers;
iii. Duration and timeliness of services provided; and
iv. Appropriateness and outcome of services provided;
4. Treatment complications including unusual incidents;
5. Therapeutic environment and life safety;
6. Adequacy of planning for termination and/or reduction of service intensity;
7. Clinical documentation;
8. Staff performance; and
9. Adherence to and adequacy of all agency policies and procedures.

(c) The QA program shall coordinate the following activities:

1. Review of clinical documentation;
2. Provision of on-site staff training;
3. On-going clinical supervision of all direct care staff;
4. Participation of all direct care staff in routine staff meetings;
5. Routine performance appraisal of all staff;
6. Documentation and tracking of identified problems and efforts to resolve problems;
7. On-going review and revision of all policies and procedures;
8. On-going review and analysis of program data; and
9. Quarterly documentation of physical and fire safety inspections of facilities.

(d) The activities in (c) above shall be fully integrated into the day-to-day operation of the program. The quality assurance program shall provide regular reports to the agency's executive director and governing board, which reports shall also be available for review by the Division.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Overearnings

Proposed New Rules: N.J.A.C. 14:3-11

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13 and 48:2-21.

Proposal Number: PRN 1989-361,

BPU Docket Number: AX 89050493.

Submit comments by August 16, 1989 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rules would establish a procedure and framework by which the Board would evaluate a utility's earnings to establish whether current rates are just and reasonable. The proposed new rules also establish other procedures to address situations where earnings are in excess of those allowed.

Social Impact

The proposed new rules balance the interests of utilities with those of the ratepaying public. Utilities are permitted an opportunity to earn a fair return on plant devoted to utility service. The return should be sufficient enough for the utility to attract capital and maintain its financial integrity for the purpose of expanding plant for the provision of utility service. The Board, after hearing, establishes the level of fair return authorized to be earned by a utility. Utility companies are permitted to increase their charges for service after the Board finds that after petition and hearing, a fair return is not being achieved at current rate levels. A utility is not, however, authorized to earn a return in excess of the return established by the Board, nor will the Board retroactively return past period overearnings to customers or past underearnings to utilities. The proposed rules established procedures by which the earned return will be evaluated.

The proposed rules will benefit customers of utility service by providing a uniform analysis of a utility's earnings, delineating the specific actions the Board might take if earnings are excessive, and providing customer with assurance that utilities will provide safe, proper and adequate service at reasonable cost. The proposed rules will help assure that the interests of ratepayers are adequately addressed and protected, when a utility's rates are not just and reasonable, while not undermining the opportunity for the utility to earn a fair return.

Economic Impact

The proposed new rules will benefit the utility's ratepayers and add greater certainty to the regulatory environment, to the benefit of utilities and ratepayers. The cost of utility service is a significant portion of a household's expense outlays, as well as a substantial cost for commercial, industrial and governmental customers. The proposed new rules provide a means for rate reductions and/or interim rates, if deemed necessary by the Board, when a utility overearns, and thus, lessens the burden of utility costs on the customers without lessening the opportunity for a utility to earn a fair return on its investment.

Regulatory Flexibility Analysis

The new rules impose requirements on approximately 50 small water and sewer businesses and approximately 600 small solid waste utilities, as the term "small business" is defined in the Regulatory Flexbility Act, N.J.S.A. 52:14B-16 et seq. The rules do not establish differing requirements for small businesses. The Board does not consider it appropriate to differentiate between small and large businesses in the rules, however, small businesses are permitted to apply to the Board for such relief as the Board may see fit to grant. The rules utilizing performance standards, establish procedures for evaluating a utility's earnings, in order to determine what action the Board may take.

Full text of the proposal follows.

SUBCHAPTER 11. EARNED RETURN ANALYSIS

14:3-11.1 Public utilities, definition and compliance

(a) As used in this subchapter, the term "public utility" is defined as all investor owned utility companies subject to the regulation of the Board of Public Utilities.

(b) The agency will exercise its discretion in determining whether noncompliance by small water, sewer and solid waste companies will adversely affect the public interest.

14:3-11.2 Earnings reports

(a) On the first of each month, the staff of the Board of Public Utilities shall prepare and make available for public inspection a report or reports listing the earned return of each public utility.

(b) Said report or reports shall state the earned return on average equity which will be calculated by dividing the actual amount of earnings applicable to common equity of the public utility since the most recent rate decision of the Board in which a rate of return was determined by the average of the end of month actual common equity of the public utility since the month ending prior to the most recent decision of the Board in which a rate of return was determined,

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multiplied by the number of months since the most recent rate decision of the Board in which a rate of return was determined divided by 12.

(c) Said report shall state the earned return on equity from the previous 12 months which will be calculated by dividing the net income available to common stockholders for the 12 month period under review by the average monthly common equity for the same 12 month period. This calculation will be performed after 12 months have elapsed since the latest base rate case on a rolling basis, where the current month will be added and the oldest month will be eliminated from the calculation.

14:3-11.3 Annual information report filing

(a) All utilities subject to this subchapter shall prepare and submit to the Board of Public Utilities and the Department of the Public Advocate, Division of Rate Counsel, an annual report. The first such report shall be submitted 30 days after the anniversary of the utility's most recent base rate case in which a rate of return was determined. Said report shall contain the following schedules:

1. Schedule 1—Plant Additions and Retirements on an item by item basis for the previous year and estimated for the following year.
2. Schedule 2—A detailed comparison of operating and maintenance expenses for the previous year and estimated for the following year as well as a detailed comparison between test year data and the previous year.
3. Schedule 3—A detailed comparison of administrative and general expenses for the previous year and estimated for the following year, as well as a comparison between test year data and the previous year.
4. Schedule 4—A detailed comparative statement of operating income for the previous year and estimated for the following year.
5. Schedule 5—A detailed comparison of rate base for the previous year and estimated for the following year.
6. Schedule 6—A detailed comparison of capital structure for the previous year and estimated for the following year.
7. Schedule 7—A weather normalized sales volume comparison by rate class for the previous year and forecast for the following year. All assumptions regarding said forecast shall be provided.
8. Schedule 8—The most recent full short and long-term financial forecasts prepared for corporate planning purposes.
9. Schedule 9—A statement of earned return on rate base, which shall be calculated by dividing utility operating income by rate base for the previous 12 month period and utilizing exclusively the methodologies used in the Board's most recent base rate decision.

(b) After review of said submission, and after proper notice being given, the Board may take such action as identified in N.J.A.C. 14:3-11.4(b).

14:3-11.4 Overearnings actions

(a) An earned return on average equity calculated in accordance with 14:3-11.2(b), in excess of the return on equity authorized by the Board in the utility's most recent rate case in which rate of return was determined, will, at the discretion of the Board, result in further action, if a minimum of 12 months have passed since said return was determined.

(b) In an overearnings situation as described in N.J.A.C. 14:3-11.4(a), or after review of the filing as described in N.J.A.C. 14:3-11.3, the Board may take whatever action it deems necessary, including but not limited to, any or all of the following:

1. Issue a directive to convene a conference;
2. Conduct a hearing after notice, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 to determine if a rate reduction is necessary, and/or;
3. Establish, after notice and hearing or submission of documents, a portion of rates interim and subject to refund during the pendency of hearings.

(c) In the event the Board issues a directive that a conference be held in accord with (b)1 above, the participants shall provide a report or reports to the Board within 45 days after the first conference, stating their respective positions and a recommendation for further action, if any. The Board will determine what further action, if any, is necessary.

(d) When overearnings as described in (b) above occurs, the utility shall, within 15 days, provide to the Board, its staff and the Division of Rate Counsel the information identified in N.J.A.C. 14:3-11.3(a), updated with the most recently available data, for public inspection.

(e) No base rate increase shall be granted to a public utility when earnings as described in N.J.A.C. 14:3-11.2(b) are in excess of the return on equity authorized by the Board in the most recent rate case in which a rate of return was determined.

(a)

BOARD OF PUBLIC UTILITIES

All Utilities

Applications; Proof of Identity; Proof of Prior Address

Proposed Amendment: N.J.A.C. 14:3-3.2

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

Proposal Number: PRN 1989-355.

BPU Docket Number: AX88081017 U.

Submit comments by August 16, 1989 to:
Eugene J. Byrne, Esq.
Administrative Practice Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

This proposed amendment would require a utility, should it request proof of identity from a prospective customer applying for service, to accept any one of the following items to establish a customer's identity:

1. Valid driver's license
2. Employment identification
3. Unexpired foreign passport
4. U.S. passport
5. Alien registration card with photograph
6. County identification card
7. County welfare identification card.

It would require a utility, when proof of a prospective customer's prior address is requested, to accept any one of the following items to establish a customer's prior address:

1. Lease/Deed
2. Current auto insurance policy
3. Bank statement
4. Credit card statement
5. Mailing envelopes addressed to the applicant at the previous address, post-marked within two months of the date of the application.

Social Impact

The proposed amendment permits a utility to require certain types of proof of identity and proof of prior address. The proposed amendment will protect prospective customers from arbitrary demands by a utility in respect to proof of identity or proof of a prior address, when applying for service.

Economic Impact

The proposed amendment would have no economic impact on the Board, the public or affected utilities. It would establish the right of a utility to require proof of identity and prior address from a prospective customer, thereby enabling them to more readily establish the same and thereafter collect outstanding bills, if any.

Regulatory Flexibility Analysis

The amendment imposes requirements on one small electric utility, over 100 small water and sewer utilities, and approximately 600 small solid waste utilities, as the term "small business" is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment does not establish differing requirements for small businesses, neither does it require any reporting or recordkeeping. The Board does not consider it appropriate to differentiate between small and large businesses. The amendment, utilizing performance standards, permits small and large businesses alike to request proofs of identity and of prior residence from

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applicants for service, and specifies what forms of such proofs may be required. The utilities are not permitted to require any other proofs of the applicant.

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

14:3-3.2 Applications

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

(c) A utility may require proof of identity with an application for service. An applicant for service may provide any one of the following items to establish identity:

1. Valid driver's license;
2. Employment identification;
3. Unexpired foreign passport;
4. U.S. passport;
5. Alien registration card with photograph;
6. County identification card; or
7. County welfare identification card.

(d) A utility may require proof of prior address with an application for service. An applicant for service may provide any one of the following items to establish prior address:

1. Lease or Deed;
2. Current auto insurance policy;
3. Bank statement;
4. Credit card statement; or
5. Mailing envelopes addressed to the applicant at the previous address, post-marked no later than two months prior to the date of the application.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Grants and Loans Programs

Proposed Repeal and New Rules: N.J.A.C. 14A:6

Authorized By: Borden Putnam, Commissioner, Department of Commerce, Energy, and Economic Development.

Authority: N.J.S.A. 52:27F-11q.

Proposal Number: PRN 1989-373.

Submit comments by August 16, 1989 to:
Administrative Practice Officer
Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 07102

The agency proposal follows.

Summary

Pursuant to the Governor's Reorganization Plan No. 002-1989, the Division of Energy Planning and Conservation, together with all its existing functions, powers and duties, will be transferred to the Board of Public Utilities, effective August 14, 1989. Therefore, this proposal will be adopted by Christine Todd Whitman, Chairman of the Board of Public Utilities.

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 14A:6 expires on August 6, 1989.

The Division has decided to expand the class of participants for both the Interest Rate Subsidy and the Revolving Loan Fund to meet pressing environmental and energy needs. The proposed expansion of participants will make competition for the affected programs very competitive. The Division feels that the proposed changes are of a significant impact to justify publishing the rules as a new proposal to allow for maximum public comment of the proposal.

The class of participants for the Revolving Loan portion of the program is amended to be consistent with the same class of participants for the Interest Subsidy Program. The class of participants to be eligible for the Revolving Loan Fund will be private non-profit institutions, family-owned farms, individually-owned farms, individually-owned or closely-held companies, municipal facilities, multi-family dwellings of five or more units, owners of condominiums and cooperatives, County facilities, Resource Recovery Facilities and District Heating and Cooling Systems.

Social Impact

The Business Energy Improvement Program amendments will have a positive social impact by expanding the class of participants for the Revolving Loan Program.

Economic Impact

The program will have a positive economic impact by creating the same class of participants and offering them a choice of either the Interest Rate Subsidy or the Revolving Loan Program. The participant can select the program which best fits their business needs.

Environmental Impact

The proposed change will have a positive indirect effect on the environment by making businesses more energy efficient. To the extent that electricity consumption is reduced in the commercial sector it will have a beneficial impact on the environment. To the extent that District Heating/Cooling projects are funded, it will increase the efficient generation of steam and electricity, reduce fossil fueled sources of pollution and improve air quality.

The proposed new rules impose requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the requirements will not require additional expenses beyond those normally associated with the management of such businesses.

Regulatory Flexibility Analysis

The proposed new rules are designed to aid small businesses by offering two types of assistance. A small business may choose between an Interest Subsidy and Revolving Loan Program. The new rules thus expand the class of participants for this type of program.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14A:6.

Full text of the proposed new rules follows:

CHAPTER 6
GRANT AND LOAN PROGRAMS

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. BUSINESS ENERGY IMPROVEMENT PROGRAM

14A:6-2.1 Scope and purpose

This subchapter establishes the rules governing the Business Energy Improvement Program. The Program provides funds to eligible applicants for the purpose of fostering energy conservation. The intent of the funds is to encourage investment in, and to provide cost reduction for, renovations, equipment replacement, energy conservation construction, alternative energy production facilities, resource recovery projects and energy demonstration projects.

14A:6-2.2 Definitions

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

"Alternative energy production facility" includes, but is not limited to, a facility that produces energy by using cogeneration, hydro power, wind power, solar technologies, resource recovery methods, or district heating/cooling.

"Applicant" means the owner or lessee of an eligible facility who applies for funds pursuant to this subchapter.

"Application" means a Business Energy Improvement Program document.

"Avoided costs" means the annual cost savings, based on improved efficiencies using the differences between the normal annual purchased energy costs, and the cost of equivalent energy production by the facility for which an application is made.

"Closely held company" means a business organization in which ownership and control are vested in 10 or fewer individuals.

"Commissioner" means the Commissioner or the Assistant Commissioner of the Department of Commerce, Energy and Economic Development, Division of Energy Planning and Conservation, or its successor.

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"Demonstration program" means an on-site installation of a state-of-the-art energy conservation measure, or integrated system of energy conservation measures, under the direction and control of a Division approved organization which serves to illustrate, by example, the practical application of energy conservation measure(s). The intent and purpose of such demonstration projects is to induce widespread adoption of the energy conservation measure(s) as a normal operating practice.

"Division" means the Division of Energy Planning and Conservation.

"District heating and cooling" means a system supplying heating and/or cooling for more than one facility when the energy source is remote from one or more user.

"Eligible applicant" means a person who qualified for one or more types of funding defined in this chapter; however, such person may not receive funds from more than one program category for a given project.

"Eligible loan" means a loan made by a lender to the applicant for energy conservation renovations or an alternative energy production facility, which meets the requirements of N.J.A.C. 14A:6-2.6 and 2.7.

"Energy audit" means a study of a building(s) or facilities conducted by an engineer or an architect/engineering firm or other Division approved party to determine operating and maintenance procedures and renovations which would result in reduced energy consumption. The energy audit shall provide the estimated costs of implementation and the expected dollar and energy savings for the recommended project and maintenance procedures. The energy audit shall include, but not be limited to, the energy conserving renovations listed in N.J.A.C. 14A:13-1.11.

"Energy conservation renovation" means any equipment, materials, alterations or improvements installed within an existing structure owned or leased by an eligible applicant that would reduce energy consumption or increase energy efficiency, and which have been approved by the Division pursuant to N.J.A.C. 14A:6-2.11, but shall not include new construction or energy conservation renovations installed prior to receipt of a completed Business Energy Improvement Program application by the Division.

"Energy conserving construction" means materials, practices or equipment that exceeds the energy efficiency of those required under the Energy Subcode, N.J.A.C. 14A:3-4 as amended.

"Energy service company" (ESCO) means a vendor engaged in the business of furnishing energy conserving renovations to users through a shared-savings or guaranteed-savings program, and includes all representatives, agents, assignees, and other persons or entities performing activities for, or acting on behalf of, the vendor.

"Family-owned farm" means a farm which is any place producing agricultural or horticultural or other food products worth $2,500 or more annually and meets the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.).

"Feasibility planning for future energy conservation techniques" means projects undertaken by eligible applicants to make their own facilities, or the facilities of other eligible applicants, energy efficient by utilizing the construction of alternative energy production facilities, demonstration programs, energy audits, energy conservation renovations, energy conserving construction or other conservation techniques as will be specified by the Division as these technologies reach commercial application.

"Incremental grant" means full payment for the incremental cost of using materials, practices and equipment that exceed those materials, practices and equipment required under the "Energy Subcode", N.J.A.C. 14A:3-4 as amended.

"Interest subsidy" means funds provided by the Division to reduce the effective interest rate on an eligible loan.

"Lessee" means a person or business operation to whom property or equipment is leased or loaned for a fee.

"Lender" means State chartered banks, savings banks, savings and loan associations, national banks, Federally-chartered savings and loan associations, approved out-of-State banks, economic development agencies, and other Division approved corporations authorized to transact the business of financing.

"Matching grant" means the one-time provision of funds by the Division to an eligible applicant to assist in the implementation of an approved project.

"Multi-family buildings" means buildings used for residential occupancy and containing five or more dwelling units.

"Municipal facility" means a facility owned and operated by either an incorporated unit of local government or a designee of the incorporated unit under contract to the unit for a specific energy conservation purpose.

"Payback" means the calculated number of years required for the first year energy cost savings, or avoided costs, to equal the capital cost of the renovation or alternative energy facility. It is calculated by the following formula:

Payback = Total estimated capital cost of renovation(s) or alternative energy facility divided by estimated net annual energy cost savings or avoided costs accruing to the applicant for the first year following installation of the energy conservation measure or alternative energy facility.

"Private nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code of 1954 which:

1. Is exempt from taxation under Subtitle A of the code;
2. Has an accounting system and a voluntary Board of Directors; and
3. Practices nondiscrimination in providing assistance.

"Program" means the Business Energy Improvement Program established by this subchapter.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of municipal solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or disposal or for energy production.

"Revolving Loan Fund" means a pool of money available at zero-interest or low interest to accommodate individually owned businesses, closely held companies, family farms, multifamily buildings, counties and municipalities which are unable to use either conventional lending sources or an energy service company (ESCO), for energy conservation projects whose principal repayments are structured around the energy savings generated.

"Subsidy" means funds furnished by the Division for energy conservation projects.

"Urban Enterprise Zone" or "Enterprise Zone" means an area that has been designated by the Commissioner of Community Affairs as an "area in need of rehabilitation" under the five-year tax abatement process (P.L. 1977, c.12 (N.J.S.A. 54:4-3.95) et seq.) or is qualified for that designation, and meets the criteria established by the Enterprise Zone Authority.

14A:6-2.3 Program duration and limitation of funding

(a) The number and amount of subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover subsidies previously approved by the Division and to provide sufficient funds for further subsidies.

(b) The Commissioner may suspend the Program with respect to new applicants in the event that funds are exhausted or the anticipated demand for subsidies exceeds available funds.

(c) Upon notification of an award, the applicant shall have 120 days to obtain all State, Federal or local permit approvals or petition the Division for an extension with full explanation for the request.

14A:6-2.4 Requests for applications

The Division shall make available Business Energy Improvement Program applications on request, until the Program is suspended pursuant to N.J.A.C. 14A:6-2.3. Application requests may be addressed to the Division of Energy Planning and Conservation, 101 Commerce St., Newark, N.J. 07102.

14A:6-2.5 Submission requirements

(a) Each program application submitted to the Division for interest subsidies, revolving loan funds, or grants shall include the following information:

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1. Name and address of the applicant;
2. A precise description of each energy conservation renovation, energy conserving construction, alternative energy production facility or demonstration programs for which the application is made;
3. For all projects, except demonstration programs, the following information shall be submitted:
i. A reasonable construction bid, including itemization of the component costs. The construction bid shall be accompanied by the following:
(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and
(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 et seq. and the rules and regulations promulgated pursuant thereto;
ii. Engineering calculations and energy savings or avoided costs calculations for each project; and
iii. The simple payback period for each energy conservation renovation or energy conserving construction.
4. Such additional information as may be required by the Division to provide a complete and accurate description of the project.
(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

14A:6-2.6 Interest subsidies
(a) Eligibility for interest subsidies will be limited to:
1. Businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37);
2. Qualified Urban Enterprise Zone businesses as defined in P.L. 1983 C.303;
3. Multi-family buildings of five or more units, condominiums, and cooperatives;
4. Private non-profit institutions, but not including facilities which are used for worship or in which the sanctuary area directy benefits from the improvement;
5. Family-owned farms;
6. Municipal facilities.
(b) For the purpose of calculating possible subsidy, the Division will participate in projects where the maximum principal amount, interest term and simple payback are as follows:
1. For energy conservation renovations and alternative energy production facilities: the principal not to exceed the lesser of the actual project cost or $500,000, the term shall not exceed the lesser of the lender loan term or the estimated time for payback of the project; and a simple payback of 10 years or less.
2. For resource recovery facilities: the principal not to exceed the lesser of the actual project cost or $2,000,000; the term not to exceed the lesser of the lender loan term or the estimated time for payback of the project; and a simple payback of 20 years or less.
(c) Applicants shall supply a copy of their loan application of loan commitment from the lending institution with supporting documentation specifying principal, interest and penalties with respect to all projects.
(d) Applicants shall execute an agreement with the Division to establish the conditions associated with the interest subsidy loan, and shall include among others:
1. The loan term;
2. The rate of interest which can be fixed or floating;
3. That the loan is amortized according to a predetermined monthly schedule;
4. That the loan does not obligate or render the Division liable to pay, at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:
i. The default or late payment of the eligible loan by the applicant;
ii. Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Division;
5. That the loan was or will be reviewed and approved by the lender in accordance with standard procedures; and
6. That the Division does not guarantee the approval by lenders of loans or that the Division will not participate in any manner in any aspect of the lender's loan review process.

14:6-2.7 Revolving loan funds
(a) Eligibility will be limited to private non-profit institutions, family owned farms, individually owned or closely held companies, and municipal facilities.
(b) Eligible applicants with an annual energy bill in excess of $150,000 which have been denied energy conservation project funding by an Energy Service Company (ESCO), and/or have been denied energy conservation project funding by a lending institution shall supply proof of that denial.
(c) Revolving loan funds shall be at zero interest or low interest to eligible applicants where the maximum principal amount term, and simple payback are as follows:
1. For energy conservation renovations or alternative energy production facilities:
i. $200,000 in principal;
ii. The loan term not to exceed the lesser of 10 years, or twice the estimated payback in years; and
iii. A simple payback of 10 years or less.
2. For resource recovery facilities:
i. $3,000,000 in principal;
ii. The loan term not to exceed the lesser of 20 years, or twice the estimated payback in years; and
iii. A simple payback of 20 years or less.
(d) Repayment of Revolving Loans shall be based on a percentage of the annual energy cost savings or avoid energy costs with a balloon payment, if any, due at the end of the term.
(e) Applicants shall execute an agreement with the Division to establish the terms and conditions associated with the loan.

14A:6-2.8 Incremental grants
Eligibility for new construction projects and/or major renovations will be limited to resource recovery facilities, district heating and cooling systems or qualified Urban Enterprise Zone Business Applicants.

14A:6-2.9 Matching grant
(a) Eligibility for matching grants shall be limited to family owned farms.
(b) The Division's percentage of match will be based on the farm operation income in relation to the median farm operation income of the farm location and will not exceed 80 percent of the cost of the project.
(c) Energy conservation projects or alternative energy projects with a maximum simple payback of 10 years will be eligible.
(d) The maximum grant amount will be $100,000.

14A:6-2.10 Demonstration program fund
(a) Eligibility for demonstration program funds is limited to non-profit organizations, educational institutions, colleges, universities.
(b) The Division may, at its discretion, allot funds in the form of grants up to a maximum of $200,000 per project for demonstration programs.

14A:6-2.11 Grant agreement
All applicants shall execute an agreement with the Division to establish the terms and conditions associated with the grant. No charges for indirect costs will be allowable charges under the grant.

14A:6-2.12 Application and review procedures
(a) Applicants shall submit to the Division a completed Business Energy Improvement application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Division's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14A:6-2.3.

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(b) The Division shall conduct a review of the applications, commencing with the application bearing the earliest submission date. The Division may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Division shall review the applications to determine whether:

1. The application is made on behalf of an eligible applicant;

2. The application covers energy conservation renovations, energy conserving construction or alternative energy production facilities, or Demonstration Programs;

3. The application is complete as to form (required documentation is present and complete);

4. The application is complete as to the submission requirements of N.J.A.C. 14A:6-2.5;

5. The engineering calculations and other technical matters with respect to the energy conservation renovations, energy conserving construction, alternative energy production facilities, or Demonstration Programs are accurate and correct;

6. The energy conservation renovations or energy conserving construction are appropriate.

7. For energy conserving construction, evidence that capital expenditures are sufficient to cover the construction cost estimate provided under 14A:6-2.5(a)3.

(c) Upon completion of the review of an application pursuant to (b) above, the Division shall notify the applicant in writing whether the application has been approved, approved with modification, or denied. Subsidies, revolving loan funds or grants shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved, an agreement shall be executed with the Division to establish the terms and conditions associated with subsidies, revolving loan funds or grants.

2. In the event that an application is approved with modification, the Division shall:

i. Indicate preliminarily in writing, the terms under which a subsidy, revolving loan or grant will be extended to the applicant, and the amount of the subsidy, revolving loan or grant.

3. In the event that an application is denied, the applicant shall be ineligible to receive a subsidy for the particular energy conservation renovations, energy conserving construction, alternative energy production facilities or Demonstration Programs included in the application and shall not be permitted to submit another application for the same project under the same program.

14A:6-2.13 Payment of subsidies

(a) The Division shall pay subsidies directly to an approved applicant or, where applicable, to a lending institution in the name of an approved applicant.

(b) The Division will pay the entire subsidy in a single discounted lump-sum payment when the project is installed and inspected. The discount rate shall be no lower than six percent. The total value of the subsidy will be the same as if the prepaid subsidy were invested at the negotiable discount rate compounded semi-annually over the term of the subsidy.

14A:6-2.14 Revolving loan funds

(a) The applicant shall be solely responsible and liable for repayment of the principal, and any interest, interest accruals, or penalties which may be assessed or result from the loan.

(b) Revolving loan funds shall be secured by property liens where applicable until loan repayment is completed.

(c) Where the project scope necessitates, the services of an interim lender may be engaged as an experienced construction lender to assume responsibility for monitoring the construction phase and timely completion of the project, to minimize non-performance risk, and monitor costs to preclude cost overruns. When an interim lender is not used, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project.

(d) Repayment of principal by the applicant shall be made from the value of energy savings that accrue as a result of the energy conservation measure implemented with the borrowed money;

(e) An annual accounting, on an agreed calendar or fiscal year basis, shall be made for reconciliation of energy savings or avoided costs realized and loan repayment due; and

(f) Repayment of the loan shall commence six months after the project is operational, and on an annual basis thereafter, with repayment not to exceed a maximum of 10 years, or 20 years for a resource recovery project.

14A:6-2.15 Grant funds

(a) For incremental grants, the Division will make a single lump sum payment when the project is installed and inspected.

(b) For matching grants, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project. Grantees must demonstrate that their matching funds are being spent at the same rate as their spending of Division funds.

(c) For demonstration program grants, the Division will reimburse grantees based on an approved line item budget for eligible expenses incurred. Requests for payment shall not be made more than once per calendar quarter.

14A:6-2.16 Monitoring

(a) The Division shall monitor all work related to energy conservation renovations, energy conserving construction or alternative energy production facilities that are the subject of a subsidy, revolving loan, or grant agreement by the Division.

(b) Monitoring shall include, but not be limited to, reviewing plans, specifications, other documents and information, and conducting on-site inspections to assess the progress and completion of work as well as the final disposition of equipment being replaced under the program.

(c) The applicant shall comply promptly with all requests by the Division to conduct monitoring activities; for example, supply periodic fuel consumption figures to validate energy savings, as required.

(d) Authorization from the applicant to the Division for the direct receipt of utility bill information may be required for monitoring purposes. Where exercised, confidentiality will be maintained; utility data shall be treated as proprietary information.

14A:6-2.17 Rescission and withholding of funds

(a) The Division, in addition to any other rights or remedies available pursuant to law, may withhold or rescind payment of a subsidy, revolving loan, or grant or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the Division to make further payments of funds to the applicant. The term "good cause" shall include, but not be limited to, the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules;

2. Failure to comply with any condition or requirement of the subsidy agreement;

3. Submission of false or misleading information, or failing to submit relevant information to the Division;

4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan;

5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant;

6. Use of the subsidy for any purpose other than as specified in the agreement;

7. Inability or failure to install the energy conservation renovations, energy conserving construction, alternative energy production facility, or conduct the Demonstration Program, in a timely manner, absent force majeure or other exigent circumstances;

8. Failure to provide documentation with respect to the installation of energy conservation renovations, energy conserving construction, the building of an alternative energy production facility, or the conduct of the Demonstration Program; and

9. Modification of the terms of the eligible loan without express written consent of the Division.

(b) Subsidies, revolving loans, or grants shall be withheld or rescinded according to the following procedures:

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1. The Division shall give written notice to the applicant of its intent to withhold or rescind a subsidy in whole or in part;

2. Prior to the withholding or rescission of the subsidy the Division shall afford the applicant a period of 30 days, commencing on the date of written notice, to consult the Division in the matter, and cure the issues forcing rescission. The Division may, thereafter, withhold or rescind the subsidy in whole or in part. The withholding or rescission determination shall be in writing and shall be effective on the date such action is taken. The determination will be provided to the applicant; and

3. The determination to withhold or rescind a subsidy, revolving loan, or grant shall be solely within the discretion of the Division and is not subject to further review by the Division.

(c) In the event that a subsidy, revolving loan, or grant is withheld or rescinded by the Division, the applicant shall refund immediately the total amount of funds paid by the Division as of the date of rescission or withholding.

(d) The Division shall return all rescinded monies to the Business Energy Improvement Program.

14A:6-2.18 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Energy Facility Review Board

Proposed Readoption with Amendments: N.J.A.C. 14A:8

Authorized By: Borden Putnam, Commissioner, Department of Commerce, Energy and Economic Development.

Authority: N.J.S.A. 52:27F-11q and N.J.S.A. 52:27F-15(c).

Proposal Number: PRN 1989-371.

Submit comments by August 16, 1989 to:
Administrative Practice Officer
Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 14A:8 expires on September 20, 1989. The Division of Energy Planning and Conservation and the Department of Commerce, Energy and Economic Development have reviewed these rules and have determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

Pursuant to the Governor's Reorganization Plan No. 002-1989, the Division of Energy Planning and Conservation, together with all its existing functions, powers and duties, will be transferred to the Board of Public Utilities, effective August 14, 1989. Therefore, this proposal will be adopted by Christine Todd Whitman, Chairman of the Board of Public Utilities.

The Department proposes to readopt this chapter, with amendments which change the designation "Department of Energy" to "the Department in which the Division is jurisdictionally located" and to "Division of Energy Planning and Conservation" at N.J.A.C. 14A:8-1.2 and 1.6 respectively. The chapter contains the rules of procedure for the Energy Facility Review Board.

Social Impact

The readoption of the Energy Facility Review Board rules allows for the orderly resolution of disputes between state agencies regarding the siting of energy facilities. The rules provide for final agency action, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., but do not preclude judicial appeals.

Economic Impact

The rules provide a stabilizing mechanism so that the siting of needed energy facilities in the State can proceed in an orderly manner. The rules provide for the issuance of a Director's report which provides an economic justification for a positive or negative finding on the application of the proposed energy facility.

Environmental Impact

The rules will not have a direct impact on the environment. To the extent that the Director's report identifies the proposed facility as the most environmentally acceptable alternative consistent with the policies of the Energy Master Plan, the rules will have a positive effect on the environment.

Regulatory Flexibility Statement

The proposed readoption does not impose any requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules govern the procedures of the Energy Review Board, a public body.

Full text of the proposed readoption can be found at N.J.A.C. 14A:8.

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

14A:8-1.2 Definitions

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

. . .

"Department" means the [New Jersey Department of Energy] **Department in which the Division of Energy Planning and Conservation is jurisdictionally located.**

. . .

14A:8-1.6 Correspondence with **the** Board

All correspondence with the Board shall be addressed to:
Secretary, Energy Facility Review Board
[Department of Energy]
Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 07012

(b)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Periodic Reporting by Energy Industries of Energy Information

Proposed Readoption with Amendments: N.J.A.C. 14A:11

Authorized By: Borden Putnam, Commissioner, Department of Commerce, Energy, and Economic Development.

Authority: N.J.S.A. 52:27F-18.

Proposal Number: PRN 1989-372.

Submit comments by August 16, 1989 to:
Administrative Practice Officer
Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 17102

The agency proposal follows.

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 14A:11 expires on September 20, 1989. The Division of Energy Planning and Conservation and the Department of Commerce, Energy and Economic Development have reviewed these rules and have determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

Pursuant to the Governor's Reorganization Plan No. 002-1989, the Division of Energy Planning and Conservation, together with all its existing functions, powers and duties, will be transferred to the Board

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of Public Utilities, effective August 14, 1989. Therefore, this proposal will be adopted by Christine Todd Whitman, Chairman of the Board of Public Utilities.

The Department proposes to readopt this chapter, with amendments which change the designation "Department of Energy" to "Division of Energy Planning and Conservation" at N.J.A.C. 14A:11-2.3 and 3.3. Contents of the chapter are as follows.

Subchapter 1 continues to be reserved.

Subchapter 2 regulates suppliers of home heating oil, and delineates scope, definition and reporting requirements.

Subchapter 3 regulates bulk terminal operating companies, and delineates scope, definitions, and reporting requirements.

Subchapter 4 regulates retail dealers of motor fuel and delineates scope, definitions, reporting requirements and penalties.

Subchapter 5 regulates retail fuel merchants and delineates scope, definitions, reporting requirements and penalties.

The proposed readoption with minor amendments gives the Division of Energy Planning and Conservation the mechanism by which to monitor both supplies and price of heating oil and motor fuels. The rules impose certain reporting requirements on suppliers of home heating oil, bulk terminal operating companies which store a variety of critical petroleum fuels including jet fuel, kerosene, Distillate Fuel oil less No. 4, lube oils and other specialty products.

These reporting requirements are critical to the Division's assessments of the state's Energy Emergency Preparedness and the Energy Master Plan.

Social Impact

These rules indirectly have a positive social impact. The information used by the rules is used partially to assess the impact of shortages of certain types of petroleum fuels during times of energy emergencies. It allows the Division to diagnose evolving price pattern and shortages which may result from these patterns. The information allows the Division to more equitably manage an energy emergency throughout the state.

Economic Impact

The proposed rule will have a positive economic impact by providing the Division with data needed to anticipate supply and price problems with respect to petroleum based fuels. This data will be used to minimize economic disruption to sectors of the state's economy during periods of energy emergencies.

Regulatory Flexibility Analysis

This chapter regulates reporting by members of the energy industry, some of whom may be small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The rules impose performance standards in the form of recordkeeping and reporting requirements, which are kept to the minimum possible to achieve the desired results. In the case of the bulk terminal reporting rules, the information submitted is a copy of a form which is already submitted to the Federal Department of Energy. When requested, information submitted is treated on a confidential basis by the Division. Because the information obtained is used for long-term energy planning and management of energy emergencies, in the interest of public welfare, the Department does not consider it appropriate to exempt small businesses as a category from the requirements of the rules.

Full text of the proposed readoption can be found at N.J.A.C. 14A:11.

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

14A:11-2.3 Reporting

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

(d) The above information should be sent to:

[Department of Energy] **Division of Energy Planning and Conservation**

101 Commerce St.
Newark, N.J. 07102
Attention: Date Center

14A:11-3.3 Reporting

(a) (No change.)

(b) The tabulation of bulk terminal stocks shall be in the form of EIA-811, Bulk Terminal Stocks of Finished Petroleum Products. This information should be sent to:

[Department of Energy] **Division of Energy Planning and Conservation**

101 Commerce St.
Newark, N.J. 07102
Attention: Date Center

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Grants and Loans Programs

Proposed New Rules: N.J.A.C. 14A:22

Authorized By: Borden Putnam, Commissioner, Department of Commerce, Energy, and Economic Development.

Authority: N.J.S.A. 52:27F-11 g and q.

Proposal Number: PRN 1989-374.

Submit comments by August 16, 1989 to:
Administrative Practice Officer
Division of Energy Planning and Conservation
101 Commerce St.
Newark, N.J. 07102

The agency proposal follows.

Summary

Pursuant to the Governor's Reorganization Plan No. 002-1989, the Division of Energy Planning and Conservation, together with all its existing functions, powers and duties, will be transferred to the Board of Public Utilities, effective August 14, 1989. Therefore, this proposal will be adopted by Christine Todd Whitman, Chairman of the Board of Public Utilities.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 14A:22 expired on June 4, 1989. The Division and the Department have evaluated the expired rules and have found that certain changes are necessary, which have been made in the new rules.

The purpose of these rules is to define the responsibilities of the gas and electric public utilities for the implementation of the Commercial and Apartment Conservation Service (CACS) Program. The CACS program is designed to encourage the installation of energy conservation measures and renewable resource measures in existing apartment buildings and commercial building by customers of covered utilities and building heating suppliers. The principal operating mechanism of the CACS program is the audit which means an on-site evaluation of a commercial or apartment building by qualified utility personnel and participating building heating suppliers during which the applicability of program measures and operations and maintenance procedures will be evaluated.

Applicable operations and maintenance procedures are detailed to the customer and general cost, saving and payback estimates are calculated and provided to the customer within 30 days of the audit.

The rules contain certain changes from the expired rules, principally with the program announcement required to be issued by the public utilities. The Division's CACS Task Force agreed that the Program Announcement should provide the utility with the flexibility to use a highlighted message on the customer's bill or an independent mailing.

Social Impact

The CACS Program will have a positive social impact through promoting energy conservation in the commercial sector, which includes commercial residential buildings. Lowered energy costs provide more disposable income for other necessities of modern life. Lessening energy costs to small businesses assists their economic viability and the employment which is dependent on them.

Economic Impact

This program will have a positive economic impact. The cost, savings, and payback estimates of these energy conservation measures which are underwritten by ratepayer funds through the public utilities ensure that measures which meet specific energy standards at reasonable cost will be implemented.

Environmental Impact

To the extent that this program lessens electrical and natural gas demand in the commercial sector it will have a positive impact on the environment. The commercial sector is the fastest growing segment of the public utilities rate base. It is also the segment where the least is known

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about energy conservation. This program over time can reduce peak demand for energy and defer the need for new fossil fueled sources of energy.

Regulatory Flexibility Statement

These rules provide for the qualification and disqualification of small businesses which install the energy conservation measures and perform the auditing. These requirements were designed to create a minimum impact on small businesses. However, these requirements are necessary to ensure that ratepayer funds are effectively utilized.

Full text of the proposed new rules follows:

CHAPTER 22
COMMERCIAL AND APARTMENT CONSERVATION SERVICE PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14A:22-1.1 Scope and purpose

(a) The rules in this chapter constitute the Commercial and Apartment Conservation Service ("CACS") Program.

(b) The purpose of the CACS Program is to encourage the installation of energy conservation measures and renewable resource measures in existing apartment buildings and commercial buildings by customers of covered utilities and building heating suppliers.

14A:22-1.2 Definitions

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

"Air conditioner efficiency maintenance" means periodic cleaning or replacement of air filters and cleaning of coils on forced-air cooling systems.

"Air conditioner replacement" means an air conditioner which replaces an existing air conditioner and which reduces the amount of fuel consumed due to an increase in efficiency.

"Apartment building" means a new or existing structure which is used for residential occupancy, and which on the date of the program audit request has had a certificate of occupancy for more than two years; which contains five or more apartments and any of the following: a central heating or a central cooling system; or a central meter for the heating or cooling system.

"Automated energy control system" means devices and associated equipment which regulate the operation of heating, cooling, or ventilating equipment based on time, inside and/or outside temperature or humidity, or utility load management considerations in order to reduce energy demand and/or consumption.

"BPU" means the New Jersey Board of Public Utilities.

"Buildings" means both apartment buildings and commercial buildings.

"Building heating supplier" means any person engaged in the business of selling No. 2, No. 4, or No. 6 heating oil, coal, kerosene, or propane to eligible customers.

"Caulking" means the sealants, putty, glazing compounds, or other pliable materials used to reduce the passage of air and moisture by filling in small gaps including:

1. At fixed joints on a building;
2. Underneath baseboards inside a building;
3. In exterior walls at electric outlets;
4. Around pipes and wires entering a building;
5. Around vents and exhaust fans in exterior walls; and
6. At any point where two different types of building materials meet.

"CEIS" means the Division's Office of Community, Education and Information Services.

"Commercial and Apartment Conservation Service Program" or "CACS" means the program contained in this chapter.

"Commercial building" means a new or existing structure which on the date of the program audit request has had a certificate of occupancy for more than two years:

1. Which is used primarily for carrying out a business (including a nonprofit business) or for carrying out the activities of a local government;
2. Which is not a Federal building;
3. Which has not had a Technical Assistance Energy Audit under the Institutional Conservation Program or a computer generated energy audit under the CLIENTS Program;
4. For which the average annual use of energy for the latest twelve month period was less than 4,500 MMBTU's; and
5. Is a small business to which final standards under 13 C.F.R. Part 121, "Small Business Size Standards" apply.

"Conditioned space reduction" means closing off unoccupied areas, and/or reducing the heating and cooling supply to those areas.

"Conversion factors" means the following factors that are to be used to determine the eligibility of a commercial building for a program audit:

1. Electricity	0.003412
2. Natural gas	0.100000
3. Distillate	0.138690/gallon
4. Residual	0.149690/gallon
5. Propane	0.095475/gallon
6. Coal	24.500000/short ton
7. Purchased steam	1.000000/1,000 lbs.
8. Kerosene	0.120000/gallon

"Covered utility" means in any calendar year a public utility which during the second preceding calendar year had either:

1. Sales of natural gas for purposes other than resale which exceed 10 billion cubic feet; or
2. Sales of electric energy for purposes other than resale which exceed 750 million kilowatt hours.

"Destratification fan" means a device which, by virtue of its design, will cause the air within a conditioned space to be distributed in a manner that will minimize the temperature gradient within that conditioned space.

"Division" means the New Jersey Division of Energy Planning and Conservation.

"Efficient use of shading" means the use of existing shades, drapes, awnings and related methods:

1. To block sunlight from entering a building in the cooling season;
2. To allow sunlight to enter a building during the heating season; or
3. To cover windows at night during the heating season.

"Eligible customer" means a person who:

1. Is the owner or tenant of a commercial building or the owner (or the owner's agent) of an apartment building to whom the covered utility sells electricity or natural gas and who is the utility's customer of record; or
2. Is the owner or tenant of a commercial building or the owner (or the owner's agent) of an apartment building which uses No. 2, No. 4, or No. 6 heating oil, kerosene, coal or propane.

"Energy audit" or "program audit" means an on-site evaluation of a commercial building or apartment building by qualified utility personnel and participating building heating suppliers during which the applicability of program measures and operations and maintenance procedures will be evaluated. Applicable operations and maintenance procedures will be detailed to the customer and general cost, saving, and payback estimates will be discussed. Any program measures found applicable to the building will have specific cost, saving and payback estimates calculated and provided to the eligible customer. All estimates will be provided to the eligible customer within 30 calendar days of the energy audit.

"Energy conservation measure" means the following in a commercial building or apartment building:

1. Air conditioner replacement;
2. Automatic energy control systems;
3. Caulking;
4. Destratification fan;
5. Energy recovery systems;
6. Furnace/boiler or utility plant and distribution system modifications;
7. Insulation;
8. Lighting systems replacement or modification;
9. Passive solar space heating-cooling;
10. Solar domestic hot water systems;

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11. Solar replacement swimming pool heater;
12. Weatherstripping;
13. Window-door system modification; and
14. Any other installation or modification of an installation designated by the Division which is designed to reduce the consumption of natural gas, electricity, oil, propane, coal or kerosene in apartment buildings and commercial buildings.

"Energy operations and maintenance procedures" means:
1. Air conditioner efficiency maintenance;
2. Efficient use of shading;
3. Furnace efficiency maintenance and adjustments;
4. Plugging infiltration leaks;
5. Reduction in amount of conditioned space;
6. Sealing leaks in pipes and ducts;
7. Steam distribution system maintenance;
8. Temperature raising in summer;
9. Temperature reduction in winter;
10. Water flow reduction in showers and faucets;
11. Water temperature reduction; and
12. Any other low or no-cost procedure designated by the Division which is designed to reduce the consumption of natural gas, electricity, oil, propane, kerosene, or coal in apartment buildings and commercial buildings and does not require the installation of an energy conservation measure.

"Energy recovery system" means devices designed to recover waste energy from sources such as refrigeration or air conditioning equipment for some useful purpose such as heating water.

"Furnace efficiency maintenance and adjustment" means cleaning and combustion efficiency adjustments of gas, propane, coal, kerosene or oil-fired furnaces/boilers (including burners), periodic cleaning or replacement of air filters on forced-air heating systems including heat pumps, lowering the bonnet or plenum fan thermostat setting on a gas or oil-fired furnace, if appropriate, and turning off the pilot light on a gas furnace during the summer.

"Furnace/boiler or utility plant and distribution system modification" means installation of any of the following devices or components:

1. "Intermittent pilot ignition device" ("IID") means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the pilot or burner and replaces a continuously burning pilot light.

2. "Flue opening modification" ("Vent damper") which means an automatically operated damper installed in a gas-fired or oil-fired furnace or boiler which:

i. Is installed downstream from the drafthood; and

ii. Conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

3. "Replacement oil burner" which means a device which is an integral part of an oil-fired furnace or boiler including the combustion chamber and which atomizes the fuel oil with air, ignites the mixture and owing to its design, achieves a reduction in the oil used over that used by the oil burner that it replaces.

4. "Replacement gas burner" which means a device designed for installation in an existing gas-fired boiler which uses fan and control mechanisms to supply and control combustion air to achieve an optimal fuel-to-air ratio for maximum gas combustion efficiency and which, because of its design, achieves a reduction in the gas used from the amount of gas used by the device which it replaces.

5. "Replacement furnace or boiler" which means a furnace or boiler, including a heat pump which replaces an existing furnace or boiler of the same fuel type and provides reduced fuel consumption due to higher energy efficiency of the system.

6. "Distribution system modification" which means modification to an energy distribution system and associated components that increases the energy efficiency, including:

i. Improved pipe or duct routing to reduce pressure drop and/or heat losses; or

ii. Point of use water heaters.

"Insulation" means a material of the following types that is primarily designed to resist transmission in one of the following ways:

1. "Ceiling insulation" which means a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roof, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof.

2. "Duct insulation" which means insulation installed on heating or cooling supply and return ducts in an unconditioned area of a building, such as the space above a dropped ceiling.

3. "Floor insulation" which means insulation that is installed between the lowest conditioned level of a building and a lower unconditioned level. For a structure with an open crawl space, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

4. "Pipe insulation" which means insulation installed on:

i. Pipes and fittings carrying hot or cold fluids for space conditioning purposes; or

ii. Hot water pipes and fittings with continuous recirculating systems.

5. "Wall insulation" which means insulation installed within or on exterior walls or walls between conditioned and unconditioned areas of a building.

6. "Water heater insulation" which means insulation wrapped around the exterior surface of the water heater casing.

"Lighting systems replacement or modification" means a device or action which reduces overall lighting energy consumption and/or demand while maintaining satisfactory lighting requirements, and includes the following:

1. Reducing lighting levels to levels cited in applicable Division rules and may include installing task lighting and reducing overhead task lighting;

2. Controlling lamp operating time by limiting lighting operation to periods of area use, or installing of local manual switching, time control devices and space use sensing devices;

3. Replacing lamps with more efficient sources including, but not limited to, replacing of incandescent and fluorescent lighting with lumen-equivalent low energy lamps, replacing of old fluorescent lighting ballasts with new electronic ballasts, or replacing of any fixture type with one of greater lumens per watt efficiency such that total lighting demand can be reduced; and

4. Use of "daylighting" by automatically switching off electric lights in areas where satisfactory lighting levels can be maintained using either existing windows or skylights in a commercial building or a common area of an apartment building.

"MMBTU" means one million British Thermal Units.

"Passive solar heating and cooling system" means a system that makes the most efficient use, or enhances the use of natural forces, for heating or cooling a space by the means of conductive, convective, or radiant energy transfer including solar irradiation, wind, nighttime coolness and includes only the following:

1. "Thermosyphon air system" which means a passive solar daytime heater attached to the south-facing wall of a building which uses natural convection or a fan of low power to draw air from near the floor, expose the air to a solar-heated surface, and discharges reheated air near the ceiling, and which is able to be closed off from the conditioned area at night and on cloudy days.

2. "Solaria/sunspace system" which means an enclosed structure of glass, fiberglass, or similar transparent material attached to the south-facing wall of a structure which absorbs solar heat and utilizes air circulation to bring this heat into the building and which is able to be closed off from the structure at night and on cloudy days.

"Payback" means the amount of time needed to recover the cost of an investment in a program measure or energy conserving operation and maintenance procedure from the energy saved by that measure or procedure. All payback estimates shall use a simple payback calculation: cost of investment/energy savings from first year. All payback estimates shall be given in years.

"Plugging infiltration leaks" means:

1. Installing scrap insulation, or other pliable material in gaps around pipes, conduits, ducts, or other gaps which connect conditioned with unconditioned spaces; and

2. Adding weatherstripping around ceiling access doors or basement doors.

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"Progam announcement" means the information and offer of services required to be sent to every eligible customer by each covered utility in their service area pursuant to N.J.A.C. 14A:22-2.

"Program auditor" means any individual employed by a covered utility or building heating supplier or under contract with a covered utility or building heating supplier who meets all of the qualifications contained in N.J.A.C. 14A:22-6.2 and N.J.A.C. 14A:22-7.2 and has successfully completed a Division auditor test for this program.

"Program measure" means energy conservation measures and renewable resource measures.

"Public utility" means any person engaged in the business of selling natural gas or electric energy or both to residential and commercial customers for use in apartment buildings and commercial buildings.

"Renewable resource measure" means the following measures in or with respect to apartment buildings or commercial buildings:

1. Solar domestic hot water systems;
2. Passive solar space heating and cooling; and
3. Solar replacement swimming pool heaters.

"Sealing leaks in pipes and ducts" means applying appropriate sealants to any leak in a heating or cooling duct that is located outside the conditioned space, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking hot water valves.

"Solar domestic hot water system" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a structure, other than for space heating, and includes solar thermosyphon hot water heaters.

"Solar replacement swimming pool heater" means a device which is used solely for the purpose of using the solar energy to heat swimming pool water and which replaces a swimming pool heater that uses electricity, natural gas, and other fossil fuels.

"South-facing" means plus or minus 45 degrees of true south.

"Steam distribution system maintenance" means the visual inspection of the steam distribution system for the purpose of detecting steam leaks, ensuring that steam is not entering the condensate return lines, and returning all condensate to the boiler where practical and desirable.

"Temperature raising in summer" means raising the thermostat or other temperature control device for occupied space to as high a temperature as reasonable during the cooling season. The temperature of space that is not occupied may be allowed to rise further than that of occupied space.

"Temperature reduction in winter" means lowering the thermostat or other temperature control device for occupied space to as low a temperature as reasonable during the heating season. The temperature of space that is not occupied may be allowed to drop further than that of occupied space.

"Water flow reduction in showers and faucets" means reducing the hot water flow in showers, faucets, or other equipment as low as reasonable by the use of different methods.

"Water temperature reduction" means turning off the water heater or manually setting back the thermostat to as low a temperature as practical, consistent with the needs for hot water.

"Weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

"Window and door system modification" includes the measures defined as follows:

1. "Storm window" which means a window or glazing material placed outside or inside a prime window, creating an air space to provide greater resistance to heat flow than the prime window alone.

2. "Thermal window" which means a window unit with improved thermal performance through the use of two or more sheets of glazing materials affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

3. "Storm or thermal door" which means:

i. A second door, installed outside or inside a prime door, creating an insulating air space;

ii. A door with enhanced resistance to heat flow through the glass area, constructed by affixing two or more sheets of glazing material;

iii. A prime exterior door with an R-value of at least 2; or

iv. A door that is designed to minimize air exchange during operation, including revolving doors and double doors with a foyer.

4. "Glazing heat gain/loss retardant" which means devices such as insulated shades, drapes, or movable rigid insulation (awnings, external rollup shades), metal or fiberglass solar screening or heat absorbing films which significantly reduce winter heat loss and heat reflective films which significantly reduce summer heat gain through windows and doors.

SUBCHAPTER 2. PROGRAM ANNOUNCEMENT

14A:22-2.1 Scope

(a) The purpose of the annual program announcement is to acquaint all eligible customers of the respective covered utilities with the benefits and availability of energy audits performed by both the utility and the Division.

(b) The program announcement shall be in a form provided or otherwise directed and approved by the Division and shall be distributed annually. The program announcement may be cycled by the covered utilities by service area over not more than 90 consecutive days.

(c) Each covered utility shall plan to achieve at least a five percent annual energy audit completion rate unless the Division approves otherwise. Each covered utility shall distribute and re-distribute sufficient numbers of program announcements and perform related promotional activities in order to achieve the approved completion rate. In the event that the response to program announcement and promotional activities exceeds five percent, utilities shall engage additional qualified personnel to service the demand in a timely manner. The program announcement and related promotional activities shall identify the Division as the lead agency for the CACS program. The covered utilities shall not unfairly discriminate among eligible customers in providing program audits.

(d) All costs of the program announcement and other promotional activities shall be borne by the covered utility.

14A:22-2.2 Contents and prohibitions

(a) Covered utilities shall notify eligible customers at least annually of the availability of energy audits. Such notification shall be made primarily as an enclosure, with a business reply card attached, in the customer's monthly billing envelope, or as an independent direct mail announcement, or as a highlighted message on the utility bill, in a form provided, directed or otherwise approved by the Division. Print, broadcast and/or billboard messages may also be used to reinforce or support annual announcements.

The notifications, announcements and messages shall be in the form provided, directed or approved by the Department.

(b) The program announcement shall not include:

1. Any brand names or advertising for sale, installation or financing of CACS program measures or operation and maintenance procedures; or

2. Any information or products which are not CACS program measures or operations and maintenance procedures.

14A:22-2.3 New customers

(a) Each covered utility shall identify and provide a program announcement or announce in the new customer booklet to each new customer within 60 days of commencing billable service.

(b) Covered utilities shall maintain computer records and provide for accessing such data for the purpose of identifying eligible customers and new customers and past audit data.

(c) Each covered utility shall furnish to the Division monthly a list in zip code sequence of all new customers to whom the program announcement was provided, and shall include the name of the individual to whom the announcement was directed in addition to the business name and address.

(d) Each covered utility shall inform each new customer in writing that upon request, the customer may receive a new program audit of a building which was previously audited under the CACS Program, instead of receiving the results of any past program audit of the customer's facility.

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SUBCHAPTER 3. PROGRAM SERVICES AND PROGRAM AUDITS

14A:22-3.1 Program services

(a) All covered utilities shall offer and provide upon request the following program services to all eligible customers:

1. A program audit of all applicable program measures in a form prescribed by the Department;

2. Financing information for program measures at no charge;

3. Conservation literature in a form specified by the Division at no charge.

(b) All covered utilities receiving requests for program audits from eligible customers shall record the requests and the arrangements made by the utility for the audit on an input form prescribed by the Division. All such records shall contain the following information, if available from the customer:

1. Name and address of the customer's place of business, or residence;

2. Date scheduled for providing the energy audit and dates services were completed;

3. Type of fuel(s) used to heat and cool;

4. Time customer is available;

5. Contact for utility and physical plant data;

6. Building type and principal use;

7. Media source from which they heard about the program;

8. Name of the customer's building heating supplier, if the building is heated with oil;

9. Names of the customer's utilities;

10. All covered utilities shall furnish to the Division of Energy a monthly list, in zip code sequence, of all customers who have received a CACS Audit which shall include the customer's name and business address and date of audit.

(c) The Division and the CEIS shall also receive requests for audits from eligible customers and shall record the same information required by (b) above.

14A:22-3.2 Arrangement of program audit

(a) If an eligible customer who heats with electricity or gas contacts the Division and requests a program audit, the Division shall refer that request to an appropriate covered utility.

(b) If an eligible customer who heats with oil, coal, kerosene or propane contacts the Division and requests a program audit, the Division shall refer that request to an appropriate covered utility. The Division shall determine at its discretion to apply American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. (ASHRAE) default values to the combustion efficiency test portion of an audit in lieu of availability of a participating customer's building heating supplier in that specific area.

(c) Upon receiving a referral from the Division each covered utility and participating building heating supplier shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit or heating unit analysis.

(d) If a covered utility receives a request for a program audit from a customer who heats with oil, coal, kerosene or propane, the utility shall record the same information required by N.J.A.C. 14A:22-3.1(b) and refer the request for a heating system analysis to the Division for review and referral.

14A:22-3.3 Timing and preconditions

(a) All covered utilities shall provide a program audit of eligible customer's buildings to determine applicable program measures and their estimated costs, savings, and payback within 30 calendar days of receipt of a request or referral. If the demand for such services becomes too great, the utility must so notify the Division in writing and contact each eligible customer requesting the program audit within 30 days of the request or referral to set up an appointment and complete the program audit within 60 calendar days of the date of the request or referral. The covered utilities shall have an additional 30 calendar days from the date the audit is completed to deliver a final audit report to the eligible customer. A copy of each final audit report shall also be sent to the Department.

(b) All participating building heating suppliers shall provide a heating unit analysis to determine applicable program measures and their estimated costs, savings and paybacks within 30 calendar days of a receipt of a request or referral. If the demand for such services becomes too great, the participating building heating supplier must so notify the Division in writing, and contact each eligible customer requesting such services within 30 calendar days of the request or referral to set up an appointment and complete the analysis within 60 calendar days of the date of the request or referral.

(c) No covered utility or participating building heating supplier shall discriminate unfairly among eligible customers participating in the CACS Program.

14A:22-3.4 Energy conserving operations and maintenance procedures

(a) As part of the program audit each covered utility shall provide a list of energy conserving operations and maintenance procedures which shall consist of basic energy conservation opportunities appropriate for apartment buildings and commercial buildings. The auditor shall:

1. Determine the applicability of each energy conserving operation and maintenance procedure;

2. Explain each of the applicable energy conserving operations and maintenance procedures to the eligible customer;

3. Explain the importance of completing applicable energy conserving operations and maintenance procedures before any program measure is installed; and

4. Provide savings estimates stated in dollars.

(b) The energy conserving operations and maintenance procedures shall consist of the following:

1. Air conditioner efficiency maintenance;

2. Efficient use of shading;

3. Furnace efficiency maintenance and adjustments;

4. Plugging infiltration leaks;

5. Reduction in amount of conditioned space;

6. Steam distribution system maintenance;

7. Temperature raising in summer;

8. Temperature reduction in winter;

9. Water flow reduction in showers and faucets;

10. Water temperature reduction; and

11. Any other energy conserving operation and maintenance procedure which the Division determines appropriate.

14A:22-3.5 Program measures

(a) The structural and heating and cooling unit analyses shall determine the applicability of the following energy conservation measures:

1. Air conditioner replacement;

2. Automatic energy control systems;

3. Caulking;

4. Destratification fans;

5. Energy recovery systems;

6. Furnace/boiler or utility plant and distribution system modifications;

7. Insulation;

8. Lighting systems replacement or modification;

9. Passive solar space heating-cooling;

10. Solar domestic hot water systems;

11. Solar replacement swimming pool heater;

12. Weatherstripping;

13. Window and door system modifications; and

14. Any other measure which the Division determines is appropriate.

(b) If an eligible customer heats with oil, coal, kerosene or propane a participating building heating supplier shall perform the heating unit analysis of that unit, pursuant to N.J.A.C. 14A:22-3.2(b).

(c) The applicability of renewable resource measures shall be determined by the auditor at the time of the energy audit.

14A:22-3.6 Applicability of program measures

(a) Every auditor shall use the program audit to determine which program measures are applicable for each building type. The auditor shall make the final determination of the applicability of a program measure.

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(b) A program measure is applicable if:

1. The program measure is not already present or in good condition and the potential exists to save energy or reduce energy demand in the building by installing same. In the event that a less efficient device performing the same function as a program measure is already present in the building, replacement with the applicable program measure shall be recommended.

2. Installation of the measure is not a violation of State, Federal or local law or regulations.

3. With respect to energy recovery systems, the building uses at least 50 gallons of service hot water per day; or has a space heating load exceeding 500 KBTU per day; and has refrigeration equipment with a total average daily waste heat discharge exceeding 75 KBTU.

4. With respect to furnace flue opening modifications, the furnace combustion air is taken from a conditioned area.

5. With respect to ceiling insulation, the difference between the R-value of any existing insulation and the program measure level is R-11 or more.

6. With respect to lighting system modification to use daylighting, any electric lighting fixtures are located within 15 feet of an existing window or skylight in a commercial building, or within 15 feet of an existing window or skylight in common areas of an apartment building.

7. With respect to passive solar thermosyphon air heating systems, the building has a south-facing wall free of major obstruction to sunshine during the heating season.

8. With respect to solar domestic hot water systems, the building consumes more than 80 gallons of hot water per day and has access to a site clear of major obstructions to solar radiation which allows solar collectors to be oriented south-facing.

9. With respect to solaria/sunspace systems, the apartment building has existing balconies, patios, or available adjacent ground area on the south-facing wall. Solaria/sunspace systems shall not be applicable to commercial buildings.

10. With respect to solar swimming pool heater replacements, the pool uses electricity or other nonrenewable energy for heating.

11. With respect to window heat gain retardants, the building has glass on the south, east, or west sides where those sides are exposed to sunlight.

12. With respect to pipe and duct insulation, hot water pipes and heating and cooling ducts which extend through unconditioned spaces.

13. With respect to destratification fans, whenever the ceiling height of a conditioned space within a building equals or exceeds ten feet; and the measured or estimated temperature gradient between the three-foot level and ceiling level exceeds one degree Fahrenheit per foot.

14A:22-3.7 Cost, savings and payback estimates

(a) The auditor shall calculate costs, savings and payback estimates for all applicable program measures. These shall:

1. Be based upon calculation procedures and estimates of cost of installation and materials, using current construction industry standards and guides approved by the Department; and

2. Be based upon adequate measurements taken during the program audit including actual measurements and inspections of the building shell, space heating, space cooling and water heating equipment.

(b) All costs, savings and payback estimates for gas-fired heating units shall be based upon an evaluation of the unit's seasonal efficiency, and shall include a measurement of the unit's steady state efficiency.

(c) All costs, savings and payback estimates for oil-fired heating units shall be based upon the unit's seasonal efficiency, and shall include measurement of the unit's steady state efficiency. The evaluation shall be conducted pursuant to N.J.A.C. 14A:22-3.1, and in accordance with the procedures set forth in N.J.A.C. 14A:3-3.5.

(d) All costs, savings and payback estimates for solar hot water systems shall be based upon the following information, which shall be disclosed to the eligible customer:

1. Square feet of collector;

2. Collector characteristics, including glazing materials and other collector materials;

3. Storage system, if needed, including capacity of storage;

4. Appropriate freeze protection;

5. Estimated percent of the water heating load to be met by solar energy; and

6. Site preparation needed.

(e) All costs, savings and payback estimates for applicable passive solar space heating and cooling systems shall be based upon the following information, which shall be disclosed to the eligible customer:

1. The applicable system;

2. The estimated percent of the heating load to be met by the system;

3. The approximate dimensions of such a system; and

4. The collection storage characteristics, including the recommended heat capacity of storage.

(f) All costs, savings and payback estimates for solar hot water systems, passive solar heating and cooling systems and replacement solar swimming pool heaters shall have the following disclosure conspicuously placed on the audit results:

"THE COST, SAVINGS AND PAYBACK ESTIMATES YOU RECEIVE ARE BASED ON SYSTEMS WHICH MAY BE DIFFERENT FROM THE ONES YOU PURCHASE. ALSO, THESE ESTIMATES WERE NOT DETERMINED USING ACTUAL CONDITIONS BUT USING SIMULATED MEASUREMENTS. THEREFORE, THE COST, SAVINGS AND PAYBACKS WE HAVE ESTIMATED MAY BE DIFFERENT FROM THOSE WHICH ACTUALLY OCCUR."

14A:22-3.8 Results of the program audit

(a) Upon completion of the program audit, the covered utility shall provide the results to each eligible customer who receives a program audit, and to the Division within 30 calendar days after the site visit. The program audit results shall be in a form prescribed by the Division. The auditor shall leave a telephone number which the eligible customer may call to review the audit results.

(b) Program audit results shall include the following:

1. The following disclosure, conspicuously placed:

"THE PROCEDURES USED TO MAKE THESE ESTIMATES ARE CONSISTENT WITH NEW JERSEY DIVISION OF ENERGY PLANNING AND CONSERVATION CRITERIA FOR APARTMENT AND COMMERCIAL BUILDING ENERGY AUDITS. HOWEVER, THE ACTUAL INSTALLATION COSTS YOU INCUR AND THE ENERGY SAVINGS YOU REALIZE FROM INSTALLING THESE MEASURES MAY BE DIFFERENT FROM THE ESTIMATES CONTAINED IN THIS AUDIT REPORT. ALTHOUGH THE ESTIMATES ARE BASED UPON MEASUREMENTS OF YOUR BUILDING, THEY ARE BASED ON ASSUMPTIONS WHICH MAY NOT BE TOTALLY CORRECT FOR YOUR BUILDING. TOTAL SAVINGS FROM THE INSTALLATION OF MORE THAN ONE PROGRAM MEASURE WILL PROBABLY BE LESS THAN THE SUM OF SAVINGS OF EACH MEASURE INSTALLED INDIVIDUALLY."

2. Energy consumption data for each fuel type stated in energy units, MMBTUS and dollars;

3. A description of the building including but not limited to information concerning level of occupancy, schedule of operating hours, and size in square feet;

4. An inventory and description of the building components and equipment affecting energy consumption;

5. An estimate of the total costs (material and labor) expressed in dollars, of installation by an installer of each applicable program measure addressed in the program audit;

6. An estimate of the savings expressed in dollars, and MMBTUS which would occur during the first year from installation of each applicable program measure addressed in the program audit;

7. An estimate of payback expressed in years for installation of each applicable program measure addressed in the program audit;

8. At the customer's option and provided that the customer consents to provide the tax information specified in v. below, a 10-year

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cash flow analysis for every energy conservation measure costing over $500.00. The analysis shall include:

i. Pretax savings;

ii. Investment and operating cost differences;

iii. Pretax cash flow;

iv. Tax depreciation difference; and

v. Customer's annual tax rate.

9. Written information explaining the standards for credit applications and loan applications, the availability of financial assistance through lenders and methods of evaluating vendor proposals.

10. The following statement:

"THIS ENERGY AUDIT REPORT IS ONLY THE FIRST STEP IN YOUR EFFORTS TO REDUCE ENERGY CONSUMPTION IN YOUR FACILITY. THE NEW JERSEY ENERGY SERVICE MARKET IS COMPOSED OF HUNDREDS OF PROFESSIONAL ARCHITECTURAL AND ENGINEERING FIRMS THAT MAY ASSIST YOU IN A MORE SPECIFIC ANALYSIS OF YOUR FACILITY AND PROVIDE THE NECESSARY DESIGN FOR THE INSTALLATION OF VARIOUS COST-EFFECTIVE ENERGY CONSERVATION MEASURES. TO OBTAIN THE NAMES OF PROFESSIONAL ARCHITECTURAL OR ENGINEERING FIRMS IN YOUR AREA CONTACT:

Consulting Engineers Council of New Jersey
66 Morris Avenue
Springfield, New Jersey 07081;

The New Jersey Society of Professional Engineers
407 West State Street
Trenton, New Jersey 08618;

New Jersey Association of Energy Engineers
P.O. Box 241
Bloomfield, New Jersey 07003; or

The New Jersey Society of Architects
1000 Route 9
Woodbridge, New Jersey 07095

14A:22-3.9 Prohibitions

(a) No auditor shall provide costs, savings or payback estimates resulting from the installation of any product or measure which is not a program measure.

(b) No auditor shall unfairly discriminate in recommendations of program measures.

(c) No auditor shall recommend, select or provide information about any contractor or supplier.

(d) No auditor shall forward audit results to any utility marketing office.

SUBCHAPTER 4. FINANCING ASSISTANCE

14A:22-4.1 Services provided

(a) Upon request by an eligible customer, each covered utility shall promptly provide services to arrange financing for the purchase and installation of any program measure. These services shall include:

1. Written information explaining the standards for credit applications, loan applications, plus the availability of financial assistance, if any, through programs of the Division, or other Departments, through commercial lenders and methods of evaluating vendor proposals.

i. Such written information shall be distributed by each covered utility to all eligible customers who receive an audit, or upon request by any eligible customer. Such written information shall be in a form prescribed by the Division.

2. Telephone assistance available through the covered utility by a toll-free number. The toll-free number shall be placed conspicuously on all lists and written information distributed.

3. In-person assistance about the selection of lenders, shopping for loans and filling out loan applications provided by trained personnel who shall be available in at least one specified location during normal business hours and/or at several locations during designated hours.

4. The CACS Audit Report to the customer pursuant to N.J.A.C. 14A:22-3.8 shall include an evaluation form addressed to the Division. The content and format shall be provided by the Division.

14A:22-4.2 Prohibitions

(a) When providing any arranging of services, no covered utility shall recommend, select, or provide information about any lender if such recommendation would unfairly discriminate among lenders.

(b) No covered utility shall provide any arranging services for any measure which is not a program measure.

SUBCHAPTER 5. PAYMENTS

14A:22-5.1 Payments

(a) Eligible customers shall be charged for energy audits, as established by Order of the Board of Public Utilities (May 11, 1984), according to the following fee schedule:

1. $25.00 for commercial buildings up to 5,000 square feet and apartment buildings of five to 50 units;

2. $50.00 for commercial buildings 5,001 to 25,000 square feet and apartment buildings of 51 to 100 units;

3. $75.00 for commercial buildings 25,001 or more square feet and apartment buildings of 101 units or more;

4. No charge for non-profit, local government and housing authority buildings, and multi-family buildings in which 66 percent of its rented occupancy comprise households in which the individual income does not exceed 150 percent of the Federal Poverty Income Guidelines as defined in the Federal Register, Volume 52, Number 34, Friday, February 20, 1987 on Pages 5340-5341 and as it applies to its yearly subsequent updates.

i. A covered utility may, at its discretion, offer free audits at any time to any market. Once offered for free, the no-cost feature must be maintained for the advertised period.

5. The maximum allowable fee charged by a utility audit contractor to a utility shall be no more than $600.00. Any covered utility may request a waiver of the cost cap for audits which are in excess of $600.00 from the Division and the BPU.

(b) If an eligible customer receives a program audit that includes an analysis of an oil-fired heating unit by a participating building heating supplier, the building heating supplier shall charge no more than $10.00. Such fee may be paid by the Division.

(c) When billing a customer for costs, pursuant to (a) above, each covered utility and building heating supplier shall identify the charges and list them separately on every bill rendered for this service.

(d) Each covered utility shall allow eligible customers to include payments for those charges along with payments for their utility bill.

(e) No covered utility or participating building heating supplier shall terminate or otherwise restrict service or fuel to any eligible customer in the event the customer fails to pay or defaults in payment for a program audit.

SUBCHAPTER 6. AUDITOR QUALIFICATIONS AND TESTING

14A:22-6.1 General

(a) All auditors of program measures shall be qualified by the Division as to basic skills necessary to perform CACS Program energy audits. Each auditor shall take and pass a written test, prepared and administered by the Division, prior to being qualified to conduct audits. The Division may retest any or all auditors upon notice as audit procedures change, or for good cause as determined by the Division.

(b) Any building heating supplier who has previously passed a Division approved audit test and has been qualified by the Division may apply for a waiver of the auditor qualification for testing. Any building heating supplier may apply for and receive a waiver of qualification testing standards if such person submits written proof which, in the opinion of the Division, establishes that the person has sufficient training in conducting testing and analysis of program measures applicable to oil-fired heating units.

(c) Any professional engineer or architect who has been previously certified by the Division as an approved Technical Assistance Analyst or Certified Energy Manager as of the operative date of this chapter may apply for and receive a waiver of the auditor qualification for testing.

(d) Covered utilities shall subcontract CACS energy audits in order to deliver better and less expensive service. Each utility in their

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requests for proposal shall make public announcements of the requests for services, and the contract(s) for energy auditing services shall be based upon appropriate qualifications, reasonable price and overall merit of the proposal(s). In developing bid specifications, advertising for bids and awarding contracts and subcontracts covered utilities shall give due consideration to participation by small businesses and minority-owned businesses. The covered utilities shall furnish the Division evidence of compliance with the above requirements.

14A:22-6.2 Qualifications of auditors

(a) Persons conducting a program audit shall have the following qualifications:

1. A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

2. A general understanding of commercial building and apartment building construction terminology and components;

3. A general knowledge of the operation of the heating and cooling systems in apartment buildings and commercial buildings;

4. The capability to conduct the program audit, including:

i. Knowledge of all operations and maintenance procedures to be audited;

ii. Ability to determine appropriate program measures;

iii. A proficiency in the pertinent auditing procedures for each applicable program measure;

5. A working ability to calculate steady-state efficiency and seasonal efficiency of the furnace and boiler;

6. An understanding of the nature of solar energy and its commercial and apartment building applications including:

i. Insulation;

ii. Shading;

iii. Heat capture and transport; and

iv. Heat transfer for hot water and space heating.

7. Building heating suppliers may be qualified to conduct a specific part of the audit and shall be tested accordingly.

14A:22-6.3 Qualification and disqualification

(a) The Division shall qualify an auditor pursuant to N.J.A.C. 14A:22-6.1 and may disqualify any auditor pursuant to (b) below from participating in the program.

(b) Grounds for disqualification include, but are not limited to the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant does business;

2. Violation of the Federal Organized Crime Control Act of 1970 or conviction for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false-swearing, receiving stolen property, obstruction of justice or any other offense indicating lack of business integrity or honesty by the applicant, or if the applicant is a corporation, partnership, or business entity;

3. Violation of any Federal or State antitrust statutes, or the Federal Anti-Kickback Act;

4. Violations of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor;

5. Any other cause affecting the responsibility of an auditor of such a serious and compelling nature as may be determined by the Division to warrant disqualification, including such conduct as may be proscribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation; or

6. Bankruptcy, insolvency or other conditions affecting financial integrity, capabilities or performance; and

7. Failure to fully comply with all applicable requirements of this chapter.

14A:22-6.4 Procedures for disqualification

(a) Any auditor whom the Division plans to disqualify from participating in the program shall receive written notice from the Division of the disqualification and the grounds therefore at least 30 days before such disqualification. The notice shall include notification to the auditor of his or her right to appeal, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The Division shall allow the auditor to respond in writing to the allegations contained in the notice. All such responses must be received by the Department no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

(c) An auditor who has been disqualified by the Division may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement under oath setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the Division erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgment which formed the basis of the Division's previous decision, on material grounds;

3. Actual change of ownership or control; and

4. Elimination of the causes for which disqualification occurred.

(d) The Division shall review the request for reconsideration and shall, within 45 days of its receipt, notify the auditor of its decision whether to allow the auditor to continue to participate in the CACS Program.

SUBCHAPTER 7. BUILDING HEATING SUPPLIERS

14A:22-7.1 Participation

Building heating suppliers may participate in the CACS Program to the extent provided by this subchapter.

14A:22-7.2 Requirements for participation

To be eligible to participate in the CACS Program, a building heating supplier shall notify the Division in writing of his intention to participate in the program of his compliance with N.J.A.C. 14A:22-7.4 and agree to comply with all applicable requirements of this chapter.

14A:22-7.3 Voluntary withdrawal

Any participating building heating supplier may voluntarily withdraw from the CACS Program upon 30 days written notice to the Division. However, any building heating supplier who so notifies the Division shall continue to comply with all requirements for participation and extend all benefits due to all eligible customers who have requested an oil-fired heating unit analysis prior to the effective date of withdrawal.

14A:22-7.4 Qualification and disqualification

(a) The Division shall not qualify a building heating supplier pursuant to N.J.A.C. 14A:22-7.2 and shall disqualify any building heating supplier from participating in the program.

(b) Grounds for disqualification include, but are not limited to the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant does business;

2. Violation of the Federal Organized Crime Control Act of 1970 or conviction for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating lack of business integrity or honesty by the applicant, or if the applicant is a corporation, partnership, or business entity;

3. Violation of any Federal or State antitrust statutes, or the Federal Anti-Kickback Act;

4. Violations of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor;

5. Any other cause affecting the responsibility of a building heating supplier of such a serious and compelling nature as may be determined by the Division to warrant disqualification, including such conduct as may be proscribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation;

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6. Bankruptcy, insolvency or other conditions affecting financial integrity, capabilities or performance;
7. Failure to fully comply with all applicable requirements of this chapter.

14A:22-7.5 Procedures for disqualification
(a) Any building heating supplier whom the Division plans to disqualify from participating in the program shall receive written notice from the Division of the disqualification and the grounds therefor at least 30 days before such disqualification. The notice shall include notification to the supplier of his or her right to appeal, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
(b) The Division shall allow the building heating supplier to respond in writing to the allegations contained in the notice. All such responses must be received by the Division no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.
(c) A building supplier who has been disqualified by the Division may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement under oath setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:
1. Newly discovered material evidence that the Division erred in its previous decision;
2. Reversal of a conviction of an offense or civil judgment which formed the basis of the Division's previous decision, on material grounds;
3. Actual change of ownership or control; and
4. Elimination of the causes for which disqualification occurred.
(d) The Division shall review the request for reconsideration and shall, within 45 days of its receipt, notify the building heating supplier of its decision whether to allow the building heating supplier to continue to participate in the CACS Program.

SUBCHAPTER 8. REPORTING AND RECORDKEEPING

14A:22-8.1 Reporting: Covered utilities
(a) Each covered utility shall submit on January 15, 1988 the following information in writing to the Division and annually thereafter for the preceding 12 month calendar period of January 1st through December 31st for the life of the program:
1. Number of audits requested by building type;
2. Estimated utility direct and indirect costs;
3. Whether the utility is engaged in financing, installing or supplying any program measures or renewable resource measures and a description of the program(s).
4. The approximate number of eligible customers and, if available, the percentage of those customers for whom the utility is the primary heating fuel supplier;
5. The number of eligible customers who have requested:
i. Program audits; and
ii. Loans arranged.
6. The number and function of employees assigned to the program, including part-time employees;
7. The program budget;
8. Such other information as the Division may require.
(b) Each covered utility shall submit the following information in writing to the Division on the 10th of each month beginning June 1984 following information for the preceding month:
1. The number of audits requested by fuel type;
2. The number of audits completed within 30 days;
3. The number of audits completed within 60 days;
4. The number of audits cancelled and the reason(s) for each CACS Audit cancellation;
5. The amount and types of program literature distributed;
6. The media sources used;
7. Such other information the Division may require.

14A:22-8.2 Reporting: participating building heating suppliers
(a) Each participating building heating supplier shall submit the following information in writing to the Division on June 1:
1. The number of oil-fired heating unit analyses performed and the cost to the customer and the building heating supplier; and
2. Other such information as the Division may require.

14A:22-8.3 Recordkeeping: covered utilities
(a) Each covered utility shall keep the following records for the periods indicated and shall make them available to the U.S. Department of Energy and the Division upon request:
1. The name and address of each eligible customer who receives a program audit, which shall be kept for five years from the date of the program audit;
2. A copy of the data collected during the audit and a copy of the estimates of the costs and savings presented to the customer, which shall be kept for five years from the date of such request;
3. A copy of all requests furnished by eligible customers for heating unit analyses which shall be kept for five years from the date of such a request;
4. The amount and cost of fuel purchased each month or other billing period for the twelve months prior to and following each program audit for each eligible customer, which shall be kept for two years from the date of such program audit; and
5. The names of the individuals who have met the qualification criteria for auditors, which shall be updated within a reasonable period of time following each implementation of the qualification procedures.

14A:22-8.4 Recordkeeping: participating building suppliers
(a) Each participating building heating supplier shall keep the following records for the periods indicated and shall make them available to the U.S. Department of Energy and the Division upon request:
1. The name and address of each eligible customer who receives a heating unit analysis as part of a program audit, which shall be kept for five years from the date of the heating unit analysis;
2. A copy of the data collected during the heating unit analysis and a copy of the estimates of costs and savings presented to the customer, which shall be kept for five years from the date of the heating unit analysis;
3. A copy of all requests furnished by eligible customers for heating unit analyses which shall be kept for five years from the date of such requests;
4. If the participating building heating supplier supplies the fuel, the amount and cost of fuel purchased each month or other billing period for the 12 months prior to and following each heating unit analysis for each of its own eligible customers participating in the program, which shall be kept for two years from the date of such heating unit analysis.

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Transmission of Contested Cases to the OAL

Adopted Amendment: N.J.A.C. 1:1-8.2

Proposed: May 15, 1989 at 21 N.J.R. 1181(a).
Adopted: June 26, 1989 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: June 26, 1989 as R.1989 d.395, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: July 17, 1989.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
The Office of Administrative Law (OAL) received only one comment on the proposed amendment, which clarifies that transmittal documents be submitted in duplicate to the OAL when contested cases are transmitted to the OAL for hearings. Another rule, N.J.A.C. 1:1-7.3(c), requires that all papers filed with the OAL shall be in duplicate, but in practice only one copy of the transmittal form and attachments were usually submitted. Photocopying by OAL personnel was causing significant delay and expense.

The Department of Education agreed with the content of the proposed amendment, but suggeted delaying its implementation so that agencies would have time to amend their own rules to require that parties file all papers with the agencies in duplicate. The burden of copying documents would then be on the parties rather than the transmitting agencies.

In its proposal, the OAL suggested that agencies might want to shift the copying responsibility to litigating parties. It was expected that agencies might want to amend their rules to require filings in duplicate. Therefore, in order to give agencies time to make this adjustment, the OAL, for three months following the adoption of the proposed amendment, will not return any cases which are transmitted without duplicate documents. However, it should be noted that the duplicate filing requirement remains in effect despite the three-month "grace period," because N.J.A.C. 1:1-7.3(c) is not affected by the amendment of N.J.A.C. 1:1-8.2.

The proposed amendment has been adopted without change.

Full text of the adoption follows:

1:1-8.2 Transmission of contested cases to the Office of Administrative Law
(a)-(e) (No change.)
(f) The completed transmittal form and any attachments shall be filed in duplicate with the Clerk of the Office of Administrative Law.

CIVIL SERVICE

(b)

MERIT SYSTEM BOARD

Layoffs (Local service)

Readoption: N.J.A.C. 4:3-16

Proposed: May 15, 1989 at 21 N.J.R. 1185(a).
Adopted: June 20, 1989 by the Merit System Board; Charles A. Nanry, Ph.D., Acting Commissioner, Department of Personnel.
Filed: June 20, 1989 as R.1989 d.369, **without change**.
Authority: N.J.S.A. 11A:2-6(d); 11A:8-1 through 11A:8-4.
Effective Date: June 20, 1989.
Expiration Date: June 20, 1994.

Summary of Public Comments and Agency Responses:
The Department of Personnel held a public hearing on the proposed readoption at the Office of Administrative Law, Trenton. Approximately 100 persons attended the hearing. One person delivered comments directed to the proposed readoption at this hearing.

No written comments were received.

COMMENT: The Area Director of the Communications Workers of America (CWA) stated that the CWA would not oppose the readoption of the current layoff rules for local service. However, he noted that N.J.S.A. 11A:8-2 requires the Merit System Board to adopt rules on preventive actions and alternatives to layoff, and such measures were lacking from the existing rules. Therefore, he urged the development of mandatory pre-layoff actions and alternatives to layoffs, in conjunction with the Labor Advisory Board.

RESPONSE: The Merit System Board has proposed comprehensive rules on layoffs, including provisions on preventive actions and alternatives to layoffs, in consultation with the Labor Advisory Board (see 20 N.J.R. 2955(b)). It is anticipated that new rules in this area will be adopted in the near future. In the meantime, readoption of these rules will ensure the continuity of uniform procedures for local governments undergoing reductions in force.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4:3-16.

COMMUNITY AFFAIRS

(c)

DIVISION ON AGING

Congregate Housing Services Program Income, Program Costs, and Service Subsidy Formula

Adopted Amendment: N.J.A.C. 5:70-6.3

Proposed: April 3, 1989 at 21 N.J.R. 816(a).
Adopted: June 22, 1989 by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.
Filed: June 23, 1989 as R.1989, d.393, **without change**.
Authority: N.J.S.A. 52:27D-188.
Effective Date: July 17, 1989.
Expiration Date: July 9, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:70-6.3 Income, program costs and service subsidy formula
(a)-(d) (No change.)
(e) Service subsidies for eligible program participants will be provided in accordance with the following formula:
1. Step I

NET INCOME— RENT = DISPOSABLE INCOME
(N.I.) (R) (D.I.)

2. The following STEP II formula shall be operative from January 1, 1990 through December 31, 1990:

D.I. of $0.00 to $173.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST: PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of $174.00 to $290.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST: PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of $291.00 to $409.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST: PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

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D.I. of $410.00 to $526.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST: PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of $527.00 to $645.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST: PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

(f) (No change.)

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules
Definitions; Controls on Affordability
Adopted New Rules: N.J.A.C. 5:92-12.1 through 12.9
Adopted Repeals: N.J.A.C. 5:92-12.1 and 12.2
Adopted Amendments: N.J.A.C. 5:92-1.3, 12.3 through 12.10

Proposed: March 6, 1989 at 21 N.J.R. 592(b).

Adopted: May 15, 1989 by the New Jersey Council on Affordable Housing, James L. Logue III, Chairman.

Filed: June 20, 1989 as R.1989 d.370, 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. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: July 17, 1989.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: If the Council is adopting restrictions and covenants, they should be reviewed so that they do not contradict any existing programs of the Department of Community Affairs.

RESPONSE: The rules, deed restrictions and lien were developed with the full cooperation of the Department of Community Affairs and the New Jersey Housing Mortgage and Finance Agency (HMFA). It should be noted that the proposed amendments and rules will have no effect on occupied low and moderate income sales units unless they are sold prior to the termination of the controlled period.

COMMENT: N.J.A.C. 5:92-12.1 requires a determination that low and moderate income housing units are controlled by the Council's deed restriction and mortgage lien prior to issuance of the initial certificate of occupancy. The municipality should be able to issue a blanket determination for condominiums and cooperatives. As long as the appropriate provisions are in a master deed, they will govern the individual units in an association. This will drastically reduce the paper work and staff time needed to comply with the Council's rule.

RESPONSE: It is acceptable to issue a blanket deed restriction for condos and coops with the added protection of individual deeds that contain the actual beginning and ending dates of the restriction as they pertain to each initial occupancy. The mortgage lien is the responsibility of each purchaser and would need to be signed at closing with the deed.

COMMENT: N.J.A.C. 5:92-12.2(f) states that the Council's restrictive covenant and mortgage lien shall have priority over all liens on the property except for the first mortgage. This provision prevents an affordable homeowner from using the property as security for a home maintenance loan.

RESPONSE: This provision mirrors language in many existing deed restrictions. It is intended to prevent excessive debt that could lead to the foreclosure and loss of affordable housing units. There is an allowance for approved second mortgages in the deed restriction that prevents overextending an equity loan but allows for credit up to the limited equity amount.

COMMENT: The Council should not dictate how resale control provisions work. The municipality should be able to decide whether or not to recycle subsidies that created affordable housing units.

RESPONSE: Before proposing these amendments and new rules, the Council decided that an affordable housing unit is a precious resource and efforts should be made to retain or supplement affordable housing, and that municipalities should have the first option to structure programs that accomplish this goal. Therefore, the Council structured the amendments rules to give municipalities the ability to render decisions on each affordable unit prior to the State exercising any option.

COMMENT: The Council on Affordable Housing (COAH) should not impose longer resale restrictions because no one has a clear idea of what the housing needs of the State will be beyond the controlled period.

RESPONSE: Given the uncertainty of the future, the Council decided not to "lock" communities into longer term controls. Rather, the Council decided to create a situation where responsible public officials could make decisions regarding the continued maintenance of affordability as the controls were expiring.

COMMENT: The rules provide non-profit agencies an option to purchase affordable units, if approved by the Council. Non-profits should be required to apply to the municipality, not the Council, for the right to repurchase.

RESPONSE: In qualifying non-profits, the Council may choose to seek input from municipalities. However, the Council needs some experience in implementing these rules prior to making substantive changes.

COMMENT: Owners of affordable units should be allowed to retain the equity built up in their units if the unit is sold after the resale controls expire. This will encourage the proper maintenance of the units as the owner will have an economic interest in maintaining the value of the property. Also, allowing homeowners to keep the equity built up is an efficient way to help low and moderate income persons improve their economic status.

RESPONSE: After listening to many different views, the Council determined that an affordable housing unit is a precious resource and efforts should be made to retain the affordable housing stock or for money to be recycled to create additional housing opportunities. However, the owners of a low and moderate income unit do receive many benefits, including an affordable housing unit during the length of their tenure; the equity resulting from repayment of a mortgage; the appreciation resulting from indexed increases to the maximum sales price of the housing unit; and the tax deductions that are synonymous with home ownership. Also, if home maintenance has been ignored, the owner may not be able to sell the unit for the full controlled price.

COMMENT: COAH must clarify what it means by the authority that administers controls on affordability. Does it need to be an independent body, or can it be an administrative entity which is part of either a municipal staff or board?

RESPONSE: It can be either. A municipality or developer may also contract with HMFA to administer the control. If Neighborhood Preservation Balanced Housing funds subsidize a housing unit, the Department of Community Affairs may be the administrative entity.

COMMENT: If low and moderate income units are assessed at less than the fair market value, the municipal taxpayers have been carrying the municipal service costs for these units. Therefore a municipality should be able to use proceeds from sales of low and moderate income units to meet needs that may not be related to housing.

RESPONSE: New Jersey and the nation are presently facing a situation where the controls on affordability are expiring on low income units created by HUD in the 1960s and 1970s. Therefore, New Jersey is losing affordable units and the subsidy necessary to replace them. In sections of the State, affordable rentals are being lost due to condominium conversion. Although it is difficult to predict the future, experience indicates that there will be an on-going need for affordable housing. Therefore, the proposed rule restricts the use of proceeds derived from sales of affordable units to the creation, rehabilitation or maintenance of affordable housing units.

COMMENT: N.J.A.C. 5:92-12.2 provides the authority with 10 days to make a written determination that a unit is controlled by the deed restriction and lien as adopted by the Council. No mention is made as to what will happen if the authority does not make a decision in 10 days.

RESPONSE: Failure of the authority to render a written determination within 10 days does not relieve the authority of the obligation to ensure the unit is properly controlled by the deed restriction and lien adopted by the Council. Failure of the authority to render a written determination does not authorize the initial occupancy or re-occupancy of a housing unit until the proper determination is rendered.

COMMENT: In addition to providing the option to non-profits approved by the Council, it would be appropriate to permit municipalities to designate non-profits to act as their agent in exercising their option.

RESPONSE: Municipalities may designate non-profits to act as their agent.

COMMENT: N.J.A.C. 5:92-12.3(c) allows the municipality and other agencies to exercise options to purchase affordable housing units. Must

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the non-municipal agencies wait until the municipality has decided whether or not to exercise its option before they can make an offer to purchase?

RESPONSE: All qualified government agencies and non-profits may offer to purchase affordable units within the 90 days provided by the rule. However, if a municipality exercises its option within the 90 days, the municipal option has priority over all others.

COMMENT: N.J.A.C. 5:92-12.7(d) requires the authority to compute the repayment obligation, but the procedure for so doing is not clearly set forth.

RESPONSE: The Council is attempting to ensure that these real estate transactions bear a reasonable relationship to fair market value. This is necessary so that a few dishonest individuals do not thwart the goal of recycling the price differential into future housing activity. At this point, the Council believes that individual authorities can develop their own procedures for achieving this reasonable relationship.

COMMENT: Should the municipality adopt an ordinance creating the Authority and vesting it with the power to receive funds and hold them separate from the municipality's general operating funds?

RESPONSE: Yes. The ordinance should be part of the fair share plan.

