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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 19, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 16, 1990

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **June 20, 1990.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Agricultural Liming Materials

Proposed New Rules: N.J.A.C. 2:70

Authorized By: State Board of Agriculture, Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:9-21.1 et seq., specifically 4:9-21.11.

Proposal Number: PRN 1990-241.

Submit comments by June 20, 1990 to:
Robert C. Fringer, Director
New Jersey Department of Agriculture
Division of Regulatory Services
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5575

The agency proposal follows:

Summary

This chapter was internally reviewed by the Department of Agriculture in compliance with Executive Order No. 66(1978) and was found to be adequate, reasonable and necessary in regulating the manufacture and use of Agricultural Liming Materials. The chapter expired on May 7, 1990 and is therefore being proposed for readoption as new rules.

The text of the chapter defines "pulverized", "ground" and "granular" limestone (N.J.A.C. 2:70-1.1 to 1.3). Materials failing to meet the standards for pulverized, ground and/or granular limestone may not be sold as agricultural limestone (N.J.A.C. 2:70-1.4). Burnt limes and hydrated lime standards are described (N.J.A.C. 2:70-1.5 and 1.6). Inspection fee requirements are clearly outlined (N.J.A.C. 2:70-1.7). Minimum total oxide content and derivation of slurries (mixtures of lime and water), and suspension are explained (N.J.A.C. 2:70-1.8). The State Treasurer receives all inspection fees from producers of liming materials sold in New Jersey.

Social Impact

The rules have allowed farm and non-farm consumers of agricultural liming materials to be clearly informed concerning the guarantee and content of the product which they use. Manufacturers have been aware of the labeling content and physical characteristics required of their products. The readoption of the rules is necessary in order to continue these beneficial effects.

Economic Impact

Consumers and distributors of agricultural liming materials have been provided relief from economic loss by the requirement that such materials be properly labeled. The failure to include correct ingredients in these materials can effectively burn a crop and damage the soil itself. Thus these rules have performed a vital role in consumer protection. The readoption of these rules is necessary in order to continue these beneficial effects.

Regulatory Flexibility Analysis

N.J.A.C. 2:70 implements N.J.S.A. 4:9-21.1 et seq., the Agricultural Liming Materials Act, which although having been altered by revisions, has been in substantially similar form on the books for many years. The original law was in response to the growing use and availability of agricultural liming materials to farmers, who faced products of doubtful value. The law and rules are designed to provide accurate verifiable information so the proper amount and type of agricultural liming material is used on any particular crop and soil.

The Department has registered firms dealing in commercial feeds, fertilizers and liming material. Many of these are small businesses. However, all farmers in New Jersey are small businesses, by virtue of that term's definition in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Further, many individual consumers use liming materials.

The Regulatory Flexibility Act makes no explicit provision for weighing the harm of a regulation against one group of small businesses and comparing it to the benefits given to others. But the intent of the Act seems to be that the regulatory agency is required to quantify in its analysis the good and harm that is to be done by a regulation to all small businesses. The question of consumer interest is not addressed in the Regulatory Flexibility Act; however, the Legislative history of the original and subsequent Agricultural Liming Materials Act makes manifestly clear there is an intent to protect the end user of the commodity. The drafting of the Agricultural Liming Materials Act itself makes clear the benefits which are bestowed by it are to be applied to that end.

The burdens the law and rules place upon the liming materials manufacturers are the costs of registration, the cost of complying with the guaranteed analysis, such monitoring of production which this might require, and the cost of reporting this information to the consumer via either printing on the bag or supplying the information in written form with bulk deliveries. The rules also provide to the consumer information which is accurate, useful and necessary to apply liming materials on the basis of the growing medium needed by the crop, without the necessity of relying upon brand names, which may or may not in themselves be reliable. There is nothing in the rules which prohibits anyone from selling the grade of liming material he wishes, but it could not be mislabeled on claims made for it that are untrue. The matter of adulterants is not in question here.