COMMENT: N.J.A.C. 5:92-12.7(d) requires the authority to determine if a proposed sale bears a reasonable relationship to the housing unit's fair market value. This is potentially a time consuming process. If possible the authority should provide a reasonable fair market sales price and maximum controlled price shortly after receiving the owner's notification of intent to sell the unit. This would allow the owner the opportunity to evaluate his/her option to sell at the market or controlled price.

RESPONSE: The Council encourages such a procedure to expedite the sales of affordable housing units.

Agency Initiated Changes

In reviewing the rules as proposed, the Council has determined a need for clarification of proposed N.J.A.C. 5:92-12.1. As the section heading indicates, this rule applies to newly constructed sales units. To affirm this application, the Council is changing the term "low and moderate income units" to "newly constructed low and moderate income sales units."

The Council has discovered that, in drafting the proposed rules, affordability controls on rehabilitated, rental and converted from non-residential use housing units, as delineated under repealed N.J.A.C. 5:92-12.2, were not addressed. Such controls are mandatory under the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., specifically 52:27D-311a(3). The Council is, therefore, adding upon adoption N.J.A.C. 5:92-12.10. This rule retains the affordability controls on rental and rehabilitated housing units contained in repealed N.J.S.A. 52:27D-12.2(a)1 and 3. As to housing units created through conversion of non-residential structures, they are subject to adopted new rule N.J.A.C. 52:27D-12.2 as new housing units.

The Council has also decided to delete the requirement of the owner to notify the Council in N.J.A.C. 5:92-12.3(b). The requirement is not necessary because the owner must notify the authority and the authority must then notify the Council. Also, since a 90 day option period begins upon receipt of notice, the deletion clarifies when the 90 days begins. It begins when the authority receives notice of an intent to sell from the owner.

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

5:92-1.3 Definitions

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

. . .

"Authority" means the entity designated by the municipality for the purpose of monitoring the occupancy, resale and rental restrictions of low and moderate income housing units.

. . .

"Exempt sales" means and shall include the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

. . .

"Fair market value" means the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

. . .

"Price differential" means the difference between the controlled unit sale price and the fair market value as determined at the date of a proposed contract of sale, after reasonable real estate broker fees have been paid.

. . .

"Repayment clause" means the obligation of a seller exercising a repayment option to pay 95 percent of the price differential to a municipality at closing for use in the municipal housing plan.

"Repayment option" means the option of a seller of a low or moderate income unit to sell a unit pursuant to N.J.A.C. 5:92-12.7 at fair market value subject to compliance with the terms of a repayment clause.

SUBCHAPTER 12. CONTROLS ON AFFORDABILITY

5:92-12.1 General provisions: new construction of sales units

(a) In developing housing elements, municipalities shall adopt measures to assure that ***newly constructed*** low and moderate income ***sales*** units remain affordable to low and moderate income households for a period of not less than 20 years. The authority shall do so by requiring all conveyances of ***newly constructed*** low and moderate income ***sales*** units subject to the Act to contain the restrictive covenant and mortgage lien adopted by the Council.

(b) Municipalities receiving State Aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b) shall adopt measures to assure that ***newly constructed*** low and moderate income ***sales*** units remain affordable to low and moderate income households for a period of not less than 10 years. The authority shall do so by requiring all conveyances of ***newly constructed*** low and moderate income ***sales*** units subject to the Act to contain the restrictive covenant and mortgage lien adopted by the Council.

5:92-12.2 General provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sales units

(a) No municipality shall issue a certificate of occupancy for initial occupancy of a low or moderate income sales unit unless there is a written determination by the authority that the unit is to be controlled by a deed restriction and mortgage lien as adopted by the Council. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien. Amendments to the deed restriction and lien shall be permitted only if they have been approved by the Council. A request for an amendment to the deed restriction and lien may be made by the authority, the municipality or a developer.

(b) No municipality shall permit the initial occupancy of a low or moderate income sales unit prior to issuance of a certificate of occupancy in accordance with (a) above.

(c) Municipalities shall, by ordinance, require a certificate of reoccupancy for any occupancy of a low or moderate income sales unit resulting from a resale and shall not issue such certificate unless there is a written determination by the authority that the unit is to be controlled by the deed restriction and mortgage lien required by the Council. Purchasers of low and moderate income sales units shall execute the deed restriction and mortgage lien prior to issuance of a certificate of occupancy regardless of whether the sellers had executed the deed restriction and mortgage lien adopted by the Council upon acquisition of the property. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien.

(d) The certificate of reoccupancy shall not be required in sales for which controls are allowed to expire or in which the repayment option is being exercised pursuant to N.J.A.C. 5:92-12.3.

(e) The mortgage lien and the restrictive covenant shall be filed with the records office of the county in which the unit is located. The lien and restrictive covenant shall be adopted by the Council, unless amendments have been approved by the Council.

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(f) The restrictive covenant, including the repayment clause, and the mortgage lien shall have priority over all mortgages on the property except for a first mortgage placed on the property by the mortgagee prior to the expiration of resale controls.

5:92-12.3 Option to buy sales units

(a) The restrictive covenant governing the deeds of low and moderate income units shall include an option permitting purchase of the affordable housing unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period specified in N.J.A.C. 5:92-12.1. The option to buy shall be available to the municipality, the Department of Community Affairs, the Agency, or a qualified non-profit as determined by the Council.

(b) All restrictive covenants governing low and moderate income units shall require the owner to notify the authority and the Council by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specified in N.J.A.C. 5:92-12.1.

(c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price shall be available for 90 days. The authority shall notify the municipality, the Department of Community Affairs, the Agency, and the Council that the unit is for sale. If the municipality exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90 day period, shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by a written offer to purchase the housing unit within 90 days of receipt of the intent to sell, the owner may proceed to sell the housing unit. If the owner does not sell the unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.

(d) Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

5:92-12.4 Municipal option

(a) Any municipality that elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:92-12.3 may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rental for a period of up to 20 years; or

2. Convey the unit at fair market value subject to the provisions of (c) below.

(b) Municipalities that purchase low income housing units shall maintain them as low income housing units.

(c) Municipalities that elect to purchase low or moderate income housing units and convey them at fair market value shall:

1. Notify the Council of any proposed sale and sales price 90 days before closing;

2. Notify the Council of the price differential as defined in N.J.A.C. 5:92-1.3;

3. Deposit the price differential in a trust account devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing; and

4. Notify the Council by February 1 of each calendar year of the balance within this trust account.

(d) Money deposited in trust accounts may not be expended until the municipality submits and the Council approves a repayment housing plan. The Council may approve the repayment housing plan if it determines that it provides a realistic opportunity for the creation, rehabilitation or maintenance of low and moderate income housing.

5:92-12.5 State option

(a) When the Department of Community Affairs or Agency elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:92-12.3, it may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental; or

2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation or maintenance of low and moderate income housing within the appropriate housing region.

5:92-12.6 Non-profit option

(a) Non-profit agencies may apply to the Council at any time for the right to purchase low or moderate income units subsequent to the period of controls on affordability of up to 20 years.

(b) Non-profit agencies that have been designated by the Council shall be eligible to purchase low or moderate income units pursuant to N.J.A.C. 5:92-12.3 for the sole purpose of conveying or renting the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental. Low income units shall be made available to low income purchasers or tenants and the housing unit shall be regulated by the restrictive covenant and lien adopted by the Council. The term of the controls on affordability shall be the same as those required by N.J.A.C. 5:92-12.1.

5:92-12.7 Seller option

(a) An eligible seller of a low or moderate income unit which has been controlled for the period established in N.J.A.C. 5:92-12.1, who has provided notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in N.J.A.C. 5:92-12.3(c) and 5:92-12.6 exercises its option to purchase within 90 days.

(b) Subject to N.J.A.C. 5:92-12.8, the seller may elect to:

1. Sell to a qualified low and moderate income household at the controlled unit sales price in accordance with existing Council rules, providing the unit is regulated by the restrictive covenant and lien adopted by the Council for a period of up to 20 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the authority, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low and moderate income household, the authority shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the restrictive covenant and lien required by the Council.

(d) The authority shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the authority may rely on comparable sales data or an appraisal. The authority shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The authority shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The authority shall adopt an appeal procedure by which a seller may submit written documentation requesting the authority to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the authority.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) Repayment proceeds shall be deposited in a trust account devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing. Money depositied in trust accounts may not be expended until the municipality submits and the Council approves a repayment housing plan. The Council may approve the repayment housing plan if it determines that it provides a realistic opportunity for the creation, rehabilitation or maintenance of low and moderate income housing.

5:92-12.8 Municipal rejection of repayment option

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low and moder-

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ate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:92-12.1. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:92-12.7.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and

2. Notify the authority and Council of its governing body's action.

The authority shall ensure that the deed restriction on all affected housing units reflect the extended period of controls.

5:92-12.9 Continued application of options to create, rehabilitate or maintain low and moderate income units

When a housing unit has been maintained as a low or moderate income unit after controls have been in effect for the period specified in N.J.A.C. 5:92-12.1, the restrictive covenant governing the housing units shall allow municipalities, the State, non-profit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this subchapter.

***5:92-12.10 Rehabilitation, rentals, conversion of non-residential structure**

(a) Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for at least six years.

(b) Rehabilitated renter-occupied housing units that are improved to code standard shall be subject to affordability controls for at least 10 years.

(c) Municipalities shall adopt measures to assure that low and moderate income rental units remain affordable to low and moderate income households for a period of not less than 20 years. Municipalities receiving state aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b) shall adopt measures to assure that low and moderate income rental units remain affordable to low and moderate income households for a period of not less than 10 years.

(d) Housing units created through conversion of a non-residential structure shall be considered a new housing unit and shall be subject to controls on affordability as delineated in N.J.A.C. 5:92-12.1(a) and (b).*

5:92-[12.3]**12.*[10]**11*** Administrative mechanism

Municipalities shall establish an authority responsible for assuring that low and moderate income housing units remain affordable to low and moderate income households; or they shall enter into a contractual agreement with the Agency to administer these responsibilities.

5:92-[12.4]**12.*[11]**12*** Initial pricing

(a) (No change.)

(b) Municipalities shall require that rents, excluding utilities, be set so as not to exceed 30 percent of the gross monthly income of the appropriate household size. Maximum rent shall be calculated as a percentage of the uncapped Section 8 income limit (as contained in Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit.

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

(f) Median income by household size shall be established by the uncapped Section 8 income limits, published by HUD, as defined in N.J.A.C. 5:92-1.3 (see Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit.

5:92-[12.5]**12.*[12]**13*** Annual indexed increases while controls are in place

The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in median income for each housing region as determined from the uncapped Section 8 income limits, published by HUD, as defined in N.J.A.C. 5:92-1.3 (see Appendix D) or other recognized standard adopted by the Council that applies to the rental housing unit.

5:92-[12.6]**12.*[13]**14*** Subsidy to ensure affordability prior to the expiration of controls

If the use of median income data adopted by the Council to index the cost of housing renders a unit unaffordable to a low or moderate income household at the time of resale, a municipality shall not lose credit for the housing unit, provided that adequate controls on affordability remain in place, but the municipality may subsidize the housing unit to maintain affordability.

5:92-[12.7]**12.*[14]**15*** Procedures of resale prior to the expiration of controls

Persons wishing to sell affordable units shall notify the authority responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the authority shall have the option to purchase the unit for the maximum price permitted based on the regional increase in median income as defined by HUD or other recognized standard adopted by the Council. If the authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. If the request is granted, the seller may offer low income housing units to moderate income households and moderate income housing units to households earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter.

5:92-[12.8]**12.*[15]**16*** Eligible capital improvements prior to the expiration of controls

Property owners of single family, owner-occupied housing may apply to the authority for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the authority if an increase in the maximum sales price is sought.

5:92-[12.9]**12.*[16]**17*** Impact of foreclosure on resale while controls are in place

A judgement of foreclosure or a deed in lieu of foreclosure by a financial institution regulated by State and/or Federal law or by a lender on the secondary mortgage market (including but not limited to the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:92-12.*[17]****18***. Notice of foreclosure shall allow the authority, the municipality, the Department of Community Affairs, the Agency or a qualified non-profit to purchase the affordable housing unit at the maximum permitted sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and prospective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the authority shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

5:92-[12.10]**12.*[17]**18*** Excess proceeds upon foreclosure

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the authority responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the

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maximum price permitted at the time of foreclosure and the amount necessary to redeem the debt to the financial institution including costs of foreclosure.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Freshwater Wetlands Protection Act Rules Statewide General Permits

Adopted Amendments: N.J.A.C. 7:7A-9.2 and 9.4

Proposed: June 20, 1988 at 20 N.J.R. 1327(a).
Adopted: June 20, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: June 20, 1989 as R.1989 d.373, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1B-3, 58:10A-1 et seq., particularly 58:10A-4 and 58:10A-6, and 13:9B-1 et seq., particularly 13:9B-23 and 13:9B-25.
DEP Docket Number: 020-88-05.
Effective Date: July 17, 1989.
Expiration Date: July 6, 1993.

Summary of Public Comments and Agency Responses:

These amendments were proposed on June 20, 1988 at 20 N.J.R. 1327(a) to implement the provisions of the Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq. A public hearing was held in Trenton on July 14, 1988. Approximately 16 members of the public attended and made verbal comments on the proposed amendments. Twenty commenters submitted written comments before the comment period closed on August 19, 1988. Pursuant to Section 23 of the Act (N.J.S.A. 13:9B-23), the Department has conducted an environmental analysis of each general permit activity. These analyses are on file with the Office of Administrative Law and are available from that agency or the Division of Coastal Resources, 501 East State Street, Trenton, New Jersey 08625.

General Comments

COMMENT: The proposed permit standards for minor road crossings, at N.J.A.C. 7:7A-9.2(a)10, and stormwater outfall structures, at N.J.A.C. 7:7A-9.2(a)11, are not realistic or workable. The proposed general permits appear to provide reasonable access through wetlands to developable uplands, but are of little value because logistically the public will not be able to utilize them.

RESPONSE: The general permit standards for minor road crossings and stormwater outfalls were developed to allow these activities in situations where the environmental impacts would be minor, both separately and cumulatively, as required by Section 23 of the Act (see N.J.S.A. 13:9B-23). Those activities which do not meet these standards may have substantial adverse environmental impacts and, therefore, will require an individual permit.

COMMENT: Several of the regulated activities covered under the Statewide general permits, including surveying activities (N.J.A.C. 7:7A-9.2(a)12), fish and wildlife harvesting (N.J.A.C. 7:7A-9.2(a)13), and the placement of water level recording devices (N.J.A.C. 7:7A-9.2(a)14), place undue hardship on people. These activities should not be regulated, but should be exempt.

RESPONSE: The Federal requirements for the State to assume responsibility for the Federal program for the regulation of the discharge of dredged or fill material into waters of the United States (404 program), at 40 C.F.R. Parts 232 and 233, require regulation of many of these types of activities. The Department, however, is investigating the possibility of narrowing the existing rules to regulate as few activities as possible while still meeting essential environmental concerns regarding protection of freshwater wetlands, as well as the Federal requirements. In the interim, in an effort to alleviate some of the burden on the public, the Department does not require a fee for reviews of a notice of proposed activity covered by Statewide general permits at N.J.A.C. 7:7A-9.2(b)12, 13 and 14, pursuant to N.J.A.C. 7:7A-16.5(a), although notice to the Department is still required.

COMMENT: The Department should adopt a Statewide general permit that would allow bank stabilization activities as is provided for under the Army Corps 404 program. These activities are required to prevent erosion and should be permitted provided no unnecessary filling of adjoining wetlands takes place.

RESPONSE: Such a change would be beyond the scope of the proposal. However, the Department may consider this type of activity for a Statewide General Permit in future rulemaking proceedings.

COMMENT: The Department should adopt a Statewide General Permit to allow small utility activities, including pad mounted transformers, switches, and man-holes, in freshwater wetlands and State open waters.

RESPONSE: Such a change would be beyond the scope of the proposal. However, the Department may consider this type of activity for a Statewide General Permit in future rulemaking proceedings.

COMMENT: The Department should create a Statewide General Permit to allow the use of freshwater wetlands and State open waters for the temporary and/or intermittent impoundment of water for stormwater management purposes.

RESPONSE: Such a change would be beyond the scope of the proposal. However, the Department may consider this type of activity for a Statewide General Permit in future rulemaking proceedings.

COMMENT: Has or will there be any consideration for the creation of a requirement in the Freshwater Wetlands Protection Act that, prior to the initiation of any land disturbance activity, a person must obtain approval from the Bureau of Freshwater Wetlands in the Division of Coastal Resources?

RESPONSE: The Department is not aware of any plans to amend the Act in such a way.

COMMENT: The Statewide General Permit required for surveying activities is too burdensome. Surveys performed solely for the simple transfer of ownership on a property should be exempt from the permit requirement. Alternatively, there should be no permit requirement for survey lines less than five feet wide.

RESPONSE: Because the cutting of vegetation for survey lines less than three feet in width does not alter the character of a freshwater wetland, the rule has been clarified to indicate that such lines are not regulated and, therefore, do not require a permit, either general or individual, from the Department. The requirements for State assumption of the Federal 404 program, at 40 C.F.R. Parts 232 and 233, require regulation of many of these types of survey activities. The Department, however, is investigating the possibility of narrowing the existing rules to regulate as few activities as possible while still meeting essential environmental concerns in connection with the protection of freshwater wetlands, as well as federal requirements. In the interim, in an effort to alleviate some of the burden on the public, the Department does not require a fee for reviews of a notice of proposed activity covered by Statewide General Permit 12, pursuant to N.J.A.C. 7:7A-16.5(a), although notice to the Department is still required.

7:7A-9.2

COMMENT: The general permit at N.J.A.C. 7:7A-9.2(a)10 should be further conditioned to ensure that culverts are passable to migratory and resident fishes, particularly anadromous species and trout. This can best be accomplished by adding the following conditions:

v. The culvert is designed so as not to impede fish passage using best management practices including, but not limited to:

(1) maintaining the natural gradient and bottom of the stream through the culvert;

(2) using open arch or box culverts on all streams that have an average annual flow in excess of 10 cubic feet per second; and

(3) using single large culverts as opposed to multiple culverts; and

vi. The permittee conducts inspections and, if necessary, maintenance at least quarterly to ensure that the culvert is fully functional.

RESPONSE: The Department has addressed these concerns by clarifying the language at N.J.A.C. 7:7A-9.2(a)10iv with a new sub-subparagraph (4) incorporating the best management practices required under this Statewide General Permit when crossing a waterbody.

COMMENT: The Statewide General Permit condition at N.J.A.C. 7:7A-9.2(a)10ii, "Disturbance on any freshwater wetlands or State open waters does not extend beyond 50 feet on either side of the ordinary high water mark of any associated water body" should be eliminated since it creates a hardship for applicants trying to cross freshwater wetlands or State open waters greater than 100 feet wide because they will have to apply for an individual merit.

RESPONSE: A distance limitation on minor road crossings is necessary to ensure that only minor environmental impacts occur when the

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activity is performed, as required by Section 23 of the Act (N.J.S.A. 13:9B-23). If the crossing is more than 100 feet long, it could have major environmental impacts and therefore must be reviewed through the individual permit process.

COMMENT: The condition on road crossing fills at N.J.A.C. 7:7A-9.2(a)10ii, "Disturbance of any freshwater wetlands or State open waters does not extend beyond 50 feet on either side of the ordinary high water mark of any associated water body," should be modified to read "the linear disturbance associated with the road crossing does not extend more than 100 feet in regulated waters or wetlands." This eliminates the confusion associated with the presence or absence of an ordinary high water line and ensures that the linear disturbance does not exceed 100 feet.

RESPONSE: In recognition of the commenter's concerns, the Department has clarified the language at N.J.A.C. 7:7A-9.2(a)10ii to indicate that the maximum length of the minor road crossing allowed under this Statewide General Permit is 100 feet in freshwater wetlands when no State open water is present, and 50 feet on either side of State open waters.

COMMENT: In N.J.A.C. 7:7A-9.2(a)10ii, minor road crossings are limited such that "Disturbance of any freshwater wetlands or State open waters does not extend beyond 50 feet on either side of the ordinary high water mark of any associated water body." Three commenters felt that the extent of disturbance is unduly restrictive and would require an applicant to spend exorbitant amounts of money to stay within the 50 foot limit. One hundred feet would give the contractor sufficient room to work and will also permit the bridge width to be increased on narrow bridges. Changing the distance to 100 feet will also match the Army Corps of Engineers criteria for a Nationalwide Permit.

RESPONSE: Doubling the length of the crossing permitted is beyond the scope of the proposal. However, the Department may consider this for inclusion in future rulemaking proceedings.

COMMENT: The definition of ordinary high water mark should be included in the rules.

RESPONSE: The ordinary high water mark is not defined in the rules because it is measured differently for the various types of State open waters because of the varying dynamics of the hydrology (for example, ponds, rivers, streams, ephemeral ponds) regulated by the freshwater wetlands program. For example, the indicators of ordinary high water mark are different on a fast-moving stream than on a quiet pond.

COMMENT: There are cases where existing roads with existing wetlands crossings require improvements (for example, widening) that would exceed the general permit limitations. A provision should be added to allow such projects under this general permit, since it minimizes the impacts on wetlands by limiting road construction to an existing disturbance (crossing).

RESPONSE: The Department agrees that expansion of existing crossings is less environmentally damaging than the construction of new crossings, which cause new disturbances. The rule has been clarified to indicate that expansion of existing road crossing fills to allow for road improvements such as widening and realignments is covered by the general permit, provided all the limitations of the general permit are met, including the limit of total wetlands disturbance to 0.25 acres or 100 cubic yards, whichever is smaller.

COMMENT: Two commenters stated that the 0.25 acre of fill limit on minor road crossings is inconsistent with the other two limits on minor road crossings fills—that is, 100 foot length of the crossing and 100 cubic yards of fill. The commenters assert that the two latter limits are so restrictive that the 0.25 acre limit is never reached. The commenters suggested expanding the length limitation to allow a 200 foot long crossing.

RESPONSE: Such a change is beyond the scope of the proposal. However, the Department may consider this for inclusion in future rulemaking proceedings.

COMMENT: Two commenters stated that the Department should clarify that measuring road crossing length from the ordinary high water mark should only be required for State open waters because there is no high water mark in wetlands.

RESPONSE: The Department has clarified the language at N.J.A.C. 7:7A-9.2(a)10ii to indicate that measurement from the ordinary high water mark will only apply to situations where a State open water is present. In freshwater wetlands, the minor road crossing must be less than 100 feet from end to end.

COMMENT: Three commenters stated that the intent of the limitations on minor road crossings, at N.J.A.C. 7:7A-9.2(a)10iii, to 100 cubic yards of fill, and to 0.25 acres of diturbance, are unclear. These provisions would make it virtually impossible to construct any type of minor road crossing which complies with local zoning requirements, and with accepted traffic safety standards. One commenter suggested a limit of 0.33 acres of disturbance.

RESPONSE: The 100 cubic yards of fill limitation is intended to limit the general permit to activities which will have only minimal adverse environmental impact, as required by Section 23c of the Act. Local traffic or zoning requirements usually do not take into consideration the presence of sensitive environmental features such as freshwater wetlands or State open waters.

The Department recognizes that these differences may cause some problems for applicants, but the Department is required to use the strict standards set out in the Act for adoption of general permits. Projects which are ineligible for general permit approval may in some cases be approved through the individual permit process.

COMMENT: The provision in N.J.A.C. 7:7A-9.2(a)10iii which states that "The total area of freshwater wetland or State open water disturbed does not exceed 0.25 acres or 100 cubic yards of fill, whichever is smaller," implies that the wetland fill impacts associated with every minor road crossing are identical, even though the acreage of wetlands affected varies greatly. For example, a deep roadway that requires 100 cubic yards of fill will affect a tiny acreage of wetlands, while a shallow roadway that also requires 100 cubic yards of fill would affect a much greater acreage. Therefore, the 100 cubic yards of fill provision should be eliminated from this Statewide General Permit because acreage is a more important measure of impact.

RESPONSE: A fill limitation encourages the use of bridges or culverts for crossing wetlands, thus minimizing the acreage of wetlands disturbed. Therefore, the provision remains as proposed.

COMMENT: In N.J.A.C. 7:7A-9.2(a)10iii, the allowable limits of the disturbance should only be specified in area of disturbance (0.25 acres) and should not be specified in volume of fill (100 cubic yards) because fill requirements are contained in the stream encroachment regulations.

RESPONSE: Not all activities governed by this general permit will be covered by the stream encroachment rules. A fill limitation encourages the use of bridges or culverts for crossing wetlands, thus minimizing the acreage of wetlands disturbed.

COMMENT: The proposed limits on minor road crossing fills are conservative and less than that which is permitted by the U.S. Army Corps of Engineers presently. The Department should use the present Army Corps Nationwide permit standards for both road crossings and stormwater outfall structures.

RESPONSE: As required by Section 23c of the Freshwater Wetlands Protection Act, the Department developed the limitations for minor road crossings by examining the environmental impacts of the proposed activities. The limitations set forth allow only those projects which will have minor environmental impacts, both separately and cumulatively.

COMMENT: The language at N.J.A.C. 7:7A-9.2(a)10iii which limits road crossings such that "the total area of freshwater wetland or State open water disturbed does not exceed 0.25 acres or 100 cubic yards of fill, whichever is smaller," should be changed to "The total area of freshwater wetland or State open water does not exceed 0.5 acres and 200 cubic yards of fill below the plane of ordinary high water."

RESPONSE: Such a change is beyond the scope of the proposal. However, the Department may consider this for inclusion in future rulemaking proceedings.

COMMENT: The language at N.J.A.C. 7:7A-9.2(a)10iii which limits disturbance to 0.25 acres or 100 cubic yards of fill, "whichever is smaller," should be revised. Unless the fill were spread very thinly, the 100 cubic yard limitation would be exceeded nearly every time before the acreage limitation is reached. Further, the intent of the U.S. Army Corps of Engineers Section 404 Nationwide authorization for minor road crossing fills was to have separate limits on the amount of fill placed in wetlands and in open water areas. The "whichever is smaller" criteria specified in the DEP regulation is not appropriate in this situation as the acreage of wetlands disturbed is more important than the volume of fill placed in wetlands. However, the volume of fill placed in open waters is often as important as the area of water disturbed. Therefore, the general permit should read: "The total area of freshwater wetland disturbed does not exceed 0.25 acres and the total volume of fill placed in State open waters does not exceed 100 cubic yards or disturb an open water area greater than 0.25 acres, and . . ."

RESPONSE: Such a change is beyond the scope of the proposal. However, the Department may consider this for inclusion in future rulemaking proceedings.

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COMMENT: The limitations for minor road crossings in N.J.A.C. 7:7A-9.2(a)10iii of 0.25 acres or 100 cubic yards of fill should be deleted and replaced with an overall limitation of 1.0 acre of wetlands disturbance without any reference to quantities of fill. Other general permits do not have such limitations. The proposed limitations would threaten many people's road programs as they are impractical. A one acre limit is suggested by the statute.

RESPONSE: The statute does not suggest an acreage limit for this general permit. Rather, the statute at N.J.S.A. 13:9B-23c mandates that the Department adopt as additional general permits only those activities which, after environmental analysis, are found to have minimal environmental impacts, both separately and cumulatively. The Department concluded in its environmental analysis that activities which went beyond the 0.25 acre of disturbance may have more than minor environmental impacts, both separately and cumulatively, and therefore require individual review. The quantity of fill limit is also designed to minimize environmental impacts by encouraging bridging and culverting.

COMMENT: Two commenters stated that the 100 cubic yards of fill limitation in N.J.A.C. 7:7A-9.2(a)10iii is a small amount of fill for a typical road crossing and should be changed to 200 cubic yards of fill below the mean high water, similar to the Army Corps of Engineers Nationwide Permits under the Federal 404 program.

RESPONSE: Such a change is beyond the scope of the proposal. However the Department may consider this for inclusion in future rulemaking proceedings.

COMMENT: Two commenters noted that the full jurisdiction for soil erosion and sediment control during construction activities resides with the local soil conservation district in accordance with standards and rules promulgated by the State Soil Conservation Committee. The stabilization of disturbed areas therefore must be pursuant to those standards as determined by the appropriate district. Those standards are promulgated by the State Soil Conservation Committee with the explicit approval of the Commissioner of the Department of Environmental Protection, and should be included in the rules.

RESPONSE: The Standards for Soil Erosion and Sediment Control are referenced as best management practices in N.J.A.C. 7:7A-1.4. Best management practices are required as a standard condition for all activities performed under the Statewide General Permits (see N.J.A.C. 7:7A-9.3(b)7). Some activities authorized under the Statewide General Permits, however, may not be regulated by the local soil conservation district (for example, projects with less than 5,000 square feet of disturbance). The Department has clarified the rule to indicate that will be required soil erosion and sediment control practices for these types of projects even though no approval of a soil erosion and sediment control plan by the local soil conservation district is necessary. In addition, the Department is working with the State Soil Conservation Service to develop standards for soil erosion and sediment control techniques which take into account the special sensitivity of freshwater wetlands and State open waters.

COMMENT: The Department should expand the activities permitted in N.J.A.C. 7:7A-9.2(a)10 to include road improvements and expansion of existing roads which cross freshwater wetlands or State open waters.

RESPONSE: The improvement of currently existing roads can already be performed under N.J.A.C. 7:7A-9.2(a)1, provided additional freshwater wetlands or State open waters are not disturbed. In addition, the Department has added language to N.J.A.C. 7:7A-9.2(a)10 to clarify that expansion of existing road crossing fills is allowed under this Statewide General Permit provided the permit conditions are met.

COMMENT: The limitations set forth at N.J.A.C. 7:7A-9.2(a)10 for minor road crossing activities are very stringent and a great majority of projects cannot meet the conditions of this general permit. This will force developers to apply for an individual permit, thereby defeating the purpose of the Statewide General Permit program.

RESPONSE: The purpose of the Statewide General Permit program is to allow certain routine, de minimus activities to occur in freshwater wetlands and State open waters with expedited review by the Department. The limitations set forth in the general permit will serve this purpose by allowing minor road crossings while retaining careful individual Department review for larger, potentially environmentally damaging projects. As required by Section 23c of the Act, the limitations set forth for the Statewide General Permits restrict activities to those which will have minor environmental impacts on freshwater wetlands and State open waters, both separately and cumulatively.

COMMENT: The condition on stormwater outfall structures which states at N.J.A.C. 7:7A-9.2(a)11i that "the structures are designed to minmize the area of freshwater wetlands or State open waters disturbance" should be eliminated since it is a repetition of the Best Management Practices defined in N.J.A.C. 7:7A-1.4

RESPONSE: The Department agrees that the condition stated in N.J.A.C. 7:7A-9.2(a)11i is a best management practice, but has retained the condition in order to emphasize the importance of this type of best management practice when designing a minor road crossing in freshwater wetlands or State open waters.

COMMENT: The right-of-way for outfalls should be as wide as required given the size of the pipe designated by the stormwater management engineer and given best management installation practices. These pipes and aprons are mandated by local or county or DEP stormwater regulations.

RESPONSE: This size of pipe designated by a stormwater management engineer is dictated by criteria that usually do not take wetlands protection concerns into account. Therefore, this would be an inappropriate standard for a general permit and would not meet the requirements of Section 23c of the Act.

COMMENT: The 20 foot right-of-way in the general permit at N.J.A.C. 7:7A-9.2(a)11ii is too narrow to allow for the proper operation of backhoes, the storage of dirt and the storage of pipe on the site. The Department should delete the limits on the width of disturbance and area of disturbance, and the volume of outfall rip-rap. Except for the aprons, these areas must be restored and will return to wetlands. Therefore, there will be no significant or permanent adverse impact regardless of the width, area, and volume of disturbance.

RESPONSE: It is not necessary to store pipe or dirt in the wetlands. This can be done on upland portions of a site. The Department has clarified some conditions of the stormwater outfall structure general permit to better address the requirements placed on applicants by the Soil Conservation Districts and other stormwater management regulations. However, without the limits of disturbance contained in the general permit the Department could not make the finding of no significant impact which is required by Section 23 of the Act before a general permit can be adopted. It is not clear what the commenter refers to in stating that "these areas must be restored" and that therefore there will be no significant or permanent adverse impact. The general permit requires only minimal restoration of sites. Even where there are executive restoration efforts, the Department does not agree that all temporary disturbances result in no significant impact to wetlands or State open waters.

COMMENT: Two commenters suggested that the proposed 20 foot right-of-way at N.J.A.C. 7:7-9.2(a)11ii for piping should be clarified so that it only applies to the actual area disturbed. Also, one commenter stated that an additional area on either side of this area should be allowed to be used for temporary storage of fill material.

RESPONSE: The Department has clarified N.J.A.C. 7:7A-9.2(a)11ii to indicate that the 20 foot width applies to the limit of disturbance. The Department's environmental analysis indicates that the 20 foot limit is required to minimize environmental impacts to freshwater wetlands and State open waters, while still allowing room to operate a backhoe. Storage of soil outside of the 20 foot area would cause additional impacts to freshwater wetlands and State open waters, and is not necessary as fill and stormwater pipes can be stored on the upland.

COMMENT: Several commenters suggested the deletion of N.J.A.C. 7:7A-9.2(a)11iii, which limits the total area of freshwater wetlands or State open waters disturbed by stormwater management activities to 0.25 acres. This limit is not needed since the activities associated with this Statewide General Permit cause only temporary disturbances to freshwater wetlands and State open waters and do not result in a net loss of freshwater wetlands or State open waters.

RESPONSE: The Department agrees that some of the activities permitted under the Statewide General Permit stated at N.J.A.C. 7:7A-9.2(a)11 may be considered temporary in nature. However, temporary activities can have significant and permanent impacts. Further, several activities covered by the general permit, including the placement of stormwater outfalls and rip-rap, are permanent structures and, therefore, cause permanent impacts and losses of wetlands.

COMMENT: The limitation on stormwater outfalls of 0.25 acres should be deleted and replaced with a limitation of 1.0 acre. There is no basis to impose this restriction on stormwater outfall structures while general permits such as those for isolated and headwater wetlands, utility lines and others are allowed to fill up to one acre.

RESPONSE: The general permits for isolated and headwater wetlands were the only two general permits mandated for adoption by the Act. The Act does not require the Department to perform environmental analyses and make a finding of no significant impact, before the adoption

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of these two general permits. In contrast, Section 23 of the Act does require that all additional general permits must be found by the Department after an environmental analysis to have no significant adverse environmental impact. Therefore, the conditions on the isolated and headwater general permits are not comparable to other general permits because the Act mandated different standards for their adoption.

The limits on additional general permits, such as those for stormwater outfalls and utility lines, vary with impact. The Department's environmental analyses of various regulated activities indicate that environmental impact may vary from activity to activity despite a similar acreage of disturbance. For instance, a small, permanent stormwater outfall structure may have a major impact on surrounding wetlands through sedimentation and changes in hydrology. Stormwater outfall structures are a common source of pollutants entering freshwater wetlands and State open waters. In contrast, the placement of an underground utility line may disturb a larger area of wetlands, but because of the temporary nature of the surface disturbance, the ability of the site, to re-establish some wetlands values and the fact that the line does not alter the water flow or hydrology of the wetland, the overall environmental impact is less. Thus, in order to limit general permit activities to those with no adverse impacts, varying acreage limits must be applied. Therefore, under the Act's requirement of no impact, the utility line general permit is limited to one acre while the stormwater general permit is limited to 0.25 acres in order to accomplish the Act's no impact goal.

COMMENT: Three commenters said the reference to 10 cubic yards in Statewide General Permit 11 should be deleted. This limitation in quantity has no bearing on the impact to a wetland since there is already an areal limitation on disturbance. If this limitation remains, a developer would be unable to install even one stormwater apron since an average apron would consist of 14 cubic yards of material. Many projects will need at least two or three aprons to safely convey stormwater off the site in a manner that reduces the erosive impact on wetlands. One commenter suggested this language: "does not exceed 10 cubic yards unless required by the soil erosion and sediment control plan."

RESPONSE: The 0.25 acre limitation established by the Department is required to limit stormwater outfall structures in freshwater wetlands and State open waters to those which will have minor environmental impacts, both separately and cumulatively, pursuant to section 23 of the Freshwater Wetlands Protection Act. The 10 cubic yard volume restriction applies separately to each outfall on a site, provided all other limitations are met. For example, two outfalls of 10 cubic yards each could be built on one site under the permit as long as the total acreage disturbed by the outfalls combined does not exceed 0.25 acres. The rule has been clarified to reflect this.

COMMENT: N.J.A.C. 7:7A-9.2(a)11iv states a requirement that "the facility is designed in accordance with a plan approved by the appropriate County Soil Conservation District." This should be clarified to read: "The facility is designed in accordance with a plan for soil erosion and sediment control certified by the appropriate soil conservation district as conforming to the Standards for Soil Erosion and Sediment Control promulgated by the State Soil Conservation Committee."

RESPONSE: The Department has clarified N.J.A.C. 7:7A-9.2(a)11iv to indicate that activities under this general permit must meet the requirements set forth in the Standards for Soil Erosion and Sediment Control. Some projects authorized under this general permit, however, may not need to obtain approval from the Soil Conservation District (for example, projects with less than 5,000 square feet of disturbance). Therefore, the Department has clarified the provision to require an approved soil erosion and sediment control plan only if applicable to the project. Persons with projects not subject to approval under a plan must certify to the Department that the project meets the requirements of the Standards. In addition, the Department is working with the State Soil Conservation Service to develop standards for soil erosion and sediment control techniques which take into account the special sensitivity of freshwater wetlands and State open waters.

COMMENT: Two commenters suggested that N.J.A.C. 7:7A-9.2(a)11iv regarding stormwater outfalls should include a reference to the Standards for Soil Erosion and Sediment Control in New Jersey.

RESPONSE: The Standards for Soil Erosion and Sediment Control are included in the definition of best management practices found in N.J.A.C. 7:7A-1.4. Therefore, they are already required for all Statewide General Permits as stated in N.J.A.C. 7:7A-9.3(b)7.

COMMENT: N.J.A.C. 7:7A-9.2(a)11iv specifies that a stormwater facility must be "designed in accordance with a plan approved by the appropriate County Soil Conservation District." The NJDOT is authorized by the Soil Erosion and Sediment Control Act of 1975 to certify its own erosion control plans and we do not have to obtain separate District approval. Therefore, the commenter suggests that this condition be revised to read: "The facility is designed in accordance with a plan approved by the appropriate Soil Conservation District, or certified as such in accordance with the provisions of the Soil Erosion and Sediment Control Act."

RESPONSE: The Department has clarified N.J.A.C. 7:7A-9.2(a)11iv to indicate that all activities under this general permit must meet the requirements set forth in the Standards for Soil Erosion and Sediment Control. An approved plan by the Soil Conservation District is not required for small projects disturbing less than 5,000 square feet, nor for NJDOT projects since they do not require approval from the Soil Conservation District. These types of projects, however, must still meet the Standards for Soil Erosion and Sediment Control as a condition of the general permit.

COMMENT: All stormwater discharges which concentrate stormwater flows must be designed in accordance with the New Jersey Standards for Soil Erosion and Soil Control. Separate or conflicting wetlands criteria should not be utilized, as the present and technically accepted Standards referenced above will provide suitable design criteria for stability in wetlands.

RESPONSE: The Standards for Soil Erosion and Sediment Control are considered to be best management practices and are required for all Statewide General Permits pursuant to N.J.A.C. 7:7A-9.3(b)7. These standards, however, do not address the environmental sensitivity of wetlands. Therefore, further conditions which limit the disturbance of freshwater wetlands and State open waters are necessary to define those activities which will have minor environmental impacts.

COMMENT: The wording and intent of N.J.A.C. 7:7A-9.2(a)11v implies that stormwater being discharged into a freshwater wetland or State open water is a regulated activity.

RESPONSE: The rule has been clarified to indicate that the filtering requirement at N.J.A.C. 7:7A-9.2(a)11v applies only to stormwater discharged from outfalls or structures constructed under the authority of the general permit.

COMMENT: If there is a stormwater discharge into a freshwater wetland and/or State open water, is the NJDEP making mandatory the employment of pre-discharge filter treatment techniques?

RESPONSE: Under this Statewide General Permit, if the stormwater management facility (or any part) is located in a freshwater wetland or State open water, pre-discharge filter treatment techniques are required under N.J.A.C. 7:7A-9.2(a)11v. Note that stormwater outfalls will be regulated by the Department in transition areas next to freshwater wetlands after July 1, 1989.

COMMENT: Statewide General Permit 11 for stormwater outfalls is very good but needs certain modifications. Conditions should be added to ensure that placement of underground pipe through a wetland is accomplished so as to avoid any permanent impacts. The pipe should be buried at least two feet underground and the wetland elevation should be restored using topsoil from the excavation. Any remaining material excavated from the trench should be disposed at an upland site. Indigenous wetland plants should then be re-established on the disturbed soil to prevent erosion and restore habitat. Condition v (N.J.A.C. 7:7A-9.2(a)11v) should be revised to include retention basins as an example of a pre-discharge treatment technique which may be acceptable. Condition v should also be modified to require annual inspection and maintenance of the pre-discharge facilities. Another pre-discharge technique which should be encouraged is the installation of oil and grease traps or oil/water separators. These should be installed within a dike dividing the stormwater runoff basin.

RESPONSE: The Department considers most of these proposed modifications to be included in the best management practices which are already required for all Statewide General Permits pursuant to N.J.A.C. 7:7A-9.3(b)7. The Department has added language to N.J.A.C. 7:7A-9.2(a)11vii to clarify that these best management practices must be adhered to for restoring areas where stormwater piping has been placed under this Statewide General Permit. The pre-discharge treatment techniques stated in N.J.A.C. 7:7A-9.2(a)11v are examples and not an exhaustive listing. The Department may require the use of oil and grease traps as part of a pre-treatment system depending on the project or site. The Department did not include retention basins in the list since they retain all stormwater and allow it to percolate into the ground through the basin floor and/or to evaporate. Therefore, retention basins do not have any discharge, outfalls or discharge pipes, and can not be considered pre-discharge treatment techniques.

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COMMENT: In many situations, treatment of runoff by routing it through detention basins or grassed swales, as required by N.J.A.C. 7:7A-9.2(a)11v, may not be possible because of right-of-way constraints, adjacent land use, or the geometrics of the roadway. Under the terms of this general permit as proposed, many bridge replacement projects could qualify for a minor road crossing fill general permit, but most would not be eligible for the general permit for stormwater outfall structures because treatment facilities cannot be provided. This inconsistency should be removed by modifying proposed general permit #11 to read "To the maximum extent practicable, all stormwater which is discharged into a freshwater wetland or State open water is first filtered or otherwise treated outside of the freshwater wetland or State open water, to minimize sediment, pollutants, and any other detrimental effects upon the freshwater wetland or State open water."

RESPONSE: Stormwater runoff from developed areas (including roads), if not pre-filtered, will carry heavy loads of pollutants directly into freshwater wetlands and State open waters. To comply with the Act's requirement of minor environmental impacts for this Statewide General Permit, the Department has placed this condition to limit water quality impacts. In situations where unique site or project conditions make this condition impossible to meet, an individual permit can be applied for and the Department will evaluate the situation individually.

COMMENT: The limitation of 10 cubic yards for rip-rap pads of outfall structures (N.J.A.C. 7:7A-9.2(a)11vi) is not practical because it does not allow compliance with the engineering and design constraints imposed by Soil Conservation Districts and local zoning ordinances on the construction of outfall structures. Most projects will be unable to comply with this condition, defeating the purpose of the general permit. Therefore, this condition should be eliminated from this general permit.

RESPONSE: The Department disagrees. The fill limitation reflects those situations where impacts to freshwater wetlands and State open waters are minor, both separately and cumulatively, as required by Section 23 of the Freshwater Wetlands Protection Act. The engineering and design constraints imposed by other agencies usually have not been developed in consideration of the environmental sensitivity of wetlands and State open waters. In order to alleviate difficulties caused by differing design requirements, the Department is working with the Soil Conservation Service to develop standards for soil erosion and sediment control techniques which take into account the special sensitivity of freshwater wetlands and State open waters.

COMMENT: The intent of N.J.A.C. 7:7A-9.2(a)11vii, which requires that "the upper 18" inches of material in any backfilled area must consist of the original topsoil", is unclear. If the purpose is to require that the existing soil materials be replaced, then the word topsoil should be removed since there are probably few, if any, situations where there is 18 inches of topsoil.

RESPONSE: The intent of N.J.A.C. 7:7A-9.2(a)11vii is to require the backfilling of areas with the original freshwater wetlands and State open water soil. The term "topsoil" is used to indicate the first 18 inches of soil material, although the Department recognizes that in technical soil terminology "topsoil" is rarely 18 inches thick.

COMMENT: Four commenters stated that the Department should amend N.J.A.C. 7:7A-9.2(a)12, "surveying activities such as soil borings and cutting of narrow (five feet or less) survey lines which do not alter the character of the freshwater wetland or State open water," to exempt surveying which involves the cutting of narrow survey lines (five feet or less) and does not utilize motorized vehicles or clearing equipment and also exempt activities necessary to establish the wetlands limit, including required hand-dug soil borings, again prohibiting motorized vehicles or clearing equipment. One commenter also stated that surveyors should not have to wait 30 days before working and shouldn't have to pay fees.

RESPONSE: The rule has been clarified to indicate that survey lines less than three feet wide and small hand-dug soil borings will not be regulated by the Department. The State program requirements for assumption of the Federal 404 program, at 40 C.F.R. Parts 232 and 233, require regulation, either under Statewide General Permits or individual permits of these many types of activities. The Department, however, is investigating the possibility of narrowing the existing rules to regulate as few activities as possible, while still meeting the Federal requirements. In the interim, in an effort to alleviate some of the burden on the public, the Department does not require a fee for reviews of a notice of proposed activity covered by Statewide General Permits 12, 13 and 14, pursuant to N.J.A.C. 7:7A-16.5(a), although notice to the Department and State authorization is still required.

COMMENT: To apply for a Statewide General Permit for surveying under N.J.A.C. 7:7A-9.5(b)2, the applicant is required to submit information to the Department which requires the performance of surveying activities in freshwater wetlands, thus causing a catch-22 situation for the applicant.

RESPONSE: The Department disagrees. N.J.A.C. 7:7A-9.5(b)2 requires a site plan showing a wetlands boundary line. This line can be estimated from a cursory site examination, thus satisfying the requirement at 9.5(b)12. The State program requirements for assumption of the Federal 404 program, at 40 CFR 232 and 233, require regulation of many of these types of activities. The Department, however, is investigating the possibility of narrowing the existing rules to regulate as few activities as possible, while still meeting the Federal requirements. In the interim, in an effort to alleviate some of the burden on the public, the Department does not require a fee for reviews of a notice of proposed activity covered by Statewide General Permits 12, 13 and 14, pursuant to N.J.A.C. 7:7A-16.5(a), although notice to the Department is still required.

COMMENT: The notification requirements at N.J.A.C. 7:7A-9.5 for Statewide General Permits N.J.A.C. 7:7A-9.2(a)12 and 14 are unduly burdensome and will prove to be extremely costly to consumers, small businesses and the regulated professions. These activities have a de minimis effect on the wetlands. Not only are the activities covered by these Statewide General Permits ones which will have no significant impact on freshwaster wetlands, but these activities have received general permit approval or a finding of no jurisdiction by the U.S. Army Corps of Engineers.

RESPONSE: The Act requires notification to the Department for all Statewide General Permit authorizations. The additional notices required are not burdensome, and provide an opportunity for valuable public input on proposed wetlands projects.

COMMENT: Obtaining a Statewide General Permit in order to perform a survey on a tract of land for title transfer would place a burden unnecessarily on the current and future owners. The simple act of transfer of ownership of property should not come under these requirements of the rule. They must be clearly exempted.

RESPONSE: The Freshwater Wetlands Protection Act does not require any interaction with the Department unless a person is performing regulated activities in a freshwater wetland or State open water. If a regulated activity needs to be performed for title transfer then the Act requires a permit from the Freshwater Wetlands program. There are no exemptions in the Act for regulated activities performed for the purpose of selling property.

COMMENT: As a practical matter, surveying activities would not require the cutting of trees and vegetation which are prohibited by regulation. Surveyors do not cut survey lines in excess of five feet in width. This is an economic rule of the survey firm.

RESPONSE: The Department included "five feet or less" in N.J.A.C. 7:7A-9.2(a)12 to specifically indicate the limits of "narrow survey lines" stated in the rule. Any line greater than this would require an individual permit.

COMMENT: The Statewide General Permit for surveying activities noted at N.J.A.C. 7:7A-9.2(a)12 should be issued for a specific time frame, that is, five years, to reduce the administrative workload of the Division and the permittees. The permit should specifically identify that it includes those public utilities whose service territories cover significant land areas of the state. This will alleviate the need to submit approximately 30 to 40 General Permit applications for Letters of Interpretations per year.

RESPONSE: The Department is investigating the possibility of narrowing the existing rules to regulate as few activities as possible, while still meeting the Federal requirements. In the interim, in an effort to alleviate some of the burden on the public, the Department does not require a fee for reviews of a notice of proposed activity covered by Statewide General Permits 12, 13 and 14, pursuant to N.J.A.C. 7:7A-16.5(a), although notice to the Department is still required. A five year blanket general permit approval would not allow Department review of specific activities authorized under the permit. The Department could not ascertain whether a project meets the no impact requirement of the Act.

COMMENT: The placement of water level and water quality monitoring devices as stated in N.J.A.C. 7:7A-9.2(a)14 should be exempt from the notification requirements for obtaining a Statewide General Permit.

RESPONSE: The Act requires notification to the Department for all Statewide General Permit authorizations. The additional notices required are not burdensome, and provide an opportunity for valuable public input on proposed wetlands projects.

COMMENT: N.J.A.C. 7:7A-9.2(a)15iv, which requires for mosquito projects that "excavated spoils are removed or spread evenly in a shallow layer no more than three inches deep on-site", should be revised as

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follows: "excavated spoils are removed or spread evenly in a shallow layer no more than nine inches deep on site." Three inches of excavation spoil after drying would reduce to approximately one inch and nine inches would be compacted down to three inches.

RESPONSE: The objective of the three inch limitation is to provide a measure of the thickness of the spoil after placement, given different types of spoils, water content and settling rate. A spoil thickness of nine inches would bury and stop any new seedling growth and would significantly change the surface elevation of the freshwater wetland. The three inch limit has been retained to prevent such adverse environmental impacts.

COMMENT: The mosquito general permit condition at N.J.A.C. 7:7A-9.2(a)15v which states "the existing hydrologic condition of the hydric soils is maintained" should be revised as follows: "in areas where natural hydrologic conditions and hydric soils exist excessive drainage not be permitted." Poor development practices have created human-made wetlands that exist in a degraded condition. The role of a mosquito control agency is the restoration of wetland areas and this often requires drainage to return a wetland to a condition that would be conducive to groundwater recharge.

RESPONSE: The Act does not provide any less protection to human-made freshwater wetlands than to naturally occurring wetlands. The excessive drainage of either type of freshwater wetlands, if permitted, would cause wetlands to eventually convert to uplands by destroying the hydrological characteristics of the wetland area. The limit was placed to permit mosquito control water management activities which would modify wetlands hydrology but maintain the hydric nature of the soil. Drainage of a wetland does not necessarily cause an area to contribute to groundwater recharge.

COMMENT: At N.J.A.C. 7:7A-9.2(a)15vii, the requirement that "The county submits individual, site-specific project proposals to the Administrator . . . with the requirements of this chapter" should be revised as follows: "The County submits individual site specific proposals to the State Office of Mosquito Control Coordination and the Administrator determines that the project is necessary to control a documented mosquito problem to existing residents." Once a determination has been made by the Administrator of the State Office of Mosquito Control Coordination, there is no need for additional review by the Bureau of Freshwater Wetlands since the Administrator has sufficient expertise to take all aspects of the project into consideration when making a determination. Further submission would be redundant.

RESPONSE: The Act requires consolidation of the processing of wetlands reviews in one program. The Administrator is not located within the agency designated by the Commissioner of the Department of Environmental Protection to implement the Freshwater Wetlands Protection Act. In addition, the Bureau records compiled by processing all applications will provide crucial information and data for the future review and refinement of Statewide General Permits, as required by the Act.

COMMENT: The requirement at N.J.A.C. 7:7A-9.2(a)15iii that only light equipment be used for mosquito control activities should be revised as follows: "Equipment to be used shall be the same as that which is permitted for stream cleaning projects requiring a stream encroachment permit." This would establish a consistency with other previously promulgated regulations.

RESPONSE: The limitation of "light equipment" was placed as a condition to control the weight and size of equipment entering freshwater wetlands and State open waters, and to avoid direct impacts from the presence and movement of the equipment. The use of stream cleaning equipment is not appropriate since other areas besides State open waters will be impacted by the equipment. The importance of uniformity in Department regulations is overshadowed in this case by the potential environmental harm to wetlands and State open waters which could be caused by allowing other than light equipment.

COMMENT: A Federal agency commented that the proposed Statewide general permit for mosquito control could lead to extensive degradation of waterfowl habitat through drainage of surface waters. The Best Management Practices for mosquito control and freshwater wetland management encourage converting surface saturated wetlands to ground saturated wetlands. Many migratory birds, especially waterfowl and wading birds, and many amphibians and reptiles, obtain essential habitat needs from wetlands having standing surface water. Such wetlands, even if temporarily or seasonally inundated, are generally prime habitats for resting, feeding and breeding. Wetland drainage, even if it preserves ground saturation, will diminish wildlife utilization and ultimately will diminish wildlife populations. The status of North America's declining waterfowl population recently compelled Canada and the United States to sign a document known as the North American Waterfowl Management Plan. The Plan is a basic policy instrument that recognizes the significant international importance of the North American waterfowl resource; promotes conservation through cooperative planning and coordinated management; and describes population and habitat objectives. With the exception of the northwest corner of New Jersey, our entire state is located in the Middle-Upper Atlantic Coast Waterfowl Habitat Area of Major Concern. The Middle-Upper Atlantic Coast Waterfowl Habitat Area has lost about 60 percent of its habitat and of the remaining habitat, only 25 percent is considered protected. The plan cannot achieve its objectives without the support of State and local governments. The proposed Statewide general permit should be further conditioned to protect and maintain valuable surface water wetlands. The proposed Statewide general permit should be reduced in scope by limiting the wetlands affected to no more than 10 acres. Projects affecting wetlands greater than 10 acres should be evaluated through individual permitting in order to prevent extensive degradation of surface water wetlands and their dependent wildlife populations. The wording of the permit should also be modified to allow the United States Fish and Wildlife Service to conduct mosquito control water management activities on national wildlife refuges, subject to the conditions of the Statewide general permit.

RESPONSE: Limiting mosquito projects to 10 acres or less is beyond the scope of the proposal. However, the Department recognizes that mosquito control activities may cause a change in hydrology which will lead to succession and modification of wetland types, and will consider the change in future rulemaking. The procedures for Statewide General Permits allow the Department to place special conditions on any authorization to proceed under a Statewide General Permit. Mosquito control activities will be reviewed carefully by the Department before authorizations are issued and particular authorizations may require monitoring to document whether this successional change occurs when drainage activities are proposed for large areas. The Department has clarified the Statewide General Permit to indicate that mosquito control activities performed by Federal agencies on Federal land are covered by the permit.

COMMENT: The following language should be inserted into the Statewide General Permit at N.J.A.C. 7:7A-9.2(a)16 in order to increase the utility of the permit without posing significant harm to wetlands: "Fish and wildlife management activities which do not involve the individual discharge or excavation of more than 15 cubic yards of clean fill, carried out in county, State or federal wildlife management areas, parks, or reserves. These activities include but are not limited to: i. the placement of artificial nesting structures, nesting islands, observation blinds, sign posts, or fencing; ii. the clearing, cutting, burning or removal of vegetation to eliminate or control nuisance flora when carried out in accordance with an approved wildlife management plan; and iv. raising and lowering surface water levels in existing impoundments to facilitate wildlife and fish management."

RESPONSE: The Department has clarified the langauge at N.J.A.C. 7:7A-9.2(a)16 to indicate that burning or removal of vegetation, control of nuisance flora, and placement of nesting islands are covered by the permit. The increase in the cubic yardage of fill is beyond the scope of this proposal, but may be considered in future rulemaking. The raising and lowering of surface water levels in existing impoundments may already qualify for approval under Statewide General Permit 16 if the Department determines that it complies with all of the conditions of the general permit.

COMMENT: The Statewide General Permit for boardwalks at N.J.A.C. 7:7A-9.2(a)17 should not be limited to public lands. Open space is typically required in large-scale residential developments under control of homeowners' associations. Substantial preserved areas can also occur in corporate parks. Private developments can also include nature trails and recreational facilities in freshwater wetlands and State open waters.

RESPONSE: Such a change is beyond the scope of the proposal. However, the Department may consider this for inclusion in future rulemaking proceedings.

COMMENT: The following modification should be made to Statewide general permit 17 (N.J.A.C. 7:7A-9.2(a)17) regarding trails and boardwalks: "ii. natural materials such as wooden planks and wood chips are used to the maximum extent practicable; and iv. the project does not significantly encroach upon or adversely affect the overall habitat of any threatened or endangered species, resulting in a net loss of habitat or habitat value."

RESPONSE: The Department has clarified N.J.A.C. 7:7A-9.2(a)17ii to include wooden planks as natural materials. The language concerning threatening or endangered species was not modified since the proposed

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additional language would substantially narrow protection for endangered species.

7:7A-9.4

COMMENT: The revisions to N.J.A.C. 7:7A-9.4(c) penalize applicants for minimizing impacts by further restricting their use of general permits, that is by not allowing more than 0.25 acres of impact for minor road crossings and outfall structures. The revisions to N.J.A.C. 7:7A-9.4(c) should not be adopted.

RESPONSE: The rule has been clarified to indicate that the 0.25 acre limit applies separately to each General Permit activity under N.J.A.C. 7:7A-9.2(a)10 and 11, not to the combined activities.

COMMENT: The proposed amendment limits the cumulative number of general permits to a fixed acreage, regardless of parcel size. This means an applicant who is developing a 100 or 500 acre parcel is limited to the same number of outfalls as a developer doing a 10 acre parcel. There is no economic benefit for an applicant to put any more roads, pipes and headwalls in wetlands than is required by local ordinances for access, water, sewer, electric and stormwater. Therefore, these types of wetlands encroachments are self-limiting. Delete the acreage limitation on General Permits #2, 10, and 11.

RESPONSE: The limitation of disturbance to one acre on-site through the use of multiple Statewide General Permits is needed to limit cumulative adverse environmental impacts on freshwater wetlands and State open waters. The Department may only adopt General Permits which, separately or cumulatively, have minor impacts (see section 23 of the Freshwater Wetlands Protection Act). Impacts of more than one acre per project would cause significant environmental impacts and must be addressed through the individual permit process, where multiple environmental impacts on freshwater wetlands and State open waters can be reviewed for alternatives and mitigation steps.

COMMENT: The Department should create a different process for a developer proposing to use many Statewide General Permits throughout a site which would disturb more than one acre. This would alleviate the burden of going through the individual permit process but allow the review of the activities.

RESPONSE: The Act provides for two types of permits, general and individual, and provides detailed review standards for each. Creating a third type of review would be administratively burdensome, and would contravene the legislative intent of the Act. The use of multiple Statewide General Permits on a site to impacts more than one acre would have significant environmental impact and the cumulative effects must be reviewed in the indivdiual permit process.

COMMENT: The Department should allow a total amount of disturbance under multiple general permits greater than the proposed one acre threshold. The Freshwater Wetlands Protection Act already allows the filling of up to one acre of isolated wetlands under a statutory general permit. For other types of general permit activities, it is unduly restrictive to allow such a negligible amount of total disturbance for the minor activities that are required for many development projects. The Department will be forcing developers to apply for a formal permit for minor types of activities. This is likely to result in development projects which propose greater amounts of disturbance than would be proposed if the Statewide general permits were more expansive.

RESPONSE: The use of multiple Statewide General Permits on-site to impact more than one acre would have significant environmental impacts and thus the cumulative effects must be reviewed in the individual permit process, pursuant to the Act. Even if it is true that limits on general permits will result in individual applications for larger disturbances than necessary, the strict individual permit review standards and alternatives analysis will prevent authorization for unnecessary disturbances.

COMMENT: Two commenters felt that the Department should delete the 0.25 acre limitation for stormwater and road crossing general permits. Instead, the Department should impose an overall limit of 1.0 acre of wetlands disturbances in any combination of general permits that the applicant selects to use. One commenter asked why it is necessary to impose additional acreage restrictions on general permit activities below 1.0 acre since the statute suggests that 1.0 acre is an appropriate and allowable disturbance.

RESPONSE: The statute does not suggest that a one acre limitation is appropriate for all general permits. The Act requires the one acre limit on two specific general permits. All other general permits must be limited pursuant to Section 23c of the Act so as to cause no significant environmental impact. The limits on general permit use which the commenters object to are necessary to ensure that there is no adverse individual or cumulative impact on the environment.

COMMENT: A distinction between temporary and permanent disturbances of freshwater wetlands should be made in dealing with Statewide General Permit "stacking" in N.J.A.C. 7:7A-9.4. The installation of utility lines and crossings and other temporary disturbances associated with permitted construction activities should not be considered permanent disturbances, and should be exempt from the acreage restriction on stacking of permits. The provision should read: "Wetlands areas temporarily disturbed by regulated activities shall be, in the case of excavation, backfilled with the original soil material to the preexisting elevation and, in all cases, shall be revegetated with native indigenous species. The temporary activity shall be designed so as not to interfere with the natural hydraulic characteristics of the wetland and subwatershed."

RESPONSE: The Department disagrees. Even when actual construction lasts a few days or weeks and restoration is performed, most of the activities allowed in the Statewide General Permits will have long lasting effects on freshwater wetlands and State open waters. Therefore, allowing unlimited "temporary" disturbances would violate the requirement in the Freshwater Wetlands Protection Act which allows general permits only for activities with minor impacts.

COMMENT: The limitation at N.J.A.C. 7:7A-9.4(c), which limits the use of multiple Statewide General permits on a site, should not be adopted since it is too restrictive. Each acreage limitation for each Statewide General Permit should be the standard for the amount of acreage to be disturbed.

RESPONSE: The Department restricts the multiple use of Statewide General Permits to avoid cumulative impacts to freshwater wetlands and State open waters as required by the Act.

Agency Initiated Changes:

1. The general Permit for stormwater outfalls at N.J.A.C. 7:7A-9.2(a)11ii was clarified to indicate that the 20 foot width disturbance applies to rights of way for all conveyance structures, not solely to piping.

2. The language at N.J.A.C. 7:7A-9.2(a)17i was modified to allow wider trails or boardwalks when necessary to accommodate barrier free access designs.

3. The general permit for trails and boardwalks at N.J.A.C. 7:7A-9.2(a)17i has been clarified to indicate that, except when required for barrier free access, boardwalks and trails are limited to six feet in width. This provides consistency with the dock and pier width limitations in the Rules on Coastal Resources and Development (N.J.A.C. 7:7E) and with the requirements of the Federal government.

4. The language in N.J.A.C. 7:7A-9.4(c) was clarified to indicate that the total area of wetlands or State open waters disturbed or modified under multiple general permits is measured "on-site" instead of "on a property", since on-site is defined in the rules, and the term "property" is not defined, and could cause confusion.

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

7:7A-9.2 Statewide General Permits

(a) The following activities in freshwater wetlands and State open waters are hereby allowed under Statewide General Permits provided the activity is in compliance with specific conditions contained in the Statewide General Permit and with the standard conditions for all Statewide General Permits in N.J.A.C. 7:7A-9.3 and provided the activities are in compliance with the Act, this chapter, and the Federal Act:

1.-9. (No change.)

10. Minor road crossing fills ***and expansion of existing road crossing fills*** including attendant features, both temporary and permanent, that are part of a single and complete project for crossing a freshwater wetland or State open water, provided that:

i. The crossing is bridged, culverted or otherwise designed to prevent the restriction of, and to withstand, expected high flows;

ii. Disturbance of any freshwater wetlands *[or State open waters]* does not extend *[beyond 50 feet on either side of the ordinary high water mark of any associated water body]* ***more than 50 feet on either side of the ordinary high water mark of State open waters. Where no State open waters are present, the total length of the disturbance or modification of freshwater wetlands caused by the crossing shall be no greater than 100 feet***;

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iii. The total area of freshwater wetland***s and/***or State open water***s*** disturbed ***or modified*** does not exceed 0.25 acres or 100 cubic yards of fill, whichever is smaller; and

iv. The crossing is designed to minimize disturbance and other detrimental effects upon freshwater wetlands or State open waters through the use of best management practices including, but not limited to:

(1) Minimizing cartway, shoulder widths and side slopes of the roadway;

(2) Stabilizing all disturbed areas ***in accordance with the Standards for Soil Erosion and Sediment Control***; *[and]*

(3) Using suitable, clean, non-toxic fill material*[.]**; **and***

(4) Designing the crossing so as not to impede fish passage, when a watercourse is present, by maintaining the existing gradient and bottom contours of the watercourse; using open arch or box culverts; and using single large open arches or culverts to span the watercourse.

11. Construction of stormwater outfall structures and associated stormwater conveyance structures such as pipes, headwalls, rip-rap and other energy dissipation structures, provided the following conditions are met:

i. The structures are designed to minimize the area of freshwater wetlands or State open waters disturbance;

ii. The *[right-of-way]* ***limit of disturbance or modification of freshwater wetlands or State open waters*** for any *[piping]* ***conveyance structures*** does not exceed 20 feet in width;

iii. The total area of freshwater wetlands or State open waters disturbed ***or modified*** does not exceed 0.25 acres;

iv. The facility is designed in accordance *[with a plan approved by the appropriate County Soil Conservation District]* ***with the Standards for Soil Erosion and Sediment Control in New Jersey, promulgated by the New Jersey State Soil Conservation Committee, Division of Rural Resources, New Jersey Department of Agriculture. If applicable, the facility shall be designed in accordance with a soil erosion and sediment control plan approved by the appropriate Soil Conservation District. If no plan is required the applicant shall certify to the Department that the proposed facility is in accordance with the standards for Soil Erosion and Sediment Control***;

v. All stormwater which is discharged into a freshwater wetland or State open water ***from an outfall constructed under this Statewide general permit*** is first filtered or otherwise treated outside of the freshwater wetland or State open water, to minimize sediment, pollutants, and any other detrimental effects upon the freshwater wetland or State open water. Detention basins, contour terraces and grassed swales are examples of pre-discharge treatment techniques which may be *[acceptable]* ***required by the Department***. This Statewide General Permit does not authorize placement of detention facilities in freshwater wetlands or State open water***s***. The Department will take into consideration whether the outfall is part of a Regional Stormwater Management Plan already approved by the Department;

vi. The total amount of rip-rap or any other material placed in the freshwater wetland or State open water does not exceed 10 cubic yards ***per outfall structure and associated rip-rap apron***; and

vii. The upper 18 inches of material in any backfilled area must consist of the original topsoil ***and the backfilled area shall be returned to the pre-existing elevation***.

12. Surveying activities such as soil borings and ***the*** cutting of ***vegetation for*** narrow (***three to*** five feet *[or less]* ***in width***) survey lines *[which do not alter the character of the freshwater wetland or State open water]*. ***Survey lines of less than three feet in width shall not require Department authorization. Soil borings dug by hand, using non-mechanized means, no greater than three feet in diameter or in depth, shall not require Department authorization.***

13. Fish and wildlife harvesting activities such as traps and duck blinds.

14. Placement of water level recording devices, water quality monitoring and testing devices***,*** and similar scientific devices.

15. Mosquito control water management activities conducted by a county mosquito control agency***, or Federal agency on federal land,*** provided:

i. Best management practices are employed including, but not limited to, shallow swales no more than three feet wide, and low sills no more than three feet wide;

ii. Disturbance of vegetation is minimized;

iii. Only light equipment is used;

iv. Excavated spoils are removed or spread evenly in a shallow layer no more than three inches deep on-site;

v. The existing hydrologic condition of the hydric soils is maintained (that is, excessive drainage is not permitted);

vi. The activities do not take place in exceptional resource value freshwater wetlands; and

vii. The county ***mosquito control agency or Federal agency*** submits individual, site-specific project proposals to the Administrator of the State Office of Mosquito Control Coordination, and the Administrator determines that the project is necessary to control a documented mosquito problem to existing residents. After approval by the Administrator, the project shall then be submitted to the Department for Statewide General Permit review in accordance with the requirements of this chapter.

16. Fish and wildlife management activities which do not involve the discharge of more than 10 cubic yards of clean fill, carried out in county, State or Federal wildlife management areas, parks or reserves. These activities include but are not limited to:

i. The placement of artificial nesting structures, ***nesting islands,*** observation blinds, sign posts, or fencing;

ii. The clearing***, burning or removal*** of vegetation to increase habitat diversity ***or to control nuisance flora*** (when carried out in accordance with an approved wildlife management plan); and

iii. The blocking or filling of human-made drainage ditches for the purpose of restoring previously existing wetland conditions.

17. Trail and/or boardwalk construction on publicly owned park land, wildlife management areas or reserves, ***in freshwater wetlands or State open waters,*** provided:

i. The width of the trail or boardwalk does not exceed *[eight]* ***six*** feet***, except for barrier free trails or boardwalks designed in accordance with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7. This general permit does not authorize construction of restrooms, gazebos, rain shelters, or any covered or enclosed structure***;

ii. Natural materials such as wood chips ***or wooden planks*** are used to the maximum extent practicable;

iii. The project does not interfere with the natural hydrology of the area; and

iv. The project does not encroach upon or adversely affect the habitat of any threatened or endangered species.

7:7A-9.4 Use of multiple Statewide General Permits

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

(c) For Statewide General Permits at N.J.A.C. 7:7A-9.2(a) 2, 6, 7, 10 and 11, the Department may approve activities covered under more than one general permit on a single property, provided that the total area of wetlands or State open waters disturbed ***or modified*** *[on that property]* ***on-site*** by activities *[under general permits 10 and 11 does not exceed 0.25 acres, the total disturbance on the property under Statewide General Permits 6 and 7 does not exceed one acre and the total disturbance of wetlands or State open waters on the property under all general permits combined does not exceed one acre. For example, the Department could approve a minor road crossing disturbing 0.125 acre, an outfall disturbing 0.125 acre, and 0.5 acre of fill in a swale, such that the total area disturbed on the property under the combined authority of Statewide General Permits 10 and 11 would not exceed 0.25 acre, the total disturbance under Statewide General Permit 7 would not exceed one acre and total disturbance on the property under the authority of all general permits would not exceed one acre.]* ***authorized under Statewide General Permits does not exceed one acre and provided that all conditions for each Statewide General Permit authorizing activities on-site are complied with, including acreage limitations. For example, the Department could approve on-site a minor road crossing disturbing 0.25 acres, stormwater outfall structures disturbing a total of 0.25 acres, and the filling of 0.5 acres of a ditch.***

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(d) (No change.)

(e) For Statewide General Permits at N.J.A.C. 7:7A-9.2(a) 1, 3, 4, 5, 9, 12, 13, 14, 15, 16 and 17, the Department may issue approvals for any number of activities on a single property covered by any number of these general permits. Later activities on the same property will also be eligible for approval under these Statewide ***general*** permits.

(f) No property will be the subject of Department approvals under Statewide General Permits 2, 6, 7, 10 or 11 more often than once every five years.

(a)

DIVISION OF WATER RESOURCES

Bureau of Marine Water Classification and Analysis Shellfish-Growing Water Classification

Adopted Amendments: N.J.A.C. 7:12-1.1, 2.1, 3.2, 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9, and 9.12.

Proposed: May 1, 1989 at 21 N.J.R. 1041(b).

Adopted: June 21, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: June 23, 1989 as R.1989 d.390, **with substantive changes not requiring additional public notice and comment** (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEP Docket Number: 018-89-04.

Effective Date: July 17, 1989.

Expiration Date: April 11, 1993.

Summary of Public Comments and Agency Responses:

These rules were proposed on May 1, 1989. The public comment period closed on May 31, 1989.

No comments were received.

Agency Initiated Changes

A change upon adoption was made to N.J.A.C. 7:12-1.1(i) in order to update the citation to the most recent Nautical Charts used to develop the Shellfish-Growing Water Classification Charts.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions to proposal indicated in brackets with asterisks *[thus]*.

7:12-1.1 General provisions

(a)-(h) (No change.)

(i) Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Classification and Analysis Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, *[80th Edition, December 29, 1984]* ***81st Edition, March 15, 1986***; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 23rd Edition, June 1, 1985; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 22nd Edition, May 4, 1985; and Number 12304 Delaware Bay, 30th Edition, March 16, 1985. The Department of Environmental Protection hereby condemns all shellfish growing waters as described in this chapter and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year, except when otherwise noted in N.J.A.C. 7:12-4 and 6.

(j) (No change.)

7:12-2.1 Shellfish growing water classification—Prohibited

(a) The following shellfish growing waters are classified Prohibited:

1.-2. (No change.)

3. Monmouth-Middlesex County area (Note that a portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3:

i.-vi. (No change.)

4.-19. (No change.)

20. Atlantic Ocean.

i.-ix. (No change.)

x. All of the ocean waters inshore of a line beginning at the base of the western jetty of Cape May Inlet and continuing along that jetty in a southeasterly direction to the light at the end of the jetty charted as Fl G 4 sec 37ft 7M HORN, then bearing approximately 295 degrees T (reciprocal 115 degrees T) to the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and terminating;

xi. All of the waters of the Cold Spring Inlet Hopper and Bucket Dredge Disposal Area contained within a line beginning at an offshore point with coordinates of latitude 38 degrees 55.9 minutes N., and longitude 74 degrees 53.1 minutes W., and bearing approximately 156 degrees T for approximately 0.35 nautical miles to a point with coordinates of latitude 38 degrees 55.6 minutes N., and longitude 74 degrees 52.9 minutes W., then bearing approximately 248 degrees T for approximately 0.5 nautical miles to a point with coordinates of latitude 38 degrees 55.4 minutes N., and longitude 74 degrees 53.5 minutes W., then bearing approximately 332 degrees T for approximately 0.3 nautical miles to a point with coordinates of latitude 38 degrees 55.7 minutes N., and longitude 74 degrees 53.7 minutes W., then bearing approximately 66 degrees T for approximately 0.5 nautical miles to its point of origin and terminating; and

xii. All those waters inshore of a line beginning at the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and bearing approximately 151 degrees T for approximately 0.25 nautical miles from the shoreline to a point with coordinates of latitude 38 degrees 56.2 minutes N., and longitude 74 degrees 53.2 minutes W., then parallel along the shoreline in a westerly direction, 0.25 nautical miles offshore, for approximately 1.4 nautical miles until it intersects a line bearing 166 degrees T from the water tank located on the corner of Madison Avenue and Columbia Avenue, City of Capy May, with coordinates of latitude 38 degrees 56.2 minutes N., longitude 74 degrees 54.9 minutes West. This point of intersecting lines is approximately 0.25 miles from the shoreline and has coordinates of latitude 38 degrees 55.6 minutes N., longitude 74 degrees 54.7 minutes West. Then proceeding in a southeasterly direction along that line for approximately 1.75 nautical miles to a point with coordinates of 38 degrees 53.9 minutes N., longitude 74 degrees 54.2 minutes W., then proceeding in a westerly direction two nautical miles offshore for approximately 5.7 nautical miles until it intersects a line bearing approximately 033 degrees T connecting a point with coordinates of latitude 38 degrees 54.3 minutes N., longitude 75 degrees 01.7 minutes W. (generally marked by a buoy charted as R"2" Fl R 4s) and a point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W. (generally marked by a buoy charted as R "4" Fl R 2.5sec marking the southwest side of Crow Shoal). This point of intersecting lines has coordinates of latitude 38 degrees 55.5 minutes N., longitude 75 degrees 0.7 minutes West. Then proceeding in a northeasterly direction for approximately 0.5 nautical miles to the point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W., then along the line described in (a)18i above to the Cap May Point Lighthouse (Fl 15 sec 165 ft. 24M) and terminating. This closure adjoins those Prohibited waters described in (a)18i above.

7:12-3.2 Shellfish growing waters that are classifed as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted:

1. All those waters contained within a line beginning on the northernmost point of Conaskonk Point near Union Beach, New Jersey and bearing approximately 345 degrees T to Sequine Point at Princes Bay, Staten Island, New York, until it intersects the New York-New Jersey boundary, then along that boundary in an easterly direction until it intersects the Raritan Bay East Reach Channel, then along the southwest boundary of that channel in a southeasterly direction

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(approximate bearing 106 degrees T) to the channel marker designated as GR "TC" Interrupted Quick Flashing Green light (GR "TC" I QK Fl G) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel and Terminal Channel, and then bearing approximately 098 degrees T to the navigation aid designated as "Equal Interval 6 second and vertical Beam light 38ft 15M Bell" (E. Int. 6 sec and VB 38ft 15M Bell) located on the shore at Sandy Hook Point, then proceeding in a generally southerly direction following the western shoreline of Sandy Hook to the westernmost extent of the Rt. 36 highway bridge spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on the mainland and then following the shoreline in a generally northwesterly direction until it intersects a line bearing approximately 201 degrees T from the navigational marker designated as Flashing light 4 second 29ft 8M (Fl 4 sec 29ft 8M) marking the easternmost extent of the Atlantic Highlands Municipal Yacht Basin's breakwater (this stonepile forms the basin's northern boundary), and then along that line in a northerly direction to the marker designated as a Flashing light 4 second 29ft 8M and following the northern side of the breakwater in a westerly direction until it reaches the structure forming the western boundary of the Yacht Basin, and then following the western edge of this structure in a southerly direction to the mainland, then following the shoreline in a generally northwesterly direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.

2.-17. (No change.)

18. Tuckerton area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4): All of Tuckerton Creek and tributaries thereof north and west of a straight line connecting the west and east banks of the cove formed by the alignment of the range (Department maintained) located on the west bank of Tuckerton Cove and the telephone pole (P-21377) on the east bank. When the range is aligned, the bearing it creates is approximately 049 degrees T (reciprocal 229 degrees T).

19.-20. (No change.)

21. Reed Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of the unnamed cove southwest of Somers Cove (adjacent to the Seasonal area described in N.J.A.C. 7:12-4.1(a)4ii) west of a line connecting two Department maintained markers.

Redesignate existing i.-ii. as ii.-iii. (No change in text.)

22.-27. (No change.)

28. Stathmere and Sea Isle City area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of Maple Swamp Creek;

ii. That portion of Ludlam Bay lying south and west of a line beginning at a Department maintained marker on the shoreline of the barrier island and bearing approximately 336 degrees T to marker R "118" then bearing approximately 232 degrees T to a Department maintained marker on the mainland and terminating.

Redesignate existing ii.-iv. as iii.-v. (No change in text.)

29. (No change.)

Renumber 31.-34. as 30.-33. (No change in text.)

7:12-4.1 Seasonally approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1.-3. (No change.)

4. Absecon Bay-Absecon Channel Reed Bay area: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30, yearly:

i. (No change.)

ii. All those waters in the unnamed cove (southwest of Somers Cove) from a Department maintained marker on the northern shoreline and bearing approximately 215 degrees T across the cove to another Department maintained marker and along that shoreline in a northerly direction to a Department maintained marker, then bearing approximately 005 degrees T to another Department maintained marker, then along the shoreline in a generally easterly direction to the point of origin and terminating.

5. (No change.)

6. Lakes Bay-Shelter Bay-Risley Channel Area: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly.

i. All that portion of Lakes Bay, Shelter Bay and adjoining thorofares contained within a line from the Pleasantville Yacht Club and following the channel markers Fl G "15", Fl G "13", Fl G "11", Fl R "8" to Fl G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island, then along the shoreline of Great Island in a southerly direction to a Department maintained marker (at the southwestern most point), then bearing approximately 216 degrees T to the northwestern tip of Shelter Island, then bearing approximately 206 degrees T to a Department maintained marker on an unnamed island then along the northern and western shoreline of the island to another Department maintained marker, then bearing approximately 245 degrees T to Jonas Island, then along the eastern shoreline, then along northern shoreline, then along western shoreline to a Department maintained marker, then bearing approximately 204 degrees T to Pork Island, then along the shoreline in a westerly direction to the base of the Ventnor-Margate Bridge, then bearing approximately 233 degrees T to the most northern point of land on Lone Cedar Island, then along the western and southern shoreline of Lone Cedar Island to a Department maintained marker, then bearing approximately 214 degrees T to the northwesternmost point of land on Dune Island, then along the western shore of Dune Island to its westernmost point, then bearing approximately 223 degrees T across Risley Channel to a Department maintained marker, then following the shoreline in a northerly direction to an unnamed thorofare, then following the southeast shoreline of that thorofare to a point of land adjacent to G "3" (at the junction with Broad Thorofare) then bearing approximately 350 degrees T across the thorofare to the point of land on the opposite bank, then along the shoreline in a northeasterly direction to its mouth at Risley Channel, then following the shoreline in a northerly direction and across the mouth of the next unnamed thorofare connecting Risley Channel and Scull Bay and continuing in a northerly direction along the shoreline of Dock Thorofare, including all of Mulberry Thorofare, then from the point of land on the north side of Mulberry Thorofare (at its mouth) bearing approximately 077 degrees T to the southermost point of land on Kiahs Island, then along that shoreline in a northeasterly direction (approximately 2500 yards) to a Department maintained marker, then bearing approximately 340 degrees T to the opposite shoreline at the point of land on the east side of the mouth of the unnamed creek just east of Stillman Creek, then continuing in an easterly direction along the northern shoreline of Dock Thorofare, Lakes Channel and Lakes Bay to its point of origin at the Pleasantville Yacht Club and terminating.

7-8. (No change.)

9. Great Sound area:

i. (No change.)

ii. All of Cresse Thorofare, Gull Island Thorofare, Great Channel, Shark Creek and Goths Creek contained within a line starting at a Department maintained marker on Halfmile Point, continuing along the shoreline of Cresse Thorofare in a southerly direction, across the mouths of Little Oyster and Oyster Creeks, continuing along the shoreline and across the mouth of Scotch Bonnet and continuing along the shoreline including Goths Creek, continuing along the shoreline and across the mouth of Muddy Hole, continuing along the shoreline and across the second mouth of Muddy Hole to the Stone Harbor Boulevard Bridge, then along the bridge in a southeasterly direction to the Stone Harbor shoreline, then along the shoreline (excluding harbors and basins) in a northeasterly direction across the mouths of Stone Harbor Creek and Oldman's Creek, continuing along the shoreline including Shark Creek, then along that shoreline in a northerly direction along Sturgeon Hole to a Department maintained marker, then bearing approximately 290 degrees T

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to a Department maintained marker on Gull Island and continuing to the point of origin at Halfmile Point.

10. Delaware Bay area:

i.-v. (No change.)

vi. Fishing Creek: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Fishing Creek: and

Redesignate existing vi. as vii. (No change in text.)

7:12-4.2 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31 yearly)

(a) The following shellfish growing waters, designated on the charts referred to in N.J.A.C. 7:12-1.1, shall be Special Restricted for harvest of shellfish from May 1 through December 31 yearly and Approved January 1 through April 30 yearly:

1.-4. (No change.)

5. Tuckerton area: Seasonal-Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Tuckerton Cove between the line described in N.J.A.C. 7:12-3.2(a) 18 and a line connecting the east and west banks of the cove formed by the alignment of the range (Department maintained) located on the west bank of the Tuckerton Cove and the telephone pole (P-35877) on the east bank. When the range is aligned, the bearing it creates is approximately 254 degrees T (reciprocal 74 degrees).

6.-7. (No change.)

8. Great Egg Harbor River and Middle River: Seasonal Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All that portion of Great Egg Harbor River and Middle River contained within a line beginning at Fl R "4" and bearing approximately 215 degrees T to the western shoreline of Great Egg Harbor River and along that shoreline in a northwesterly direction to Middle River, then along the south shore of Middle River to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River, then along the shore of Great Egg Harbor River to a Department maintained marker, then bearing approximately 028 degrees T to Fl R "8", then along the northern and/or eastern shore of Great Egg Harbor River in a downstream direction to the point of origin at Fl R "4".

7:12-5.1 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, Condemned Area: October 1 through April 30 yearly)

The Seasonal Special Restricted waters described below shall be Condemned for the harvest of shellfish from October 1 through April 20 yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-9 and N.J.A.C. 7:17, during the period May 1 through September 30 yearly. These waters will not be utilized, that is, will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metals are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by the Department from analyses of ongoing studies.

7:12-9.1 General provisions

(a)-(g) (No change.)

(h) Due to the necessity to closely monitor this program for the purpose of protecting public health, the Division of Water Resources shall immediately suspend the Special Permit or any participant who violates any condition of the permit or any provision of this chapter and thereby creates a threat to public health by compromising the purity of shellfish as a food product. The Division of Water Resources may suspend the Special Permit of any participant who violates any other condition of the permit or any other provision of this chapter. The right to post-suspension hearing shall be granted by the Division of Water Resources in accordance with the procedures established by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1. The hearing shall be held on an expedited basis, unless an adjournment is requested by the participant.

(i)-(j) (No change.)

7:12-9.7 Relay program

(a) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the shellfisheries rules which appear at N.J.A.C. 7:25-15.1.

1.-8. (No change.)

9. All hard clams taken from the designated relay waters shall be relayed to the special leased plots on a schedule set by the Department and shall remain upon said leased plots until written permission for harvest has been granted by the Bureau of Marine Water Classification and Analysis. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30 day purging period will begin on a schedule established by the Department. Additionally, the water temperature of the Approved waters during the minimum 30-day purging period shall be at or above 10 degrees Celsius (50 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of Marine Water Classification and Analysis. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10.-21. (No change.)

7:12-9.8 Transfer program

(a) (No change.)

(b) Permit No. 6 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-6. (No change.)

7. To facilitate compliance with (b)6 above, the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final transfer to the leased lots has been completed and validated in accordance with (b)2 above. The minimum 30-day purging period shall begin after the Bureau of Marine Water Classification and Analysis has received written notice of the final transfer date and has determined that the water temperature of the Approved waters have stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit).

8.-11. (No change.)

(c) (No change.)

7:12-9.9 Transplant program

(a) The purpose of Permit No. 7 (Transplant Permit Seed Oysters) is to allow for the harvest and possession of seed oysters from waters classified other than Approved for transplanting to leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of Marine Water Classification and Analysis. The purging period will be for a minimum of 30 days at which the water temperature of the approved waters have stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis.

(b) Permit No. 7 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-6. (No change.)

7. To facilitate compliance with (b)6 above the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final transplanting to a particular leased lot. The minimum 30 day purging period shall begin after the Bureau of Marine Water Classification and Analysis has received written notice of the final transfer date and has determined that the water temperature of the Approved waters have stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit).

8.-10. (No change.)

(c) (No change.)

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7:12-9.12 Seed oysters

(a) (No change.)

(b) Permit No. 8c shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-6. (No change.)

7. To facilitate compliance with (b)6 above, the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final planting on the leased lot. The minimum 30-day period shall begin after the Bureau of Marine Water Classification and Analysis has received written notice of the final planting date and has determined that the water temperature of the Approved waters has stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit).

8.-9. (No change.)

(c) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fishery Management/Menhaden
Marine Fisheries

Adopted Amendments: N.J.A.C. 7:25-22.1 and 22.2
Adopted New Rules: N.J.A.C. 7:25-22.3 and 22.4

Proposed: January 17, 1989 at 21 N.J.R. 107(a).

Adopted: June 23, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: June 23, 1989 as R.1989 d.394, **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. 13:1D-1 et seq., 23:2B-1 et seq., particularly 23:2B-6 and 23:2B-14, 23:3-51 and 23:5-28.

DEP Docket Number: 049-88-12.

Effective Date: July 17, 1989.

Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

The public comment period ended on February 16, 1989. Fifteen commenters submitted written comments during the comment period. In order to provide the additional opportunity for public comment, a public hearing was held by the Department of Environmental Protection (Department) and the Marine Fisheries Council (Council) on February 9, 1989 and approximately 11 persons offered oral comment. Many of the comments, both oral and written, were similar in nature and have been combined. Commenters included representatives of commercial fishing companies, menhaden trade organizations, recreational fishing clubs, party and charter boat associations, State and county government, and individual recreational and commercial fishermen.

COMMENT: The 1983 incident with large menhaden purse seiners created a reckless situation and endangered lives.

RESPONSE: In the fall of 1983, many large schools of menhaden existed along the northern New Jersey coast. Approximately 16 large purse seine vessels actively engaged in simultaneous fishing operations on these large schools. The Department was notified of a number of conflicts between the large menhaden purse seiners and recreational boats at this time. Adoption of the amendments and new rules should prevent these kinds of conflicts from reoccurring.

COMMENT: In 1987 there was a conflict between large menhaden purse seiners and recreational boat fishermen in Raritan and Sandy Hook Bays. The large boats threatened local boaters with statements such as "move or suffer the consequences."

RESPONSE: The Department has no record of this incident or of any complaint lodged in connection with this incident. As such, it cannot affirm or deny its occurrence.

COMMENT: The potential for increased fishing pressure and increased conflict from the menhaden reduction fishery exists if the United States Food and Drug Administration (FDA) approves menhaden oil as a food source. This action has the potential to cause a 27 million dollar expansion in the industry.

RESPONSE: If the FDA approves menhaden oil as a source of food or vitamin supplement, increased fishing pressure would be likely. Any increased pressure may be especially felt in the northern areas (from New Jersey through Maine) where larger fish with higher oil content tend to aggregate through the summer and fall. The Department agrees that it is also likely that increased conflicts could result in conjunction with stepped up fishing efforts to satisfy this new market. The adoption is intended to reduce such conflict.

COMMENT: The 1.2 nautical mile restricted zone established in the proposal is a fair compromise between sportfishermen (allegedly numbering 10,000) who wanted the menhaden fishery restricted from fishing within two miles from shore and purse seiners.

RESPONSE: The Department acknowledges this comment in support of the proposal. The Department is aware of two bills pending in the New Jersey Legislature that would prohibit the purse seining of menhaden within two miles of the shore. However, it agrees that a prohibition within 1.2 nautical miles of the ocean shore for the large purse seine vessels should work to greatly reduce spacial conflicts as well as reduce the need for the passage of such bills.

COMMENT: Menhaden purse seine fishing activity disrupts feeding of weakfish, striped bass and bluefish and, thereby, disrupts sport fishing for these species. Even the perception of a loss of gamefish, or their availability, to the sport angler results in a real economic loss to party and charter boats, bait and tackle shops and tourism in general. Any reduction in the conflicts between the menhaden industry and sportfishermen in nearshore areas and any resolution of the real or perceived impact to gamefish should be accomplished to protect the economies of coastal communities.

RESPONSE: Available information indicates that menhaden purse seine fishing does not result in the harvest of significant numbers of sportfish. Existing data further suggests that menhaden do not constitute a major portion of the diet of bluefish or striped bass. At certain times, however, sportfish do feed heavily on concentrated schools of menhaden. At these times, sportfish increase in local abundance and become more available to sport fishermen. Disruption or removal of these menhaden schools at such times will have the impact of reducing local availability of the predatory fishes and thus impact the recreational fishery and support industries. The adoption should reduce the real as well as the perceived conflicts and, thereby, reduce the impacts to the coastal communities as described in the comment.

COMMENT: The proposed amendments and new rules would reduce availability of a significant portion of the area previously fished by the menhaden reduction industry in New Jersey, thereby curtailing rights of New Jersey citizens to share in health benefits of menhaden meal and oil by reducing the availability of high quality protein to the poultry industry.

RESPONSE: The proposed amendments and new rules would reduce the area allowed for menhaden fishing for fishmeal reduction purposes by eliminating the Raritan, Sandy Hook and Delaware Bays and by extending the coastal restricted area from 0.6 to 1.2 nautical miles from shore. Approximately half of the recent fishing effort directed upon menhaden for fishmeal reduction purposes has been within the zone that would be restricted by this proposal. The additional restrictions would not, however, preclude the industry from harvesting pre-restriction amounts of menhaden, provided that additional fishing time is expended. As indicated under Social Impact in the proposal (see 21 N.J.R. 107(a)), these restrictions are essential to reduce spacial conflicts in an already crowded near-shore fishing area.

COMMENT: The proposed amendments and new rules are not consistent with the Atlantic States Marine Fisheries Commission (ASFMC) coastwide management plan which, in part, recommends the elimination of restrictions on the fishery which do not contribute to achieving the greatest continuing yield from each area. "Closures such as those proposed in New Jersey and those in Delaware, North and South Carolina, New York and New Hampshire reduce the areas available for fishing regardless of stock conditions, and continued loss of fishing grounds threatens the existence of the industry."