The cost of compliance varies with the number of grades of liming materials placed on the market. These costs are solely in the hands of the manufacturer and is solely one that a manufacturer makes to meet the demands of the market.

The law and rules are designed to provide the freest form of safe, honest and understandable competition. They are based on the accepted standards of the Association of American Plant and Food Control Officers, Inc., whose standards are the basis for the laws and rules of most other states. If the burden on the manufacturer or distributor were lifted, New Jersey manufacturers would be left only with a New Jersey market and would be given no chance to compete in other states or countries. Further, every bag of every liming materials load would have to be tested by every user to determine if it was desirable for use on each and every area to be covered. Competition in the liming materials field would soon become based not on results but on brand loyalty, which would further deprive the small manufacturer of the opportunity to compete on merit, requiring them to match the advertising budget of the large manufacturer, which no small manufacturer could do.

It is the analysis of the Department that the rules provide more benefits to more small businesses by complying with these rules and law, than are hurt by them. They are the minimum necessary to ensure the honest, understandable trade in the commodity based on the important results deliverable by the product, not upon brand loyalty. It is, as a result, more economically advantageous for small business manufacturers to enter and compete in the market in both New Jersey and the rest of the world.

Lastly, liming materials are one of the key ingredients of modern agriculture and a source of great consumer pleasure in landscaping and gardening. The overwhelming cost saved in purchasing these products for the results desired provides a sound basis for economical farming and gardening based on science, not luck.

Full text of the proposed new rules follows:

CHAPTER 70
AGRICULTURAL LIMING MATERIALS

SUBCHAPTER 1. PHYSICAL CLASSIFICATION (FINENESS)

2:70-1.1 Limestone classified "pulverized"

Limestone shall be classified as "pulverized" when at least 98 percent passes through a number 20 sieve, 70 percent through a number 60 sieve and 55 percent through a number 100 sieve.

2:70-1.2 Limestone labeled "ground"

Limestone shall be labeled as "ground" when it fails to meet the standards set forth in N.J.A.C. 2:70-1.1, but when at least 98 percent passes through a number 20 sieve, 60 percent through a number 60 sieve and 40 percent through a number 100 sieve.

2:70-1.3 Limestone labeled "granular"

Limestone shall be labeled as "granular" when it fails to meet either of the standards set forth in N.J.A.C. 2:70-1.1 and 1.2; but when at least 98 percent passes through a number 20 sieve, 55 percent through a number 60 sieve and 30 percent through a number 100 sieve.

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2:70-1.4 Limestone failing to meet standards

Materials failing to meet any of the standards set forth in N.J.A.C. 2:70-1.1, 1.2 and 1.3, may not be sold as agricultural limestone.

2:70-1.5 Burnt limes

All burnt limes shall be of such fineness that 75 percent will pass through a number 20 sieve, 50 percent through a number 60 sieve and 30 percent through a number 100 sieve.

2:70-1.6 Hydrated limes

All hydrated limes shall be of such fineness that 98 percent will pass through a number 20 sieve, 95 percent through a number 60 sieve and 80 percent through a number 100 sieve.

2:70-1.7 Inspection fee

(a) In assessing the inspection fee for any licensee pursuant to N.J.S.A. 4:9-21.8, the department shall collect payment only from the producer for any liming material sold for use in New Jersey.

(b) Producers of any liming material who pay the inspection fee should advise purchasers and inform the Department of Agriculture to avoid double assessment.

2:70-1.8 Slurries and suspensions

Agricultural liming materials when offered for sale in slurry or suspension form shall be derived from agricultural liming materials whose composition meets the requirements of the act and must be additionally labeled so as to disclose the composition (calcium oxide and magnesium oxide) of the slurry. The minimum total oxide content of the slurry that may be offered for sale is 15 percent total oxides.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Special Education

Proposed Amendments: N.J.A.C. 6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5 through 2.9, 3.3 through 3.7, 3.9, 4.1, 4.2, 4.4 through 4.8, 5.1, 5.2, 6.1 through 6.4, 7.1, 7.4, 8.1, 8.4 through 8.6, 9.2, 10.1, 11.5, 11.6, 11.11 and 11.12

Proposed New Rules: N.J.A.C. 6:28-6.5

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

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq, 18A:7B-1 et seq, 18A:7C-1 et seq, 18A:40-4, 18A:46-1 et seq, 18A:46A-1 et seq, 18A:48-8, 39:1-1, U.S. P.L. 93-112, Sec. 504, 94-142 and 99-457.