RESPONSE: The ASFMC recommendation to eliminate restrictions to the fishery which do not contribute to achieving the greatest continuing yield was taken into consideration during the development of the proposed amendments and new rules. However, the proposed 1.2 mile line was proposed in an effort to reduce existing real and perceived conflicts, the potential for increased future conflicts, and the resultant economic loss to the recreational fishery, while being responsive to the needs of the large-vessel purse seine fishery. This was deemed adequate to reduce conflicts in the crowded near-shore fishing area while providing continued access, although limited, to the commercial industry. It is important to note that a number of other states such as New Hampshire,

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Delaware, Maryland and portions of New York are significantly more restrictive than New Jersey. Proper management of the fishery demands that all aspects of the resource, including the habitat upon which it depends and the various user groups dependent upon the resource, be addressed, considered and weighed.

COMMENT: No major conflicts have occurred since the 0.6 nautical mile restriction was established by regulation in 1983 and only one alleged violation of this regulation has occurred during this period. Why, therefore, are additional restrictions being placed upon the commercial menhaden fishery?

RESPONSE: Every year since 1983, bills have been introduced in the New Jersey Legislature to prohibit large-scale menhaden purse seining in New Jersey within either 1.2 or two nautical miles of the shoreline. Written responses to this proposal allege that there was a conflict incident in 1987 as well as negative economic impacts on the recreational fishing industry and on tourism in general from continued legal nearshore (0.6 nautical miles) presence of the large menhaden vessels. The proposed amendments and new rules strike a balance between the recreational and coastal economic interests on the one hand and the fishmeal reduction industry on the other, and it may forestall the imposition of strict legislative sanctions on the fishmeal reduction industry. The amendments and new rules also attempt to minimize potential long term conflicts likely resulting from increased recreational boating (New Jersey boat registrations increased from 129,886 in 1981 to 150,121 in 1987) and increased commercial presence that would result from an FDA approval of menhaden oil as a source of food.

COMMENT: The proposed amendments and new rules prohibit the possession of fish other than menhaden on a purse seine vessel harvesting menhaden. The industry needs a one percent tolerance on this limitation.

RESPONSE: The primary purpose of this provision is to prevent directed fishing activity on species other than menhaden, while allowing the menhaden fishery to continue to operate. Since catches of menhaden by purse seiners are not landed in New Jersey, the enforcement effort necessary to monitor a limited allowable by-catch would be unworkable. Even if the catches were landed in New Jersey, the large volume of these catches and the need for certified weighing equipment and additional Department personnel to oversee operations would present enormous enforcement problems. Consequently, for adequate enforcement, a by-catch allowance is not feasible and a zero tolerance is essential.

COMMENT: Industry could establish a voluntary program setting forth requirements that would achieve the goals of the proposed amendments and new rules. This program could include provisions to end fishing activities by noon each Friday; to prohibit fishing in Raritan and Sandy Hook Bays or within one mile of inlets, piers or jetties; to establish a maximum number of four boats in each of 15 zones along the coast and in the Delaware Bay; and, to establish a one percent by-catch tolerance.

RESPONSE: The establishment and strict adherence to such a voluntary program by the menhaden fishing industry throughout the past decade could have reduced past conflicts to the point where there may not have been a need for the amendments and new rules. However, in the absence of such a voluntary program, it is now incumbent upon the Department to implement and enforce the program established by this adoption. In addition, compliance with this kind of voluntary plan would be very difficult and its provisions would be largely unenforceable.

COMMENT: There is no scientific evidence of menhaden stock problems and the proposed amendments and rules would have no significant effect on the status of sportfish stocks.

RESPONSE: During the 1970's, the menhaden landings showed decreasing numbers of sexually mature (greater than three years of age) fish in the population, an increase in the harvest of those fish less than one year old and a decreasing yield per recruit. These are classic signs of overfishing and precipitated the development of a coastwide fishery management plan. Since that time fishing effort has been reduced significantly, primarily due to economic factors within the menhaden fishmeal-reduction industry. Although the primary purpose of the proposed amendments and new rules is to reduce social and spacial conflict problems, the amendments and rules would have the added effect of affording some increased protection to the menhaden stocks while they were in New Jersey waters, especially if fishing effort were to increase to or above prior levels. The Department agrees that it is unlikely that there would be a significant impact on the status of sportfish stocks, but the amendments and rules may have a positive impact on local availability of sport fish as noted earlier.

COMMENT: There is no scientific evidence that the proposed amendments and rules would have any beneficial effect on the survival of juvenile menhaden.

RESPONSE: As stated in the prior response, the primary purpose of amendments and rules is to reduce social and spacial conflict problems. Any increased protection afforded to juvenile menhaden would be an additional benefit. Although there is no data on size and age distribution within the proposed 1.2 nautical mile zone along our coast, the Department does know that juvenile menhaden inhabit the coastal bays and tributaries during the summer months. As they leave in the fall to migrate southward along the coast, it is reasonable to assume that the increased restricted zone from 0.6 to 1.2 nautical miles from shore would give added protection from harvest to these juvenile fish while in New Jersey waters. However, it must be noted that even a total elimination of the fishery in New Jersey waters may not affect juvenile survival if effort is increased in other areas such as Virginia or North Carolina, to and from which the fish from New Jersey waters migrate.

COMMENT: A request was made to establish a committee composed of commercial and recreational fishermen to consider alternative options prior to adopting the proposed amendments and new rules.

RESPONSE: A committee composed of representatives of the Council and the Division of Fish, Game and Wildlife met separately with representatives of both the fishmeal reduction industry and recreational interests in this matter and to develop the amendments and rules. Establishing another committee to serve the same function would be redundant and cause an unnecessary delay in the regulatory process.

COMMENT: The Council was not made aware of all the background material available which is pertinent to this matter. In view of the factual information provided to the Department by the fishmeal reduction industry, the present rules should continue in effect without change.

RESPONSE: Copies of all the information provided by the fishmeal reduction industry to the Department have been made available to all of the Council members. The Council had full opportunity to comment on the proposal before, during and after their meeting of April 13, 1989 and final adoption of these amendments and rules is being made with their approval.

COMMENT: General reference was made to a court decision regarding the legality of restricting access to a marine resource based upon state of residence.

RESPONSE: Nothing in the proposed amendments and rules restricts access to the resource on the basis of the state of residence of the applicant or registration of the vessel.

COMMENT: N.J.A.C. 7:25-23.3(b)8 and 9 indicate that a vessel licensed to take menhaden in New Jersey could not harvest food fish beyond the State's three mile territorial sea with a purse seine, but vessels not so licensed could land purse-seined food fish in New Jersey. These sections should be replaced with the following: "The possession of any fish other than Atlantic menhaden on board any vessel using a purse seine in State waters is prohibited."

RESPONSE: The comment is valid; however, the alternative offered would not completely solve the problem. Purse seining for food fish offshore of two miles from the shoreline is currently permitted and the alternative proposed by this comment would prohibit such activity. The proposed rule has been changed to make N.J.A.C. 7:25-23.3(b)9 a subparagraph of (b)8 and to make further changes to N.J.A.C. 7:25-23.3(b)8i in order to prohibit the simultaneous possession of Atlantic menhaden, any other fish and a purse seine aboard a vessel licensed to take menhaden. This will allow for some level of dockside enforcement while permitting purse seine vessels to engage in either food fishing activities or menhaden fishing activities at any time except during the same trip. This change will also be made to N.J.A.C. 7:25-22.2(a)10 and 11.

COMMENT: N.J.A.C. 7:25-22.3(b)13 requires a six foot by six foot display containing a yellow capital letter "B" not less than five feet in height on both sides of any vessel harvesting Atlantic menhaden for bait. This is too large a display for some smaller vessels who may engage in this fishery. The fishermen's identification number should be used instead.

RESPONSE: While the Department understands the concern, the use of a fisherman's identification number would not address the purpose of the display, which is to readily identify the vessel's activity to concerned persons in the area. Some of these vessels could be quite large, could fish quite close to shore and could create a great deal of controversy and concern if their activity in the area was not known. N.J.A.C. 7:25-22.3(b)13 has been amended, however, to address the needs of smaller vessels.

COMMENT: A commercial fisherman commented that he tended gillnets along the ocean beaches, did not experience conflicts with large

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vessels and saw no need for the proposed 1.2 mile limit, while another commercial fisherman from the Cape May area commented that he fished primarily in Delaware Bay with nets and also has not experienced conflicts. The latter commenter also expressed concern that the proposed amendments and new rules would curtail the menhaden industry's catch and the resulting increase in menhaden numbers would result in menhaden die-offs that would foul coastal harbors.

RESPONSE: While the Department acknowledges these statements relating the experience of these commenters from the Delaware Bay and Atlantic Ocean areas, it is the Department's experience that the majority of fishermen in these areas believe that there is a conflict problem that must be resolved. The proposed amendments and new rules address this conflict problem without causing significant impact to the overall coastwide harvest of menhaden, nor to the coastal menhaden population. Fishkills involving menhaden typically result from large numbers of young of the year fish moving into tidal creeks or lagoons where their own utilization of dissolved oxygen in the water, coupled with nighttime sags in oxygen levels, cause oxygen deprivation and mortality. It is extremely unlikely that the proposal would have any effect on year class strengths (the number of juveniles produced in any given year) and, therefore, on the prevalence of fishkills due to natural occurrences.

COMMENT: A commenter stated that the menhaden resource is a public resource and access to the resource should be shared. In addition, due to the importance of fishmeal and oil to the consuming public, the supply of menhaden to consumers should not be limited.

RESPONSE: The Department agrees that public access to our marine fishery resources is extremely important. Specifically, the Department has been mandated by the Legislature to maintain and enhance fishery resources to support recreational and commercial use. The major purpose of the proposed amendments and new rules is to address real and perceived spacial and resource conflicts between large purse seine vessels and the sport fishing community, thereby helping to ensure continued public access by diverse interested groups to a wide variety of marine species, including menhaden. Although the amendments and rules do further limit access to the menhaden resource in New Jersey waters by pursue seiners, they do not preclude their ability to harvest menhaden at prior levels through additional fishing effort. As has been stated previously, the amendments and rules should not significantly alter the coastwide harvest of menhaden nor the availability of fishmeal and oil to the consuming public. They should reduce the need for additional restrictions which could result in a decrease in menhaden harvests.

COMMENT: A commentor representing an association of recreational fishing groups comprised of 42 fishing clubs expressed support for the proposed amendments and rules and stated that they were a reasonable compromise from what was originally intended: a two mile exclusion for the operation of all menhaden purse seine vessels. In addition, the commentor expressed concern that fishing operations were too efficient and that the 1.2 mile restriction would provide juvenile menhaden with an adequate corridor to complete their migration.

RESPONSE: The Department acknowledges the aforementioned comments submitted by the various recreational fishing organizations, recreational and commercial fishermen and interested parties and appreciates their efforts to relate their experiences with the issues raised by these proposed amendments and rules.

COMMENT: Six fishing clubs, two recreational fisherman and a representative of the New Jersey Assembly expressed support for the proposed amendments and rules.

RESPONSE: The Department acknowledges the aforementioned comments submitted by the various recreational fishing organizations, recreational and commercial fishermen and interested parties and appreciates their efforts to relate their experiences with the issues raised by the proposed amendments and rules.

Agency Initiated Change:

The term "license" has been replaced with "permit" at N.J.A.C. 7:25-22.2(a)10i and 23.3(b)8i to reflect the need for Atlantic menhaden licensees taking menhaden for bait to possess at Department issued permit.

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 22. FISHERY MANAGEMENT IN NEW JERSEY

7:25-22.1 Menhaden season

The season for taking Atlantic menhaden (Brevoortia tyrannus) from the marine waters of the State of New Jersey by purse seine for fish meal reduction shall begin on the third Monday in May and end on the third Friday in October. This provision shall not impose a limited season for the taking of menhaden for bait, chum or purposes other than for fish meal reduction.

7:25-22.2 Purse seine fishing of Atlantic menhaden

(a) Persons licensed to fish for Atlantic menhaden with a purse seine or shirred net in the marine waters of New Jersey pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52 who are taking Atlantic menhaden for purposes other than bait, as provided in N.J.A.C. 7:25-22.3, shall be subject to the following:

1. (No change.)

2. Fishing shall be restricted to the Atlantic Ocean, not closer than 1.2 nautical miles of any point along the shore, jetties or piers. It will be incumbent upon the captain of a purse seine vessel to determine the possibility of drifting inside the 1.2 nautical mile limit while fishing, before setting his or her net. Drifting into the 1.2 nautical mile restricted area along the shore, or around a jetty or pier, while fishing shall constitute a violation of this subchapter.

3. A person shall not fish on Saturdays, Sundays, and the days on which Memorial Day, Independence Day, Labor Day and Columbus Day are officially observed by the State of New Jersey.

4.-6. (No change.)

7. The licensee is responsible for cleaning up any fish, fish-parts refuse, litter, or garbage of any kind which is released during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the release begins. Upon the licensee's failure to initiate such cleanup within the 24 hour period, the Department may conduct the cleanup or arrange for the performance of the cleanup. In addition to any other penalties and remedies provided by law, the licensee shall be liable for all costs associated with such cleanup, including any administrative costs incurred by the Department. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes.

8. No markers or buoys designating channels, crab pots, lobster pots, fish pots, or traps shall be disturbed by the act of fishing.

9. Persons subject to this subchapter shall notify the Division of Fish, Game and Wildlife's Marine Enforcement Office located at Nacote Creek, Star Route, Absecon, New Jersey when they intend to fish in State waters, by calling 609-441-3474. The notification shall be made both prior to and upon the completion of any fishing in State waters, by the Captain or his or her agent.

10. The possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden on a purse seine vessel harvesting menhaden is prohibited.

*[11.]***i.** The simultaneous possession of ***Atlantic menhaden and*** any ***other*** fish, as defined at N.J.S.A. 23:2B-3e, *[other than Atlantic menhaden]* and a purse seine, aboard a vessel of any person holding an Atlantic menhaden *[license]* ***bait permit*** or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of a violation of this subchapter.

7:25-22.3 Taking of Atlantic menhaden for bait

(a) Persons licensed to fish for Atlantic menhaden (Brevoortia tyrannus) with a purse seine or shirred net in the marine waters of New Jersey pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52, may apply between January 1 and March 1 for a permit for the purpose of taking Atlantic menhaden for bait purposes only.

1. All persons licensed to take Atlantic menhaden for bait purposes only shall keep, on forms furnished by the Division of Fish, Game and Wildlife's Bureau of Marine Fisheries, accurate records of the amount and location of Atlantic menhaden harvested. Forms are available from the Trenton Office of the Division of Fish, Game and Wildlife, Bureau of Marine Fisheries, 501 East State Street, Third Floor, Trenton, New Jersey 08625. These records shall be filed by the 10th day of each month with the Division of Fish, Game and

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Wildlife's Trenton office. If no Atlantic menhaden were harvested during the month, a report to that effect shall be provided to the Division of Fish, Game and Wildlife's Bureau of Marine Fisheries.

(b) Persons licensed to fish for Atlantic menhaden with a purse or shirred net in the marine waters of New Jersey, for the purpose of taking Atlantic menhaden for bait purposes only, shall be subject to the following:

1. Fishing, for the purpose of this section, shall be defined as having a purse seine in the marine waters of this State.

2. Fishing shall be restricted to the Atlantic Ocean, not closer than 0.6 nautical miles of any point along the shore, jetties or fishing piers and to that portion of the Delaware Bay south and east of a line from Fourteen Foot light to Deadman Shoal light (Bug light) and thence to Dennis Creek light. Fishing shall be restricted in Raritan Bay and Sandy Hook Bay, not closer than 0.3 nautical miles of any point along the shore, jetties or piers. It will be incumbent upon the captain of a purse seine vessel to determine the possibility of drifting inside the limit while fishing, before setting his or her net. Drifting into the restricted area along the shore, or around a jetty or pier while fishing shall be considered a violation of this subchapter.

3. The maximum length overall of any vessel fishing under the provisions of this *[subchapter]* ***section*** shall be 90 feet.

4. Purse seine or shirred nets shall not exceed 150 fathoms in length.

5. A person shall not fish on Saturdays, Sundays, and the days on which New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day are officially observed by the State of New Jersey.

6. Fishing shall be conducted only during the hours between sunrise and sunset.

7. Removal of fish from the purse seine shall be by brailing or dip netting only.

8. The possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden on a purse seine vessel harvesting Atlantic menhaden for bait is prohibited.

*[9.]***i.*** The simultaneous possession of ***Atlantic menhaden and*** any ***other*** fish, as defined at N.J.S.A. 23:2B-3e, *[other than Atlantic menhaden]* and a purse seine, aboard a vessel of any person holding an Atlantic menhaden bait *[license]* ***permit*** or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of the violation of this subchapter.

*[10.]***9.*** No refuse, litter or garbage of any kind, or any quantity of dead fish shall be thrown overboard or released from the vessel or its net(s).

*[11.]***10.*** The licensee is responsible for cleaning up any fish, fish-part, refuse, litter, garbage of any kind which is released during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the release begins. Upon the licensee's failure to initiate such cleanup within the 24 hour period, the Department may conduct or arrange for the performance of the cleanup. In addition to any other penalties and remedies provided by law, the licensee shall be liable for all costs associated with such cleanup, including any administrative costs incurred by the Department. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes.

*[12.]***11.*** No stakes, markers, or buoys designating channels, crab pots, lobster pots, fish pots, or traps, or staked leased shellfish grounds, shall be disturbed by the act of fishing.

*[13.]***12.*** Any vessel engaged in fishing for Atlantic menhaden for bait under the provisions of this section shall display, on both sides of the vessel amidship, a yellow capital letter "B" not less than five feet in height on a black square background not less than six feet on a side. ***For any vessel where the gunnel height is less than eight feet above the waterline at amidship, the ratio of height of the letter "B" to height (or width) of the square black background of the display shall remain in the same proportion, that is, 5:6, but may be reduced in size. In all cases, however, each side of the black background shall be no less than three-quarters of the height of the gunnel at amidship from the waterline.***

7:25-22.4 Vessel boarding

The operator of, or any other person on board, a fishing vessel subject to this subchapter, shall immediately comply with instructions and signals issued by any law enforcement officer and facilitate a safe boarding and inspection of the vessel, its gear, equipment, catch, and any area where fish may be stored, for the purpose of enforcement of this subchapter.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual
Medicaid Occupancy Initiative
Adopted New Rule: N.J.A.C. 10:63-3.21

Proposed: May 15, 1989 at 21 N.J.R. 1456(a).

Adopted: June 16, 1989, by Drew Altman, Commissioner, Department of Human Services.

Filed: June 16, 1989 as R. 1989 d. 368, **without change**.

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b, c; 30:4D-12; L.1989, c.18, effective February 6, 1989.

Effective Date: June 16, 1989.

Expiration Date: November 29, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:63-3.21 Medicaid Occupancy Initiative

(a) For purposes of this section, the term "public assistance" refers specifically to the General Public Assistance Law, N.J.S.A. 44:8-107 et seq.

(b) The Department of Human Services shall pay a supplement for routine patient care expenses to the prospective per diem Medicaid reimbursement rates of non-governmental long term care facilities participating in the Medicaid program that have a Medicaid occupancy level above or within two percent of the Statewide average Medicaid occupancy level.

1. For this purpose, the Statewide average Medicaid occupancy level shall be calculated using the sum of the average number of Medicaid recipients and recipients of public assistance under N.J.S.A. 44:8-107 et seq. residing in each skilled nursing and intermediate care facility in the State divided by the total number of skilled nursing and intermediate care facility licensed beds in the State, during that month. This calculation shall not include either governmental facilities or facilities which have conditionally withdrawn from or do not participate in the Medicaid Program as long term care providers. Medicaid and public assistance recipients shall include only those residents in a facility who receive skilled nursing or intermediate care services for which the facility is being reimbursed by either of these Programs.

2. For this purpose, each facility's Medicaid occupancy level shall be calculated using the average number of Medicaid recipients and recipients of public assistance residing in a long term care facility divided by the total number of licensed beds in the facility, during that month. The calculation of Medicaid occupancy level shall include eligible bed reserve days in the determination of Medicaid recipients and recipients of public assistance under N.J.S.A. 44:8-107 et seq. Medicaid and public assistance recipients shall include only those residents in a facility who receive skilled nursing or intermediate care services for which the facility is being reimbursed by either of these Programs.

(c) For the purpose of making payment under this section, the Department shall determine the Statewide average Medicaid occupancy level and the Medicaid occupancy level using the number of Medicaid recipients and licensed beds for the actual billing month, if available, or for the most recent month available at the time the regular Medicaid monthly billing is being processed.

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(d) The supplement will be paid monthly to qualifying facilities for the billing periods between October 1, 1988 to September 30, 1989.

(e) The interim supplement to the prospective per diem reimbursement rates shall be as follows:

i. For facilities which have a Medicaid occupancy level between a percentage which is two percent below the Statewide average Medicaid occupancy level and 79.9 percent, the amount of $2.60 per diem.

ii. For facilities which have a Medicaid occupancy level between 80 percent and 89.9 percent, the amount of $2.85 per diem.

iii. For facilities which have a Medicaid occupancy level between 90 percent and 100 percent, an amount of $3.10 per diem.

(f) The final supplement to the per diem reimbursement rate will be based upon a reconciliation of the actual Statewide census for the periods October 1, 1988 to September 30, 1989 with the total appropriation. Final settlement will be paid to the facilities based upon their actual reported occupancy.

(g) Unexpended amounts on the funds appropriated for this supplement at the end of the one year statutory period shall be used to adjust the payment of the supplement. A reserve of approximately one million ($1,000,000) dollars shall be withheld in anticipation of increased Medicaid occupancy and potential facility appeals.

(h) Any payment of funds to a facility which is inconsistent with the provisions of this section is subject to recovery of both principal and interest and any other penalties which may be applicable under the New Jersey Medicaid Act. The interest and overpayment penalties may only be assessed in those instances where the error is attributable to the facility.

(i) N.J.A.C. 10:63-3.19, which limits the rates paid to a facility to the certified lowest semi-private rate charged to private patients, will not be applicable to any per diem rate resulting from this section until the first full month following the publication of this section in the New Jersey Register.

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Life and Health Insurance Advertising Endorsements by Third Parties

Adopted Repeal and New Rule: N.J.A.C. 11:2-11.6
Adopted Amendments: N.J.A.C. 11:2-11.1, 11.18, 23.3, 23.5 and 23.8
Adopted Repeal: N.J.A.C. 11:2-11.15

Proposed: April 17, 1989 at 21 N.J.R. 970(a).

Adopted: June 23, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance

Filed: June 23, 1989 as R.1989 d.391, **with substantive and technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 17:1C-6(e), 17B:30-1 et seq., 17B:30-15 and 17:22A-1 et seq.

Effective Date: July 17, 1989.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

The Department received several comments concerning the proposed amendments and new rule. A summary of these comments and the Department's responses appear below. Several comments misinterpret the proposed amendment and rule as they relate to licensure as an insurance producer. As noted in the Department's responses to the comments, the purpose of the proposed amendment and rule is to require disclosure of the financial or other relationship between a person making an endorsement and the insurance product being endorsed. The proposed amendment and rule do not require that a person making an endorsement be licensed as an insurance producer, nor do they provide an exemption from such licensure. They merely reference the existence of the statutory and other regulatory provisions relevant to such a determination so that insurers, insurance producers and limited insurance representatives are clearly apprised in one rule of all the requirements which may be pertinent to endorsement advertising.

COMMENT: Montgomery Ward Life Insurance Company (Montgomery) comments that the definitions of "endorsement" and "spokesperson" are too broad "with respect to the ability of a group policyholder, such as an association or discretionary group, to include with advertising materials an announcement letter advising individuals of the availability of a group program." Montgomery interprets the proposed amendment to place limitations upon the ability of a group policyholder to announce the availability of coverage.

RESPONSE: The proposed amendments do not modify in any way the provisions of N.J.A.C. 11:2-23.3, which specifically exclude from the definition of "advertisement" general announcements from group or blanket policyholders to eligible individuals who are currently employees or members of the group that a policy or program has been written or arranged; provided that the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage. Thus, since the proposed amendments and new rule concern the use of "endorsements" in "advertising," and the scenario raised by Montgomery, to the extent it has been revealed, is not "advertising," the proposed amendments and new rule do not apply.

COMMENT: Montgomery also comments that the proposed amendments and new rule requiring advertising records to be maintained "until the completion by the Department of the next market conduct examination of the insurer," instead of for a period of not less than four years, is inappropriate, since the Department does not conduct market conduct examinations of all companies licensed in New Jersey.

RESPONSE: Although the Department may conduct a market conduct examination of any insurer authorized or admitted in New Jersey, the Department has changed the record retention requirement upon adoption to require insurers to keep advertising records for five years, consistent with the requirements for record retention for market conduct examinations generally. This change will lessen the record maintenance burdens on insurers from the rule as proposed, and is thus consistent with N.J.A.C. 1:30-4.3.

COMMENT: Blue Cross and Blue Shield of New Jersey (BCBS) seeks clarification as to whether the proposed amendments and new rule would permit them to utilize the endorsement of a group decisionmaker in an advertisement explaining that person/company's decision to purchase BCBS coverage. The endorsement would only be on behalf of the type of policy purchased by that group. Further, compensation would be nominal ("certainly under union scale wages"). BCBS states that by limiting compensation to a minimal amount, there would be no need to indicate in the body of the advertisement that it is a paid endorsement.

RESPONSE: The Department believes that the use of a group decisionmaker as noted above would be an endorsement within the meaning of the proposed amendments, and would be subject to the disclosure and other provisions of the proposed amendments and new rule, if that person "endorses" (as defined in the rule) a product and is otherwise a "spokesperson" (see, for example, proposed N.J.A.C. 11:2-11.6(b)1 through 4). In this regard, N.J.A.C. 11:2-11.6(b)4 states that a person is a "spokesperson" if he or she is "in any way directly or indirectly compensated for making the endorsement." This covers nominal or greater compensation in any and all amounts and forms. Accordingly, the fact of such compensation must be disclosed by use of the phrase "This is a Paid Endorsement," or a similar phrase, pursuant to proposed N.J.A.C. 11:2-11.6(f), except where (1) compensation consists of union "scale" wages required by union rules and the payment is actually for such "scale" for television or radio performances, or (2) where the spokesperson is a company officer, director or employee who is paid generally for the advertisement. The proposed amendments and new rule do not provide an exception for other nominal compensation and BCBS is incorrect in concluding that limiting compensation to a nominal amount would preclude the need for disclosure that the group decisionmaker is giving a "paid endorsement."

Implicit on BCBS' request that the rule be amended to accommodate the situation for which clarification is sought. In this regard, the Department notes that the disclosure exception (for nominal compensation in the form of union scale wages) was inserted for radio and television performances only in recognition of the fact that celebrities are most likely to be endorsing a product on these media and to give insurers an opportunity to use such persons (since they could not perform without union scale payment). The Department does not wish to create unnecessary and endless exceptions or qualifications to the rules. Moreover, "nominal"

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compensation is virtually indefinable and is far too subjective to be a usable standard.

COMMENT: Garden State Life Insurance Company (Garden State) comments that the definition of "endorsement" is too broad since it includes any public statement "describing" any insurance product or any aspect of any insurance product. They suggest amending the definition to encompass only those instances where "approval" is stated.

RESPONSE: This comment is similar to several other comments received by the Department and this response will also serve as a response to all such similar comments. The definition of "endorsement" is intended to cover both public "descriptions" and public "approval" of an insurance product. The Department believes that by the mere fact that a "spokesperson" is publicly describing an insurance product he or she is inherently "endorsing" it (that is, "indirect endorsement"). The Department does not want to engage in semantical or excessively interpretive efforts to distinguish between a "description" and an "approval". Further, in response to Garden State's concern that "notices of availability" made by an employer on behalf of a group should be excepted from the term "endorsement," the Department notes, as expressed in its response to Montgomery Ward Life Insurance Company (see above), that such notices of availability are generally not advertisements and are thus excepted from the "endorsement" requirements.

COMMENT: Garden State also comments that the four year record maintenance requirement should be continued.

RESPONSE: This comment has been addressed in response to a comment by Montgomery Ward Life Insurance Company (see above). As therein noted, the rule has been changed upon adoption to require maintenance for five years.

COMMENT: State Farm Insurance Companies (State Farm) comments that the requirement that a "spokesperson" be licensed as an "insurance producer" is "overly broad regulation."

RESPONSE: This comment was made by several commenters and this response will also serve as a response to all such similar comments. The requirement that a spokesperson be licensed as an insurance producer, if he or she acts as an insurance producer, is entirely statutory (see also the May 15, 1989 issue of the New Jersey Register at 21 N.J.R. 1317(a) for proposed rules in implementation of the statute) and is not grounded in the proposed amendments and new rule (see N.J.S.A. 17:22A-1 et seq.). The reference in proposed N.J.A.C. 11:2-11.16(c) and 11:2-23.5(k)3 to the licensure requirements of the statutory law is merely an effort to expose and clarify this requirement in the context of endorsement advertising so that persons or entities engaging in endorsement advertising are fully apprised of all pertinent requirements. The proposed amendments and new rule do not create a new category of licensure, nor do they amend the existing statutory law. The Department believes that this referencing is necessary and appropriate. The major thrust of the proposed amendments and new rule is the requirement of disclosure for spokespersons making endorsements, rather than their licensure.

COMMENT: Continental American Life Insurance Company (Continental American) comments that because of the long lead time to prepare advertising, the requirements in proposed N.J.A.C. 11:2-11.6(d) and 11:2-23.5(k)4, concerning the use of the statement "this offer is not available in New Jersey" where a "spokesperson" is not a licensed insurance producer, are burdensome.

RESPONSE: Continental American apparently misinterprets the requirements of the above cited rules. In the instant context, the use of the phrase "this offer is not available in New Jersey" is required when a "spokesperson" is used who should be licensed in New Jersey as an insurance producer but who is not so licensed. The term "offer" does not apply to the product's availability to New Jersey residents, but rather to the availability of the product as advertised through the spokesperson. Further, the use of a "spokesperson" who is properly licensed is certainly within the control of the insurer and "lead time" should not be a factor in this regard. Of course, if an advertisement is for a product that is not filed or approved in New Jersey, or if the advertisement does not otherwise meet the requirements of the proposed amendments and new rule or other applicable laws, then the advertisement would also have to carry similar renunciatory language. In this case, such language as currently used by Continental, "not available in all states," would be satisfactory and would be in compliance with proposed N.J.A.C. 11:2-11.6(h) and 11:2-23.5(k)8.

COMMENT: Continental American comments that the disclosure provisions in proposed N.J.A.C. 11:2-11.6(e) and 11:2-23.5(k)5 are burdensome and unnecessary, and that a requirement that the disclosure in print advertising be "prominent" rather than in the same size type as the largest print used in the advertisement is more appropriate.

RESPONSE: The Department simply does not agree. In its opinion, this requirement is necessary to ensure full disclosure of paid endorsements when such disclosure is required.

COMMENT: Continental American states that the definition of "endorsement" is too broad and that a person should not have to be licensed as an insurance producer for using in its description of coverage such broad and generic terms as "valuable" and "affordable".

RESPONSE: Two questions are raised by this comment. First, as previously noted in a response to an earlier comment, the Department believes that the definition of "endorsement" as proposed is appropriate. Second, as previously noted, the requirement for licensure is statutory and, accordingly, if the use of such terms as "valuable" and "affordable" in the context in which they are employed is a solicitation, or otherwise requires licensure within the purview of N.J.S.A. 17:22A-1 et seq., then licensure is required. The resolution of this issue is beyond the scope of the instant adoption.

COMMENT: Continental American comments that the Regulatory Flexibility Analysis states that a spokesperson need not be licensed "if he or she does not act as or hold himself or herself out to the public as being an insurance producer," but that the proposed amendments do not address this requirement.

RESPONSE: This is incorrect. See proposed N.J.A.C. 11:2-11.6(c) and 11:2-23.5(k)3. These two sections refer to the requirements of N.J.S.A. 17:22A-3.

COMMENT: The Prudential Insurance Company of America (Prudential) comments that they would find it difficult, if not impossible, under the proposed rules, to locate union actors who have acquired insurance licenses. They note that a large number of their advertisements involve the portrayal of an agent, but that the persuasiveness is in the content of the agent's message, not in his notoriety. Prudential notes that the message is controlled by the company and that the proposed amendments and new rule rightfully hold the company to the message portrayed. They recognize that the "strict standards" of the proposed amendments and new rule are appropriate when a personality comes before an audience and makes claims, banking on his notoriety to create the impression of authority. However, Prudential states, the proposed amendments are overbroad when they encompass actors' portrayals as well. To remedy this, they suggest that proposed N.J.A.C. 11:2-11.6(g) and 11:2-23.5(k)7 be amended to obviate the need for licensure as well as disclosure where the sole financial interest or compensation of the spokesperson is "union scale" wages.

RESPONSE: As previously noted, the insurance producer licensure requirements are statutorily-based. Thus, exceptions to the licensure requirements cannot be made a part of these rules. Simply, if, under N.J.S.A. 17:22A-1 et seq., an actor dramatizing a scenario, rather than one banking on his or her celebrity status and image only, is required to be licensed as an insurance producer, then licensure is required. The resolution of this issue is beyond the scope of the instant rules. Whether an actor merely dramatizing a scenario would have to be licensed as an insurance producer would depend on the particular facts of each case. Clearly, however, disclosure that the advertisement is a paid endorsement would have to be given in cases where an actor dramatizes a scenario if it constitutes an "endorsement" as defined in these rules.

COMMENT: Prudential comments that another concern with the proposed amendments involves the compensation of those making an endorsement. Exceptions to the disclosure provisions exist when the compensation for the endorsement is the general salary of a company officer or union scale wages for radio or television performances. Prudential feels that the rules should also clarify that "indirect compensation" (see, for example, proposed N.J.A.C. 11:2-11.6(b)4 and (f)) does not include paying expenses and transportation for persons, such as policyholders, appearing in commercials. Allowance should also be made for donations to charities of the choice of the person making the endorsement.

RESPONSE: The Department does not agree. Whether a person's motivation to make an endorsement is money, a trip to New York or Los Angeles, or simply the excitement of being asked to do so, the public should be made aware that the endorser's comments have been solicited in some fashion, and that a benefit or recompense of some sort has been provided. Acknowledging the receipt of any such benefit or recompense will help ensure that an advertisement will not be misleading and deceptive. Further, the fact that a person donates his or her fee to charity, while a noble deed, should not limit disclosure since it is irrelevant to the purpose underlying the disclosure requirement. Thus, whether one's motivation is personal financial aggrandizement or the support of a favorite charity, the public should be apprised of the fact that a benefit of some sort, for some person or entity, is being derived from the endorse-

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ment. Indeed, the examples given by Prudential fit squarely within the term "indirect compensation."

COMMENT: Prudential also comments that the proposed amendments do not restrict the use of departmental publications as an endorsement to types or lines of insurance, but rather only to "the insurer, its policies or its contracts." (see proposed N.J.A.C. 11:2-11.6(b) and 11:2-23.5(k)8). Prudential requests that the rules be amended to include such a requirement.

RESPONSE: The Department appreciates the opportunity to clarify the proposed amendments and new rule concerning this matter. It was and is the Department's intention and purpose to include within the meaning of "policy" or "contract" particular lines or types of insurance, as noted by Prudential. The terms used by the Department were thought to be sufficiently broad and all encompassing. However, for purposes of clarification, the Department has changed the rules upon adoption to include these terms. Since this change is for clarification purposes only, it is not in violation of N.J.A.C. 1:30-4.3.

COMMENT: National Home Life (National) comments that there is no need to reiterate in the proposed amendments the requirements of the "New Jersey Insurance Producer Licensing Act."

RESPONSE: As previously noted, the Department believes that this iteration is necessary since it clarifies the relationship between the proposed amendments and new rule and the insurance producer licensing requirements. The reference in a rule of a relevant statutory provision is appropriate for this purpose.

COMMENT: National comments that the definition of "endorsement" is too broad and does not provide sufficient guidance as to the type of statements covered by the definition. They recommend that the definition cover only cases of "approval" and not "descriptions" of insurance products.

RESPONSE: The Department has addressed this comment in a previous response. Additionally, however, the Department notes that the term "description" is quite clear. Simply put, and for the very purpose of avoiding confusion and interpretational problems, an "endorsement" is all-inclusive except for specific exceptions to the definition of "advertising." (see, for example, N.J.A.C. 11:2-23.3.)

COMMENT: National comments that the proposed amendments and new rule require a spokesperson who publicly endorses an insurance product to be licensed—thus equating an endorser with an insurance producer. National states that the proposed amendments and new rule should recognize a distinction between the endorsement and the sale of an insurance policy, and that a person should be able to say that a particular policy provides "valuable" or "affordable" coverage without being licensed, as long as the endorser does not attempt to provide a detailed analysis of the rates and benefits. National further states that since the proposed amendments and new rule require an individual who would not otherwise have to obtain an insurance producer's license to hold one, they are ultra vires to that extent, and thus inappropriate.

RESPONSE: The Department disagrees. The proposed amendments do not require licensure of spokespersons as insurance producers, but rather provide and summarize, for clarification purposes only, the legal information necessary for making such a determination. The proposed amendments do not say that a person must be licensed as an insurance producer if he or she is a "spokesperson" making an "endorsement" as these terms are defined. They merely and simply state that such persons may have to be licensed if, in addition to being a "spokesperson" making an "endorsement," they have to be licensed as an insurance producer pursuant to N.J.S.A. 17:22A-1 et seq.

COMMENT: National also comments that the requirements in proposed N.J.A.C. 11:2-11.6(e) and 11:2-23.5(k)5 concerning disclosure in print advertising are too burdensome and unnecessary. National believes that as long as the disclosure is "prominent" and at the beginning of the advertisement, there should be no requirement to use the same type style and size of the largest type used in the advertisement.

RESPONSE: This comment has been addressed in a prior response. The Department recognizes the need for flexibility in allowing insurers to advertise their products. However, the Department does not believe that the desired flexibility in advertising should include the simple requirement that such disclosure be "prominent". Such a requirement is already part of the proposed amendments concerning the use of the required type size and style. The use of a "prominence" requirement only, without a requirement concerning type style and size, would be too subjective and too subject to abuse. The Department believes that the present proposed requirement is clear and certain, and is the best way to ensure full and fair disclosure by all insurers.

COMMENT: National suggests that the Department expand the exemptions from disclosure in proposed N.J.A.C. 11:2-11.6(f) and 11:2-23.5(b), concerning company officers who are paid generally but not specifically for making an advertisement, to include company directors and employees on the same basis.

RESPONSE: The Department agrees with this comment and has expanded upon adoption the exemption to include company directors and employees who are paid generally, but not specifically, for making the advertisement. There is no reason to limit this exemption to company officers, and the Department only did so because it did not envision other persons making endorsements. This change is consistent with N.J.A.C. 1:30-4.3 since it affords insurers greater flexibility than the rule as proposed.

COMMENT: Allstate Life Insurance Company (Allstate) comments that proposed N.J.A.C. 11:2-11.6(c) and 11:2-23.5(k)3 merely reiterate statutory law and thus should be omitted. They see no reason to "single out spokespersons".

RESPONSE: As noted in previous Department responses, the inclusion of the statutory provisions concerning insurance producer licensing is clarificatory and appropriate.

COMMENT: Allstate objects to the disclosure requirement for print advertising requiring the use of a type style and size at least equal to the largest type otherwise used in the advertisement. Allstate recommends the use of section 8C of the NAIC model, which requires that disclosure "be accomplished in the introductory portion of the endorsement in the same form and with equal prominence thereto." Allstate states that the disclosure requirements as written may affect an "unintended target"—the company officer (rather than a "celebrity" endorser), and would give "undue prominence" to his title.

RESPONSE: This comment has also been previously addressed. The NAIC language is considered to be too vague and unenforceable as a method of assuring adequate disclosure and preventing misleading or deceptive advertising. The Department believes that a more specific and certain standard must be applied. As to Allstate's contention that "undue prominence" may be given to a company officer's title, the Department believes that such a disclosure is neither burdensome nor misleading. The Department does not understand the meaning of the phrase "undue prominence" in the instant context, nor is it explained by the commenter. If it is suggested that the use of the title of a high officer may have the reverse effect of inducing people to buy the insurance product for the sole reason that the endorser is a prominent person, rather than for the value of the insurance product itself, then the Department disagrees.

COMMENT: Allstate comments that proposed N.J.A.C. 11:2-11.6(f) and 11:2-23.5(k)6, exempting from the disclosure requirements company officers who are paid generally, should be expanded to include an exemption for company directors and employees who are paid generally.

RESPONSE: As previously noted, the Department agrees with this comment and will make the appropriate change upon adoption.

COMMENT: Allstate comments that proposed N.J.A.C. 11:2-11.6(h) and 11:2-23.5(k)8, requiring prior written approval of an individual or organization prior to use of an endorsement by that individual or organization in an advertisement, are too burdensome with respect to "third-party arrangements" and "company officer endorsements". Specifically, Allstate notes an employer announcement of group insurance coverage to its employees could be considered an endorsement for which prior written approval must be obtained. Similarly, an announcement by a third-party organization, such as a creditor or credit card issuers, to its members of the availability of coverage, would require prior written approval for every instance of advertising. Moreover, even statements in an advertisement by a company officer would seem to require prior written approval. Accordingly, Allstate suggests that this requirement be omitted and that, in any event, an exception be made for company officers, similar to that contained in N.J.A.C. 11:2-11.6(f).

RESPONSE: The Department disagrees. Both "third-party arrangements" noted by Allstate would be exempt from requirements of the proposed rules if they are not life insurance advertisements (see N.J.A.C. 11:2-23.3). Thus, if they are only "announcements" of the availability of a product or coverage, rather than an "advertisement" as defined at N.J.A.C. 11:2-23.3, then no prior written approval is required. Further, the proposed requirements cited by Allstate were not intended to apply to "company officer endorsements". This has been clarified upon adoption, consistent with the changes made upon adoption in proposed N.J.A.C. 11:2-11.6(f) and 23.5(k)6. As a clarification, this change is consistent with N.J.A.C. 1:30-4.3.

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Agency Initiated Changes

1. Proposed N.J.A.C. 11:2-11.6(l) is changed to delete reference to "testimonials" since this term is part of the definition of "endorsement" and is, therefore, meaningless as used.

2. Clarifications are made in proposed N.J.A.C. 11:2-11.6(h) and 23.5(k)8. The word "organization" is deleted and replaced with a more explanatory phrase.

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

11:2-11.1 General provisions and definitions

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

(d) "Endorsement" means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or of the terms, benefits or any other aspect of any insurance product.

(e) "Person" means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, business trust, corporation and every legal entity.

Recodify existing (d) as (f) (No change in text.)

11:2-11.6 Endorsements by third parties

(a) Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

(b) A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

1. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

2. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;

3. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (b)1 or 2 above; or

4. Is in any way directly or indirectly compensated for making the endorsement.

(c) Any person acting as a spokesperson as defined in (b) above, who transacts the business of or holds himself or herself out to the public as being an insurance producer as defined at N.J.S.A. 17:22A-2, and who is required to have a license pursuant to N.J.S.A. 17:22A-3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A-1 et seq. and any implementing rules.

(d) Where, pursuant to (c) above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (e) below, the following statement: "This offer is not available in New Jersey." The requirements of this subsection shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey, and to advertisements which originate in or emanate from New Jersey.

(e) The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this subsection shall be accomplished in the introductory portion of the endorsement and shall be given prominence.

(f) If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning, in the manner provided by (e) above. The requirements of this subsection do not apply where the spokesperson is a company officer who is paid generally, but not specifically, for making the advertisement.

(g) The disclosure requirements in (e) and (f) above shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

(h) An advertisement shall not state or imply that an insurer or a policy or contract has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between an organization and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other entity has been secured.

(i) If the person making the endorsement in (h) above has been formed by the insurer or is owned or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

(j) When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of Insurance of the next market conduct examination of the insurer.

(k) Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

(l) Endorsements concerning Medicare supplement insurance shall be filed with the Division of Life and Health of the Department of Insurance at least 30 days prior to their first use. Radio and television testimonials or endorsements shall be filed in transcribed form.

(m) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

11:2-11.15 (Reserved)

11:2-11.18 Insurers' responsibility and control; advertising file; certificate of compliance

(a)-(d) (No change.)

(e) All such advertisements shall be maintained in said file until the completion by the Department of Insurance of the next market conduct examination of the insurer.

(f) (No change.)

11:2-23.3 Definitions

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

. . .

"Endorsement" means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or the terms, benefits or any other aspect of any insurance product. . . .

"Person" means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, corporation and every legal entity.

. . .

11:2-23.5 Disclosure requirements

(a)-(j) (No change.)

(k) Endorsements by third parties must comply with the following requirements:

1. Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

2. A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

i. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

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ii. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;

iii. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (k)2i and ii above; or

iv. Is in any way directly or indirectly compensated for making the endorsement.

3. Any person acting as a spokesperson as defined in (k)2 above, who acts as or holds himself or herself out to be an insurance producer as defined at N.J.S.A. 17:22A, and who is required to have a license pursuant to N.J.S.A. 17:22A-3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A-1 et seq. and any implementing rules.

4. Where, pursuant to (k)3 above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (k)5 below, the following statement: "This offer is not available in New Jersey." The requirements of this paragraph shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey and to advertisements which originate in or emanate from New Jersey.

5. The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising, the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this paragraph shall be accomplished in the introductory portion of the endorsement and shall be given prominence.

6. If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning in the manner provided by (k)5 above. The requirements of this paragraph do not apply where the spokesperson is a company officer who is paid generally, but not specifically, for making the advertisement.

7. The disclosure requirements of this subchapter shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

8. An advertisement shall not state or imply that an insurer or a policy or contract has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between an organization and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other person has been secured.

9. If the person making the endorsement in (k)8 above has been formed by the insurer or is owned, or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

10. When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of Insurance of the next market conduct examination of the insurer.

11. Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

12. An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

(l)-(o) (No change.)

11:2-23.8 Insurers' responsibility and control; advertising file; certificate of compliance

(a)-(d) (No change.)

(e) All such advertisements shall be maintained in said file until the completion by the Department of Insurance of the next market conduct examination of the insurer.

(f) (No change.)

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

URBAN ENTERPRISE ZONE AUTHORITY

Business Certification for Zone Business Benefits

Adopted New Rules: N.J.A.C. 12A:120-2

Proposed: March 20, 1989 at 21 N.J.A.C. 693(a).

Adopted: June 14, 1989, by the Urban Enterprise Zone authority, Borden R. Putnam, Chairman.

Filed: June 21, 1989 as R.1989 d.376, **without change.**

Authority: N.J.S.A. 52:27H-60, specifically 52:27H-65.

Effective Date: July 17, 1989.

Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Response:
No comments received

Full text of the adoption follows.

SUBCHAPTER 2. BUSINESS CERTIFICATION FOR ZONE BUSINESS BENEFITS

12A:120-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, c.303, as amended by P.L. 1988, c.93, the New Jersey Urban Enterprise Zones Act (the Act), and to implement standards of business certification for zone business benefits. This subchapter is divided into two parts: the first part which establishes standards for the recertification of zone business (N.J.A.C. 12A:120-2.3 to 2.6), and the second part which establishes standards for the conditional recertification of zone businesses (N.J.A.C. 12A:120-2.7 to 2.10).

(b) The Act provides for the establishment of an UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA provide continuing review of the implementation of the Act and report annually to the Governor and the Legislature on the effectiveness of UEZs in addressing the conditions cited in the Act, including any recommendations for legislation to improve the effectiveness of operation of the UEZs.

(c) Applications and questions concerning UEZs should be directed to:

Urban Enterprise Zone Program
New Jersey Department of Commerce, Energy and Economic Development
20 West State Street
Trenton, New Jersey 08625

12A:120-2.2 Definitions

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

"Act" means the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60).

"Administrator" means the Administrator of the Urban Enterprise Zone Program in the Department of Commerce, Energy and Economic Development.

"Authority" or "UEZA" means the New Jersey Urban Enterprise Zone Authority.

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"Commissioner" means the Commissioner of the Department of Commerce, Energy and Economic Development.

"Enterprise zone" or "zone" means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority pursuant to the Act.

"Qualified business" means any entity authorized to do business in the State of New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business in that zone and for which at least 25 percent of its full-time employees, newly hired during the two years after issuance of the business's certificate of occupancy to work at a business location in the zone, meet one or more of the following criteria:

1. Resident within the zone, within another zone or within the municipality in which the zone or any other zone is located; or

2. Unemployed for at least a year prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance programs for at least one year prior to being hired; or

3. Determined to be economically disadvantaged pursuant to the Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. §§ 1501 et seq.)

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of the Act, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate; except that a municipality which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor.

"Qualified small business" means any entity authorized to do business in the State of New Jersey which, at the time of designation of the enterprise zone, had been engaged in the active conduct of a trade or business in that zone for at least one year prior to that designation, and which employs fewer than 50 full-time employees.

"Zone business benefits" means those benefits as defined by N.J.S.A. 52:27H-75 to 52:27H-79.

"Zone development corporation" means a nonprofit corporation or association created by the governing body of a qualifying municipality to formulate and propose a preliminary zone development plan pursuant to section 9 of the Act.

"Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality.

"Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to the Act; which is organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes, and which has for its principle purpose the encouragement and support of community activities within, or on behalf of, the zone so as to stimulate economic activity, increase or preserve residential amenities, or otherwise encourage community cooperation in achieving the goals of the zone development plan.

12A:120-2.3 Reapplication for zone business benefits

Any business desiring to continue to receive zone business benefits shall forward to the Administrator a letter specifying the benefits which it wants to receive, a certification that the business is located in the zone, the amount of full-time employees of the business located within the zone, the amount of full-time employment projected for the next year, actual and projected capital expenditures and any other additional information requested by the Administrator.

12A:120-2.4 Time for reapplication for zone business benefits

(a) A business must reapply for zone business benefits no later than one year after the prior date of certification of that business to receive zone business benefits.

(b) The Administrator may extend the reapplication period deadline by no more than six months when the business has demonstrated good faith efforts to produce the information required by the Administrator.

12A:120-2.5 Alternative qualified small business recertification

(a) A qualified small business desiring to continue to receive zone business benefits may, upon agreement with the governing body of the qualifying municipality in which the enterprise zone is located and subject to the approval of the UEZA, agree to undertake investments in the enterprise zone in lieu of creating new employment. For purposes of this section, investments in the enterprise zone shall include, but shall not be limited to:

1. Improvements in the exterior appearance or customer facilities of the property constituting the place of business of the qualified business within the zone; or

2. Monetary or in-kind contributions to the qualifying municipality to undertake improvements to increase the safety or attractiveness of the zone to businesses which may wish to locate there or to consumer visitors to the zone, including, but not limited to:

i. Litter clean up and control;

ii. Landscaping

iii. Creation or improvement of parking areas and facilities

iv. Creation or improvement of recreational and rest area facilities;

v. Repair or improvement of public streets, curbing, sidewalks and pedestrian thoroughfares;

vi. Creation or improvement of street lighting; or

vii. Increase in police, fire or sanitation services in the enterprise zone.

(b) In order for an investment to constitute an alternative means by which a small business may become recertified as qualified zone business, the investment by that business shall:

1. Be no less than $5,000 if the business employs 10 or fewer employees; or

2. If the business employs more than 10 employees, not less than the amount produced by multiplying the number of employees employed by the small business by $500.00.

12A:120-2.6 Acceptance as a recertified qualified zone business

(a) When a business has been granted recertification by the Administrator, the business shall be placed on the qualified zone business register. The business shall be eligible for all zone business benefits as determined by UEZA.

(b) Once a business is placed on the qualified business register, it shall be eligible for zone business benefits until its next annual date of recertification, subject to N.J.A.C. 12A:120-2.4.

12A:120-2.7 Standards for conditional zone business recertification

(a) When a zone business applies for recertification to receive zone business benefits and that business has not increased employment at the business located in the zone since issuance of its certificate of occupancy, the Administrator may conditionally recertify that business when:

1. The business has exhibited good faith efforts to fulfill the projections of increased employment; and

2. The business has experienced unforeseen adverse business conditions unrelated to its location within the zone; or

3. The business has been unable to fulfill its projected increase in employment due to unforeseen adverse conditions within the State's labor force; or

4. The business has been unable to fulfill its projected increase in employment for other good cause demonstrated to the Administrator.

12A:120-2.8 Time for application for conditional zone business recertification

A business seeking conditional zone business certification shall apply within one year after its prior zone business certification.

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12A:120-2.9 Application procedures for conditional zone business recertification

As part of its application to the Administrator for conditional zone business recertification, the business shall document the reasons why the business could not meet its projected increase in employment. Where available, this documentation shall include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, as well as a professional analysis of the conditions which prevented the business from meeting its projected increase in employment.

1. If the applicant fails to provide adequate documentation in its application, the application may be delayed or rejected. The Administrator may establish deadlines for an applicant business to provide information, and when those deadlines are not met, he or she may deny the application.

2. If the applicant knowingly supplies incomplete or inaccurate information, the business shall be ineligible to receive zone business benefits for a period of not less than two years and no more than five years.

(b) An applicant for conditional zone business recertification shall forward its application and accompanying documentation by certified mail return receipt requested.

12A:120-2.10 Conditional recertification as an eligible zone business

(a) When a business is conditionally recertified as an eligible zone business, that business will be placed on the zone business register.

(b) The business shall agree to commence increasing its employment during the first quarter of the new year of certification and to reach the conditions set forth in its projection of increased employment.

(c) The business shall agree to implement a capital improvement program, as may be prescribed by the Administrator, to be commenced during the year of the conditional recertification year, unless an alternate plan is agreed to by the Administrator.

(d) The business shall agree the communicate at least each quarter with the Administrator and the local Urban Enterprise Zone coordinator concerning the progress the business is making toward fulfilling the obligations of the conditional business recertification.

12A:120-2.11 Denial of recertification or conditional recertification of a qualified zone business

(a) When a business has been denied recertification or conditional recertification based upon the information provided by the business to the Administrator, the business may appeal the Administrator's decision.

(b) A business which is denied recertification or conditional recertification shall have 10 working days from the date of notification of denial to submit an appeal.

12A:120-2.12 Procedure for appealing denial of recertification or conditional recertification

(a) An appeal of denial of recertification or conditional recertification shall be made in writing and shall be forwarded to the Administrator by certified mail return receipt requested.

(b) The written appeal shall be accompanied with evidence to support a basis for appeal of the Administrator's decision.

(c) The Department of Commerce, Energy and Economic Development shall notify the appealing business of the date, time and place of the review, and the right of the business to attend and be represented at the review.

(d) The review will be conducted by a designee of the Commissioner. The designee shall issue a written report to the Commissioner within 10 working days of the close of the review.

(e) The appealing business will be permitted to file written exceptions of the designee's report no later than five working days from the receipt of the report.

(f) Thereafter, the Commissioner shall issue a final decision on the appeal and notify the business by certified letter, return receipt requested.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Transportation by Licensees; Transit Insignia

Adopted Amendment : N.J.A.C. 13:2-20

Proposed: May 15, 1989, at 21 N.J.R. 1300(a).

Adopted: June 16, 1989, by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.

Filed: June 20, 1989, as R.1989 d.372, **without change**.

Authority: N.J.S.A. 33:1-1(x) and (y), 2, 3, 10, 11, 12, 13, 14, 23, 25, 26, 28, 28.1, 28(a), 35, 39, 50, 55 and 66.

Effective Date: July 17, 1989.

Expiration Date: August 5, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 20. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEES; INSIGNIA

13:2-20.1 Transit insignia; transportation of alcoholic beverages

No licensee shall transport alcoholic beverages into, out of, or within the State of New Jersey in any vehicle unless it is owned, leased or contracted for by the licensee. Such vehicle, while so used, shall first have issued therefor a transit insignia, special transit insignia, transportation license insignia issued pursuant to the provisions of this subchapter, or a limited transportation permit or emergency trip permit issued pursuant to the provisions of N.J.A.C. 13:2-21.

13:2-20.2 Transportation by retail licensee; delivery slip

(a) No retail licensee shall deliver or transport any alcoholic beverages into, out of, or within the State of New Jersey unless the driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the date of delivery, the bona fide name and address of the purchaser or consignee, and the brand, size of container, and quantity and price of each item of the alcoholic beverages being delivered or transported. The original or true copy of such delivery slip, invoice, manifest, waybill or similar document shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) (No change.)

13:2-20.3 Transportation by State licensee with retail privileges; delivery slip or route card

(a) No State licensee privileged to sell alcoholic beverages at retail shall deliver or transport any alcoholic beverages in any vehicle, unless:

1. The driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container, quantity and price of each item of the alcoholic beverages being delivered or transported; or

2. The driver of the vehicle has in his or her possession a route card which shall contain the name, address and standing order of the customer, and the entry at the time of delivery of the date of delivery, the brand, size of container, quantity delivered and the price charged. In addition to such route cards, there must be carried in the vehicle a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container; and

3. The original or true copy of such delivery slip, invoice, manifest, waybill, route card or similar document shall be retained by the

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licensee at his licensed premises for a period of one year from the date of delivery, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) The holder of a New Jersey Plenary or Farm Winery license with retail privileges may authorize the shipment of wine purchased in person at retail on the licensed premises to a destination within this State by a parcel delivery service subject to the following terms and conditions:

1. The New Jersey Plenary or Farm Winery licensee with retail privileges must first file an application for authorization to utilize a parcel delivery service before it makes any such deliveries to consumers. The application is made on a form provided by the Division and must be accompanied by an annual fee of $150.00. All parcel delivery service permits are for one year and expire on June 30 and must be renewed annually; and

2. The parcel delivery service must first be registered and approved by the Director. Application for approval shall be made on a form to be provided by the Division. No fee is required. Once approved, a parcel delivery service shall not be required to obtain a Transportation License under N.J.S.A. 33:1-13 or any Transit Insignia under N.J.S.A. 33:1-28 or this subchapter; and

3. An invoice must be attached to every package stating the purchaser's name, address, destination, quantity of wine being shipped and place of purchase. A copy of the original invoice must be made available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. for a period of one year at the office of the licensee; and

4. It is the duty of personnel delivering the wine for a licensee in accordance with N.J.S.A. 33:1-28.1 et seq. and this subsection to seek to determine that, at the time of delivery of wine, the party signing a delivery receipt is of legal age to purchase and consume alcoholic beverages.

(c) (No change.)

13:2-20.4 Transportation by other State licensees, importers and manufacturers; delivery documents

(a) No manufacturer, importer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverages into, out of, or within the State of New Jersey in any vehicle, nor shall any transportation licensee so deliver or transport alcoholic beverages for any licensee, unless the driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the name, address and New Jersey State assigned license number (if applicable) of the purchaser or consignee, the brand, size of container, terms of sale, quantity and price of each kind of alcoholic beverages being delivered or transported. Such document shall further bear a printed or stamped legend reading substantially as follows:

"The undersigned licensee hereby acknowledges that all of the alcoholic beverages itemized above have been ordered and were received on

_____
(Date)

_____"
(Signature by or for licensee)

(b) Two copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the licensee or his agent at the time and on the date of actual delivery of any alcoholic beverage. One copy shall be retained for a period of one year from the date thereof by the manufacturer, importer or wholesaler and the other by the purchasing licensee for a like period at its respective licensed premises, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted written permission to the manufacturer, importer, wholesaler or retailer to keep its copies at another designated place.

(c) (No change.)

13:2-20.5 Eligibility for transit insignia, special transit insignia or transportation license insignia

(a) No transit insignia, special transit insignia or transportation license insignia shall be issued:

1. To a bonded warehouse bottling licensee, public warehouse licensee, or warehouse receipts licensee, unless such licensee also holds a license of some type which authorizes the transportation of alcoholic beverages.

2. For any motor vehicle unless it is properly registered in New Jersey or authorized to utilize New Jersey roads in accordance with State law applicable to such vehicle.

3. For any leased vehicle or other vehicle not owned by the licensee unless said lease or other document by its terms transfers to the licensee exclusive possession, control and operation of such vehicle when utilized in connection with the licensed business. A copy of the lease or other document must be furnished with any application.

(b) No transit insignia or special transit insignia shall be issued for any solicitor's vehicle unless an agreement exists authorizing utilization of the solicitor's vehicle for purposes in furtherance of the business of the solicitor's employer.

13:2-20.6 Application; fees

(a) Application for transit insignia shall be filed with the Director upon a prescribed form accompanied by the full fee of $25.00 for each insignia, in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control.

(b) Application for special transit insignia, which may be issued for passenger type vehicles and consists of a sticker that is less conspicuous than a transit insignia, shall be filed with the Director upon a prescribed form accompanied by the full fee of $25.00 for each permit, in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control.

(c) Application for transportation license insignia shall be filed with the Director upon a prescribed form and shall be issued at a cost of $10.00 for each insignia, in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control.

1. No transportation license insignia shall be required for any vehicle operated by a parcel delivery service holding a transportation license for delivery of alcoholic beverages purchased at retail to consumers unless the vehicle is primarily and substantially used at any time for transport or delivery of alcoholic beverages.

13:2-20.7 Term of transit insignia, special transit insignia or transportation license insignia; renewal

(a) All transit insignia and special transit insignia expire on August 31 following their issuance unless sooner terminated by order of the Director or by surrender or termination of the basic license under which the insignia was issued.

(b) All transportation license insignia expire on June 30 following their issuance or upon sooner termination of the underlying transportation license.

(c) Renewals must be applied for in the same manner as a new insignia.

13:2-20.8 Location of transit insignia, special transit insignia or transportation license insignia

(a) Transit insignia must be directly affixed to the exterior of the vehicle on the left side thereof, so as to be clearly visible at all times.

(b) Special transit insignia must be directly affixed to the rearmost side window on the driver's side of the vehicle. The insignia shall be placed in the lower rear corner of such window, shall be affixed from the inside facing outward and shall be clearly visible at all times.

(c) Transportation license insignia shall either be affixed to the exterior of the vehicle in the same manner as a transit insignia or otherwise visibly displayed as may be determined by the Director.

13:2-20.9 Restrictions applicable to vehicles bearing transit insignia, special transit insignia or transportation license insignia

(a) No licensee shall allow, permit or suffer any vehicle for which a transit insignia, special transit insignia or transportation license

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insignia is issued to be used to transport alcoholic beverages except solely for the licensee's own business.

(b) When any transit insignia, special transit insignia or transportation license insignia shall become marred, defaced or damaged, the licensee shall forthwith notify the Director in writing, so that there may be appropriate replacement, if necessary, of such insignia.

(c) Transit insignia or special transit insignia may be used only for the vehicle for which issued, provided, however, that nothing herein contained shall prohibit the transportation of alcoholic beverages by a transferee of a license in a vehicle for which a transit insignia or special transit insignia was issued to his transferor for a period not exceeding seven days subsequent to the effective date of the transfer of license to such transferee.

(d) A transportation license insignia is issued to the holder of a transportation license and may be used for any eligible vehicle under N.J.A.C. 13:2-20.5, provided the identity of the transportation license holder is indicated on the vehicle.

(e) Except as provided in (c) above, no licensee shall sell or otherwise dispose of any vehicle to which a transit insignia or special transit insignia is affixed, without having first removed said insignia and having notified the Director of such removal.

13:2-20.10 Search of licensed vehicle

By acceptance of a transit insignia, special transit insignia or transportation license insignia, the licensee consents to the inspection and search of the vehicle for which such insignia is issued, without search warrant, by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Transportation of Alcoholic Beverages Into, Through or Out of the State

Adopted Amendments: N.J.A.C. 13:2-21

Proposed: May 15, 1989, at 21 N.J.R. 1304(a).

Adopted: June 16, 1989 by John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.

Filed: June 20, 1989, as R.1989 d.371, **without change**.

Authority: N.J.S.A. 33:1-1(x) and (y), 1-2, 1-3, 1-10, 1-11, 1-12, 1-13, 1-14, 1-23, 1-25, 1-26, 1-28, 1-28.1, 1-28(a), 1-35, 1-39, 1-50, 1-55 and 1-66, 1-74.

Effective Date: July 17, 1989.

Expiration Date: August 5, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 21. TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO, THROUGH OR OUT OF THE STATE

13:2-21.1 Delivery into or out of the State

Delivery of alcoholic beverages into or shipment of alcoholic beverages out of New Jersey is prohibited unless the beverages are transported by a licensee pursuant to N.J.A.C. 13:2-20 or in a vehicle bearing or carrying a permit issued in accordance with this subchapter.

13:2-21.2 Transportation for personal consumption; amount limitation; permit

(a) Alcoholic beverages intended in good faith for personal consumption and not for sale may be transported into this State from a point outside New Jersey by any person in a vehicle under his or her control, without any transportation license or permit, to the extent permitted by N.J.S.A. 33:1-2, that is not exceeding one-fourth barrel or one case containing not in excess of 12 quarts in all, of beer, ale or porter, and one gallon of wine, and two quarts of other alcoholic beverages within any consecutive period of 24 hours.

(b) Alcoholic beverages intended in good faith for personal consumption and not for sale may be transported between points within this State by any person in a vehicle under their control to the extent permitted by N.J.S.A. 33:1-2 that is, not exceeding one-half barrel, or two cases, containing not in excess of 24 quarts in all, of beer, ale or porter, and five gallons of wine and 12 quarts of other alcoholic beverages within any consecutive period of 24 hours.

(c) Transportation of alcoholic beverages intended in good faith for personal consumption in excess of the limits set forth in this section is prohibited, unless the consumer:

1. Acquires from the Division a special permit to authorize the intrastate transportation in that individual's vehicle for a fee of $5.00 as set forth N.J.S.A. 33:1-2; or

2. Has the alcoholic beverages delivered intrastate by a New Jersey licensed alcoholic beverage transporter; or

3. Acquires from the Division a special permit to authorize the interstate transportation for a fee of $5.00 as set forth in N.J.S.A. 33:1-2. No such permit shall be issued until the applicant establishes that there has been payment of all applicable New Jersey Alcoholic Beverage Taxes.

13:2-21.3 Transportation through New Jersey

(a) Alcoholic beverages may be transported through the State of New Jersey in any vehicle provided the following terms and conditions are met:

1. No delivery is made in New Jersey;

2. The alcoholic beverages may lawfully be sold and transported from the state of origin;

3. The driver of the vehicle possesses a bona fide, accurate waybill, bill of sale, invoice, receipt or similar document stating the name and address of the seller and buyer, the type and quantity of alcoholic beverages being transported and the places of origin and destination; and

4. The alcoholic beverages may lawfully be delivered to and received in the state of destination.

13:2-21.4 Limited transportation permit

(a) Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported from the licensed premises in this State of a manufacturer, wholesaler or public warehouse licensee, to points outside this State; or between points outside this State and piers of import or export located within the State by the holder of a New Jersey transportation license or a limited transportation permit.

(b) Application for a limited transportation permit shall be made to the Division on a form prescribed by the Director, in duplicate, accompanied by a fee of $200.00.

(c) A limited transportation permit has a term of one year terminating on June 30, unless sooner cancelled by the Director.

(d) The holder of a limited transportation permit cannot transport alcoholic beverages unless the vehicles have affixed thereto a limited transportation permit insignia.

(e) Limited transportation permit insignia are obtainable from the Division in the same manner, with the same eligibility requirements, transfer restrictions and insignia location as a transit insignia as set forth in N.J.A.C. 13:2-20. The cost for this limited transportation permit insignia is $20.00 per vehicle.

13:2-21.5 Emergency trip permit

(a) The Director, Division of Alcoholic Beverage Control, or any designated agent of the Director may issue a special emergency trip permit for the temporary or emergency transportation of alcoholic beverages into or out of the State in any vehicle not otherwise authorized by license or permit issued pursuant to N.J.A.C. 13:2-20 or this subchapter.

(b) An emergency trip permit shall authorize the delivery into or out of the State for a particular singular shipment identified in the permit from a specified source of origin to a specified destination.

(c) Applications for an emergency trip permit shall be on a form prescribed by the Director and may be issued by the Director or his designated agent for such purpose.

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(d) The fee for an emergency trip permit is $25.00, which shall be deposited in the State Treasury. A surcharge in an amount allowed by the Director may be collected and retained by the agent when the permit is issued by that designated agent.

(e) A designated agent shall maintain true and accurate books of account, electronically transmit to the Division at time of issuance a copy of the issued permit, remit emergency trip permit fees to the Division within seven business days after issuance, and post an adequate performance bond if required.

(f) A designated agent serves at the will of the Director and may be dismissed without cause upon 30 days notice.

13:2-21.6 Prohibited transportation; seizure of unlawful property

No alcoholic beverages shall be transported into, through or out of the State except in accordance with this subchapter. Alcoholic beverages transported in violation of this subchapter and the vehicle containing the same, are unlawful property and are subject to seizure and forfeiture by the Director in accordance with N.J.S.A. 33:1-66.

13:2-21.7 Search of vehicle

By acceptance of a special permit issued pursuant to this subchapter for the transportation of alcoholic beverages in excess of the quantities authorized by law, or a limited transportation permit, or an emergency trip permit, the holder of the permit consents to the inspection and search of the vehicle for which such permit is issued, without search warrant, by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service
Organization of the Division of Motor Vehicles
Adopted New Rules: N.J.A.C. 13:18-11

Adopted: April 7, 1989, by Glenn R. Paulsen, Director of the Division of Motor Vehicles

Filed: June 14, 1989 as R.1989 d.365.

Authority: N.J.S.A. 39:2-3, 52:14B-3(1) and 52:14B-4(b).

Effective Date: June 14, 1989.

Expiration Date: April 1, 1990.

On April 7, 1989, Glenn R. Paulsen, Director of the Division of Motor Vehicles, pursuant to authority of N.J.S.A. 39:2-3, 52:14B-3(1) and 52:14B-4(b), adopted new rules, N.J.A.C. 13:18-11, concerning the organization of the Division of Motor Vehicles. These organizational rules are exempt from the notice and hearing requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and, therefore, there was no public comment regarding these rules, which become effective upon filing with the Office of Administrative Law pursuant to N.J.S.A. 52:14B-4(b).

Full text of the adopted new rules follows.

SUBCHAPTER 11. ORGANIZATION OF THE DIVISION OF MOTOR VEHICLES

13:18-11.1 Division of Motor Vehicles organizational structure

(a) The Division of Motor Vehicles consists of a Director of Motor Vehicles and such offices and other organizational units as allowed by law and as necessary to carry out the Division's statutory mandates.

(b) The Director has a deputy. The following subunits exist under the deputy:

1. Internal Audit Office;
2. Regulatory Affairs Office; and
3. Special Projects Office.

(c) The Division has a Chief of Staff who has the powers and responsibilities set forth in N.J.S.A. 39:2-4 and 39:2-5. The following subunits exist under the Chief of Staff:

1. Office of Special Assistance and Customer Complaints;
2. Planning Office;
3. Legal/Legislative Office;
4. Public Affairs Office; and
5. Human Resource and Organizational Development Office.

(d) The Division has three Administrators, as follows:

1. Customer Services;
2. Information and Systems Management; and
3. Administrative Services.

(e) The following subunits exist under the Administrator for Customer Services:

1. Northern Regional Services Offices;
2. Central Regional Services Offices;
3. Southern Regional Services Offices; and
4. Operations and Support Services Bureau.

(f) The following subunits exist under the Administrator for Information and Systems Management:

1. Information Update and Retrieval Bureau; and
2. Systems Management Bureau.

(g) The following subunits exist under the Administrator for Administrative Services:

1. Central Services Bureau;
2. Facilities Management Bureau;
3. Financial Management Bureau; and
4. Personnel Administration Bureau.

13:18-11.2 Public information requests and submissions

(a) A member of the public may obtain information or make a submission or a request by writing to the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, 7th Floor, Trenton, New Jersey 08666.

(b) A member of the public seeking general information may telephone the Division of Motor Vehicles from anywhere in New Jersey by calling 1-800-DMV-2222.

(c) A member of the public seeking general information may telephone the Division of Motor Vehicles from out of State by calling 1-609-588-2424.

ENERGY

(b)

ENERGY PLANNING AND CONSERVATION

Certificate of Need for Electric Facilities
Definition of Electric Facility
Adopted Amendment: N.J.A.C. 14A:14-2.1

Proposed: April 3, 1989 at 21 N.J.R. 882(a).

Adopted: June 14, 1989 by Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.

Filed: June 14, 1989 as R.1989 d.364, **without change.**

Authority: N.J.S.A. 48:7-16 and 52:27F-11q.

Effective Date: July 17, 1989.

Expiration Date: January 30, 1994.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows.

14A:14-2.1 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

. . .

"Electric facility" means:

1. Any electric power generating unit or combination of units at a single site with a combined production of 100 megawatts or more and any facilities appurtenant thereto; or

2. Any electric generating units added to an existing electric generating facility which will increase its installed capacity 25 percent or by more than 100 megawatts, whichever is smaller;

3. (No change in text.)

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TRANSPORTATION

(a)

THE COMMISSIONER

Organization of the Department of Transportation Operation and Procedures of the Department of Transportation

Adopted New Rules: N.J.A.C. 16:1A

Adopted June 7, 1989, by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.
Filed: June 16, 1989, as R.1989 d.366.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-4(b).
Effective Date: June 16, 1989.
Expiration Date: June 16, 1994.

These proposed new rules and amendments are organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and are effective upon filing.

Full text of the adoption follows.

CHAPTER 1A
ADMINISTRATION, ORGANIZATION AND MANAGEMENT

SUBCHAPTER 1. OPERATION AND PROCEDURES OF THE DEPARTMENT OF TRANSPORTATION

16:4-1A.1 Mission statement of the Department

(a) It is the mission of the Department of Transportation to provide transportation systems for the citizens of New Jersey by using its resources in a coordinated, balanced, cost effective manner. Consistent with this mission statement, the Department has established the following objectives:

1. Plan, design, construct, maintain and manage an efficient, balanced Statewide transportation system which promotes the State's economic development goals;
2. Seek cost effective solutions to transportation problems while promoting the conservation of non-renewable resources and minimizing adverse environmental impacts;
3. Promote efficient land development patterns based on existing transportation facilities;
4. Develop and maintain a safe, efficient passenger and freight transportation system which provides essential connections within the State and the region;
5. Enhance access to the State transportation system for all people, including the transportation disadvantaged;
6. Encourage involvement in decision-making by including local governments, advisory committees, commuter groups, and employees in the process;
7. Provide the opportunity for employees to develop professionally; and
8. Coordinate the activities of the Department with those of other State agencies and public authorities, regional and national organizations, and other agencies with transportation responsibilities within the State.

16:1A-1.2 Organization of Department

(a) The Department of Transportation is organized as indicated in the Organizational Chart (see Appendix A) and the functions and responsibilities of its officers are as follows:

1. The Commissioner of Transportation is the Chief Executive officer of the Department and oversees all functions of the Department of Transportation.
2. The Deputy Commissioner reports to the Commissioner. The Deputy Commissioner oversees the general operations of the Department, as directed by the Commissioner. The Deputy Commissioner is also designated as the "State Transportation Engineer."
3. The Assistant Commissioner for Policy and Planning reports to the Commissioner with principal responsibilities in the following areas:
   i. Transportation Assistance;
   ii. Research and Demonstration;
   iii. Transportation Policy;
   iv. Systems Planning; and
   v. Project Planning and Development.
4. The Assistant Commissioner for Design and Right of Way reports to the Commissioner with principal responsibilities in the following areas:
   i. Regional Design;
   ii. Bridge Design;
   iii. Roadway Design;
   iv. Traffic Engineering and Local Aid;
   v. Right of Way; and
   vi. Engineering Support Services.
5. The Assistant Commissioner for Construction and Maintenance reports to the Commissioner with principal responsibilities in the following areas:
   i. Operations Engineering;
   ii. Construction and Maintenance Engineering Support;
   iii. Construction and Maintenance Engineering, Region 1;
   iv. Construction and Maintenance Engineering, Region 2;
   v. Construction and Maintenance Engineering, Region 3;
   vi. Construction and Maintenance Engineering, Region 4.
6. The Assistant Commissioner for Finance and Administration reports to the Commissioner with principal responsibilities in the following areas:
   i. Safety;
   ii. Facilities Planning;
   iii. Affirmative Action and Hearings;
   iv. Civil Rights;
   v. Accounting and Auditing;
   vi. Budgeting;
   vii. Support Services;
   viii. Management Information Services;
   ix. Human Resources; and
   x. Procurement.
7. The Assistant Commissioner for Interagency Coordination reports to the Commissioner with principal responsibilities for providing coordination with the following agencies:
   i. New Jersey Expressway Authority;
   ii. New Jersey Turnpike Authority;
   iii. New Jersey Highway Authority;
   iv. NJ Transit;
   v. Port Authority of New York and New Jersey;
   vi. Delaware River and Bay Authority;
   vii. Delaware River Port Authority;
   viii. Delaware River Joint Toll Bridge Commission;
   ix. Burlington County Bridge Commission;
   x. Palisades Interstate Park Commission;
   xi. City of Salem Port Authority; and
   xii. South Jersey Port Corporation.
8. Other officials within the Department report to the Commissioner. These officials include the:
   i. Chief of Staff;
   ii. Legislative Liaison;
   iii. Director of Communications;
   iv. Inspector General; and
   v. Director of Programming and Monitoring.

16:1A-1.3 (Reserved.)

16:1A-1.4 Public information requests

(a) Members of the public may obtain general information from the Department of Transportation by writing to or telephoning the Public Information Officer, Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625, (609) 530-2124.

(b) The cost for copies of documents to a member(s) of the public is:

1. First page to 10th page, $0.50 per page;
2. Eleventh page to 20th page, $0.25 per page;
3. All pages over 20, $0.10 per page.

(c) Government agencies are exempt from cost for copies of documents.

APPENDIX "A"
ORGANIZATION CHART
DEPARTMENT OF TRANSPORTATION

OAL NOTE: The Department organizational chart cannot be reproduced in the New Jersey Register or the Administrative Code. Copies may be obtained from the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN 301, Trenton, N.J. 08625.

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(a)

LOCAL AID
State Aid Road System
County Operations
Construction Equipment Damage Program
Adopted Repeals: N.J.A.C. 16:14, 15 and 18

Proposed: May 15, 1989 at 21 N.J.R. 1282(a).
Adopted: June 15, 1989, by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.
Filed: June 16, 1989 as R.1989 d.367, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 to 9, 27:13-1 to 41, 27:13A-1 to 13, 27:14-1 to 49 and 52:27B-17.
Effective Date: July 17, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the repealed rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:14, 15 and 18, pending their deletion from the Code.

(b)

TRANSPORTATION OPERATIONS
Restricted Parking and Stopping
Routes U.S. 1 in Middlesex County; U.S. 30 in Camden County; N.J. 34 in Middlesex County; and N.J. 71 in Monmouth County
Adopted Amendments: N.J.A.C. 16:28A-1.1, 1.21, 1.24 and 1.38

Proposed: May 15, 1989 at 21 N.J.R. 1283(a).
Adopted: June 19, 1989, by John F. Dunn Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: June 21, 1989 as R.1989 d.374, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Effective Date: July 17, 1989.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.1 Route U.S. 1
(a) The certain parts of the State highway Route U.S. 1 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.
1.-4. (No change.)
5. No stopping or standing in Plainsboro Township, Middlesex County:
i. Along both sides:
(1) For the entire length within the corporate limits of the Township of Plainsboro including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.
(b) (No change.)

16:28A-1.21 Route U.S. 30
(a) (No change.)
(b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1.-25. (No change.)
26. Along the eastbound (southerly) side in Somerdale Borough, Camden County:
i. Near side bus stops:
(1) Evergreen Avenue—Beginning at the westerly curb line of Evergreen Avenue and extending 105 feet westerly therefrom.
(2) Crestwood Avenue—Beginning at the westerly curb line of Crestwood Avenue and extending 123 feet westerly therefrom.
(3) Somerdale Road—Beginning at the westerly curb line of Somerdale Road and extending 105 feet westerly therefrom.
(4) Dartmouth Avenue—Beginning at the westerly curb line of Dartmouth Avenue and extending 105 feet westerly therefrom.
27. Along the westbound (northerly) side in Somerdale Borough, Camden County:
i. Near side bus stops:
(1) Vassar Avenue—Beginning at the easterly curb line of Vassar Avenue and extending 105 feet easterly therefrom.
(2) Lafayette Avenue—Beginning at the easterly curb line of Lafayette Avenue and extending 105 feet easterly therefrom.
(3) Somerdale Road —Beginning at the easterly curb line of Somerdale Road and extending 105 feet easterly therefrom.
(4) Crestwood Avenue—Beginning at the easterly curb line of Crestwood Avenue and extending 115 feet easterly therefrom.
(5) Evergreen Avenue—Beginning at the easterly curb line of Evergreen Avenue and extending 120 feet easterly therefrom.
ii. Far side bus stops:
(1) White Horse Road Route 673—Beginning at the westerly curb line of White Horse Road Route 673 and extending 140 feet westerly therefrom.
(2) Dartmouth Avenue—Beginning at the westerly prolongated curb line of Dartmouth Avenue and extending 100 feet westerly therefrom.
28. (No change in text.)

16:28A-1.24 Route 34
(a) (No change.)
(b) The certain parts of State highway Route 34 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1. Along the easterly (northbound) side in Old Bridge Township, Middlesex County:
i. Near side bus stops:
(1) (No change.)
(2) Lexington Circle—Beginning at the southerly prolongated curb line of Lexington Circle and extending 105 feet southerly therefrom.
ii. Far side bus stops:
(1) (No change.)
2. Along the southerly (westbound) side in Old Bridge Township, Middlesex County:
i. (No change.)
ii. Near side bus stop:
(1) Lexington Circle—Beginning at the northerly curb line of Lexington Circle and extending 110 feet northerly therefrom.

16:28A-1.38 Route 71
(a)-(b) (No change.)
(c) The certain parts of State highway Route 71 described in this subsection are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Loading Zones:
1. No parking—Loading Zone in the City of Asbury Park, Monmouth County:
i. Along the easterly (northbound) side:
(1) (No change.)
(2) Beginning at a point 50 feet from the northerly curb line of Sewall Avenue and extending 50 feet northerly therefrom.
ii. (No change.)
(d) (No change.)

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(a)

TRANSPORTATION OPERATIONS
Restricted Parking and Stopping
Route U.S. 9 in Middlesex County
Adopted Amendment: N.J.A.C. 16:28A-1.7

Proposed: May 15, 1989 at 21 N.J.R. 1284(a).
Adopted: June 19, 1989, by John F. Dunn Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: June 21, 1989 as R.1989 d.375, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Effective Date: July 17, 1989.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9
(a) (No change.)
(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1. Along the northbound side in Old Bridge Township, Middlesex County:
i. Far side bus stops:
(1)-(2) (No change.)
Renumber (4) through (7) as (3) through (6) (No change in text.)
ii. Near side bus stops:
(1)-(6) (No change.)
(7) Ferry Road (105 feet);
iii. Mid-block bus stop:
(1) Northbound Service Road—From a point 1,615 feet north of the northerly curb line of Cindy Street to a point 1,750 feet north of the northerly curb line of Cindy Street.
2. Along the southbound side in Old Bridge Township, Middlesex County:
i.-ii. (No change.)
3.-39. (No change.)

(b)

POLICY AND PLANNING
DIVISION OF TRANSPORTATION ASSISTANCE
Autobuses
Adopted New Rules: N.J.A.C. 16:53

Proposed: May 1, 1989 at 21 N.J.R. 1098(a).
Adopted: June 1, 1989, by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.
Filed: June 23, 1989 as R.1989 d.392, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14D-1 et seq.
Effective Date: July 17, 1989.
Expiration Date: July 17, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 16:53.

Full text of the adopted new rules amending the expired rules follows.

CHAPTER 53
AUTOBUSES

SUBCHAPTER 1. AUTOBUS SPECIFICATIONS FOR VAN TYPE AUTOBUSES

16:53-1.1 Scope
(a) (No change.)
(b) Any van now in operation or acquired prior to June 1, 1989 and for which the New Jersey Department of Transportation has issued a Certificate of Compliance may continue in service presently designed, constructed and equipped.
(c)-(d) (No change.)

16:53-1.13 Brakes
(a)-(f) (No change.)
(g) Brakes stopping distances shall be measured by means of instrument or machine of the decelerometer type, capable of being read in feet.
1. Each autobus shall meet the brake stop requirements with an approved and calibrated decelerometer.
2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.
3. The brake stop test shall be performed within 20 days prior to self inspection certification.
4. The New Jersey Department of Transportation shall provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing shall be provided.
(h) (No change.)

16:53-1.17 Exhaust systems
(a)-(b) (No change.)
(c) The engine shall be maintained in good operating condition so as to prevent emission of unnecessary smoke or vapors. Vehicles shall meet the New Jersey Department of Environmental Protection motor vehicle emission inspection standard applicable to light duty gasoline fuel motor vehicles.
1. Each vehicle exhaust emission system shall be inspected utilizing equipment approved by the New Jersey Department of Environmental Protection.
2. Inspection of the vehicle exhaust emission system may be conducted by the vehicle company, by a designated person chosen by the company or by the New Jersey Department of Transportation for a fee, as prescribed in N.J.A.C. 16:53-10.1.
3. Each vehicle must be inspected every six months by a person qualified to conduct emission testing. Inspections must be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspection performed by other than New Jersey Department of Transportation personnel shall require a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.
4. The New Jersey Department of Transportation shall provide facilities to conduct exhaust emission testing at various geographic locations. A monthly schedule for testing will be provided.
(d)-(e) (No change.)

SUBCHAPTER 3. AUTOBUS SPECIFICATIONS

16:53-3.1 Scope
(a)-(b) (No change.)
(c) Any autobus now in operation or acquired prior to June 1, 1989 and for which the Department has issued a Certificate of Compliance, may continue in service as presently designed, constructed and equipped where the context of these specifications indicates to the contrary. Any autobus for which a contract of sale or purchase order has been entered into on or before June 1, 1989 should be certificated in accordance with specifications in effect prior to June 1, 1989.
(d) (No change.)

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16:53-3.2 Dimensions of autobuses

(a) (No change.)

(b) The overall width shall not exceed 102 inches outside measurements. For buses exceeding 102 inches, see (c) below.

(c) No autobus with an outside width in excess of 102 inches will be approved unless the request for approval is accompanied by a certificate of the Division of Motor Vehicles in the Department of Law and Public Safety, that the proposed width is not unsafe for use on the highways in this State, and of the Department of Transportation, that the proposed width, if in excess of the 102 inches, is not in conflict with the requirements of any agency of the United States having jurisdiction over the National System of Interstate and Defense Highways authorized by law. No outside width so prescribed shall be valid if the allowance or use of same would disqualify the State of New Jersey or any department, agency, or governmental subdivision thereof for the purpose of receiving Federal highway funds.

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

16:53-3.6 Service doors

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

(d) Autobuses equipped with a kneeling feature are required to have the following:

1. A warning sign located on the right front exterior, visible while the door is opened, indicating that the bus kneels;

2. A flashing amber light at least 2½ inches in diameter located at the right front of the vehicle and an audible device which shall be activated when the bus is lowered or raised; and

3. An interlock installed so that during the kneeling cycle, it will be impossible, under normal operating conditions, to put the vehicle in motion.

16:53-3.10 Seat dimensions

(a)-(d) (No change.)

(e) A tour guide seat may be installed to the right of the center aisle, provided that said seat is not occupied by other than an employee of the autobus company. When the tour guide seat is not in use, it shall fold to allow a clear 24 inch passageway. The tour guide seat shall be equipped with a seat belt.

16:53-3.12 Handles for standing passengers

(a)-(d) (No change.)

(e) All vehicles carrying passengers must have the permitted standing passengers capacity of vehicle displayed on the exterior or vehicle adjacent to the area of the entrance door and clearly visible to all boarding passengers. Vehicles not permitting standees shall display on the exterior of the vehicle "No standees".

16:53-3.20 Brakes

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

(c) The braking distance will ordinarily be measured by means of an instrument or machine of the decelerometer type capable of being read in feet.

1. Each autobus shall meet the brake stop requirement with an approved calibrated decelerometer.

2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

3. The brake stop test shall be performed within 20 days prior to self inspection certification.

4. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided.

(d) (No change.)

(e) Brake systems shall be equipped with a pressure or power gauge, indicating pounds per square inch or inches of mercury, located in clear view of the driver and illuminated during the period running lights are required.

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

16:53-3.22 Identification

(a) (No change.)

(b) Every autobus shall be assigned an identifying number by the utility. This number shall be displayed on the interior front, and the front, rear and both sides of the exterior. Interior and exterior numbers shall be at least three inches in height. All exterior numbers shall be at least three inches in height and of a sharply contrasting color from the background. The number at the rear shall be displayed at least 60 inches from the ground.

(c) Each autobus shall display on the right-hand side thereof, the number of the Department's Certificate of Compliance and the charter number, if applicable, in letters and figures three inches high in the following style: NJDOT 12345 and/or NJDOT 123C.

16:53-3.23 Certificate of Inspection

(a)-(e) (No change.)

(f) Any person who issues a Certificate of Inspection or submits a certification to the Department without the required inspection and repair having been performed, shall be deemed to be a disorderly person in accordance with N.J.S.A. 48:4-2.1(a) and be subject to the appropriate penalty.

16:53-3.27 Exhaust systems

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

(d) Such system shall be maintained in good working order in conformity with standards promulgated by the New Jersey Department of Environmental Protection.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the autobus exhaust emission system may be conducted by the autobus company, by a designated person chosen by the company or by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed within 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspections performed by any person other than New Jersey Department of Transportation personnel shall require a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

16:53-3.29 Safety glazing and window construction

Glazing shall be a type approved by the Director, Division of Motor Vehicles, and comply with Federal Motor Carrier Safety Regulation 393.60 and Federal Motor Vehicle Safety Standard No. 217, pertaining to emergency escape.

16:53-3.32 Speedometers

Each autobus shall be equipped with a suitable speedometer which indicates speed in miles per hour, shall be operative with reasonable accuracy and readily visible to the operator. A method for recording accumulated miles shall also be provided.

16:53-3.40 Mirrors

(a) Interior and exterior mirrors shall be provided to insure a clear view of the vehicle interior and of the exterior sides to the rear.

(b) A video camera designed to view the exterior rear, in addition to rear view mirrors, shall be installed so that the camera is inoperable while the vehicle is in a forward motion.

16:53-3.41 Video monitor and/or television receiver installation for passenger use

(a) An autobus shall not have a video monitor and/or a television receiver installed in such a manner that the viewing screen is visible to the driver while operating the autobus.

(b) The manual changing of station channels for television reception must be done at a location other than from the driver's seat.

(c) The viewing screen shall be installed in such a way as to minimize passenger contact. In addition, viewing screens shall not block normal access to the aisle or emergency escape windows.

(d) Viewing screens placed above passenger seats shall be installed in a manner as to allow a passenger to occupy the seat below the

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unit without coming into contact with it, while in a normally seated position.

(e) With the exception of the viewing screen and the front perimeter of the housing, the video monitor or the television receiver shall be enclosed in a material designed to soften any passenger impact with the chassis of the unit or its mounting components. Ventilation holes are permitted.

(f) All equipment (video screens, television receivers, video cassette recorders, tape players, etc.) shall be securely mounted to the vehicle, so that they cannot be moved without being intentionally unfastened. In lieu of this requirement, the unit must be inside of an enclosure to prevent its shifting or falling on the driver or passengers.

(g) Wiring shall be installed in a workmanlike manner and shall be equipped with an overload protector.

SUBCHAPTER 4. MODIFIED INTERIORS OR AUTOBUSES USED FOR CHARTER OR SPECIAL BUS OPERATIONS

16:53-4.1 Scope

(a) (No change.)

(b) A New Jersey Department of Transportation autobus whose conventional seating has been modified prior to June 1, 1989 may continue in service as presently designed.

SUBCHAPTER 6. AUTOBUS SPECIFICATIONS FOR SMALL BUS

16:53-6.1 Scope

(a) (No change.)

(b) Any small bus now in operation or acquired prior to June 1, 1989 and for which the Department has issued a Certificate of Compliance, may continue in service as presently designed, constructed and equipped.

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

16:53-6.2 Definitions

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

"FMCSR" means Federal Motor Carrier Safety Regulations.

"FMVSS No. 217" means Federal Motor Carrier Safety Standard No. 217.

"GVW" means gross vehicle weight (weight of unloaded vehicle).

"GVAW" means gross vehicle axle weight.

"GVWR" means gross vehicle weight rated (weight of vehicle including load).

"Small bus" means a vehicle having a seating capacity of 16 to 25 adult passengers, not including the driver.

16:53-6.3 Dimensions

(a) (No change.)

(b) No autobus with an outside width in excess of 102 inches will be approved unless the request for approval is accompanied by a certificate of the Division of Motor Vehicles in the Department of Law and Public Safety, that the proposed width is not unsafe for use on the highways in this State, and of the Department of Transportation, that the proposed width, if in excess of 102 inches, is not in conflict with the requirements of any agency of the United States having jurisdiction over the National System of Interstate and Defense Highways authorized by law. No outside width so prescribed shall be valid if the allowance or use of same would disqualify the State of New Jersey or any department, agency, or governmental subdivision thereof for the purpose of receiving Federal highway funds.

16:53-6.4 to 6.10 (No change in text.)

16:53-6.11 Mirrors

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

(c) A video camera designed to view the exterior rear, in addition to rear view mirrors, shall be installed so that the camera is inoperable while the vehicle is in a forward motion.

16:53-6.12 Brakes

(a)-(f) (No change.)

(g) Brakes stopping distance shall be measured by means of an instrument or machine of the decelerometer type capable of being read in feet.

1. Each autobus shall meet the brake stop requirement with an approved calibrated decelerometer.

2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

3. The brake stop test shall be performed within 20 days prior to self inspection certification.

4. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided.

(h)-(n) (No change.)

16:53-6.13 to 6.15 (No change in text.)

16:53-6.16 Exhaust system

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

(c) The engine shall be maintained in good operating condition so as to prevent emission of unnecessary smoke or vapors. Vehicles shall meet the New Jersey Department of Environmental Protection Motor Vehicle Emission Inspection Standard applicable to the type of engine installed.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the exhaust emission system may be conducted by the autobus company, by a person chosen by the company or by New Jersey Department of Transportation for a fee as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspections performed by any person other than New Jersey Department of Transportation personnel require a certification from the individual conducting such inspection, indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

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

16:53-6.17 to 6.20 (No change in text.)

16:53-6.21 Identification

(a) (No change.)

(b) Every autobus shall be assigned an identifying number by the utility. This number shall be displayed on the interior front, and the front, rear, and both sides of the exterior. Interior and exterior numbers shall be at least three inches in height and of a sharply contrasting color from the background. The number at the rear shall be displayed at least 60 inches from the ground.

(c) Each autobus shall display on the right-hand side thereof, the number of the Department's Certificate of Compliance and the charter number, if applicable, in letters and figures three inches high in the following style: NJDOT 12345 and/or NJDOT 123C.

16:53-6.22 to 6.25 (No change in text.)

16:53-6.26 Speedometers

Each autobus shall be equipped with a suitable speedometer which shall be operative with reasonable accuracy in miles per hour and readily visible to the driver. A method of recording accumulated miles shall also be provided.

16:53-6.27 to 6.32 (No change in text.)

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SUBCHAPTER 7. SPECIFICATIONS FOR SPECIAL AUTOBUS TYPE RECREATIONAL VEHICLES

16:53-7.1 Scope

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

(c) Any vehicle now in operation or acquired prior to June 1, 1989 and for which the Department has issued a Certificate of Compliance may continue in service as presently designed, constructed and equipped.

(d) (No change.)

16:53-7.2 Dimensions

(a) (No change.)

(b) No autobus with an outside width in excess of 102 inches will be approved unless the request for approval is accompanied by a certificate of the Division of Motor Vehicles in the Department of Law and Public Safety, that the proposed width is not unsafe for use on the highways in this State, and of the Department of Transportation, that proposed width, if in excess of 102 inches, is not in conflict with the requirements of any agency of the United States having jurisdiction over the National Systems of Interstate and Defense Highways authorized by law. No outside width so prescribed shall be valid if the allowance or use of same would disqualify the State of New Jersey or any department, agency or governmental subdivision thereof for the purpose of receiving Federal highway funds.

16:53-7.11 Brakes

(a)-(f) (No change.)

(g) Brakes stopping distances shall be measured by means of an instrument or machine of the decelerometer type capable of being read in feet.

1. Each autobus shall meet the brake stop requirement with an approved and calibrated decelerometer.

2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

3. The brake stop test shall be performed within 20 days prior to self inspection certification.

4. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided.

(h)-(n) (No change.)

16:53-7.14 Exhaust system

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

(c) The engine shall be maintained in good operating condition so as to prevent emission of unnecessary smoke or vapor. Vehicles shall meet the New Jersey Department of Environmental Protection Motor Vehicle emission inspection standard applicable to type of engine installed.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the autobus exhaust emission may be conducted by the vehicle company, by a designated person chosen by the company or by New Jersey Department of Transportation for a fee as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspection performed by any person other than New Jersey Department of Transportation personnel requires a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

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

16:53-7.15 Windshield wipers and defroster

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

(c) Vehicles shall be equipped with a suitable windshield defroster.

16:53-7.20 Speedometer

Each autobus shall be equipped with a suitable speedometer which shall be operative with reasonable accuracy in miles per hour and readily visible to the driver. A method of recording accumulated miles shall also be provided.

16:53-7.24 Identification

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

(c) Each autobus shall display on the right-hand side thereof, the number of the Department's Certificate of Compliance and the charter number, if applicable, in letters and figures three inches in height in the following style: NJDOT 12345 and/or NJDOT 123C.

SUBCHAPTER 8. SPECIFICATIONS FOR SEDAN-TYPE AUTOBUSES

16:53-8.1 Scope

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

(c) Any sedan-type autobus now in operation or acquired prior to June 1, 1989 and for which the Department has issued a Certificate of Compliance, may continue in service as presently designed, constructed and equipped.

16:53-8.9 Brakes

(a) Each vehicle shall be equipped with two independent brake systems operating independently of each other and conforming to the following standards of construction and maintenance.

1.-4. (No change.)

5. The braking distance shall be measured by means of an instrument or machine of the decelerometer type capable of being read in feet.

i. Each autobus shall meet the brake stop requirement with an approved and calibrated decelerometer.

ii. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

iii. The brake stop test shall be performed within 20 days prior to self inspection certification.

iv. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided; and

6. (No change.)

16:53-8.15 Exhaust systems

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

(c) The engine shall be maintained in good operating condition so as to prevent discharge of unnecessary fumes or gases. Vehicles shall meet the New Jersey Department of Environmental Protection motor vehicle emission inspection standard applicable to the type of engine installed.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the exhaust emission system may be conducted by the autobus company, by a person chosen by the company or by the New Jersey Department of Transportation for a fee as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspections performed by any person other than New Jersey Department of Transportation personnel require a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

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

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SUBCHAPTER 10. DESIGNATED FEES FOR AUTOBUS INSPECTIONS

16:53-10.1 Smoke emission inspection

The fee charged for a smoke emission test performed by Department of Transportation personnel in conjunction with self inspection certification will be $15.00 per vehicle.

16:53-10.2 Brake test inspection

The fee charged for a brake test performed by Department of Transportation personnel in conjunction with self inspection certification will be $15.00 per vehicle.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund School Year Members

Adopted Amendment: N.J.A.C. 17:3-4.3

Proposed: April 17, 1989, at 21 N.J.R. 980(a).
Adopted: June 12, 1989, by the Teachers' Pension and Annuity Fund, Anthony Ferrazza, Secretary.
Filed: June 13, 1989 as R.1989 d.359, **without change**.

Authority: N.J.S.A. 18A:66-56.

Effective Date: July 17, 1989.
Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: A commenter suggested the rule be clarified to more fully explain the rule's purpose as set out in the proposal's impact statements. That a definition of "full year" be included in the rule was also suggested.

RESPONSE: The Board considers the proposed rule language to be sufficiently clear to generate the effects explained in the proposal. The Board does not consider the suggested definition necessary, as that term is unchanged from the rule as previously in effect.

Full text of the adoption follows.

17:3-4.3 School year members

Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's credit shall be given during any consecutive 12 months.

(b)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund Purchases and Eligible Service

Adopted New Rule: N.J.A.C. 17:3-5.9

Proposed: April 17, 1989, at 21 N.J.R. 980(b).
Adopted: June 9, 1989, by the Teachers' Pension and Annuity Fund, Anthony Ferrazza, Secretary.
Filed: June 13, 1989 as R. 1989 d. 360, **without change**.

Authority: N.J.S.A. 18A:66-56.

Effective Date: July 17, 1989.
Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:3-5.9 Lump-sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the Teachers' Pension and Annuity Fund Law (N.J.S.A. 18A:66-1 et seq.) and the rules of the retirement system.

(c)

STATE LOTTERY COMMISSION

Lottery Commission Rules Ethics; Conflict of Interest

Adopted Amendment: N.J.A.C. 17:20-8

Proposed: March 6, 1989 at 21 N.J.R. 631(a).
Adopted: June 20, 1989 by the New Jersey State Lottery Commission, Barbara Marrow-Mooring, Executive Director.
Filed: June 22, 1989 as R.1989 d.381, **without change.**

Authority: N.J.S.A. 5:9-7(a), (b), and (f): 52:13D-12 et seq.: and Executive Order No. 189(1988).

Effective Date: July 17, 1989.
Expiration Date: September 26, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:20-8.1 Lottery vendors' code of ethics

(a) No Lottery vendor shall employ any person or maintain any business relationship with any person who is a Lottery Commissioner, officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Lottery or with his or her immediate family or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. As used in this section, Lottery vendor means any person, firm or corporation engaging or seeking to engage in business with the Division of the State Lottery.

(b) The maintenance of a business relationship shall be deemed to include, but not be limited to, any interest, financial or otherwise, direct or indirect, any business transaction or professional activity involving a Commissioner, officer or employee, including the sale of any interest in the vendor. However, it shall not be a violation of this paragraph for a Lottery Commissioner, officer or employee to seek future outside employment or to correspond with a Lottery vendor with respect thereto, provided that:

1. The Director is promptly informed of such activities; and
2. They are not violative of State law or such other ethical standards as may apply. (Lottery Commissioners and Division Officers and employees are covered by separate Codes of Ethics. See (i) below.)

(c) Any relationships subject to (b) above shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(d) No Lottery vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner, officer or employee to act in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said Lottery Commissioner, officer or employee.

(e) No Lottery vendor shall cause or influence, or attempt to cause or influence, any Lottery Commissioner, officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Lottery vendor or for any other person.

(f) No Lottery vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, to any Lottery Commissioner, officer or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such person, or any partnership, firm, or corporation with which such person is employed or associated, or in which such person has an interest within the meaning of N.J.S.A. 52:13D-13g, any fee, commission, compensation, gift, favor,

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service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Commissioner, officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

(g) This Code of Ethics shall also apply to any licensed agent of the New Jersey State Lottery.

(h) No Lottery vendor shall, without the written approval of the Director, disclose, directly or indirectly, any information not generally or legally available to the public concerning the affairs of the Division.

(i) This code is intended to augment and not replace existing administrative orders and pertinent codes of ethics. It shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate. If any part of this Code shall be found ineffective or inoperative, such finding shall not affect the other parts of the Code.

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Organizational Rules

Adopted New Rules: N.J.A.C. 19:8-11

Adopted: June 14, 1989 by the New Jersey Highway Authority, George P. Zilocchi, Executive Director.

Filed: June 14, 1989 as R.1989 d.361.

Authority: N.J.S.A. 52:14B-3(l), 52:14B-4(f) and 27:12B-5(a), (j) and (t).

Effective Date: June 14, 1989.

Expiration Date: July 5, 1993.

Take notice that the New Jersey Highway Authority has adopted the following organizational rules, which are adopted without prior notice and hearing and effective upon filing with the Office of Administrative Law, pursuant to N.J.S.A. 52:14B-4(b).

Full text of the adoption follows:

SUBCHAPTER 11. ORGANIZATIONAL RULES

19:8-11.1 Authority purpose

The New Jersey Highway Authority is an instrumentality exercising public and governmental essential functions in the construction, operation and maintenance of the Garden State Parkway, the Garden State Arts Center and ancillary functions thereto.

19:8-11.2 Organization of the New Jersey Highway Authority

(a) The New Jersey Highway Authority consists of eight Commissioners appointed by the Governor for five-year terms, with the advice and consent of the Senate, each of whom shall serve until a successor is appointed and has qualified. The Governor designates one of the members of the Authority as Chairman and another member as Vice-Chairman who serve at the pleasure of the Governor and until their respective successors have been designated. The Chairman is the Chief Executive Officer of the Authority, presides at all meetings of the Authority and has the general supervision, direction and control of the affairs of the Authority and appoints Commissioners to such Committees as the Authority may from time to time establish. The Vice-Chairman, in the absence of or incapacity of the Chairman or in the event of a vacancy in that office, assumes and performs the duties and powers of the Chairman.

(b) Additional officers of the Authority include a Secretary and a Treasurer who may but need not be members (Commissioners) and an Executive Director who shall not be a member (Commissioner).

(c) The functions of the Authority are subdivided into six major Departments managed by Department Heads who report directly to the Executive Director.

(d) The Departments are further broken down into subunits designated Divisions, as follows:

1. Executive:
i. General and Administrative;
ii. Internal Audit;
iii. Law;
iv. Public Relations;
v. Personnel;
vi. Central Purchasing;
vii. Arts Center;
viii. Cultural Center Fund;
ix. Printing Services; and
x. Management Information & Computer Services.
2. Operations:
i. General and Administrative;
ii. State Police Troop "E"; and
iii. Patron Services.
3. Finance:
i. General and Administrative;
ii. Accounting; and
iii. Audit.
4. Engineering:
i. General and Administrative;
ii. Traffic Planning.
5. Maintenance:
i. General and Administrative;
ii. Roadway Division; and
iii. Building Division.
6. Tolls:
i. General and Administrative; and
ii. Toll Collection Division.

19:8-11.3 Public information requests

Members of the public may obtain general information from the New Jersey Highway Authority by contacting the Executive Director, New Jersey Highway Authority, Garden State Parkway, Woodbridge, N.J. 07095.

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of Elections for Governor; Coordinated Expenditures

Adopted New Rules: N.J.A.C. 19:25-15.29 and 16.30

Proposed: May 15, 1989 at 21 N.J.R. 1286(a).

Adopted: June 21, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: June 23, 1989, as R.1989 d.382, **without change.**

Authority: N.J.S.A. 19:44A-38 and P.L. 1989, c.4, specifically section 12.

Effective Date: June 23, 1989.

Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:

The Election Law Enforcement Commission (hereafter, "ELEC"), received written comments from "Florio for Governor, Inc.", by letter dated May 24, 1989, Angelo J. Genova, Esq., general counsel, and Scott A. Weiner, Esq., treasurer; and from "Friends of Jim Courter," by letter dated June 12, 1989, Peter Verniero, Esq., deputy campaign director. Mr. Genova and Mr. Weiner testified at the public hearing on June 1, 1989, as did Steve DeMicco, director, "Campaign '89," a committee supporting Democratic candidates for General Assembly. A summary of the comments and responses follows:

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COMMENT: The Florio campaign representatives, and the "Campaign '89" representative, generally supported the proposed rules but suggested that coordinated expenditures for direct mail and "get-out-the-vote" telephone activities be added to the activity excluded from the coordinated activity rules.

RESPONSE: The addition of direct mail and phone bank activity to those activities excluded from the coordinated expenditure rules would substantially alter the scope of the Commission's proposal. Therefore, ELEC is not adopting those suggestions at this time, but intends to repropose those suggestions and other possible changes for publication in the August 7, 1989 edition of the New Jersey Register.

COMMENT: The Courter campaign representative generally supported the proposed rules but questioned whether a poster containing a photograph of all candidates under a slogan such as: "Vote the Republican Team: Courter for Governor, Candidate X for Assembly, Candidate Y for Freeholder" would be deemed insubstantial under proposed N.J.A.C. 15.29(b)2 and 16.30(b)2.

RESPONSE: ELEC believes that the example provided would constitute an insubstantial reference under the proposed text. The fact that there was a pictorial reference to a gubernatorial candidate as well as a reference to the gubernatorial candidate's name would not preclude the references from being treated as insubstantial. ELEC intends to repropose these rules shortly and may revise the text of subsection (b) to state that a single reference to a gubernatorial candidate's name, a single reference to a gubernatorial candidate's name within a slate of candidate names, and a single photograph of the gubernatorial candidate may collectively comprise an insubstantial reference.

Full text of the adoption follows:

19:25-15.29 Coordinated expenditures

(a) A communication expenditure by a candidate other than a gubernatorial candidate is a contribution by such candidate subject to the contribution limit in N.J.S.A. 19:44A-29 and is a coordinated expenditure of the gubernatorial candidate properly allocable against the expenditure limit of gubernatorial candidate in N.J.S.A. 19:44A-7 if:

1. The communication makes an unambiguous reference to the gubernatorial candidate in an audio, visual or printed format; and

2. The gubernatorial candidate or his or her campaign committee has consented to, authorized, or exercised control over the production or circulation of the communication.

(b) A reference to a gubernatorial candidate will be deemed insubstantial and not subject to (a) above provided that:

1. The reference consists of the name or picture of the gubernatorial candidate in equal or less than equal prominence to the prominence given the names or pictures of non-gubernatorial candidates;

2. The names or pictures of the gubernatorial and non-gubernatorial candidates appear on printed campaign materials used in connection with volunteer activities on behalf of the named or pictured non-gubernatorial candidates, such materials consisting of buttons, pins, bumper stickers, handbills, brochures, posters, yard signs or palm cards; and

3. The materials in (b)2 above are not used in connection with any broadcasting, newspaper, magazine, billboard, direct mail or similar type of general public communication or political advertising.

(c) A gubernatorial candidate or campaign committee receiving a coordinated communication pursuant to (a) above must determine:

1. The cost of preparation and circulation of the communication; and

2. The reasonable value of the coordinated communication to the gubernatorial candidate.

(d) The reasonable value of a coordinated communication to a gubernatorial candidate may be determined at less than 100 percent of the total cost of preparation and circulation if the coordinated communication referred to one or more non-gubernatorial candidates in the same election, and the percentage of the cost to be allocated to the gubernatorial candidate shall be determined based upon the following:

1. The number of non-gubernatorial candidates identified or otherwise referred to; and

2. The relative prominence of the reference to the gubernatorial candidate in relation to references to non-gubernatorial candidates. For example, if a printed pamphlet is prepared and circulated at a cost of $1,000 and features equally one page for a non-gubernatorial candidate and one page for a gubernatorial candidate, the reasonable value is 50 percent of the total cost of $1,000 or $500.00.

(e) A gubernatorial candidate determining the reasonable value to his or her candidacy of a coordinated communication pursuant to (d) above shall establish that value to the nearest five percent of the total cost of preparation and circulation. In no case shall the reasonable value be determined to be less than five percent of total cost.

19:25-16.30 Coordinated expenditures

(a) A communication expenditure by a candidate other than a gubernatorial candidate is a contribution by such candidate subject to the contribution limit in N.J.S.A. 19:44A-29 and is a coordinated expenditure of the gubernatorial candidate properly allocable against the expenditure limit of the gubernatorial candidate in N.J.S.A. 19:44A-7 if:

1. The communication makes an unambiguous reference to the gubernatorial candidate in an audio, visual or printed format; and

2. The gubernatorial candidate or his or her campaign committee has consented to, authorized, or exercised control over the production or circulation of the communication.

(b) A reference to a gubernatorial candidate will be deemed insubstantial and not subject to (a) above provided that:

1. The reference consists of the name or picture of the gubernatorial candidate in equal or less than equal prominence to the prominence given the names or pictures of non-gubernatorial candidates;

2. The names or pictures of the gubernatorial and non-gubernatorial candidates appear on printed campaign materials used in connection with volunteer activities on behalf of the named or pictured non-gubernatorial candidates, such materials consisting of buttons, pins, bumper stickers, handbills, brochures, posters, yard signs or palm cards; and

3. The materials in (b)2 above are not used in connection with any broadcasting, newspaper, magazine, billboard, direct mail or similar type of general public communication or political advertising.

(c) A gubernatorial candidate or campaign committee receiving a coordinated communication pursuant to (a) above must determine:

1. The cost of preparation and circulation of the communication; and

2. The reasonable value of the coordinated communication to the gubernatorial candidate.

(d) The reasonable value of a coordinated communication to a gubernatorial candidate may be determined at less than 100 percent of the total cost of preparation and circulation if the coordinated communication referred to one or more more-gubernatorial candidates in the same election, and the percentage of the cost to be allocated to the gubernatorial candidate shall be determined based upon the following:

1. The number of non-gubernatorial candidates identified or otherwise referred to; and

2. The relative prominence of the reference to the gubernatorial candidate in relation to references to non-gubernatorial candidates. For example, if a printed pamphlet is prepared and circulated at a cost of $1,000 and feature equally one page for a non-gubernatorial candidate and one page for a gubernatorial candidate, the reasonable value is 50 percent of the total cost of $1,000 or $500.00.

(e) A gubernatorial candidate determining the reasonable value to his or her candidacy of a coordinated communication pursuant to (d) above shall establish that value to the nearest five percent of the total cost of preparation and circulation. In no case shall the reasonable value be determined to be less than five percent of total cost.

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HEALTH

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations

Cost Base; Standard Costs Per Case; Reasonable Indirect Patient Care Costs; Update Factors; Derivation from Preliminary Cost Base; Reconciliation; Hospitals

Adopted Amendments: N.J.A.C. 8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, and Appendix II

Proposed Repeal Not Adopted: N.J.A.C. 8:31B-Appendix IX

Proposed: January 17, 1989 at 21 N.J.R. 135(a).

Adopted: June 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 23, 1989 as R.1989 d.387, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 130-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: July 17, 1989.

Expiration Date: October 15, 1990.

PREFACE

HOSPITAL GROUPS

Hospital Group A—duplicate comments were provided by several hospitals:

1. Bergen Pines County Hospital
2. Dover General Hospital
3. East Orange General Hospital
4. Elizabeth General Medical Center
5. The Hospital Center at Orange
6. The Medical Center of Ocean County
7. St. Elizabeth Hospital
8. United Hospitals Medical Center
9. Wallkill Valley Hospital and Health Centers
10. Warren Hospital

Hospital Group B—endorsed the comments of HFMA:

1. The Hospital Center at Orange
2. Jersey Shore Medical Center
3. The Memorial Hospital of Salem County, Inc.
4. Overlook Hospital
5. Shore Memorial Hospital

Hospital Group C—endorsed the comments of NJHA:

1. Newark Beth Israel Medical Center
2. Newton Memorial Hospital
3. Shore Memorial Hospital
4. Wallkill Valley Hospital and Health Centers

Hospital Group D—Cohen, Shapiro, Polisher, Shiekman and Cohen submitted comments on behalf of the following hospitals:

1. Alexian Brothers Hospital
2. Dover General Hospital
3. East Orange General Hospital
4. The Hospital Center at Orange
5. The Medical Center of Ocean County
6. Robert Wood Johnson University Hospital
7. St. Francis Medical Center
8. United Hospitals Medical Center
9. Warren Hospital

ORGANIZATION

The comments and responses are organized as follows:

Part I—Adequacy

Part II—Indirects

Part IV—Miscellaneous Issues

I. Adequacy and Update Factors

COMMENTERS: Holy Name Hospital, St. Joseph's Hospital and Medical Center, St. Peter's Medical Center.

COMMENT: The commenters support expanding the base-year cost data base by including Commission-approved costs related to waste disposal.

RESPONSE: The Department agrees with this comment.

COMMENTERS: Cathedral Healthcare System, Elizabeth General Medical Center, General Hospital Center at Passaic, Montclair Community Hospital, Rahway Hospital, St. Joseph's Hospital and Medical Center, West Hudson Hospital.

COMMENTS: Commenters questioned the manner in which 1988 adjustments for waste disposal costs are added to the 1986 base. They request that these adjustments be added as lump sum amounts to each hospital's indirect costs, rather than as increments to the utilities cost center where they would be included in the calculation of a standard and reimbursed on a volume variable basis.

Some commenters also requested that the Department clarify its method for addressing waste disposal costs in 1989 and subsequent years.

RESPONSE: The 1988 adjustments for waste disposal costs will be incorporated as recommended above, that is, as additions to base year 1986 total indirect costs. They will not be reflected in any specific cost center, not standardized, and not reimbursed on a volume variable basis.

In making a special adjustment for 1988 waste disposal costs, the Department has captured costs incurred during a post base-year period of unusually high cost increases. Recognition in 1986 base year costs will allow continued incorporation of that level of cost to all years for which 1986 serves as the base year.

To assist the Department in monitoring the adequacy of proxies, such as that for waste disposal cost, a Proxy Committee will be constituted shortly. In examining questions of adequacy, it will necessarily examine current reimbursement levels, and can bring related inequities such as an additional period of unusually high waste disposal costs to the Department's attention.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Bayshore Community Hospital, Cathedral Healthcare System, Chilton Memorial Hospital, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Franciscan Health System of New Jersey, Inc., Freehold Area Hospital, Hackensack Medical Center, Hackettstown Community Center, Healthcare Financial Management Association, New Jersey Chapter, Helene Fuld Medical Center, Holy Name Hospital, Jersey City Medical Center, Jersey Shore Medical Center, Memorial Hospital of Salem County, Mercer Medical Center, Montclair Community Hospital, Morristown Memorial Hospital, Mountainside Hospital, Our Lady of Lourdes, Overlook Hospital, Raritan Bay Medical Center, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, St. Francis Medical Center, Union Hospital, Wayne General Hospital, Hospital Group A

COMMENT: The Department has indicated its intention to include a portion of the four percent labor adjustment approved by the Hospital Rate Setting Commission in January 1988 if those dollars were not captured in rebasing. This commitment needs to be in writing along with a methodology detailing how this adjustment will be calculated and implemented in the 1989 rates. A recommended calculation method is average employee hourly wages as determined from the actual date. This method will neutralize the effects of volume changes.

RESPONSE: Subsequent to the January 17, 1989 initial publication of these amendments, the Department proposed an amendment to allow a data base adjustment for the four percent labor increase. The Health Care Administration Board approved the proposal for initial publication at its February 9, 1989 meeting. Comments received pertaining to this proposal follow in a separate section.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Bayshore Community Hospital, Cathedral Healthcare System, Chilton Memorial Hospital, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Franciscan Health System of New Jersey, Inc., Freehold Area Hospital, Hackensack Medical Center, Hackettstown Community Center, Healthcare Financial Management Association, New Jersey Chapter, Helene Fuld Medical Center, Holy Name Hospital, Jersey City Medical Center, Jersey Shore Medical Center, Kaden Arnone, Inc., Memorial Hospital of Salem County, Mercer Medical Center, Montclair Community Hospital, Morristown Memorial Hospital, Mountainside Hospital, Our Lady of Lourdes, Overlook Hospital, Raritan Bay Medical Center, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, St. Francis Medical Center, Union Hospital, Wayne General Hospital, Hospital Group A

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COMMENTS: There are several issues not addressed in the amendments that hospitals believe impact the adequacy of the reimbursement system. They are identified below:

1. The expiration of the Medicare waiver results in the loss of a major participating payer. Without an assurance in rules, hospitals will be unable to collect their full financial elements absent Medicare's participation in the Chapter 83 system.

2. The Department needs to state in writing whether the Length of Stay (LOS) Adjustment will continue in 1989. It is unrealistic for the Department to assume LOS has stabilized. The commenters are in favor of maintaining a LOS adjustment.

3. The 1989 final reconciliation methodology should be determined and shared with the industry in the first quarter of 1989.

RESPONSE: 1. On May 11, 1989, the HCAB approved for initial publication language that would allow the Hospital Rate Setting Commission to adjust the rates for participating payers if PPS revenue is different from Chapter 83 revenue. Through this action, hospitals will be allowed to collect their full approved revenue.

2. On February 28, 1989, Assistant Commissioner Pamela S. Dickson issued a memorandum informing all Hospital Chief Executive Officers and Chief Financial Officers that the LOS adjustment will no longer be calculated for LOS declines between the rate year and the base year. Since 1989 rates will reflect rebasing and implementation of an updated GROUPER with new trimpoints, many of the initial reasons for a LOS adjustment no longer exist. However, in order to assure that this change will be implemented prospectively with the 1989 rate year, changes in length of stay between 1986 through 1988 will be calculated and LOS adjustments for 1987 and 1988 will be reflected as a continuous adjustment in the mark-up report. The LOS adjustment has never been in regulation; thus, no regulatory change is required.

3. The Department will issue the 1989 final reconciliation methodology prior to the time 1989 rates are implemented.

COMMENTERS: Chilton Memorial Hospital, Community Medical Center, East Orange General Hospital, Healthcare Financial Management Association, New Jersey Chapter, Holy Name Hospital, Jersey Shore Medical Center, Medical Center of Ocean County, Memorial Hospital of Salem County, Muhlenberg Regional Hospital, Our Lady of Lourdes, St. Francis Medical Center, Wayne General Hospital

COMMENT: The overriding issue that must be addressed is the issue of adequacy. The changes proposed for 1989 must ensure the financial solvency of efficient, effective and properly utilized hospitals. The healthcare delivery system taken as a whole must be adequately funded by the reimbursement system.

RESPONSE: Equity and adequacy are the goals of these reimbursement reform proposals. The Department expects that the proposed methodology will add $195 million system-wide compared to the 1982 base in addition to $214 million in special adjustments approved by the Rate Setting Commission in anticipation of rebasing. The additional reimbursment is provided through: rebasing; implementing a new labor proxy; introducing a technology update factor; incorporating an operating margin; and adjusting the base for increases in waste disposal and labor costs.

COMMENTER: Wallkill Valley Hospital and Health Centers

COMMENT: The proposed amendments fail to include a complete transfer of rebundled services to direct patient care for those areas where volume was greatly increased after 1986, for example, CT Scan, intraocular lens replacement, hip replacement prostheses, etc. The proposed regulations do not correct the fact that hospitals were limited to charging only five percent more than costs for these items. Therefore the charge/cost ratio utilization in the proposed base year does not reflect the ratio used for these rebundled services as inlier costs in 1989.

RESPONSE: The hospital implies that the 1986 charge/cost ratios will be used in the establishment of 1989 rates, which is incorrect. Although some cost centers use changes as a cost allocation basis, the relationship of cost to charges does not reduce the amount of the costs to be allocated.

COMMENTER: Wallkill Valley Hospital and Health Centers

COMMENT: It is not clear how emergency room and outpatient clinic visit costs will be recalculated, or what the effect of the proposed amendments in assuring adequate reimbursement for these cost areas will be.

RESPONSE: The Uncompensated Care Trust Fund legislation mandates emergency room pricing to be implemented in the 1990 rate year. This issue is not addressed in the proposal, but will become a priority for the next phase of reimbursement reform.

COMMENTERS: Helene Fuld Medical Center, The Medical Center at Princeton

COMMENT: The base year data should be reviewed for reasonableness and data errors identified before calculating the screens and disincentive amounts.

RESPONSE: The 1986 data were reviewed for reasonableness. If errors are found, hospitals can address these in accordance with N.J.A.C. 8:31B-3.16(d).

COMMENTERS: Morristown Memorial Hospital, Our Lady of Lourdes Medical Center, Overlook Hospital, Raritan Bay Medical Center, St. Francis Medical Center, South Jersey Hospital System

COMMENT: Comments were made regarding the Department of Health's Reimbursement Reform Modeling dated January 12, 1989.

1. There is a concern that this model did not take into consideration missing gross charges on the M.I.D.S. documents versus what hospitals reported on their S.H.A.R.E. forms. Revenue shortfalls would occur if the gross-up of charges does not take place.

2. Some commenters indicated that the financial modeling presented by the Department was inadequate while others indicated that it was much too comprehensive to make a legitimate assessment of the impact of reimbursement reform. The Department of Health, before moving forward with its proposal, should provide specific hospital rate reports and allow time for hospitals to assess the outcome in light of the intent of reform regulations and the Department's commitment to meeting financial requirements of hospitals.

RESPONSE: The purpose of issuing the Department of Health's reimbursement modeling reports on January 12, 1989 was to provide hospitals a projection of the Statewide impact of the Department's proposed reimbursement reform rules. This information was not intended to provide a detailed analysis of the hospital-specific rate calculations of the DRG payment rates. The Department subsequently has issued complete rate packages for informational purposes. This rate package does include all of the details necessary to arrive at the hospital-specific DRG payment rates, and will allow hospitals to evaluate the Department's proposed reimbursement reform regulations.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Cathedral Healthcare Systems, Chilton Memorial Hospital, Clara Maass Medical Center, Deborah Heart and Lung Center, East Orange General Hospital, Franciscan Health System of New Jersey, Inc., Hackensack Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey City Medical Center, Jersey Shore Medical Center, Kaden Arnone, Inc., Memorial Hospital of Salem County, Mercer Medical Center, Montclair Community Hospital, Mountainside Hospital, New Jersey Hospital Association, Palisades General Hospital, Rahway Hospital, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, United Hospitals Medical Center, The Valley Hospital, Wayne General Hospital, West Hudson Hospital

COMMENTS: The Department received several technical comments regarding the three percent of labor costs that represents the contracted services portion of total labor costs.

1. The three percent amount proposed in the amendments was appropiate in 1986, but is not sufficient in 1988.

2. The Department should trend forward 1986, 1987 and 1988 actual data to project 1989 agency costs for prospective rate setting.

3. The Department should reconcile to actual 1989 levels for 1989 final reconciliation.

4. Contracted Services should be excluded from the Labor I component of the Economic Factor and considered as a separate component.

RESPONSES: 1. Three percent was derived by using 1987 actual cost reports, the most recent data available to the Department when the proposal was developed. As stated in N.J.A.C. 8:31B-3.26(a)1ii, Statewide 1987 contracted services costs were divided by Statewide 1987 total labor costs in the Labor I component to yield a proportion of contracted labor cost in 1987 of 2.42 percent. This number was rounded upward to three percent. For 1988 and 1989, the rule has been revised to increase the percentage of labor that represents contracted services from three percent to the lower of actual or six percent. Therefore, 1988 and 1989 labor proxies will be comprised prospectively of six percent contracted services index and 94 percent Northeast Regional index. Those proportions may be altered after the rate year actual data is collected, verified and analyzed. However, the proportion of contracted services will not exceed six percent.

2. The Department arrived at the contracted labor portion of the proxy by trending forward 1986, 1987 and 1988 data to predict 1989. A standard forecasting method was used to develop the 1986-1989 component of the proxy for contracted services. Between June of 1986 and June of 1987,

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the weighted average increase in agency personnel costs was 25.4 percent. The growth rate between June of 1987 and June of 1988 was 18.5 percent. The increase between June of 1988 and June of 1989 was predicted to be 16.6 percent through standard trending procedures. The addition of contracted services as a component of the labor proxy increases the 1986-89 proxy by 1.97 percent over that which it would be if only the Northeast Regional index were used. The financial impact of the contracted service component is the addition of $41.6 million.

3. Reconciling the contracted services portion of the labor proxy to actual levels would encourage increased utilization of high cost agency personnel. The Department is opposed to such action without limits. The contracted services portion for 1988 and 1989 labor proxies, will be six percent. Should the actual statewide proportion be less than six percent, future labor proxies will be adjusted downward to reflect the lower proportion.

4. Creating a separate component for contracted services would also have the negative incentive of encouraging increased utilization of high cost agency personnel. Further, labor performed by contracted services is a substitute for labor performed by hospital personnel and should therefore remain in the same cost component.

COMMENTER: Bayshore Community Hospital

COMMENT: "The 3% Labor Component to contracted labor costs is an excellent enhancement but to date we have not seen any calculation to show if the June 1986 and June 1988 period was an accurate reflection of what really occured in the industry. June to June was not a true indicator of Bayshore's experience and we provided totals for 1986, 1987, and 1988 to show the Department's actual annual trends."

RESPONSE: The purpose of the Department of Health's adjustment for contracted services in the labor component was to provide some relief in the 1989 Rates due to the increase in agency personnel costs. Based upon various meetings with the sub-groups of the joint Hospital Payer Task Force, it was agreed that a survey of hospital agency personnel costs for the months of June 1986, June 1987 and June 1988 would be used to determine this adjustment. For any given month there may well be advantages and disadvantages for specific hospitals. Taking the average for the three June periods captures the cost at mid year.

COMMENTERS: Muhlenberg Regional Medical Center, St. Peter's Medical Center

COMMENT: The hospitals agree with the Department's proposal to use agency fee increases to calculate a portion of the economic factor for labor.

RESPONSE: The Department acknowledges this comment.

COMMENTERS: Community Medical Center, Freehold Area Hospital, Hackettstown Community Hospital, Holy Name Hospital, Kaden Arnone, Inc, New Jersey Hospital Association, Our Lady of Lourdes, Hospital Group A, Hospital Group C

COMMENT: Although the Northeast Regional component of the Bureau of Labor Statistics Average Hourly Earnings for Nonsupervisory Hospital Workers is an improvement in the labor proxy, it does not make hospitals whole for 1989 labor costs. Actual 1987 and 1988 labor costs should be factored into the proxy to be more aligned with the State's actual hospital labor costs.

RESPONSE: Using actual New Jersey labor cost experience to measure inflation rather than using an independent proxy would be a pass-through of costs and is therefore inappropriate to use in a prospective reimbursement system.

COMMENTERS: Clara Maass Medical Center, Community Medical Center, Healthcare Financial Management Association, New Jersey Chapter, Jersey Shore Medical Center, Memorial Hospital of Salem County, Mercer Medical Center, Morristown Memorial Hospital, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Palisades General Hospital, Wayne General Hospital, West Jersey Health System, Hospital Group A, Hospital Group C

COMMENT: A more appropriate labor proxy for 1989 should be developed. It should be regionally specific such as including only areas surrounding New Jersey (for example, New York City and Philadelphia).

RESPONSE: The Northeast Regional component of the Average Hourly Earnings for Nonsupervisory Hospital Workers is the most regionally specific index calculated. New York and Pennsylvania are included in the proxy. The suggestion that only New York City and Philadelphia be used is inappropriate because not all New Jersey hospitals compete with New York City and Philadelphia for labor, and wages paid in each of these cities must be higher to account for city wage taxes and commuter costs. Higher salaries in New York City and Philadelphia are reflected in higher equalization factors in the proximate labor market areas.

COMMENTERS: Alexian Brothers Hospital, Clara Maass Medical Center, Deborah Heart and Lung Center, Mountainside Hospital, New Jersey Hospital Association, Robert Wood Johnson University Hospital, United Hospitals Medical Center, Wayne General Hospital, Hospital Group C

COMMENT: An adequate labor proxy must account for the fact that New Jersey wages for hospital workers are not competitive with similar professional levels in other industries.

RESPONSE: During the process of identifying a labor proxy replacement, the Department and the Joint Hospital Payer Task Force considered combining a hospital workers index with a general labor index. This option was rejected because the indices were not mutually exclusive and would result in double counting of some types of hospital workers. The original Chapter 83 labor proxy was a general labor index. It was replaced in 1983 by the national hospital workers index at the request of the New Jersey Hospital Association and the industry for a more specific proxy.

The Department believes that an index used as a proxy for inflation should be related to the cost component. Using an index based on general professionals in other industries would not be a sensitive measure of hospital labor inflation. The percentage increase for professionals in other industries may be higher or lower than the percentage increase for hospital workers depending upon circumstances specific to a given industry. When the bases of the index and the cost component are very different, the percentage of growth may be distorted if the index is used as a proxy for that cost component.

COMMENTER: St. Peter's Medical Center

COMMENT: The commenter concurs with the Department's recommendation to change the Labor Proxy.

RESPONSE: The Department acknowledges this comment.

COMMENTERS: Hackensack Medical Center, Jersey City Medical Center, Rahway Hospital

COMMENT: The Department should consider using the proposed labor proxy for the northeast region for all rate years from 1982 forward. This proxy appears to be a more appropriate indicator of New Jersey actual labor cost experience than the national labor proxy used for those years.

RESPONSE: The suggestion to modify the Department's amendments would be inappropriate because it would entail making a retroactive change to a proxy for prior rate years. Further, the amount added to the 1986 base for labor was $157 million above the 1982 base. The $88 million added in 1988 was advanced to hospitals to simulate rebasing. The Department believes that the four percent labor adjustment to the 1986 base and the new labor proxy will provide sufficient levels of reimbursement for labor.

COMMENTERS: New Jersey Business and Industry Association, Health Insurance Association of America

COMMENT: The commenters support the regional labor proxy proposed for establishing 1989 rates. However they would strongly oppose any further switching of the labor proxy. The labor proxy must be chosen for its ability to accurately predict labor cost increases, not to maximize reimbursement at a given point in time.

RESPONSE: The Department agrees with this comment.

COMMENTER: The Medical Center at Princeton

COMMENT: The malpractice proxy should be eliminated from the economic factor report; including it at 1.0000 artificially reduces the true economic factor.

RESPONSE: The Department acknowledges that the overall economic factor is reduced by a 1.0000 malpractice proxy.

The malpractice proxy is reconciled to actual malpractice cost. Hospitals receive dollar for dollar payments as a cost pass through. A suitable proxy has not yet been identified. Therefore the Department will retain 1.0000 as the proxy but exclude it when calculating the overall economic factor.

COMMENTERS: Kennedy Memorial Hospital-University Medical Center

COMMENT: Psychiatric Acute Care Units (PSA) were omitted from the list of Labor 1 cost centers in Appendix II.

RESPONSE: The Department agrees with this comment. This was an inadvertent omission and has been corrected.

COMMENTER: New Jersey Business and Industry Association

COMMENT: "In general we also support using a separate factor to increase direct and indirect patient care rates to provide prospective funds to hospitals for the acquisition of new or improved technologies. We believe that providing such funding on a prospective basis will significantly decrease the need for retroactive increases and will allow hospitals

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to make intelligent decisions about which technologies should be implemented. In particular we support the use of a national factor such as ProPAC in order to avoid the problem of self-fulfilling price escalations."

RESPONSE: The Department agrees with this comment.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Franciscan Health System of New Jersey, Inc., Freehold Area Hospital, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Holy Name Hospital, The Medical Center at Princeton, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, St. Francis Medical Center, St. Peter's Medical Center, University Health Systems, Valley Hospital, Wayne General Hospital, West Jersey Health System, Hospital Group A, Hospital Group B

COMMENTS: Although hospitals support the concept of a prospective technology factor, some specific concerns were raised.

1. The technology factor does not address the needs of multi-hospital systems to duplicate technology purchases at multiple sites. For example, medical standards now dictate that each facility have a CT where it was formerly considered a resource to be shared by four facilities.

2. Substitution of the technology factor for all Commission approved generic items and rebundled services will not adequately reimburse hospitals for any items that were added after the "new" 1986 base year. The Department should allow each hospital, under the Accept option, to appeal for any rate inadequacies that have occurred since the rate year.

3. The concept of a technology adjustment is appropriate but needs further study. A New Jersey-specific study of Medicare and non-Medicare patients should be done, similar to ProPAC's study, estimating the impact of new cost-increasing technology on inpatient costs. In the meantime, allow appeals for technology. We are concerned about the technology add-on percentages and the ability to support future technology advancements with it.

4. The technology factor excludes capital and major moveable equipment costs and therefore is not adequate to cover the adoption of technologies. Any item with high depreciation cost will be excluded and not adequately accounted for in the technology factor.

5. The technology factor does not adjust for case-mix.

6. There is no indication of how the financial impact was calculated.

RESPONSES: 1. The first comment pertains to duplicate equipment purchases of multi-hospital systems. The technology factor provides funds for only the incremental operating costs of technology. Depreciation costs are not a part of this factor. Major moveable equipment depreciation, formerly appealable under the Accept option provided Certificate of Need criteria are met. Equipment such as CT Scanners and lithotripters would meet the CN criteria.

2. Only three generic appeal issues are considered to be included in the technology factor: Tissue Plasminogen Activator (TPA), low-osmolality contrast media, and CDC universal AIDS precautions. All of these technologies were evaluated by ProPAC and were included as cost increasing technologies in the recommendation. Statewide, the technology factor doubles the reimbursement dollars of those generic appeals combined. The other generic appeals are retained through rebasing or adjustments to the base. Treatment of rebundled services is described below. The trade-off for providing prospective funding for technological advancements is a streamlined appeal process that benefit the system as a whole. Hospitals with truly inadequate rates will have the Not Accept option as a legitimate avenue of appeal.

3. The factor recommended annually by the Prospective Payment Assessment Commission is based on an exhaustive, generalizable study of the relative cost impact of major new technologies. The New Jersey Department of Health believes it to be a reasonably independent measure of technological advancement. If better models are identified, they will be considered for future rate years. The Department believes that the system is better served by implementing an automatic adjustment for technology rather than providing no prospective funds and forcing hospitals to appeal for operating costs associated with each new technology as is now the case. The implementation of an automatic adjustment for technological advancements is viewed as an improvement over the current system in which hospitals must conditionally accept their rates to appeal for added costs of technology not captured in clinical appeals.

4. The Department believes that the technology factor should not provide funds for major moveable equipment because another mechanism exists to address hospital-specific increases in MME depreciation costs. Those funds may be appealed for as stated in paragraph 1 above.

5. The technology factor is a multiplier of the DRG rates which, by definition, already reflect case-mix intensity by pricing each DRG based on its historical cost. No further adjustment to the technology factor is needed to account for case-mix.

6. The financial impact of the technology factor was calculated by multiplying the sum of statewide direct patient care and indirect rates by the 1987-1989 compounded technology factor. The compounded technology factor was derived by multiplying the 1987, 1988 and 1989 technology factors (1.0050 x 1.0023 x 1.0046 = 1.01195).

COMMENTER: Hospital Group A

COMMENT: The Department proposed a technology factor "based on the Scientific and Technological Advancement Allowance recommended annually to the Secretary of the United States Department of Health and Human Services by the Prospective Payment Assessment Commission." The proposed amendments do not clearly set forth how the Department actually will determine the technology factor. Will the factor be adopted in New Jersey regardless of Federal adoption?

RESPONSE: In the proposed amendment, the sentence following the one quoted above describes how the technology factor will be calculated. "The factor shall be composed of the proportion of incremental operating costs associated with ProPAC's identified cost-increasing technologies, and ProPAC's allowance for technologies not included in the technology-specific projections, less the projection of incremental operating costs of cost-decreasing technologies identified by ProPAC." The use of the factor in New Jersey is not contingent on Federal adoption.

COMMENTER: Hospital Group A

COMMENT: These hospitals submitted the following comment:

"The Scientific and Technological Advancement Allowance is one element used by ProPAC to calculate an annual discretionary adjustment factor . . . The discretionary adjustment factor includes hospital productivity, site-care substitution and case mix as well as technology changes. Will the Department's technology factor be based solely upon the Scientific and Technological Advancement Allowance or will the discretionary adjustment factor be considered? . . . If the Department intends to use only the Scientific and Technological Advancement in determining the technology factor, how will the Department address the other elements included in ProPAC's discretionary adjustment factor?"

RESPONSE: The Department will use only the data supplied by ProPAC's Scientific and Technological Advancement Allowance for New Jersey Chapter 83 technology factor calculation. Other components of the Discretionary Adjustment Factor (DAF), some of which result in the negative or no adjustments, are not proposed for use in New Jersey. The Department did not set out to mirror PPS in incorporating an allowance for the adoption of new technologies. A search for data-based objective research on which to base a technology allowance resulted in the identification of Project Hope's studies which are the foundation of ProPAC's Scientific and Technological Advancement Allowance. The other components of the DAF were never considered as part of this reform package.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Bayshore Community Hospital, Cathedral Healthcare System, Christ Hospital, Clara Maass Medical Center, Community Medical Center, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Holy Name Hospital, Jersey City Medical Center, Kaden Arnone Inc., Kennedy Memorial Hospital-University Medical Center, Mercer Medical Center, Mountainside Hospital, Palisades General Hospital, Rahway Hospital, Raritan Bay Medical Center, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, United Hospitals Medical Center, Wayne General Hospital, Hospital Group B

COMMENT: The Department has indicated that the inclusion of the ProPAC technology factor, along with rebasing using 1986 costs, would preclude the need to continue trailer billing for rebundled services. There should be two exceptions to the elimination of the rebundling, MRI and lithotripsy services, because costs for these two technologies were minimal or not included in the 1986 base year costs. Accordingly, if these costs were not included in the base year, they would not be included in the 1989 rates. It was noted that the costs of both of these services include a considerable amount of capital (major movable equipment) costs, which would not be addressed by the technology factor because it only considers operating costs of new technologies. Therefore, it is recommended that hospitals be allowed to continue trailer billing in 1989 and future years for MRI and lithotripsy services provided to inpatients, as well as the associated ambulance costs. Further, it is recommended that the Department allow hospitals to either trailer bill for new technologies as they emerge, or adjust the technology factor to cover these new services.

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RESPONSE: Several issues raised in this comment need clarification. The first issue is the distinction between rebundling and trailer billing. Rebundling was accomplished through the trailer billing mechanism to reimburse hospitals for services and supplies provided by vendors to inpatients who were billed directly by the vendors in the 1982 base year. Technically, only supplies or services which were provided to inpatients in the base year were eligible to be rebundled between the rate years 1984 and 1988. The rebundling codes were established in lieu of rerunning the rates to include these vendor costs. It should be noted that rebundling was implemented to comply with the Tax Equity and Fiscal Responsibility Act (TEFRA) in order to preserve the Medicare waiver. Any new supplies or services purchased from vendors in rate years 1984 through 1988 should have been requested through the normal rate appeal process.

When the Department decided to allow trailer billing for MRI and lithotripsy, this was not actually treating them as rebundled services, but as an add-on to the DRG rates because at that time volumes were not known and thus mark-up factor adjustment could not be calculated. These two technologies are unique in that since the new base year the following occurred: (1) both of these new technologies were established as demonstration projects through the Certificate of Need process; (2) both technologies are considered eligible for inpatient reimbursement under the Chapter 83 rate setting system; and (3) only one of the certified facilities was opened by the end of rate year 1986.

The Department acknowledges that the costs of these two technologies were not included in the base year, and that the ProPAC factor would not cover the capital costs or transportation costs associated with them. The Department would like to ensure that access to MRI and lithotripsy services is not limited due to these factors, and will be proposing a generic mechanism to include the associated capital and transportation costs for 1989 and future rate years based on 1986 costs. The Department plans to present to the Hospital Rate Setting Commission the following proposal: (1) the Department's established MRI and lithotripsy rates will be used to determine the capital cost per procedure; (2) the cost of a round-trip ambulance transport will be established; and (3) each hospital will be given an individual adjustment to its 1989 mark-up factor to be calculated by multiplying the capital portion of the approved MRI, lithotripsy and ambulance rates by that hospitals' projected volume for 1989.

The ProPAC technology factor is updated every year and the Department will incorporate this new factor into the appropriate rate year. Therefore, it is presumed that this factor will reimburse hospitals for the operating cost of new technologies as they emerge. If any hospital believes the ProPAC amount in its rates to be insufficient, the hospital may appeal for additional costs under the Not Accept option. Also, if hospital pruchases are new technologies requiring Certificate of Need approval, then the equipment costs are appealable under the Accept Option.

COMMENTERS: Bayshore Community Hospital, Cathedral Healthcare System, Chilton Memorial Hospital, Freehold Area Hospital, The General Hospital at Passaic, Hackensack Medical Center, Healthcare Financial Management Association, New Jersey Chapter, Holy Name Hospital, Jersey City Medical Center, Montclair Community Hospital, Our Lady of Lourdes Medical Center, Raritan Bay Medical Center, Robert Wood Johnson University Hospital, St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, Wayne General Hospital, Hospital Group B

COMMENT: The technology factor is not adequate to cover the costs of all new technology.

1. Some hospitals commented that the adjustment for non-ionic contrast media is inadequate especially for hospitals using cardiac catheterization and CTs. Others suggested that CDC universal AIDS precautions, hemophilia products, emerging technologies (for example, MRI and lithotripsy) are also inadequately addressed by the technology factor.

2. Tissue-plasminogen activator (TPA) does not appear in ProPAC's study.

3. Hospitals should receive the full technology factor in addition to generic appeal continuing adjustments.

4. Department of Health guidelines for use of non-ionic contrast media are broad and encourage use of the media which is not covered by the technology factor. The technology factor does not cover the hospital's generic 1988 adjustments for TPA, low osmolality contrast media and CDC AIDS precautions.

RESPONSES: 1. As described above, the technology factor is designed to provide an overall estimate of the reasonable incremental operating costs of new technology. The technology-specific profile in ProPAC's recommendation will probably not exactly match technology use in any hospital. Some hospitals will offer more of one technology and less of another. Few if any hospitals will provide all of the technologies identified in ProPAC's recommendation. Therefore, it is not appropriate to examine the adequacy of the factor's coverage of a single technology. Adequacy of the entire factor is appropriate. Hospitals will choose to implement a new program or use a new technology based on an evaluation of financial feasibility including an assessment of potential utilization. If the hospital believes that the technology factor is not adequate to support expenses, use of the Not Accept option will allow appeal for costs associated with new technologies as well as other hopsital costs.

2. TPA is included in ProPAC's study under the general heading of thrombolytic agents.

3. The ProPAC technology factor includes reimbursement for low osmolality contrast media, CDC universal AIDS precautions and TPA. Therefore, use of both the generic adjustments for these issues and technology factor would duplicate reimbursement.

4. The guidelines issued by the Department of Health for use of both TPA and non-ionic contrast media were designed to provide guidelines to Utilization Review Organizations. As an interim 1988 measure, UROs reviewed the use of TPA and non-ionic contrast media since reimbursement was allowed only when usage was clinically appropriate. The guidelines were designed to provide a general framework for the UROs to guide their review. The protocols were never designed to mandate the use of either TPA or non-ionic contrast media. Based on the information used in the modeling, only one hospital with a cardiac catheterization lab recognized more reimbursement through the generic appeals process than through the technology factor. More current data suggest that for this hopsital the originally projected numbers were overstated for non-ionic useage.

COMMENTERS: Alexian Brothers Hospital, Cathedral Healthcare System, Clara Maass Medical Center, Deborah Heart and Lung Center, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey Shore Medical Center, Kaden Arnone Inc., Memorial Hospital of Salem County, Mercer Medical Center, Montclair Community Hospital, Mountainside Hospital, Muhlenberg Regional Medical Center, Inc., New Jersey Hospital Association, Palisades General Hospital, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, Robert Wood Johnson Hospital University, Wayne General Hospital, West Hudson Hospital, Hospital Group A

COMMENT: A one percent operating margin is not sufficient. It is well below national margins. The Public Utility Commission and such national experts as William Cleverly, noted healthcare economist, should be considerd as sources for this important factor. The operating margin should be similar to hospitals outside of New Jersey or to other regulated industries. It should be reviewed annually.

RESPONSE: The operating margin component of the rates is not intended to be the sole means by which hospitals may earn an operating marging. Many New Jersey hospitals have earned significant operating margins before the proposed one percent increase to standard costs. The amendments do not guarantee an overall operating margin, but rather are intended to increase the potential for an overall operating margin. One percent is not a limit to operating margins but rather a built-in financial element. To the extent that a hospital can deliver health care services below the standard price, margins above one percent can, potentially, be earned on each patient.

In developing the operating margin component of the rates, the Department reviewed public utilities models, research reported by Dr. Clevelry, and other national comparisons including HFMA's FAS-PLUS Database. The Department concluded that the health care environment in New Jersey is different from the public utilities enviroment as well as the health care environment in most other parts of the nation.

Public utilities are not analogous to Chapter 83 hospitals because public utilities have shareholders for whom a profit must be genetrated. In contrast, all hospitals in the Chapter 83 system are not for profit.

In comparing the New Jersey health care environment with the national health care environment, similarities and differences were noted. While operating margins of New Jersey hospitals have declined, this is consistent with the historical nationwide trend.

New Jersey margins and national margins are not comparable because the New Jersey reimbursement environment is sufficiently different from that of other states. Hospitals in New Jersey are not at risk for uncompensated care and bad debt as they are in most other states. Efficient hospitals will continue to have the potential to generate positive bottom lines beyond the operating margin added to the standard portion of the rates. Nothing in the proposed amendments precludes annual review.

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COMMENTERS: Barnert Memorial Hospital Center, Bayshore Community Hospital, Cathedral Healthcare System, Chilton Memorial Hospital, Christ Hospital, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Franciscan Health System of New Jersey, Inc., Hackensack Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey City Medical Center, Jersey Shore Medical Center, Memorial Hospital of Salem County, Montclair Community Hospital, Morristown Memorial Hospital, Muhlenberg Regional Medical Center, Our Lady of Lourdes Medical Center, Overlook Hospital, Rahway Hospital, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, Union Hospital, The Valley Hospital, Wayne General Hospital, West Hudson Hospital, Hospital Group A

COMMENT: The proposed operating margin of one percent is diluted to one-half of one percent because it is effective for only the standard portion of direct and indirect rates. The Department should apply the proposed one percent add-on to total direct and indirect rates, or to approved revenue.

RESPONSE: The 1988 indirect rules adopted by the HCAB committed the Department to implement an operating margin as the system moved toward standard reimbursement. The Department believes that a standard rate should include an add-on to allow hospitals operating at standard the opportunity to generate an operating margin. The Department views the addition of an opertaing margin only to the standard portion of the rates as appropriate. Hospitals may generate margins on the standard at costs below standard prices. By adding a margin to the standard portion of the rates, efficient hospitals will have an enhanced potential to generate margins. On the other hand, the addition of an operating margin to the portion of the rates that reflects a hospital's own costs would result in a guarantee of an operating margin on that portion of the rates regardless of efficiency, rather than the potential to generate a margin. A guaranteed operating margin would have incentives for cost containment. Therefore the Department is opposed to such a guarantee. As the percentage of standard in the rates increases, a larger portion of the rates will have an operating margin add-on.

COMMENTER: Hospital Group A

COMMENT: The proposed amendments provide an operating margin. Does this mean that the reimbursement regulations are now at full standard? If so, N.J.A.C. 8:31B-3.24 must be amended to state that hospitals are at 100 percent standard reimbursement.

RESPONSE: N.J.A.C. 8:31B-3.24(c)6 states, "When full standard reimbursement is in effect, then the phase-in of an operating margin will begin." Because several indirect cost centers will be reimbursed at 100 percent standard, phase-in of the operating margin will now begin. The Department does not believe that the proposed amendment is inconsistent.

COMMENTER: New Jersey Business and Industry Association

COMMENT: "The proposed regulation to add an operating margin has raised major concerns, both pro and con. On the one hand the Chapter 83 reimbursement system has had 8 years to move to a price-based rather than cost-based system and it has not yet achieved that goal. It is our belief that the system should allow efficient hospitals to earn a margin from standard prices and that some incentive is needed to move forward on fully establishing such a standard system. Furthermore, a large proportion of the needs which an operating margin is expected to cover in for-profit businesses are already provided for in the basic rates (e.g., $10 million was granted for unexpected increases in the cost of waste disposal in 1988).

On the other hand, providing the opportunity at this time for hospitals to earn a margin on the indirect cost centers set at standard will hopefully decrease the need for retroactive rate adjustments. Therefore, because the margin will be linked to only those cost centers at a standard and because of our strong need for rate predictability, we are supporting this regulatory change."

RESPONSE: The Department acknowledges this comment.

COMMENTERS: Holy Name Hospital, St. Peter's Medical Center.

COMMENT: The commenters concur with the Department's recommendation to provide an operating margin based on a one percent increase to the Statewide portion of direct and indirect rates reimbursed at standard costs.

RESPONSE: The Department acknowledges the comment.

COMMENTERS: Health Insurance Association of America, Healthways Inc., New Jersey Business and Industry Association.

COMMENT: The commenters oppose granting the Operating Margin to those hospitals which do not accept their rates. Providing the operating margin to these hospitals would put back into rates the funds which they chose to forego from the "1% accept amount," thereby eliminating the accept incentive. It makes no sense to withhold the accept bonus but to then provide the option of earning an operating margin.

RESPONSE: The Department considers it reasonable to apply an operating margin to the standard portion of the rates regardless of a hospital's appeal decision. The standard portions of the rates are not appealable except under limited circumstances. Therefore it would be inappropriate to place the operating margin component at risk for hospitals not accepting their rates. The Department believes that loss of the one percent accept amount and the technology factor establish a sufficient distinction between accepting and not accepting the rates.

COMMENTER: Health Insurance Association of America.

COMMENT: "HIAA has stated repeatedly over the years that consideration for support of an operating margin could be discussed if it was accompanied by a proposal for movement to one hundred percent of standard for both direct and indirect costs. We have not waivered in our position. In light of the fact that hosptals are eligible for the "one percent Accept" increase of direct costs, an operating margin absent full standard remains unjustified. We ask that you withdraw this amendment until full standard is achieved."

RESPONSE: The Department acknowledges the commenter's concerns. However, the Department also recognizes that the DRGs are not yet sufficiently accurate predictors of cost to justify a move to a system reimbursed at 100 percent standard rates. The coefficient of variation continues to be used in calculating the percent of standard in each DRG rate. Providing an operating margin component for the standard portion of the rates provides an incentive to continue movement toward full standard pricing.

The one percent accept increase to direct patient care rates is not considered an operating margin, but rather prospective funds provided automatically in lieu of small appeals.

COMMENTERS: Kennedy Memorial Hospitals-University Medical Center.

COMMENT: In N.J.A.C. 8:31B-3.16, the citation for calculation of the operating margin is incorrect. The appropriation citation is N.J.A.C. 8:31B-3.38(a)3.

RESPONSE: The Department agrees with this comment, and the citation has been so corrected.

COMMENTER: Hackensack Medical Center.

COMMENT: The proposed operating margin should be volume variable, not an add-on.

RESPONSE: The operating margin is volume variable. It is added to the standard portion of rates. Direct patient care rates are reimbursed per patient and therefore are volume variable. All indirects based on standard are also volume variable.

COMMENTERS: Catherdral Healthcare System, Cohen, Shaprio, Polisher, Shiekman and Cohen (representing Hackettstown Community Hospital, Newton Memorial Hospital, Wallkill Valley Hospital, Warren Hospital), Montclair Community Hospital, St. Joseph's Hospital and Medical Center, West Hudson Hospital.

COMMENTS: The following comments were made regarding the proposal to retain the 1988 labor market areas for 1989 rate setting:

1. The hospitals are concerned about:

i. The construction of the labor market areas (that is, which hospitals are included in each labor market area).

ii. The number of hospitals in some labor market areas is in violation of the existing regulation, which specifies that there be a minimum of five hospitals in each labor market area.

2. The Department should review the current labor market areas and make appropriate adjustments as part of the 1989 reimbursement reform package. Alternatively, the Department should address this issue for the year 1990 and beyond.

3. Inaccurate designation of LMA's causes fiscal harm to certain hospitals because they receive less approved cost for labor inputs than they must spend to recruit and retain sufficient numbers of qualified professional staff.

4. LMA's which parallel Federal Metropolitan Statistical Areas (MSA's) are recommended.

RESPONSE: The Commissioner's Hospital Payer Task Force (and its associated work groups) reviewed present LMA's and hospital assignments to these LMA's during the course of reimbursement reform.

1. The proposal specifies that existing labor market areas be retained for 1989. The specification of a date indicated that the Department must review this issue for 1990.

i. Existing labor market areas will be used in 1989 while reformulation or reconstruction is studied.

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ii. The Department proposed that numerical references to five hospitals per LMA be deleted.

2. An addition or deletion of a LMA, or hospital reassignments between LMAs, would be budget neutral on a Statewide basis. However, redistribution would result in some hospitals gaining reimbursement while others would lose reimbursement. Addressing the concerns of a single Labor Market Area requires evaluating the impact on every other hospital affected. The Hospitals in one LMA containing four hospitals wanted to be redistributed among other LMAs. The Hospitals in the other four hospital LMA were opposed to being redistributed to another LMA. One other LMA requested the formation of a new LMA containing only four hospitals. Redistribution of hospitals in any of these LMAs would affect hospitals in surrounding LMAs as well. The Department and the Joint Hospital Payer Task Force decided that a careful analysis was not possible for 1989. It was agreed to leave existing labor market areas in place during 1989 and analyze them for any needed change in rate year 1990.

3. The issues raised by the commenters are of concern to the Department. Therefore, LMAs are a priority for thorough analysis for possible change in 1990.

4. Federal metropolitan statistical areas (MSA's) will be considered in the Department's analysis for 1990.

COMMENTER: St. Peter's Medical Center.

COMMENT: The Department's proposal to retain existing Labor Market Areas for 1989 is supported.

RESPONSE: The Department acknowledges this comment.

COMMENTERS: Alexian Brothers Hospital, Clara Maass Medical Center, Mountainside Hospital, Montclair Medical Center, Rahway Hospital, Robert Wood Johnson University Hospital, West Hudson Hospital, Hospital Group A except St. Elizabeth General.

COMMENT: Montclair Community Hospital, Rahway Hospital and West Hudson Hospital indicated that they wanted the volume variability adjustment to be continued.

The remaining hospitals have several concerns regarding the Department's proposal to eliminate the Cost/Volume Methodology, known as the volume variability adjustment in the rules.

1. The purpose of the Cost/Volume Methodology was to reflect in reimbursement the actual relationship between cost and volume. The use of this methodology stabilized revenue during periods of volume changes where experience shows that a hospital cannot accordingly adjust levels of expenditures. The relationship between volume and cost changes have not changed.

2. In 1987, this adjustment had an impact on 36 hospitals with an average adjustment of approximately $1 million per hospital and impacts directly on the institution's Net Results from Operations. This proposal will have a significant financial impact on many institutions due to an arbitrary change in methodology.

3. It appears that at least $18 million is being removed from the system that was not reflected in the Department's Model of Phase II. This is contrary to previous statements by the Department.

RESPONSE: 1. The current methodology has the effect of removing the compensation portion of patient care (DPC) revenue hospitals will receive for volume or intensity increases, and protecting hospitals from the full impact on these components of revenue due to volume or intensity decreases. The elimination of this adjustment would make DRG revenue fully volume variable, which is consistent with volume variability for most indirect costs. The proposed amendments would have the impact of shifting more reimbursement to those hospitals gaining in volume/intensity and shifting reimbursement away from those hospitals losing in volume/intensity, thereby encouraging the closure of excess beds and allowing hospitals gaining in volume to retain all revenue in order to be better able to plan for growing demand.

2. The hospital's projections that the 1987 statewide impact of this adjustment was not supported with documentation. The most recent data available is from final reconciliation for the 1986 rate year. For the 1986 rate year, volume and intensity were compared to a 1982 base year. The proposed amendments will be effective for the 1989 rate year with 1986 as the base. It is expected that the aggregate adjustment for 1989 using the 1986 base would decline significantly since volume and case mix appear to have stabilized. It should be noted that elimination of the volume variability adjustment is not an arbitrary change in methodology. The Department has intended to eliminate the volume variability adjustment for some time. This regulatory amendment was originally proposed in 1987 but was withdrawn with the clear intention of reintroduction in 1989.

3. The hospitals believe that the 1986 base year costs were reduced by $18 million because the 1986 Final Reconciliation volume variability adjustment was not added to the hospitals' 1986 cost base for 1989 rate setting. This belief is erroneous because at the beginning of the rebasing process, 100% of the 1986 base year costs are used. The inclusion of the volume variability adjustment in the 1986 base year costs is inappropriate because this is a revenue adjustment related to a 1982 base year, not a cost readjustment.

COMMENTER: University Health System of New Jersey.

COMMENT: The commenter believes that eliminating the volume variability adjustment, which mitigates the effects of volume changes, is an initial step toward eliminating excess capacity in hospital facilities. However, the commenter cautions that a widely diverse case mix reflects significantly differing demands and institutional resources which must be considered.

RESPONSE: The Department agrees that hospitals with decreasing volumes should not be given reimbursement incentives, nor should hospitals with increasing volumes be penalized. However, the Department believes the concern about case-mix intensity not being reflected in inpatient direct patient care costs is unfounded since DRG rates are based on discrete diagnoses with their associated average costs based on resources consumed.

COMMENTERS: Blue Cross and Blue Shield of New Jersey, Health Insurance Association of America, New Jersey Business and Industry Association, St. Peter's Medical Center

COMMENT: The commenters support the elimination of the volume variability adjustment. The commenters believe that the proposed amendments encourage hospitals to be more efficient.

RESPONSE: The Department acknowledges this comment.

COMMENTER: New Jersey State Nurses Association

COMMENT: "The New Jersey State Nurses Association supports the proposed 1989 Rate Setting Methodology which includes in particular, rebasing using 1986 costs and adjustments for technology, waste disposal, operating margins and Grouper/Trimpoints. We recognize the modifications these changes will make to assure a more equitable system."

RESPONSE: The Department acknowledges this comment.

II. Indirect Methodology

COMMENTER: Kennedy Memorial Hospital-University Medical Center

COMMENT: The Physician—Physician and Education and Research—Physician cost centers should be changed to:

COST CENTER	PEER GROUP	UNIT OF SERVICES	LIMIT
(PHY)	Teaching/Minor	Full Time Equiv.	1.1
Phys.-Phys.	Teaching Non-Teaching	in PHY	
(EDR)	Teaching/Minor	Full Time Equiv.	1.1
Educ. & Research	Teaching	in EDR	
Phys.	Non-Teaching		

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RESPONSE: The Department acknowledges the error pointed out by the Hospital and has made the appropriate changes, consistent with the existing regulatory format.

COMMENTER: Besler and Morrisy, Hospital Group D

COMMENT: Adjusted admissions (using DOH methodology) does not provide an appropriate basis for the development of standards at 100 percent because it does not recognize differences due to:

1. Case-mix Intensity;
2. Teachingness;
3. Severity of Illness;
4. Charge Structure (Inpatient/Outpatient);
5. Age, Size, Square Footage of Hospital Plant;

RESPONSE: 1. Case-mix Intensity: While the Besler and Morrisy regression analysis showed a 63 percent variation in cost for teaching and case-mix combined, the method used was based on a modified version of the way the Department has historically calculated adjusted admissions. In the Besler and Morrisy analysis, adjusted admissions were "modified to weight admissions based on each hospital's specific teaching and case-mix intensity". Therefore, the adjusted admissions calculated in their analysis builds in a relationship between teaching, case mix and unit price. Even with this built-in relationship, the Besler and Morrisy analysis showed no significant relationship between case-mix and unit costs for the four cost centers for any peer group. The Department has never used this approach in calculating adjusted admissions. The Department uses total revenue and inpatient revenue to compute a factor which is then multiplied by admission.

In the calculation of case-mix, the Department used 1986 hospital inlier and outlier cost data to compare to standards in developing the case-mix indices for the three peer groups. The Department's analysis of inlier case-mix intensity and unit cost developed through adjusted admissions showed no significant relationship between the two variables when the specialty hospitals and Bergen Pines were removed from the analysis. Except in the minor teaching peer group for the plant cost center, no other peer group or cost centers showed a relationship between unit cost and total case mix.

A section describing criteria for appeal of indirect standard payments has been added to the proposed amendments. Hospitals with specialty designation may appeal the standard payment rate under the Accept option. This issue is discussed further in the Appeals section.

2. Teachingness: The indirect standards are already modified to a certain extent to control for teachingness since there are three different unit costs defined by teaching peer group. Within these peer groups, there is no correlation between unit cost and teachingness. The calculated r^2 for the four cost centers ranged from a low of .000037 to a high of .09, thus showing no correlation between unit costs and teachingness once University is removed from the analysis. This analysis supports the uniqueness of University as a teaching hospital. As discussed later in the appeals section, a provision has been added to the proposed amendments to allow appeal of indirect standard payment rates on the basis of a very high degree of teaching.

3. Severity of Illness: The Department has not accumulated sufficient data to enable us to do a thorough analysis pertaining to this issue. Consequently, the Department has decided to postpone implementation of severity of illness until 1990 to allow further analysis.

4. Charge Structure: Chapter 83 has traditionally defined resource consumption based on the level of charges. It does this not only in the allocation of inpatient costs and outpatient costs but on a DRG specific level. Therefore, since charges have been determined as a historically accepted measure of resource consumption, then the adjusted admissions as presently calculated appropriately reflect resource consumption. Additionally, a review of the "modified" adjusted admission as calculated by Besler and Morrisy showed no significant difference from the Department of Health's approach except for about eight hospitals which had swings of over five percent. The swings for some of those hospitals may well be attributed to their special status. Of those hospitals, two have uncompensated care caps (Jersey City, and UMDNJ), and Deborah has a no bad debt provision.

5. Age, size, square footage of hospital plant: In the analysis performed by the Department, with the exception of bed complement and utility unit cost for the major teaching hospital peer group, no relationship was shown for any of the variables listed above. The coefficient of determination resulting from the regression analysis showed insignificant relationships with the r^2s ranging from .000 to .152 for square footage and .000 to .139 for bed complement except for Utility unit cost for major teaching hospitals which showed an r^2 of .29. As can be expected, a large size as measured by number of beds varied inversely with unit costs of utilities, which suggests economies of scale as well as encourages mergers where possible. This is consistent with the original goals of reimbursement reform.

The r^2s for age of plant and unit costs ranged from .000 to .09. However, a scatter diagram displaying each hospital as defined by the pair of variables was examined. While overall r^2s were low, a pattern appears for plants aged at least 10 years between age and costs in the Plant and Utilities costs centers. In the appeals section of this document, age of plant as a basis for appeals of the indirect payment rate is discussed.

COMMENTER: Besler and Morrisy, Hospital Group D

COMMENTS: The calculation of adjusted admissions is flawed:

1. Routine newborns should not be counted as admissions. Inclusion of newborns provides two admissions for one occasion of services.

2. Counting same day medicals as admissions is inconsistent with the treatment of same day surgeries.

3. Outpatient services are given consideration in the formula to an extent that is significantly higher than what is shown in acceptable methods of cost allocation.

4. Case-mix intensity is excluded in the adjusted admission calculations.

RESPONSE: The issues raised here all relate to case-mix intensity. The commenters assert that newborns, same day medical admissions and outpatient allocation are ways of indicating that hospitals with a low case-mix intensity, would be advantaged by the methodology and show lower unit costs than hospitals with higher case intensity. As indicated, the Department's analysis showed no significant correlation between case-mix intensity and unit costs.

COMMENTERS: Kaden Arnone, Inc., Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, United Hospitals Medical Center, Hospital Group D

COMMENT: A significant factor, case-mix intensity, is ignored in the adjusted admission calculation. While the Department recognized the need to consider case-mix intensity by providing an exemption for specialized hospitals, this does not adequately address this issue. Intensity varies significantly from hospital to hospital. The development of any standard must consider that differences in resource consumption for directs which will be reflected in the amount of costs resulting for indirects.

It is believed that adjusted admissions as calculated in the methodology is not a reasonable unit of measurement to determine reasonable indirect patient care costs.

RESPONSE: While case-mix intensity varies from hospital to hospital, the Department's analysis of inlier case-mix intensity and unit cost per adjusted admission showed no significant relationship between these two variables once the specialty hospitals and Bergen Pines were excluded from the analysis. This analysis suggests that more severe patients are not generally associated with higher indirect costs in the four cost centers to be reimbursed at standard prices.

COMMENTER: Besler and Morrisy

COMMENTS: The standards do not accurately measure efficiency or encourage the direction of revenues towards needed healthcare services.

1. "The assumption that adjusted admissions fairly evaluate reasonableness of costs are the determining factor directly related to changes on levels of expenses are questionable, and the validity of the relationship is undocumented."

2. Components of the calculation of adjusted admissions are very questionable. Each admission is given equal weight. No consideration is given for the intensity of services required.

RESPONSE: 1. The Department strongly believes that reimbursing hospitals through a standard unit pricing is a better mechanism than the previously existing reimbursement methodology which considered indirects as fixed. Standard unit pricing will promote financial solvency of necessary and efficient hospitals. Hospitals with costs greater than the standard should examine why they cannot deliver services at standard costs. Hospitals with costs below the standard will benefit from presumed efficiency. The proposed volume variable method of payments directs revenue towards healthcare services where the r^2's truly a demand for such service, and away from those hospitals with low and/or declining volume.

The only cost centers subject to standard reimbursement are the four with the lower coefficients of variation. Two cost centers previously subject to standard reimbursement have been removed from standard price due to higher coefficients of variation.

2. As indicated earlier, the Department's analysis showed no significant relationship between case-mix and unit costs in those cost centers being reimbursed on standard.

COMMENTER: Besler and Morrisy, Hospital Group D

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COMMENT: "Coefficients of variation on indirect cost do not accurately reflect reliability of peer group standards."

RESPONSE: The coefficient of variation (C.V.) is widely used as a measure of dispersion or a measure of variation related to the standard deviation. It does not assume any normal distribution in terms of any data. It only shows the variation from the mean used for comparing two distributions. Coefficient of variation is not a measure of reliability but of variability.

COMMENTERS: Healthways Inc., New Jersey Business and Industry Association

COMMENT: "We support placing the A&G/FIS, PLT, PCC and UTC indirect cost centers on 100% standard. The state's hospitals have had more than a year to anticipate this regulatory change and statistical analysis supports the reasonableness of the standards. This change is an important move toward rewarding efficient hospitals at a prospective price."

RESPONSE: The Department acknowledges this comment.

COMMENTERS: Besler and Morrisy, St. Francis Medical Center, Hospital Group D

COMMENT: Implementation of 100 percent standard creates significant shifts in reimbursement from inner city and rural areas to suburban and urban areas.

RESPONSE: Implementation of 100 percent standard does not shift reimbursement from rural and inner city hospitals to suburban and urban areas. The commenters' assertions are supported by only a few cases.

COMMENTERS: Wallkill Valley Hospital, Hospital Group D

COMMENT: "The proposal to limit indirect costs to 100% of Standard imposes a severe hardship on small hospitals such as Wallkill Valley. Several indirect costs in Administrative and General (A&G) and Fiscal cost centers are almost the same whether the hospital has 100 beds or 500 beds. Certainly a hospital of greater size and volume should have a lower cost per admission or adjusted admission in the A&G and Fiscal cost areas. It is grossly unfair to hold a 100 bed hospital such as Wallkill Valley to the same indirect costs standards as a 500 bed hospital when Wallkill Valley cannot by definition, attain the same economies of scale."

RESPONSE: As indicated earlier, the Department's analysis showed no correlation between unit costs and bed complement in A&G/FIS. Aside from these findings, this is not an issue related to the regulatory change. However, it is incorrect to conclude that a 100 bed hospital cannot be efficient. In calculating the standard for hospitals, the costs for both the larger and smaller bed size hospitals are aggregated in order to develop the standard. By this method, the smaller size hospitals benefit from the higher standard computed. While economies of scale might be realized by a 500 bed size hospital, it is primarily due to adjusting all inputs optimally so that there can be a decrease in the unit cost of production. A smaller size hospital can achieve the same goal by adjusting its inputs in an efficient manner through concentration of effort.

COMMENTERS: Besler and Morrisy, Hospital Group D

COMMENT: Use of 100 percent standard for Indirects is inconsistent with the use of coefficients of variation for direct patient care costs.

RESPONSE: The intent of this comment is not clear. It is not clear whether the commenter is arguing that all costs should be reimbursed using the exact same method. No justification for this position has been supplied. Without considerably more analysis, the Department could not support this conclusion. However, the use of CVs for directs rather than indirects is due to the fact that there are differences in medical practice patterns and severity of cases that legitimately account for differences in costs, whereas overhead costs such as "the cost of cutting a patient bill" ought to be fairly uniform across hospitals.

COMMENTER: Besler and Morrisy

COMMENT: The indirect (overhead) costs associated with "core" hospitals' graduate medical education programs is not taken into account in establishing peer groups.

RESPONSE: Hospitals show no evidence to support the claims of higher overhead costs based on teachingness. The Department's analysis showed that there was no relationship between unit costs and teaching once university is removed from the sample. The coefficients of determination ranged from a low of .000037 for Plant to a high of .09 for A&G/Fiscal when teachingness was regressed against the four cost centers.

COMMENTER: Besler and Morrisy, Hospital Group D.

COMMENT: Indirect costs by definition are not volume variable.

RESPONSE: The proposed methodology is not an attempt to redefine indirect costs. This reimbursement of standard price of unit cost approach is considered more appropriate than the previous methodology which reimbursed indirect costs as "fixed." The "fixed" approach resulted in hospitals being fully reimbursed for their indirect costs regardless of volume. The proposed approach will direct revenue toward healthcare services where there is truly a demand (hospitals gaining in volume) and away from those with declining volumes which may want to consider downsizing or mergers.

COMMENTERS: Barnert Memorial Hospital Center, Bayonne Hospital, Bayshore Community Hospital, Besler and Morrisy, Freehold Area Hospital, Jersey City Medical Center, Jersey Shore Medical Center, Kaden Arnone, Inc., Palisades General Hospital, Hospital Group D.

COMMENT: Some commenters contend that the basis for setting standard rates in plant and utilities cost centers should be square feet rather than adjusted admissions. Others suggest that Utility costs cannot be significantly controlled by the institution.

Costs in these cost centers are more a function of the size of the plant than the number of admissions. This is particularly true of institutions with aging physical plants which have recently completed major CN projects.

RESPONSE: Unit indirect costs per adjusted admission for the cost centers PLT and UTC were analyzed considering square footage. Results of Department analysis show little relationship between this independent variable and unit pricing within peer groups. The coefficient of determination analysis showed insignificant relationships, with the r^2s ranging from .000 to .152 for square footage. Further, the use of square feet as a measure of unit cost is inappropriate because it does not reflect level of use due to patient demand. There is no justification to reimburse hospitals for under-utilized space.

Although utility costs cannot be significantly controlled by individual hospitals, reimbursement is equalized by Labor Market Area to recognize different conditions from area to area. Department analysis revealed that very old plants frequently have higher utility costs. Therefore a provision to allow hospitals with old physical plants to appeal has been added to the Accept option. In addition, these hospitals typically have capital costs per adjusted admission below the Statewide limit and may therefore engage in CN-approved capital projects with an assurance those costs will be reimbursed up to the Statewide limit.

COMMENTER: Hospital Center at Orange.

COMMENT: Administrative and General (A&G) and Fiscal (FIS) costs should be screened based on dividing the non-teaching hospitals into two groups: major non-teaching of 15,000 or more adjusted admissions, and minor non-teaching of less than 15,000 adjusted admissions.

This proposed alternative is consistent with the subgroup of the teaching hospitals.

RESPONSE: The Hospital Center at Orange did not provide any data to support its contention. In the Department's analysis, there is no relationship between A&G/FIS unit costs and a number of variables including age of plant, bed complement, square footage and case-mix for the non-teaching peer group. Based on this analysis, there is no evidence to support further delineation of the non-teaching peer group.

COMMENTER: Hospital Center at Orange (HCO).

COMMENT: ". . . we question the inclusion of Plant Maintenance and Utilities costs with the indirect costs. If they are included, we would recommend the inclusion of Building depreciation and/or Interest or Amortization costs. Many facilities have concluded recent building or renovation projects which have reduced their operating costs while increasing their capital costs. When both costs are combined and screened, a more accurate measure of efficiency will be produced. Another alternative would be to return the evaluation of these costs to the previous screening method of square footage of Plant Maintenance and Utilities cost.

As it pertains to Plant Maintenance and Utilities costs, under the proposed indirect allocation method, HCO will lose 27% of its Utilities costs and 23% of its Plant Maintenance costs. It is incomprehensible that we can improve the efficiencies in our costs in these areas by $795,000 or 25% of the total cost."

RESPONSE: This issue is not directly related to the proposed rules. Components of the Plant and Utility cost centers have been documented in Appendix II of the Procedural and Methodological Regulations.

Plant and Utilities standard indirect costs were analyzed statistically, by peer groups, against age of plant, bed complement, and square footage (of plant). Results showed little explanation of variance. In the non-teaching peer groups this r^2 analysis showed:

1. Age of Plant to:
   Plant = .09
   Utilities = .000

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2. Bed Complement to:
   Plant = .000
   Utilities = .099
3. Square Footage to:
   Plant = .000
   Utilities = .152

In the next step of the analysis, the Department reviewed scatter diagrams. It became evident that while a low overall relationship is seen between age of plant and unit costs in the plant and utilities cost centers, a relationship appears to exist for very old plants (10 years old or more).

These results lead the Department to conclude that Plant and Utilities cost centers can be equitably reimbursed by a standard indirect cost payment for most hospitals. For those hospitals with plants older than 10 years, an appeal can be made under the Accept option.

COMMENTERS: Elizabeth General Medical Center, Hospital Center at Orange.

COMMENT: "N.J.A.C. 8:31B-3.22(b) provides for purposes of screening indirects costs the classification of teaching (major and minor) and non-teaching hospitals. It is our belief that the classification of hospitals into such categories is not relevant to determining the disincentive on indirect costs. It is our view that indirect costs are not a function or dependent on teaching programs."

RESPONSE: There has not been Department analysis to date to justify elimination of peer groups for indirects. Department analysis shows that elimination of the peer groups would shift significant indirect reimbursement among hospitals. While the Department committed significant resources to elimination of peer groups for direct patient care costs, a similar treatment of indirects was not targeted for 1989.

III. Miscellaneous Issues

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Bayshore Community Hospital, Cathedral Healthcare System, Chilton Memorial Hospital, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey Shore Medical Center, Memorial Hospital of Salem County, Mercer Medical Center, Mountainside Hospital, Our Lady of Lourdes, Wayne General Hospital, Hospital Group A.

COMMENT: A number of hospitals commented on the relationship between the deadlines for the hospitals and those for the Department of Health. The hospital must submit its appeal within 60 working days of receipt of the Proposed Schedule of Rates or forfeit its right to appeal. The Department shall conduct a detailed review within 45 working days of receipt of this appeal. Hospitals commented that the Department should be required to comply within the required 45 days (or 90 days). Some commenters suggest that, if the Department does not meet this deadline, the hospital's appeals should be automatically granted. A flexible time frame was suggested to account for individual differences.

RESPONSE: The Department acknowledges the commenters' concerns regarding the Department's responsibility to adhere to established time frames. A major focus of reimbursement reform is to simplify the appeal process for hospitals and the Department. Simplification is expected to enhance the Department's ability for timely responses in reviewing appeals and finalizing the hospitals' rates.

COMMENTERS: Hospital Group A, Jersey Shore Medical Center.

COMMENT: Using the Accept option to appeal increases in the number of residents is allowable so long as: the resident number does not exceed the Statewide cap; the resident number is offset by decreases in other hospitals' residents; and associated costs do not increase Statewide. Some hospitals contend that information about changes in other hospitals' costs and number of residents may not be available at the time hospitals must choose acceptance or nonacceptance of their rates thereby negating any benefits of the amendments. Their recommendation is that, unless this specific information is provided at the time rates are issued, the conditions be removed.

RESPONSE: The proposed amendments simply restate an existing rule, with no substantive change in content. Thus, no regulatory change is being proposed at this time.

COMMENTERS: Alexian Brothers Hospital, Clara Maass Medical Center, Deborah Heart and Lung Center, Mountainside Hospital, Robert Wood Johnson University Hospital, Hospital Group A except St. Elizabeth.

COMMENT: These hospitals noted that if the length of stay (LOS) adjustment is eliminated, it would be improper to limit reimbursement on transfer patients to the lower of the low per diem multiplied by acute days or the inlier rate. As regional services increase, it becomes correspondingly more important to assure that all hospitals providing care to a particular patient are properly reimbursed for their services to that patient.

RESPONSE: The length of stay (LOS) adjustment is not codified in the rules; therefore, eliminating this methodology is not part of the proposed regulatory reforms.

The Department, though not currently proposing a regulation change for transfer outliers, reserves this comment for future consideration.

COMMENTER: St. Joseph's Hospital and Medical Center.

COMMENT: The current treatment for transfers eliminates double reimbursement for the same case. While the basis for this treatment is understandable, there may be a negative impact for regional referral centers, which may not, for example, send stabilized patients back to community hospitals.

RESPONSE: The Department is concerned that the current transfer outlier treatment may adversely impact regional referral centers in certain circumstances which were not anticipated at the time the current regulation was adopted. However, the Department's current reform proposals do not include any changes to the outlier reimbursement methodology. The appropriate forum for exceptions to this methodology is the rate appeal process.

COMMENTER: Besler and Morrisy.

COMMENT: Resource consumption of directs should be reflected in standards established for indirects.

RESPONSE: This issue is not related to the proposed changes to the indirect cost methodology. The Department appreciates the suggestion and it can be examined in the future.

COMMENTERS: Helene Fuld Medical Center, Overlook Hospital, St. Clares Riverside Medical Center.

COMMENT: Because 1989 rates will not be issued until the middle of the second quarter of 1989, these hospitals request the effective date be either July 1, 1989, or January 1, 1990.

RESPONSE: The Department proposes that the rates become effective on January 1, 1989 because of serious difficulties associated with both of the dates suggested above.

1. A midyear implementation date would necessitate additional administrative costs related to using two different methodologies within one calendar year. For example, two Final Reconciliations and two appeal documents would be needed for the 1989 rate year.

2. Implementation in 1990 would delay receipt of the additional dollars added Statewide by reimbursement reforms. Industry representatives have consistently opposed such a delay, and members of the Joint Hospital Payer Task Force concurred.

As a result, the Department proposed retroactive implementation, and made that position known during the last quarter of 1988 so that hospitals would have sufficient time to make the necessary administrative adjustments.

COMMENTERS: Alexian Brothers Hospital, Bergen Pines County Hospital, Cathedral Healthcare System, Franciscan Health System of New Jersey, Inc., Healthcare Financial Management Association, New Jersey Chapter, Jersey Shore Medical Center, Memorial Hospital of Salem County, Robert Wood Johnson University Hospital.

COMMENT: The commenters argue that the effective year of the Statewide cap on graduate medical education trainees should be changed to coincide with the 12 month period beginning July 1, 1986, so that it will be consistent with the new 1986 base year.

RESPONSE: There is no proposal to change this section of the rules.

COMMENTER: Holy Name Hospital.

COMMENT: The Medicare waiver ended on December 31, 1988 and the Medicare Periodic Interim Payments (PIP) ended in January 1989. The hospitals must now bill Medicare using the Medicare PPS format and hospitals have questioned the new billing procedures which may cause delays. All of these factors will cause cash flow problems for the hospitals. Therefore, the hospital recommends that the Department include a working cash infusion calculation in the 1989 rate setting process and allow reimbursement for interest on short term borrowing for working capital needs.

RESPONSE: Medicare billing under the PPS format is not part of the reform proposal. However, the Department notes that, regarding the Medicare PPS billing format, hospitals should be working with Blue Cross, the fiscal intermediary, to resolve any billing problems. There should not be significant changes in the PPS format, since both Medicare and Chapter 83 use the UB-82 form.

COMMENTERS: Kaden Arnone Inc., St. Francis Medical Center, Hospital Group A

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COMMENT: Several hospitals have interpreted a section of the existing rule (at N.J.A.C. 8:31B-3.16(a), Current cost base) to mean that the Department is required to update the base year annually when establishing rates.

RESPONSE: The Department does not intend that the current cost base be updated annually when establishing rates. This would be virtually impossible as the data being reported to the Department cannot be processed rapidly enough to implement the rates. Using Actual costs is not consistent with prospective reimbursement. Recognizing that this section of the rules has caused some confusion, the Department's proposal clarifies the current cost base as it relates to the rate-setting process.

COMMENTERS: Clara Maass Medical Center, The Mountainside Hospital, Rahway Hospital, St. Francis Medical Center, Wallkill Valley Hospital and Health Centers

COMMENT: Hospitals which have been successful in containing costs are penalized by selecting 1986 as the base year. There have been rapid cost increases in 1987 and 1988 which are not reflected in 1986 rebasing; these costs should be recognized in the base. Hospitals should not be penalized for constraining spending, nor encouraged to overspend.

Alternatively, a more recent base year than 1986 should be used; 1987 or 1988 are suggested.

RESPONSE: Using 1986 as a base year was discussed at length with the Commissioner's Hospital Payer Task Force members; individual providers; payers; and representatives of the financial accounting community. In response to their suggestions, the Department made a commitment to incorporate into the 1986 base subsequent adjustments for labor and certain generic appeals thereby addressing the issue of adequacy about which the most serious concerns were raised. Using a different base year for 1989 is virtually impossible. Using any particular base year will, by definition, be advantageous to some hospitals and disadvantageous to others. Hospitals successful in containing costs will benefit by the movement to standard cost.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Cathedral Healthcare System, Chilton Memorial Hospital, Christ Hospital, Clara Maass Medical Center, Community Medical Center, Franciscan Health System of New Jersey, Inc., Freehold Area Hospital, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Helene Fuld Medical Center, Hospital Center at Orange, Jersey City Medical Center, Jersey Shore Medical Center, Kaden Arnone Inc., Memorial Hospital of Salem County, Mercer Medical Center, Montclair Community Hospital, Morristown Memorial Hospital, Mountainside Hospital, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Overlook Hospital, Palisades General Hospital, Robert Wood Johnson University Hospital, St. Francis Medical Center, St. Joseph Hospital and Medical Center, Union Hospital, The Valley Hospital, Wayne General Hospital, West Hudson Hospital, Hospital Group A

COMMENT: Several comments were made regarding 1986 as the new base year.