Proposal Number: PRN 1990-242.

Submit comments by June 20, 1990 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On April 5, 1989, the State Board of Education adopted amendments to N.J.A.C. 6:28, as part of its readoption pursuant to Executive Order No. 66(1978). At that meeting, the Board was informed of the need for several additional amendments and that the Division of Special Education would return to the Board in the future months. Amendments are necessary at this time due to the Department's careful consideration of the public comments received after the publication of the rules. Due to the merit of these comments, substantive changes are proposed by the Department. Amendments are also proposed due to the enactment of 34 C.F.R. Part 303 in August, 1989 which sets forth rules for early intervention programs and P.L. 1989, c. 152 which provides placement for handicapped pupils in accredited nonpublic schools. A summary of the proposed amendments follows:

N.J.A.C. 6:28-1.1(g)1 has been amended to clarify what is meant by "at least one grade of" in sending-receiving relationships.

N.J.A.C. 6:28-1.1(i) has been amended to comply with P.L. 1989, c. 152.

At N.J.A.C. 6:28-1.3, the definition of "consent" has been amended to clarify which parent(s) may grant consent for referral and/or implementation of the special education program.

N.J.A.C. 6:28-1.4(a)1 has been amended to delete the reference to N.J.A.C. 6:39 since N.J.A.C. 6:39 was amended and no longer cross-references N.J.A.C. 6:28.

N.J.A.C. 6:28-2.1(c)1 has been amended to replace the 30-day timeline between the determination of eligibility and completion of the basic plan which was inadvertently omitted from the recently adopted rules.

N.J.A.C. 6:28-2.1(f) has been amended to ensure consistency with N.J.A.C. 6:28-2.3(i).

N.J.A.C. 6:28-2.1(g) has been amended to extend the age limitation down to age three for mediation and due process hearings on initial admission to a public school.

N.J.A.C. 6:28-2.3(a) has been reorganized to emphasize when consent is required.

N.J.A.C. 6:28-2.3(b) has been amended to clarify the circumstances when an additional consent is to be obtained for pupils classified as eligible for speech-language services.

N.J.A.C. 6:28-2.3(c)1 has been amended to ensure consistency with N.J.A.C. 6:28-2.3(a).

N.J.A.C. 6:28-2.3(c)2 has been deleted because it was moved to N.J.A.C. 6:28-2.3(a).

N.J.A.C. 6:28-2.3(c)3 has been deleted and 2.3(h)2 has been amended to change the requirements for notice when an individualized education program (IEP) or eligibility meeting is scheduled. Timely notification would remain as a requirement in N.J.A.C. 6:28-2.3(h)2 as required by 34 C.F.R. 300.345. This change would decrease paperwork requirements and improve the timeliness of delivery of special education services.

N.J.A.C. 6:28-2.3(f)3 and (k) have been amended to comply with the corrective action required by the U.S. Department of Education, Office of Special Education Programs.

N.J.A.C. 6:28-2.5(a)5 has been amended to state that evaluations may be conducted which measure an educationally handicapped pupil's impairment if that is the intended purpose of the test.

N.J.A.C. 6:28-2.6(a) has been amended to provide mediation for children below the age of three.

N.J.A.C. 6:28-2.6(b) has been corrected to refer to the appropriate cross-reference.

N.J.A.C. 6:28-2.7(a) has been amended to clarify that a due process hearing may be conducted for children below the age of three.

N.J.A.C. 6:28-2.7(b) has been amended to ensure consistency with N.J.A.C. 6:28-2.3(g).

N.J.A.C. 6:28-2.7(c) has been amended to clarify when a public agency other than a district board of education may be included as a party in a due process hearing.

N.J.A.C. 6:28-2.7(d) has been amended to clarify which parties other than the district board of education shall be named as respondent in due process hearings involving pupils classified as eligible for day training.

N.J.A.C. 6:28-2.7(e)3 has been corrected to refer to the appropriate cross-reference.

N.J.A.C. 6:28-2.7(a)4vi, (f) and (h) have been amended to comply with the corrective action required by the U.S. Department of Education, Office of Special Education Programs.

N.J.A.C. 6:28-2.7(i) has been amended to ensure consistency with N.J.A.C. 6:28-2.7(c).

N.J.A.C. 6:28-2.7(j) has been corrected to refer to the appropriate cross-reference.

N.J.A.C. 6:28-2.8 has been amended to clarify when and how discipline may be applied to educationally handicapped pupils.

N.J.A.C. 6:28-2.9(b) has been amended to ensure consistency with N.J.A.C. 6:3-2 and to comply with 34 C.F.R. 300.562.

N.J.A.C. 6:28-2.9(c) has been amended to clarify consent procedures for pupil records.

N.J.A.C. 6:28-3.3(b) and 3.4(a) have been amended for consistency with N.J.A.C. 6:28-2.3(a).

N.J.A.C. 6:28-3.3(g) has been amended to ensure consistency in the reference to district boards of education.

N.J.A.C. 6:28-3.4(a)1 has been amended to further assure compliance with 34 C.F.R. 300.532.

N.J.A.C. 6:28-3.4(f) has been amended to clarify that a medical evaluation is not required for reevaluation.

N.J.A.C. 6:28-3.4(h) has been amended to ensure consistency with N.J.A.C. 6:28-2.5(b)2ii.

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N.J.A.C. 6:28-3.5(a) has been corrected to refer to the appropriate cross-reference.

N.J.A.C. 6:28-3.5(c)2 and 3.6(d) have been amended to eliminate the classification of eligible for home instruction. The delivery of home instruction will continue as a program option without the necessity to classify a pupil as such.

N.J.A.C. 6:28-3.5(c)5iii has been amended to comply with N.J.S.A. 18A:46-9(c).

N.J.A.C. 6:28-3.6(c) has been amended to ensure consistency of language with N.J.A.C. 6:28-3.7(a)5 and to correct a cross-reference.

N.J.A.C. 6:28-3.6(d)3 has been amended to clarify the participants at individualized education program (IEP) meetings for educationally handicapped pupils determined to need home instruction.

N.J.A.C. 6:28-3.6(e)2 has been amended to reinstate the components of the current education status in the IEP.

N.J.A.C. 6:28-3.6(e)5iv has been amended to include rules on core course proficiencies in N.J.A.C. 6:8 and 6:39 as adopted by the Board on April 5, 1989 and published in New Jersey Register on May 1, 1989 (see 21 N.J.R. 1134(a)).

N.J.A.C. 6:28-3.6(e)5vii has been amended to clarify the role of the IEP in planning for transition according to N.J.A.C. 6:28-4.7(b).

N.J.A.C. 6:28-3.6(e)5xiii has been amended to include a new component for IEP which will address local disciplinary policies and procedures.

N.J.A.C. 6:28-3.6(k) has been amended to ensure consistency with N.J.A.C. 6:3-2, Pupil Records.

N.J.A.C. 6:28-3.6(n) has been proposed to assure Statewide consistency in the use of audio-tape recorders during IEP meetings.

N.J.A.C. 6:28-3.7(a) has been amended to clarify that an IEP must be developed if a pupil is classified.

N.J.A.C. 6:28-3.7(a)5 has been amended to clarify who shall participate in IEP meetings following a pupil's reevaluation.

N.J.A.C. 6:28-3.9 has been corrected to refer to the appropriate cross-reference.