1. 1987 or 1988 should be the base year for 1989 rates instead of 1986. The further the base year is from the rate year, the more difficult it is to establish adequate rates.

2. If using 1987 or 1988 as the base for 1989 rates is not feasible, use 1988 as a base year for 1990 rates.

3. The Department should rebase annually to more accurately reflect actual cost.

4. The Department should rebase at no longer than two or three year intervals.

5. The Department should maintain 1982 as the base year and 1988 regulations for the 1989 rate year, except for the technology factor, labor proxy, and operating margin. The proposed amendments should go into effect for 1990 with 1988 as the base year.

RESPONSE: The Department's authority to rebase is already established by rule. The proposed amendments do not address any change in determining the base year. The Department appreciates the suggestions for future consideration.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Cathedral Healthcare System, Christ Hospital, Community Medical Center, Franciscan Health System of New Jersey, Inc., Freehold Area Hospital, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey Shore Medical Center, Memorial Hospital of Salem County, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, St. Francis Medical Center, Wayne General Hospital, Hospital Group A

COMMENT: The Department states that the standard will not be recalculated except when including Statewide generic issues. The Department should recalculate the standards for any material change, such as, modification of the base year cost data base.

RESPONSE: The requirement cited is already part of the Procedural and Methodological Regulations. This is not a proposed amendment; it is currently in regulation.

COMMENTER: Muhlenberg Regional Medical Center, Inc.

COMMENT: As with the 1982 base, the Department has removed the highest cost hospital from the standard in the rate calculations. This artificially lowers the Statewide average. If the highest cost hospital is being omitted from the standard calculation, the lowest cost hospital should also be omitted. This would create more accurate Statewide average numbers.

RESPONSE: The Department is not proposing a change to this approach.

COMMENTER: Elizabeth General Medical Center

COMMENT: The hospital provided an analysis of 1988 and 1989 approved revenue that revealed a potential loss.

RESPONSE: The Department analysis of the data provided does not support this hospital's findings. The hospital's analysis did not include all financial elements and was based on assumptions regarding Commission approved adjustments for years between the base and rate years.

Although the Department is interested in responding to the financial impact of the reform measures on individual hospitals, the comprehensive impact on the system as a whole is the basis of the Department's proposed amendments.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Bayshore Community Hospital, Cathedral Healthcare System, Chilton Memorial Hospitals, Christ Hospital, Community Medical Center, Franciscan Health System of New Jersey, Inc., Freehold Area Hospital, Hackensack Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Hospital Center at Orange, Jersey City Medical Center, Jersey Shore Medical Center, Kaden Arnone Inc., Medical Center of Ocean County, Memorial Hospital of Salem County, Mercer Medical Center, Montclair Community Hospital, Mountainside Hospital, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Palisades General Hopsital, Rahway Hospital, Raritan Bay Medical Center, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, St. Joseph's Hospital and Medical Center, United Hospitals Medical Center, University Health Systems, Wallkill Valley Hospital and Health Centers, Warren Hospital, Wayne General Hospital, West Hudson Hospital

COMMENT: N.J.A.C. 8:31B-3.24(c)6 states that outpatient indirect costs shall remain fixed except for same day surgery patients. Outpatient indirect costs should be changed to reflect volume variability.

RESPONSE: The above is not specific provision referenced affected by the proposed amendments. The Department agrees with the commenters that outpatient reimbursement may be an appropriate area for future reform efforts.

COMMENTER: Community Medical Center.

COMMENT: The commenter participated in a group dialysis appeal which was submitted on behalf of five hospitals in the non-teaching peer group. The Department recommended adjustments for these hospitals which effectively removed disincentives in the dialysis cost center for inpatient services. These adjustments were effective between rate years 1984 and 1986 depending on when the hospitals first raised this issue in their annual appeal documents. The commenter wants assurance that inpatient dialysis costs will be excluded from the development of standard costs in 1989 based on 1986 cost data and included in the rates as unscreened costs.

RESPONSE: The Commission approved the Department's recommendation in September 1988 which stated that: "In future rate years, the Department will remove all dialysis costs from the standard for non-teaching hospitals and reimburse those hopsitals on a prospective basis its full base year costs multiplied by the appropriate inflation factor. This approach . . . should continue until rebasing occurs."

It is noted that this is not a rule change but a rate implementation issue since it is part of a clinical appeal. In calculating the 1989 rates based on 1986 base-year costs, the Department will exclude inpatient dialysis costs from the development of non-teaching standard costs used for peer comparison in the rate setting process. However, inpatient dialysis costs will be included in the rates by treating them as unscreened costs similar to the treatment of physician costs.

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COMMENTER: Community Medical Center

COMMENT: The commenter wants to know which UB-82 revenue code to use to bill for Clinitron beds and requests an explanation of the reimbursement treatment for this service at Final Reconciliation.

RESPONSE: Apparently this commenter is asking these questions in relation to the discontinuance of rebundled service revenue codes in 1989. Rebundling was a mechanism which began in 1984 which permitted the Department to bring hospitals' billing procedures in compliance with TEFRA provisions in order to maintain the HCFA waiver from Medicare reimbursement principles. By 1986, the base year for 1989 rates, hospitals should have fully implemented the rebundling mechanism which captures all costs related to inpatient services and supplies provided by vendors.

Clinitron beds, like any other supply or service rebundled since 1984, should be billed in 1989 using the normally assigned (non-zero prefixed) revenue code. In the case of Clinitron beds, revenue code 291 should be used.

At Final Reconciliation, Clinitron bed costs will be reimbursed the same as any other costs which are included in the DRG rates. Specifically, there will be no provision for trailer billing in addition to the DRG rates. Further, if a hospital believes there are insufficient costs in the 1986 base year rates for Clinitron beds, or any other rebundled costs, the hospital can request additional costs through the rate appeal process.

COMMENTER: Our Lady of Lourdes Medical Center

COMMENT: The hospital opposes present and proposed criteria that restrict reimbursement for Graduate Medical Education. The criteria are thought to: discriminate against certain facilities; be based on outdated classifications that have not been validated by an independent authority; and potentially result in limiting access to care.

RESPONSE: The rules concerning Graduate Medical Education reimbursement are not among those currently being addressed by public comment. During the public comment period for GME rules, May 1-31, the Department will respond if the issue is raised.

COMMENTER: St. Francis Medical Center

COMMENT: The hospital states that the right to appeal for changes in scope of teaching was eliminated and requests that this right be reinstated under the Accept option.

RESPONSE: While it is true that the Conditionally Accept option (N.J.A.C. 8:31B-3.51) included appeals for changes in scope of teaching, that appeal is limited by another rule for which no change is proposed. Current rules at N.J.A.C. 8:31B-3.31(c) state that adding resident positions by transfer may not result in change to a higher teaching peer group. This appeal can be made under the Accept option. If, however, a hospital wishes to appeal to attain a higher peer group status, the Not Accept option would have to be used.

COMMENTERS: Mountainside Hospital, Hospital Group A

COMMENT: The proposed amendments do not address either billing or reimbursement for patients in distinct part units ("excluded units" under PPS). Medicare excludes these units from PPS billing and reimbursement as they are provided for under TEFRA guidelines. This area must be specifically addressed in the Department's proposed amendments. This issue is of increased importance as the Department's preliminary proposal for a Medicare Carve-Out Methodology states that a hospital must make a "good faith effort" to maximize Medicare reimbursement or be subject to a penalty.

RESPONSE: The rules do not address distinct part units, also known as PPS excluded units, because if these units provide acute care services they would continue to be reimbursed under Chapter 83. If these units provide non-acute services, such as rehabilitation, reimbursement would be determined under SHARE regulations.

The Department will make a determination for each distinct part unit as to whether reimbursement will be subject to Chapter 83 or SHARE rules. Since Medicare requires each distinct part unit to have a separate provider number, segregation of these cases will not be diffcult.

The Department's proposed Medicare carve-out language has not yet been finalized. However, the concept of a "good faith effort" by hospitals establishes hospitals' responsibility for monitoring their Medicare reimbursement levels now that Medicare's waiver has ended. The Department is not proposing that hospitals "maximize" Medicare reimbursement, but that hospitals collect appropriate levels of PPS reimbursement.

COMMENTERS: Alexian Brothers Hospital, Robert Wood Johnson University Hospital, United Hospitals Medical Center

COMMENT: Same day medical and surgical cases should be reimbursed by the same method. There appears to be no justification to assume different amounts of indirect resource consumption for very similar indirect activities associated with these services.

RESPONSE: The proposed regulatory reforms would treat indirect costs in the following manner:

1. The proportion of outpatient revenue to total revenue is used to allocate indirects for outpatient services.

2. The same day surgery portion of the outpatient indirect cost allocation is used to develop an outpatient cost per SDS case based on 1986 base year SDS cases.

3. Same day medical cases will continue to be considered inpatient services. This means that, although the length of stay is technically zero, the Department assigns a one day length of stay and, depending on the trim points of the DRG assigned, the payment is either the low per diem or the inlier rate. As an inpatient case, reimbursement for some of the indirect cost centers would be volume variable.

Although there may be some logic regarding the similarity between same day medical and same day surgical cases, the merits of this will not be considered at this time since there is no proposal to change reimbursement for same day medical cases. This issue was debated by a Subcommittee of the Joint Hospital Payer Task Force, which recommended that it be tabled for future consideration.

COMMENTER: Franciscan Health System of New Jersey, Inc.

COMMENT: "The same day surgery indirect cost reimbursement are volume variable and therefore should reflect the same level of reimbursement as regular inpatient admissions. The indirect resources consumed by same day surgery cases are the same as for regular admissions and therefore, indirect reimbursement should also be the same."

RESPONSE: The proposed amendments do not involve any change in the method for reimbursing indirects for Same Day Surgery. The Department will be considering related issues in the future.

COMMENTERS: St. Francis Medical Center, Jersey Shore Medical Center

COMMENT: 1. Hospitals should be permitted to appeal their 1989 rates based on SOI information derived from future studies.

2. Hospitals should be permitted to appeal if they demonstrate a significant shortfall in reimbursement caused by the absence of SOI adjusted payments.

RESPONSE: There is no change in the status of this as an appeal item.

COMMENTER: St. Francis Medical Center

COMMENT: This commenter supports the Department's recommendations for changes to Graduate Medical Education reimbursement, and recommends that Indirect Graduate Medical Education costs be reimbursed in a manner similar to Direct costs.

RESPONSE: The rules concerning Graduate Medical Education reimbursement are not among those currently being addressed by public comment. During the public comment period for GME rules, May 1-31, the Department will respond if the issue is raised.

COMMENTER: The Medical Center at Princeton

COMMENT: "Before establishing the 1989 rates the Department should ensure that it has included the correct adjustment for Waste Disposal expenditures for all hospitals."

RESPONSE: No regulatory changes are proposed for the 1988 Hospital Rate Setting Commission approved adjustments for waste disposal expenditures. Therefore, the adjustments being used are included in the Informational Rate Packages, which were sent to each hospital for examination and correction.

MAJOR ISSUES NOT ADDRESSED BY REIMBURSEMENT REFORM

COMMENTERS: Health Insurance Association of America, Mountainside Hospital, New Jersey Business and Industry Association, St. Peter's Medical Center, University Health Systems

COMMENTS: Reimbursement reform does not address other issues that will soon face the health care industry. These issues, which commenters would like to see addressed, include:

1. Incentives for decreasing inpatient admissions and increasing outpatient care;

2. "Flexibility within the regulations" to enable hospital response to demands of provider groups such as HMOs, PPOs, and prepaid health plans;

3. The Medicare approach to rate setting, with both the Standardized Amount and the DRG weights adjusted to include all costs, both Direct and Indirect, except old capital; and coefficients of variation utilized for determining the amount of standard in areas with large unexplained cost variations;

4. Reimbursement for uncomensated care from general revenue:

5. Reimbursement for Indirect GME costs which accounts for "different kinds of patient volume;"

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6. Recognition of efficiencies achieved since 1982 by adjusting rebasing to account for inherent incentives;

7. New capital reimbursement should vary with both volume and case-mix, that is, become a DRG-specific add-on;

8. A Medicare waiver, with its cap, should be a part of New Jersey's future ". . . if, and only if, it contributes to a solution of our problems;"

9. When changes are used as a proxy for determining apportionment of Indirect costs between Inpatient and Outpatient areas, distortions are created;

10. Volume variability should be recognized in reimbursing outpatient indirect costs;

11. Future reforms should include "higher degrees of prospectivity" and increased efficiency and productivity among hospitals; and

12. Wide variability in cost centers other than A&G/FIS, POC, PLT and UTC should be examined in an attempt to develop standard costs for these other cost centers.

RESPONSE: No regulatory changes in these areas are being recommended by the Department at this time. Each of the issues can be considered for reform of reimbursement methods in future years.

COMMENTERS: St. Francis Medical Center, Hospital Group A.

COMMENT: "Several hospitals have corporate offices that provide a range of services covering many components of cost. For accounting purposes these expenditures are charged to administrative and general, but, in reality, they may impact on the CFA, direct patient care, or non-volume variable indirect costs. The appeal process should allow for the proper allocation and review of these costs under the Accept option."

RESPONSE: The Department is not proposing changes to this section of the rules.

COMMENTER: Wallkill Valley Hospital.

COMMENT: "The methodology for calculating direct and indirect patient care disincentives is unfair. [The small size of a hospital] . . . may account for the major increase in the indirect disincentives; however, the calculation of the disincentive on DPC is not clear. How is a DPC disincentive reconciled to the cost of efficient delivery of appropriate and necessary health care service of high quality (required by such hospitals mix of patient)?"

RESPONSE: The Department believes that the calculation of the indirect cost disincentive is reasonable. A hospital's unit cost is compared with the standard for its peer group. When the hospital's unit cost exceeds the standard, a disincentive is calculated, and vice versa. What the disincentive/incentive calculation shows is that the particular institution's costs, as compared to similar hospitals, are higher or lower than those in the same category. It is therefore important for that hospital to try to operate efficiently if it is in a disincentive position. The Department sees no problem with this methodology.

Direct Patient Care incentive/disincentive is calculated through a blending of hospital cost and the standard reasonable cost per DRG based on the coefficient of variation. The Department proposes no change to this approach.

COMMENTERS: The General Hospital Center at Passaic, Hackensack Medical Center.

COMMENT: Because the appropriate proxy cannot equate to the unpredictable hospital-specific expenditures for waste disposal costs, these hospitals recommend final reconciliation to actual costs.

RESPONSE: The Department is not recommending any regulatory changes that would affect the Hospital Rate Setting Commission's 1988 adjustments for generic appeals related to waste disposal costs.

COMMENTERS: Cathedral Health System, Community Medical Center, Franciscan Health System of New Jersey, Inc., Montclair Community Hospital, Morristown Memorial Hospital, Our Lady of Lourdes Medical Center, Rahway Hospital, St. Joseph's Hospital and Medical Center, Wallkill Valley Hospital and Health Centers, West Hudson Hospital.

COMMENT: The Department has proposed a change in the labor proxy. The industry favors this change. However, several other proxies that comprise the economic factor are insufficient. Examples are: medical and surgical supplies, drugs, medical insurance, business service equipment and office supplies. The Department should review the proxies currently in use to assure that they reflect the prices and services consumed by New Jersey Hospitals.

RESPONSE: Reviewing proxies and the economic factor are appropriate for future consideration.

COMMENTER: Elizabeth General Medical Center.

COMMENTS: The hospital finds that N.J.A.C. 8:31B-3.16(d), Data Base Errors, of the Procedural and Methodological Regulations is unreasonable for the following reasons:

1. Requests for change to the 1986 cost submission were denied.

2. The date by which a hospital's actual cost reports cannot be substituted or rearranged is not a published date. Hospitals have no knowledge of the appropriate cut-off date for submitting changes and corrections to their actual cost submission.

RESPONSE: The Department is not proposing any changes to N.J.A.C. 8:31B-3.16(d). The rule states that: "Hospitals may only revise their cost reports prior to the closing of the data base before the first and second years that the data is used to establish rates." The Department also provides adequate notice to the hospitals as to when the data base will be closed regarding changes to the data.

COMMENTER: Franciscan Health System of New Jersey, Inc.

COMMENT: The hospital made various comments concerning detailed review procedures (N.J.A.C. 8:31B-3.52(c)) including the nature of the request for information from the hospital and timelines governing the exchange of information.

RESPONSE: The Department did not propose any change to the section which relates to the comment.

COMMENTER: University Health System of New Jersey.

COMMENTS: The approach to rate setting used in the Chapter 83 system is detailed and complex. This complex approach, though useful for management information, partially negates the system goal of prospectivity. Also, the complexity impacts on the Department's ability to incorporate changes needed in the system regarding equity.

Developers of Medicare's PPS recognized this shortcoming in the Chapter 83 system and solved the problem by separating the issues of cost (standardized amount) and allocation (DRG weights). The commenter recommends using an approach similar to Medicare's in computing rates.

RESPONSE: While such a charge is not proposed for 1989 the Department appreciates this comment and is exploring the possibility of allocating indirect costs to the DRG rates to create all-inclusive rates for 1990.

COMMENTER: Helene Fuld Medical Center.

COMMENT: The Department has not specifically addressed several critical issues involving significant amounts such as the phase-out of Medicare Periodic Interim Payments (PIP) and the methodology to be used to provide cash flow relief to hospitals with Medicare under-collections due to the differences between Medicare and Chapter 83 payments.

RESPONSE: Most hospitals currently receive Medicare accelerated payments in lieu of PIP payments which were phased out in early January 1989. Medicare is allowing hospitals nine months, until September 1989, to develop expertise in submitting Medicare PPS bills before phasing out these lump sum payments. Medicare has indicated that hospitals with special circumstances may be allowed to continue on these accelerated payments, but expects most hospitals to convert to a claims processed basis to be consistent with all other states on PPS. The Department recognizes that there may be cash flow problems due to this conversion, but cannot anticipate the impact. However, the Department will address this issue when more information becomes available. The Medicare payment differential methodology was approved by the Hospital Rate Setting Commission as a cash flow adjustment on April 19, 1989.

COMMENTER: Hospital Group A.

COMMENT: "The proposed amendment fails to identify the Labor Market Areas for the City of Orange and Camden County . . . [and] . . . must be republished to provide this information, otherwise hospitals will not know if they are assignments to the correct Labor Market Area."

RESPONSE: The Department thanks the Hospitals for pointing out this omission. The Commenters should note that the City of Orange is included in Labor Market Area XI (Newark, Central City); X (Vineland, Millville, Camden and Salem). A copy of LMA's will be issued with the rates.

COMMENTER: Elizabeth General Medical Center.

COMMENTS: Regulations must be proposed that will recognize the effect that a disproportionate number of medically indigent patients has on hospitals' operating costs. Approximately 25 percent of EGM's patients qualified for reimbursement pursuant to the Uncompensated Care Trust Fund in 1988.

Hospitals with a disproportionate share of medically indigent cases will have the patients but not the doctors.

RESPONSE: The Department is concerned that inner city hospitals continue to provide care for the population of their service areas including the medically indigent. The Uncompensated Care Trust Fund was established so that hospitals with a high percentage of indigent care would not be unfairly disadvantaged.

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If Physician costs are in the base year, those costs are inflated and carried forward to the rate year. In addition, outpatient direct patient care reimbursement is volume variable. If volume increases, so does the reimbursement from all payers including the Uncompensated Care Trust Fund thus providing revenue for additional physicians.

COMMENTER: New Jersey State Nurses Association (NJSNA).

COMMENT: Concern was expressed about limited resources being available for nursing services at the same time patients are requiring greater nursing resources. For example, one hospital requires mandatory overtime and regularly assigns nurses to a double shift one day per week.

The NJSNA requests that nursing agenda for New Jersey be addressed with the guidance of the Nursing Advisory Committee, considered imperative, and expedited.

RESPONSE: While the Department's prospective reimbursement system cannot adopt unlimited resource payments, the Department agrees that nursing services in Chapter 83 hospitals are pivotal to providing quality patient care. Moreover, the availability of sufficient numbers of nursing staff is contingent upon many variables in addition to adequate salary dollars provided through the rates.

The Department's recommendations to, and approval by, the Hospital Rate Setting Commission of $168 million in increased labor payments was significantly due to recognizing the importance to Chapter 83 hospitals of sufficient quantitites of quality nursing staff. Additionally, the Commissioner's Hospital Payer Task Force includes representation from the NJSNA.

The Department concurs that nursing staff and the necessary payments to support needed staff are issues of high importance and urgency. The Department will include the Nursing Advisory Committee as these issues are analyzed and addressed.

Summary of Changes upon Adoption:

A statement regarding the Department's intent for 1990 rates has been added to the current cost base section, at N.J.A.C. 8:31B-3.16(b)7.

Three changes have been made in the indirect patient care cost section, N.J.A.C. 8:31B-3.24, allowing hospitals that have specialty designation, older plants, or large teaching adjustment factors to appeal for costs associated with the four cost centers reimbursed at 100 percent standard.

The portion of contracted services labor costs to total labor costs in Labor 1 at N.J.A.C. 8:31B-3.26(e)1 is set at three percent for 1987; and for 1988 and 1989, six percent with reconciliation to actual if lower.

Appendix IX was not repealed because the cost-volume methodology was proposed for repeal beginning with rate year 1989. However, the methodology will apply through 1988 Final Reconciliations, so the Department has reinstated the Appendix in order that it may be used as a reference for those Reconciliations.

Technical changes were made, including: (1) correction of a citation in N.J.A.C. 8:31B-3.16(b)3, and (2) a change in the placement of a cost center component at N.J.A.C. 8:31B-3.24.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***, deletions from proposal indicated in brackets with asterisks *[thus]*):

8:31B-3.16 Current Cost Base

(a) A hospital's Current Cost Base is defined as the actual costs and revenue as identified in the Financial Elements in the base reporting period as recognized by the New Jersey Department of Health for purposes of rate-setting.

(b) The Current Cost Base is used to develop the Preliminary Cost Base and Schedule of Rates through:

1.-2. (No change.)

3. Calculation of the operating margin as described in N.J.A.C. 8:31B-*[3.26(a)]***3.38(a)3***;

4. Addition of the 1988 rate year adjustments approved by the Commission for expenditures related to waste disposal. These adjustments will be made only to the 1986 cost base;

5. Calculation of the economic factor cost component as defined in N.J.A.C. 8:31B-3.26(a);

6. Calculation of the technology factor as described in N.J.A.C. 8:31B-3.26(b).

7. The costs used to set rates for the 1990 rate year will be based on 1988 costs so as to meet an implementation date of January 1, 1990. If a total rebase to 1988 costs is not possible in order to meet this implementation date, the rebase will be simulated based on best available data. 1990 rates will be based on severity of illness-adjusted DRGs if agreement is reached upon an effective methodology for adjusting DRG rates.

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

8:31B-3.22 Standard costs per case

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

(c) Determination of labor equalization factor to calculate Statewide standard costs per case:

1. (No change.)

2. For 1989 rate setting purposes, the Labor Market areas recognized in 1988 rate setting will be used.

3.-7. (No change.)

(d) (No change.)

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance, malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

1. The following indirect costs will be equalized and then totaled by peer group: A&G/FIS, PLT and PCC (non-physician). This total cost will be divided by the peer group adjusted admissions to create the equalized peer group standard unit cost. An adjusted admission is defined as admissions multiplied by total gross revenue divided by inpatient gross revenue. This standard unit cost will be multiplied by the operating margin of 1.01 as set forth in N.J.A.C. 8:31B-3.38(a)3.

2. The UTC indirect costs are totaled (but not equalized) by peer group, and divided by adjusted admissions to create a peer group (unequalized) standard unit cost. This standard unit cost will be mulitplied by the operating margin of 1.01 as set forth in N.J.A.C. 8:31B-3.38(a)3.

3. The costs used to calculate these peer group indirect standards will be the actual base-year costs. The standard will not be recalculated except for the inclusion of Statewide generic issues affecting one or more peer groups.

4. and 5. (No change.)

6. Hospitals that have an overall teaching adjustment factor of 18 percent or greater, or physical plants older than 10 years may appeal for unit costs that reflect a portion of their own base-year costs, provided their base-year unit costs exceeded the peer group mean by 1.0 standard deviation. Specialty hospitals as recognized in accordance with N.J.A.C. 8:31B-3.22(b)5 and 3.24(b)5 may appeal for unit costs that reflect their own base-year costs. The hospitals making appeals under these options must also demonstrate that they are well utilized as measured by occupancy rates in the base years and subsequent rate years.

*[6.]****7.*** Inpatient indirect costs are volume variable with the exception of those cost centers described in this subsection. Hospitals will be reconciled to inpatient discharges multiplied by the standard rate. Projected total indirect costs will be collected during the year through the use of the overhead mark-up factor. Outpatient indirect costs will remain fixed except for same-day surgery patients. Same day surgery indirect costs will be volume variable, subject to a unit cost which represents the pro rata portion of outpatient indirect costs which were attributable to same day surgery in the base year. ***The Department will examine additional refinements to the methodology for reimbursement of indirect costs, for possible implementation in the 1990 rate year.***

i. As part of an entire reimbursement reform package, the Department will recognize an operating margin for hospitals. When full standard reimbursement is in effect, then the phase-in of an operating margin will begin.

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(d) Non-Physician salaries will be equalized based upon the 11 labor market areas as defined in N.J.A.C. 8:31B-3.22 for the purpose of grouping the following indirect cost centers in the peer group standard calculations:

1. A&G/FIS;
2. PLT; and
3. PCC (non-phy).

(e) Cost centers subject to screening:

Cost Centers	Peer Group	Unit of Service	Reasonable Cost Limit
(RSD) Residents Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Physicians Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent PHY	1.1
(RSD) Residents Physician	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Phys. & Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	1.1
[(PHY)] Educ. and Research ***PHY***	teaching non-teaching	PHY	

8:31B-3.26 Update Factors

(a) Economic Factor: An economic factor shall be calculated for each hospital. It shall take into account the level of hospital expenses and replacement cost of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The economic factor is the measure of the change in the prices of goods and services used by New Jersey hospitals. It is to be based, as far as possible, on recorded price changes. For that part of the period covered by the economic factor for which recorded price changes are unavailable, the economic factor shall be based on the best available forecast of price trends.

1. The cost components of the economic factor are shown in Appendix II. The labor proxy for the 1982 rate year will remain the Employment Cost Index Northeast. The proxy used for labor costs in calculating rates in 1983 through 1988 will remain the Bureau of Labor Statistics series Average Hourly Earnings for Non-Supervisory Hospital Workers (U.S). Rates set for 1989 forward, will multiply base-year costs by ***a*** labor proxy composition as described below:

i. For 1989 rates, the *[1987]* Statewide proportion of contracted services labor costs to total labor costs in the Labor 1 component *[(three percent)]* will be increased by the percentage change in the cost of contracted services as measured between June 1986 ***and between June 1987*** and June 1988 and projected forward for 1989. ***For 1987, the proportion of labor costs subject to these increases in contracted services is three percent. For 1988 and 1989, the proportion of contracted services to total Labor 1 costs will be capped at six percent. Should the actual Statewide proportion of contracted services to total labor costs be lower than six percent in 1988 or 1989, future labor proxies will be adjusted downward to reflect this lower proportion. This treatment will continue for all rate years based on the 1986 base year.***

ii. The remaining proportion of *[labor cost in the Labor 1 component (97 percent)]* ***proxy*** will be multiplied by the Bureau of Labor Statistics, Average Hourly Earnings for Nonsupervisory Hospital Workers (Northeast).

2. The hospital-specific economic factor is the weighted average of the recorded and projected change in the value of its components. The weight given to each component is its share of that hospital's total expenditure as described in Appendix II. The projection of individual components shall be based, where appropriate, on legal or regulatory charges which fix the future value of a proxy that is, FICA). Components which are of particular importance may be projected through the use of time series analysis on other relevant indicators.

3. See Appendix II for Cost Components and Proxies for the Economic Factor.

(b) Technology Factor: Base-year direct patient care and indirect rates shall be multiplied in succeeding years by a technology factor to provide prospective funds to support hospital adoption of quality-enhancing technologies. The technology factor shall be based on the Scientific and Technological Advancement Allowance recommended annually to the Secretary of the United States Department of Health and Human Services by the Prospective Payment Assessment Commission (ProPAC). The factor shall be composed of the proportion of incremental operating costs associated with ProPAC's identified cost-increasing technologies, and ProPAC's allowance for technologies not included in the technology-specific projections, less the proportion of incremental operating costs of cost-decreasing technologies identified by ProPAC.

1. For the initial rate year after the base year, base-year direct patient care and indirect rates will be multiplied by the product of the technology factors calculated for interim years between the base year and the rate year.

2. For each year that a hospital accepts its rates, the rates will be updated prospectively by the technology factor calculated for that rate year.

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements based on direct costs shall be as follows:

1.-2. (No change.)

3. An operating margin will be calculated and added to hospital rates as follows:

i. Standard per unit indirect reimbursement as defined in N.J.A.C. 8:31B-3.24 will be multiplied by 1.01.

ii. The standard amount in each DRG will be multiplied by 1.01.

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

8:31B-3.73 Reconciliation: Hospitals

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

1. Variable financial elements:

i. (No change.)

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ii. At reconciliation for rate years through 1988 adjustments will be made to the marginal revenue associated with increases and decreases in volume and case-mix according to the methodology detailed in Appendix IX.

iii. and iv. (No change in text.)

2.-4. (No change.)

APPENDIX II
COST COMPONENTS PROXIES
FOR THE ECONOMIC FACTOR

LABOR 1

COST COMPONENT: Non-physician Salaries. Physicians' Salaries and Fees

SHARE COST CENTER: All cost centers for which employee salaries are reported; contracted services in MSA, OBS, PED, ***PSA,*** ICU, CCU, NNI, NBN, EMR, CLN, DEL, ORR and OHS Cost Centers; physicians' salaries and fees for all Cost Centers except RSD; and physicians' fees for RSD Cost Center.

PROXIES: BLS, Average Hourly Earnings for Nonsupervisory Hospital Workers, Northeast (97 percent ***in 1987, and no less than 94 percent in 1988 and 1989***)

Percentage change in New Jersey contracted services hourly wage (*[3]* ***three*** percent ***in 1987, six percent in 1988 and 1989*)*. Labor proxies of future years will be adjusted downward to reflect the actual 1988 and 1989 statewide proportion of contracted services if the actual proportion is less than six percent. This treatment will continue for all rate years based ont he 1986 base year.***

SOURCE: Bureau of Labor Statistics (BLS), Employment Cost Index New Jersey Department of Health survey of contracted services labor costs for 1986 thorugh 1988.

LABOR 2.-LABOR 3. (No change.)

SUPPLIES 1.-SUPPLIES 10. (No change.)

OTHER 1.-OTHER 5. (No change.)

OTHER 6.

COST COMPONENT: Other Services

SHARE COST CENTER: Other expenses reported in all cost centers except INT, PLT, OGS, MAL, UTC, LFB, PFB, and PEN; other expenses in A & G Cost Center not classified above; contracted service costs in Ancillaries exclusive of DEL, ORR, DTY, HKP, MRD, PCC, EDR, A&G and FIS Cost Centers.

PROXIES: Service less rent and medical care

SOURCE: BLS, Consumer Price Index

APPENDIX IX

[(RESERVED)] ***Volume Variability Adjustment***

At final reconciliation ***for rate years through 1988*** the volume adjustment applies only to inpatient care revenues. Outpatient and same day surgery Direct Patient Care revenues remain 100 percent volume variable. The compensation costs of Inpatient Direct Patient Care are considered the Fixed portion of the marginal revenue. Thus the percentage of Direct Patient Care that is related to non-compensation costs remains 100 percent volume variable. The following section describes how changes in volume and intensity are measured and then used to calculate the amount of marginal revenue the hospital may retain.

The terms Marginal Revenue and Incremental Revenue are used interchangeably in the methodology. Marginal revenue equals the difference between:

Rate Year Revenue	(Rate Year Inlier + Reasonable Outlier Revenue in Base Year Dollars)
Base Year Revenue	(Base Year Inlier + Outlier Revenue in Base Year Dollars)

The methodology is concerned with adjusting this marginal revenue in order to arrive at earned marginal revenue. Earned marginal revenue is that portion of marginal revenue due the hospital to cover the actual costs of treating a more intense or larger patient load.

Determining Volume Changes

A.-H. (No change.)

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Appeals

Adopted New Rules: N.J.A.C. 8:31B-3.59 and 3.60

Adopted Repeal and New Rule: N.J.A.C. 8:31B-3.58

Adopted Amendments: N.J.A.C. 8:31B-3.51, 3.52 and 3.55

Adopted Repeals: N.J.A.C. 8:31B-3.53 and 3.54

Proposed: January 17, 1989 at 21 N.J.R. 131(b).

Adopted: June 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 23, 1989 as R.1989 d.385, **with substantive and technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: July 17, 1989.

Expiration Date: October 15, 1990.

PREFACE

HOSPITAL GROUPS

Hospital Group A—duplicate comments were provided by several hospitals:

1. Bergen Pines County Hospital
2. Dover General Hospital
3. East Orange General Hospital
4. Elizabeth General Medical Center
5. The Hospital Center at Orange
6. The Medical Center of Ocean County
7. St. Elizabeth Hospital
8. United Hospitals Medical Center
9. Wallkill Valley Hospital and Health Centers
10. Warren Hospital

Hospital Group B—endorsed the comments of HFMA:

1. The Hospital Center at Orange
2. Jersey Shore Medical Center
3. The Memorial Hospital of Salem County, Inc.
4. Overlook Hospital
5. Shore Memorial Hospital

Hospital Group C—endorsed the comments of NJHA:

1. Newark Beth Israel Medical Center
2. Newton Memorial Hospital
3. Shore Memorial Hospital
4. Wallkill Valley Hospital and Health Centers

Hospital Group D—Cohen, Shapiro, Polisher, Shiekman and Cohen submitted comments on behalf of the following hospitals:

1. Alexian Brothers Hospital
2. Dover General Hospital
3. East Orange General Hospital
4. The Hospital Center at Orange
5. The Medical Center of Ocean County
6. Robert Wood Johnson University Hospital
7. St. Francis Medical Center
8. United Hospitals Medical Center
9. Warren Hospital

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Cathedral Healthcare System, Chilton Memorial Hospital, Christ Hospital, Clara Maass Hospital, Community Medical Center, Deborah Heart and Lung Center, Franciscan Health Systems of New Jersey, Inc., Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey City Medical Center, Kaden Arnone, Inc., Kennedy Memorial Hospitals-University Medical Center, Mercer Medical Center, Montclair Community Hospital, Morristown Memorial Hospital, Mountainside Hospital, New Jersey Hospital Association, Palisades General Hospital, Rahway Hospital,

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Robert Wood Johnson University Hospital, St. Joseph's Hospital and Medical Center, Union Hospital, The Valley Hospital, Wayne General Hospital, West Hudson Hospital, West Jersey Health System, Hospital Group A, Hospital Group B

COMMENT: The Department is proposing to reduce the time a hospital will have before notifying the Department of its decision to accept or not accept its rates. The hospital industry is facing many changes in 1989 due to reimbursement reform. It will take significant analysis to determine the impact that these proposed changes will have on the hospitals. It is recommended that the time frame for notification of appeals remain at 45 days or increase to 60 days.

RESPONSE: The change in the notification time frame in these proposed amendments was to make N.J.A.C. 8:31B-3.51 consistent with N.J.A.C. 8:31B-3.43(a). "Unless otherwise ordered by the Commission, the proposed Schedule of Rates shall be implemented on the first day of the month (within) following 30 working days after receipt of the Schedule of Rates." However, the Department agrees that hospitals may required 45 days to analyze their rates and respond. Therefore, the Department is not adopting this change and the notification deadline will remain at 45 working days. The Department will implement rates as if they were accepted. Where hospitals subsequently reject their rates, the technology factor and one percent accept amounts will be removed from the Mark-up Factors.

COMMENTERS: Alexian Brothers Hospital, Clara Maass Medical Center, Deborah Heart and Lung Center, Mountainside Hospital, Robert Wood Johnson University Hospital, St. Francis Medical Center, Hospital Group A except for East Orange

COMMENT: Deleted from the proposed amendments is a provision in the appeal process for adjusting physician reimbursement patterns, specifically direct versus hospital billing.

RESPONSE: This section was inadvertently deleted from the initial proposal, and a proposal is in process to add at N.J.A.C. 8:31V-3.51(b)1vii, under the Accept Option. It will permit a hospital to appeal for reimbursement if physicians joining a hospital practice change from direct billing to a hospital compensation basis.

COMMENTERS: Deborah Heart and Lung Center, United Hospitals Medical Center

COMMENT: Current rules provide for specialized acute hospitals to apply to the Commissioner for teaching status. Such applications were not provided for when the Conditionally Accept Option was eliminated from the proposed rules.

RESPONSE: Under the proposed methodology for GME reimbursement, direct patient care standard payments are no longer based on Peer Groups, so there would be no need for appeals to change Peer Group. For indirect, costs, appeals are allowed for hospitals that have been accorded specialty designation pursuant to N.J.A.C. 8:31B-3.22(b)5 and 3.24(b)5.

COMMENTERS: Alexian Brothers Hospital, Cathedral Healtcare System, Franciscan Health System of New Jersey, Inc., Mountainside Hospital, Robert Wood Johnson University Hospital, United Hospitals Medical Center.

COMMENT: The Department has never used the requirement to submit a plan to eliminate inefficiencies if the hospital has an overall direct patient care disincentive. It is unreasonable to expect hospitals to devote considerable time and effort to preparing a report to be presented to the Hospital Rate Setting Commission when its meaning and application is unknown.

RESPONSE: The purpose of the amendment to N.J.A.C. 8:31B-3.51(b)1 was to tie the cost reduction plan requirement to acceptance of the Certified Revenue Base as defined at N.J.A.C. 8:31B-3.15.

Currently, rates for each hospital are set using a Preliminary Cost Base (PCB). As defined at N.J.A.C. 8:31B-3.2, the PCB includes "reasonable" direct, indirect and physician costs, net income from other sources, inflationary adjustments via the economic factor, and capital. Hospitals petition for revenue in addition to their PCB through the appeals process. In contrast, the Certified Revenue Base (CRB) is a goal of the Chapter 83 System that has not yet been reached by any hospital. A hospital may elect to be on a CRB, defined as a PCB as approved by the Hospital Rate Setting Commission, which is sufficient to meet a hospital's needs in providing adequate and appropriate healthcare. This implies that appeals and other non-automatic revenue adjustments no longer occur.

COMMENTERS: Alexian Brothers Hospital, Cathedral Healtcare System, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Franciscan Health System of New Jersey, Inc., Jersey Shore Medical Center, Mountainside Hospital, Robert Wood Johnson University Hospital, St. Clares Riverside Medical Center, Hospital Group A.

COMMENT: Clarification of the overspending challenge is requested. Because the Department has never implemented the overspending challenge, it should be deleted from the proposed amendments and rules. In addition, a hospital should only have appropriate disincentives removed from its rates once. Having a disincentive should not be used against a hospital in hearing other appeals.

RESPONSE: The Department agrees that the overspending challenge does not constitute a productive element of the reimbursement system. Reference to the overspending challenge has been deleted from the rules upon adoption, at N.J.A.C. 8:31B-3.51(b)2.

COMMENTERS: Cathedral Healthcare System, Franciscan Health System of New Jersey, Inc., Jersey City Medical Center, Hospital Group A.

COMMENT: This comment suggests changing the rule governing appeals under the Accept option for costs associated with a decrease in the number of approved residents. Because residents are generally paid less than replacements who would provide the same level of coverage, the commenters oppose limiting reimbursement to the amount paid to residents. A criterion of reasonable replacement cost is recommended instead.

RESPONSE: This rule applies to loss of residents due to the following conditions:

1. A hospital's inability to meet accreditation requirements as specified in N.J.A.C. 8:31B-3.22(b)1.-3.;

2. A hospital's inability to hire residents meeting the criteria in N.J.A.C. 8:31B-3.22(b)6.; or

3. A hospital's voluntary reduction in its number of resident positions.

A reduction number of residents will also reduce certain associated overhead costs such as faculty salaries. These reductions can be expected to offset any potential increases due to employment of fully trained physicians as replacements for residents.

COMMENTERS: Hospital Group A, Our Lady of Lourdes Medical Center, Rahway Hospital.

COMMENT: These commenters noted that under the proposed Accept option, hospitals may raise various issues allowed under the current Accept and Conditionally Accept options. However, since restrictions are placed on these appeals, hospitals would be required to use a Not Accept option to obtain their appeal rights. The commenters suggest broadening appeal rights under the Accept option.

RESPONSE: As previously described, one goal of reimbursement reform is to streamline the appeals process for both hospitals and the Department of Health. The proposed appeal structure allows a variety of automatic adjustments for which hospitals do not have to appeal (technology factor and operating margin in addition to the current one percent accept). Broadening appeal rights under the Accept option would complicate rather than streamline the process.

A hospital which disagrees with its rates may use the Not Accept option. It may appeal almost any aspect of its rates with few exceptions. Although the Not Accept option requires the hospital to forfeit the one percent incentive and the technology factor, the Department has recommended removal of the overspending challenge and provision for future compounding of the technology factor as explained later in this document. Therefore, it is reasonable to require hospitals to not accept their rates in order to pursue this comprehensive appeal option.

COMMENTERS: Healthways, Inc., New Jersey Business and Industry Association.

COMMENT: Representatives of the business community and payers commented on the appeal options with views as follows:

1. Thresholds for appeals are reasonable and do not preclude appeals for exceptional circumstances.

2. The timing of possible appeals should be modified. The proposed rules do not preclude reimbursement changes which occur outside the established timelines for determination of premiums for employers.

RESPONSE: As described in other responses, the Department believes that the proposed appeal rules and other proposed changes provide hospitals with a reasonable system for insuring appropriate reimbursement. Proposed revisions should make the timing of decisions on appeals more regular and predictable by including various Statewide issues in the regular appeal process.

COMMENTER: Hackensack Medical Center.

COMMENT: The two year limitation applied to operating costs of mergers and consolidations appears reasonable.

RESPONSE: The Department agrees with this comment.

COMMENTERS: Alexian Brothers Hospital, Franciscan Health System of New Jersey, Inc., Hospital Group A.

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COMMENTS: The following comments were received regarding appeals of mergers, acquisitions, and consolidations:

1. The proposed rules define appeal adjustments related to mergers, acquisition or consolidation for only operating costs. This should be expanded to all costs, including appropriate capital costs.

2. The proposal limits appeals and adjustments to a maximum of two years. Commenter suggest that each merger, consolidation and acquisition should be reviewed individually and without predetermined timeframes.

3. Specific criteria should be developed to measure systemwide economic benefits.

RESPONSES: 1. The proposed rules are responsive to additional operating costs which may result from mergers or other consolidations. The proposed rules also allow for appeal of any capital costs, including those associated with mergers and consolidations, under the Accept option provided that the specified Certificate of Need procedures are met.

2. The time limitation of two years for such adjustments is appropriate. Additional appeal is possible under the Not Accept option. The Department believes that the operational cost impacts will occur within two calendar years following a merger or consolidation. After two years, it is expected that the projected cost-savings should begin to be realized.

3. The criteria for evaluation of systemwide benefits are not delineated in regulation. The intent of this section is to recognize that mergers and consolidations may have benefits to the system that are not financial. A system benefit, such as maintaining access to quality care, is an outcome this section would encourage.

COMMENTERS: Alexian Brothers, Clara Maass Medical Center, Deborah Heart & Lung Center, Franciscan Health System of New Jersey, Inc., Kennedy Memorial Hospitals—University Medical Center, Our Lady of Lourdes Medical Center, Robert Wood Johnson University Medical Center, St. Francis Medical Center, Hospital Group A.

COMMENTS: 1. Comments were received regarding capital and MME appeals. Several commenters recommended that ". . . all costs associated with capital and MME projects should be appealable under the Accept option. These costs should have been reviewed and evaluated in the Certificate of Need process. Approval of projects and approval for reimbursement of their costs must be consistent."

2. Comment was made that the Department should justify removing disincentive amounts from appeals as these amounts have already been removed when rates were issued.

3. Appeals relating to replacement and fully depreciated equipment should be allowed under the Accept option.

4. Only the overall patient care rather than the cost center disincentive should be netted against the appeal adjustment.

RESPONSES: 1. Under the proposed Accept option, capital and MME costs associated with CN approved projects are appealable. The proposal for final adoption will also include a provision for appeal of operating costs associated with CN approved projects. The proposed rules not only provide consistency with CN procedures, but are also a significant liberalization over present rules. For many CN approved projects, operating costs will be reimbursed through the rates through added volume and improved efficiency or through the technology factor. The status of interest reimbursement does not change from the current system.

2. According to the current rules, a disincentive, either overall or in the specific cost center affected, precludes a hospital from receiving any adjustment for MME expenses resulting from a Certificate of Need. The proposed rules allow hospitals to appeal for CN related MME under the Accept option provided any disincentive amount in the appropriate cost center is netted against the appeal. Further, use of the Not Accept option would allow hospitals to appeal such cost as well as the netting out of the disincentive amount. Overall the appeals for MME have been broadened and liberalized.

3. Any given base year includes historical depreciation costs which are price level adjusted and increased by the economic factor in order to provide funds to replace equipment at the expiration of useful life. Similarly, any year selected would normally have some fully depreciated equipment with no corresponding depreciation costs whether a base year or a rate year. However, hospitals may appeal a price level fund deficiency as in prior years under the Not Accept option, since this would be an appeal contending insufficiency of the rates.

4. The Department believes the cost center is the most pertinent level for analysis of hospital spending relative to new equipment.

COMMENTERS: Elizabeth General Medical Center, Jersey City Medical Center.

COMMENT: Capital costs in excess of the Statewide limit should be allowed.

RESPONSE: The Commissioner issued a capital exceptions policy on June 20, 1988 to permit hospitals to appeal the Statewide unit price limitation on capital facilities allowance (CFA). The policy was revised on April 12, 1989. The policy permits major batch hospitals to obtain payments above the statewide limit in defined circumstances. Accept option appeals for capital reimbursement of costs exceeding the Statewide unit price will be subject to this capital exceptions policy.

COMMENTERS: Hospital Group A

COMMENT: These hospitals commented that:

"That Proposed Amendments result in hospitals being required to Not Accept their 1989 rates in order to appeal adjustments previously approved in 1987 and 1988 that are not in their base year costs. This failure to recognize previously approved adjustments could require hospitals that are extremely efficient to Not Accept their rates in 1989 in order to have those costs included in their 1989 rates. This incongruous result demonstrates the Proposed Amendments to be arbitrary and capricious."

RESPONSE: The Department agrees that it is reasonable to allow appeals under the Accept option for 1987 and 1988 rate year continuing adjustments that were approved by the Commission but not captured in rebasing. A section describing such appeals has been added to the proposed rules.

COMMENTERS: Cathedral Healthcare System, Community Medical Center, Franciscan Health System of New Jersey, Inc., Hackensack Medical Center, Rahway Hospital, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, Valley Hospital, Hospital Group A except Dover, East Orange, and Elizabeth.

COMMENT: The rules require that all appeals, including Statewide legal and clinical appeals, be submitted within 60 days of receipt of the rates. These timelines are too restrictive for Statewide appeals which take longer to develop. In addition, a Statewide issue could develop during the year. For example, Statewide rules for waste disposal could be signed into law in the middle of the year and result in significant additional costs. Statewide legal and clinical issues should be developed at any time.

In addition, the regulation should be changed to require submission within 60 working days.

RESPONSE: The focus of reform of the appeal process has been to provide hospitals with increased automatic adjustments and sufficient funds necessary for efficient operations without the need for appeal. The Statewide part of the appeal process is designed to allow timely, appropriate response to issues which impact on the costs incurred by hospitals for legal and clinical issues. The hospitals appeal these issues; the Department makes recommendations on the issues which are to be considered during the year; and the Hospital Rate Setting Commission makes a final determination. The system is designed to allow both the Department and the HRSC to respond to the needs of New Jersey hospitals in an efficient and timely manner. Appeals will be evaluated as a group and recommendations made about the Statewide issues which will be considered during the year. Timelines are necessary to allow an organized analysis and response. The prospective rate setting system and the related appeals process are annual in order to allow systematic evaluation and processing. Any cost change which occurs in the middle of the year could be addressed in a subsequent year's rate appeal.

The Department agrees that the regulation should be changed to require submission of Statewide legal and clinical appeals within 60 working days, not 60 days.

COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Cathedral Healthcare System, Clara Maass Medical Center, Deborah Heart and Lung Center, Franciscan Health System of New Jersey, Inc., Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey City Medical Center, Jersey Shore Medical Center, Memorial Hospital of Salem County, Montclair Community Hospital, New Jersey Hospital Association, Rahway Hospital, Raritan Bay Medical Center, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, Wayne General Hospital, West Hudson Hospital, Hospital Group A.

COMMENTS: Several hospitals did not agree with the use of a threshold for Statewide legal appeals under the accept option. The rules require that each issue must exceed reasonable costs of $10,000; each hospital's adjustment will be only for those dollars which exceed .1 percent direct patient care rates. Specific comments were as follows:

1. Hospitals should receive full reimbursement for legal issues. The hospital should not be required to meet both criteria. Other hospitals suggested that only the $10,000 threshold should be used. Hospitals cannot absorb costs for multiple mandated legal issues which could determine an institution's profitability.

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2. It is not clear whether the .1 percent threshold applies to each legal appeal or all current appeals.

3. Appeals of less than $10,000 should be approved by the analyst.

4. Restriction of appeal for legal issues violates the principles of due legal process.

RESPONSES: 1. In light of the need to reduce the number of appeals and streamline the process, it is appropriate that Statewide legal appeals considered under the Accept option meet specific thresholds both individually and as a group. Each appeal must exceed $10,000 in reasonable costs. The one percent incentive under the Accept option is specifically designed to cover some cost increases without the need to appeal. Therefore, final recommended adjustments for each hospital accepting its rates will be for those recommended aggregate legal appeal dollars exceeding .1 percent of the direct patient care rates (i.e., 10 percent of the one percent incentive monies).

2. The .1 percent threshold calculation would be based on all legal appeals which are applicable in the rate year, including prior year continuous adjustments.

3. The suggestion that the hospital's rate analyst have the discretion to approve small legal appeals is inappropriate. By rule, all rate adjustments must be approved by the Hospital Rate Setting Commission.

4. The Department does not believe that the rule violates due legal process. The restrictions at issue apply only to the Accept option. Hospitals retain the right to appeal any legal issues by choosing the Not Accept option.

COMMENTER: Hospital Group A (excluding St. Elizabeth).

COMMENT: The proposed rules limit legal appeals to changes since the base year. This group of hospitals questioned whether this would exclude appeals for costs resulting from legislation or regulations which were in effect in the base year but whose financial impact was not felt until later.

RESPONSE: The treatment of legal appeals has historically assumed that a hospital is in compliance with legislation and regulations in place in the base year. If the hospital is not in compliance and consequently the reimbursement impact is delayed, the Department will evaluate the special circumstances in analyzing the appeal. The proposed rules are consistent with this policy.

COMMENTER: Raritan Bay Medical Center.

COMMENT: ". . . the adoption of FASB '87 relating to pension costs, should be recognized for those hospitals that adopted it in 1986."

RESPONSE: Specific hospital appeals for legal issues will be evaluated within the rules. Detailed information on the hospital's situation is required.

COMMENTERS: Alexian Brothers Hospital, Cathedral Healthcare System, Clara Maass Medical Center, Community Memorial Hospital, Deborah Heart and Lung Center, Division of Mental Health and Hospitals, Department of Human Services, State of New Jersey, Franciscan Health System of New Jersey, Inc., Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey City Medical Center, Jersey Shore Medical Center, Kaden Arnone Inc., Memorial Hospital of Salem County, Montclair Community Hospital, Mountainside Hospital, New Jersey Hospital Association, Palisades General Hospital, Rahway Hospital, St. Clares Riverside Medical Center, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, Wayne General Hospital, West Hudson Hospital, West Jersey Health System, Hospital Group A.

COMMENTS: A Statewide clinical appeal must be raised by 35 percent of the hospitals or impact 35 percent of patients within the affected DRGs. A number of hospitals commented that these criteria are restrictive and difficult to meet.

1. Thirty-five percent of hospitals are not in each peer group. For example, an issue which affected all major teaching hospitals would not meet the threshold. The requirement should apply to hospitals within a peer group.

2. Specialized psychiatric programs would not meet either criterion although the DRG rates are inadequate.

3. An individual hospital may treat a disproportionate percentage of patients within a DRG or a disproportionate percentage of more severely ill patients.

4. The clinical appeal process is a significant method for addressing inequities and should not be limited. Individual hospitals should have the option of addressing clinical situations on a hospital-specific basis.

RESPONSE: Revisions in the rules are designed to improve the adequacy of reimbursement and make the system more sensitive to differences in medical care. These revisions include a new GROUPER, which should improve the relationship between reimbursement and specific clinical conditions. The GROUPER will be updated annually to maintain the relationship between clinical practices and reimbursement. The new system also includes an operating margin and a new labor proxy. In addition, a hospital accepting its rates receives one percent of direct patient care cost as an incentive plus a technology factor. Under the Accept option, while additional funds flow through the system there is also some restriction in appeal rights.

A hospital accepting its rates may use the Statewide clinical appeals process to address systemwide inadequacies in reimbursement. A hospital may use the Not Accept option to address clinical issues which are more specific. This option allows appealing most aspects of a hospital's rates. Utilization of this option requires forfeiture of the one percent incentive and the technology factor but does not involve use of the efficiency standard as in the current regulations.

The Department believes that some issues relating to peer groups and a more ill patient mix could be appealed under the Statewide appeal option. Some clinical conditions would be reflected in only a few DRGs; therefore, the issue would affect 35 percent of the patients within a DRG or group of DRGs.

The Department will add a regulatory provision which expands the definition of Statewide clinical appeals to include CN approved regional services as defined in planning rules.

COMMENTER: Hospital Group A.

COMMENT: Evaluation of a new technology as a clinical appeal requires comparative analysis of the new technology, including a cost/benefit analysis and a comparison with other technologies. However, such information is frequently not available for new technologies which are still being evaluated in the medical literature. New technologies may require a longer length of stay since physicians are not familiar with the outcome.

RESPONSE: N.J.A.C. 8:31B-3.59(b) lists various types of information which would be used in evaluating clinical appeals. Different types of information would be appropriate for evaluating various new treatments or technologies. It will be important to describe the conditions which indicate use and the research evidence in support of the new technology. Estimates of related costs, including LOS, are also important. Obviously, complete information would not be available in all cases. However, in order to determine whether additional reimbursement is appropriate, the Department would consider all available information. The hospital should be able to document the reasons for use of the new technology and the impact of the new technology on cost.

COMMENTERS: Alexian Brothers Hospital, Cathedral Healthcare System, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Healthcare Financial Management Association, New Jersey Chapter, Jersey City Medical Center, Jersey Shore Medical Center, Memorial Hospital of Salem County, Mountainside Hospital, St. Francis Medical Center, United Hospitals Medical Center, Wayne General Hospital.

COMMENT: A Statewide clinical appeal may not be for costs addressed by the technology factor. This should be changed to adequately addressed.

RESPONSE: The technology factor is based on extensive research on the projected costs of a number of new technologies. Hospitals provide differing ranges of services which require different technologies. Therefore reimbursement for a specific new technology may be too high or too low for an individual hospital. However, the overall reimbursement for technology should be adequate.

If the hospital finds that due to unique circumstances the technology factor is not appropriate, the hospital may elect to use the hospital-specific clinical appeal under the Not Accept option. Under these conditions, the hospital may appeal for costs related to any new technology.

COMMENTERS: Alexian Brothers Hospital, Cathedral Healtcare System, Clara Maass Medical Center, Deborah Heart and Lung Center, Healthcare Financial Management Association, New Jersey Chapter, Jersey Shore Medical Center, Memorial Hospital of Salem County, Mountainside Hospital, St. Francis Medical Center, United Hospitals Medical Center, Wayne General Hospital.

COMMENT: Clarify language of N.J.A.C. 8:31B-3.58(a)2ii.

RESPONSE: As defined in N.J.A.C. 8:31B-3.26(b), the technology factor consists of three parts: (1) an increase based on the evaluation of the costs of specific high cost or high volume new technologies; (2) an increase based on an estimate of the costs of other new technologies; and (3) a decrease due to the impact of cost-decreasing technologies. These components are defined annually by the Prospective Payment Assessment Commission (ProPAC), and are discussed in more detail below.

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N.J.A.C. 8:31B-3.58(a)2 states that if a Statewide clinical appeal relates to new technology, it must not be addressed in the technology specific portion of the factor (section (1) in previous paragraph), and it must exceed the portion of the technology factor which is not based on the evaluation of specific technologies (section (2) in previous paragraph.)

COMMENTER: Hospital Group A

COMMENTS: These hospitals submitted the following comments in reference to proposed amendments to N.J.A.C. 8:31B-3.58(a)2i and iii. Statewide clinical appeals.

1. "The intent of this provision is unclear. Subparagraph i refers to the "technology-specific portion of the technology factor." In discussing how it will determine the technology factor, the Department of Health has not identified a "technology-specific portion." Rather, the proposal based the technology factor on ProPAC's Scientific Technological Advancement Allowance. If the Department of Health's technology factor determination includes other considerations, they should be explicitly identified in the regulations."

2. "With respect to subparagraph ii, the Department does not provide any guidance as to how hospitals are to determine that the new technology exceeds the portion of the "technology factor that accounts for technologies not included in the technology-specific projections." Moreover, in its discussion of the technology factor applied to Chapter 83 hospitals, the Department of Health has not indicated that it intends to publicly identify the specific components considered in determining this factor each year."

RESPONSES: 1. At the end of the first quarter, every year, ProPAC publishes *Report and Recommendations to the Secretary, U.S. Department of Health and Human Services.* This report makes recommendations about changes in PPS reimbursement. For the fiscal years 1987, 1988 and 1989, ProPAC recommended increases in Medicare payments to account for the incremental operating costs of scientific and technological advancement. ProPAC's recommendations for those years were based on three components:

a. Study of potentially high-cost technological advancements,

b. Technologies identified in component a., above, as being cost-decreasing rather than cost-increasing, and

c. An allowance for lower cost advancements and other new technologies that were not studied.

Components a. and b. identify the technologies in the "technology-specific portion:" of the technology factor. They are:

	Cost-Increasing	Cost-Decreasing
1987	.14% MRI Pacemakers Implantable Defibrillators Heart Transplants Thoraco-Abdominal Aortic Aneurysm Resection	(.20%) Lithotripsy (ESWL) PTCA
1988	.30% Pacemakers Implantable Defibrillators Cochlear Implants MRI Heart Transplants Thrombolysis Penile Prosthesis Pulse Oximetry Hyperthermia Systems Implantable Infusion Pumps Doppler Ultrasound Cardiac Output Monitoring, Doppler Assisted Brain Electrical Activity Mapping End Tidal Carbon Dioxide Monitors Gastroesophageal Anti-Reflux Device New Immunoassays Patient-Controlled Analgesia Artificial Sphincters Bone Growth Stimulators	(.27%) Lithotripsy (ESWL) Valvuloplasty PTCA Endoscopic Lasers Monoclonal Antibodies Automated Discrete Blood Chemistry Analyzers

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1989	.30%	(.04)%
	Implantable Defibrillator	Valvuloplasty
	Pacemakers (advances)	ESWL (kidney and urinary tract)
	PTCA	Automated Clinical Chemistry Analyzers
	Thrombolytic Agents	Muromonab—CD3 (OKT3)
	Bone Growth Stimulator	Endoscopic Lasers
	Bone Growth Devices for Spinal Surgery	
	Cochlear Implants	
	Artificial Urinary Sphincter	
	Penile Prosthesis	
	Cardiac Output Monitoring Systems	
	End Tidal Carbon Dioxide Monitors	
	Mass Spectrometry	
	Pulse Oximetry	
	Implantable Infusion Pumps	
	Patient Controlled Analgesia	
	Vascular Access Device	
	Hyperthermia Systems	
	Doppler Ultrasound	
	EEG Brain Mapping Systems	
	High Speed Cline CT	
	MRI	
	PET	
	SPECT	
	Los Osmolality Contrast Agents	
	Monoclonal Antibody Imaging Agent	
	Tests for Tumor Markers	
	Liver Transplants	
	Infection Control for AIDS	
	Gastroesophageal Anti-Reflux Device	

2. As stated above, ProPAC's Scientific and Technological Advancement Allowance recommendation includes a portion to account for all other technologies. In 1987, the allowance for technologies not in the study was .56%; in 1988 and 1989 it was .20% for each year. The specific components used to determine the technology factors for the years 1987, 1988 and 1989 are as follows:

	1987	1988	1989
Cost Increasing Technologies	.14%	.30%	.30%
Cost Decreasing Technologies	(.20%)	(.27%)	(.04%)
Technologies Not Studied	.56%	.20%	.20%
Totals	.50%	.23%	.46%
Annual Technology Factor	1.0050	1.0023	1.0046

COMMENTER: Hospital Group A.

COMMENT: In order to make an appropriate notification decision, the hospitals want to know how they can determine whether a clinical appeal will be considered a statewide or a hospital-specific appeal.

RESPONSE: The types of issued raised under the Statewide clinical designation and the hospital-specific variation would generally be different. The statewide issues will be requests for systemwide changes in reimbursement which affect many hospitals or patients. The hospital-specific clinical appeal refers to a change in an individual hospital's program. The difference between these two options will generally be apparent.

The Department does not believe that the process for determining statewide appeals by the Hospital Rate Setting Commission violates a hospital's right to appeal. The Commission currently has the responsibility for making determinations within the regulations on appeal issues raised by individual hospitals. The proposed amendments involve no change in this process. Inclusion of hospital-specific clinical appeals under the Accept option would not facilitate streamlining the appeals process.

COMMENTERS: Alexian Brothers Hospital, Bergen Pines County Hospital, Cathedral Healthcare System, Clara Maass Medical Center, Community Medical Center, Healthcare Financial Management Association, New Jersey Chapter, Jersey City Medical Center, Memorial Hospital of Salem County, Montclair Community Hospital, Mountainside Hospital, New Jersey Hospital Association, Palisades General Hospital, Rahway Hospital, St. Clare's Riverside Medical Center, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, United Hospitals Medical Center, Wayne General Hospital, West Hudson Hospital.

COMMENT: The rules allow hospital-specific clinical appeals only under the Not Accept option. This is contrary to the original intent of the clinical appeal rules. Hospital-specific clinical appeals should be addressed under both options.

RESPONSE: An objective of reimbursement reform is to provide sufficient prospective reimbursement and thereby minimize a hospital's need to appeal. The new GROUPER, annual updating of the GROUPER and the technology factor will make reimbursement more sensitive to real differences in clinical care. In addition to the one percent accept incentive, the hospital receives a new labor proxy and the operating margin. These additions are designed to limit the need for appeals.

COMMENTERS: Cathedral Healthcare System, Deborah Heart and Lung Center, Franciscan Health System of New Jersey, Hospital Group A.

COMMENTS: Several comments were received regarding N.J.A.C. 8:31B-3.51(b)2i, Commission criteria for evaluating appeals.

1. This section states that appeals raised under the Not Accept option will be evaluated by the Hospital Rate Setting Commission to determine "relative efficiency" of a hospital. The Department should clearly document how this evaluation will be conducted.

2. It is irrelevant whether or not any cost increases were attributable to activities intended to be covered by update factors. The only matter of note is whether the hospital's reasonable activities are adequately reimbursed.

RESPONSE: 1. The language in this section was slightly modified and moved from the deleted Conditionally Accept option. In the former context, this section commented that "relative efficiency" was grounds to deny appeals. In the context of the proposal, this section is intended to serve as guidance for evaluation of appeals, not necessarily resulting in denial. In evaluating relative efficiency, the Department will consider a hospital's incentive/disincentive position, occupancy rate, average length of stay, relevant financial ratios, range of services and other utilization measures as appropriate.

2. One of the goals of a prospective system is to encourage delivery of quality health care while striving to contain costs within reasonable limits. One purpose of the update factors is to define those reasonable limits. Therefore, it is appropriate for the Commission to consider a hospital's efforts to stay within the economic and technology factors.

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COMMENTERS: Alexian Brothers Hospital, Barnert Memorial Hospital Center, Cathedral Healthcare Systems, Clara Maass Medical Center, Community Medical Center, Deborah Heart and Lung Center, Franciscan Health Systems of New Jersey, Inc., Hackensack Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, New Jersey Chapter, Jersey Shore Medical Center, Kaden Arnone Inc., Memorial Hospital of Salem County, Montclair Community Hospital, Mountainside Hospital, New Jersey Hospital Association, Rahway Hospital, Robert Wood Johnson University Hospital, St. Clare's Riverside Medical Center, St. Joseph's Hospital and Medical Center, Wayne General Hospital, West Hudson Hospital, Hospital Group A.

COMMENTS: A hospital not accepting its proposed schedule of rates will forfeit the technology factor for the rate year. The technology factor for that rate year will also be excluded from compounding in subsequent rate years. Commenters made the following suggestions:

1. Only the accept incentive should be excluded when rates are not accepted. Hospitals not accepting their rates should not forfeit the technology factor.

2. The proposed rules should be changed to include in future compounding the technology factor for the rate year in which the rates were not accepted, unless continuing appeal dollars at least equal to the technology factor were granted.

RESPONSE: 1. Under the Not Accept option, all technology is appealable. Therefore, it is appropriate for the technology factor to be at risk.

2. Based on these comments, the Department has revised its position on future compounding. When a hospital chooses the Not Accept option, the technology factor will appear on the mark-up report as a negative adjustment to be netted against Commission-approved technology adjustments for the rate year. The entire technology factor will be included in future compounding.

COMMENTERS: Alexian Brothers Hospital, Clara Maass Medical Center, Freehold Area Hospital, Hackettstown Community Hospital, Jersey City Medical Center, Jersey Shore Medical Center, Kaden Arnone Inc., Kennedy Memorial Hospital-University Medical Center, Mountainside Hospital, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Overlook Hospital, Palisades General Hospital, Robert Wood Johnson University Hospital, St. Clare's Riverside Medical Center, Wayne General Hospital, West Jersey Health Systems, Hospital Group A, Hospital Group D.

COMMENT: The commenters observed that large swings in approved revenue may occur if standard priced volume variable indirect reimbursement is adopted. This outcome was noted as representing inequities in the proposed versus the current payment method because some hospitals would gain approved revenue while others would lose approved revenue. Commenters suggest that this redistributive impact be attenuated by permitting appeals.

Some commenters noted that the fixed price payment method does not completely account for indirect costs. Some components of indirect cost may not be volume variable. Inequities may result. The method should therefore be appealable.

Commenters stated that when hospitals change the scope or type of services offered, indirect standard payments will not always be adequate to new or expanded (and Certificate of Need approved) services. Indirect standard payment should therefore be appealable.

RESPONSE: Redistribution of indirect approved revenue was, and continues to be, part of the proposed rules. Redistribution was noted when the indirect standard payment rules were adopted on January 4, 1988 with an initial standard payment proportion of 25 percent. Redistribution under a more rational and efficient unit pricing approach was, and is, considered to be an improvement to the Chapter 83 payment system. Movement to 100 percent standard is consistent with directing reimbursement dollars toward hospitals with increasing volume and efficient operating costs. However, the Department acknowledges that several simultaneous payment system changes are occurring during the 1989 rate year. Therefore, to attenuate the impact of multiple changes in addition to the move to 100 percent standard indirect payments, one-year corridors are proposed (and discussed below) which will dampen the positive and negative changes in approved revenue under these proposals. The Department does not agree in general that providing appeals to indirect standard payments should be used to attenuate swings in approved revenue under indirect cost unit priced payments.

The Department analyzed indirect cost centers included in standard payments in conjunction with the Commissioner's Joint Hospital Payer Task Force deliberations. Statistical analysis confirmed that two cost centers should be excluded from standard payment [OGS and PCC (Phy)] while four cost centers [A&G/FIS; PLT; UTC; and PCC (N-P)] should be retained. These four cost centers represent the elements of indirect cost which can be subjected to unit priced payments at 100 percent standard resulting in redistribution of approved revenue to efficient hospitals with increasing volume.

Moreover, regression analyses of these four cost centers show insignificant explanation of cost variance when compared to the independent factors raised by commenters and discussions at the Joint Hospital Payer Task Force. In the presence of this information the Department believes that allowing appeals to the standard would strongly tend to remove the encouragement toward efficiency inherent in standard pricing while providing an avenue to inappropriately increase Chapter 83 total payments to hospitals which are either inefficient or losing volume.

However, the Department analyses indicate that specified and narrowly defined hospital characteristics could provide reasonable bases for appeals to the indirect standard costs. These factors include and are limited to: (1) High degrees of Graduate Medical Education; (2) Specialty hospital designation; and (3) Age of the hospital's plant. These characteristics are further defined by: (1) Occupancy levels (as compared to peers); and (2) Unit priced indirect costs (as compared to peers). The Department believes hospitals demonstrating conformance with these exception criteria may appeal standard priced payments.

The Department's proposal provides for liberalized appeals under the Accept Option. For example, Merger and Acquisition and Capital and Major Moveable Equipment (MME) can be appealed under Accept. When hospitals add new services or expand existing services it is expected that unit costs for cost centers included in the standard will be largely unaffected because: either the new/expanded service will increase volume; or costs associated with the services will be included in direct patient care areas (or permitted under expanded appeal options).

COMMENTER: Besler and Morrisy, Jersey City Medical Center, Robert Wood Johnson University Hospital, St. Clare's Riverside Medical Center, Hospital Group A.

COMMENT: Without a provision for a protective corridor there will be a significant unfavorable financial impact on many hospitals. The proposed changes result in "windfall" gains or excessive shortfalls for many hospitals. The Department should consider a reasonable period of phase-in.

RESPONSE: In the proposal for final adoption, a provision for the 1989 rate year has been included to modify the initial impact of reimbursement reform.

For each hospital, rates before reimbursement reform and after the adoption of the new methodologies will be compared. Hospitals gaining up to three percent or losing up to one percent of their pre-reform preliminary cost base will be inside the corridor. For these hospitals, rates will be implemented as specified by the 1989 methodology. The lower limit of the corridor is defined as one percent loss of revenue. For hospitals below the corridor, revenues will be restored to the lower limit of the corridor. Appeals granted for hospitals below the corridor must exceed the amount of revenue restored before additional dollars are approved. The upper limit of the corridor is defined as a three percent gain on rebasing, changes in reimbursement of indirects and Graduate Medical Education. For hospitals gaining reimbursement above the corridor, revenues will be reduced to the upper limit of the corridor. Appeal of the three issues included in the calculation of the upper limit cannot exceed the upper limit.

Summary of Changes upon Adoption:

Five other types of appeals have been added to the Accept Option at N.J.A.C. 8:31B-3.51(b)1vii through xi: (1) Changes in Physician Compensation Arrangements, previously incorporated in the Conditionally Accepted Option; (2) Certain indirect standard unit costs; (3) Commission-approved continuing adjustments not captured in the base year; (4) Specified operating costs associated with Certificates of Need; and (5) Appeal of the calculation of the 1989 corridor.

Three changes have been made to the Not Accept Option at N.J.A.C. 8:31B-3.51(b)2. Deleted from the proposed rule is language that excludes the technology factor from future compounding for all years in which rates were not accepted. The overspending challenge has also been deleted. A phrase clarifying the issues appealable under this option has also been added.

Clinical rate appeal criteria are expanded to include appeals associated with approved Certificates of Need in State health plans at N.J.A.C. 8:31B-3.58(a)2.

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Corridors have been added to the proposal at N.J.A.C. 8:31B-3.60 to mitigate the initial impacts of changes to the reimbursement methodology which result in significant changes to hospital rates.

Minor technical changes were made including:

1. Reference was added at N.J.A.C. 8:31B-3.51 to the operating margin to clarify its addition to rates accepted;

2. At N.J.A.C. 8:31B-3.51(b)2, reference to hospitals not being allowed to appeal indirects at standard unit costs has been qualified to encompass the exceptions allowed under N.J.A.C. 8:51B-3.51(b)1; and

3. The time during which hospitals may raise Statewide clinic appeals is clarified in N.J.A.C. 8:31B-3.58(b).

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

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: within *[30]* ***45*** working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing of their decision to:

1. Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. Rates accepted will also include an increase to direct patient care and indirect costs equal to the technology factor as described in N.J.A.C. 8:31B-3.26 ***and the operating margin as described in 8:31B-3.38***. Prior to obtaining a Certified Revenue Base, a hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. A hospital accepting the Schedule of Rates may appeal only the costs associated with the following:

i. Changes in the number of residents:

(1) An increase in the number of residents that does not exceed the Statewide number approved by the Commissioner for the 12 month period beginning July 1, 1985, and is offset by corresponding decreases in resident costs in other New Jersey hospitals;

(2) A decrease in the number of approved residency positions caused by the hospital's inability to meet accreditation requirements as specified in N.J.A.C. 8:31B-3.22(b) 1 through 3, its inability to hire residents meeting the criteria specified in N.J.A.C. 8:31B-3.22(b)6, or its voluntary reduction of its number of residency positions. In such cases the hospital must demonstrate that a decline in the services needed by the area population will occur as the result of such reductions. In no case may the amount of revenue appealed for or the amount approved by the Hospital Rate Setting Commissiosn exceed the costs associated with residency positions that were lost. Adjustments will be limited to a maximum of two rate years.

ii. Statewide legal and clinical appeals as defined in N.J.A.C. 8:31B-3.58.

iii. Capital and MME projects subject to the requirements and limits as defined in N.J.A.C. 8:31B-3.27 and meeting all the following criteria:

(1) The costs result from approved certificates of need;

(2) Capital costs of the hospital do not exceed the applicable statewide limit as defined in N.J.A.C. 8:31B-3.27(a)1 vii and viii; and

(3) Major Moveable equipment costs satisfying the Certificate of Need application and review process as defined in N.J.A.C. 8:33-27(a)1 through 3 and the definitions of "major moveable equipment", and "equipment unit" or "equipment systems" as defined in N.J.A.C. 8:33-1.6. Adjustments will be net of any disincentive. No more than the total disincentive will be removed for all appeals granted while rates are calculated using the same base-year. Replacement equipment costs are excluded from appeal under this option.

iv. Mergers, acquisitions or consolidations, provided that projected cost savings exceeding the appealed dollars can be demonstrated for one or more subsequent rate years or the Commission determines there is a quantifiable economic benefit to the system as a whole. If required, certificate of need approval must be granted. Adjustments will be limited to operating costs for a maximum of two rate years.

v. Capital Facilities Formula Allowance as defined in N.J.A.C. 8:31B-3.55(b).

vi. Revenue adjustments as defined in N.J.A.C. 8:31B-3.56.

vii. Physician Compensation Arrangements which are defined as a change in the method of reimbursement of physicians from/to hospital compensation basis to/from a direct billing basis. Change in compensation due to salary or fee increases and/or the addition of personnel is not appealable for a hospital which has accepted its proposed Schedule of Rates.

viii. Indirect standard unit costs if the criteria in N.J.A.C. 8:31B-3.24(c)6 are met.

ix. 1987-1988 Commission-approved continuing adjustments not captured in the base year.

x. Operating costs associated with Certificates of Need provided that:

(1) The costs were submitted by the hospital as part of its CN application as defined in N.J.A.C. 8:33 and as approved by the Commissioner of Health.

(2) The costs are for services added since the base year.

(3) The costs are not associated with a regionalized service as defined in N.J.A.C. 8:31B-3.58(a)2.

(4) In evaluating operating costs related to new technologies, the overall adequacy of the technology factor to cover these costs will be considered.

xi. The calculation of the 1989 corridor as defined in N.J.A.C. 8:31B-3.60.*

2. Not Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: A hospital not accepting the Proposed Schedule of Rates or adjusted Rate Order retains the right to appeal ***all issues subject to the guidelines described in (b)2iii below***. *[Rates not accepted shall not include the additional one percent of all direct patient care costs or the technology factor component of the update factor as described in N.J.A.C. 8:31B-3.26(b)2. Also, the revised Proposed Schedule of Rates will remove the costs identified in the overspending challenge as described in N.J.A.C. 8:31B-3.32. In subsequent years, the overspending challenge will continue to be removed from the revised proposed schedule of rates.]*

i. In evaluating appeals brought under this section, the Commission shall consider the relative efficiency of the hospital in the Current Cost Base year. The Commission will examine in detail the degree to which cost increases between the Current Cost Base year and rate year can be attributed to activities intended to be covered by the update factors.

ii. A hospital not accepting its Proposed Schedule of Rates will retain the operating margin and economic factor components of the rates. The one percent Accept option bonus and the technology factor will not be included in the rates. If a hospital chooses the Accept option in years subsequent to not accepting its rates, the technology factor for the year not accepted shall be *[excluded from]* ***included in*** future compounding.

iii. Under this option:

(1) Hospitals may not appeal indirect costs that are reimbursed on a volume-variable basis ***except*** as described in N.J.A.C. 8:31B-3.24***(c)6***.

(2) Appeals of issues described in sections 8:31B-3.55 through 3.59 are also subject to the criteria described in those sections.

8:31B-3.52 Submission of exceptions

(a) Within 60 working days of receipt of the Proposed Schedule of Rates, hospitals shall submit in writing one copy to the Commission and two copies to the Commissioner, a list of exceptions, including Statewide appeals as defined in N.J.A.C. 8:31B-3.58, organized pursuant to the subsections immediately below, together with written documentation concerning all exceptions. Unless otherwise directed by the Commission, the Commissioner shall schedule a

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detailed review to be conducted by the Department not more than 45 working days following receipt of exceptions and documentation.

(b) Exceptions under either option shall be justified by a full presentation of the dollar value of the cost, the dollar value of the benefits and a complete explanation of any other benefits which cannot be given a dollar value. This documentation will specify each exception, the costs associated with each exception, and the hospital's rationale for the request. Should the hospital fail to submit its appeal document within the allotted time or fail to appear at the scheduled detailed review on the established date, it shall have forfeited its right of appeal and the Commissioner's Proposed Schedule of Rates will have been accepted by the hospital.

(c) At the detailed review, the Analyst shall indicate which exceptions are not supported by sufficient documentation to permit a resolution, and the hospital shall be permitted 10 working days in which to submit such documentation. Any adjustments to the Proposed Schedule of Rates shall be proposed to the Commission within 30 working days. The Analyst may give consideration only to documentation submitted pursuant to the deadline set forth immediately above in deciding upon any proposed exceptions. Should the hospital pursue any further appeal, the hospital may not submit documentation other than that provided to the Analyst unless the hospital can demonstrate to the satisfaction of the Commission the existence of good cause for failure to provide the documentation to the Analyst within the deadline set forth above.

(d) Any changes to the Proposed Schedule of Rates which may be approved by the Commission shall be implemented in accordance with N.J.A.C. 8:31B-3.63 through 3.70, and are subject to the procedures set forth in N.J.A.C. 8:31B-3.71 through 3.86.

8:31B-3.53 (Reserved)

8:31B-3.54 (Reserved)

8:31B-3.55 Capital facilities

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

(d) Under the "Not Accept" option (N.J.A.C. 8:31B-3.51(b)2), a hospital may petition the Commission to include in its Certified Revenue Base or Preliminary Cost Base, whichever is appropriate, the interest expense associated with the purchase of major movable equipment as set forth in N.J.A.C. 8:31B-4.66(e).

8:31B-3.58 Statewide legal and clinical appeals

(a) A Statewide appeal is either a legal appeal or a clinical appeal as defined below:

1. A legal appeal is a request for an adjustment in reimbursement for costs associated with changes in statutes and regulations since the base year. Under the accept option, a hospital must demonstrate that each statutory or regulatory change affects the cost of delivering health care, including reasonable costs of reporting fees related to these statutes or rules, and it must meet a materiality standard of $10,000 per issue. Hospital-specific adjustments will be considered if the hospital submitted the issue in its rate appeal document and demonstrated reasonable costs meeting the materiality standard. For each rate year, the hospital accepting its rates will receive a legal appeals adjustment for only those dollars exceeding .1 percent of its direct patient care rates.

2. A clinical rate appeal is a request for adjustment in the non-physician patient care costs resulting from a change in the treatment program or the relative frequency of a medical practice, or the use of new technologies defined as scientific advances in drugs, devices and medical and surgical procedures used in medical care. A statewide clinical appeal must at a minimum be raised by 35 percent of the hospitals or apply to 35 percent of the patients within the affected DRGs**, or be associated with an approved Certificate of Need for a regionalized service as defined in planning rules or designated or recognized by the Department in the State Health Plan as a regionalized service***. It may be raised under the Accept or Not Accept options in accordance with N.J.A.C. 8:31B-3.51 and 3.52. If the Statewide clinical appeal relates to a new technology, it must:

i. Not be addressed in the technology-specific portion of the technology factor.

ii. Exceed in aggregate the portion of the technology factor that accounts for technologies not included in the technology-specific projections of the Prospective Payment Assessment Commission (ProPAC).

(b) A Statewide legal or clinical appeal that meets the criteria in (a) above will be submitted by individual hospitals as discrete parts of their rate appeal documents. Additionally, a Statewide clinical appeal may be raised by the Commission on its own motion, the Department of Health or another interested party. Interested parties must raise these issues in writing to the Department and the Hospital Rate Setting Commission within 60 ***working*** days of issuance of the rates.

(c) With recommendations from the Department, the Hospital Rate Setting Commission will determine which appeals merit consideration as the rate year's statewide legal and clinical appeals. A Statewide clinical appeal will be evaluated in accordance with N.J.A.C. 8:31B-3.59(b), (c) and (d).

8:31B-3.59 Hospital-specific clinical rate appeals

(a) A hospital-specific clinical rate appeal must meet the definitional criteria in N.J.A.C. 8:31B-3.58(a)2 except for the Statewide impact requirements. It may be submitted by a single hospital as part of its rate appeal under the Not Accept option in accordance with N.J.A.C. 8:31B-3.51 and 3.52.

(b) Evaluation of all clinical rate appeals shall consider but not be limited to the following types of information:

1. The DRGs affected;

2. Volume of patients and changes in the frequency of specific procedures or medical practices;

3. Percent of total hospital admissions or patient care costs;

4. Length of stay and inlier/outlier statistics;

5. Patient care costs by cost center;

6. Type of patient population and areas served by the institution;

7. UB-PS patient-specific data for the affected Diagnosis Related Groups;

8. Positive and negative effects of the appeal issues as well as quality outcome measures with justification referenced in the medical literature;

9. Whether the medical practice is experimental or research in nature; and

10. In cases involving new technologies, indications for use; comparative analyses with old procedures; cost per procedure; length of stay impact; cost/benefit report if applicable; institutional resource requirements; and evaluation of patient outcomes.

(c) As part of the evaluation of any clinical rate appeal, the Department of Health may request further study by a qualified Utilization Review Organization in accordance with N.J.A.C. 8:31B-3.78(a)1iv.

(d) As part of the evaluation of any clinical rate appeal, the Department of Health may request a recommendation by the Commissioner's Physician Advisory Committee (CPAC) or another appropriate medical group.

8:31B-3.60 *[through 8:31B-3.62 Reserved)]* ***Temporary revenue adjustments**

(a) For the 1989 rate year, corridors will be implemented to limit the initial impact of rebasing and reimbursement reform.

1. The lower limit of the corridor is defined as a loss of revenue greater than 1 percent of a hospital's pre-Reimbursement Reform Cost Base in 1989 dollars. For hospitals with losses greater than 1 percent, revenue will be restored to the lower limit of the corridor.

2. The upper limit of the corridor is defined as a gain in revenue greater than 2 percent of a hospital's pre-Reimbursement Reform Cost Base in 1989 dollars. The 3 percent upper limit applies only to revenue changes resulting from rebasing, changes to Graduate Medical Education and indirect reimbursement methodology. For hospitals gaining more than 3 percent, revenue will be reduced to the upper limit of the corridor.

(b) For hospitals impacted by the lower limit, total appeals approved must exceed the value of the revenue restored in accordance with 8:31B-3.60(a)1. above before additional dollars are included in the hospital's revenue.

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(c) Total appeals approved relating to issues identified in 8:31B-3.60(a)2. cannot exceed the upper limit.

(d) These corridors will not apply to changes in revenue due to volume or case-mix changes.

8:31B-3.61 through 3.62 (Reserved)*

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Graduate Medical Education

Adopted Amendments: N.J.A.C. 8:31B-3.22, 3.23 and 3.24

Adopted New Rule: N.J.A.C. 8:31B-3 Appendix XI

Proposed: May 1, 1989 at 21 N.J.R. 1059(a).

Adopted: June 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (With Approval of the Health Care Administration Board).

Filed: June 23, 1989 as R.1989 d.388, **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-5b and 26:2H-18d.

Effective Date: July 17, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: St. Joseph's Hospital and Medical Center commented that the Medicare PPS system should be used for 1989, while the proposed system is being refined.

RESPONSE: The PPS system is not an appropriate alternative in several respects:

(1) The proposed changes consider only INPATIENT INLIERS, because outpatients and outliers are reimbursed in New Jersey according to hospital-specific costs. To the extent that teaching costs are incurred for outliers and outpatients, these costs are included in a hospital's reimbursement in addition to the add-ons for inliers. The PPS system, without significant revisions, would not be compatible with this approach.

(2) PPS bases its methodology on number of residents per bed; use of RESIDENTS does not encourage hospitals to decrease their resident complement in accordance with the suggested reduction "of about 25% over the next 15 year period" (The Next Generation of Physicians, A Report of the Advisory Graduate Medical Education Council of New Jersey, Volume 2, page 18), or the possible improvement of the training program itself.

(3) The PPS methodology, which does not attempt to account for differences in costs across types of programs, predicts cost less accurately than the proposal, as demonstrated by their respective square values.

(4) The PPS methodology is based on a different set of DRG definitions and a less rigorous cost-finding methodology.

COMMENT: Bergen Pines County Hospital and Elizabeth General Medical Center commented that the Department has not shared with the industry the data, the regression equation, or modeling of the impact.

RESPONSE: The Department has shared the proposed methodology with industry and advisory groups at every stage of development, beginning with discussions of the Teaching Subcommittee of the Joint Hospital Payer Task Force in January of this year. Presentations followed by full discussion were held for the full Task Force, the Directors of Medical Education, and the HCAB. In addition, two technical sessions were held for hospital financial people, and computer disks containing all computations (actual copies of those used by the Department) were given to several hospitals upon request.

A technical summary of the proposed methodology, together with all regression equations, is included in proposed Appendix XI, copies of which were submitted to the HCAB for initial publication on May 1, 1989, and subsequently mailed to every Director of Medical Education in the State. Also sent to all Directors of Medical Education were the Department's latest calculations of the GME add-on percentages, the resident and program counts, and the equalization and unequalization factors employed in the methodology. In addition, the complete data set and regression analysis are available from the Department upon request. Several hospitals have taken advantage of this resource.

In all of these ways, the Department sought to provide sufficient information for hospital officials to gain complete understanding not only of the methodology but also of its hospital-specific impacts.

COMMENT: Blue Cross and Blue Shield of New Jersey supports the amendments designed to change the method of reimbursing direct costs for Graduate Medical Education from Peer Groups to a continuous system based on the number and type of Graduate Medical Education programs in each hospital.

RESPONSE: The Department appreciates this comment.

COMMENT: Blue Cross and Blue Shield of New Jersey objects to the proposed reimbursement of indirect Costs using Peer Groups, and proposes using the same method of reimbursement for both Direct and indirect costs.

RESPONSE: For 1989, the Department has proposed maintaining Peer Groups for indirect costs. Commissioner Coye has committed in rules to examining additional refinements to the methodology for reimbursement for possible implementation in the 1990 rate year. There were not sufficient data available at this time to justify eliminating Peer Groups for indirect costs in 1989.

COMMENT: Blue Cross and Blue Shield of New Jersey, and the Department of Human Services, Division of Medical Assistance and Health Services, State of New Jersey commented that the $2.35 million supplement for Family Practice programs is not justified because the amendment was initially considered to be budget-neutral.

RESPONSE: The methodology found no additional inpatient cost associated with Family Practice programs. This effect was not unexpected since most Family Practice residency activity is in the outpatient area. Thus the original proposal would have reduced inpatient reimbursement to these programs compared to the current methodology which is blind to type of residency program.

However, the Statewide need for primary care physicians is well documented. It was not considered desirable to reduce incentives to provide this training. Therefore, the $2.35 million supplement represents a social policy decision designed to address this need by assuring continued reimbursement for the training of those who will serve as Family Practitioners in the future.

COMMENT: Elizabeth General Medical Center, Overlook Hospital, and St. Joseph's Hospital and Medical Center commented that what the proposed methodology calculates as the "identified" cost of graduate medical education is actually only the difference between the teaching hospitals' own standards and the non-teaching hospitals' standards. Differences between the two standard costs are being labeled as "the cost of Graduate Medical Education," when in fact they may be the result of other factors.

RESPONSE: The proposed methodology identifies a difference in costs between teaching and non-teaching hospitals which is rather strongly (r-square of .508) associated with hospitals' degrees of teachingness as measured by their numbers and mix of residency programs in relation to their patient volumes. It does not attempt to quantify absolutely the direct patient care costs of teaching. Rather it seeks to adjust payments to hospitals for differences in cost which are not otherwise reimbursed and which are associated with degree of teaching. Even though the cost differences may also be associated with other factors, such as relative efficiency of the hospital or severity of illness. However, relative efficiency is addressed through the blend of standard and hospital-specific cost; and severity of illness is not currently recognized in the reimbursement system. Knowledge of type and number of teaching programs is a much better predictor of costs than the present Peer Group system (r-square of .508 as compared to .078) which also does not take such factors into account.

COMMENT: Elizabeth General Medical Center and Overlook Hospital commented that the method fails to capture certain teaching costs because:

1. It uses inpatients only and excludes outpatient clinics and services;
2. It uses inliers only and excludes the difficult, costly patients who are often outliers; and
3. It does not use neonatology DRGs.

RESPONSE: 1. The proposed methodology uses inpatient data to determine teaching costs. Outpatients were excluded from the methodology because hospitals are reimbursed on an actual hospital-specific rate per visit. Under Chapter 83, hospitals are paid 100 percent of their own historical costs for outpatients, and therefore accrue no further expenses. Hence hospital-specific teaching impacts, while not measured, are fully reimbursed on outpatients.

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2. The exclusion of outliers has absolutely no influence on the relationships measured among inliers. To the extent that teaching costs are incurred for outliers, these costs are included in a hospital's reimbursement at 100 percent of its own base year cost for outliers.

3. Rates for neonates are developed based on a hospital's own historical costs with no standard included. If these costs include teaching costs, they are included in a hospital's rates in addition to the pediatric teaching factor.

In summary, the proposed amendments do not attempt to identify differences in hospital outpatient, outlier or neonatal costs associated with teaching because any such differences would not be relevant to a payment system in which each of these items is paid at 100 percent of cost for each hospital.

COMMENT: Overlook Hospital and St. Joseph's Hospital and Medical Center commented that the ancillary program factor is quite high compared to other program factors, a finding that is neither logical nor statistically substantiated.

RESPONSE: Base year costs in hospitals without radiology and pathology programs are significantly less than costs in hospitals with these programs. Discussions with physicians and hospital administrators suggest that the ancillary program costs are highly correlated with those in other programs. Thus the presence of these training programs in an institution serves to increase costs in other related services that include direct contact with patients and the ordering of tests. Therefore, rather than establish radiology and pathology teaching factors that are accurate in the aggregate but overly high when applied to specific programs, the Department is proposing to spread these ancillary costs across all other affected programs.

COMMENT: Overlook Hospital and St. Joseph's Hospital and Medical Center commented that the proposal of allocating costs by the number of programs creates additional inequities because the methodology does not adequately address the density of a specific program. Considering a program with only a few residents (usually a subspecialty) to have an impact equal to those with six to 15 times the number of residents (usually primary care) ignores the differences in amount of resident-patient contacts in the two programs.