N.J.A.C. 6:28-4.1(i)1 has been modified to remove the conflict with N.J.A.C. 6:28-4.4(c).

N.J.A.C. 6:28-4.2(a)8 has been amended to ensure consistency with N.J.A.C. 6:28-4.5, Program criteria: home instruction, in the approval for placement on home instruction.

N.J.A.C. 6:28-4.2(a)9 has been amended due to the enactment of P.L. 1989, c.152 which allows the placement of educationally handicapped pupils in accredited nonpublic schools.

N.J.A.C. 6:28-4.4(a)3 and 11.11(b)3vi have been amended to comply with N.J.A.C. 6:11-6.2(a)6.

N.J.A.C. 6:28-4.4(b) has been amended to expand the definition of secondary programs to include grade six and to clarify how services are to be provided in secondary special class programs.

N.J.A.C. 6:28-4.5(a) has been amended to ensure consistency with N.J.A.C. 6:28-3.5(c) which no longer requires the classification for pupils as eligible for home instruction.

N.J.A.C. 6:28-4.5(a)5 has been amended to clarify the exemption status of educationally handicapped pupils on home instruction.

N.J.A.C. 6:28-4.5(b)2 has been amended to allow the renewal of home instruction beyond the maximum of 60 days.

N.J.A.C. 6:28-4.5(c) and (c)1 have been amended to ensure consistency with N.J.A.C. 6:28-3.5(c) and to allow State-operated facilities to provide this program option.

N.J.A.C. 6:28-4.5(c)3ii has been amended to correct an error of construction and to allow greater flexibility in programming.

N.J.A.C. 6:28-4.6(a)3iii has been amended to clarify that an exception is not required regarding the provision of an extended academic year program.

N.J.A.C. 6:28-4.7 was retitled to include new material in N.J.A.C. 6:28-4.7(b).

N.J.A.C. 6:28-4.7(a) has been amended to clarify that transition to a secondary program shall occur for all educationally handicapped pupils.

N.J.A.C. 6:28-4.7(b) is proposed to address the transition of educationally handicapped pupils to adult life.

N.J.A.C. 6:28-4.8(a) has been amended to reinstate the requirement for written approval of the chief school administrator for each exemption from the high school graduation requirements.

N.J.A.C. 6:28-5.1(a) has been amended to clarify that not only clinics and agencies may provide contracted services to districts.

N.J.A.C. 6:28-5.2(a)3iii and 8 have been amended to improve the monitoring of clinics and agencies.

N.J.A.C. 6:28-6.1, 6.2, 6.3 and 6.4 section titles have been amended to clarify that these rules only apply to nonpublic school pupils placed under P.L. 1977, c.192 and c.193.

N.J.A.C. 6:28-6.2(f) has been amended to allow personnel in nonpublic, nonsectarian, nonprofit schools to contract with public schools.

N.J.A.C. 6:28-6.5 has been proposed to comply with P.L.1989, c.152 which allows the placement of pupils in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils.

N.J.A.C. 6:28-7.1(h) has been amended to establish certification requirements in administrative positions in newly approved private schools for the handicapped.

N.J.A.C. 6:28-7.4(a) has been corrected to refer to the appropriate cross-reference.

N.J.A.C. 6:28-8.1(h) has been amended to clarify that programs shall be provided in State-operated programs at least four hours per day.

N.J.A.C. 6:28-8.1(n) and (o) have been amended to allow pupils in State-operated facilities who have no identifiable district of residence to receive State endorsed diplomas issued by the Commissioner of Education.

N.J.A.C. 6:28-8.4(c)3 has been amended to delete the requirement for a certified teacher of the handicapped in classes in State facilities in which both educationally and noneducationally handicapped pupils are assigned.

N.J.A.C. 6:28-8.4(g)1 has been amended to clarify teacher responsibilities in the development of IEPs in day training centers.

N.J.A.C. 6:28-8.5 and 8.6 have been amended to clarify the responsibilities of the Departments of Corrections and Human Services in the expenditure of funds under N.J.S.A. 18A:7B-1 et seq.

N.J.A.C. 6:28-9.2(a) has been amended due to Federal requirements that written complaints be signed.

N.J.A.C. 6:28-10.1(d)1 and 2 have been proposed to clarify the requirements for monitoring and complaint investigation in early intervention programs.

N.J.A.C. 6:28-10.1(l) has been amended to ensure consistency with due process procedures according to N.J.A.C. 6:28-2.7, Due process hearings.

N.J.A.C. 6:28-11.5(c), (d) and 11.6(c) have been amended to ensure consistency with N.J.A.C. 6:28-3.3(b) and 3.4(a).

N.J.A.C. 6:28-11.6(a) has been amended to ensure consistency with N.J.A.C. 6:28-3.4(a).

N.J.A.C. 6:28-11.6(b) has been amended to ensure consistency with N.J.A.C. 6:28-3.4(a)1.

N.J.A.C. 6:28-11.11(a)9 has been amended to ensure consistency with N.J.A.C. 6:28-4.5(b)4.

N.J.A.C. 6:28-11.12(a)4 has been amended to ensure consistency with the age span in preschool handicapped classes allowed under the definition of age three contained in N.J.A.C. 6:28-1.3.

Social Impact

The proposed amendments are designed to continue the quality of services provided to educationally handicapped pupils.

Using the Federal count of December 1, 1988, the number of educationally handicapped pupils served in New Jersey was 169,234.

The Departments of Human Services, Health and Corrections; parents of handicapped pupils; handicapped pupils and district boards of education will be affected by the changes. Procedural safeguard rights of educationally handicapped pupils will be strengthened. For example, an amendment has been proposed which would make due process hearings and mediation available for pupils below the age of three.

Planning for the transition of pupils to adult life would be improved by the proposed amendments which would require this activity for all educationally handicapped pupils age 14 and above.

The proposed amendment which would no longer require classification to enable otherwise non-handicapped pupils to receive home instruction during temporary illnesses would allow the delivery of the service without unnecessary labelling or paperwork.

Economic Impact

The proposed amendments, with the exception of those regarding the enactment of P.L. 1989, c. 152, should not have an economic impact that would increase State or local expenditures. Categorical aid for educating handicapped pupils in 1988 was $312,000,000.

Due to the anticipated reduction in paperwork requirements some administrative costs may be reduced.

The economic impact of the enactment of P.L. 1989, c. 152 which allows educationally handicapped pupils to be placed in accredited non-

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public schools is impossible to project because the Department does not know how many pupils will be placed under this provision nor can the Department project the tuition rates of the placements chosen. Additional costs as a result of due process cases on these placements may be expected.

Regulatory Flexibility Statement

The proposed amendments will have no new reporting, recording or compliance requirements for small businesses except for approved clinics and agencies and approved private schools for the handicapped newly approved to operate after December 1, 1990. In 1989-90, there were 73 approved clinics and agencies throughout New Jersey providing services to both public and nonpublic school handicapped pupils. It is not known how many new private schools will seek approval after 1990. The average number of new schools approved annually is two.

New recording and reporting requirements for clinics and agencies include the maintenance of a log detailing the hours of employment for professional staff with a list of services provided indicating date, time and location of services rendered. Annually, each clinic and agency will provide an assurance statement to the department indicating the maintenance of this log. Monitoring activities will occur on-site to verify this information.

The new compliance requirement for approved private schools could affect new schools which open after December 1, 1990 by requiring certification for five unrecognized administrative job titles.

It is not anticipated that the additional recording and reporting activities will be unduly burdensome. While the changes require additional recording and reporting, they are necessitated to improve the quality of special education services provided by approved clinics and agencies and approved private schools for the handicapped.

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

6:28-1.1 General requirements

(a)-(f) (No change.)

(g) When a district board of edcucation provides its educational programs through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. In a sending-receiving relationship, when all the pupils of [at least] one **or more** [grade] **grades** of a district board of education attend [schools] **school(s)** operated by other district boards of education, the receiving district board of education shall be responsible for determining the [pupil's] eligibility **of those pupils** and developing and implementing [the] **their** individualized education [program] **programs**.