RESPONSE: The number of patient contacts is not necessarily a relevant factor in determining the costs of GME; rather the quality and types of interventions are preeminent in hypotheses explaining significant cost differences. The data analysis demonstrates that subspecialty interventions cost much more. Reimbursement for subspecialties simply recognizes these actual costs.

COMMENT: Overlook Hospital and St. Joseph's Hospital and Medical Center believe that it is extremely important to focus on the issue of case-mix and severity as they relate to this issue and the costs of teaching institutions. Had severity of illness been implemented this year, it would have complemented the graduate medical education methodology perhaps to the point that the reimbursement shortfalls caused by the proposed methodology could have been minimized.

RESPONSE: At the time this methodology was first proposed, a severity of illness methodology was being seriously considered. It was subsequently deemed not ready for implementation, based on findings from a limited demonstration project. However, the Department is actively pursuing a severity of illness grant, and fully intends to address this issue as soon as feasible. Further, the Department has committed in regulation to base 1990 rates on severity of illness adjusted DRGs if agreement is reached upon an effective methodology for adjusting DRG rates.

COMMENT: Bergen Pines County Hospital commented that, because the current method does not recognize medical specialties, it supports the continuous method of reimbursement for GME. There is concern, however, that the methodology proposed will not be sufficiently sensitive to recognize the special needs of hospitals with unique patient populations.

RESPONSE: The proposed methodology recognizes each accredited program in an institution, so long as minimal numerical requirements are met. This level of sophistication is far superior to that of the current system, and of other systems used elsewhere, such as PPS. The Department is committed, however, to on-going analyses and refinements that will address the sorts of issues raised in this comment.

COMMENT: Overlook Hospital commented that, because the proposed methodology is based on number of training programs rather than number of residents in an institution, it fails to account for the fact that residents treat patients, and thus generate the costs and that resident-related costs are more likely to be generated in the earlier years of training, yet the methodology does not distinguish between years of training.

RESPONSE: On balance, the use of programs is superior to the use of residents for the following reasons:

(1) Programs are accredited, and provide a sound base since they must include adequate faculty supervision and patient loads to ensure quality of education and patient care. Numbers of residents rise and fall frequently in response to numerous vagaries such as leave of absence or delays in recruiting.

(2) Programs differentiated by specialty explain significantly more interhospital variance in cost than do raw counts of residents.

(3) Programs may be linked with policy issues much more directly than residents: specifically they provide incentives to minimize rather than maximize residents, and they may be used directly to influence future physician mix, now that underlying cost differences are recognized.

It is possible that year of residency would be a better predictor of costs of GME, but that is not certain. If first and second year trainees generate higher costs in instructional time, for example, trainees in later years would presumably generate higher costs due to the ordering of more, and more sophisticated tests. So on balance, costs by resident year may not vary appreciably.

The commenter provided no data to substantiate its claim that costs vary by training year of the resident. This is an issue for potential future exploration.

COMMENT: The Health Insurance Association of America supports the proposed amendments because they will alleviate the inequities that can result from peer group inequities.

RESPONSE: The Department appreciates this comment.

COMMENT: Community Medical Center is concerned because the proposed system does not remove any costs from non-teaching hospitals for their graduate medical education costs.

RESPONSE: For a system designed to reimburse hospitals for costs associated with graduate medical education, non-teaching hospitals were presumed to have no such costs. Therefore, removing reimbursement from their rates would be removing costs related to other non-GME activities. This the Department deemed unfair.

Furthermore, there was general consensus that the existing peer group system, reimbursing according to peer group averages, created inequities within each of the three groups, rather than between teaching and non-teaching groups. Thus the goal of the proposed system was to redistribute more equitably the reimbursement within each group.

COMMENT: Overlook Hospital stated, "The criteria by which one might judge success or failure of this methodology is not clear."

RESPONSE: Contrary to the commenter's position, there exists a very clear criterion for the method and its background research: among Chapter 83 hospitals, payment inequities associated with degree of teaching can be corrected.

Statistically, this criterion was measured using the percentage on interhospital variance in cost (after equalizing for wage differentials and controlling for case-mix) explained by the proposed method versus alternatives. These results were:

	Percent Variance Explained
Peer Groups	7.8%
Interns and Residents per Bed	37.7%
Programs	50.8%

The opportunity for independent evaluation (including that by Lewin and Associates, contracted by the commenter's institution) has been presented by the Department's full disclosure of the data sets and statistical methods to all interested parties. Several hospitals have made constructive criticism of the original proposal as a result of this disclosure, resulting in numerous refinements to the proposed methodology.

In addition to the demonstrated statistical ability of the proposal to address existing payment inequities of Peer Groups, its cost-finding specificity also provides a foundation for making social policy decisions. Thus the proposal can also be evaluated in terms of its ability to assist in meeting current policy concerns with respect to graduate medical education. However the process cannot begin until the method is first tried as a financing mechanism.

COMMENT: Overlook Hospital commented that the methodology is not a single system, but a series of different approaches.

RESPONSE: The use of differing approaches for different program categories was suggested by statistical analysis, field research, and literature reviews. The following brief summary includes the approaches used and the reasons for usage.

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The multiple regression approach for internal medicine versus other medical specialties and subspecialties was employed because it was shown to better explain interhospital differences in cost.

General surgery versus other surgical specialties and subspecialties was similarly tested, and the variance explanation did not improve.

Field research at hospitals with radiology and pathology programs has confirmed the statistical relationship observed but offered an additional insight: the impact of ancillary programs is not on patients; it is on other programs which in turn impact patients. So in the proposal, ancillary costs are added to all categories: Medicine, Surgery, OB/GYN, and Pediatrics.

It is important to note that many of these approaches were made in response to recommendations of the commenter, or other industry representatives.

Summary of Changes upon Adoption:

The methodology proposed in Appendix XI has been changed so that the Ancillary program cost factor is added to the Medicine, Surgery, and OB/GYN and Pediatrics categories. In this way, reimbursement for ancillary services will parallel actual hospital cost experience for these services, because their effect is an interactive one in the presence of the other programs. Ancillary programs in a hospital serve to increase costs in Medicine, Surgery, OB/GYN and Pediatrics because more tests are ordered than when the service is not provided in hospital or when it is provided by practicing physicians rather than by residents. No consequent change in reimbursement will occur as a result of this reallocation.

Technical corrections in Appendix XI include:

1. Deleting of an incorrect listing for dermatopathology from internal medicine;
2. Deletion of redundant listings for pathology, blood banking, and chemical pathology; and
3. Rearrangement of forensic pathology to list it in alphabetical order.

These changes necessitated changes in numbering as well.

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

8:31B-3.22 Standard costs per case

(a) The standard to be used in the calculation of the proposed PCB for each inpatient DRG is determined as the mean non-physician direct patient care costs per case in all hospitals whose costs are included in the data base, adjusted for labor market differentials and amount and type of Graduate Medical Education. Standards shall be calculated across all hospitals for which current cost bases were derived from a common reporting period.

(b) Classification of Teaching (Major and Minor) and Non-Teaching Hospitals for purposes of determining indirect costs shall be as follows:

1. Teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all the following requirements:

i. Four or more residencies approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA), of which at least two are in the following five clinical services:

(1) Internal Medicine;
(2) General Surgery;
(3) Family Practice;
(4) Pediatrics;
(5) Obstetrics and Gynecology.

ii. A minimum of 45 full-time equivalent residents in all approved residencies combined;

iii. Twenty-five full-time equivalent residents must be in the five clinical services listed in (b)1i(1) through (5) above, and half of these residents (at least 12.5 full-time equivalents) must be in Internal Medicine, Family Practice and/or Pediatrics. The hospital must have the principal residencies for these core areas and not just rotating residencies.

2. Minor teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all of the following requirements:

i. Two or more residencies approved by the ACGME or AOA, of which at least one occurs in the following five clinical services:

(1) Internal Medicine;
(2) Family/General Practice;
(3) Pediatrics;
(4) Obstetrics and Gynecology;
(5) Surgery.

ii. A minimum of 15 full-time equivalent residents in all approved residencies combined;

iii. Nine full-time equivalent residents in the six clinical services listed above with at least five FTEs in Internal Medicine and/or Family Practice.

3. However, a hospital may also qualify as a minor teaching hospital if all 15 residents are in at least one ACGME/AOA approved residency program in a primary care field (Family Practice or Internal Medicine).

4. Hospitals may include flexible first year or rotating internships in the total number of full-time equivalent residents. These residents are not to be counted in the core programs of Internal Medicine, Surgery, Family Practice, Pediatrics, and Obstetrics and Gynecology.

5. Hospitals, because of their specialized acute nature, having a majority of active medical staff in specialties which have an ACGME approved residency may apply to the Commissioner for teaching status pursuant to N.J.A.C. 8:31B-3.51 through 3.62.

6.-7. (No change.)

8. Hospitals not meeting the criteria for major teaching or minor teaching status will be considered non-teaching for purposes of indirect reimbursement.

(c) Methodology for determining hospital-specific direct patient care rate adjustments for graduate medical education (GME) shall be as follows:

1. In order to be eligible for GME reimbursement, hospitals must submit each year, before the issuance of rates, documentation that attests to current accreditation for all programs for which accrediting bodies exist.

2. For all programs which have maintained the appropriate accreditation, and have a minimum number of residents equal to the years in that program necessary for it to receive accreditation, direct patient care costs associated with Graduate Medical Education will be calculated for each inpatient DRG as described in (c)2i to vi below, and added to the PCB:

i. All DRGs will be assigned to one of four mutually-exclusive residency categories: Medicine, Surgery, Pediatrics and OB/GYN. Assignment will be determined by the specialty of the resident who would, in most New Jersey teaching hospitals, have principal responsibility for care of a patient in a given DRG. Appendix XI, which is hereby incorporated by reference, lists these DRG assignments. *[Ancillary and]* ***The*** Family Practice residency *[categories]* ***category*** will be related to all DRGs.

ii. For Medicine DRGs, rates will be increased using the methodology described in Appendix XI C.I.

iii. For Surgery DRGs, rates will be increased using the methodology described in Appendix XI C.II.

iv. For Pediatrics and OB/GYN DRGs, rates will be increased using the methodology described in Appendix XI C.III.

[v. The rates for all DRGs in hospitals with Ancillary Residency programs will be increased using the methodology described in Appendix XI C.IV. and V.]

*[vi.]***v.*** The rates for all DRGs in hospitals with Family Practice Residency programs will be increased using the methodology described in Appendix XIC.VI.

(d) (No change in text.)

(e) Calculation of standards will be as follows:

1. The calculation of standards will be based on the group of hospitals first receiving a PCB or other appropriate sample of hospitals thereafter. The cost per case of each hospital's patients with UB-PS records categorized by inpatient DRGs is multiplied by each hospital's equalization factor (see N.J.A.C. 8:31B-3.24(c)) and for the appropriate DRGs and hospitals, reduced by a rate expressing the amount and type of Graduate Medical Education (see Appendix XI) for the hospital pertaining to each DRG. The mean equalized cost of all such records in all hospitals calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases, is the incentive standard for each DRG.

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2. (No change.)

8:31B-3.23 Reasonable direct cost per case

(a) Inpatient direct cost per case is determined as follows:

1. The reasonable Direct Cost Per Case (DRG) of the Preliminary Cost Base for those hospitals receiving rates in accordance with this subchapter determined for all hospitals, for every DRG with greater than five merged patients and shall include incentives and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

degree of confidence × labor market standard, calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases, × the amount and type of Graduate Medical Education

plus

(1 – degree of confidence) × hospital current non-physician direct cost per case

plus

hospital current physican patient service cost per case

i.-iv. (No change.)

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

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance and malpractice insurance. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

1.-2. (No change.)

3. The costs used to calculate these peer group indirect standards will be the 1985 approved indirect costs plus 1986 Commission-approved indirect costs which are approved as continuous adjustments. The imputed value of pending 1986 appeals are included in the calculation of the standard unit cost. The standard will not be recalculated except for the inclusion of statewide generic issues affecting one or more peer groups. The hospitals will receive the Commission-approved 1986 indirect costs, as it effects the hospital specific portion of the blended rate, at Final Reconciliation. If a loss of program accreditation would result in a hospital's reclassification into a lower peer group, that change will be implemented in the rate year following the program loss. If as a result of an appeal a hospital moves to a higher peer goup, its reimbursement will change, based on the existing standard unit cost of the new peer group into which it moves.

4.-6. (No change.)

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

APPENDIX XI

Reimbursement Methodology for Graduate Medical Education

A. Certain residency programs that do not involve direct patient care responsibilities are considered ancillary for purposes of direct patient care cost determination. Adjustments made for these programs will apply to all DRGs. Ancillary programs include:

1. Anatomic and Clinical Pathology
2. Blood Banking
3. Chemical Pathology
4. Dermatopathology

5. Forensic Pathology

*[5.]****6.*** Hematopathology

*[6.]****7.*** Neuropathology

*[7.]****8.*** Nuclear Medicine

*[8.]****9.*** Nuclear Radiology

*[9. Pathology

10. Blood Banking
11. Chemical Pathology
12. Forensic Pathology]*

*[13.]****10.*** Radiation Oncology

*[14.]****11.*** Radioisotopic Pathology

*[15.]****12.*** Radiology, Diagnostic

*[16.]****13.*** Radiology, Therapeutic

B. All DRGs will be assigned to one of four residency categories for purposes of calculating the direct costs associated with Graduate Medical Education. The assignments are as follows:

I. Medicine

a. Included programs:

1. Internal Medicine
2. Allergy and Immunology
3. Cardiovascular Disease
4. Dermatology

[5. Dermatopathology]

*[6.]****5.*** Endocrinology and Metabolism

*[7.]****6.*** Flexible First Year/Transitional

*[8.]****7.*** Gastroenterology

*[9.]****8.*** Hematology and Oncology

*[10.]****9.*** Infectious Disease

*[11.]****10.*** Nephrology (Renal Disease)

*[12.]****11.*** Neurology

*[13.]****12.*** Physical Medicine and Rehabilitation

*[14.]****13.*** Preventive Medicine

*[15.]****14.*** Pulmonary Diseases (Medical Diseases of the Chest)

*[16.]****15.*** Rheumatology

*[17.]****16.*** Psychiatry

*[18.]****17.*** Child Psychiatry

(b) Included DRGs:

009-025, 027-029, 031-032, 034-035, 078-080, 082-090, 092-097, 099-102, 104, 106, 112, 115-118, 121-136, 138-145, 172-183, 188-189, 202-208, 240-248, 256, 271-273, 277-278, 283-284, 294-297, 299-301, 316-317, 395, 397-399, 403-404, 409-414, 416, 418-421, 423, 425-432, 447, 449-450, 452-455, 462-467, 473, 475, 701-702, 704-705, 707-708, 710-711, 713-714, 735-736, 743-751.

II. Surgery

(a) Included programs:

1. Anesthesiology
2. Neurological Surgery
3. General Surgery
4. Colon and Rectal Surgery (Proctology)
5. Dentistry
6. Emergency Medicine
7. Hand Surgery
8. Musculoskeletal Oncology
9. Ophthalmology
10. Oral/Maxillofacial Surgery
11. Orthopedic Sports Medicine
12. Orthopedic Surgery
13. Otolaryngology (Otorhinolaryngology/Orofacial Plastic Surgery)
14. Pediatric Orthopedic Surgery
15. Pediatric Surgery
16. Plastic Surgery
17. Thoracic Surgery
18. Urology
19. Vascular Surgery, General.

(b) Included DRGs:

001-2, 004-8, 036-047, 049-069, 071-073, 075-077, 103, 105, 107-111, 113-114, 119-120, 146-171, 185-187, 191-201, 209-239, 249-251, 253-254, 257-270, 274-276, 280-281, 285-293, 302-315, 318-321, 323-326, 328-329, 331-332, 334-342, 344-352, 392-394, 400-402, 406-408, 415, 424, 439-445, 456-461, 468, 471-472, 476-477, 730-734, 741-742.

III. Obstetrics/Gynecology

(a) Included program: Obstetrics/Gynecology.

(b) Included DRGs: 353-384.

IV. Pediatrics

(a) Included programs:

1. Pediatrics
2. Child Neurology
3. Neonatal-Perinatal Medicine
4. Pediatric-Cardiology
5. Pediatric Endocrinology

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6. Pediatric Hematology/Oncology
7. Pediatric Nephrology.
(b) Included DRGs:
026, 030, 033, 048, 070, 074, 081, 091, 098, 137, 184, 190, 252, 255, 279, 282, 298, 322, 327, 330, 333, 343, 396, 405, 417, 422, 446, 448, 451, 600-700, 712, 737-740, 752.
V. Family Practice
(a) Applied to all DRGs.
C. Methodology
I. Medical programs:
[The] ***A medical residency*** regression equation *[will]* ***is defined to*** consist of:
The dependent variable, defined as the ratio of actual cost per case, by DRG, for each hospital with a Medical teaching program and the Statewide average non-teaching cost per case, by DRG, for all hospitals without teaching programs;
The first independent variable defined as the number of internal medicine programs (one or zero) per 5,000 †case-mix adjusted discharges; the second independent variable defined as the number of other medical programs per 5,000 †case-mix adjusted discharges.
The adjustment to the standard portion of the DRG rates will equal: *[for hospitals with an Internal Medicine program, the slope of the first independent variable adjusted for the Y-intercept times the ratio of 5,000 to the actual number of †case-mix adjusted discharges, plus the slope of the second independent variable times the number of other medical programs per 5,000 †case-mix adjusted discharges.
For hospitals without an Internal Medicine program the Y-intercept plus the slope of the second independent variable times each program per 5,000 †case-mix adjusted discharges.]*
For hospitals with a Medical residency program, including an Internal Medicine program, but with no Ancillary program: the slope of the first independent variable adjusted for the Y-intercept times the ratio of 5,000 to the actual number of †case-mix adjusted discharges, plus the slope of the second independent variable times the number of other medical programs per 5,000 †case-mix adjusted discharges.
For hospitals with a Medical residency program without an Internal Medicine program and without an Ancillary program: the Y-intercept plus the slope of the second independent variable times each program per 5,000 †case-mix adjusted discharges.
For hospitals with a Medical residency program with an Internal Medicine program and with an Ancillary program: the slope of the first independent variable adjusted for the Y-intercept times the ratio of 5,000 to the actual number of †case-mix adjusted discharges, plus the slope of the second independent variable times the number of other medical programs per 5,000 †case-mix adjusted discharges;
plus
The ratio between the costs per DRG adjusted for medical, surgical, OB/GYN, and Pediatric teaching for teaching hospitals with ancillary programs and the costs adjusted for medical, surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.*
II. Surgical programs:
[The] ***A surgical residency*** regression equation *[will]* ***is defined to*** consist of:
The dependent variable, defined as the ratio of actual cost per case, by DRG, for each hospital with a Surgical teaching program and the Statewide average non-teaching cost per case, by DRG, for all hospitals without teaching programs;
The independent variable, defined as the number of programs per 5,000 †case-mix adjusted discharges.
The adjustment to the standard portion of the DRG rates will equal: *[for the first program per 5,000 †case-mix adjusted discharges the slope adjusted for the Y-intercept, and the additional programs the slope times each program per 5,000 †case-mix adjusted discharges.]*
For hospitals with a Surgical residency program but with no Ancillary program: for the first program per 5,000 †case-mix adjusted discharges the slope adjusted for the Y-intercept, and for additional programs the slope times each program per 5,000 †case-mix adjusted discharges.
For hospitals with a Surgical residency program and with an Ancillary program: for the first program per 5,000 †case-mix adjusted discharges the slope adjusted for the Y-intercept, and the additional programs the slope times each program per 5,000 †case-mix discharges;
plus
The ratio between the costs per DRG adjusted for medical, surgical, OB/GYN and Pediatric teaching for teaching hospitals with ancillary programs and the costs adjusted for medical, surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.*
III. Obstetrics/Gynecology and Pediatrics programs:
*[The standard portion and the DRG rates will be adjusted by a ratio between the costs per DRG for hospitals with teaching programs and the costs for hospitals that have none.
Adjustments for Obstetrics/Gynecology and Pediatrics will be applied to those DRGs listed in Appendix XIB III. and IV., respectively.]*
The adjustment to the standard portion of the DRG rates will equal:
For hospitals with Obstetrics/Gynecology and Pediatric programs but without an Ancillary program: the ratio between the costs per DRG for hospitals with teaching programs and the costs for hospitals that have none, for Obstetrics/Gynecology and Pediatrics, respectively.
For hospitals with Obstetrics/Gynecology and Pediatric programs with an Ancillary program: the ratio between the costs per DRG for hospitals with teaching programs and the costs for hospitals that have none, for Obstetrics/Gynecology and Pediatrics, respectively;
plus
The ratio between the costs per DRG adjusted for medical, surgical, OB/GYN and Pediatric teaching for teaching hospitals with ancillary programs and the costs adjusted for medical, surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.*
*[IV. Ancillary programs:
The standard portion and the DRG rates will be adjusted by a ratio between the costs per DRG adjusted for Medical, Surgical, OB/GYN, and Pediatric teaching for teaching hospitals with ancillary programs and the costs adjusted for Medical, Surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.
Adjustments for Ancillary Programs will be applied to all DRGs.]*
*[V.]****IV.*** Other Adjustments
In order to maintain base year budget neutrality for all programs except Family Practice, the difference between actual costs of teaching hospitals and the predicted costs derived by application of the above formulae will be apportioned over the adjustments for each specialty area *[as well as for ancillary programs]*.
*[VI.]****V.*** Family Practice
Hospitals with accredited Family Practice residency programs will have their rates increased by a Family Practice supplement calculated as follows:
A ratio consisting of the total number of Family Practice residents in the base year divided by the total number of residents in all accredited GME programs in the same year
times
The Statewide standard costs, adjusted for teaching, of all accredited teaching programs minus the non-teaching standard for all DRGs in teaching hospitals
divided by
The standard direct patient care costs of all DRGs in hospitals with a Family Practice program.
The standard portion of direct patient care rates for all DRGs of hospitals with an accredited Family Practice residency program will be multiplied by the Family Practice supplemental factor plus one.

†Case-mix adjusted discharges = the hospital's number of inlier cases by DRG times the Statewide average cost per case for discharges within the appropriate groupings divided by the Statewide cost per case for inlier discharges in all DRGs times the hospital's actual number of outlier discharges.

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(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Current Cost Base

Adopted Amendment: N.J.A.C. 8:31B-3.16

Proposed: March 20, 1989 at 21 N.J.R. 661(b).

Adopted: June 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 23, 1989 as R.1989 d.383, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5B and 26H:2H-18d.

Effective Date: July 17, 1989.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:

COMMENTERS: Chilton Memorial Hospital, Community Medical Center, East Orange General Hospital, Elizabeth General Medical Center, Hackensack Medical Center, Holy Name Hospital, New Jersey Hospital Association, St. Clares Riverside Medical Center, St. Francis Medical Center, University Health Systems.

COMMENT: The Department should specify a detailed methodology for this calculation. The methodology should be approved by the industry. Various calculation methods were offered. Hospitals also requested financial impact information.

RESPONSE: The Department has developed a method to calculate the four percent labor adjustment using average hourly employee wages. This method was developed with input from the Joint Hospital Payer Task Force and its subcommittee. The method is as follows:

1. 1982 average hourly rate per hospital is calculated by dividing 1982 employee salaries by 1982 employee hours. The source of this data is the 1982 Actual cost report form.

2. Similarly, the 1986 average hourly rate is calculated from the 1986 Actual data.

3. The 1982 average hourly rate is multiplied by the 1982 to 1986 adjusted labor proxy. (The original labor proxy of 1.2394 is multiplied by 1.04, the Commission approved labor adjustment, to yield an adjusted proxy of 1.288.) This amount is the projected 1986 average hourly rate.

4. The actual and projected 1986 average hourly rates are compared. If the actual rate is equal to or greater than the projected rate, then the entire labor adjustment is captured in rebasing. If the actual rate is less than the projected rate, the difference is multiplied by employee hours to determine the amount of the total projected rate that was not spent.

5. As described later in this notice of adoption, the four percent adjustment is considered to be captured in the Statewide 1986 cost base. Therefore, only the hospital-specific portion of the adjustment will be added to the base. The result of step 4 is multiplied by an overall estimate of the portion of the rates that are hospital-specific: 44.4 percent. This percentage is calculated using the following assumptions:

i. Labor is comprised of 60 percent direct and 40 percent indirect patient care costs.

ii. Direct patient care rates are reimbursed at 50 percent hospital-specific costs.

iii. The hospital-specific percentage of indirect rates is 36 percent.

iv. Therefore, $(.6 \times .5) + (.4 \times .36) = .444$.

The Statewide financial impact of this labor adjustment to the base is $36.5 million.

COMMENTERS: The General Hospital at Passaic, St. Joseph's Medical Center.

COMMENT: The calculation, based on gross salaries in the Labor 1 cost centers, fails to take into account case-mix and/or volume increases in 1986 and 1987. Cost per hour or FTE would be a more appropriate measure.

RESPONSE: This comment was offered as a criticism of a preliminary gross salary calculation presented to the Task Force. Recognizing that volume and to a lesser extent, case-mix does change from year to year, and to neutralize the effect of physician unbundling on a hospital's reported gross salaries, a revised calculation based on hourly wages will be used.

COMMENTERS: Chilton Memorial Hospital, Coopers and Lybrand, East Orange General Hospital, Holy Name Hospital, New Jersey Hospital Association, St. Clares Riverside Medical Center, St. Francis Medical Center, St. Joseph's Medical Center, University Health Systems.

COMMENT: In an attempt to stay within the economic factor, many hospitals did not grant salary increases until the end of 1987. These hospitals should not be penalized. They have now spent the additional salary dollars, and those costs will continue forward. Several hospitals suggested adjusting the entire cost base for labor regardless of whether a hospital can demonstrate that the salary dollars were spent in 1987.

RESPONSE: The Department agrees with the comment. The requirement that hospitals demonstrate that the four percent labor adjustment was spent in 1987 has been deleted from the final proposal. Thus, all hospitals retain the 1988 Commission approved four percent adjustment which simulated rebasing.

COMMENTER: The Valley Hospital.

COMMENT: The commenter asserts that salary costs in 1986 were artificially depressed by the use of the national labor proxy. Therefore the new labor base will not be adequate. The commenter recommends that the four percent labor adjustment remain in place to offset the fact that the actual expense level was artificially depressed.

RESPONSE: The Department believes that providing data base adjustments to all hospitals whose base year costs were below the four percent rebase simulation provides an adequate base for labor.

COMMENTER: East Orange General Hospital.

COMMENT: The Department's calculation based on average hourly rates does not meet the objective of simulating the effect of rebasing to 1986. The Department should use the preliminary gross salary calculation instead because it is more appropriate.

RESPONSE: The majority of participants in the Joint Hospital Payer Task Force and its subgroups favored the hourly rate calculation for reasons mentioned above. The Department strongly considered the input of these advisory groups before deciding on the hourly rate method of calculation for this adjustment.

COMMENTER: Community Medical Center.

COMMENT: Hospitals with statistical anomalies in 1987 appear to receive substantial adjustments, while hospitals with normal increases in employee hours and average costs per hour from 1986 to 1987 are receiving little if any adjustments. The anomalies could be explained by a shift from employee hours to the use of agency personnel. The commenter believes it is inappropriate to provide a financial incentive to shift from the use of hospital employees to agency personnel.

The commenter recommends that the Department use the original gross salary methodology with the additions of volume and appeal adjustments to labor costs. The commenter believes that this would be a better reflection of actual increases in labor costs from year to year and would eliminate the problems associated with increased use of agency personnel.

RESPONSE: The Department does not agree with the analysis because the commenter's assertion that there are statistical anomalies is not supported by any objective data. However, the Department agrees it is inappropriate to provide incentives to shift from the use of hospital employees to agency personnel. This concern was an important consideration in developing the labor proxy. The calculation of employee hourly wages excludes costs associated with agency personnel and therefore does not reward hospitals with increases in agency use.

COMMENTERS: Community Memorial Hospital, Elizabeth General Medical Center, Holy Name Hospital, The General Hospital Center at Passaic.

COMMENT: This adjustment to the base should be done prior to the development of standards.

RESPONSE: On a Statewide basis, the 1986 base for labor is equivalent to more than four percent above the 1982 base times the labor proxy. This is because many hospitals' base year costs are greater than the 1988 Commission-approved four percent adjustment. Therefore, on a Statewide basis, rebasing captured the four percent and it is included in the standard.

COMMENTER: Elizabeth General Medical Center.

COMMENT: Explain what is meant by "the 1986 labor component of the cost data base may be altered for one time only"? Will the four percent adjustment be volume variable?

RESPONSE: The proposed language quoted above means that this adjustment will be made only once to the 1986 cost base. All rate years that are based on 1986 will include the base-year adjustment. The adjustment will be made as a lump sum adjustment to the data base and is therefore not volume variable.

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COMMENTER: Chilton Memorial Hospital.

COMMENT: The Department should consider adding an amount to the proposed labor proxy to allow hospitals to raise these wages to competitive levels. Until this is done, the additional four percent adjustment should be left in the rates as an adjustment to base year costs.

RESPONSE: The Department believes that the labor adjustment to the rebased rates, in addition to the new labor proxy provides sufficient levels of reimbursement for labor.

COMMENTER: St. Clares Riverside Medical Center.

COMMENT: "Another consideration that should be made when comparing hourly costs is that of temporary service employees, such as contracted nurses. It is felt by the Medical Center that between 1986 and 1989 the RN shortage became more apparent. These outside service costs are not part of the salary rate. As in the case of the Medical Center, a sample time period of contracted services showed a jump of 167 percent from 1986 to 1987 and 210 percent from 1987 to 1988. These services were necessary as it was not possible to hire RN's. This should be considered for all hospitals as the shortage of RN's is industry-wide and not hospital-specific."

RESPONSE: The Department believes that the issue of agency costs is appropriately and adequately addressed through the new labor proxy which includes a component for contracted services. The labor proxy recognizes Statewide cost increases in agency services as well as the proportion of labor costs that are spent on contracted services.

COMMENTERS: Community Medical Center.

COMMENT: The Department should apply the fringe factor to the additional labor costs associated with the four percent adjustment in order to be consistent with all previous rate setting procedures and allocation of costs.

RESPONSE: The four percent adjustment approved by the Hospital Rate Setting Commission was not applied to the fringe factors. The Department's commitment regarding this adjustment to the 1986 base is only to maintain the level of labor reimbursement approved by the Commission.

COMMENTER: Blue Cross and Blue Shield of New Jersey.

COMMENT: The commenter supports the Department's proposal to allow a data base adjustment for actual 1987 labor cost inflation up to four percent above the 1982-1987 labor proxy for those hospitals which did not experience the full four percent inflation above the labor proxy in 1986. The commenter believes that the Department's approach in using 1986 hourly rates to determine hospital-specific adjustments is fair and satisfies the intent of the regulations.

RESPONSE: The Department acknowledges this comment.

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

8:31B-3.16 Current cost base

(a)-(d) (No change.)

(e) The 1986 labor component of the cost data base may be altered for one time only upon the identification by a hospital that 1986 labor costs did not exceed the labor proxy by four percent between 1982 and 1986. *[In this case, the hospital's 1987 actual cost report must demonstrate that 1987 labor costs exceeded 1982 labor costs by up to four percent over the 1982-87 labor proxy.]* The hospital's actual cost up to four percent above the 1982-87 labor proxy will be added to the data base.

(a)

HOSPITAL REIMBURSEMENT

Diagnostic Related Groups

DRG Lists

Adopted Amendments: N.J.A.C. 8:31B-5.1, 5.2 and 5.3

Proposed: January 17, 1989 at 21 N.J.R. 138(a).

Adopted: June 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 23, 1989 as R.1989 d.384, **with substantive and technical changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:24-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: July 17, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

It should be noted that the descriptions and trim points for DRGs 168, 169, and 185 through 187 remain the same; however, the DRGs have been moved from Major Diagnostic Category (MDC)06 to MDC 03, in accordance with the Federal GROUPER. Incorrect descriptions for DRG 253, 254 and 255, and the trim points for DRGs 468 and 476 in MDCs 21 and 22 have been corrected.

COMMENTER: Richard H. Rapkin, M.D., Medical Director, Children's Hospital of New Jersey.

COMMENT: In general, I find that the changes made to the DRG List Regulation are good and important for equitable reimbursement.

RESPONSE: The Department agrees with this comment.

COMMENTER: Lawrence P. Floriani, M.D., Chairman, Orthopedic Department, Morristown Memorial Hospital.

COMMENT: The trim points for musculoskeletal systems and connective tissue DRGs are acceptable.

RESPONSE: The Department acknowledges this comment.

COMMENTERS: Warren Hospital, Dover General Hospital, Hospital Financial Managers Association (HFMA), Franciscan Health System of NJ, Inc., Alexian Brothers Hospital, Barnert Memorial Hospital, Clara Maass Medical Center, Bergen Pines County Hospital, Elizabeth General Medical Center, Jersey City Medical Center, Jersey Shore Medical Center, The Medical Center of Ocean County, Mercer Medical Center, Memorial Hospital of Salem County, Inc., The Mountainside Hospital, United Hospitals Medical Center, St. Elizabeth Hospital, St. Francis Medical Center, Wallkill Valley Hospital, Wayne General Hospital, Besler & Co., Inc., Integrated Health Resources.

COMMENT: 1. The proposed new GROUPER includes DRG's for newborns based on birth weight and for AIDS patients. The data required to assign these DRG's was not collected in 1986. The Department must detail how trim points and rates for these DRG's will be calculated.

2. The Department must publish procedures for review of the proposed trim points. In the past, a physician group was used to review the trim points. The Department must indicate if this procedure will continue during 1989 and, if so, set forth the timetable related to the review.

3. The Department must also detail how the coefficients of variation and confidence levels will be established. These items should be made available to the industry as soon as possible since they will directly affect the new DRG rates.

RESPONSE: 1. The data required to assign the newborn DRGs for the Version 6 New York GROUPER was not collected in 1986. The Department's proposal is to calculate newborn reimbursement rates for 1989 based on each hospital's historical costs in 1986, inflated by an economic factor to rate year dollars. The hospital base year costs will be allocated to the newborn DRGs based on an index developed utilizing New York State data. This index looks at the relation of each DRG to a normal newborn. Given that the rates will be based on historical cost, no standard will be derived, and the coefficient of variation is not involved. The trim points for the newborn and HIV Infection DRGs are those used by New York State and were not calculated by New Jersey methodology.

The Department has calculated an interim AIDS payment rate which for cash flow purposes will be used in projecting Direct Patient Care revenues for mark-up factor purposes. The amount is calculated by increasing current AIDS rates by the average loss per case on high volume AIDS DRGs for a sample of high volume AIDS hospitals. The Department will continue to refine the rates as the cost data for the AIDS DRGs becomes available.

2. The proposed trim points were published in the New Jersey Register with a comment period of 30 days. This was intended to substitute for the clinical evaluation process, which has occurred in the past.

The Department will be reviewing 1989 data during the implementation of Version 6 New York GROUPER, as well as investigating other sources of data. Once sufficient data for the newborn DRGs is available, it will be analyzed to determine if any trim point modification is necessary. At that time, any modifications to the trim points would be proposed as a change to the DRG List Regulation and subject to an official comment period.

3. When data from New Jersey hospitals are available, coefficients of variation will be calculated in accordance with their mathematical definition and used to establish rates in accordance with the rule.

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COMMENTERS: Warren Hospital, Dover General Hospital, Hospital Center at Orange, East Orange General Hospital, Elizabeth General Hospital, The Medical Center of Ocean County, The Mountainside Hospital, Clara Maass Medical Center, United Hospitals Medical Center, Alexian Brothers Hospital, Robert Wood Johnson University Hospital, Bergen Pines County Hospital, St. Elizabeth Hospital, St. Francis Medical Center, Wallkill Valley Hospital, Besler & Co., Inc.

COMMENT: The Department of Health does not have the necessary data to properly develop rates for patients in MDCs 15, 24, 25. It appears that they will be billed as outliers and reconciled to a standard rate per case. Many problems and inequities will be created. The commenters recommend development of a methodology to allow hospitals to bill charges and be reconciled to actual costs for these new DRGs.

RESPONSE: The Department does not support the billing of charges for these patients; however, hospital specific rates will be calculated using base-year costs for each hospital. There will be no reconciliation to a standard rate per case.

COMMENTERS: Network, Inc., Kennedy Memorial Hospital/University Medical Center.

COMMENT: The following errors were noted in the DRG list as published in the proposed amendment:

1. DRGs 168, 169, 185, 186, 187 should be included in MDC 3, not MDC 6 (in accordance with recent Federal GROUPER changes).

2. DRGs 253, 254, and 255 have listed incorrect descriptions.

RESPONSE: The errors have been noted and corrected upon adoption.

COMMENTER: Cathedral Healthcare System.

COMMENT: DRG-MDC 21, MDC 22 trim points should be 4-57. DRG 476-MDC 21, MDC 22 trim points should be 5-58. DRG 253-255—descriptions are incorrect.

RESPONSE: The errors cited have been corrected upon adoption.

COMMENTER: Prudential Insurance Company, Healthways, Inc. (HMO).

COMMENT: The downward alteration of the DRG low trim point for nine specific DRGs will result in a 14 percent increase in our hospital related costs. This contradicts the principles under which the DRG system was established, since the lowered trim points will allow the same reimbursement for efficient and inefficient care. It has removed a viable incentive from benefit programs designed to encourage shorter stays. A recommendation is hereby made for unchanged low trim points where existing trim points have already demonstrated sufficient experience with under trim LOS.

RESPONSE: The Department recognizes that several low length of stay DRGs now have a low trim point of one day, in the proposed amendment. Upon completion of an analysis of these DRGs, the Department has determined that the new DRG rate appropriately reflects the actual resources used, since those patients with low cost are now included as inliers in the rate setting process. Considering the inclusion of these low cost patients, the DRG rate per case in many instances, despite inflation, reflects very little change from the 1982 price per case to the 1986 price per case. The probable reason for this cost containment is the inclusion of costs previously associated with low outliers into the DRG rate. When 30 percent of the patients fall below the low trim points, as is the case with these nine DRGs, it is appropriate to recalculate a DRG rate, which reflects the present medical practice of decreased length of stay.

COMMENTER: Newark Beth Israel Medical Center.

COMMENT: 1. MDC 5—Diseases and Disorders of the Circulatory System. DRGs 104-107.

High trim points do not adequately compensate the hospital for tertiary care. Low trim points should remain at the current level to allow hospitals to recover their costs for tertiary care.

2. MDC 14—Pregnancy, Childbirth and the Puerperium DRGs 370 and 371 (Cesarean Sections).

Low trim points are now proposed to be the same as vaginal deliveries and denies recognition of increased resource consumption. Cesarean sections should have a low trim point of four days.

3. MDC 15—Normal Newborn and Other Neonates with Certain Conditions Originating in the Perinatal Period.

The proposed high trim points for the smallest babies, discharged alive, is lower than the larger babies, discharged alive. We believe that it should be reversed. Revisions to MDC 15 should probably be reviewed six to 12 months after implementation.

RESPONSE: 1. The Department believes that rates resulting from the expanded trim points more accurately reflect the resource consumption, since patients in both the lower and higher cost range are now included in the new DRG rate for inliers. The rate should therefore adequately compensate hospitals for tertiary care.

2. The Department believes that the statistically set low trim points for Cesarean sections will result in DRG rates that do recognize the appropriate resource consumption. The greatest amount of resources utilized are usually found in the early portion of the length of stay for these patients.

3. MDC 15—The proposed high trim points for the smallest babies, discharged alive, are lower than for larger babies which enables the smaller babies to become outliers earlier. The hospital would then be reimbursed on the outlier methodology which recognizes the increased resource consumption and tertiary care required for the smaller babies. The Department plans to review the newborn DRGs as the data becomes available following implementation.

COMMENTER: St. Joseph's Hospital and Medical Center.

COMMENT: The current treatment of neo-natal patient transfers has been to eliminate double reimbursement for the same case. To enhance the concept of tertiary care, we request the Department to further review this issue, especially in the instance when a neonate is transferred back to the original sending hospital.

RESPONSE: The revised newborn and neonate DRGs have addressed the transfer issue in the following manner, whereby the DRG rate will be reflective of the services given to the newborn by each hospital at each level of care.

Transferring Hospital: DRG 601 Neonate transferred less than five days old.

Tertiary Care Hospital: DRG 602-630—As appropriate by birthweight.

Original Sending Hospital: DRG 635—Neonatal aftercare for weight gain.

COMMENTER: North Jersey Physicians Review.

COMMENT: No definition of neonate, which is a newborn under 29 days of age, is included in the proposed amendment. No mention of neonates is made in the economic impact statement.

RESPONSE: The defintion of "neonate" has now been included under N.J.A.C. 8:31B-1(b)9. The economic impact of including admissions of infants under 29 days of age in MDC 15 should be more equitable for the hospital. The DRG payment rate is based on the neonate's birthweight and is significantly higher in the newborn category than in the organ system related DRGs.

COMMENTER: Kennedy Memorial Hospital-University Medical Center.

COMMENT: If a newborn (neonate) less than 29 days old is admitted to a hospital, should a weight be entered on the uniform bill?

RESPONSE: The birthweight of a neonate under 29 days of age must be entered on the uniform bill when the infant is admitted, transferred and/or readmitted.

COMMENTER: Our Lady of Lourdes Medical Center.

COMMENT: The proposed amendments to the DRG List Regulations do not lend themselves to analysis until the hospital specific rates are issued; hence, we urge the extension of the proposed comment period until such rates are issued.

RESPONSE: Rates were sent to hospitals for informational and analytical purposes on February 23, 1989.

COMMENTER: Kennedy Memorial Hospital/University Medical Center.

COMMENT: The Department has several duplicate DRGs in virtually every MDC. The hospital believes that DRGs should be assigned to mutually exclusive MDCs.

RESPONSE: The process of defining the surgical and medical classes in an MDC required that each class be based on some organizing principle. There are, however, patients who receive surgical procedures which are completely unrelated to the MDC to which the patient was assigned, based on the principal diagnosis. For example, in the case of a patient with a principal diagnosis of pneumonia, whose only surgical procedure is a transitional prostatectomy, the DRG is based on the surgical prostatic procedure, which recognizes the increased resource utilization for billing purposes. The patient is classified into the MDC which is reflective of the reason for admission. This grouping procedure has always been in effect, but not displayed in that manner on the DRG list. The GROUPER initially designates the MDC for statistical purposes, then assigns the DRG for billing purposes.

COMMENTER: New Jersey Department of Human Services, Division of Mental Health and Hospitals.

COMMENT: MDC 19—Mental Illness

Currently, the Statewide average length of stay for adults and children in inpatient psychiatric units is 13 and 24 days, respectively. The new

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outlier trims are so much higher than the Statewide average that hospitals which provide such care, especially those hospitals with new psychiatric units, will bear a serious financial burden. Need for these new beds, under State policy, is critical and the increase in the outlier trim points will discourage such development.

RESPONSE: The proposed higher trim points have been statistically determined and, as is noted, more patients will be inliers. The average inlier rate, however, will include the higher cost patients that are now length of stay outliers, thus, the DRG reimbursement rate should be adequate. The increase in the outlier trim points should not cause a negative financial impact in the hospital.

COMMENTER: Kaden & Arnone, Inc.

COMMENT: The Department's proposed trim points for 1989 require a thorough analysis by both clinical and statistical experts. The change in the methodology used to calculate the trim points in 1982 and 1986 base years results in more inlier cases and no increase in the percent standard. It appears that hospitals treating patients requiring a higher LOS will incur disincentives due to the screening of the costs related to unusual patients. This item should be appealable under the accept option until the industry has time to identify any potential inequities.

RESPONSE: The Department will be analyzing the overall impact of the new trim points on a periodic basis, following implementation and will propose changes if indicated. The Department plans to continue the severity of illness study which should address the costs of treating patients requiring a higher length of stay.

It should be noted, however, that higher length of stay patients are included in the establishment of DRG rates and the percentage of standard has not deteriorated significantly, suggesting that the inclusion is appropriate.

The Department does not believe that this should be an appealable item under the accept option.

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

8:31B-5.1 Diagnosis Related Groups

(a) Diagnosis Related Groups represent categories of hospital inpatients with similar clinical characteristics; and, except for outliers, patients in each DRG can be expected to consume similar amounts of hospital resources. Assignment of a patient to a DRG requires the following information:

1.-6. (No change.)

7. Birthweight (Newborn); and

8. Severity of Illness (S.O.I.) indicators (upon implementation of methodology).

(b) Each of these data items is defined in the Rules on Hospital Reporting of Uniform Bill-Patient Summaries (N.J.A.C. 8:31B-2) and/or the Uniform Hospital Discharge Data Set developed by the U.S. Department of Health and Human Services. The appropriate definitions are reported here and these are the only definitions allowable for DRG assignment.

1.-6. (No change.)

7. Birthweight: A newborn's weight in grams at birth.

8. Severity of Illness (S.O.I.) indicators: A patient-specific level of illness rating within the DRG which may indicate a more appropriate rate of reimbursement to the provider for resources utilized.

9. Neonate: a newborn under 29 days of age.

(c) (No change.)

8:31B-5.2 Outliers

(a) Outliers are patients displaying atypical characteristics relative to other patients in a DRG. The five categories of outliers are defined and the methodology for outlier payment is established in the Procedural and Methodological Regulations (N.J.A.C. 8:31B-3.38).

8:31B-5.3 List of Diagnosis Related Groups

(a) The following are Major Diagnostic Categories (Organ System Approach):

1. Diseases and Disorders of the Nervous System.
2. Diseases and Disorders of the Eye.
3. Diseases and Disorders of the Ear, Nose, Mouth and Throat.
4. Diseases and Disorders of the Respiratory System.
5. Diseases and Disorders of the Circulatory System.
6. Diseases and Disorders of the Digestive System.
7. Diseases and Disorders of the Hepatobiliary System and Pancreas.
8. Diseases and Disorders of the Musculoskeletal System and Connective Tissue.
9. Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast.
10. Endocrine, Nutritional and Metabolic Diseases and Disorders.
11. Diseases and Disorders of the Kidney and Urinary Tract.
12. Diseases and Disorders of the Male Reproductive System.
13. Diseases and Disorders of the Female Reproductive System.
14. Pregnancy, Childbirth and the Puerperium.
15. Normal Newborns and Other Neonates with Certain Conditions Originating in the Perinatal Period.
16. Diseases and Disorders of Blood and Blood Forming Organs and Immunological Disorders.
17. Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms.
18. Infectious and Parasitic Diseases (Systemic or Unspecified Sites).
19. Mental Diseases and Disorders.
20. Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders.
21. Injuries, Poisonings and Toxic Effects of Drugs.
22. Burns.
23. Factors Influencing Health Status and Other Contacts with Health Services.
24. Human Immunodeficiency Virus (HIV) Infections.
25. Multiple Significant Trauma.

(b) (No change.)

(c) A table of Diagnosis Related Groups follows:

OAL NOTE: The tables of Diagnostic Related Groups, Major Diagnostic Categories 01 through 23, currently in the New Jersey Administrative Code, are deleted by the Department of Health. The current tables may be found in the Code at N.J.A.C. 8:31B-5.3(c). The following tables are to replace the current tables:

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MAJOR DIAGNOSTIC CATEGORY 01: DISEASES AND DISORDERS OF THE NERVOUS SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(001)	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	5	65
(002)	CRANIOTOMY AGE FOR TRAUMA AGE >17	3	61
(004)	SPINAL PROCEDURES	4	62
(005)	EXTRACRANIAL VASCULAR PROCEDURES	2	31
(006)	CARPAL TUNNEL RELEASE	1	8
(007)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W CC	4	79
(008)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W/O CC	2	13
(009)	SPINAL DISORDERS & INJURIES	2	29
(010)	NERVOUS SYSTEM NEOPLASMS W CC	3	47
(011)	NERVOUS SYSTEM NEOPLASMS W/O CC	2	24
(012)	DEGENERATIVE NERVOUS SYSTEM DISORDERS	2	40
(013)	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	2	27
(014)	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	3	45
(015)	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	2	24
(016)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W CC	3	38
(017)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W/O CC	2	22
(018)	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	2	30
(019)	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	2	18
(020)	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	3	37
(021)	VIRAL MENINGITIS	2	16
(022)	HYPERTENSIVE ENCEPHALOPATHY	2	23
(023)	NON-TRAUMATIC STUPOR & COMA	2	25
(024)	SEIZURE & HEADACHE AGE >17 W CC	2	26
(025)	SEIZURE & HEADACHE AGE >17 W/O CC	2	13
(026)	SEIZURE & HEADACHE AGE <18	1	9
(027)	TRAUMATIC STUPOR & COMA, COMA >1 HR.	2	30
(028)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W CC	2	36
(029)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W/O CC	2	14
(030)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE <18	1	9
(031)	CONCUSSION AGE >17 W CC	2	20
(032)	CONCUSSION AGE >17 W/O CC	1	9
(033)	CONCUSSION AGE <18	1	5
(034)	OTHER DISORDERS OF NERVOUS SYSTEM W CC	2	38
(035)	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	2	14
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(737)	VENTRICULAR SHINT REVISION AGE <18	2	24
(738)	CRANIOTOMY AGE <18 W CC	4	50
(739)	CRANIOTOMY AGE <18 W/O CC	2	27

MAJOR DIAGNOSTIC CATEGORY 02: DISEASES AND DISORDERS OF THE EYE

		OUTLIER TRIM POINT LOW	HIGH
(036)	RETINAL PROCEDURES	2	7
(037)	ORBITAL PROCEDURES	2	14
(038)	PRIMARY IRIS PROCEDURES	1	8
(039)	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	1	6
(040)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	1	8
(041)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE <18	1	5
(042)	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	1	10
(043)	HYPHEMA	2	9
(044)	ACUTE MAJOR EYE INFECTIONS	2	13
(045)	NEUROLOGICAL EYE DISORDERS	2	13
(046)	OTHER DISORDERS OF THE EYE AGE >17 W CC	2	22
(047)	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	2	13
(048)	OTHER DISORDERS OF THE EYE AGE <18	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

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MAJOR DIAGNOSTIC CATEGORY 03: DISEASES AND DISORDERS OF THE EAR, NOSE, MOUTH, AND THROAT

		OUTLIER TRIM POINT LOW	HIGH
(049)	MAJOR HEAD & NECK PROCEDURES	3	48
(050)	SIALOADENECTOMY	1	7
(051)	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1	7
(052)	CLEFT LIP & PALATE REPAIR	2	9
(053)	SINUS & MASTOID PROCEDURES AGE >17	1	8
(054)	SINUS & MASTOID PROCEDURES AGE <18	1	7
(055)	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1	6
(056)	RHINOPLASTY	1	4
(057)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE >17	1	15
(058)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE <18	1	4
(059)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	1	3
(060)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE <18	1	2
(061)	MYRINGOTOMY W TUBE INSERTION >17	1	7
(062)	MYRINGOTOMY W TUBE INSERTION <18	1	8
(063)	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	2	17
(064)	EAR, NOSE, MOUTH & THROAT MALIGNANCY	2	42
(065)	DYSEQUILIBRIUM	2	15
(066)	EPISTAXIS	2	12
(067)	EPIGLOTTITIS	2	12
(068)	OTITIS MEDIA & URI AGE >17 W CC	2	20
(069)	OTITIS MEDIA & URI AGE >17 W/O CC	2	12
(070)	OTITIS MEDIA & URI AGE <18	2	8
(071)	LARYNGOTRACHEITIS	1	9
(072)	NASAL TRAUMA & DEFORMITY	1	15
(073)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE >17	2	15
(074)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE <18	1	10
***(168)**	**MOUTH PROCEDURES W CC**	**2**	**23**
(169)	**MOUTH PROCEDURES WO CC**	**1**	**11**
(185)	**DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE 17**	**2**	**21**
(186)	**DENTAL EXTRACTIONS & RESTORATIONS AGE 18**	**2**	**11**
(187)	**DENTAL EXTRACTIONS & RESTORATIONS**	**1**	**8***
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(735)	MOUTH, LARYNX OR PHARYNX DISORDERS WITH TRACHEOSTOMY	4	71
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 04: DISEASES AND DISORDERS OF THE RESPIRATORY SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(075)	MAJOR CHEST PROCEDURES	4	45
(076)	OTHER RESP SYSTEM O.R. PROCEDURES W CC	4	55
(077)	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	2	24
(078)	PULMONARY EMBOLISM	3	28
(079)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	4	50
(080)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	2	31
(081)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE <18	2	22
(082)	RESPIRATORY NEOPLASMS	2	32
(083)	MAJOR CHEST TRAUMA W CC	2	26
(084)	MAJOR CHEST TRAUMA W/O CC	2	11
(085)	PLEURAL EFFUSION W CC	2	30
(086)	PLEURAL EFFUSION W/O CC	2	15
(087)	PULMONARY EDEMA & RESPIRATORY FAILURE	2	23
(088)	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	2	31
(089)	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	3	32
(090)	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	2	17
(091)	SIMPLE PNEUMONIA & PLEURISY AGE <18	2	12
(092)	INTERSTITIAL LUNG DISEASE W CC	2	28
(093)	INTERSTITIAL LUNG DISEASE W/O CC	2	17
(094)	PNEUMOTHORAX W CC	2	25
(095)	PNEUMOTHORAX W/O CC	2	12
(096)	BRONCHITIS & ASTHMA AGE >17 W CC	2	24
(097)	BRONCHITIS & ASTHMA AGE >17 W/O CC	2	12
(098)	BRONCHITIS & ASTHMA AGE <18	2	8

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(099)	RESPIRATORY SIGNS & SYMPTOMS W CC	2	21
(100)	RESPIRATORY SIGNS & SYMPTOMS W/O CC	2	9
(101)	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	2	29
(102)	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	2	11
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(475)	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3	46
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(631)	BPD AND OTHER CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PERIOD	2	39
(632)	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	2	25
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(740)	CYSTIC FIBROSIS	2	23

MAJOR DIAGNOSTIC CATEGORY 05: DISEASES AND DISORDERS OF THE CIRCULATORY SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(103)	HEART TRANSPLANT	6	69
(104)	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	5	58
(105)	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	3	43
(106)	CORONARY BYPASS W CARDIAC CATH	4	40
(107)	CORONARY BYPASS W/O CARDIAC CATH	3	31
(108)	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	4	47
(109)	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3	41
(110)	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	4	60
(111)	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2	21
(112)	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2	31
(113)	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	6	86
(114)	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	4	54
(115)	PERM CARDIAC PACEMAKER IMPL W AMI, HEART FAILURE OR SHOCK	4	37
(116)	PERM CARDIAC PACEMAKER IMPL W/O AMI, HEART FAILURE OR SHOCK	2	34
(117)	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	3	33
(118)	CARDIAC PACEMAKER DEVICE REPLACEMENT	2	27
(119)	VEIN LIGATION & STRIPPING	2	18
(120)	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	4	62
(121)	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	3	31
(122)	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	2	20
(123)	CIRCULATORY DISORDERS W AMI EXPIRED	2	25
(124)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	2	19
(125)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1	8
(126)	ACUTE & SUBACUTE ENDOCARDITIS	6	63
(127)	HEART FAILURE & SHOCK	2	30
(128)	DEEP VEIN THROMBOPHLEBITIS	2	25
(129)	CARDIAC ARREST, UNEXPLAINED	2	27
(130)	PERIPHERAL VASCULAR DISORDERS W CC	2	29
(131)	PERIPHERAL VASCULAR DISORDERS W/O CC	2	17
(132)	ATHEROSCLEROSIS W CC	2	24
(133)	ATHEROSCLEROSIS W/O CC	2	14
(134)	HYPERTENSION	2	19
(135)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	2	26
(136)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	2	14
(137)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE <18	2	19
(138)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	2	22
(139)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	2	14
(140)	ANGINA PECTORIS	2	16
(141)	SYNCOPE & COLLAPSE W CC	2	20
(142)	SYNCOPE & COLLAPSE W/O CC	2	13
(143)	CHEST PAIN	2	10
(144)	OTHER CIRCULATORY SYSTEM DIAGNOSIS W CC	2	29
(145)	OTHER CIRCULATORY SYSTEM DIAGNOSIS W/O CC	2	13
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

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MAJOR DIAGNOSTIC CATEGORY 06: DISEASES AND DISORDERS OF THE DIGESTIVE SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(146)	RECTAL RESECTION W CC	4	41
(147)	RECTAL RESECTION W/O CC	3	21
(148)	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	4	52
(149)	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	3	23
(150)	PERITONEAL ADHESIOLYSIS W CC	3	38
(151)	PERITONEAL ADHESIOLYSIS W/O CC	2	18
(152)	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2	33
(153)	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	15
(154)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3	45
(155)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	2	19
(156)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE <18	2	27
(157)	ANAL & STOMAL PROCEDURES W CC	2	22
(158)	ANAL & STOMAL PROCEDURES W/O CC	1	8
(159)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	2	23
(160)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	2	9
(161)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	2	17
(162)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	1	5
(163)	HERNIA PROCEDURES AGE <18	1	5
(164)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	3	26
(165)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	2	13
(166)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	2	19
(167)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	2	7
*[(168)	MOUTH PROCEDURES W CC	2	23
(169)	MOUTH PROCEDURES W/O CC	1	11]*
(170)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	4	60
(171)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	2	19
(172)	DIGESTIVE MALIGNANCY W CC	3	38
(173)	DIGESTIVE MALIGNANCY W/O CC	2	18
(174)	GASTROINTESTINAL HEMORRHAGE W CC	2	24
(175)	GASTROINTESTINAL HEMORRHAGE W/O CC	2	12
(176)	COMPLICATED PEPTIC ULCER	2	24
(177)	UNCOMPLICATED PEPTIC ULCER W CC	2	17
(178)	UNCOMPLICATED PEPTIC ULCER W/O CC	2	10
(179)	INFLAMMATORY BOWEL DISEASE	2	25
(180)	GASTROINTESTINAL OBSTRUCTION W CC	2	28
(181)	GASTROINTESTINAL OBSTRUCTION W/O CC	2	13
(182)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W CC	2	20
(183)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W/O CC	2	11
(184)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE <18	2	9
*[(185)	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS AGE >17	2	21
(186)	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS AGE <18	2	11
(187)	DENTAL EXTRACTIONS & RESTORATIONS	1	8]*
(188)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	2	22
(189)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	1	12
(190)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE <18	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 07: DISEASES AND DISORDERS OF THE HEPATOBILIARY SYSTEM AND PANCREAS

		OUTLIER TRIM POINT LOW	HIGH
(191)	PANCREAS, LIVER & SHUNT PROCEDURES W CC	5	63
(192)	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2	25
(193)	BILIARY TRACT PROC W CC EXCEPT ONLY TOTAL CHOLECYST W OR W/O C.D.E.	4	51
(194)	BILIARY TRACT PROC W/O CC EXCEPT ONLY TOTAL CHOLECYSTECTOMY W OR W/O C.D.E. (COMMON DUCT EXPLORATION)	3	30
(195)	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	3	36
(196)	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	2	20
(197)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	2	26
(198)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	2	12
(199)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	4	54
(200)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	3	42
(201)	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2	36
(202)	CIRRHOSIS & ALCOHOLIC HEPATITIS	3	34

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(203)	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	2	31
(204)	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	2	25
(205)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W CC	2	32
(206)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W/O CC	2	16
(207)	DISORDERS OF THE BILIARY TRACT W CC	2	24
(208)	DISORDERS OF THE BILIARY TRACT W/O CC	2	11
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(741)	LIVER TRANSPLANT	NA	NA

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES OF MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

		OUTLIER TRIM POINT LOW	HIGH
(209)	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	4	42
(210)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	5	59
(211)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	3	38
(212)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE <18	3	36
(213)	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	4	53
(214)	BACK & NECK PROCEDURES W CC	4	48
(215)	BACK & NECK PROCEDURES W/O CC	2	23
(216)	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	3	46
(217)	WOUND DEBRID & SKIN GRAFT EXC HAND, FOR MUSCULOSKEL & CONN TISS DIS	3	59
(218)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W CC	3	46
(219)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W/O CC	2	20
(220)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE <18	2	17
(221)	KNEE PROCEDURES W CC	2	32
(222)	KNEE PROCEDURES W/O CC	1	9
(223)	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	2	19
(224)	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	1	8
(225)	FOOT PROCEDURES	1	13
(226)	SOFT TISSUE PROCEDURES W CC	2	29
(227)	SOFT TISSUE PROCEDURES W/O CC	1	10
(228)	MAJOR THUMB OR JOINT PROC, OR OTHER HAND OR WRIST PROC W CC	2	16
(229)	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	1	7
(230)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES OF HIP & FEMUR	2	20
(231)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES EXCEPT HIP & FEMUR	1	17
(232)	ARTHROSCOPY	1	14
(233)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W CC	3	42
(234)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W/O CC	2	14
(235)	FRACTURES OF FEMUR	4	56
(236)	FRACTURES OF HIP & PELVIS	3	39
(237)	SPRAINS, STRAINS & DISLOCATIONS OF HIP, PELVIS & THIGH	2	24
(238)	OSTEOMYELITIS	4	47
(239)	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISSUE MALIGNANCY	3	38
(240)	CONNECTIVE TISSUE DISORDERS W CC	2	33
(241)	CONNECTIVE TISSUE DISORDERS W/OCC	2	20
(242)	SEPTIC ARTHRITIS	3	34
(243)	MEDICAL BACK PROBLEMS	2	20
(244)	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	2	30
(245)	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	2	19
(246)	NON-SPECIFIC ARTHROPATHIES	2	21
(247)	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDER	2	17
(248)	TENDONITIS, MYOSITIS & BURSITIS	2	18
(249)	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2	23
(250)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W CC	2	27
(251)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W/O CC	1	12
(252)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE <18	1	5
*[(253)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W CC	2	34
(254)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W/O CC	2	15
(255)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE <18	1	11]*
***(253)**	**FX, SPRAIN, STRAIN & DISLOC. OF UPPER ARM, LOWER LEG, EXC FOOT AGE 17 W CC**	**2**	**34**
(254)	**FX, SPRAIN, STRAIN & DISLOC. OF UPPER ARM, LOWER LEG, EXC FOOT AGE 17 WO CC**	**2**	**15**
(255)	**FX, SPRAIN, STRAIN & DISLOC. OF UPPER ARM, LOWER LEG, EXC FOOT AGE 18**	**1**	**11***

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(256)	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	2	15
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(471)	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	6	68
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 09: DISEASES OF THE SKIN, SUBCUTANEOUS TISSUE AND BREAST

		OUTLIER TRIM POINT LOW	HIGH
(257)	TOTAL MASTECTOMY FOR MALIGNANCY W CC	2	24
(258)	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	2	11
(259)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	2	29
(260)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	1	9
(261)	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1	7
(262)	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	1	12
(263)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W CC	5	76
(264)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W/O CC	3	38
(265)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W CC	2	37
(266)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W/O CC	2	14
(267)	PERIANAL & PILONIDAL PROCEDURES	1	6
(268)	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1	11
(269)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W CC	2	39
(270)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W/O CC	2	12
(271)	SKIN ULCERS	3	43
(272)	MAJOR SKIN DISORDERS W CC	2	36
(273)	MAJOR SKIN DISORDERS W/O CC	2	18
(274)	MALIGNANT BREAST DISORDERS W CC	3	39
(275)	MALIGNANT BREAST DISORDERS W/O CC	2	13
(276)	NON-MALIGNANT BREAST DISORDERS	2	12
(277)	CELLULITIS AGE >17 W CC	2	28
(278)	CELLULITIS AGE >17 W/O CC	2	17
(279)	CELLULITIS AGE <18	2	11
(280)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W CC	2	26
(281)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W/O CC	1	10
(282)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE <18	1	8
(283)	MINOR SKIN DISORDERS W CC	2	33
(284)	MINOR SKIN DISORDERS W/O CC	2	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 10: ENDOCRINE, NUTRITIONAL, AND METABOLIC DISEASES

		OUTLIER TRIM POINT LOW	HIGH
(285)	AMPUTATION OF LOW LIMB FOR ENDOCRINE, NUTRIT, & METABOLIC DISORDERS	6	88
(286)	ADRENAL & PITUITARY PROCEDURES	3	41
(287)	SKIN GRAFT & WOUND DEBRID FOR ENDOC, NUTRIT & METABOLIC DISORDERS	5	76
(288)	O.R. PROCEDURES FOR OBESITY	2	17
(289)	PARATHYROID PROCEDURES	2	19
(290)	THYROID PROCEDURES	2	15
(291)	THYROGLOSSAL PROCEDURES	1	6
(292)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W CC	4	59
(293)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W/O CC	2	19
(294)	DIABETES AGE >35	2	28
(295)	DIABETES AGE <36	2	15
(296)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	2	35
(297)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	2	19
(298)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE <18	2	19
(299)	INBORN ERRORS OF METABOLISM	2	17
(300)	ENDOCRINE DISORDERS W CC	2	31
(301)	ENDOCRINE DISORDERS W/O CC	2	14
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(735)	MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	4	71
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(740)	CYSTIC FIBROSIS	2	23

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MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT

		OUTLIER TRIM POINT LOW	HIGH
(302)	KIDNEY TRANSPLANT	4	48
(303)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NEOPLASM	3	40
(304)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W CC	3	39
(305)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W/O CC	2	18
(306)	PROSTATECTOMY W CC	3	39
(307)	PROSTATECTOMY W/O CC	2	21
(308)	MINOR BLADDER PROCEDURES W CC	2	32
(309)	MINOR BLADDER PROCEDURES W/O CC	2	15
(310)	TRANSURETHRAL PROCEDURES W CC	2	19
(311)	TRANSURETHRAL PROCEDURES W/O CC	2	9
(312)	URETHRAL PROCEDURES AGE >17 W CC	2	21
(313)	URETHRAL PROCEDURES AGE >17 W/O CC	1	10
(314)	URETHRAL PROCEDURES AGE <18	1	11
(315)	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	4	58
(316)	RENAL FAILURE	2	31
(317)	ADMIT FOR RENAL DIALYSIS	1	10
(318)	KIDNEY & URINARY TRACT NEOPLASMS W CC	2	32
(319)	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1	11
(320)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	2	32
(321)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	2	14
(322)	KIDNEY & URINARY TRACT INFECTIONS AGE <18	2	11
(323)	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	2	11
(324)	URINARY STONES W/O CC	1	7
(325)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	2	22
(326)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	2	12
(327)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE <18	1	11
(328)	URETHRAL STRICTURE AGE >17 W CC	2	19
(329)	URETHRAL STRICTURE AGE >17 W/O CC	1	7
(330)	URETHRAL STRICTURE AGE <18	1	5
(331)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	2	27
(332)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	2	15
(333)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE <18	2	13
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 12: DISEASES AND DISORDERS OF THE MALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(334)	MAJOR MALE PELVIC PROCEDURES W CC	3	28
(335)	MAJOR MALE PELVIC PROCEDURES W/O CC	3	18
(336)	TRANSURETHRAL PROSTATECTOMY W CC	2	27
(337)	TRANSURETHRAL PROSTATECTOMY W/O CC	2	12
(338)	TESTES PROCEDURES, FOR MALIGNANCY	2	25
(339)	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1	10
(340)	TESTES PROCEDURES, NON-MALIGNANCY AGE <18	1	5
(341)	PENIS PROCEDURES	2	18
(342)	CIRCUMCISION AGE >17	1	11
(343)	CIRCUMCISION AGE <18	1	3
(344)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY	2	28
(345)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	2	17
(346)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	2	32
(347)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1	7
(348)	BENIGN PROSTATIC HYPERTROPHY W CC	2	19
(349)	BENIGN PROSTATIC HYPERTROPHY W/O CC	1	8
(350)	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	2	14
(351)	STERILIZATION, MALE	1	3
(352)	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	1	10
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX, OR PHARYNX DISORDER	10	125

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MAJOR DIAGNOSTIC CATEGORY 13: DISEASES AND DISORDERS OF THE FEMALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(353)	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	3	37
(354)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W CC	2	28
(355)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W/O CC	2	11
(356)	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	2	13
(357)	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	3	32
(358)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	2	18
(359)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	2	10
(360)	VAGINA, CERVIX & VULVA PROCEDURES	1	14
(361)	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1	8
(362)	ENDOSCOPIC TUBAL INTERRUPTION	1	5
(363)	D&C CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	2	24
(364)	D&C CONIZATION EXCEPT FOR MALIGNANCY	1	7
(365)	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2	32
(366)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	3	37
(367)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM, W/O CC	2	11
(368)	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	2	10
(369)	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	1	10
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 14: PREGNANCY, CHILDBIRTH, AND THE PUERPERIUM

		OUTLIER TRIM POINT LOW	HIGH
(370)	CESAREAN SECTION W CC	2	14
(371)	CESAREAN SECTION W/O CC	2	9
(372)	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	2	9
(373)	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	1	5
(374)	VAGINAL DELIVERY W STERILIZATION &/OR D&C	2	7
(375)	VAGINAL DELIVERY W O.R. PROC EXCEPT STERILIZATION &/OR D&C	2	10
(376)	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	2	10
(377)	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1	9
(378)	ECTOPIC PREGNANCY	2	8
(379)	THREATENED ABORTION	1	9
(380)	ABORTION W/O D&C	1	5
(381)	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	1	4
(382)	FALSE LABOR	1	3
(383)	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	2	11
(384)	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 15: NORMAL NEWBORN AND OTHER NEONATES WITH CERTAIN CONDITIONS ORIGINATING IN THE PERINATAL PERIOD

		OUTLIER TRIM POINT LOW	HIGH
(600)	NEONATE, DIED WITHIN ONE DAY OF BIRTH	1	1
(601)	NEONATE, TRANSFERRED <5 DAYS OLD	1	4
(602)	NEONATE, BIRTH WT <750G, DISCHARGED ALIVE	3	46
(603)	NEONATE, BIRTH WT <750G, DIED	3	48
(604)	NEONATE, BIRTH WT 750-999G, DISCHARGED ALIVE	11	73
(605)	NEONATE, BIRTH WT 750-999G, DIED	5	53
(606)	NEONATE, BIRTH WT 1000-1499G, W SIGNIF O.R. PROC, DISCHARGED ALIVE	17	105
(607)	NEONATE, BIRTH WT 1000-1499G, W/O SIGNIF O.R. PROC, DISCHARGED ALIVE	9	73
(608)	NEONATE, BIRTH WT 1000-1499G, DIED	3	46
(609)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	9	68
(610)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	11	81
(611)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	7	69
(612)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	5	58
(613)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	5	60
(614)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	4	53
(615)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	11	85
(616)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	5	56
(617)	NEONATE, BIRTH WT 2000-2499 G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	5	56

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(618)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	3	49
(619)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	3	48
(620)	NEONATE, BWT 2000-2499G, W/O SIGNIF O.R. PROC, W ONLY NORM NEWBORN DIAG.	2	10
(621)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	24
(622)	NEONATE BIRTH >2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	6	61
(623)	NEONATE BIRTH WT >2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	2	46
(624)	NEONATE, BIRTH WT >2499G, W MINOR ABDOMINAL PROCEDURE	2	9
(625)	NOT VALID	NA	NA
(626)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	3	48
(627)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	2	22
(628)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	22
(629)	NEONATE, BWT >2499G, W/O SIGNIF O.R. PROC, W ONLY NORMAL NEWBORN DIAG.	1	6
(630)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	12

MAJOR DIAGNOSTIC CATEGORY 16: DISEASES AND DISORDERS OF THE BLOOD AND BLOOD-FORMING ORGANS AND IMMUNITY

		OUTLIER TRIM POINT LOW	HIGH
(392)	SPLENECTOMY AGE >17	3	39
(393)	SPLENECTOMY AGE <18	2	17
(394)	OTHER O.R. PROCEDURES OF BLOOD AND BLOOD FORMING ORGANS	2	43
(395)	RED BLOOD CELL DISORDERS AGE >17	2	22
(396)	RED BLOOD CELL DISORDERS AGE <18	2	12
(397)	COAGULATION DISORDERS	2	20
(398)	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	3	45
(399)	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	2	14
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(742)	BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISORDERS AND POORLY DIFFERENTIATED MALIGNANCY, AND OTHER NEOPLASMS NEC

		OUTLIER TRIM POINT LOW	HIGH
(400)	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	3	48
(401)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	4	51
(402)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	2	17
(403)	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	3	41
(404)	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	2	18
(405)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18	2	30
(406)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W CC	4	52
(407)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W/O CC	2	20
(408)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W OTHER O.R. PROC.	2	30
(409)	RADIOTHERAPY	3	40
(410)	CHEMOTHERAPY	1	9
(411)	HISTORY OF MALIGNANCY W/O ENDOSCOPY	1	7
(412)	HISTORY OF MALIGNANCY W ENDOSCOPY	1	5
(413)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W CC	3	39
(414)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W/O CC	2	21
(473)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3	48
(735)	MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	4	71
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(742)	BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND PARASITIC DISEASES (SYSTEMIC)

		OUTLIER TRIM POINT LOW	HIGH
(415)	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	5	72
(416)	SEPTICEMIA AGE >17	3	38
(417)	SEPTICEMIA AGE <18	2	15
(418)	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	2	24
(419)	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	2	27
(420)	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	2	13
(421)	VIRAL ILLNESS AGE >17	2	14

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(422)	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE <18	2	8
(423)	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	2	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(742)	BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 19: MENTAL ILLNESS

		OUTLIER TRIM POINT LOW	HIGH
(424)	O.R. PROCEDURE W PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	5	84
(425)	ACUTE ADJUST REACTION & DISTURBANCE OF PSYCHOSOCIAL DYSFUNCTION	2	24
(426)	DEPRESSIVE NEUROSES	2	26
(427)	NEUROSES EXCEPT DEPRESSIVE	2	28
(428)	DISORDERS OF PERSONALITY & IMPULSE CONTROL	2	47
(429)	ORGANIC DISTURBANCES & MENTAL RETARDATION	3	52
(430)	PSYCHOSES	3	40
(431)	CHILDHOOD MENTAL DISORDERS	3	49
(432)	OTHER MENTAL DISORDER DIAGNOSES	5	69
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 20: SUBSTANCE USE DISORDERS AND SUBSTANCE INDUCED ORGANIC DISORDERS

		OUTLIER TRIM POINT LOW	HIGH
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(743)	OPIOID ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	11
(744)	OPIOID ABUSE OR DEPENDENCE W CC	2	26
(745)	OPIOID ABUSE OR DEPENDENCE W/O CC	2	23
(746)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	10
(747)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W CC	2	30
(748)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W/O CC	2	22
(749)	ALCOHOL ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	9
(750)	ALCOHOL ABUSE OR DEPENDENCE, W CC	2	24
(751)	ALCOHOL ABUSE OR DEPENDENCE, W/O CC	2	19

MAJOR DIAGNOSTIC CATEGORY 21: INJURY, POISONING, AND TOXIC EFFECTS OF DRUGS

		OUTLIER TRIM POINT LOW	HIGH
(439)	SKIN GRAFTS FOR INJURIES	2	39
(440)	WOUND DEBRIDEMENTS FOR INJURIES	2	43
(441)	HAND PROCEDURES FOR INJURIES	2	14
(442)	OTHER O.R. PROCEDURES FOR INJURIES W CC	3	43
(443)	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	2	21
(444)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W CC	2	22
(445)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W/O CC	2	11
(446)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE <18	1	9
(447)	ALLERGIC REACTIONS AGE >17	2	9
(448)	ALLERGIC REACTIONS AGE <18	1	5
(449)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	2	21
(450)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	1	12
(451)	POISONING & TOXIC EFFECTS OF DRUGS AGE <18	1	11
(452)	COMPLICATION OF TREATMENT W CC	2	23
(453)	COMPLICATION OF TREATMENT W/O CC	2	11
(454)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W CC	2	29
(455)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W/O CC	1	10
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	*[3]**4*	*[48]**57*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	*[4]**5*	*[57]**58*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(752)	LEAD POISONING	2	11

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MAJOR DIAGNOSTIC CATEGORY 22: BURNS

		OUTLIER TRIM POINT LOW	HIGH
(456)	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2	51
(457)	EXTENSIVE BURNS W/O O.R. PROCEDURE	2	42
(458)	NON-EXTENSIVE BURNS W SKIN GRAFT	4	56
(459)	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	2	32
(460)	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	2	17
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	*[3]**4*	*[48]**57*
(472)	EXTENSIVE BURNS W O.R. PROCEDURE	7	94
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	*[4]**5*	*[57]**58*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 23: SELECTED FACTORS INFLUENCING HEALTH STATUS AND CONTACT WITH HEALTH SERVICES

		OUTLIER TRIM POINT LOW	HIGH
(461)	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	2	33
(462)	REHABILITATION	5	61
(463)	SIGNS & SYMPTOMS W CC	2	28
(464)	SIGNS & SYMPTOMS W/O CC	2	12
(465)	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	10
(466)	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	16
(467)	OTHER FACTORS INFLUENCING HEALTH STATUS	1	16
(633)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	2	12
(634)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	2	8
(635)	NEONATAL AFTERCARE FOR WEIGHT GAIN	3	34
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 24: HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTIONS

		OUTLIER TRIM POINT LOW	HIGH
(700)	HIV WITH SPECIFIED RELATED CONDITION, AGE <13	3	47
(701)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W OPIOID USE, AGE >12	4	51
(702)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W/O OPIOID USE, AGE >12	5	54
(703)	(NOT VALID)	NA	NA
(704)	HIV RELATED MALIGNANCY, W OPIOID USE, AGE >12	5	58
(705)	HIV RELATED MALIGNANCY, W/O OPIOID USE, AGE >12	4	49
(706)	(NOT VALID)	NA	NA
(707)	HIV RELATED INFECTION, W OPIOID USE, AGE >12	4	51
(708)	HIV RELATED INFECTION, W/O OPIOID USE, AGE >12	4	54
(709)	(NOT VALID)	NA	NA
(710)	HIV WITH OTHER RELATED CONDITION, W OPIOID USE, AGE >12	4	52
(711)	HIV WITH OTHER RELATED CONDITION, W/O OPIOID USE, AGE >12	2	43
(712)	HIV W/O SPECIFIED RELATED CONDITION, AGE <13	1	3
(713)	HIV W/O SPECIFIED RELATED CONDITION, W OPIOID USE, AGE >12	7	65
(714)	HIV W/O SPECIFIED RELATED CONDITION, W/O OPIOID USE, AGE >12	3	46

MAJOR DIAGNOSTIC CATEGORY 25: MULTIPLE SIGNIFICANT TRAUMA

		OUTLIER TRIM POINT LOW	HIGH
(730)	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6	95
(731)	HIP, FEMUR AND LIMB REATTACHMENT PROC FOR MULTIPLE SIGNIFICANT TRAUMA	6	83
(732)	OTHER O.R. PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	4	61
(733)	HEAD, CHEST AND LOWER LIMB DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	3	45
(734)	OTHER DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	2	25
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38

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(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need Policy Manual for the Review of Rehabilitation Hospitals and Comprehensive Rehabilitation Services

Adopted New Rules: N.J.A.C. 8:33M

Proposed: May 1, 1989 at 21 N.J.R. 1062(a).

Adopted: June 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner of the Department of Health (with approval of the Health Care Administration Board).

Filed: June 23, 1989, as R. 1989 d. 386, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: July 17, 1989.

Expiration Date: July 17, 1994.

Summary of Public Comments and Agency Responses:

Written comments were received from the following: Johnson Rehabilitation Institute, Kessler Institute for Rehabilitation, Mediplex Rehab—Camden, Newton Memorial Hospital, and Our Lady of Lourdes Medical Center.

COMMENT: Johnson Rehabilitation Institute and Kessler Institute for Rehabilitation expressed support for the proposed new rules. Johnson Institute stated that the rules are comprehensive and complete with regard to content, and they also requested strict enforcement of the proposed licensure standards, N.J.A.C. 8:43H.

RESPONSE: The Department gratefully acknowledges the comments of Johnson Rehabilitation Institute and Kessler Institute for Rehabilitation.

COMMENT: Mediplex Rehab—Camden proposes four amendments to N.J.A.C. 8:33M. The first of these is the amendment of N.J.A.C. 8:33M-1.1(e) to include among the categories of facilities that will be considered by the Department for authorization and licensure as rehabilitation hospitals (that is, for "grandfathering") those institutions that are currently accredited by the Commission on the Accreditation of Rehabilitation Facilities (CARF). The Commenter states that CARF-accredited facilities must meet very strict guidelines that have been developed and refined over the course of 20 years.

Mediplex Rehab—Camden also recommends the amendment of N.J.A.C. 8:33M-1.4(d) to include psychological services, respiratory therapy, and vocational services as part of the list of services contributing to meeting the requirement that patients receive at least three hours of therapy per day.

Modification of N.J.A.C. 8:33M-1.5(c) regarding the age cutoffs for patients to be treated in pediatric and adult rehabilitation hospitals is recommended by Mediplex Rehab—Camden. The commenter suggests that there should be flexibility in this cutoff, as some teenage patients might be appropriately cared for in an adult facility even while their age indicates that they should be treated in a pediatric rehabilitation hospital.

The final comment made by Mediplex Rehab—Camden concerns N.J.A.C. 8:33M-1.8, regarding the minimum requirements for care provided to Medicare, Medicaid, and medically indigent patients. There may be periods when the facility falls below the minimum requirements contained in N.J.A.C. 8:33M-1.8, due to a lack of patient load in the specified categories. Consequently, it is recommended that a facility's record of providing care to the latter categories of patients during the three-year period prior to submission of a certificate of need application be reviewed. Medicare, Medicaid, and medically indigent patients should be placed on a prioritized waiting list; patients in other payor categories should be allowed to use the facility's available beds in accordance with their standing on the prioritized waiting list.

RESPONSE: In developing the proposed rules, the Department's Comprehensive Rehabilitation Advisory Committee carefully considered the accreditation standards developed by the Commission on the Accreditation of Rehabilitation Facilities. However, the Advisory Committee and the Department ultimately concluded that it was inappropriate to use CARF accreditation as a means of determining which facilities should be grandfathered. One of the fundamental reasons for developing licensing standards and certificate of need policies for rehabilitation hospitals was to establish quality and access-to-care requirements that would be applied consistently to all facilities offering inpatient comprehensive rehabilitation. To grandfather facilities that meet either the Department's proposed licensing standards or CARF accreditation standards could result in disparities between rehabilitation hospitals with respect to the type and quality of care they provide.

Regarding the forms of therapy that are required at rehabilitation hospitals, the Department's Advisory Committee felt very strongly that physical therapy, occupational therapy, and speech therapy constitute the core of an intensive, inpatient rehabilitation program. If the patient requires less than 15 hours per week of these services, then it is likely that the patient could be treated in a lower level, alternative setting. As both the proposed licensing and certificate of need rules for rehabilitation hospitals stipulate, psychological services, respiratory therapy, and vocational services must be provided; however, the aforementioned services would be provided in addition to the required amount of physical, occupational, and speech therapies.

The formulas contained in N.J.A.C. 8:33M-1.5(c), as alluded to by Mediplex Rehab—Camden, indicate that the cutoff between pediatric and adult patients is at age 20. While it is acknowledged that there may be occasions when a teenage patient will be cared for in an adult rehabilitation hospital, such instances will be handled by facilities' obtaining a waiver from the Department's Division of Licensing and Certification. However, for the purpose of projecting future rehabilitation hospital bed need, it is necessary to have a fixed age cutoff between adult and pediatric patients. The practical considerations inherent in computing regional bed need will not preclude patients from being treated in whichever facilities that are most appropriate to their individual, clinical needs.

The Department acknowledges Mediplex Rehab—Camden's point that there may be periods when a rehabilitation hospital falls below the minimum requirements contained in N.J.A.C. 8:33M-1.8 regarding utilization of rehabilitation hospital beds by Medicare, Medicaid, and medically indigent patients. For this reason, the rules specify that each percentage requirement is to be met on an annual basis rather than a daily basis. Because each rehabilitation hospital will be approved to meet a regional rather than a local need, it is the facility's responsibility to target services to needy populations within the region to assure that Medicare, Medicaid, and medically indigent patients receive adequate access to rehabilitation hospital care. The percentage requirements proposed in the rules are consistent with the actual payer mix of most facilities that are currently providing inpatient comprehensive rehabilitation services.

The Department appreciates the comments submitted by Mediplex Rehab—Camden but is not able to accept any of the recommended amendments.

COMMENT: Newton Memorial Hospital recommends that the size requirements for rehabilitation hospitals as contained in N.J.A.C. 8:33M-1.5 not be applied to existing facilities when grandfathering decisions are made by the Department. Existing facilities were built and became operational prior to the development of the proposed rules.

RESPONSE: N.J.A.C. 8:33M-1.1(e) specifies the types of facilities that will be considered for grandfathering and the requirements that must be met by rehabilitation hospitals in order to qualify for authorization and licensure without certificate of need approval. The provision specifies that hospitals must be in compliance with the standards contained in N.J.A.C. 8:43H in order to be grandfathered. The latter proposed chapter does not feature any minimum size requirements for rehabilitation hospitals.

COMMENT: Our Lady of Lourdes Medical Center expresses support for the Department's efforts to establish planning criteria for rehabilitation hospitals. The Medical Center concurs with the requirement that comprehensive rehabilitation patients should receive a minimum of three hours per day of physical, speech and/or occupational therapy. The commenter takes exception to the requirement that dental and pharmaceutical services should be provided on an outpatient basis. There are sufficient community resources and private dentists to provide these services; it is unnecessary to have rehabilitation hospitals offer these.

RESPONSE: The requirements in N.J.A.C. 8:33M-1.4(b) that dental and pharmaceutical services be provided on both an inpatient and outpatient basis were included after much deliberation by the Department's Rehabilitation Advisory Committee. Rehabilitation patients will not be required to receive outpatient dental care or pharmacy services from the rehabilitation hospital; they may choose to rely upon community resources and private dentists, as the commenter has suggested. However, for the sake of continuity of care, these services should be made available on site at the facility.

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Agency Initiated Change

The Department has extended the time period at N.J.A.C. 8:33M-1.1(e) for requesting consideration for authorization and licensure as rehabilitation hospitals from 30 days after the effective date of this chapter to September 1, 1989, in order to allow more time for facilities to request such authorization and licensure (see notice regarding necessary request information, published elsewhere in this issue of the New Jersey Register).

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 33M
CERTIFICATE OF NEED: REHABILITATION HOSPITALS AND COMPREHENSIVE REHABILITATION SERVICES

SUBCHAPTER 1. REVIEW STANDARDS

8:33M-1.1 Scope and purpose

(a) The Department of Health is "designated as the sole agency in this State for comprehensive health planning" (N.J.S.A. 26:2H-1). The Health Care Facilities Planning Act stipulates that "no health care facility shall be constructed or expanded, and no new health care services shall be instituted . . . except upon application for and receipt of a certificate of need" (N.J.S.A. 26:2H-7). Consequently, the rules contained in this chapter specify the certificate of need requirements for all new rehabilitation hospitals and for all existing rehabilitation hospitals proposing to alter their licensed bed complements.

(b) A rehabilitation hospital may be either a freestanding inpatient health care facility or one or more separate and distinct inpatient units within a health care facility that is licensed by the Department of Health to provide comprehensive rehabilitation services as defined in N.J.A.C. 8:33M-1.2. The facility shall provide both inpatient and outpatient rehabilitation services. The coordinated, multidisciplinary services provided in rehabilitation hospitals shall be aimed at ameliorating the effects of disabilities by maximizing individual and family functional capacities for independent, productive living.

(c) Comprehensive rehabilitation and inpatient rehabilitation services which are promoted or advertised as being comprehensive in nature shall be provided exclusively in health care facilities licensed by the Department of Health as rehabilitation hospitals. Only licensed rehabilitation hospitals shall bill patients and third party payers for inpatient rehabilitation services which are promoted or advertised as being comprehensive in nature.

(d) In the case of health care facilities that provide comprehensive rehabilitation as well as other types of health care services, only those beds located in separate and distinct units used exclusively for comprehensive rehabilitation shall be counted as part of the facility's rehabilitation hospital license.

(e) Upon written request to the Department of Health *[within 30 days of the effective date of this chapter]* ***received on or before September 1, 1989***, the following may be considered for authorization and licensure as rehabilitation hospitals:

1. Facilities providing comprehensive rehabilitation that are licensed by the Department as special hospitals, unless the special hospital has received a certificate of need stipulating that approved beds are not to be used for comprehensive rehabilitation;

2. That part of a general hospital containing one or more separate and distinct units with beds that have previously been licensed by the Department of Health as "medical-surgical (rehab)" beds; and

3. That part of any other health care facility which has an established program (that is, in operation for at least 12 months prior to the effective date of these rules) of inpatient rehabilitation services in compliance with the standards contained in N.J.A.C. 8:43H.

(f) Subsequent to the Department's determination regarding which of the facilities identified under (e) above will be authorized and licensed as rehabilitation hospitals, any providers seeking to alter their licensed complement of comprehensive rehabilitation beds or any other providers proposing to establish services that will meet the licensure requirements for comprehensive rehabilitation contained in N.J.A.C. 8:43H shall obtain certificate of need approval, in accordance with the rules contained in this chapter.

8:33M-1.2 Definitions

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

"Applicant" means the applicant for a certificate of need for comprehensive rehabilitation services.

"Comprehensive rehabilitation" means an intensive, multidisciplinary program of inpatient care designed to restore a disabled person to the highest attainable level of functioning and to provide new skills for successful adaptation to long-term impairments. It is offered primarily to patients who have recently experienced disability due to a congenital defect, acute illness or injury, or the exacerbation of a chronic illness or injury. Patients admitted to comprehensive rehabilitation programs are screened to assure that their treatment in the facility will result in demonstrably increased functional abilities and an improved quality of life after discharge from the institution, to an extent that would not generally be possible with treatment available from other types of health care facilities.

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

"Environmental modification services" means a planned process of evaluation and adaptation of a patient's living environment as may be needed to permit maximum independent functioning.

"Freestanding rehabilitation hospital" means a facility that carries its own separate license from the Department of Health for comprehensive rehabilitation beds.

"Medicaid patient" means a patient whose care is paid for by Medicaid.

"Medically indigent patient" means a patient who lacks sufficient income and assets to pay in full or in part for comprehensive rehabilitation care (for example, income at or below the State Pharmaceutical Assistance for the Aged and Disabled (P.A.A.D.) guidelines) and who also lacks third party payment coverage (for example, Medicare, Medicaid, private insurance) for rehabilitation hospital care.

"Multidisciplinary program" means a collaborative, integrated process whereby health professionals from a variety of disciplines assess individual patients and work together as a team to establish each patient's plan of care and goals for that care. The team meets on a regular basis to review patients' progress, to modify goals as necessary, and to assure that patients' needs are being met. Members of the team either provide care directly to patients in accordance with their treatment plans, or are responsible for supervising other health care workers who provide such care.

"Physiatrist" means a physician who is either certified or eligible for certification by the American Board of Physical Medicine and Rehabilitation or by the American Osteopathic Board of Rehabilitation Medicine.

8:33M-1.3 Relationship between licensure and certificate of need requirements

The provisions of N.J.A.C. 8:43H, the Manual of Standards for Licensure of Comprehensive Rehabilitation Hospitals, are hereby incorporated by reference. Applicants receiving certificate of need approval for comprehensive rehabilitation beds shall comply with all applicable requirements of N.J.A.C. 8:43H.

8:33M-1.4 Facility personnel and service requirements

(a) Applicants shall document that they will provide services in such numbers and types to adequately meet the needs of the patient population. These services may be provided by staff employed directly by the facility or through contractual arrangements with other agencies or facilities. At a minimum, the rehabilitation hospital shall provide the following services on-site in the facility; audiology, dental, dietary, driver education, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing and counseling.

(b) The rehabilitation hospital shall provide the following services on both an inpatient and an outpatient basis: audiology, dental, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and

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prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing and counseling.

(c) The applicant shall describe, to the satisfaction of the Department of Health, how the multidisciplinary program will be organized. This shall include an identification of personnel who will be included on the team, as well as members' roles and responsibilities. The applicant shall document how the multidisciplinary team will promote coordination of care for patients.

(d) The applicant shall document that combined rehabilitative therapies, excluding nursing care and physician services and including physical therapy and occupational therapy and/or speech therapy, shall be provided for a minimum of three hours per patient per day, five days per week. In the case of pediatric rehabilitation hospitals, applicants shall document that combined rehabilitative therapies, excluding nursing care and physician services and including at least two out of four modalities (that is, physical, occupational, speech, and/or respiratory therapies), shall be provided for a minimum of three hours per patient per day, five days per week.

(e) The applicant shall provide documentation that the comprehensive rehabilitation program for adult patients will be under the direction of a full-time, Board-certified physiatrist. If the comprehensive rehabilitation program is intended to treat pediatric patients, the applicant shall provide documentation that the program will be under the direction of a full-time, Board-certified pediatrician with a physiatrist available to all patients as needed. Medical staffing at a proposed rehabilitation hospital shall include, at a minimum, one full-time equivalent physiatrist per 20 adult patients. For pediatric patients, the proposed rehabilitation hospital shall be staffed, at a minimum, with one full-time equivalent pediatrician per 20 patients.

(f) Applicants shall describe nurse staffing patterns which shall include, at a minimum, one registered nurse on each nursing care unit, 24-hours per day. Priority shall be given to approving applications that provide documentation of a commitment to promoting high quality, specialized rehabilitation nursing. Applicants shall submit a detailed, specific plan for the recruitment, retention, and in-service education of nursing staff, including a description of any incentives that shall be provided by the hospital for the purpose of encouraging the facility's registered nurses to earn master's degrees from programs accredited by the National League of Nursing and/or to receive certification from the Association of Rehabilitation Nurses (or, in the case of pediatric facilities, from the National Board of Pediatric Nurse Practitioners and Associates or the American Nurses Association).

8:33M-1.5 Minimum size of facilities

(a) To promote the efficient use of resources, the minimum size for a new, freestanding rehabilitation hospital shall be 60 beds.

(b) The minimum size for a non-freestanding rehabilitation hospital that is located within another type of licensed health care facility shall be 30 beds.

1. An exception to the 30 bed minimum size for a non-freestanding rehabilitation hospital may be considered by the Department under the following circumstances, provided that all other applicable requirements of this chapter are met:

i. An existing, non-freestanding rehabilitation hospital proposes renovations or improvements in its physical plant that are necessary to meet the minimum State and Federal Life Safety Code requirements listed in N.J.A.C. 8:43H-23.1(a) and no change in the rehabilitation hospital's bed complement is proposed or necessary; or

ii. In regions where there is a need for fewer than 30 adult or pediatric rehabilitation beds, as documented by the need methodologies described in N.J.A.C. 8:33M-1.6(c), the Department of Health shall give consideration to approving applications that will improve access to high quality, cost efficient comprehensive rehabilitation services. Under no circumstance shall an application proposing a total complement of fewer than 20 comprehensive rehabilitation beds for either pediatric or adult patients be approved.

(c) Rehabilitation hospitals proposing to treat both pediatric and adult patients shall include a minimum of 30 beds for pediatric patients and 30 beds for adult patients, unless an exception is granted for a smaller number of pediatric or adult beds, as described above in (b)1ii. Pediatric and adult rehabilitation beds shall not be combined to achieve the minimum bed complement.

8:33M-1.6 Requirements for expansion and new construction

(a) Certificate of need applications for new rehabilitation hospitals or for bed additions to existing rehabilitation hospitals shall be filed with the Department in accordance with the batching cycles for comprehensive rehabilitation. Filing dates for these batching cycles shall be April 1 and October 1 of each year, beginning with that filing date which falls a minimum of 60 days subsequent to the effective date of the rules contained in this chapter.

(b) To promote the efficient provision of comprehensive rehabilitation, these services shall be provided by rehabilitation hospitals on a regional basis. The applicant shall therefore identify the proposed regional service area for any new or expanding rehabilitation hospital and shall provide documentation of how the facility will assure access to comprehensive rehabilitation for the population residing throughout that service area.

1. For certificate of need purposes, the regional service area proposed by an applicant shall be one of the following:

i. Northern region: Bergen, Passaic, Hudson, Essex, Morris, Sussex, Union, and Warren Counties;

ii. Central region: Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset Counties; or

iii. Southern region: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties.

(c) New comprehensive rehabilitation beds shall be approved only in service areas where there is a documented, projected bed need.

1. Need projections shall be computed for that year which is four years from the time that a certificate of need application is accepted for processing.

2. For the purpose of computing bed need, the Department shall maintain an inventory of approved comprehensive rehabilitation beds for each service area, and these beds shall be subtracted from the projected number of beds needed in each service area. Approved comprehensive rehabilitation beds shall include those that are authorized and licensed as described in N.J.A.C. 8:33M-1.1(e) and all comprehensive rehabilitation beds that receive certificate of need approval.

3. Need projections shall be computed using the most recent available data from acute care hospitals (Uniform Bill-Patient Summary data maintained by the Health Research and Educational Trust of New Jersey), rehabilitation facilities (rehabilitation hospital utilization data—discharge abstracts, which are submitted by all facilities to the Department of Health), and the New Jersey Department of Labor (population projections).

4. The need methodology for rehabilitation beds for adult patients shall include the following factors:

i. The projected population for four age groups (that is, 20-44, 45-64, 65-74, and 75+) for each of the three regions (that is, north, central, south);

ii. The age rate of New Jersey acute care discharges per population for each group for each of eight diagnostic categories that are likely to require comprehensive rehabilitation (that is, amputation, arthritis, brain/head injury, hip fracture and replacement, back pain, multiple sclerosis, spinal cord injury, and stroke/hemiplegia);

iii. The percentage of discharged acute care cases that are treated in rehabilitation facilities for each of the eight categories listed in (c)4ii above;

iv. The projected number of rehabilitation cases by diagnosis for the target year;

v. The average length of rehabilitation stay for each of eight diagnoses and for an "all other" category;

vi. An adjustment factor to allow for a number of "other" rehabilitation cases, which are those patients with diagnoses other than the eight aforementioned categories; and

vii. An adjustment factor to allow for 85 percent occupancy of comprehensive rehabilitation facilities.

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5. The adult bed need formula is computed as follows:

i. STEP 1: For each region, each age group, each diagnostic category:

Current acute hospital cases / Current estimated population	×	Projected Population, Target Year	=	Projected Acute Care Cases for Target Year

ii. STEP 2: For each region, each diagnostic category:

Sum of Projected Acute Care Cases for All Specified Age Groups, Target Year	×	Percentage of Patients Admitted to Rehab, Current Year	×	Average Rehab Length of Stay, Current Year
365 Days × 85% Desired Occupancy				

iii. STEP 3: For each region:

Sum of Rehab Cases for All Specified Age Groups for Eight Diagnostic Categories, Target Year	×	Percentage of "Other" Diagnoses Rehab Cases, Current Year	×	Average Rehab Length of Stay "Other" Diagnoses
365 Days × 85% Desired Occupancy				

iv. STEP 4: For each region:

Results of Step 2	+	Results of Step 3	-	Current Regional Bed Supply	=	Projected Bed Need Target Year	

6. To compute the need for rehabilitation beds for pediatric patients, the most recent available pediatric rehabilitation hospital discharge abstract data shall be analyzed in relation to population data for the corresponding year, in order to determine the total, Statewide rate of inpatient rehabilitation days for each of four pediatric population age groups. The four age groups are: zero to four years, five to nine, 10 to 14, and 15 to 19. For any year in which there is a disparity between the total, reported number of inpatient pediatric rehabilitation days based upon discharge abstract data and the total number of inpatient pediatric rehabilitation days reported by the Department's Center for Health Statistics in its annual report of inpatient utilization data, the aforementioned rates for each age group shall be uniformly adjusted to take into account the actual, total number of inpatient rehabilitation days provided to pediatric patients. The rates for each age group shall then be multiplied by the population projections for each of the age groups in each of the regions for the targeted year. The projected number of inpatient days shall then be adjusted (that is, divided) by a factor of .85 to allow for 85 percent occupancy of the beds. The latter, adjusted figure shall then be divided by 365 to yield the total number of pediatric beds needed in each region for the targeted year. Pediatric comprehensive rehabilitation beds that are part of the Department's inventory as described in (c)2 above shall then be subtracted from the total number of pediatric beds needed in each region for the targeted year, to yield the net bed need.

(d) In regions where there is no net projected bed need, according to the methodologies described in (c) above, the Department may give consideration to approving certificate of need applications for additional beds at rehabilitation hospitals that offer documentation of an occupancy rate in excess of 90 percent for a period of at least 12 months immediately prior to filing the application, providing that the applicant meets all other applicable requirements of this chapter including the minimum facility size requirements specified in N.J.A.C. 8:33M-1.5. The applicant shall only be approved for that number of beds which can be expected to result in an 85 percent annual occupancy rate during the 12 month period following licensure of the proposed, additional beds. The applicant shall submit documentation, to the satisfaction of the Department of Health, that patients' average length of stay at the hospital does not substantially exceed the statewide average for a comparable patient population.

(e) In regions where there is a net projected bed need, according to the methodologies described in (c) above, applicants proposing bed additions at existing rehabilitation hospitals in the service area shall provide evidence of an occupancy rate of at least 85 percent for the calendar year prior to submission of the certificate of need application. Bed additions at existing facilities with less than 85 percent occupancy of the comprehensive rehabilitation bed complement shall not be approved.

(f) In the case where a hospital's occupancy rate is less than 85 percent, an exception to (e) above may be made if the applicant is able to provide compelling documentation, to the satisfication of the Department of Health, that the hospital will be able to achieve an 85 percent occupancy rate within one year of project implementation (that is, after the bed addition has been licensed). Compelling documentation shall include a detailed description of specific factors that have prevented the facility from achieving at least 85 percent occupancy, along with a description of how obstacles to the desired occupancy level will be eliminated.

(g) To assure continuity of care for comprehensive rehabilitation patients, applicants shall submit documentation of existing or anticipated transfer agreements and referral arrangements with acute care hospitals, home health agencies, long term care facilities, and residential facilities (for example, residential health care facilities) throughout the proposed service area.

(h) Applicants shall submit a copy of proposed educational program materials pertaining to the care of HIV-infected patients, including documentation regarding how universal precautions shall be instituted in the proposed or existing rehabilitation hospital, to be used in training all health care staff. In addition, the applicant shall agree, as a condition of certificate of need approval, to enter into and maintain a formal affiliation with the Department's AIDS Division to assure follow-up and case management of patients who may be HIV-infected.

(i) The applicant's prior record of providing quality care, as determined by the Department's Division of Health Facilities Evaluation, shall be taken into consideration during the certificate of need review. Applicants with a record of significant licensure violations or deficiencies pertaining to patient care during the 12 month period prior to submission of the certificate of need application shall not be approved for bed additions nor for the construction of new rehabilitation hospitals. Significant violations or deficiencies are those in which the Department has taken action to revoke or suspend licensure, impose a fine, or curtail admissions in the areas pertaining to patient care (for example, nursing, infection control, pharmacy or dietary services).

8:33M-1.7 Patient admission and discharge policies

(a) Admission criteria and policies shall be developed by the facility and submitted as part of the certificate of need application. Patients in non-freestanding facilities shall be admitted separately into the rehabilitation hospital for statistical and costing purposes.

(b) Written admission policies shall, at a minimum, address each of the following:

1. Patient eligibility characteristics or factors specific to recognized rehabilitation diagnoses/conditions that will be treated at the facility. These diagnoses/conditions shall be consistent with the scope and intensity of services that the facility intends to provide;

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2. Screening to assure that treatment in the facility will result in demonstrably increased functional abilities and an improved quality of life after discharge from the institution, to an extent that would not generally be possible with treatment available from other types of health care facilities. Only patients who are capable of engaging in and benefiting from this level of treatment shall be admitted;

3. Non-discrimination against patients on the basis of payment source for care;

4. Non-discrimination against patients who are known to be or who are suspected of being HIV-positive. As a condition of certificate of need approval, the facility shall agree to treat patients who meet the admission criteria for the facility and are HIV-positive; and

5. For those individuals who are deemed ineligible for admission to the facility, a description of how patients will be recommended for a more appropriate level of care.

(c) Discharge criteria shall be developed by the applicant and included as a part of the certificate of need application.

(d) The applicant shall submit documentation of a plan to provide job placement opportunities and referrals for those patients who desire employment after discharge from the facility.

(e) For each patient who is discharged from the hospital, the facility shall collect the following data to be reported to the Department of Health: patient's age, county of residence, referral source, length of stay, principal and secondary diagnoses, functional impairments on admission and discharge, payment source, discharge status and destination, and post-discharge service needs.

(f) The applicant shall submit documentation of the referral process that will be implemented to assure that patients will receive appropriate follow-up care after discharge from the facility. The facility shall establish and maintain a plan to assure that needed outpatient services will be arranged for patients residing within each county in the facility's service area.

8:33M-1.8 Accessibility of care for Medicaid, Medicare, and medically indigent patients

(a) On an annual basis, a minimum of five percent of the total patient days within a facility's adult comprehensive rehabilitation beds shall be utilized by Medicaid patients. This requirement shall be met within one year of project completion and/or license for a rehabilitation hospital and shall be maintained thereafter.

(b) On an annual basis, a minimum of 35 percent of the total patient days within a facility's adult comprehensive rehabilitation beds shall be utilized by Medicare patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hopital and shall be maintained thereafter.

(c) On an annual basis, a minimum of 40 percent of the total patient days within a facility's pediatric comprehensive rehabilitation beds shall be utilized by Medicaid-eligible patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(d) On an annual basis, a minimum of three percent of the total patient days within a facility's comprehensive rehabilitation beds shall be provided in the form of free and/or part-pay care to medically indigent patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(e) The applicant shall provide documentation that written policies shall be maintained and enforced by the facility, stating that no patient will be discharged prior to completion of treatment as a result of the inability to pay for care.

(f) The Department shall give priority to the approval of certificate of need applications for rehabiliation hospitals that have at least a three year prior history of complying with the applicable requirements specified in (a), (b) and (c) above.

(g) The applicant for a certificate of need shall provide documentation, to the satisfaction of the Department of Health, of strategies that will be implemented by the rehabilitation hospital in order to promote and assure access to care for Medicaid-eligible patients who reside throughout the facility's service region.

8:33M-1.9 Financial feasibility and cost effectiveness

(a) Applicants for a certificate of need shall demonstrate the financial feasibility of proposed construction projects. A study shall be submitted by the applicant analyzing the feasibility of the project under the reimbursement rules that can reasonably be expected to be in effect at the time of implementation. A project may be determined financially feasible where the applicant can demonstrate to the satisfaction of the Department that there will be a net positive income in the calendar or fiscal years that are two and five years beyond project completion.

(b) Financial projections submitted as part of the certificate of need application shall provide evidence that income generated by operation of the proposed facility will be sufficient to cover the cost of service to the percentage of Medicaid, Medicare, and medically indigent patients specified in the application, or in accordance with N.J.A.C. 8:33M-1.7, whichever amount is greater.

(c) Financing of hospital construction, modernization/renovation, or major movable equipment projects shall require that at least 15 percent of the total project costs, including all financing and carrying costs, be available and applied in the form of equity, in accordance with N.J.A.C. 8:33-2.15.

(d) All projects involving long-term financing of capital construction costs shall demonstrate use of the least-cost financing available.

(e) The applicant for a certificate of need for additional comprehensive rehabilitation beds shall submit documentation that appropriate alternatives to inpatient care have been considered and that the project as proposed will encourage the use of lower cost outpatient rehabilitative services, where such services are appropriate to meet patients' needs for care.

(f) Applicants for comprehensive rehabilitation beds that are proposed to be located within long-term care facilities shall submit projected fee schedules not only for rehabilitation services but also for long-term care services at the facility. Applications that propose a schedule of charges indicating that costs will be shifted from comprehensive rehabilitation patients to long-term care patients shall not be approved.

8:33M-1.10 Geographical accessibility of facilities and siting considerations

(a) In service areas where there is a need for additional comprehensive rehabilitation beds, priority shall be given to approving applications from facilities located in areas that will improve geographical accessibility for residents of the region. The evaluation of geographical accessibility shall include but not be limited to a consideration of the location of existing rehabilitation hospitals, population density of the service area, and driving time to existing and proposed rehabilitation hospitals in the service area.

(b) Where possible, each rehabilitation hospital shall be located in close proximity to public transportation routes.

(c) Documentation of the zoning status and the need for land use approvals for any site proposed for new construction shall be submitted by the applicant. Priority shall be given to the approval of certificate of need applications for projects located on sites that are likely to receive necessary zoning and land use approvals.

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(a)

HEALTH FACILITIES EVALUATION AND LICENSING
Long Term Care Licensing Standards
Hot Water Temperature
Adopted Amendment: N.J.A.C. 8:39-19.7

Proposed: February 21, 1989 at 21 N.J.R. 417(a).
Adopted: June 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board.
Filed: June 23, 1989 as R.1989 d.389, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: July 17, 1989.
Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

8:39-19.7 Mandatory space and environment for water supply
(a)-(d) (No change.)
(e) Hot (90 to 110 degrees Fahrenheit) and cold running water shall be provided. At no time shall the temperature of running water in patient care areas exceed 110 degrees Fahrenheit.

(b)

DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: August 1, 1988 at 20 N.J.R. 1766(a).
Adopted: June 21, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: June 22, 1989 as R.1989 d.377, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 17, 1989.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

The following product and its manufacturer was **adopted**:

Amiloride/HCTZ tabs 5/50	**Par**

The following products were **not adopted but are still pending**:

APAP/codeine elix 120/12/5 ml	Naska
Amitriptyline/CDP tabs 5/12.5, 10/25	Par
Cyclobenzaprine tabs 10 mg	Par
Diazepam tabs 10 mg	Pharbita
Disopyramide ER caps 100, 150 mg	KV
Divalproex EC tabs 125, 250, 500 mg	Par
Doxepin caps 75, 150 mg	SKF
Erythromycin E.C. pellet caps 250 mg	Abbott
Erythromycin E.C. tabs 250, 333 mg	Abbott
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Chelsea
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Duramed
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Lidocaine viscous solution 2%	Naska
Metaproterenol tabs 20 mg	Quantum
Methocarbamol/Aspirin tabs 400/325	Par
Methylprednisolone tabs 2, 4, 8 mg	Par
Norethindrone/ethin. estradiol 10/11-21	Watson
Sulindac tabs 150, 200 mg	Par
Triamcinolone cream 0.5%	Naska
Triamcinolone oint 0.025, 0.1%	Naska
Triamcinolone/nystatin oint 1 mg/100 MU	Naska

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 20 N.J.R. 2769(a) and at 21 N.J.R. 63(b), 756(b) and 1430(a).

(c)

DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: March 20, 1989 at 21 N.J.R. 662(a).
Adopted: June 21, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: June 22, 1989 as R.1989 d.378, **with portions of the proposal not adopted and with portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 17, 1989.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
No comments were received on the adopted products.

The following products and their manufacturers were **adopted:**

Amitriptyline/perphenazine 2/10, 2/25	**Mylan**
Amitriptyline/perphenazine 4/10, 4/25, 4/50	**Mylan**
Amoxicillin caps 250, 500 mg	**Clonmel**
Amoxicillin for susp 125/5, 250/5	**Clonmel**
Ampicillin caps 250, 500 mg	**Clonmel**
Ampicillin for susp 125/5, 250/5	**Clonmel**
Benztropine mesylate tabs 0.5, 1, 2 mg	**Sidmak**
Carisoprodol tabs 350 mg	**Pioneer**
Cefadroxil caps 500 mg	**Biocraft**
Chlorpheniramine/PPA ER caps 12/75	**Cord**
Chlorzoxazone tabs 250, 500 mg	**Pioneer**
Chlorthalidone tabs 50 mg	**Pioneer**
Colchicine/probenecid tabs 0.5/500	**Danbury**
Dicyclomine caps 10 mg	**Pioneer**
Doxepin caps 100, 150 mg	**Quantum**
Doxepin oral solution 10 mg/ml	**PharmBasics**
Erythromycin base EC caps 250 mg	**Barr**
Fluocinonide sol, gel, and cream (0.05%)	**Lemmon**
Flurazepam caps 15, 30 mg	**Chelsea**
Haloperidol oral solution 2 mg/ml	**Copley**
Lactulose syrup 10 g/15 ml	**PharmBasics**
Metaproterenol 0.4%, 0.6% soln (UDose)	**Paco**
Metaproterenol inhalation soln 5%	**PharmBasics**
Metaproterenol syrup 10 mg/5 ml	**PharmBasics**
Minoxidil tabs 2.5, 10 mg	**Par**
Nifedipine caps 10 mg	**Purepac**
Oxazepam caps 10, 15, 30 mg	**Barr**
Penicillin VK for soln 125/5, 250/5	**Clonmel**
Penicillin VK tabs 250, 500 mg	**Clonmel**
Phenylephrine, chlorpheniramine, pyrilamine (as tannates) tabs, ped. susp	**Ferndale**
Potassium Cl ER caps 10 mEq	**KV**
Prazosin caps 1, 2, 5 mg	**Purepac**
Tetracycline caps 250, 500 mg	**Lab A**
Theophylline elixir 80 mg/15 ml	**Thames**
Timolol maleate tabs 5, 10, 20 mg	**Bolar, PharmBasics**
Verapamil tabs 40 mg	**Chelsea**
Verapamil tabs 80, 120 mg	**Sidmak**

The following products were **not adopted**:

Oxybutynin tabs 5 mg	Sidmak
Quinidine sulfate tabs 100, 200, 300 mg	Mutual
Tolazamide tabs 100, 250, 500 mg	Barr

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Mutual, PharmBasics
Amantadine caps 100 mg	Chase
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Atenolol tabs 50, 100 mg	Par
Atenolol/HCTZ tabs 50/25, 100/25	Par
Atropine sulfate ophth soln 1%	Ocumed
Baclofen tabs 10, 20 mg	Danbury
Chlordiazepoxide caps 10, 25 mg	Pioneer
Chlorzoxazone tabs 500 mg	Danbury
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Cyclobenzaprine tabs 10 mg	Cord

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Diazepam tabs 2, 5, 10 mg	Pioneer
Disulfiram tabs 250, 500 mg	Danbury
Erythromycin ethylsucc. susp 200 & 400/5	Barr
Fenoprofen tabs 600 mg	Mutual
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Gemfibrozil caps 300 mg	Purepac
Hydrocodone/APAP tabs 5/500	Watson
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Hyoscyamine tabs 0.125 mg	Ferndale
Ibuprofen tabs 400, 600 mg	Danbury
Ibuprofen tabs 400, 600 mg	Lederle
Imipramine tabs 10 mg	Vitarine
Imipramine tabs 10, 25, 50 mg	Mutual
Isometheptene, dichloralphenazone, and Acetaminophen caps	Ferndale
Isosorbide dinitrate tabs 20, 30 mg	Barr
Lactulose syrup 10 g/15 ml	Inalco SPA
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Methyldopa/HCTZ tabs 250/15, 250/25	Watson
Methyldopa/HCTZ tabs 500/30, 500/50	Watson
Methylprednisolone tabs 4, 16 mg	Chelsea
Metoclopramide syrup 5 mg/5 ml	Barre, Charter
Metoclopramide tabs 5 mg	Chelsea
Minocycline caps 50, 100 mg	Chelsea
Minocycline tabs 50, 100 mg	Chelsea
Nifedipine caps 10 mg	Cord
Oxybutynin tabs 5 mg	Quantum
Perphenazine tabs 2, 4, 16 mg	Chelsea
Phenobarbital, ergotamine tartrate, and belladonna alkaloids tabs	Ferndale
Propranolol tabs 60, 90 mg	Watson
Sulindac tabs 150, 200 mg	Cord
Sulindac tabs 150, 200 mg	Purepac
Tetracycline caps 500 mg	Vitarine
Theophylline ER tabs 100, 200, 300 mg	Sidmak
Thiothixene conc. 5 mg/ml	Charter
Triamcinolone acet./nystatin cream	Naska
Triamterene/HCTZ tabs 75/50	Watson
Valproic acid caps 250 mg	Chelsea

(a)

DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: December 19, 1988 at 20 N.J.R. 3078(a).
Adopted: June 21, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: June 22, 1989 as R.1989 d.379, **with a portion of the proposal not adopted and with portions not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: July 17, 1989.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
COMMENT: Mr. W. Baxter, representing Ortho, stated that company's opposition to the Gedeon-Richter product, citing current lack of bioequivalency data, as well as reiterating the same packaging and other concerns that Ortho has previously stated about the general interchangeability of oral contraceptives. In essence, Ortho feels that oral contraceptives are not suitable for interchange.
RESPONSE: The Council does not agree that oral contraceptives are generally unacceptable for generic substitution, but does agree that acceptable bioequivalency data are needed, and the Council had received such bioequivalency data before making its decision on this product. However, the Council was of the opinion that the low study power for the ethinyl estradiol AUC (0 to 24 hours), coupled with the 90 percent confidence interval for that parameter (81.4 to 125) being outside of the normally acceptable range of 80 to 120, made this product unacceptable.

The following products and their manufacturers were **adopted**:

Oxycodone/APAP caps 5/500	**Halsey**
Procainamide ER tabs 250, 750 mg	**Danbury**

The following product was **not adopted**:

Norethindrone/ethinyl estradiol tabs 1/35	Gedeon-Richter

The following products were **not adopted but are still pending**:

Amiloride HCl tabs 5 mg	PharmBasics
APAP/Codeine tabs 15, 30, 60 mg	Luchem
Carisoprodol tabs 350 mg	PharmBasics
Chlorpropamide tabs 100, 250 mg	Charlotte
Chlorzoxazone tabs 500 mg	Par
Clorazepate tabs 3.75, 7.5, 15 mg	Danbury
Imipramine tabs 25, 50 mg	Vitarine
Lithium carbonate caps 300 mg	Par
Lorazepam tabs 0.5, 1, 2 mg	Mepha
Methyldopa tabs 250, 500 mg	Pharbita
Nalidixic acid tabs 250, 500, 1000 mg	Barr
Prazosin caps 1, 2, 5 mg	Par
Propranolol/HCTZ tabs 40/25, 80/25	Danbury
Quinidine gluconate ER tabs 324 mg	Par
SMZ/TMP susp. 200/40/5 ml	Barr
Temazepam caps 15, 30 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Par, Lederle
Trazodone tabs 150 mg	Amer. Ther.
Trazodone tabs 50, 100 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 21 N.J.R. 755(b) and 1429(b).

(b)

DRUG UTILIZATION REVIEW COUNCIL
Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: September 19, 1988 at 20 N.J.R. 2356(a).
Adopted: June 21, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: June 22, 1989 as R.1989 d.380, **with portions not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: July 17, 1989.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

The following products and their manufacturers were **adopted**:

Carisoprodol tabs 350 mg	**Cord**
Timolol maleate tabs 5, 10, 20 mg	**Cord**

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Amer.Ther.
Albuterol tabs 2, 4 mg	Cord
Allopurinol tabs 300 mg	Cord
Amoxicillin caps 250, 500 mg	Lab A
Fenoprofen calcium tabs 600 mg	Lederle
Fluocinonide oint. 0.05%	Clay-Park
Haloperidol tabs 10, 20 mg	Danbury
Lithium carbonate caps 300 mg	Reid-Rowell
Metaproterenol tabs 10 mg	Quantum
Metoclopramide tabs 10 mg	Cord
Prednisone tabs 10, 50 mg	Cord
Propoxyphene HCl/APAP tabs 65/650	Cord
Quinidine sulfate tabs 300 mg	Cord
Salsalate tabs 500, 750 mg	Upsher-Smith
Sulindac tabs 150, 200 mg	Mutual
Theophylline ER tabs 100, 200, 300 mg	Cord
Trazodone tabs 50, 100 mg	Cord
Triamcinolone acet. lotion 0.025, 0.1%	Clay-Park

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 21 N.J.R. 63(c), 756(a) and 1429(c).

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EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Regulated Medical Waste

Adopted Emergency Rules and Concurrent New Proposed Rules: N.J.A.C. 7:26-3A

Adopted Emergency Repeals and Concurrent Proposed Repeals: N.J.A.C. 7:26-3A.

Emergency New Rules Adopted: June 23, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 23, 1989.

Emergency Rule Filed: June 26, 1989 as R.1989, d.396.

Authority: N.J.S.A. 13:1B-3, 13:1E-1 et seq., particularly 13:1E-6; 13:1E-48.1 et seq.; and N.J.S.A. 58:10A-1 et seq.

Concurrent Proposal Number: PRN 1989-394.

DEP Docket Number: 033-89-06.

Effective Date: June 26, 1989.

Emergency Rule Adoption Expiration Date: August 25, 1989.

A **public hearing** concerning this concurrent proposal will be held on:
Tuesday, August 1, 1989 at 1:00 P.M.
War Memorial, Veteran's Room (basement)
West Lafayette Street
Trenton, New Jersey 08625

Submit written comments on the concurrent proposal by August 16, 1989 to:
Mary L. Gillespie, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

These repeals and new rules at N.J.A.C. 7:26-3A were adopted on an emergency basis and became effective upon filing with the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon filing of the notice of adoption with the Office of Administrative Law (see N.J.A.C. 1:30-4.5), if filed prior to the emergency rules expiration.

The agency emergency rule adoption and concurrent proposal follows:

Summary

N.J.A.C. 7:26-3A is promulgated pursuant to the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., specifically the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, N.J.S.A. 13:1E-48.1 et seq. (Comprehensive Act) and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The rules are adopted on an emergency basis due to the problems this State faces as a result of the illegal disposal of medical waste. These problems pose an imminent peril to the public health, safety, welfare and the environment.

The Comprehensive Act was signed into law by Governor Kean on March 6, 1989 and requires, among other things, that the Department of Environmental Protection (Department) in consultation with the Department of Health (DOH), adopt the rules and regulations adopted by the United States Environmental Protection Agency (EPA) under the authority of the Medical Waste Tracking Act of 1988, 42 USC 6903 et seq. (Federal Act). The Department and DOH are to act together to implement and enforce the provisions of the Comprehensive Act. The Federal act, which was signed into law by President Reagan on November 1, 1988, was enacted as a response to public concern over the degradation of shoreline areas due to washups of sewage and other wastes and due to the careless management of medical waste evidenced by cases of disposal of medical waste into open dumpsters. The Federal Act required the EPA, among other things, to promulgate rules instituting a two year demonstration program to track medical waste shipments. The EPA adopted the rules at 54 FR 12326 amending 40 CFR Part 259, effective June 22, 1989.

Though N.J.A.C. 7:26-3A essentially adopts the EPA rules, found at 40 CFR Part 259 (Federal demonstration program), there is one major difference between N.J.A.C. 7:26-3A and the Federal demonstration program. N.J.A.C. 7:26-3A requires generators to track all regulated medical waste, no matter how small the amount, while the Federal demonstration program exempts generators of less than 50 pounds per month from its tracking requirements if certain conditions are met.

N.J.A.C. 7:26-3A is effective June 26, 1989, with the exception that before June 22, 1989, transporters must notify the EPA that they will be transporting regulated medical waste by providing certain information in accordance with N.J.A.C. 7:26-3A.29 prior to collecting or transporting regulated medical waste. N.J.A.C. 7:26-3A applies to any regulated medical waste that is generated, stored, transported, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey. In other words, if regulated medical waste is generated in New Jersey, these rules apply regardless of whether the waste is stored, transported, transferred, treated, destroyed, disposed of, or otherwise managed in another state. N.J.A.C. 7:26-3A also applies to regulated medical waste that is generated in another state but that is stored, transported, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

Regulated medical waste is defined at N.J.A.C. 7:26-3A.6 and includes, among other things: cultures and stocks of infectious agents, human pathological waste, human blood and blood products, used and unused sharps including syringes, animal waste and specialized isolation waste which are defined as Biosafety level 4 by the Center for Disease Control in their publication entitled "Classification of Etiologic Agents on the Basis of Hazard," July 1974. Regulated medical waste that is both treated and destroyed is no longer regulated medical waste. Regulated medical waste that is treated but not destroyed is still considered regulated medical waste as is regulated medical waste that is destroyed but not treated. Regulated medical waste is treated when the biological character is changed so as to substantially reduce or eliminate its potential for causing disease, and it is destroyed when it is ruined, torn apart, or mutilated so that it is no longer generally recognizable as medical waste. While regulated medical waste that is both treated and destroyed is no longer considered regulated medical waste, generators who both treat and destroy regulated medical waste through such process as incineration are subject to certain recordkeeping, logging and reporting requirements which are described below.

N.J.A.C. 7:26-3A.10 through 3A.15 include pre-transport requirements such as segregating regulated medical wastes from other types of solid waste, packaging the regulated medical wastes, and labeling and marking the packaged material. These requirements generally apply to regulated medical wastes that are transported or offered for transport off-site. The storage requirements of N.J.A.C. 7:26-3A.12 also apply to regulated medical wastes that are treated and destroyed or disposed of on-site. Most of the above requirements apply to generators, but several of the requirements also apply to other persons such as transporters and intermediate handlers.

Regulated medical waste shipped off-site must be tracked from the point of generation to the point of treatment and destruction or disposal. The tracking system requires that each person in the chain of custody of regulated medical waste management take responsibility for assuring that the waste reaches the proper destination facility for treatment, destruction or disposal. A New Jersey medical waste tracking form, available from the Department, must accompany all regulated medical waste that is generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey. However, if regulated medical waste is generated in New Jersey but is transported for disposal to another state which is participating in the Federal demonstration program and which prints its own tracking form and requires its use, then that state's tracking form shall be used.

N.J.A.C. 7:26-3A.43 and 3A.44 establish procedures for handling the tracking form and recordkeeping requirements that rail carriers of regulated medical waste must follow.

Each generator shipping regulated medical waste off-site is responsible for initiating the tracking form in accordance with the requirements of N.J.A.C. 7:26-3A.19. Generators shall use transporters who have regis-

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tered with the Department and the New Jersey Board of Public Utilities as solid waste and regulated medical waste transporters and who have applied for an EPA identification number. Generators who ship regulated medical waste, Classes 4 and 7, through the U.S. Postal Service in accordance with N.J.A.C. 7:26-3A.17(b) are not required to use transporters who have notified the EPA if they generate less than three cubic feet of regulated medical waste per month and ship less than three cubic feet in their shipment. In addition, N.J.A.C. 7:26-3A.17(a) exempts generators of regulated medical waste who generate less than three cubic feet of regulated medical waste per month and who transport only that waste, which must be less than three cubic feet, to another generator for treatment or disposal, from transporter registration, notification and fee requirements. However, the generator is still subject, among other requirements, to the tracking requirement of this subchapter.

Portions of the tracking form must be completed by the transporters in accordance with the requirements of N.J.A.C. 7:26-3A.31, by the intermediate handlers (that is, facilities that either treat or destroy regulated medical waste), and by the destination facilities (that is, treatment and destruction facilities, incineration facilities and disposal facilities) in accordance with the requirements of N.J.A.C. 7:26-3A.39. Transporters may choose to consolidate onto a single tracking form all regulated medical waste shipments of less than 220 pounds if the requirements of N.J.A.C. 7:26-3A.33 are met. Generators and intermediate handlers who transport regulated medical waste to a foreign country for treatment and destruction or disposal shall request that the destination facility provide written confirmation that the waste was received, in accordance with N.J.A.C. 7:26-3A.20. In addition, exception and discrepancy requirements are specified so that the Departments and appropriate Federal officials are notified if regulated medical wastes do not reach their designated destination or if there are any discrepancies between what was sent and what was received.

N.J.A.C. 7:26-3A allows regulated medical waste which has been treated to be taken to any transfer station or sanitary landfill in New Jersey as long as the facilities are permitted by the Department and the permit for the facility allows for the acceptance of regulated medical waste. The Department has determined that the ban on regulated medical waste being taken to solid waste transfer stations from its August 1988 medical waste rules readopted at 20 N.J.R. 2760(a), shall be discontinued. The Departments' reasoning is that these regulated medical waste rules' requirements for treatment of the waste, plus the handling and tracking requirements of these rules, assure that the wastes are properly tracked and packaged to prevent contact with the waste management community, the public, and the environment.

In its August 1988 rules, the Department allowed regulated medical waste generated by small quantity generators to be disposed of at permitted sanitary landfills as ID type 10 solid waste. N.J.A.C. 7:26-3A allows treated regulated medical waste from any generator, which is managed and tracked according to these rules, to be disposed of at properly permitted sanitary landfills. The Department's reasoning for allowing treated regulated medical waste to be disposed at permitted sanitary landfills is the same as its reasoning regarding the handling of regulated medical waste at permitted transfer stations. In addition, there is no scientific or epidemiological evidence which indicates that treated regulated medical waste poses a threat to human health or the environment when disposed of at sanitary landfills.

The Departments' policy concerning handling and disposal of regulated medical waste at transfer stations and disposal at sanitary landfills will be reevaluated during a one year study of existing and potential regulated medical waste management and disposal practices required by the Comprehensive Act, specifically, N.J.S.A. 13:1E-48.13. In this study, the Department will be conducting an analysis of both the existing and the potential regulated medical waste disposal options over the next year, evaluating the technological, environmental, economic, waste flow and health risk implications of regulated medical waste management. The Department will then develop specific recommendations for the disposal of regulated medical waste for the legislature in the form of a Statewide regulated medical waste management plan.

N.J.A.C. 7:26-3A.8 requires regulated medical waste generators, transporters, intermediate handlers (that is, facilities that either treat or destroy regulated medical waste) and destination facilities (that is, treatment and destruction facilities, incineration facilities and disposal facilities) to register with the Department as such, and pay fees to cover the costs the Department incurs in administering and monitoring the provisions of this subchapter. The definition section at N.J.A.C. 7:26-3A.5 defines, among other things, generator, transporter, treatment facility, destruction facility, intermediate handler and destination facility.

The Department is granting temporary authorizations to operate a regulated medical waste incinerator for incinerators that were accepting regulated medical waste on or before March 6, 1989 provided the requirements of N.J.A.C. 7:26-3A.37 are met. The requirements include, among other things, that the facility's owner or operator must have an existing certificate to operate control apparatus or equipment (certificate) issued from the Department's Division of Environmental Quality pursuant to N.J.A.C. 7:27, the air pollution control code. In addition, the authorization shall continue for only so long as the facility's current certificate remains valid. Prior to expiration of the facility's current certificate, the owner or operator must be fully permitted as a solid waste facility in accordance with the provisions of N.J.A.C. 7:26-2 and 2B. For the purposes of this temporary authorization, any application for a renewal or extension of the current certificate shall be considered an expiration of the current certificate resulting in the termination of the temporary authorization. The incinerator shall also meet certain operational requirements, and shall maintain adequate water supply and adequate firefighting equipment so as to be readily available to extinguish any and all types of fires. The Department is also authorized to enter and inspect the facility at any time.

Any generator who treats and destroys regulated medical waste on-site by a process other than incineration is required to maintain certain records in accordance with N.J.A.C. 7:26-3A.21(b), concerning the quantity and percentage of regulated medical waste that is treated and destroyed. However, generators with on-site incinerators are required to maintain records and submit reports. These requirements are discussed below.

All generators of regulated medical waste, including generators with on-site incinerators, are required to maintain a generator log in accordance with N.J.A.C. 7:26-3A.21. All generators of 300 pounds per year or more of regulated medical waste are required to maintain a generator daily log. All generators of less than 300 pounds per year of regulated medical waste are required to maintain a generator monthly log. The generator daily and monthly logs will serve an enforcement purpose and will assure that the information regarding regulated medical waste generation, treatment, destruction and disposal is tabulated correctly for use in preparation of the annual generator reports. All regulated medical waste generated, including regulated medical waste that is disposed of by placement into the sanitary sewer, must be recorded in the generator logs and in the annual generator reports by Waste Class. If waste is disposed of via the sanitary sewer, all applicable Federal, State, county and local statutes, rules and ordinances must be complied with. All generators of regulated medical waste are required by N.J.A.C. 7:26-3A.21(g) to submit annual generator reports to the Department for the period covering June 22 through June 21 which are due by July 21 of each calendar year.

In addition to the above generator logging and annual generator report requirements, generators with on-site incinerators shall keep an on-site incinerator operating log at their incineration facility in accordance with N.J.A.C. 7:26-3A.25, containing among other things, information on the amounts of waste incinerated, the frequency of incineration, and the length of the incineration cycle. Generators with on-site incinerators shall also provide information on the amounts of waste received from sources outside the facility in order to allow the Department to determine how much regulated medical waste is incinerated from sources such as private physicians or small group practices. This information will be summarized in the on-site incinerator reports required by the Department in accordance with N.J.A.C. 7:26-3A.26. The first on-site incinerator report is due February 6, 1990 and covers the periods from June 22, 1989 through December 22, 1989. The second on-site incinerator report is due February 6, 1991 and covers the period from June 22, 1990 through December 22, 1990. Beginning July 1, 1991 annual on-site incinerator reports covering the period from July 1 through June 30 shall be submitted to the Department by July 30 of each calendar year. These on-site incinerator reports will provide a more complete picture of quantities of regulated medical waste being incinerated.

All transporters of regulated medical waste shall comply with the registration and fee requirements of N.J.S.A. 7:26-3A.8. In addition, transporters must notify the EPA and the Department, and any other state required to be notified, pursuant to N.J.A.C. 7:26-3A.29, before they transport regulated medical waste. Following compliance with N.J.A.C. 7:26-3A.29, the EPA will issue a unique EPA medical waste identification number to the transporter. In addition, all transporters of regulated medical waste shall register with the Department as solid waste transporters pursuant to N.J.A.C. 7:26-3.1, pay fee in accordance with the requirements of N.J.A.C. 7:26-4.3, comply with the requirements of

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N.J.A.C. 7:26-16, and obtain a certificate of public convenience and necessity required by N.J.S.A. 48:13A-6. However, generators of regulated medical waste who generate less than three cubic feet of regulated medical waste per month and who transport only that waste, which must be less than three cubic feet, to another generator for treatment or disposal and who meet the requirements of N.J.A.C. 7:26-3A.17(a) are exempt from all of the above transporter notification and registration requirements.

The transporter's vehicle must be fully enclosed, be leak resistant, maintained in a sanitary condition, be secured if left unattended, and must not subject the cargo to mechanical stress or compaction as provided at N.J.A.C. 7:26-3A.30. All vehicles used in the transportation of regulated medical waste shall include the following identification on the two sides and back of the cargo-carrying body in letters a minimum of three inches in height: the name of the transporter, the transporter's NJDEP solid waste transporter registration number and a sign stating "MEDICAL WASTE" or "REGULATED MEDICAL WASTE".

In accordance with the requirements of N.J.A.C. 7:26-3A.35, transporters are required to submit a regulated medical waste transporter report to the Department and the EPA. If the regulated medical waste was not generated in New Jersey but was generated in another state and the other state is participating in the Federal demonstration program, the report shall be sent to the EPA and a copy of the report shall be sent to that state's waste management division. The report will describe, among other things, the source and disposition of the regulated medical wastes. The first regulated medical waste transporter report covers the period from June 23, 1989 through December 19, 1989 and is due by February 2, 1990. The second regulated medical waste transporter report, covering the period from December 20, 1989 through June 17, 1990 is due by August 1, 1990. The third regulated medical waste transporter report covering the period from June 18, 1990 through December 14, 1990 is due by January 28, 1991. The fourth regulated medical waste transporter report covering the period from December 15, 1990 through June 12, 1991 is due by July 27, 1991. After July 27, 1991, the transporter shall submit an annual regulated medical waste transporter report to the Department only, covering the period from July 1 through June 30, which shall be due by July 30 of each calendar year. The regulated medical waste transporter reports will aid enforcement and provide information for the Comprehensive State Regulated Medical Waste Management Plan, described below.

Regulated medical waste intermediate handlers (that is, facilities that either treat or destroy regulated medical waste) and destination facilities (that is, treatment and destruction facilities, incinerators and disposal facilities) are also required by N.J.A.C. 7:26-3A.42 to submit annual intermediate handler and destination facility reports to the Department covering the period from January 1 through December 31 (except for the first year, which shall cover the period from June 22 through December 31) and shall be due by February 15 of each calendar year. The intermediate handler and destination facility report shall include among other things, descriptions of the sources, the types and amounts of regulated medical waste treated and/or destroyed and the methods of treatment and destruction.

All reports required by the Department shall be used for enforcement purposes and, in addition, will be used to prepare a Comprehensive State Regulated Medical Waste Management Plan (Comprehensive State Plan) and amendments to the Comprehensive State Plan. The Comprehensive State Plan will address the immediate, interim, and long-term needs of the State with respect to the disposal of regulated medical waste in a manner that will protect the public health and the environment.

Social Impact

The overall social impact of N.J.A.C. 7:26-3A will be positive. The annual generator reports will affect all generators of regulated medical wastes. The daily and monthly log and annual reporting requirements will place a minor burden on generators of regulated medical waste. The tracking form requirements may also inconvenience generators, transporters, intermediate handlers and owners and operators of destination facilities. The requirements for handling, storing, packaging, labeling, tracking, and transporting will place additional burdens on the regulated community. However, the additional burden or inconvenience placed upon the regulated community is outweighed by the positive social impacts these rules are designed to provide. N.J.A.C. 7:26-3A requires regulated medical waste to be packaged securely, thus, reducing the chances that waste handlers and the public will be exposed to regulated medical waste.

In addition, the presence of labels, marking tags, and a tracking form will aid in easily identifying regulated medical waste. This should serve as a deterrent to careless or otherwise improper management, and will also aid in identifying persons who do not manage their waste properly. The problem posed by the illegal disposal of regulated medical waste to the public health, safety, welfare and the environment outweighs the burden placed on the regulated community.

Environmental Impact

The environmental impact of these new rules will be positive. The tracking form requirement assures that regulated medical waste is tracked from the point of origin to the point of disposal. The tracking form will facilitate inspection and enforcement activities. This is an important step in attacking the problem of the illegal disposal of regulated medical waste. Proper storing, packaging, handling, labeling, transportation and tracking of regulated medical waste will help to ensure that it is disposed of properly. This will lead to a safer, cleaner and more aesthetically pleasing environment.

Economic Impact

The overall economic impact of the rules to this State will be positive. Hospitals, research facilities, other generators, transporters and disposers of regulated medical waste will incur some increased administrative costs in complying with N.J.A.C. 7:26-3A and also will be assessed annual fees to support the Departments' medical waste program costs. However, the problems of illegal disposal of regulated medical waste which have adversely impacted the State's travel economy, as well as the lives of the citizens of this State, outweigh the burden placed on the regulated community. These steps, taken to stop the illegal disposal of regulated medical waste, will have an overall positive economic impact.

The regulated medical waste fees are expected to increase the regulated medical waste industry costs by six million dollars. The fees will provide the funding necessary for the Department of Environmental Protection and the Department of Health to provide their respective services required under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. specifically, the Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

In accordance with the requirements of the Comprehensive Act, N.J.S.A. 13:1E-48.26, 25 percent of the fees collected will be allocated to the Department of Health to cover the costs of their monitoring and other activities.

The Department of Environmental Protection (Department) computes staffing costs based upon an eight hour work day, and the Department of Health (DOH) computes staffing costs based upon a seven hour work day. This results in 1,720 hours per staff year in the Department of Environmental Protection and 1,540 hours per staff year in the Department of Health. The division of labor between the Departments does not reflect an exact allocation of 75 percent of each workload to the Department of Environmental Protection and 25 percent allocation of each workload to the Department of Health. Rather, a larger percentage of compliance monitoring has been allocated to the Department of Health, which will designate all of its workload to generator compliance monitoring, while planning and data analysis activities have been allocated to the Department of Environmental Protection along with the balance of the compliance monitoring workload. This results in positions of different cost values being allocated to each of the Departments, which, combined with the differences in position workday length, accounts for the unequal value unit cost of an average position in each of the Departments as seen below.

The cost of specific Department of Environmental Protection activities upon which these proposed fee amounts are based is calculated by determining the number of staff hours required for the activity and multiplying this figure by the average cost per staff hour. The average cost of each is made up of salary and normal operating expenses. The costs have been calculated using the annual dollar amounts listed in paragraphs 1 and 2 below. In addition, the cost of special equipment is added.

1. Staff salaries, indirect costs, and fringe benefits average $45,861 per each staff person required, which at a standard staff year of 1,720 hours equals $26.66 per staff hour.

2. Normal operating expenses such as postage, telephone, travel, supplies and data system maintenance average $16,295 per each staff person required, which at a standard staff year of 1,720 hours, equals $9.47 per staff hour.

3. Furniture and equipment, averaging $6,061 for each staff person required for a total of approximately $400,000, which at a standard staff year of 1,720, equals $3.53 per staff hour.

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Cumulatively these expenses total $68,217 per each staff person required, which at a standard staff year of 1,720 hours, equals $39.66 per staff hour.

The cost of specific DOH activities upon which these proposed fee amounts are based is calculated by determining the number of full time staff positions required for the activity and multiplying this figure by the average cost per full-time employee. The average cost of each is made up of salary and normal operating expenses. The costs have been calculated using the annual dollar amounts listed in paragraphs 1 and 2 below.

1. Staff salaries, indirect costs, and fringe benefits average $39,992 per each staff person required, which at a standard staff year of 1,540 hours, equals $25.97 per staff hour.

2. Normal operating expenses such as postage, telephone, travel, supplies and data system maintenance average $17,414 per each staff person required, which at a standard staff year of 1,540 hours, equals $11.31 per staff hours. This also includes any furniture and equipment expenses.

Cumulatively, these expenses total $57,406 per each staff person required, which at a standard staff of 1,540 hours equals $37.28 per staff hour.

Generator Fees

The Department is proposing to assess new fees for generators of regulated medical wastes based on a sliding scale consistent with the services provided. Regulated medical waste generator fees will be used to support activities required in performing all aspects of generator registration and regulatory compliance monitoring. The Department projects that 9,838 total generators made up of 130 hospitals, 142 blood banks, 545 clinical laboratories, 798 other licensed health care facilities, 6,777 private practitioners and 1,446 other organizations such as corporations will register as regulated medical waste generators. The projection of the size of the regulated community was obtained from the regulated medical waste generator 1988 Summary Reports which were submitted to the Department pursuant to the August 1988 medical waste rules. In the case of hospitals, blood banks and clinical laboratories, the actual number of registrants was used. In the case of private practitioners, only 4,841 private practitioners filed reports out of an estimated number of 42,000. After surveying a segment of the private practitioner universe, the Department estimates that approximately 40 percent more private practitioners will register under these more comprehensive rules, than registered in 1988, for a total of 6,777 private practitioners. The Department further projects that 1,446 corporations and other organizations such as ambulance companies and paramedical units will register with the Department.

For computation of the annual generator fee, generators of regulated medical waste are divided according to the amount of waste generated, into three categories as explained in the following table:

Generator Category	Pounds Generated Per Year	Number of Generators In Category	Projected No. Registration 1989	Base Fee Category	Adjustment Rates
1	<300	N_1	9,000	F_1 = $528.50	R_1
2	300-1000	N_2	100	F_2 = $687.14	R_2
3	>1000	N_3	738	F_3 = $845.78	R_3

The base fee for each generator category is based on the Departments' costs in providing services to each generator category. Smaller generators, category 1, will require less time for compliance monitoring as described below, whereas larger operators in categories 2 and 3 will require more time for compliance monitoring. During the first year, the fee for each generator category shall be equal to the base fee. "R_1" represents the adjustment rate for generators in category 1. "R_2" represents the adjustment rate for generators in category 2. "R_3" represents the adjustment rate for generators in category 3.

In subsequent years, if the cost of providing services to regulated medical waste generators in any generator category changes from the previous year's costs, which includes any roll-over debits or credits from the respective generator categories, the costs shall be adjusted by computing the factors "R_1", "R_2" and "R_3" so that the total fees collected for each generator category equals the cost of providing services to that category.

The fee for generator category 1 shall be calculated by multiplying the factor "R_1" times the base fee for generator category 1 which is "F_1", with "F_1" being equal to $528.50. The product of the above multiplication is then multiplied by "N_1" with "N_1" being the projected number of generators who will be registering in generator category 1. The equation for the foregoing is:

N_1 ($R_1 \times F_1$) = cost of providing services to generator category 1

The fee for generator category 2 shall be calculated by multiplying the factor "R_2" times the base fee for generator category 2 which is "F_2", with "F_2" being equal to $687.14. The product of the above multiplication is then multiplied by "N_2" with "N_2" being the projected number of generators who will be registering in generator category 2. The equation for the foregoing is:

N_2 ($R_2 \times F_2$) = cost of providing services to generator category 2

The fee for generator category 3 shall be calculated by multiplying the factor "R_3" times the base fee for generator category 3 which is "F_3", with "F_3" being equal to $845.78. The product of the above multiplication is then multiplied by "N_3" with "N_3" being the projected number of generators who will be registering in generator category 3. The equation for the foregoing is:

N_3 ($R_3 \times F_3$) = cost of providing services to generator category 3

The registration year for generators shall extend from July 22 through July 21 of each calendar year and shall be payable by August 20 of the calendar year. The fees assessed on regulated medical waste generators will be used by the Department of Environmental Protection and the Department of Health to register the generators of regulated medical waste and to perform generator site monitoring and compliance activities which are discussed below. The fees are derived from the specific costs associated with generator related activities contained in the approved work plan of the Department's Division of Solid Waste Management and the Department of Health's Division of Community Health Services and will be used exclusively to fund the activities of the regulated medical waste program.

Registration of regulated medical waste generators involves processing of applications, creation of permanent files, preparation of registration documents, tracking and logging of documents, mailing, annual renewals, analysis of annual reports, telephone inquiry service and maintenance of walk-in registration facilities. Staff time required is approximately 1.3 hours for a registration. The entire process is expected to require 12,789 hours of staff time for the proposed workload.

In addition, an estimated 8,110 hours are needed on an annual basis to verify the accuracy of the annual generator reports and to analyze the data.

Compliance monitoring of regulated medical waste generators involves such activities as inspecting storage areas, verifying packaging, labeling, marking, segregation and records retention, examining records, and logging forms, and confirming waste classification. These activities are performed in a coordinated fashion as an integral operation in the Department of Environmental Protection and the Department of Health, and require approximately four, eight or 12 hours for completion of an average generator inspection for the three respective generator categories. The larger generator categories, numbered 2 and 3, will require more complex monitoring activities and thus are planned to take eight and 12 hours respectively, requiring correspondingly larger fees. It is anticipated in accordance with the approved work plan, that regulated medical waste generator inspections will be conducted annually at each generator's facility, requiring approximately 45,656 hours per year. Compliance re-inspections, investigations, and case management tracking of generators will require an additional 19,049 hours per year, totalling 64,705 staff hours per year required for regulated medical waste generator compliance monitoring.

Maintaining program services for educating and advising generators about regulated medical waste regulations will require approximately 6,020 hours per year.

Analysis and determination of new regulated medical waste flows for regulated medical waste will require 3,440 hours per year.

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Approximately 3,440 hours per year are required for analyzing the regulated medical waste streams to determine what types of wastes can be reduced and how to implement the reductions.

Legal support services will require 12,040 staff hours per year. Internal legal support includes reviewing, drafting and finalizing rule proposals and adoptions to effectively implement the regulated medical waste program; reviewing legislation that affects the regulated medical waste program; advising the Division of Solid Waste Management on any issues involving the regulated medical waste program; reviewing all documents and correspondence which impact the regulated medical waste program; and, initiating enforcement actions against persons who violate the Departments' regulated medical waste rules. Legal support services will also be provided by the Division of Law. Such services include rendering legal advice, representing the Department in all administrative actions, court actions and enforcement actions and researching legal issues.

Program administrative support services will require 8,600 hours per year for such functions as contract administration, personnel services, fiscal analysis, purchasing, vehicle support and salary administration.

Specific programs support services for all aspects of the program such as clerical services, data management and supervisory positions will require 20,640 hours.

In summary, the workplan for the regulated medical waste generator budget includes the following:

	Staff Hours	Staff Year	Expense $
Registration	12,789	7.44	507,521
Report Analysis	8,110	4.72	321,976
Compliance Monitoring*	64,705	40.34	2,470,888
Advisement/Education	6,020	3.5	238,753
Waste Flow Determination	3,440	2.0	136,430
Waste Reduction Analysis	3,440	2.0	136,430
Legal Support Services	12,040	7.0	477,506
Administrative Support	8,600	5.0	341,076
Clerical, Data Management and Supervisory Services	20,640	12.0	818,580
Total	139,784	84	$5,449,160

*Includes 26 Department of Health positions at 1,540 staff hours for a total of 40,040 staff hours, plus 14.34 Department of Environmental Protection positions at 1,720 hours for a total of 24,665 staff hours.

Transporter Fee

The Department is proposing to assess new fees for transporters of regulated medical waste based on the cost of providing services to the transporters. These rules assess a $3,957 regulated medical transporter education, advisement and facility auditing fee at N.J.A.C. 7:26-3A.8. It is projected that 100 regulated medical waste transporters will be registering with the Department in the first registration year. The registration year for transporters shall extend from May 1 through April 30 of each calendar year and fees shall be payable by May 29 of each calendar year, except that during the 1989 registration year, fees shall be payable before July 23, 1989.

Auditing regulated medical waste transporter facilities involves, among other things, such activities as verifying that containers of regulated medical waste are marked and labeled, that vehicles are properly identified, that records required to be kept pursuant to this subchapter are retained and that vehicles are properly registered and marked. It is anticipated that it will take approximately 12 hours for completion of an average regulated medical waste transporter facility audit and that 100 such audits will be performed quarterly requiring approximately 4,800 hours of staff time annually.

Registration and report analysis for regulated medical waste transporters will require 430 hours per year. Education, including regulatory advisement, will require 860 hours per year. Legal support services are projected to require 1,720 hours per year while general administrative support will require 860 hours. Clerical services, data management and supervisory functions will require 1,290 staff hours per year.

In subsequent years, if the cost of providing services to regulated medical waste transporters changes from the previous year's costs, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_1", so that the total fees collected from transporters equals the budget for regulated medical waste transporters. The fee for regulated medical waste transporters shall be computed as follows:

The fee is calculated by multipling the factor "r_1", which is the annual assessment rate, times the base fee which is "F" with "F" being equal to $3,957. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of transporters that will be registering with the Department. The equation for the foregoing is:

$N (r_1 \times F)$ = budget for regulated medical waste transporters

In summary, the workplan for regulated medical waste transporters includes the following:

	Staff Hours	Staff Year	Expense $
Compliance Auditing	4,800	2.80	191,002
Registration & Report Analysis	430	.25	17,054
Education/Advisement	860	.5	34,108
Legal Support Service	1,720	1.0	68,215
Administrative Support	860	.5	34,108
Clerical, Data Management and Supervisory Services	1,290	.75	51,161
Total	9,960	5.8	395,648

Intermediate Handler and Destination Facility Fees

These rules provide for a $2,046 registration, education and report analysis fee for all regulated medical waste intermediate handlers and destination facilities. It is projected that 100 intermediate handlers and destination facilities will be registering with the Department in the first registration year. The registration year shall extend from January 1 through December 30 of each calendar year and shall be payable by January 29 of each calendar year, except that during the 1989 registration year fees shall be payable before August 15, 1989.

Registration and analysis of regulated medical waste intermediate handler and destination facility annual reports will require 430 hours per year. Education, including regulatory advisory services will require 860 hours per year. Legal support services for intermediate handlers and destination facilities will require 1,720 hours per year. Divisional administrative support will require 860 hours per year, while general clerical, data management and supervision will require 1,290 hours per year.

In subsequent years, if the cost of providing services to intermediate handlers and destination facilities changes from the previous year's cost, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_2" so that the total fees collected from intermediate handlers and destination facilities equals the budget for intermediate handlers and facilities. The fee for intermediate handlers and destination facilities shall be computed as follows:

The fee is calculated by multiplying the factor "r_2", which is the annual assessment rate, times the base fee which is "F" with "F" being equal to $2,046. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of intermediate handlers and destination facilities registering with the Department. The equation for the foregoing is:

$N(r_2 \times F)$ = budget for intermediate handlers and destination facilities

In summary, the workplan for intermediate handlers and destination facilities includes the following:

	Staff Hours	Staff Year	Expense $
Registration & Report Analysis	430	.25	17,054
Education/Advisement	860	.5	34,108
Legal Support Services	1,720	1.0	68,215
Administrative Support	860	.5	34,108
Clerical, Data Management and Supervisory Services	1,290	.75	51,161
Total	5,160	3.0	204,646

The above described generator, transporter, intermediate handler and destination facility fees will generate an estimated $6,049,700 and fund 66 staff positions in DEP and 26 positions in DOH in accordance with the following cost analysis:

	DEP	DOH	TOTAL
Salaries/indirect/fringe	$3,026,826	$1,039,792	$4,066,618
Normal operating expenses	$1,110,449	$ 472,633	$1,583,082
Furniture and Equipment	$ 400,000	—	$ 400,000
Total	$4,537,275	$1,512,425	$6,049,700

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The Department shall prepare an annual fee schedule report of regulated medical waste fees including the annual assessment rate, "R_1", "R_2", "R_3" for generators, "r_1" for transporters, and "r_2" for intermediate handlers and destination facilities. It shall include the number of generators projected in each category, the number of transporters and the number of intermediate handlers and destination facilities that will register with the Department. It shall also include a financial statement showing the Departments' budgets for the forthcoming year by account title, and a financial statement of the previous year's actual expenditures by account title showing monies and expenditures for generators, transporters and intermediate handlers and destination facilities. The Department will hold a public hearing concerning its regulatory fee program prior to the assessment of fees whenever the projected fees exceed a 10 percent increase. The details of the annual fee schedule report are in N.J.A.C. 7:26-3A.8(e) through (h).

Regulatory Flexibility Analysis

The tracking, packaging, storage, segregation, labeling, marking, logging and reporting requirements will apply to all generators of regulated medical waste. It is estimated that of the total number of regulated medical waste generators effected by these proposed rules 8,500 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with the rules, the small businesses will have to track all shipments of regulated medical waste shipped off-site, comply with all packaging, marking, labeling and segregation requirements, keep a daily or monthly log regarding regulated medical waste generated at the facility, submit an annual generator report of regulated medical waste generation, treatment and disposal practices to the Department, register with the Department, and pay an annual regulated medical waste generator fee.

Since the costs to business associated with the tracking system, packaging, storing, labeling, and marking will be directly related to the amount of waste generated, costs will be minimized for most small businesses which generate small volumes of waste. It is likely that small businesses may incur increased administrative costs from complying with this rule.

It is expected that the aggregate costs to small businesses will be minimal because the cost of compliance for a generator producing less than 300 pounds of regulated medical waste per year is expected to be $528.50 for registration, plus the labor and material costs of logging and packaging the regulated medical waste at the generator's facilities.

The cost to transporters will be $3,957 for regulated medical waste transporters auditing, education and advisement. Apart from this present fee rule, transporters of regulated medical waste must also register and pay fees as solid waste transporters. Solid waste transporter fees, at N.J.A.C. 7:26-4.4, require a fee of $120.00 for each solid waste trailer, solid waste cab, solid waste single-unit vehicle and $25.00 for each solid waste container. In addition, transporters must comply with N.J.A.C. 7:26-16 and pay a fee of $600.00 per key employee of the company for disclosure licensing. An average transporter of regulated medical waste with three vans and two key employees, would pay first year fees to the Department of $5,517.

The cost of compliance for facilities is $2,046 for education, registration and report analysis. A typical incineration facility would pay fees of $2,046 for education, registration and report analysis, plus fees for solid waste facility registration and inspection per N.J.A.C. 7:26-4, disclosure licensing per N.J.A.C. 7:26-16 and additional fees for air pollution permitting per N.J.A.C. 7:27.

In developing these rules, the Department has balanced the need to protect the environment against the economic impact of the rules and has determined that to minimize the impact of the rule would endanger the environment, public health, safety and welfare.

Full text of the emergency and concurrent proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 7:27-3A.

Full text of the emergency adoption and concurrent proposal follows:

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

7:26-3A.1 Purpose, scope and applicability

(a) The purpose of this subchapter is to establish a program for regulated medical waste pursuant to the New Jersey Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.

(b) The rules in this subchapter apply to regulated medical waste, as defined at N.J.A.C. 7:26-3A.6, that is generated, stored, transported, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(c) Generators, transporters, and owners or operators of intermediate handling facilities (for example, treatment and destruction facilities) and destination facilities (for example, treatment and destruction facilities, incineration facilities, and disposal facilities) who generate, store, transport, transfer, treat, destroy, dispose of, or otherwise manage regulated medical waste in New Jersey shall comply with this subchapter.

(d) In addition to the requirements of this subchapter, all applicable requirements of the Department of Health shall be met.

(e) In addition to the requirements of this subchapter, generators, transporters, and owners and operators of intermediate handling facilities and destination facilities shall comply with all applicable Federal, State, county and local statutes, rules and ordinances.

(f) The Department, in conjunction with the New Jersey Board of Public Utilities, may direct the disposal of regulated medical waste which is defined in N.J.A.C. 7:26-3A.6.

7:26-3A.2 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory duties.

7:26-3A.3 Severability

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:26-3A.4 Record retention

(a) The length of time that parties shall keep records required under this subchapter is automatically extended in the case where EPA, the Departments or another State agency initiates an enforcement action, for which those records are relevant, until the conclusion of the enforcement action.

(b) All records, reports, logs and tracking forms required to be made and/or kept in accordance with this subchapter shall be made available for inspection by the Department.

7:26-3A.5 Definitions

(a) For the purposes of this subchapter, all of the terms defined in 40 C.F.R. Section 260.10 and N.J.A.C. 7:26-1.4 are hereby incorporated by reference. In case of conflict between 40 C.F.R. Section 260.10 and N.J.A.C. 7:26-1.4, the definitions in N.J.A.C. 7:26-1.4 will control, except for the following terms, which when used in this subchapter shall have the following meanings:

"Administrator" means the Administrator of the United States Environmental Protection Agency.

"EPA" means the United States Environmental Protection Agency.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, destroying, storing, or disposing of regulated medical waste. A facility may consist of several treatment, destruction, storage, or disposal operational units.

"Federal demonstration program" means the United States Environmental Protection Agency rules at 40 C.F.R. Part 259.

"Generator" means any person, by site, whose act or process produces regulated medical waste as defined in N.J.A.C. 7:26-3A.6, or whose act first causes a regulated medical waste to become subject to regulation. In the case where more than one person (for example, doctors with separate medical practices) are located in the same building, each individual business entity is a separate generator for the purposes of this subchapter. However, households utilizing home self-care are not generators.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or any department, agency or instrumentality of the United States.

"Storage" means the temporary holding of regulated medical wastes before treatment, disposal, or transport to another location.

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"Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of regulated medical waste are held (come to rest), during the course of transportation for a period not to exceed 24 hours and are not transferred to other vehicles during the course of transportation. A transfer facility is a "transporter". A location at which regulated medical waste is transferred directly between two vehicles is not a transfer facility but is considered a transfer station and must be permitted as such pursuant to N.J.A.C. 7:26-2.4.

"Transportation" means the shipment or conveyance of regulated medical waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of regulated medical waste by air, rail, highway, or water.

"Treatment", "treated", or "treats" when used in any section of this subchapter except for N.J.A.C. 7:26-3A.6(a), shall mean to change the biological character or composition of any regulated medical waste to reduce or eliminate its potential for causing diseases through such methods, techniques or processes as incineration, steam sterilization, chemical disinfection, irradiation, thermal inactivation, or any other effective method as approved by the State Department of Health. When used in the context of N.J.A.C. 7:26-3A.6(a), treatment means either the provision of medical services of the preparation of human or animal remains for interment or cremation.

"Treatment facility" means a facility which treats regulated medical waste.

(b) In addition, when used in this subchapter, the following terms shall have the meanings given below:

"Biologicals" means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

"Blood products" means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

"Body fluids" means liquid emanating or derived from humans and limited to blood; cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

"Central collection point" means a location where a generator consolidates regulated medical waste brought together from original generation points prior to its transport off-site or its treatment on-site (for example, incineration).

"Decontamination" means the process of reducing or eliminating the presence of harmful substances, such as infectious agents, so as to reduce the likelihood of disease transmission from those substances.

"Departments" means the New Jersey Department of Environmental Protection and the New Jersey Department of Health.

"Destination facility" means the disposal facility, the incineration facility, or the facility that both treats and destroys regulated medical waste, to which a consignment of such is intended to be shipped, specified in Box 8 of the Medical Waste Tracking Form.

"Destroyed regulated medical waste" means regulated medical waste that has been ruined, torn apart, or mutilated through processes such as thermal treatment, melting, shredding, grinding, tearing or breaking, so that it is no longer generally recognizable as medical waste. It does not mean compaction.

"Destruction facility" means a facility that destroys regulated medical waste by ruining or mutilating it, or tearing it apart.

"Home self-care" means the provision of medical care in the home setting (for example, private residence) through either self-administration practices or by a family member or other person who does not receive monetary compensation for their services. Excluded from this definition are direct patient care services provided in the home by home health agencies as described in N.J.A.C. 8:42-1, durable medical equipment companies, home infusion companies, hospice care companies, and any other services or companies as determined by the State Department of Health that generate regulated medical waste in the home setting.

"Infectious agent" means any organism (such as a virus or a bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

"Intermediate handler" is a facility that either treats regulated medical waste or destroys regulated medical waste but does not do both. The term does not include transporters.

"Laboratory" means any research, analytical, or clinical facility that performs health care related analysis or service. This includes medical, pathological, pharmaceutical, and other research, commercial, or industrial laboratories.

"Medical waste" means any solid waste which is generated in the diagnosis, treatment (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. The term does not include any hazardous waste identified or listed under 40 C.F.R. Part 261 or any household waste generated from home self-care as defined in this section.

"New Jersey medical waste tracking form" means the New Jersey medical waste tracking form available from the Department that must accompany all applicable shipments of regulated medical wastes.

"Original generation point" means the location where regulated medical waste is generated. Waste may be taken from original generation points to a central collection point prior to off-site transport or on-site treatment.

"Oversized regulated medical waste" means medical waste that is too large to be placed in a plastic bag or standard container.

"Regulated medical waste" means those medical wastes that have been listed in N.J.A.C. 7:26-3A.6 and that must be managed in accordance with the requirements of this subchapter.

"Tracking form" means a medical waste tracking form, including the New Jersey medical waste tracking form, the federal tracking form, and the tracking form from other states that are participating in the Federal demonstration program that must accompany all applicable shipments of regulated medical waste.

"Treated regulated medical waste" means regulated medical waste that has been treated to substantially reduce or eliminate its potential for causing disease, but has not yet been destroyed.

"Universal biohazard symbol" means the symbol design that conforms to the design shown in 29 C.F.R. §1910.145(f)(8)(ii).

"Untreated regulated medical waste" means regulated medical waste that has not been treated to substantially reduce or eliminate its potential for causing disease.

"Waste category" means either untreated regulated medical waste or treated regulated medical waste.

"Waste Class" means the description of Waste Class found at N.J.A.C. 7:26-3A.6(a).

7:26-3A.6 Definition of regulated medical waste

(a) A regulated medical waste is any solid waste, generated in the diagnosis, treatment, (for example, provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, that is not excluded or exempted under (b) below, and that is listed in the following table:

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TABLE

REGULATED MEDICAL WASTE

WASTE CLASS	DESCRIPTION
1. Cultures and Stocks	Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
2. Pathological Wastes	Human pathological wastes, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.
3. Human Blood and Blood Products	Liquid waste human blood; products of blood; items saturated and/or dripping with human blood; or items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.
4. Sharps	Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
5. Animal Waste	Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals.
6. Isolation Wastes	Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.
7. Unused Sharps	The following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

(b) The following are excluded from the definition of regulated medical waste:

1. Hazardous waste identified or listed under the regulations in 40 C.F.R. Part 261;

2. Household waste, generated in households utilizing home self-care as defined in N.J.A.C. 7:26-3A.5(b);

3. Ash from incineration of regulated medical waste once the incineration process has been completed;

4. Residues from treatment and destruction processes once the regulated medical waste has been both treated and destroyed; and

5. Human corpses, remains, and anatomical parts that are intended for interment or cremation.

(c) The following are exempted from the definition of regulated medical waste:

1. Etiologic agents being transported interstate pursuant to the requirements of the U.S. Department of Transportation, U.S. Department of Health and Human Services, and all other applicable shipping requirements are exempt from the requirements of this subchapter; and

2. Samples of regulated medical waste transported off-site by the EPA, the Department, the Department of Health or the New Jersey Department of Law and Public Safety for enforcement purposes are exempt from the requirements of this subchapter during the enforcement proceeding.

7:26-3A.7 Mixtures

(a) Except as provided in (b) below, mixtures of solid waste and regulated medical waste listed in N.J.A.C. 7:26-3A.6(a) are a regulated medical waste.

(b) Mixtures of hazardous waste identified or listed in 40 C.F.R. Part 261 and regulated medical waste listed in N.J.A.C. 7:26-3A.6(a) are subject to the requirements in this subchapter, unles the mixture is subject to the hazardous waste manifest requirements in 40 C.F.R. Part 262 or 40 C.F.R. Part 266.

7:26-3A.8 Registration and fees for regulated medical waste generators, transporters, intermediate handlers and owners and operators of destination facilities

(a) Any person who generates regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (d) below, and shall pay fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated, into three categories as explained in the following table:

Generator Category	Pounds Generated Per Year	Number of Generators	Base Fee for each category	Adjustment Rates
1	< 300	N_1	F_1=$528.50	R_1
2	300 to 1000	N_2	F_2=$687.14	R_2
1	> 1000	N_3	F_3=$845.78	R_3

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i. During the first year, the fee for each category shall equal the base fee;

ii. "R_1", "R_2" and "R_3" represent the adjustment rates, respectively for generator categories 1, 2 and 3;

iii. In subsequent years, if the cost of providing services to regulated medical waste generators in any generator category changes from the previous year's costs, which includes any roll-over debits or credits from the respective generator categories, the costs shall be adjusted by computing the factors "R_1", "R_2" and "R_3" so that the total fees collected for each generator category equals the cost of providing services to that category. The fee for each category shall be computed as follows:

(1) The fee for generator category 1 shall be calculated by multiplying the factor "R_1" times the base fee for generator category 1 which is "F_1" with "F_1" being equal to $528.50. The product of the above multiplication is then multiplied by "N_1" with "N_1" being the projected number of generators who will be registering in generator category 1. The equation for the foregoing is:

$N_1(R_1 \times F_1)$ = cost of providing services to generator category 1.

(2) The fee for generator category 2 shall be calculated by multiplying the factor "R_2" times the base fee for generator category 2 which is "F_2" with "F_2" being equal to $687.14. The product of the above multiplication is then multiplied by "N_2" with "N_2" being the projected number of generators who will be registering in generator category 2. The equation for the foregoing is:

$N_2(R_2 \times F_2)$ = cost of providing services to generator category 2.

(3) The fee for generator category 3 shall be calculated by multiplying the factor "R_3" times the base fee for generator category 3 which is "F_3" with "F_3" being equal to $845.78. The product of the above multiplication is then multiplied by "N_3" with "N_3" being the projected number of generators who will be registering in generator category 3. The equation for the foregoing is:

$N_3(R_3 \times F_3)$ = cost of providing services to generator category 3.

iv. For regulated medical waste generator fee purposes only, quantities of body fluids and blood and blood products which have been removed from a human corpse prior to interment or cremation and which are disposed of into a sanitary sewer system, which shall be in compliance with all applicable Federal, State, and county and local statutes, rules and ordinances, shall not be included in a generator's annual calculation of regulated medical waste generated, but at a minimum, if the generator generates no other regulated medical waste, the generator shall be included in generator category 1.

(b) Any person who engages or continues to engage in the transportation of regulated medical waste in this State, except generators who transport their own waste and who meet the requirements of N.J.A.C. 7:26-3A.17(a), shall register with the Department as a regulated medical waste transporter in accordance with (d) below, and pay fees in accordance with the following:

1. All regulated medical waste transporters shall pay a fee of $3,957 for the 1989 registration year.

2. In subsequent years, if the cost of providing services to regulated medical waste transporters changes from the previous year's costs, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_1" so that the total fees collected from transporters equals the budget for regulated medical waste transporters. The fee for regulated medical waste transporters shall be computed as follows:

i. The fee is calculated by multiplying the factor "r_1", which is the annual assessment rate for transporters, times the base fee which is "F" with "F" being equal to $3,957. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of transporters who will be registering with the Department. The equation for the foregoing is:

$N\ (r_1 \times F)$ = budget for regulated medical waste transporters.

(c) All intermediate handlers and owners and operators of destination facilities shall register with the Department as a regulated medical waste intermediate handler or destination facility in accordance with (d) below, and pay fees in accordance with the following:

1. All regulated medical waste intermediate handlers and destination facilities shall pay a registration, education and report analysis fee of $2,046 for the 1989 registration year.

2. In subsequent years, if the cost of providing services to intermediate handlers and destination facilities changes from the previous year's costs, the budget, which is based on the cost of providing services and includes any roll-over debits or credits, will be adjusted by computing the factor "r_2" so that the total fees collected from intermediate handlers and destination facilities equals the budget for intermediate handlers and destination facilities. The fee for intermediate handlers and destination facilities shall be computed as follows:

i. The fee is calculated by multiplying the factor "r_2", which is the annual assessment rate for intermediate handlers and destination facilities, times the base fee which is "F" with "F" being equal to $2,046. The product of the above multiplication is then multiplied by "N" with "N" being the projected number of intermediate handlers and destination facilities who will be registering with the Department. The equation for the foregoing is:

$N\ (r_2 \times F)$ = budget for intermediate handlers and destination facilities.

3. Persons who only dispose of regulated medical waste that they generate by placing body fluids or blood and blood products into the sanitary sewer system, in compliance with all applicable Federal, State, county and local statutes, rules and ordinances, shall not be considered an intermediate handler or destination facility.

(d) The generator, transporter, intermediate handler and destination facility regulated medical waste registration statement shall be executed on forms prescribed by and available from the Department at the address listed below and shall state such information as necessary and proper to the enforcement of this subchapter, as the Department may require. No pro rata adjustment of fees shall be made by the Department. Fees shall be payable to the Department 30 days after the beginning of each respective registration year in accordance with the following schedule:

1. The registration year for generators shall extend from July 22 through July 21 of each calendar year and fees shall be payable by August 20 of each calendar year;

2. The registration year for transporters shall extend from May 1 through April 30 of each calendar year and shall be payable by May 30 of each calendar year, except that during the 1989 registration year, fees shall be payable before July 23, 1989;

3. The registration year for intermediate handlers and destination facilities shall extend from January 1 through December 30 of each calendar year and shall be payable by January 29 of each calendar year, except that during the 1989 registration year fees shall be payable before August 15, 1989; and

4. The Department's address for regulated medical waste is:

Medical Waste Advisement Unit
Division of Solid Waste Management
New Jersey Department of Environmental Protection
401 East State Street
CN 414
Trenton, New Jersey 08625

(e) The Department shall prepare an annual fee schedule report of regulated medical waste fees which shall include the following:

1. The annual assessment rate of "R_1", "R_2" and "R_3" for generators, "r_1" for transporters, and "r_2" for intermediate handlers and destination facilities for the forthcoming fiscal year;

2. The projected number of generators for each category, number of transporters, number of intermediate handlers and destination facilities that will register with the Department;

3. A detailed financial statement showing the estimated budget for generators, the estimated budget for transporters and the estimated budget for intermediate handlers and destination facilities for the forthcoming fiscal year. The statement shall include a separate breakdown of the regulated medical waste program for each of the budgets listed above by account title (for example, printing and office supplies, vehicular, and maintenance of vehicles); and

4. A detailed financial statement of the previous fiscal year's actual expenditures for each budget including a separate breakdown of the total number of generators registered for each respective generator

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category, total number of transporters registered and total number of intermediate handlers and destination facilities registered, actual revenue and any credit or deficit to be carried forward to the next fiscal year.

(f) The Department shall hold a public hearing concerning the fees assessed for generators, transporters, intermediate handlers and destination facilities only when the projected fees exceed a 10 percent increase as compared to the previous fiscal year's fees. The Department shall hold the hearing prior to the actual assessment of fees. The Department shall provide public notice of the hearing in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(g) In those years in which a public hearing is not required in accordance with (f), above, publication of the forthcoming year's annual adjustment assessment rate of "R_1" "R_2", "R_3" "r_1" and "r_2" and the projected number of generators for each category, transporters and intermediate handlers and destination facilities together with a synopsis of the annual fee schedule report shall appear in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(h) The annual fee schedule report may be obtained, at any time after public notice is published in accordnce with (f) or (g) above, by submitting a request and self addressed 10 inch by 13 inch (minimum size) envelope to the address listed at N.J.A.C. 7:26-3A.8(d).

7:26-3A.9 Education

All transporters, except generators who transport their own regulated medical waste and who meet the requirements of N.J.A.C. 7:26-3A.17(a), and intermediate handlers' and destination facilities' supervisory personnel shall attend an education and training session which will be provided by the Department, and shall also be required to disseminate the information obtained at the training session to all employees.

7:26-3A.10 Segregation requirements

(a) Generators shall segregate regulated medical waste intended for transport off-site to the extent practicable prior to placement in containers according to (b) below.

(b) Generators shall segregate regulated medical waste into:

1. Sharps (Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6(a)) including sharps containing residual fluid;

2. Fluids (quantities greater than 20 cubic centimeters); and

3. Other regulated medical waste.

(c) If other waste is placed in the same container(s) as regulated medical waste, then the generator shall package, label, and mark the container(s) and its entire contents according to the requirements in N.J.A.C. 7:26-3A.11, 3A.14 and 3A.15.

7:26-3A.11 Packaging requirements

(a) Generators shall ensure that all of their regulated medical waste is packaged in accordance with the requirements of (b) through (d) below, before transporting or offering such regulated medical waste for transport off-site. Generators may use one or more containers to meet these requirements for regulated medical waste packaging.

(b) Generators shall ensure that all regulated medical waste is placed in a container or containers that are:

1. Rigid;

2. Leak-resistant;

3. Impervious to moisture;

4. Have a strength sufficient to prevent tearing or bursting under normal conditions of use and handling; and

5. Sealed to prevent leakage during transport.

(c) In addition to the requirements above, generators shall:

1. Package sharps and sharps with residual fluids in packaging that is puncture-resistant; and

2. Package fluids (quantities greater than 20 cubic centimeters) in packaging that is break-resistant and tightly lidded or stoppered.

(d) Generators need not place oversized regulated medical waste in containers. Generators shall note any special handling instructions for these items in Box 14 of the medical waste tracking form.

7:26-3A.12 Storage of regulated medical waste prior to transport, treatment, destruction, or disposal

(a) Any person who stores regulated medical waste prior to treatment or disposal on-site (for example, interment, treatment and destruction, or incineration), or transport off-site, shall comply with the following storage requirements:

1. Store the regulated medical waste in a manner and location that maintains the integrity of the packaging and provides protection from water, rain and wind;

2. Maintain the regulated medical waste in a nonputrescent state, using refrigeration when necessary;

3. Lock the outdoor storage areas containing regulated medical waste (for example, dumpsters, sheds, tractor trailers, or other storage areas) to prevent unauthorized access;

4. Limit access to on-site storage areas to authorized employees; and

5. Store the regulated medical waste in a manner that affords protection from animals and does not provide a breeding place or a food source for insects and rodents.

7:26-3A.13 Decontamination standards for reusable containers

(a) Generators, transporters, intermediate handlers and destination facility owners and operators shall comply with the following requirements with respect to reusing containers:

1. All non-rigid packaging and inner liners shall be managed as regulated medical waste under this subchapter and shall not be reused;

2. Any container used for the storage and/or transport of regulated medical waste and designated for reuse once emptied, shall be decontaminated if the container shows signs of visible contamination; and

3. If any container used for the storage and/or transport of regulated medical waste is for any reason not capable of being rendered free of any visible signs of contamination in accordance with (a)2 above, the container must be managed (labeled, marked and treated and/or disposed of) as regulated medical waste under this subchapter.

7:26-3A.14 Labeling requirements

(a) Generators shall label each package of regulated medical waste according to the following labeling requirements before transporting or offering for transport off-site:

1. Each package of untreated regulated medical waste shall have a water-resistant label affixed to or printed on the outside of the container. The label shall include the words "Medical Waste," or "Infectious Waste," or display the universal biohazard symbol. Red plastic bag(s) used as inner packaging need not display a label; and

2. Packages containing treated regulated medical wastes are not required to be labeled under this section but are required to be marked in accordance with the requirements of N.J.A.C. 7:26-3A.15.

7:26-3A.15 Marking (identification) requirements

(a) Generators (including intermediate handlers) shall mark each package of regulated medical waste according to the following marking requirements before the waste is transported or offered for transport off-site:

1. The outermost surface of each package prepared for shipment shall be marked with a water-resistant identification tag of sufficient dimension to contain the following information:

i. The generator's or intermediate handler's name;

ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address;

iii. The transporter's name;

iv. The transporter's NJDEP solid waste registration number;

v. The date of shipment; and

vi. Identification of contents as medical waste.

2. In addition to the requirements of (a)1 above, if the generator has used inner containers, including sharps and fluid containers, each inner container shall be marked with indelible ink or imprinted with

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water-resistant tags. The marking or the tag shall contain the following information:

i. The generator's or intermediate handler's name; and

ii. The generator's or intermediate handler's address. If the generator or intermediate handler is not located in New Jersey, then use their state permit or identification number, and if their state does not issue permit or identification numbers, then use the generator's or intermediate handler's address.

7:26-3A.16 General requirements for generators of regulated medical waste

(a) A person who generates a medical waste, as defined in N.J.A.C. 7:26-3A.5 and who is located in New Jersey, or who stores, transfers, transports, treats, destroys or disposes of, or otherwise manages medical waste in New Jersey shall determine if that waste is a regulated medical waste.

(b) A generator who either treats and destroys or disposes of regulated medical waste on-site (for example, incineration, burial or sewer disposal covered by Section 307(b)-(d) of the Clean Water Act, but any person who disposes of regulated medical waste via sewer disposal shall comply with all applicable Federal, State, county and local statutes, rules and ordinances) is not subject to tracking requirements for that waste but is subject to all other applicable requirements, including the generator logging, reporting, registration, and fee requirements of this subchapter.

(c) Vessels at port in New Jersey are subject to the requirements of this subchapter for those regulated medical wastes that are transported ashore in New Jersey. The owner or operator of the vessel and the person(s) removing or accepting waste from the vessel are considered co-generators of the waste.

(d) Generators of regulated medical waste shall use transporters who have NJDEP registration numbers, who have notified the EPA and who have a certificate of public convenience and necessity issued by the New Jersey Board of Public Utilities, unless the transporter is a generator meeting the requirements of N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the requirements of N.J.A.C. 7:26-3A.17(b) are met.

7:26-3A.17 Exemptions

(a) Generators of less than three cubic feet of regulated medical waste per month who transport only their own regulated medical waste to another generator for storage or disposal are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) and the requirements of N.J.A.C. 7:26-3A.27(b) provided they meet the following conditions:

1. The regulated medical waste is transported by the generator (or the generator's authorized employee) in a vehicle with a gross weight of less than 8,000 pounds which is owned by the generator or the generator's authorized employee;

2. The original generation point and the storage point or disposal facility are located in New Jersey; and

3. The generator complies with the requirements of N.J.A.C. 7:26-3A.19(e).

(b) Generators who transport by the U.S. Postal Service regulated medical waste, Classes 4 and 7 as defined at N.J.A.C. 7:26-3A.6, are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) if the generator generates less than three cubic feet of regulated medical waste per month and ships less than three cubic feet of regulated medical waste per shipment and provided they meet the following conditions:

1. The package shall be sent registered mail, return receipt requested (indicating to whom the package is sent, signature of sender, date, and address where delivered);

2. The generator shall retain the original receipt and the returned registered mail receipt and attach them to the generator copy of the tracking form; and

3. The generator shall comply with the requirements of N.J.A.C. 7:26-3A.19(f).

7:26-3A.18 Solid waste facility acceptance of regulated medical waste

(a) Regulated medical waste which has been treated may be transported to or otherwise unloaded at any transfer station which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

(b) Regulated medical waste which has been treated may be transported to and disposed of at any sanitary landfill facility which is permitted or approved by the Department in accordance with N.J.A.C. 7:26, provided that the permittee applies to the Department for an amended permit, pursuant to N.J.A.C. 7:26-2.6, to authorize the facility to accept regulated medical waste.

7:26-3A.19 Generator use of tracking form

(a) A generator who transports or offers for transport regulated medical waste for off-site treatment, destruction, or disposal, including generators who meet the requirements of N.J.A.C. 7:26-3A.17, shall use only New Jersey regulated medical waste tracking forms, available upon request from the Department at the address listed at N.J.A.C. 7:26-3A.8(d), unless the regulated medical waste is transported for disposal to another state which is participating in the Federal demonstration program and which prints its own tracking form and requires its use, in which case the transporter shall supply the generator with the receiving state's form.

(b) The tracking form shall be prepared in accordance with (c) through (g) below and the instructions provided by the Department.

(c) The generator shall prepare at least the number of tracking form copies that will provide the generator, each transporter(s), and each intermediate handler with one copy, and the owner or operator of the destination facility with two copies.

(d) The generator shall also:

1. Sign the certification statement on the tracking form by hand;

2. Obtain the handwritten signature of the initial transporter and date of acceptance on the tracking form; and

3. Retain one copy, in accordance with N.J.A.C. 7:26-3A.21.

(e) Generators who transport their own regulated medical waste and who meet the requirements of N.J.A.C. 7:26-3A.17(a) shall:

1. Sign the certification statement on the tracking form by hand;

2. Sign the transporter section of the tracking form, noting the date the regulated medical waste was transported;

3. Retain the generator copy in accordance with N.J.A.C. 7:26-3A.21;

4. Ensure that the tracking form accompanies the regulated medical waste while in transit; and

5. Comply with the tracking form requirements for transporters at N.J.A.C. 7:26-3A.31(d).

(f) Generators who transport their regulated medical waste through the U.S. Postal Service and who meet the requirements of N.J.A.C. 7:26-3A.17(b) shall:

1. Sign the certification statement on the tracking form by hand;

2. Sign the transporter section of the tracking form by noting that the transporter is the U.S. Postal Service and noting the date the shipment was mailed;

3. Retain the generator copy in accordance with N.J.A.C. 7:26-3A.21; and

4. Ensure that the tracking form accompanies the regulated medical waste while in transit.

(g) For rail shipments of regulated medical waste within the United States that originate at the site of generation, the generator shall send at least three copies of the tracking form dated and signed in accordance with this section to:

1. The next non-rail transporter, if any; or

2. The intermediate handler or destination facility if transported solely by rail; or

3. The last rail transporter to handle the waste in the United States if exported by rail.

7:26-3A.20 Generators exporting regulated medical waste

(a) Generators (including transporters and intermediate handlers that initiate tracking forms) who export regulated medical waste to a foreign country (for example, Canada) for treatment and destruction, or disposal shall request that the destination facility provide written confirmation that the waste was received. If the generator has not received that confirmation from the destination facility within 45 days from the date of acceptance of the waste by the first transporter, the generator shall submit an exception report as required under N.J.A.C. 7:26-3A.22.

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7:26-3A.21 Generator recordkeeping

(a) Each generator shall:

1. Keep a copy of each tracking form required by N.J.A.C. 7:26-3A.19 for at least three years from the date the waste was accepted by the initial transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of all exception reports required to be submitted pursuant to N.J.A.C. 7:26-3A.22(b).

(b) Each generator who treats and destroys regulated medical waste on-site by a method or process other than incineration, shall maintain the following records:

1. The approximate quantity by weight, of regulated medical waste that is subject to the treatment and destruction processes;

2. The approximate percent, by weight, of total waste treated and destroyed that is regulated medical waste; and

3. For regulated medical waste accepted from other generators, the name and address of the generators, the date the waste was accepted from each generator, the weight of waste accepted from each generator, and the date the waste was treated and destroyed for each generator.

(c) Each generator in (b) above shall maintain records for a period of at least three years from the date the waste was treated and destroyed, unless the Department specifically requires an additional retention period.

(d) All generators of 300 pounds per year or more of regulated medical waste shall maintain a daily generator log of all regulated medical waste generated, treated or disposed of on-site (incinerator, disposal via sanitary sewer which must comply with all applicable Federal, State, county and local statutes, rules and ordinances) and/or sent off-site for treatment, destruction or disposal on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(d), or on forms approved by the Department, which shall include the information listed in (f) below.

(e) Generators of less than 300 pounds per year of regulated medical waste shall maintain a generator monthly log of all regulated medical waste generated, treated or disposed of on-site (incinerator, disposal via sanitary sewer which must comply with all applicable Federal, State, county and local statutes, rules and ordinances) and/or sent off-site for treatment, destruction or disposal on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(d), which shall contain the information listed in (f) below.

(f) The generator log shall include, but not be limited to, the following information:

1. The date of the entry;

2. A description of the regulated medical waste generated, by Waste Class;

3. The total quantity in pounds for each Waste Class of regulated medical waste generated each day, or each month for generators of less than 300 pounds per year;

4. The name and NJDEP solid waste transporter registration number of each transporter who transported regulated medical waste corresponding to the descriptions in (f)2 and 3 above;

5. The EPA regulated medical waste transporter number of each transporter listed in (f)4 above;

6. The date that the regulated medical waste was given to every transporter listed in (f)4 above;

7. The name and address of each intermediate handler or destination facility that received the regulated medical waste, and the quantity in pounds for each Waste Class of regulated medical waste sent to each facility corresponding to the transporter who transported the regulated medical waste to that facility; and

8. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer) corresponding to the facility listed in (f)7 above.

(g) Th generator logging forms are available at the address listed in N.J.A.C. 7:26-3A.8(d) and copies of the generator log shall be retained for at least three years from the date that the waste was generated unless the Department specifically requires an additional retention period.

(h) All generators of regulated medical waste shall submit annual generator reports to the Department for the period June 22 through June 21 of each calendar year on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) covering all regulated medical waste generated, treated or destroyed, and disposed of and shall be submitted to the Department by July 21 of each calendar year. The generator annual report shall include, but not be limited to, the following information:

1. The date of the report;

2. A description of the regulated medical waste, identified by Waste Class;

3. The total quantity in pounds for the year for each Waste Class of regulated medical waste generated, treated, destroyed, or disposed of;

4. The name and NJDEP solid waste transporter registration number of every transporter who transported the generator's regulated medical waste;

5. The EPA regulated medical waste transporter number for each transporter listed in (h)4 above;

6. The name and address of each intermediate handler or destination facility and a description of quantity in pounds for each Waste Class of regulated medical waste sent to each facility; and

7. The method of treatment, destruction or disposal of each Waste Class by quantity in pounds (for example, on-site treatment, on-site incineration, disposal via sanitary sewer).

(i) Copies of the generator reports shall be retained for at least three years from the date that the report is due, unless the Department specifically requires an additional retention period.

7:26-3A.22 Exception reporting for generators

(a) A generator shall contact the owner or operator of the destination facility, transporter(s), and intermediate handler(s), as appropriate, to determine the status of any tracked waste if the generator does not receive a copy of the completed tracking form with the handwritten signature of the owner or operator of the destination facility within 35 days of the date the waste was accepted by the initial transporter.

(b) A generator shall submit a generator exception report, as described below, to the Department at the address listed at N.J.A.C. 7:26-3A.8(d), and the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a completed copy of the tracking form signed by the owner or operator of the destination facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must be postmarked on or before the 46th day following the date the waste was accepted by the initial transporter and shall include:

1. A legible copy of the original tracking form for which the generator does not have confirmation of delivery; and

2. A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the regulated medical waste, and its final disposition if ascertained, and the results of those efforts.

(c) A copy of the generator exception report shall be kept by the generator for a period of at least three years from the due date of the report unless the Department specifically requires an additional retention period.

7:26-3A.23 Additional reporting for generators

The Department and the Administrator may require generators to furnish additional information concerning the quantities and management methods of medical waste as they deem necessary under Resource Conservation Recovery Act (RCRA) Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

7:26-3A.24 Generators of regulated medical waste who incinerate regulated medical waste on-site

(a) The requirements of N.J.A.C. 7:26-3A.25 and 3A.26 shall apply to generators of regulated medical waste who incinerate regulated medical waste on-site.

(b) Generators of regulated medical waste who incinerate such waste on-site and who accept regulated medical waste accompanied by a regulated medical waste tracking form are also subject to the requirements of N.J.A.C. 7:26-3A.38 through 3A.42.

(c) In addition, owners and operators of incinerators are required to comply with the requirements of N.J.A.C. 7:26-2, 2B, 4 and 16

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unless they are temporarily authorized to operate in accordance with N.J.A.C. 7:26-3A.37.

7:26-3A.25 Recordkeeping for generators with on-site incinerators

(a) Generators shall keep a generator on-site incinerator operating log at their incineration facility that includes, but shall not be limited to, the following information:

1. The date each incineration cycle was begun;
2. The length of the incineration cycle;
3. The total quantity in pounds of solid waste and medical waste incinerated, per incineration cycle;
4. An estimate of the quantity in pounds of regulated medical waste incinerated, per incineration cycle; and
5. The quantity in pounds of ash generated and transported off-site, including dates of transport and the name, address, and NJDEP solid waste registration number of the transporters and the name and address of the disposal facilities utilized.

(b) Generators with on-site incinerators that accept regulated medical waste from other generator(s) shall maintain the following information, in addition to the on-site incinerator operating log required by (a) above, for each shipment of regulated medical waste accepted:

1. The date the waste was accepted;
2. The name and address of the generator who originated the shipment. If the generator is not located in New Jersey, then use the state permit or identification number of the other state and if the other state does not issue a permit or identification number, then use the generator's address;
3. The total weight in pounds of the regulated medical waste accepted from the originating generator; and
4. The signature of the individual accepting the waste.

(c) Generators with on-site incinerators shall compile the generator on-site incinerator operating log required by (a) above during the following period: June 22, 1989 to June 22, 1991 and shall retain the operating log until at least June 22, 1992 unless the Department specifically requires an additional retention period.

(d) Generators with on-site incinerators that accept regulated medical waste from other generators shall keep copies of all tracking forms and operating logs for a period of three years from the date they accepted the waste unless the Department specifically requires an additional retention period.

(e) Generators shall retain a copy of the generator on-site incinerator report form required under N.J.A.C. 7:26-3A.26 for three years from the date of submission, unless the Department specifically requires an additional retention period.

7:26-3A.26 Reporting for generators who incinerate regulated medical waste on-site

(a) The owner or operator of an on-site incinerator shall prepare three copies of a generator on-site incinerator report on forms available from the Department at the address listed in N.J.A.C. 7:26-3A.8(d), and submit one copy of the generator on-site incinerator report to the Department, and two copies to:

Chief, Waste Characterization Branch
Office of Solid Waste (OS-332)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

(b) The generator on-site incinerator reports shall summarize, in the format provided by the Department, information collected in the generator on-site incinerator operating log during the period covering June 22, 1989 through December 22, 1989 and during the period covering June 22, 1990 through December 22, 1990, and shall contain, but not be limited to, the following information:

1. Facility name, mailing address, and location;
2. Facility type (for example, hospital, laboratory);
3. Contact person;
4. Waste feed information;
5. The total number of incinerators at the facility that incinerate regulated medical waste and information concerning each incinerator; and
6. The quantity in pounds of ash generated and transported off-site, including dates of removal, the name, address and NJDEP solid waste transporter registration number of the transporter(s), and the name and address of the disposal facility.

(c) Each generator on-site incinerator report shall contain the following certification, signed by the facility owner or his authorized representative: "I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete."

(d) The first generator on-site incinerator report is due by February 6, 1990 and shall contain information covering the period from June 22, 1989 through December 22, 1989.

(e) The second generator on-site incinerator report is due by February 6, 1991 and shall contain information covering the period from June 22, 1990 through December 22, 1990.

(f) Beginning July 1, 1991, the owner or operator of an on-site incinerator shall submit to the Department only, an annual generator on-site incinerator report on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) for the period from July 1 through June 30 which shall be due July 30 of each calendar year.

7:26-3A.27 Transporters

(a) The requirements of N.J.A.C. 7:26-3A.27 through 3A.36 apply to transporters, including generators who transport their own waste, and owners and operators of transfer facilities engaged in transporting regulated medical waste that is generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

(b) The requirements of (a) above shall not apply to on-site transportation of regulated medical waste.

(c) No person shall engage or continue to engage in transportation of regulated medical waste in New Jersey unless:

1. They register as a regulated medical waste transporter in accordance with N.J.A.C. 7:26-3A.8;
2. They register as a solid waste transporter in accordance with N.J.A.C. 7:26-3.2, pay fees in accordance with N.J.A.C. 7:26-4, and comply with the requirements of N.J.A.C. 7:26-3.1, 3.4, 3.7, and 16;
3. They obtain a certificate of public convenience and necessity as required by N.J.S.A. 48:13A-6; and
4. They notify the EPA in accordance with N.J.A.C. 7:26-3A.29.

(d) Generators of less than three cubic feet of regulated medical waste per month who meet the requirements of N.J.A.C. 7:26-3A.17(a) are exempt from the requirements of (c) above.

(e) A transporter of regulated medical waste shall also comply with applicable requirements of N.J.A.C. 7:26-3A.16, 3A.18, 3A.20, 3A.21, 3A.22 and 3A.23, when he consolidates two or more shipments of regulated medical waste onto a single regulated medical waste tracking form.

(f) Transporters shall also comply with the pre-transport requirements of N.J.A.C. 7:26-3A.10 through 3A.15 if they:

1. Store regulated medical waste in the course of transport; or
2. Remove regulated medical waste from a reusable container; or
3. Modify packaging of regulated medical waste.

7:26-3A.28 Transporter acceptance of regulated medical waste

(a) Transporters shall not accept for transport any regulated medical waste unless the outer surface of the container is labeled and marked in accordance with N.J.A.C. 7:26-3A.14 and 3A.15.

(b) Transporters shall not accept a shipment of regulated medical waste from a generator unless accompanied by a properly completed tracking form as required under N.J.A.C. 7:26-3A.19.

(c) When regulated medical waste is handled by more than one transporter, each subsequent transporter shall attach a water resistant identification tag below the generator's marking on the outer surface of the packaging, that does not obscure the generator's or previous transporter's markings. The transporter taking possession of the shipment must ensure that the tag contains the following information:

1. The name of transporter taking possession (receiving) of the regulated medical waste;
2. The transporter's NJDEP solid waste registration number. If the transporter does not transport in New Jersey, use the permit or identification number issued by the state in which the transporter is

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registered. If the transporter's state does not issue a permit or identification numbers, then use the transporter's address; and

3. The date of receipt.

7:26-3A.29 Transporter EPA notification

(a) Transporters (including owners or operators of transfer facilities) are prohibited from transporting regulated medical waste generated in New Jersey unless they have notified EPA in writing in accordance with (c) and (d) below and have submitted a copy of the notification form to the Department at the address listed in N.J.A.C. 7:26-3A.8(d).

(b) Transporters who accept regulated medical waste that was not generated in New Jersey but was generated in another state that is participating in the Federal demonstration program shall notify the EPA in writing in accordance with (c) and (d) below and shall submit a copy of the notification form to that state's waste management agency.

(c) The original and one copy of the transporter notification must be sent to:

Chief, Waste Characterization Branch (OS-332)
EPA Office of Solid Waste
401 M Street, SW
Washington, DC 20460

(d) Each transporter notification shall contain the following information:

1. The transporter's name, mailing address, and EPA hazardous waste identification number (if any);

2. The name, address and telephone number for each transportation or transfer facility (by site) that the transporter will operate from in New Jersey or from another state which is participating in the federal demonstration program;

3. The NJDEP solid waste transporter registration number;

4. The following statement signed by a corporate official or the owner or operator: "I certify, under penalty of criminal or civil prosecution for making or submission of false statements, representations, or omissions, that I have read, understand, and will comply with the regulations at 40 C.F.R. Part 259, issued under authority of Subtitle J of the Resource Conservation and Recovery Act."

(e) EPA will issue transporters who notify under this section a unique EPA Medical Waste Identification Number for New Jersey if the regulated medical waste is generated in New Jersey, or a unique EPA Medical Waste Identification Number for the state of generation if other than New Jersey. This identification number will apply to all transporter sites identified in (d)2 above. Transporters may accept regulated medical waste after notifying under this section as long as the notification complies with the requirements of (d) above. Upon receipt of an EPA Medical Waste Identification Number, the transporter shall include it on Box 5 of the medical waste tracking form.

7:26-3A.30 Vehicle requirements

(a) In addition to the requirements of N.J.A.C. 7:26-3, transporters shall use vehicles to transport regulated medical waste that meet the following requirements:

1. The vehicle shall have a fully enclosed, leak-resistant cargo-carrying body;

2. The transporter shall ensure that the waste is not subject to mechanical stress or compaction during loading and unloading or during transit;

3. The transporter shall maintain the cargo-carrying body in good sanitary condition; and

4. The cargo-carrying body shall be secured if left unattended.

(b) The transporter shall use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of three inches in height:

1. The name of the transporter;

2. The transporter's NJDEP solid waste transporter registration number; and

3. A sign or the following words imprinted:

i. MEDICAL WASTE; or

ii. REGULATED MEDICAL WASTE.

(c) A transporter shall not transport regulated medical waste with other solid waste in the same container, unless the transporter manages both wastes as regulated medical waste in compliance with the requirements of N.J.A.C. 7:26-3A.27 through 3A.36.

7:26-3A.31 Tracking form requirements for transporters

(a) A transporter shall not accept a shipment of regulated medical waste if the regulated medical waste is to be treated, transported, stored, transferred, destroyed, disposed of, or otherwise managed in New Jersey, unless it is accompanied by a medical waste tracking form available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d) and completed in accordance with instructions provided by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-3A.19. In the case where a transporter intends to deliver regulated medical waste generated in New Jersey to another state which is participating in the Federal demonstration program and which supplies its own tracking form and requires its use, the transporter shall provide the generator with the form of that state to which the waste is to be sent.

(b) Before accepting for transport or transporting any regulated medical waste the transporter shall:

1. Certify that the tracking form accurately reflects the number and total weight in pounds of the packages being transported by signing and dating the tracking form acknowledging acceptance of the regulated medical waste from the generator; and

2. Return a signed copy of the tracking form to the generator before leaving the generator's site.

(c) The transporter shall ensure that the tracking form accompanies the regulated medical waste while in transit.

(d) A transporter, upon delivery of the regulated medical waste to another transporter (including a transfer facility) or to an intermediate handler or destination facility located in the United States, shall:

1. Obtain the date of delivery and the handwritten signature of the transporter, or the owner or operator of the intermediate handling facility, or destination facility on the tracking form;

2. Retain one copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34; and

3. Give the remaining copies of the tracking form to the accepting transporter, intermediate handler, or destination facility.

(e) Any transporter who transports regulated medical waste across an international border, or who delivers regulated medical waste to a transporter or treatment, destruction, or destination facility located in a foreign country (for example, Canada) shall:

1. Sign the tracking form and verify that the waste has been delivered to the next (foreign) transporter, or treatment, destruction, or destination facility;

2. Retain one copy of the signed tracking form for his records; and

3. Return all remaining copies of the tracking form by mail to the generator.

(f) For shipments involving rail transportation, the requirements of N.J.A.C. 7:26-3A.44 apply to rail transporters in lieu of the requirements of subsections (b), (c) and (d) of this section.

7:26-3A.32 Transporter compliance with the tracking form

(a) Except as provided in (b) below, the transporter shall deliver the entire quantity of regulated medical waste that he has accepted from a generator or another transporter to:

1. The intermediate handler or destination facility listed on the tracking form; or

2. The next transporter.

(b) If the regulated medical waste cannot be delivered in accordance with (a) above, the transporter shall contact the generator for further directions, revise the tracking form according to the generator's instructions, and deliver the entire quantity of regulated medical waste from that generator according to the generator instructions.

7:26-3A.33 Transporters consolidating waste to a new tracking form

(a) A transporter may choose to consolidate to a single tracking form all shipments of regulated medical waste less than 220 pounds.

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(b) When the transporter receives the signed tracking form that he initiated by consolidating shipments of regulated medical waste back from the destination facility, the transporter shall:

1. Attach a copy of the tracking form signed by the destination facility to the generator's original tracking form;

2. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26-3A.34;

3. Return a copy of each tracking form to the generator within 15 days of receipt of the tracking form from the destination facility; and

4. Maintain a transporter consolidation log indicating all shipments consolidated on that form. The transporter consolidation log must accompany the tracking form and include the following information:

i. The name of each generator;

ii. The generator's address or if the regulated medical waste was generated in another state which issues a permit or identification number, then use that permit or identification number and, if the generator's state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator;

iv. The quantity in pounds of regulated medical waste (number of containers and/or weight in pounds) by waste category (i.e., "untreated" or "treated") shipped by each generator; and

v. The names, NJDEP registration numbers of all previous transporters or, if the transporters do not transport in New Jersey, then use the permit or identification number issued by the state in which the transporter is registered, and if the state does not issue permits or identification numbers, use the transporters' addresses.

7:26-3A.34 Recordkeeping for transporters of regulated medical waste

(a) A transporter of regulated medical waste shall keep a copy of the tracking form signed by the generator, himself, the previous transporter (if applicable), and the next party, which may be one of the following: another transporter; or the owner or operator of an intermediate handling facility or destination facility. The transporter shall retain a copy of this form for a period of three years from the date the waste was accepted by the next party unless the Department specifically requires an additional retention period.

(b) For any regulated medical waste that was received by the transporter and consolidated by the transporter to another tracking form, the transporter shall:

1. Retain a copy of the generator-initiated tracking form signed by the transporter for three years from the date the waste was accepted by the transporter unless the Department specifically requires an additional retention period; and

2. Retain a copy of the transporter-initiated tracking form signed by the intermediate handler or destination facility for three years from the date the waste was accepted by the intermediate handler or destination facility unless the Department specifically requires an additional retention period.

(c) Retain a copy of each regulated medical waste transporter report required by N.J.A.C. 7:26-3A.35 for three years after the date of submission unless the Department specifically requires an additional retention period.

7:26-3A.35 Transporter reporting

(a) A transporter who accepts regulated medical waste which is generated in New Jersey or that is to be stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey shall submit a regulated medical waste transporter report to the Department describing the source and disposition of the waste. The regulated medical waste transporter reports shall be submitted on forms available from the Department and sent to the address listed at N.J.A.C. 7:26-3A.8(d).

(b) If the regulated medical waste was generated in New Jersey, the transporter shall also send a copy of the regulated medical waste transporter report to the EPA at the following address:

Chief, Waste Characterization Branch (OS-332)
Office of Solid Waste
U.S. Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460

(c) In addition, if the regulated medical waste was not generated in New Jersey but was generated in a state which is participating in the Federal demonstration program, the transporter shall submit a copy of the report to the EPA at the address in (b) above and to the waste management agency of the generation state.

(d) Each regulated medical waste transporter report shall include, but not be limited to, the following information:

1. The transporter's name, address, and EPA medical waste identification number and NJDEP solid waste transporter registration number or if the transporter does not transport in New Jersey, then use the permit or identification number issued of the state in which the transporter is registered;

2. The name and telephone number of a contact person;

3. The total number of generators from whom the transporter accepted regulated medical waste;

4. The name, address, and type of each generator (for example, hospital, doctor) from whom the transporter accepted regulated medical waste;

5. The amount by weight in pounds and waste category (untreated or treated) of regulated medical waste accepted from each generator;

6. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey, or from all generators in another state which is participating in the Federal demonstration program, that the transporter delivered to an intermediate handler or to a destination facility;

7. The total, by weight in pounds and by waste category, of regulated medical waste from all generators in New Jersey or from all generators in another state which is participating in the Federal demonstration program that the transporter delivered to a second transporter or to a transfer facility; and

8. The certification of the transporter report signed by the owner or operator, or his authorized representative.

(e) Transporters who transport or deliver regulated medical waste to an intermediate handler or to a destination facility shall also provide the following information:

1. The name and address of each intermediate handler and destination facility to which the waste was delivered;

2. The amount in pounds, by waste category, that was delivered;

3. The total number of intermediate handlers and destination facilities to which waste was delivered.

(f) The transporter shall submit regulated medical waste transporter reports covering the following periods:

1. A regulated medical waste transporter report covering the 180 day period from June 23, 1989, to December 19, 1989 which is due on or before February 2, 1990.

2. A regulated medical waste transporter report covering the 180 day period from December 20, 1989, to June 17, 1990 which is due on or before August 1, 1990.

3. A regulated medical waste transporter report covering the 180 day period from June 18, 1990, to December 14, 1990 which is due on or before January 28, 1991.

4. A regulated medical waste transporter report covering the 180 day period from December 15, 1990, to June 12, 1991 which is due on or before July 27, 1991.

5. After June 12, 1991 an annual regulated medical waste transporter report shall be submitted to the Department only which shall cover the period from July 1 through June 30 and shall be due on or before July 30 of each calendar year.

(g) Each transporter who initiates a tracking form shall meet the requirements of N.J.A.C. 7:26-3A.22, exception reporting, except that the 35 and 45 day periods begin on the day the transporter accepted the waste from the generator.

7:26-3A.36 Additional reporting for transporters of regulated medical waste

The Department and the Administrator may require transporters to furnish additional information concerning the quantities and man-

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agement methods of regulated medical waste as he or she deems necessary under RCRA Section 11004 and as the Department may deem necessary under N.J.S.A. 13:1D-9.

7:26-3A.37 Temporary authorization to operate a regulated medical waste incinerator

(a) This section applies only to and sets forth requirements for an authorization to operate an incinerator that accepts regulated medical waste for disposal.

(b) Notwithstanding the requirements of N.J.A.C. 7:26-2 and 2B, but subject to the requirements of N.J.A.C. 7:26-16, the owner or operator of an incinerator shall be authorized to operate that incinerator if the following requirements are met:

1. The owner or operator shall submit documentation as submitted to the Department demonstrating that the incinerator was in operation accepting regulated medical waste for disposal on or before March 6, 1989;

2. The owner or operator of the disposal facility continues to accept regulated medical waste for disposal;

3. The owner or operator registers and pays fees as a regulated medical waste destination facility in accordance with N.J.A.C. 7:26-3A.8;

4. The owner or operator of the facility shall have a current certificate to operate control apparatus or equipment pursuant to N.J.A.C. 7:27;

5. The owner or operator shall be or is fully permitted pursuant to N.J.A.C. 7:26-2 and 2B prior to expiration of the facility's current certificate to operate control apparatus or equipment issued pursuant to N.J.A.C. 7:27. For the purposes of the temporary authorization, any application for a renewal or extension of the current certificate shall be considered an expiration of the current certificate;

6. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

7. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling wind-blown papers and other lightweight materials such as fencing shall be implemented;

8. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

9. The owner or operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

10. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of the local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

11. The owner or operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

12. The facility owner or operator shall be responsible for the sanitary condition and orderly operation of the area;

13. The Departments' inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion of the facility;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the facility's authorization or permit issued by the Department; or

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

14. An operation and maintenance manual meeting the requirements of N.J.A.C. 7:26-2B.4(a)17 through 20 shall be maintained at the facility;

15. The owner or operator shall obtain or has obtained all applicable permits and approvals required by Federal, State, county and local ordinance;

16. The facility shall not pose a threat to the public health, safety or the environment; and

17. The facility shall only accept regulated medical waste from transporters who have NJDEP registration numbers and who have notified the EPA in accordance with N.J.A.C. 7:26-3A.29 and who have a certificate of public convenience and necessity issued by the New Jersey Board of Public Utilities, unless the transporter is exempt from these requirements pursuant to N.J.A.C. 7:26-3A.17(a) or unless the transporter is the U.S. Postal Service and the generator who has shipped the waste has complied with N.J.A.C. 7:26-3A.17(b).

7:26-3A.38 Intermediate handlers and destination facilities

(a) N.J.A.C. 7:26-3A.38 through 3A.42 apply to owners and operators of facilities located in New Jersey that receive regulated medical waste and owners and operators of facilities in another state that receive regulated medical waste generated in New Jersey. Facilities that are subject to the above sections include:

1. Destination facilities (that is, treatment and destruction facilities, a facility that causes the regulated medical waste to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4 including incineration facilities, and disposal facilities); and

2. Intermediate handlers (that is, facilities that either treat or destroy the regulated medical waste, but do not cause it to meet the conditions of N.J.A.C. 7:26-3A.6(b)3 or 4).

(b) The rule paragraphs noted in (a) above also apply to generators with on-site incinerators who accept regulated medical waste for disposal.

7:26-3A.39 Use of the tracking form for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility when receiving a tracking form shall:

1. Sign and date each copy of the tracking form to certify that the regulated medical waste listed on the tracking form was received;

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.40(a) on the tracking form;

3. Immediately give the transporter at least one copy of the signed tracking form:

i. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(a), immediately give the generator at least one copy of the signed tracking form.

ii. In the case of regulated medical waste transported in accordance with N.J.A.C. 7:26-3A.17(b) the disposal facility shall mail at least one copy to the generator directly.

4. Send a copy of the tracking form to the generator (or to the transporter or intermediate handler that initiated the tracking form) within 15 days of the delivery; and

5. Retain a copy of each tracking form in accordance with N.J.A.C. 7:26-3A.41.

(b) When an intermediate handler receives regulated medical waste the owner or operator shall meet the following requirements:

1. The owner or operator shall meet all the requirements for generators under both N.J.A.C. 7:26-3A.10 through 3A.16 and 3A.18 through 3A.23, including signing the tracking form accepting the waste as specified in Box 20 and entering the new tracking form number in Box 21 when initiating a new tracking form for each shipment of regulated medical waste that has either been treated or destroyed.

2. The owner or operator shall maintain an intermediate handler log matching the original generator's tracking forms to the tracking form that he initiates. The intermediate handler log shall include:

i. The name(s) of generator(s);

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ii. The generator's address. If the generator is not located in New Jersey, then use the generator's state permit or identification number. If the state does not issue permit or identification numbers, then use the generator's address;

iii. The date the regulated medical waste was originally shipped by the generator or the generator's unique tracking form number;

iv. The new tracking form number to which the waste is assigned;

3. Within 15 days of receipt of the tracking form that he initiated and that was signed by the destination facility, the intermediate handler shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form initiated by the generator identified in (b)2i above;

ii. Send a copy of each tracking form to the generator who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26-3A.41.

(c) If a destination facility or intermediate handler receives from a rail transporter regulated medical waste that is accompanied by shipping papers containing the information required on the medical waste tracking form, with the exception of the generator's certification and chain of custody signatures, the owner or operator or his agent, shall:

1. Sign and date each copy of the tracking form or the shipping papers (if the tracking form has not been received);

2. Note any discrepancies as defined in N.J.A.C. 7:26-3A.40(a) on each copy of the tracking form or shipping papers (if the tracking form has not been received);

3. Immediately give the rail transporter at least one copy of the tracking form or shipping papers (if the tracking form has not been received);

4. If the facility is a destination facility, send a copy of the signed and dated tracking form to the generator within 15 days after the delivery. If the owner or operator has not received the tracking form within 15 days of delivery, he shall send a copy of the signed and dated shipping papers to the party initiating the tracking form;

5. If the facility is an intermediate handler, retain a copy of the tracking form (or the shipping papers if the tracking form has not been received), until he receives a copy of the tracking form signed by the owner or operator of the destination facility. He then shall:

i. Attach a copy of the tracking form signed by the destination facility to the original tracking form (or the shipping papers if the tracking form has not been received) initiated by another party;

ii. Send a copy of each tracking form (or each set of shipping papers) to the party who initiated the tracking form; and

iii. Retain a copy of each tracking form in accordance with the requirements of N.J.A.C. 7:26-3A.41.

(d) The destination facilities and intermediate handlers as set forth in (c) above shall retain a copy of the tracking form (or shipping papers if signed in lieu of the tracking form) for at least three years from the date of acceptance of the regulated medical waste unless the Department specifically requires an additional retention period.

(e) The destination facilities and intermediate handlers receiving shipments by rail should expect to receive the tracking form from the generator, or the preceding non-rail transporter who will have sent the tracking form to the facility by some other means (for example, by mail).

7:26-3A.40 Tracking form discrepancies for intermediate handlers and destination facilities

(a) Tracking form discrepancies are:

1. For packages, any variation in piece count such as a discrepancy of one box, pail, or drum in a truckload;

2. For waste by categories (that is, untreated or treated), discrepancies in number of packages for each category of regulated medical waste as described on the label imprinted or affixed to the outer surface of the package;

3. Packaging that is broken, torn, or leaking; and

4. Regulated medical waste that arrives at an intermediate handler or a destination facility unaccompanied by a tracking form, or for which the tracking form is incomplete or not signed.

(b) Upon discovering a discrepancy, the owner or operator shall attempt to resolve (for example, with telephone conversations) the discrepancy with the waste generator, the transporter and/or the intermediate handler. If the discrepancy is not resolved, the owner or operator shall submit a letter, within 15 days of receiving the waste describing the nature of the discrepancy and the attempts the owner or operator has undertaken to reconcile it. The owner or operator shall include with the letter a legible copy of the tracking form or shipping papers in question. If the discrepancy is the type specified in (a)4 above, the letter shall specify the quantity of waste received, the transporter, and the generator(s). The letter shall be submitted as follows:

1. If the regulated medical waste was generated and disposed of in New Jersey, the letter shall be sent to:

i. The Department at the address listed in N.J.A.C. 7:26-3A.8(d); and

ii. The EPA Regional Administrator for New Jersey.

2. If the regulated medical waste was generated in New Jersey but disposed of in another state, the letter shall be sent to:

i. The EPA Regional Administrator for New Jersey;

ii. The EPA Regional Administrator for the state of disposal; and

iii. The Department at the address listed in N.J.A.C. 7:26-3A.8(d).

3. If the regulated medical waste was not generated in New Jersey but was generated in a state which is participating in the Federal demonstration program, the letter shall be sent to:

i. The EPA Regional Administrator for the state of generation;

ii. The EPA Regional Administrator for New Jersey; and

iii. The Department at the address listed in N.J.A.C. 7:26-3A.8(d).

4. If the regulated medical waste was generated in a state which is not participating in the Federal demonstration program, the letter shall be sent to:

i. The Department at the address listed in N.J.A.C. 7:26-3A.8(d).

7:26-3A.41 Recordkeeping for intermediate handlers and destination facilities

(a) The owner or operator of a destination facility or an intermediate handler receiving regulated medical waste generated, treated, destroyed, disposed of or otherwise managed in New Jersey shall maintain records for a minimum of three years from the date the waste was accepted unless the Department specifically requires an additional retention period. These records shall contain the following information:

1. Copies of all tracking forms required by N.J.A.C. 7:26-3A.39(a)5, (b)3iii, and (c)5iii; and the logs required by N.J.A.C. 7:26-3A.39(b)2;

2. Copies of all discrepancy reports required by N.J.A.C. 7:26-3A.40(b).

7:26-3A.42 Additional reporting for intermediate handlers and destination facilities

(a) All regulated medical waste intermediate handlers and destination facilities are required to submit an annual intermediate handler and destination facility report to the Department, covering the period from January 1 through December 31 of each calendar year and shall be submitted by February 15 of each calendar year, on forms available from the Department at the address listed at N.J.A.C. 7:26-3A.8(d), which shall include, but not be limited, to the following information:

i. A description of the sources, the types and amounts of regulated medical waste treated and/or destroyed; and

ii. The methods used for treatment and/or destruction.

(b) The Administrator and the Department may require owners or operators of destination facilities and intermediate handlers to furnish additional information concerning the quantities and management methods of medical waste as he deems necessary under RCRA Section 11004 and as the Department deems necessary under N.J.S.A. 13:1D-9.

7:26-3A.43 Rail transporters

(a) The requirements in this section and in N.J.A.C. 7:26-3A.44 apply to persons engaged in rail transportation of regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey.

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(b) Rail transporters of regulated medical waste shall also comply with the transporter requirements of N.J.A.C. 7:26-3A.27 through 3A.36 except as otherwise provided in N.J.A.C. 7:26-3A.31(f).

7:26-3A.44 Rail shipment tracking form requirements

(a) The following requirements apply to all shipments of regulated medical waste involving rail transport:

1. When accepting regulated medical waste generated, stored, transferred, treated, destroyed, disposed of, or otherwise managed in New Jersey from a non-rail transporter, the initial rail transporter shall:

i. Sign and date the tracking form acknowledging acceptance of the regulated medical waste;

ii. Return a signed copy of the tracking form to the non-rail transporter;

iii. Forward at least three copies of the tracking form to:

(1) The next non-rail transporter, if any; or

(2) The intermediate handler or destination facility, if the shipment is delivered to that facility by rail; or

(3) The last rail transporter designated to handle the waste in the United States; and

iv. Retain one copy of the tracking form and rail shipping paper in accordance with N.J.A.C. 7:26-3A.34.

2. Rail transporters shall ensure that a shipping paper containing all the information required on the tracking form (excluding permitting or licensing numbers, generator certification, and signatures) accompanies the shipment at all times. Intermediate rail transporters are not required to sign either the tracking form(s) or shipping paper(s).

3. When delivering regulated medical waste to an intermediate handler or destination facility, a rail transporter shall:

i. Obtain the date of delivery and handwritten signature of the owner or operator of the facility on the tracking form or the shipping papers (if the tracking form has not been received by the facility); and

ii. Retain a copy of the tracking form or signed shipping paper in accordance with N.J.A.C. 7:26-3A.34.

4. When delivering regulated medical waste to a non-rail transporter, a rail transporter shall:

i. Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the tracking form; and

ii. Retain a copy of the tracking form in accordance with N.J.A.C. 7:26-3A.34.

5. Upon accepting regulated medical waste generated or to be treated, destroyed or disposed of in New Jersey from a rail transporter, a non-rail transporter shall sign and date the tracking form (or the shipping papers if the tracking form has not been received by the transporter) and provide a copy to the rail transporter.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code; Fire Code Enforcement Registration and Permit Fees

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 5:18-2.8, 5:18A-2.6

Emergency Amendments Adopted: June 30, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 30, 1989.

Emergency Amendment Filed: July 3, 1989 as R.1989 d.404.

Authority: N.J.S.A. 52:27D-198.

Emergency Amendment Effective Date: July 3, 1989.

Emergency Amendment Expiration Date: September 1, 1989.

Concurrent Proposal Number: PRN 1989-399.

Submit comments by August 16, 1989 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 804
Trenton, NJ 08625

These amendments were adopted on an emergency basis and became effective on July 3, 1989, subsequent to acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5(b)). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to their expiration.

The agency emergency adoption and concurrent proposal follows:

Summary

Life hazard use registration fees and permit fees are increased by about 15 percent across the board. Of the increased fees, 70 percent, rather than 80 percent, shall be remitted to local enforcing agencies. These increases have been made necessary by the current State fiscal crisis, which has led the Legislature to require, in the Fiscal Year 1990 Appropriations Act, that activities that have heretofore been funded out of general revenue be fee supported. These increases are not the result of the regular biennial review of fees. In order to ensure that the increased revenue is available to cover the cost of State enforcement activities, the percentage of the total revenue going to the State, rather than to local enforcing agencies, is increased from 20 percent to 30 percent. However, the increase in the overall fee ensures that there will be no decrease in actual funds remitted to local enforcing agencies.

Social Impact

The impact of these amendments is essentially economic rather than social. The public will benefit insofar as the additional fee revenue will make it possible to avoid reductions in the fire safety enforcement program for budgetary reasons.

Economic Impact

Life hazard registration and permit fees paid by owners of life hazard uses and persons engaged in activities requiring a permit will increase by about 15 percent. While the percentage of the total revenue going to local enforcing agencies will decrease from 80 percent to 70 percent, the amount received will be equivalent to 80.5 percent of total revenue prior to the increase.

Regulatory Flexibility Analysis

Generally, smaller life hazard uses pay a lower fee than larger life hazard uses of the same type. To the extent that smaller life hazard uses are more likely to be owned by small businesses, the dollar amount of the increases, though not the proportion, paid by such small businesses will be less. There is no basis for distinguishing between types of owners, as opposed to types of facilities, in determining fees. These amendments, being an across-the-board increase, maintain the existing fee ratios among the different classes of uses and permits.

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

5:18-2.8 Fees, registration and permit

(a) The annual registration fees for life hazard uses shall be as follows:

1. Type Aa—[$50.00] **$58.00** per year;
2. Type Ab—[$75.00] **$86.00** per year;
3. Type Ac—[$80.00] **$92.00** per year;
4. Type Ad—[$90.00] **$104.00** per year;
5. Type Ae—[$100.00] **$115.00** per year;
6. Type Af—[$120.00] **$138.00** per year;
7. Type Ag—[$150.00] **$173.00** per year;
8. Type Ah—[$180.00] **$207.00** per year;
9. Type Ai—[$240.00] **$276.00** per year;
10. Type Aj—[$300.00] **$345.00** per year;
11. Type Ba—[$80.00] **$92.00** per year;
12. Type Bb—[$150.00] **$173.00** per year;
13. Type Bc—[$240.00] **$276.00** per year;

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14. Type Bd—[$300.00] **$345.00** per year;
15. Type Be—[$350.00] **$403.00** per year;
16. Type Bf—[$450.00] **$518.00** per year;
17. Type Bg—[$480.00] **$552.00** per year;
18. Type Bh—[$600.00] **$690.00** per year;
19. Type Bi—[$720.00] **$828.00** per year;
20. Type Bj—[$750.00] **$863.00** per year;
21. Type Bk—[$900.00] **$1,035.00** per year;
22. Type Bl—[$1,050.00] **$1,208.00** per year;
23. Type Bm—[$1,200.00] **$1,380.00** per year;
24. Type Bn—[$1,500.00] **$1,725.00** per year;
25. Type Bo—[$1,800.00] **$2,070.00** per year;
26. Type Ca—[$600.00] **$690.00** per year;
27. Type Cb—[$720.00] **$828.00** per year;
28. Type Cc—[$780.00] **$897.00** per year;
29. Type Cd—[$840.00] **$966.00** per year;
30. Type Ce—[$960.00] **$1,104.00** per year;
31. Type Cf—[$1,050.00] **$1,208.00** per year;
32. Type Cg—[$1,200.00] **$1,380.00** per year;
33. Type Da—[$1,800.00] **$2,070.00** per year;

(b) (No change.)

(c) The application fee for a permit shall be as follows:

1. Type 1—[$25.00]
2. Type 2—[$100.00]
3. Type 3—[$200.00]
4. Type 4—[$300.00]
5. Type 5—[$1,000.00]

(d) (No change).

5:18A-2.6 Collection of and accounting for fees and penalties

(a) State collection of registration fees:

1. (No change.)

2. The Bureau of Fire Safety shall remit [80] **70** percent of the amount collected to the local enforcing agency established for the inspection of life hazard uses. The payment shall be disbursed by the end of the quarter next succeeding the one in which the fees were collected.

3. The [80] **70** percent local share shall not be considered State funds but rather local funds held in trust by the State.

(b)-(e) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Planned Real Estate Development Full Disclosure Municipal Enforcing Agency Fees; Standards for Municipal and Departmental Fees

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 5:23-4.17, 4.18, 4.19, 4.20; and 5:26-2.3 and 2.4

Emergency Amendments Adopted: June 30, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 30, 1989.

Emergency Amendments Filed: July 3, 1989 as R.1989, d.405.

Authority: N.J.S.A. 52:27D-124 and 45:22A-35.

Emergency Amendments Effective Date: July 3, 1989.

Emergency Amendments Expiration Date: September 1, 1989.

Concurrent Proposal Number: PRN 1989-400.

Submit comments by August 16, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

These amendments were adopted on an emergency basis and became effective on July 3, 1989, subsequent to acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5(b)). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to their expiration.

The agency emergency adoption and concurrent proposal follows:

Summary

In conjunction with an overall increase of approximately 30 percent in fees for its code enforcement and planned real estate development review services and an increase in the State training fee from $0.0006 to $0.0014 per cubic foot volume of new construction, the Department (DCA) is proposing to amend its fee schedule, and its standards for municipal fees, to more accurately represent necessary fees charged, to eliminate outdated fees no longer collected, and to take notice of recent legislation. In an attempt to foster uniformity, mechanical fees the Department formerly charged under N.J.A.C. 5:23-4.20(c)6iv have been eliminated. An exemption from fees for DCA-inspected new low- and moderate-income units is also established. Corresponding changes have also been made to permissible onsite agency fees set forth at N.J.A.C. 5:23-4.18.

To account for work formerly done under the "mechanical" designation, the Department noted where mechanical inspections are performed by building, plumbing, electrical, and fire officials and more clearly delineated categories of equipment under those designations.

As much as 75 percent of the work delineated in the mechanical subcode is the responsibility of the building subcode official (see N.J.A.C. 5:23-3.4, Bulletin 87-2) and should be reflected in the volumetric building fees set. Equipment inspected by the plumbing subcode official is largely listed as equipment for which itemized charges are made. Some equipment inspected by the fire subcode official and requiring more than minimal oversight was thought to be inadequately represented in the fee schedules. New fees are therefore set for the inspection of gas and oil fired appliances, for kitchen exhaust systems and for incinerators and crematoriums. Pursuant to rule, inspection of this equipment is the responsibility of the fire subcode official. While all subcode officials may be required to make some inspections of equipment which is not specifically listed, the Department has provided that fees include a general component which is not itemized and which allows an official to inspect whatever equipment is installed at a site, even if this equipment is not part of a checklist. This latitude insures the protection of the public's safety by insuring that even unusual installations will be reviewed by a qualified subcode official.

Lower fees for certain farm buildings are now explicitly made applicable to commercial farm buildings covered by N.J.A.C. 5:23-3.2(d). Fees for electrical fixtures and devices have been graduated so that more complex equipment and more powerful equipment, which requires more inspection time, is charged a higher fee. Fees for the inspection of fire detectors (smoke and heat) have been added since these devices are inspected. Municipalities are also now authorized to charge fire protection fees under N.J.A.C. 5:23-4.18. Municipalities in which onsite agencies enforce subcodes are authorized to charge up to a 15 percent administrative fee to cover their cost of administration. A fee for the periodic inspection of sprinkler systems in N.J.A.C. 5:23-4.20(c)10iv has been deleted because these inspections are now performed by the fire official under the Uniform Fire Code, not by the Fire Subcode Official under the Uniform Construction Code. It must be remembered that the proposed minor increases will be offset by the elimination of all mechanical fees.

N.J.A.C. 5:23-4.20 has been changed to delete fees for periodic inspections of sprinkler systems. These are now performed by and charged for by the Fire Safety Element of the Division of Housing and Development.

By re-wording N.J.A.C. 5:23-4.20(c)2, the Department has sought to make it clear that a minimum construction fee shall cover all subcodes instead of being computed separately for each. The Department is aware that some subcode officials would prefer that a minimum fee be charged for each subcode area since every inspection visit, no matter how routine, demands an official's time and attention. This must be balanced, however, by an element of fairness to the public which makes it undesirable that an applicant of modest means making, for example, an alteration in a bathroom, where building, plumbing and electrical subcode areas are

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affected, should pay three minimum fees. It would be inconsistent on the one hand to encourage even people of modest means to repair and to upgrade their residences, and then to charge them numerous minimum fees when they seek to do so. One lower minimum fee will do much to encourage people to only do work with the benefit and protection of a permit.

Building removal permits, rarely if ever requested, and ambiguous as set forth because they do not clearly distinguish between a "sending" and "receiving" location, have been added to the category of demolition permits. A similar change was made to the text of N.J.A.C. 5:23-4.18. Some confusion has occurred in regard to charges for solar energy systems. While the Department's permit fee waiver pursuant to P.L. 1985, c.85 codified at N.J.S.A. 52:27D-130.2 was never repealed by the Legislature, the underlying statutes authorizing tax exemption, P.L. 1977, c.256, P.L. 1982, c.218, and P.L. 1983, c.44 (formerly codified at N.J.S.A. 54:4-3.113 et seq.), have expired, rendering the Department's waiver moot. Fees for solar energy systems have therefore been reinstated.

Several other changes of a clerical nature appear in these proposed amendments. Renumbering and rearrangement of existing provisions have been done to distinguish the four subcodes (building, plumbing, electrical, and fire protection) for which construction inspection fees are charged. Other types of certificates and periodic charges have been separated and subheaded to similarly distinguish them.

Social Impact

The Department anticipates no notable social impact from this amended fee schedule. It represents no alteration in the substance of inspections currently performed, but instead represents a shifting of costs from the mechanical fees formerly charged to other subcode areas. Inspections are already performed by licensees in these areas pursuant to N.J.A.C. 5:23-3.4, as clarified by DCA Bulletin 87-2, which assigns responsibilities for various inspection tasks to licensed subcode officials.

The public should experience no perceptible difference in life safety when sprinkler systems are inspected by Fire Safety officials instead of officials enforcing the Uniform Construction Code under the oversight of the Construction Code Element.

Economic Impact

The proposed amendments should have the effect of adding approximately 30 percent to the cost to property owners and developers of construction inspection and planned real estate development review. In addition, the increased training fee will raise costs to property owners and developers by .08¢ per cubic foot of new construction. These increases are made necessary by the State's current fiscal crisis, which has led the Legislature to require, in the Appropriations Act, that code enforcement activities heretofore funded out of general revenue be fee supported and to authorize the use of fee revenue, including revenue from the training fee, for such purposes. Otherwise, the proposed amendments reordering the fees will have little or no economic impact on the cost of a typical project. Shifting fees for the inspection of sprinkler systems should only shift receipts from one element of the Department to another; there will be no public impact.

In deciding upon changes to be made in the fee schedules, the Department considered the position of third party agencies which are required to follow the same schedules. Their revenues under the new fee schedule will also increase by 30 percent. Otherwise, the changes should not result in any actual change in the amount of work performed or in the compensation received. Use of this new proposed schedule may, of course, require some changes in personnel assignments and procedures during a period of readjustment.

Regulatory Flexibility Analysis

It is not anticipated that these proposed amendments to the Departmental and municipal fee schedules will have any special detrimental effect on small businesses. While the 30 percent increase will have an adverse economic effect on all who are required to pay it, there is no basis for establishing a lesser increase for small businesses, or for any other segment of the community either, for that matter, since any favor shown to one group will have to be paid for by everyone else if the total revenue required is to be brought in. There is no basis for establishing fees that will have a differential effect on businesses of varying size since the inspection effort required in order to protect health and safety is the same regardless of who owns or uses the building.

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

5:23-4.17 Municipal enforcing agency fees

(a) Ordinance: The municipality shall set enforcing agency fees by ordinance for the following activities: plan review, construction permits, certificate of occupancy, **certificates of continued occupancy, certificate of approval,** demolition permit, [moving of building permit,] elevator permit and sign permit[s].

1. The municipality shall include in any such ordinance all fees pertaining to the operations of the enforcing agency, including those for which the department has not set standards, such as fees for reinstatement of lapsed permits. All minimum fees shall be stipulated. **Fees may be rounded to the nearest dollar amount if the municipality's ordinance so provides.**

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

5:23-4.18 Standards for municipal fees

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

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building, or in the case of alterations, the estimated construction cost, and the number and type of plumbing, [and] electrical **and fire protection** fixtures or devices as herein provided.

1. Volume or cost: Fees for new construction or alteration shall be as follows:

i.-v. (No change.)

vi. [Structures of use group T, temporary,] **Temporary structures** and all structures for which volume cannot be computed, such as swimming pools and open structural towers, shall be **charged** a flat rate;

vii. (No change.)

2.-3. (No change.)

4. Fees shall be based upon the number of sprinkler heads, standpipes, and detectors (smoke and heat) and shall be reasonable unit charges. Fees may also be charged for the inspection of premanufactured fire suppression systems, for gas and oil fired appliances not connected to the plumbing system, for kitchen exhaust systems and for incinerators and crematoriums. The municipal ordinance shall clearly set forth what fees are to be charged for what devices.

(d) Demolition permit fees: Permit fees for demolition of **or the removal** of a building or structure shall be a flat fee. This fee may vary according to type of structure or [if condemned] **whether there has been a condemnation,** but this shall be clearly indicated in the ordinance and schedule.

[(e) Removal permit fees: The fee for a permit for the removal of a building or structure, from one lot to another or to a new location on the same lot, shall be at a unit rate per $1,000 of the sum of the following: The estimated cost of moving, plus the cost of new foundations and all work necessary to place the building or structure in its completed condition in the new location.]

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

[(l)]**(k)** Fees to be charged to municipalities by private onsite inspection and plan review agencies are as follows:

1. Where the local enforcing agency uses the services of a private onsite inspection and plan review agency to enforce one or more subcodes, then the fees charged to the municipality by the private onsite agency shall be identical to those charged by the Department pursuant to N.J.A.C. 5:23-4.20 and as provided in this paragraph.

i. Building subcode: Where a private onsite agency performs building subcode services, the fees charged to the municipality by the private agency shall be [the sum of 70 percent of] either the volume-based or cost-based fee[s], whichever type is appropriate, which are **charged by the Department, as** set forth at N.J.A.C. 5:23-4.20 [(c)2i and 100 percent of the mechanical fee set forth at N.J.A.C. 5:23-4.20(c)2iv].

[ii. Fire subcode: Where a private onsite agency performs fire subcode services, the fee charged to the municipality by the private agency shall be the sum of 30 percent of either the volume-based or cost-based fees, whichever type is appropriate, which are set forth at N.J.A.C. 5:23-4.20(c)2i, and 100 percent of the sprinkler and standpipe fee which is set forth at N.J.A.C. 5:23-4.20(c)2v.]

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[iii.]**ii.** Plumbing subcode: Where a private onsite agency performs plumbing subcode services, [then] the fees charged to the municipality by the private agency shall be [100 percent of] the fees for plumbing fixtures and stacks **which are charged by the Department** as set forth at N.J.A.C. 5:23-4.20[(c)2ii].

[iv.]**iii.** Electrical subcode: Where a private onsite agency performs electrical subcode services, [then] the fees charged to the municipality by the private agency shall be [100 percent of] the fees for electrical fixtures and devices which are **charged by the Department as** set forth at N.J.A.C. 5:23-4.20[(c)2iii].

iv. Fire subcode: Where a private onsite agency performs fire subcode services, the fees charged to the municipality by the private agency shall be the sprinkler, standpipe, fire detector (smoke and heat), premanufactured fire suppression system, gas or oil fired appliances not connected to the plumbing system, kitchen exhaust system, incinerator and crematorium fees which are charged by the Department as set forth at N.J.A.C. 5:23-4.20.

v. Administrative surcharge: Municipalities using private onsite inspection and plan review agencies may add to the above fees an administrative surcharge of up to 15 percent of the relevant subcode(s) permit fee(s). The surcharge shall apply only to subcode areas for which the municipality has a contract with the onsite agency. In lieu of an administrative surcharge to fees charged by an onsite agency, a municipality may adjust its fee schedule up to 15 percent higher for this purpose.

2. Demolition and removal fees shall be charged as follows:

i. Where a private onsite agency performs one or more subcode services for demolitions or removals, [then] the amount charged to the municipality by the private agency shall be a portion of the demolition or removal fees[, whichever type is appropriate,] which are set forth at N.J.A.C. 5:23-4.20[(c)3 and 4, which portion] **as Departmental fees, and which** shall be as follows:

(1) Building subcode: 40 percent;

(2) Fire subcode: 20 percent;

(3) Plumbing subcode: 20 percent;

(4) Electrical subcode: 20 percent;

3. Sign fees shall be charged as follows:

i. Where a private onsite agency performs one or more subcode services for signs or billboards, [then] the amount charged to the municipality by the private agency shall be as follows:

(1) Building subcode: [100 percent of the] **The** sign fees set forth at N.J.A.C. 5:23-4.20[(c)5] **as Departmental fees.**

(2) Electrical subcode: [100 percent of the] **The** fees for electrical fixtures and devices set forth at N.J.A.C. 5:23-4.20[(c)2iii] **as Departmental fees.**

[4. Elevator fees shall be charged as follows:

i. When a private onsite agency performs services for elevators, then the elevator fees charged to the municipality by the private agency shall be identical to the elevator fees charged by the Department pursuant to N.J.A.C. 5:23-4.20(c)7, 10i, and 10ii].

[5.]**4.** Fees for certificates of occupancy and certificates of continued occupancy charged to the municipality by the private agency shall be the following portions of the fees for a certificate of occupancy and certificate of continued occupancy set forth at N.J.A.C. 5:23-4.20[(c)6:] **as Departmental fees:**

i. Building subcode: 40 percent;

ii. Fire subcode: 20 percent;

iii. Plumbing subcode: 20 percent; and

iv. Electrical subcode: 20 percent.

[6.]**5.** (No change in text.)

5:23-4.19 State of New Jersey training fees

(a) (No change.)

(b) Amount: This fee [will] **shall** be in the amount of [$0.0006] **$0.0014** per cubic foot volume of new construction. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28.

1. (No change.)

(c) (No change.)

5:23-4.20 Departmental fees

(a) General:

1.-4. (No change.)

5. Newly constructed residential units that are to be legally restricted to occupancy by households of low or moderate income shall be exempted from the fees set forth in (b) and (c) below and otherwise payable to the Department.

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a [departmental] **Departmental** plan review surcharge in the amount of 30 percent of each listed fee. Where the [department] **Department** performs plan review only, the plan review fee shall be in the amount of 20 percent of the new construction permit fee which would be charged by the [department] **Department** pursuant to these regulations. The minimum fee shall be [$25.00] **$33.00**.

(c) Departmental (enforcing agency) fees:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, [the mechanical systems and equipment,] the number of plumbing fixtures and [stacks] **pieces of equipment,** the number of electrical fixtures and devices and the number of sprinklers [and], standpipes, **and detectors (smoke and heat)** at the unit rates provided herein plus any special fees. [In each case, the] **The** minimum fee for **a** basic construction **permit covering any or all of building, plumbing, electrical or fire protection** work shall be [$25.00] **$33.00**.

i. **Building** [Volume] **volume** or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of [$0.0145] **$0.019** per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be [$0.008] **$0.011** per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be [$0.0004] **$0.0005** per cubic foot for structures on farms, **including commercial farm buildings under N.J.A.C. 5:23-3.2(d),** used exclusively for the storage of food or grain, or the sheltering of livestock, with the maximum fee for such structures on farms not to exceed [$625.00] **$815.00**.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of [$13.00] **$17.00** per $1,000. From $50,001 to and including $100,000, the additional fee shall be in the amount of [$10.00] **$13.00** per $1,000 of estimated cost above $50,000. Above $100,000, the additional fee shall be in the amount of [$8.00] **$11.00** per $1,000 of estimated cost above $100,000. For the purpose of determining estimated cost, the applicant shall submit to the [department, if available] **Department such** cost data **as may be available** produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The [department will] **Department shall** make the final decision regarding estimated cost.

(3)-(4) (No change.)

[(5) Fees for minor construction work shall be based upon the estimated cost of the work. The fee shall be in the amount of $13.00 per $1,000 of estimated cost or fraction thereof.]

ii. Plumbing fixtures and [stacks] **equipment**: The fees shall be as follows:

(1) The fee shall be [in the amount of $5.00] **$7.00** per fixture [or stack] **connected to the plumbing system** for all fixtures **and appliances** except as listed in (c)**2ii**(2) below.

(2) The fee shall be [in the amount of $35.00] **$46.00** per special device for **the following:** grease traps, oil separators, water-cooled air conditioning units, **refrigeration units,** utility service connections, **back flow preventers, steam** boilers [and furnaces]**, hot water boilers (excluding those for domestic water heating), gas piping, gas service entrances, active solar systems, sewer pumps, interceptors and fuel oil piping**.

[(3) For the purpose of computing this fee, fixtures or stacks shall include but not be limited to lavatories, kitchen sinks, slop sinks, sinks, urinals, water closets, bath tubs, shower stalls, laundry tubs, floor drains, utility service connections, drinking fountains, dishwashers, garbage disposals, clothes washers, hot water heater, or similar devices.]

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iii. Electrical fixtures and devices: The fees shall be as follows:

(1) (No change.)

(2) For each motor or electrical device [of more than one horsepower or one kilowatt] **greater than one horsepower and less than or equal to 10 horsepower; and for transformers and generators greater than 1 kilowatt and less than or equal to 10 kilowatts,** the fees shall be [in the amount of $5.00] **$7.00**.

[(3) For the purpose of computing this fee, all motors shall be counted, including control equipment, generators, transformers and all heating, cooking or other devices consuming or generating electric current.

(4) For each service panel of 100 amperes capacity or less, the fee shall be in the amount of $13.00; for each service panel of greater than 100 amperes capacity, the fee shall be increased $7.00 for each 100 amperes increment.]

(3) For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower; for each service panel, service entrance or sub panel less than or equal to 200 amperes; and for all transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts, the fee shall be $33.00.

(4) For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for transformers and generators greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be $65.00.

(5) For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater 1,000 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be $325.00.

(6) For the purpose of computing these fees, all motors except those in plug-in appliances shall be counted, including control equipment, generators, transformers and all heating, cooking or other devices consuming or generating electrical current.

[(5) For the purpose of computing this fee, the term service panel shall include service conductors, feeders, switches, switchboards, and panelboards.]

[3. The fee for a demolition permit shall be $35.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building subcode), and structures on farms used exclusively for storage of food or grain, or sheltering of livestock, and $65.00 for all other use groups.

4. The fee for a permit for removal of one building from one lot to another or to another location on the same lot shall be in the amount of $7.00 per $1,000 of estimated cost of moving, plus the estimated cost of new foundation and all work necessary to place the building in its completed condition in the new location.

5. The fee for a permit to construct a sign shall be in the amount of $0.65 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be $25.00.

6. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee which would be charged by the department pursuant to these regulations. The minimum fee shall be $65.00, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on forms used exclusively for storage of food or grain, or sheltering of livestock, for which the minmum fee shall be $35.00

i. The fee for a certificate of occupancy granted pursuant to a change of use group shall be $95.00.

ii. The fee for certificate of continued occupancy shall be $65.00.

iii. There shall be no fee for a temporary certificate of occupancy.

iv. Mechanical systems and equipment: The fee shall be 10 percent of the volume fee.]

[v. Sprinklers]

iv. Fire protection and other hazardous equipment: sprinklers [and], standpipes, **detectors (smoke and heat) pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums**: [The fee shall be as follows:]

(1) [For one to] **The fee for** 20 **or fewer** heads **or detectors** [,the fee] shall be [$35.00] **$46.00**; for 21 to **and including** 100 heads **or detectors**, the fee shall be [$65.00] **$85.00**; for 101 to **and including** 200 heads **or detectors**, the fee shall be [$125.00] **$163.00**; for 201 to and **including** 400 heads **or detectors**, the fee shall be [$325.00] **$423.00**; for 401 to and including 1,000 heads **or detectors**, the fee shall be [$450.00] **$585.00**; for over 1,000 **heads or detectors**, the fee shall be [$575.00] **$748.00. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.**

(2) The fee for **each** standpipe[s] shall be [$125.00 each] **$163.00.**

(3) The fee for each independent pre-engineered system shall be $65.00.

(4) The fee for each gas or oil fired appliance which is not connected to the plumbing system shall be $33.00.

(5) The fee for each kitchen exhaust system will be $33.00.

(6) The fee for each incinerator shall be $260.00.

(7) The fee for each crematorium shall be $260.00.

[7.] **3. Elevators:** The fee for a permit to install an elevator shall be [$200.00] **$260.00**.

4. Certificates and other permits: The fees are as follows.

i. The fee for a demolition or removal permit shall be $46.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building subcode), and structures on farms including commercial farm buildings under N.J.A.C. 5:23-3.2(d) used exclusively for storage of food or grain, or sheltering of livestock, and $85.00 for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of $0.85 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be $33.00.

iii. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee which would be charged by the Department pursuant to these regulations. The minimum fee shall be $85.00, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), used exclusively for storage of food or grain, or sheltering or livestock, for which the minimum fee shall be $46.00.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be $124.00.

v. The fee for certificate of continued occupancy shall be $85.00.

vi. There shall be no fee for a temporary certificate of occupancy.

vii. The fee for a certificate of approval certifying that work done under a construction permit has been satisfactorily completed shall be $20.00.

[8.]**viii.** The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode [is as follows: $150.00] **shall be $195.00** for one and two-family homes, and **for** light commercial structures having the indoor temperature controlled from a single point, and [$750.00] **$975.00** for all other structures.

[9.]**ix.** The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be [$325.00] **$423.00** for class I structures and [$65.00] **$85.00** for class II and class III structures. The fee for resubmission of an application for a variation shall be [$125.00] **$163.00** for class I structures and [$35.00] **$46.00** for class II and class III structures.

[10.]**5. Periodic inspections:** Fees for the periodic [departmental] **Departmental** reinspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i. For elevators, escalators and moving walks requiring reinspection every six months, the fee shall be [$50.00] **$65.00**, except for each five-year inspection and witnessing of tests on elevators, for which the fee shall be [$160.00] **$208.00**.

ii. For dumbwaiters requiring reinspection every 12 months, the fee shall be [$20.00] **$26.00**.

iii. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be [$25.00] **$33.00** for each device when they are tested (thrice annual-

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ly) and [$65.00] **$85.00** for each device when they are broken down and tested (once annually).

[iv. For sprinklers requiring reinspection every 12 months, the fee shall be $125.00 for systems of up to 100 sprinkler heads and $6.50 for each 150 additional sprinkler heads.].

[11.]**6. Annual permits:** The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers **who are** employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Fees shall be as follows:

i. 1-25 workers (including foreman) [$325] **$425.00**/worker; each additional worker over 25 [$125] **$165.00**/worker.

[12.]**ii.** Prior to the issuance of the annual permit, a training registration fee of $100.00 per subcode shall be submitted by the applicant to the Department of Community Affairs, [Bureau of] Construction Code [Enforcement]**Element**, Training Section along with a copy of the construction permit (Form F-170). Checks shall be made payable to "Treasurer, State of New Jersey".

5:26-2.3 Requests for exemptions

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions of the Act, or who is contemplating a planned real estate development or retirement community which he believes may be exempt, may apply to the Director for a Letter of exemption. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community, or proposed planned real estate development or retirement community, may be exempt from the Act. An application for exemption pursuant to N.J.A.C. 5:26-2.2(a) shall be accompanied by a fee of [$80.00] **$104.00**.

1. No fee shall be charged for any development consisting entirely of units legally restricted to occupancy by households of low or moderate income.

(b)-(e) (No change.)

5:26-2.4 Application for registration; submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in N.J.A.C. 5:26-3 and shall be submitted in the manner and form as provided therein together with the filing fee in the amount of [$775.00] **$1,000.00** plus [75.00] **$100.00** per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey. In the event lots, parcels, units or interests are added during registration, an additional fee of [$75.00] **$100.00** per lot, parcel, unit or interest shall be paid. There [will] **shall** be no refunds for deletions.

1. No fee shall be charged for units legally restricted to occupancy by households of low or moderate income.

(b) (No change.)

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on May 23, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment, "An Amendment Concerning the Application of Wetlands Policy for Mountainview Development in Ewing Township (Water Quality Management Plan Section 4.5.1.)" will provide for a minor intrusion through a wetlands area running along Bear Creek. 0.005 acres of intrusion will occur due to construction of a concrete driveway culvert serving two of the homes and a temporary intrusion of 0.011 acres to construct a sanitary sewer line crossing.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on July 26, 1988, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment will adopt a Wastewater Management Plan (WMP) for the Township of Cedar Grove. That document allows for the upgrade and expansion of the Cedar Grove Wastewater Treatment Plant from 1.5 million gallons per day to 2.0 million gallons per day and establishes a sewer service area for that facility. The Township of Cedar Grove will be designated as the Wastewater Management Agency.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on September 21, 1988, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment is to adopt a Wastewater Management Plan (WMP) for Ringwood Borough. This WMP defines the sewer service area for the Wanaque Regional Sewerage Authority in addition to five existing sewage treatment plants. The WMP provides for designated areas for utilizing on-site sewage treatment systems via groundwater discharge.

(d)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Petition for Rulemaking N.J.A.C. 7:27-23

Public Notice

Petitioners:

Individual Name	Company
Alfred E. Eline	Eline Company, Inc.
	A&M Paint & Wallpaper Supplies
Bruce K. Klein	Mister Paints, Inc.
Frank Mahon	Belmont Paint & Decorating Center
Henry W. Buschman	Buschman Inc.
Joseph J. Rossi	Rossi Paint, Inc.
James Canova, Jr.	Tungol Paint
Andrew R. Korch	Hillsdale Paint/Westwood Paint
John Mathews	P.J. Monahan Paint Co., Inc.
Chuck Patuti	
Robert W. Landzettel	Landzettel & Sons
John J. Grennor	Park Decorating Center
	N. Siperstein, Inc.
David Greenberg	Salem Paint
	Paint N Paper
Cathy Blinn	Marsala Hardware
	Township Hardware
Bruce J. Palmer	Palmer Brothers Co.
Joseph M. Pisari	Eagle Paint and Wallpaper Co.
	National Paint and Glass Supply
	Norton Stores, Inc.
James Patterson	Hackensack Paint & Wallpaper
Elliot Greenberg	Fox Paint
Bernard Rossi	Rossi Decorating Co.
	Sacks Paint
	Field Paints

Take notice that during the comment period for proposed amendments to the Air Pollution Control Code which closed June 9, 1989 (see 21 N.J.R. 1055(a)), the Department of Environmental Protection (the Department) received petitions for rulemaking concerning N.J.A.C. 7:27-23, the Department's rules on volatile organic substances in consumer products.

Petitioners request that the Department amend N.J.A.C. 7:27-23.3 to provide "grandfathering" of existing stock of architectural coatings by basing compliance with the rule on the date of manufacture of the particular product.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioners, and file with the Office of Administrative Law, a notice of action on the petition.

(e)

DIVISION OF WATER RESOURCES

Notice of Public Meeting

Criteria for Future Grant Priorities under the Sewage Infrastructure Improvement Act

Take notice that the New Jersey Department of Environmental Protection, Division of Water Resources ("Department") will hold a public meeting to solicit public comment concerning criteria for future grant priorities under the Sewage Infrastructure Improvement Act. The **public meeting** will be held on:

Monday August 14, 1989 at 3:00 P.M.
Ocean County Administration Building, Room 119
101 Hooper Avenue
Toms River, New Jersey

The Sewage Infrastructure Improvement Act ("Act"), N.J.S.A. 58:25-23 et seq., requires all municipalities with stormwater sewer systems discharging into the salt waters of Monmouth, Ocean, Atlantic, or Cape May Counties ("affected municipalities") to adopt a final map of their stormwater sewer system on or before February 3, 1990. The final map should locate all stormwater sewer and sanitary sewage lines within the

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geographical boundaries of the municipality which are part of any stormwater sewer system that discharges into surface waters. The final map shall also identify all cross-connections and known interconnections between stormwater and sanitary sewer systems and indicate whether the cross-connections have received a permit from the Department. Further, in order to abate pollution from combined sewer overflow points, the Act requires any public entity within the State of New Jersey ("State"), including any local government unit, operating a combined sewer system to provide abatement measures by February 3, 1991 at any combined sewer overflow point where a permit is required. To meet the objectives of the Act, the Act authorized an appropriation of $33.5 million to provide grants to affected municipalities and municipalities and public entities controlling or operating combined stormwater sewer and sanitary sewage systems.

To facilitate preparation of the final map, the Department is making available grants to prepare preliminary mapping and inventory. While affected municipalities are not required to apply for preliminary mapping and inventory grants, information obtained in the preliminary mapping and inventory phase will be used to determine final mapping grant awards. These proposed rules for the preliminary mapping and inventory ($1.0 million) as well as the proposed rules for the planning and design to eliminate combined sewer overflows ($17.4 million) appear elsewhere in this issue of the New Jersey Register (see Proposed New Rules—Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A-1, 3, 3 and 6).

The affected municipalities, upon completion of the final map, shall monitor at least every three months the water quality at the outfall locations for any stormwater sewers discharging into salt waters. The Act additionally requires the affected municipalities to eliminate or cause to be eliminated all unpermitted cross-connections and interconnections between stormwater sewer systems and sanitary sewage systems within the municipalities before February 3, 1991. The affected municipalities shall also take measures to abate nonpoint sources of pollution directly entering salt waters of the State.

The Department is currently preparing the rules to address the outstanding objectives of the Act and to distribute the remaining $13.1 million contained in the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund. These rules will apply to the final mapping standards ($5.6 million), quarterly monitoring requirements, nonpoint source pollution abatement planning ($2.8 million), and planning and design requirements to eliminate cross-connections and interconnections ($4.7 million). The Department is seeking public input into the development of criteria which may be used in determining grant priorities for these funds.

The Department is considering the following factors for establishing grant priorities:

A. For the award of final mapping grants: public road mileage, the number of outfalls and a development indicator (for example, zoning densities). The Department believes that public road mileage is a good indication of infrastructure, that the number of outfalls is an indication of the number of systems to be mapped, and the development factor is an indication of the amount of impervious cover. Some or all of these factors plus any additional criteria the Department deems relevant would be averaged together. The average would be multiplied by $6.6 million and maximum and minimum grant amounts would be established, similar to the proposed preliminary mapping and inventory grants. Final mapping grants would be made available to all affected municipalities.

B. For nonpoint source pollution abatement planning grants: surface area of the municipality, land use, shellfish areas, primary recreation areas, and preliminary water quality sampling. The surface area of the municipality is an indication of the size of the municipality, land use is an indication of potential sources of stormwater runoff pollution, shellfish areas and primary recreation areas are indications of areas adversely impacted by nonpoint source pollution, and the preliminary water quality sampling will indicate problem areas. A priority list would be developed based on some or all of these factors plus any additional criteria the Department deems relevant. Grant awards would be based on the priority ranking and the submission of a completed application within the timetable established by the Department. Grants would be awarded until the funds are depleted.

C. For the planning and design to eliminate the cross-connections and interconnections: the results of the final mapping and preliminary water quality sampling. The final maps adopted by the affected municipalities must identify cross-connections and interconnections. The preliminary water quality sampling will indicate problem areas. A priority list would be developed based on some or all of these factors plus any additional criteria the Department deems relevant. Grant awards would be based on the priority ranking and the submission of a completed application within the timetable established by the Department. Grants would be awarded until the funds are depleted.

Submit written comments by August 16, 1989 to:

Roger S. Haase, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on July 26, 1988, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment included a Wastewater Management Plan (WMP) for the Town of Phillipsburg, Lopatcong and Pohatcong Townships, and Alpha Borough. The Phillipsburg Sewage Treatment Plant (STP) will be upgraded to meet effluent limitations and the sewer service area will be expanded. Phillipsburg will be designated the Wastewater Management Agency for the treatment plant and their conveyance system. Each of the municipalities will be designated as the Wastewater Management Agency for their own conveyance facilities.

Comments on this amendment were received during the public comment period, and are summarized below with the Department's response.

COMMENT: Comments were received from two parties regarding the non-inclusion of their property in the proposed sewer service area and the mechanisms by which the proposed sewer service area delineation was arrived at. Both parties requested a public hearing.

RESPONSE: At the present time, the Phillipsburg STP is being upgraded to meet the Federal Clean Water Act effluent limitations. The plant is not being expanded. The present wastewater flow to the plant is 2.4 million gallons per day (MGD); however, the plant is presently permitted at 3.5 MGD. The upgrade will merely allow them to completely utilize their existing permitted flow. Discussions with Phillipsburg have indicated that they will seek an expansion of the STP and the sewer service area at a later date.

With regard to the method by which the 3.5 MGD sewer service area was determined, the Town of Phillipsburg requested the outlying municipalities to identify those projects within their corporate limits which had received either preliminary or final approval from their respective Planning Boards. Upon receipt of that data, those projects were plotted on a map and the zoning densities were identified for those parcels located between the approved projects in the existing sewer service area. Based upon the combination of these two items, the 3.5 MGD sewer service area was delineated. Several of the projects which had received preliminary or final approval from an outlying municipality were not included in the sewer service area. If they were included in the sewer service area it would have resulted in gaps within the sewer service area.

A public meeting was held on March 28, 1988 regarding the amendment. The purpose of the meeting was to review the proposed sewer service area prior to submittal of the WMP to the Department. There appeared to be no objections to the proposed delineation among those present at the meeting which included representatives of the municipalities. Due to the minimal number of comments which were received during the comment period, a public hearing was not held.

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(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on September 2, 1988, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment is to adopt a Wastewater Management Plan (WMP) for Chester Township. The WMP allows the construction of a sewage treatment plant to service the Westminister Estates and Schaefer Tract residential developments. The Simmonds Precision Plant will construct a holding tank where additional wastewater flows can be collected and transported daily to their Hercules-Kenvile plant for treatment. Chester Township will be designated as the Wastewater Management Agency.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on September 8, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment is to adopt the Hillsborough Township's Wastewater Management Plan. This plan will allow the expansion of the Valley Road Sewerage Companies Incorporated sewer service area to include the proposed Wyckoff Estates development. The River Road Sewerage Treatment Plant (STP) will be converted to a pump station with flows being connected to the Somerset-Raritan Valley Sewerage Authority's STP. The Fieldhedge Drive STP will be dismantled and its flow connected to the Somerset-Raritan Valley Sewerage Authority's STP. The Hillsborough Township Municipal Utilities Authority will be designated as the Wastewater Management Agency for the Township.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow for the transfer of the Somerset Raritan Valley Regional Sewerage Authority's (SRVSA) sewer service area from properties owned by the County of Somerset and the Elizabethtown Corporation (E'town) located in Bridgewater Township to adjacent parcels of lesser acreage which are more appropriate for development. Seventy-nine acres will be added to the SRVSA sewer service area, whereas 129.7 acres will be removed from the sewer service area. The transfer of the sewer service area to an adjacent smaller tract will aid in the effort to preserve the integrity of the Washington Valley Reservoir.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Township of Franklin, Gloucester County Wastewater Management Plan (WMP). This WMP would allow the construction of four new on-site wastewater treatment facilities to serve the proposed Delsea Middle School, the Mary F. Janvier Elementary School, the Royal National Line Inn and the Franklin Place Retail Shopping Center.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HEALTH

(e)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Grandfathering Process for Rehabilitation Hospitals

Take notice that the Department of Health, with the approval of the Health Care Administration Board, is requesting the submission of documentation from existing facilities in New Jersey that wish to be considered for licensure as a rehabilitation hospital without applying for a certificate of need, through a grandfathering process.

On May 1, 1989, proposed certificate of need rules (N.J.A.C. 8:33M) and licensing standards (N.J.A.C. 8:43H) for rehabilitation hospitals were published in the New Jersey Register. N.J.A.C. 8:33M appears as an adoption in this issue of the New Jersey Register. N.J.A.C. 8:33M contains provisions identifying the types of facilities that may be considered by the Department for licensure as rehabilitation hospitals without applying for a certificate of need. In general terms, facilities that will be "grandfathered" by the Department as rehabilitation hospitals are those institutions that have historically been providing inpatient, comprehensive rehabilitation services in accordance with the licensure standards proposed in N.J.A.C. 8:43H.

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N.J.A.C. 8:33M-1.1(e) states the following:

Upon written request to the Department of Health by September 1, 1989, the following may be considered for authorization and licensure as rehabilitation hospitals:

1. Facilities providing comprehensive rehabilitation that are licensed by the Department as special hospitals, unless the special hospital has received a certificate of need stipulating that approved beds are not to be used for comprehensive rehabilitation;

2. That part of a general hospital containing one or more separate and distinct units with beds that have previously been licensed by the Department of Health as "medical-surgical (rehab)" beds; and

3. That part of any other health care facility which has an established program (that is, in operation for at least twelve months prior to the effective date of these rules) of inpatient rehabilitation services in compliance with the standards contained in N.J.A.C. 8:43H.

Facilities meeting the descriptions given above are eligible to submit to the Department a request for "grandfathering". As the "grandfathering" request deadline approaches, the Department has decided to set forth, through this notice, the following information and documentation the Department needs from each applicant, in order to properly assess each request:

1. A description of the facility with a breakdown of the total bed complement, according to the licensing category of beds:
   - —How many of the facility's beds are proposed to be grandfathered as comprehensive rehabilitation beds?
   - —If less than the facility's entire bed complement is proposed for grandfathering, are the rehabilitation beds located on a separate and distinct unit?
   - —Identify the location of each unit that is used exclusively for inpatient rehabilitation, and indicate the number of beds on each of these units.

2. A statement specifying the date when the facility began offering comprehensive inpatient rehabilitation. If the facility received certificate of need approval to offer inpatient rehabilitation, a copy of the approval letter should be submitted.

3. Using the most recent available data covering a twelve month time period, provide a breakdown of the facility's inpatient rehabilitation patients according to their referral sources:

No. patients
referred by:
- —acute care hospitals
- —long-term care facilities
- —self/family/friend
- —private physician (patients admitted to the facility from home/community rather than from an inpatient health care facility)
- —other rehabilitation hospitals
- —Other (specify: _____)

4. Provide a breakdown of the facility's inpatient rehabilitation patients from the same time period used in Question #3 above, according to primary diagnosis. Use the following groupings and state the **number of patients** and the **number of patient days** for each diagnostic category (NOTE: DO NOT INCLUDE ACUTE CARE PATIENTS OR PATIENT DAYS):

No. Pts. Pt. Days
- —amputation
- —arthritis
- —brain/head injury
- —hip fracture/replacement
- —back pain
- —major multiple trauma
- —multiple sclerosis
- —spinal cord injury
- —stroke/hemiplegia/cerebrovascular accident
- —congenital defect
- —all others

5. Provide a breakdown of the facility's inpatient rehabilitation patients from the same time period used in Question #3 above, according to discharge destination:

No. Pts.
Discharged to:
- —acute care hospital
- —long-term care facility/other sheltered care facility
- —home/private residence
- —another rehabilitation hospital
- —deceased at time of discharge
- —Other (specify: _____)

6. Provide a copy of the medical director's resume including Board certification status, job description, and proof of hours per week worked at the facility during the past twelve month period.

7. Submit documentation of physician coverage of the rehabilitation beds during the past twelve month period, including medical staff's resumes, job descriptions, and proof of hours per week worked at the facility.

8. Submit proof of rehabilitation therapists' coverage of the rehabilitation beds during the past twelve month period, naming each physical, occupational, speech, and respiratory therapist along with his/her professional credentials, and identifying the total number of hours worked by each category of personnel (e.g., staffing schedules, payroll documentation):
   - —physical therapists
   - —occupational therapists
   - —speech-language pathologists
   - —respiratory therapists

9. Submit proof of registered nurses' coverage of the rehabilitation beds during the past twelve month period, demonstrating whether each rehabilitation unit has been staffed by at least one registered nurse, 24 hours per day, seven days per week.

10. Submit a copy of the facility's admission policies for the rehabilitation beds.

11. Indicate which of the following services the facility has consistently provided to rehabilitation patients during the past twelve month period, on an inpatient and/or outpatient basis; submit proof that the service was actually provided by the facility; indicate whether the service was provided by staff hired directly by the facility or through a subcontracting arrangement; and indicate the number of full-time equivalent employees for each service:

Inpatient Outpatient
- —audiology
- —dental
- —driver evaluation
- —environmental modification
- —laboratory
- —nutritional counseling
- —orthotic and prosthetic
- —pharmaceutical
- —psychological counseling
- —sexual counseling
- —social work
- —vocational testing and counseling

Requests for grandfathering of rehabilitation hospitals, accompanied by the above-referenced items of documentation, should be submitted by September 1, 1989 to:

John Calabria
Director, Health Policy, Planning, and Certificate of Need
State Department of Health
CN 360
Trenton, N.J. 08625

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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 June 5, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MAY 15, 1989

NEXT UPDATE: SUPPLEMENT JUNE 19, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1179 and 1472	May 15, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 2949 and 3046	December 5, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 1 and 88	January 3, 1989		
21 N.J.R. 89 and 224	January 17, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to OAL	21 N.J.R. 1181(a)	R.1989 d.395	21 N.J.R. 2019(a)
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
Most recent update to Title 1: TRANSMITTAL 1989-3 (supplement April 17, 1989)				
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importations	21 N.J.R. 1477(a)		
2:5	Equine infectious anemia and avian influenza	21 N.J.R. 1479(a)		
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)	R.1989 d.270	21 N.J.R. 1384(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:69-1.11	Commercial values of primary plant nutrients	21 N.J.R. 813(a)	R.1989 d.326	21 N.J.R. 1668(a)
2:71-2.2, 2.4	"Jersey Fresh" logo program	21 N.J.R. 591(a)	R.1989 d.235	21 N.J.R. 1118(a)
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)	R.1989 d.234	21 N.J.R. 1118(b)
2:76	State Agricultural Development Committee rules	21 N.J.R. 1601(a)		
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)		
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)		
Most recent update to Title 2: TRANSMITTAL 1989-5 (supplement May 15, 1989)				
BANKING—TITLE 3				
3:1-2.25, 2.26	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:1-16.1	Mortgage loan practices	21 N.J.R. 957(a)	R.1989 d.332	21 N.J.R. 1668(b)
3:6-13.3, 13.5, 14.1, 14.2	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:11	Lending and investments by State banks	21 N.J.R. 367(a)	R.1989 d.236	21 N.J.R. 1121(a)
3:11-5.1, 11.9	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:22-1	Insurance premium finance agreements	21 N.J.R. 661(a)	R.1989 d.307	21 N.J.R. 1516(a)
3:24	Check cashing business standards	21 N.J.R. 1765(a)		
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		
Most recent update to Title 3: TRANSMITTAL 1989-2 (supplement May 15, 1989)				
CIVIL SERVICE—TITLE 4				
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)		
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)		
4:3-16	Layoffs in local service	21 N.J.R. 1185(a)	R.1989 d.369	21 N.J.R. 2019(b)
4:3-16	Layoffs in local service: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1480(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)				

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)		
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)		
4A:3-2.2	Designation of SES positions: administrative correction	_____	_____	21 N.J.R. 1824(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:4-2.3, 2.9, 2.15, 5.2, 6.3–6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)		
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)		
	Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)			
COMMUNITY AFFAIRS—TITLE 5				
5:2-1	Organization of department (see also 5:51-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:2-2	Petitions for rules (recodified from 5:29-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:10-11.1	Hotels and multiple dwellings: correction to text	_____	_____	21 N.J.R. 1123(a)
5:11-8.5	Recovery of relocation assistance costs	21 N.J.R. 1039(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)	R.1989 d.10	21 N.J.R. 1123(b)
5:15-3.1, 3.4	Emergency shelters for homeless	21 N.J.R. 1509(a)		
5:17	Retirement community full disclosure	21 N.J.R. 958(a)	R.1989 d.317	21 N.J.R. 1669(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18A-2.6	Uniform Fire Code: life hazard use registration fees and permit fees	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: full disclosure municipal enforcing fees; standards for municipal and departmental fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)	R.1989 d.342	21 N.J.R. 1844(b)
5:26-1.3, 11.7	Retirement community full disclosure	21 N.J.R. 958(a)	R.1989 d.317	21 N.J.R. 1669(a)
5:26-2.3, 2.4	Uniform Construction Code: full disclosure municipal enforcing fees; standards for municipal and departmental fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:29-1	Petitions for rules (see 5:2-2)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:29-2	Landlord-tenant relations	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)	R.1989 d.227	21 N.J.R. 1133(a)
5:51-1	Handicapped Persons' Recreational Opportunities Act (recodified from 5:2-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)	R.1989 d.393	21 N.J.R. 2019(c)
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)	R.1989 d.259	21 N.J.R. 1331(b)
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-1.3, 11.2, 14.3	Council on Affordable Housing: alternative living arrangements	21 N.J.R. 595(a)	R.1989 d.264	21 N.J.R. 1331(c)
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)	R.1989 d.370	21 N.J.R. 2020(a)
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)	R.1989 d.265	21 N.J.R. 1332(a)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)	R.1989 d.295	21 N.J.R. 1516(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:100	Ombudsman for the institutionalized elderly: extension of comment period	21 N.J.R. 958(b)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		

Most recent update to Title 5: TRANSMITTAL 1989-5 (supplement May 15, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)	R.1989 d.354	21 N.J.R. 1824(b)
6:8-1.1, 4.3, 7.1	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:24-5.4	Public testimony session concerning charges against tenured employees of other State departments	21 N.J.R. 1775(a)		
6:28	Special education	21 N.J.R. 239(a)	R.1989 d.239	21 N.J.R. 1385(a)
6:29-9.2, 9.3, 9.5, 9.6	Substance abuse control and education	21 N.J.R. 1603(a)		
6:30-1.7, 2.3, 2.6	Adult education programs: monitoring and funding	21 N.J.R. 1039(b)	R.1989 d.355	21 N.J.R. 1826(a)
6:39	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:39-1	Statewide assessment of pupil proficiency in core studies	21 N.J.R. 1605(a)		
6:46-4.1, 4.4–4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)	R.1989 d.241	21 N.J.R. 1137(a)
6:70	Public testimony session concerning library network services	21 N.J.R. 1775(a)		

Most recent update to Title 6: TRANSMITTAL 1989-5 (supplement May 15, 1989)

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7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2–1.5, 1.7–1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)		
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)		
7:6	Boating rules	21 N.J.R. 1157(a)	R.1989 d.351	21 N.J.R. 1856(a)
7:6-1.44, 4.7, 9	Lanyard cut-off switch; Greenwood Lake boating; personal watercraft	21 N.J.R. 1157(b)	R.1989 d.352	21 N.J.R. 1856(b)
7:7	Coastal Permit Program	21 N.J.R. 369(a)	R.1989 d.309	21 N.J.R. 1526(a)
7:7	Coastal Permit Program: extension of comment period	21 N.J.R. 1041(a)		
7:7	Coastal Permit Program: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:7-2.3	Waterfront development	21 N.J.R. 4(a)	R.1989 d.243	21 N.J.R. 1141(a)
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-1.4, 2.5, 6, 7, 16.6, 16.7	Freshwater wetlands transition areas	21 N.J.R. 596(a)	R.1989 d.362	21 N.J.R. 1858(a)
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)	R.1989 d.373	21 N.J.R. 2024(a)
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)	R.1989 d.271	21 N.J.R. 1332(b)
7:7E-7.14	High rise structures: administrative correction	_____	_____	21 N.J.R. 1857(a)
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:11-2.1–2.5, 2.8–2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)	R.1989 d.310	21 N.J.R. 1527(a)
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9, 9.12	Shellfish-growing water classification	21 N.J.R. 1041(b)	R.1989 d.390	21 N.J.R. 2032(a)
7:13	Flood hazard area control	21 N.J.R. 371(a)		
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13	Flood Hazard Area Control: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:13-7.1(d)	Redelineation of Ramapo River: extension of comment period	21 N.J.R. 1482(a)		
7:14	Water pollution control	21 N.J.R. 373(a)	R.1989 d.282	21 N.J.R. 1530(a)
7:14A	New Jersey Pollutant Discharge Elimination System (NJPDES)	21 N.J.R. 707(a)	R.1989 d.339	21 N.J.R. 1883(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:23	Emergency flood control	21 N.J.R. 1051(a)	R.1989 d.348	21 N.J.R. 1903(a)
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)		
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)		
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)		
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)	R.1989 d.269	21 N.J.R. 1333(a)
7:25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)	R.1989 d.394	21 N.J.R. 2035(a)
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-3A	Regulated medical wastes	Emergency (expires 8-25-89)	R.1989 d.396	21 N.J.R. 2109(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)	R.1989 d.308	21 N.J.R. 1558(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)	R.1989 d.331	21 N.J.R. 1669(b)
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:28-25	Radiation laboratory fee schedule	21 N.J.R. 826(a)	R.1989 d.349	21 N.J.R. 1904(a)
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		

Most recent update to Title 7: TRANSMITTAL 1989-5 (supplement May 15, 1989)

HEALTH—TITLE 8				
8:8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)	R.1989 d.246	21 N.J.R. 1412(a)
8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)		
8:31B-3.16	Hospital reimbursement: labor cost component	21 N.J.R. 661(b)	R.1989 d.383	21 N.J.R. 2087(a)
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51-3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1-5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)	R.1989 d.387	21 N.J.R. 2058(a)
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.22, 3.23, 3.24, App. XI	Hospital reimbursement: graduate medical education	21 N.J.R. 1059(a)	R.1989 d.388	21 N.J.R. 2082(a)
8:31B-3.27	Capital facilities: administrative correction	_____	_____	21 N.J.R. 1827(a)
8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(b)	R.1989 d.385	21 N.J.R. 2073(a)
8:31B-3.66	Hospital reimbursement: adjusted admission fee ceiling	21 N.J.R. 1606(a)		
8:31B-3.73	Hospital reimbursement: rates adjustment and reconciliation	21 N.J.R. 1606(b)		
8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)		
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)	R.1989 d.384	21 N.J.R. 2088(a)
8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)	R.1989 d.272	21 N.J.R. 1419(a)

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8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)	R.1989 d.322	21 N.J.R. 1680(a)
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)		
8:33G	Computerized tomography services: certificate of need process	21 N.J.R. 1061(a)		
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)	R.1989 d.276	21 N.J.R. 1423(a)
8:33J-1.1–1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)	R.1989 d.274	21 N.J.R. 1423(b)
8:33M	Rehabilitation hospitals and comprehensive rehabilitation services: need review process	21 N.J.R. 1062(a)	R.1989 d.386	21 N.J.R. 2102(a)
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(b)	R.1989 d.273	21 N.J.R. 1425(a)
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)	R.1989 d.389	21 N.J.R. 2107(a)
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)	R.1989 d.323	21 N.J.R. 1681(a)
8:42A	Licensure of alcoholism treatment facilities: correction to proposal	21 N.J.R. 833(a)		
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8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)		
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8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
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8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
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8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:43H	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)		
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8:60-1.4, 2.1 (12:120-1.4, 2.1)	Asbestos removal defined	20 N.J.R. 1049(a)	R.1989 d.247	21 N.J.R. 1333(b)
8:61-2.4	Retrovir reimbursement program	21 N.J.R. 606(b)	R.1989 d.275	21 N.J.R. 1429(a)
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8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b), 756(b), 1430(a))	20 N.J.R. 1766(a)	R.1989 d.377	21 N.J.R. 2107(b)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c), 756(a), 1429(c))	20 N.J.R. 2356(a)	R.1989 d.380	21 N.J.R. 2108(b)
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
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10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)	R.1989 d.315	21 N.J.R. 1699(b)
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)	R.1989 d.284	21 N.J.R. 1562(a)
10:37-5.6–5.11, 5.16–5.24	Repeal (see 10:31)	21 N.J.R. 273(a)	R.1989 d.283	21 N.J.R. 1572(a)
10:40	Organization of Division of Developmental Disabilities	Exempt	R.1989 d.301	21 N.J.R. 1572(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)	R.1989 d.302	21 N.J.R. 1573(a)
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
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10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:49-1.1, 1.2	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)		
10:49-1.1, 1.7–1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
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10:63-3.21	Long-term care facilities: Medicaid occupancy level supplemental payment	21 N.J.R. 1456(a)	R.1989 d.368	21 N.J.R. 2038(a)
10:65	Medical Day Care Program	21 N.J.R. 1794(a)		
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10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-6.1, 6.3	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)		
10:80-1	Organization of Division of Public Welfare	Exempt	R.1989 d.316	21 N.J.R. 1700(a)
10:81	Public Assistance Manual	21 N.J.R. 1795(a)		
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10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)	R.1989 d.337	21 N.J.R. 1908(a)
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)		
10:81-14.5, 14.18	REACH Program: post-AFDC child care	21 N.J.R. 1086(b)	R.1989 d.353	21 N.J.R. 1908(b)
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10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)	R.1989 d.338	21 N.J.R. 1910(a)
10A:19	Public information	21 N.J.R. 1490(a)		
10A:33	Juvenile Detention Commitment Programs	21 N.J.R. 667(a)	R.1989 d.286	21 N.J.R. 1517(a)
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11:3-16	Private passenger automobile rate filings	21 N.J.R. 611(a)		
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11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-20	Private passenger automobile insurers: financial disclosure and excess profits reporting	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1335(a)
11:3-20	Financial disclosure and excess profits reporting: corrected responses to comments	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1517(b)
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11:3-22.1, 22.3, Forms A, B	Automobile coverage option survey: PIP and tort threshold	21 N.J.R. 619(a)	R.1989 d.267	21 N.J.R. 1358(a)
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12:100-4.2	Public employee safety and health: air contaminant exposure limits	21 N.J.R. 1089(a)	R.1989 d.358	21 N.J.R. 1829(a)
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12:100-9.2	Public employee safety and health: work in confined spaces	21 N.J.R. 1647(a)		
12:100-11	Public employee safety and health: control of hazardous energy sources	21 N.J.R. 620(a)	R.1989 d.238	21 N.J.R. 1144(a)
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12A:120-2	Urban Enterprise Zone Program: certification for zone business benefits	21 N.J.R. 693(a)	R.1989 d.376	21 N.J.R. 2043(a)
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13:1-4.5	Police Training Commission: instructor certification	21 N.J.R. 1647(b)		
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13:2-21	Transportation of alcoholic beverages into, through or out of State	21 N.J.R. 1304(a)	R.1989 d.371	21 N.J.R. 2047(a)
13:18-11	Organization of the Division of Motor Vehicles	Exempt	R.1989 d.365	21 N.J.R. 2048(a)
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