2. (No change.)

(h) (No change.)

(i) **With the exception of pupils placed in nonpublic schools according to N.J.A.C. 6:28-6.5,** [All] **all** educationally handicapped pupils shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(j)-(n) (No change.)

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Education for All Handicapped Children Act.

. . .

"Consent" means that [the parents] **a parent having legal responsibility for educational decision making** or **the** adult pupil has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; understands and agrees in writing to the implementation of this activity; and understands that the granting of consent is voluntary and may be revoked at any time.

. . .

6:28-1.4 District board of education policies and procedures

(a) Each district board of education shall develop and adopt written policies and procedures for the following:

1. Exemption of educationally handicapped pupils from the high school graduation requirements according to N.J.A.C. 6:8-7.1(b), 6:28-3.6 and 4.8 [and 6:39-1.6];

2.-11. (No change.)

6:28-2.1 General requirements

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

(c) After parental consent for initial evaluation has been received, the district board of education shall ensure that within 90 calendar days evaluation and determination of eligibility for special education and/or related services, and, if eligible, development and implementation of the basic plan section of the individualized education program for the pupil shall be completed.

1. The basic plan shall be written within 30 calendar days of the determination that the pupil is eligible for special education and/or related services; and

2. Within the 90 calendar days, no more than 30 calendar days shall elapse between the development and the implementation of the basic plan section of the individualized education program.

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

(f) Upon [parental] request **by a parent or adult pupil,** each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6:28), pupil records rules (N.J.A.C. 6:3-2), **and** information regarding the availability of free and low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(g) If the mediation according to N.J.A.C. 6:28-2.6 or due process hearing according to N.J.A.C. 6:28-2.7 involves initial admission to the public school of a child age [five] **three** through 21, the child, with the consent of the parent(s), shall be placed in the public school program or a placement agreed to by the parent(s) and district board of education pending the outcome of the hearing.

6:28-2.3 Parental notice, consent, participation and meetings

(a) Consent shall be obtained:

1. Prior to initial evaluation; and

2. Prior to initial implementation of a special education program and/or related services resulting from (a)1. above.

(b) For those pupils classified as eligible for speech-language services, additional consent shall be obtained prior to initial evaluation by the child study team and/or implementation of a special education program and/or related services resulting from that referral.

[(a)]**(c)** Written notice which meets the requirements of this section shall be provided to the parent(s) when a district board of education:

1. Proposes to initiate or change the **referral,** classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;

2. Requests consent [to conduct an initial evaluation or for initial implementation of a special education program and/or related services];

[3. Schedules a meeting to determine a pupil's eligibility for special education and/or related services or to develop an individualized education program;]

Recodify existing 4. and 5. as **3. and 4.** (No change in text.)

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

[(d)]**(f)** Each notice shall be written in language understandable to the general public and shall include:

1.-2. (No change.)

3. A **copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a** full explanation of the [parental rights to appeal and the process of appealing a district board of education's proposal or denial of an action according to N.J.A.C. 6:28-2.7 and N.J.A.C 1:6A.] **procedural safeguards available to parents and/or adult pupils.**

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

[(f)]**(h)** Meetings shall be conducted to determine eligibility and to develop, review and revise the basic plan of a pupil's individualized education program.

1. (No change.)

2. Parent(s) shall be notified in writing of meetings early enough to ensure that they will have an opportunity to attend.

Recodify existing 2.-5. as **3.-6.** (No change in text.)

Recodify existing (g) and (h) as **(i) and (j)** (No change in text.)

[(i)]**(k)** Adult pupils shall be given a copy of this chapter [and a copy of N.J.A.C. 1:6A] **and the procedural safeguards statement published by the New Jersey Department of Education** upon attainment of the eighteenth birthday.

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6:28-2.5 Protection in evaluation procedures

(a) Each district board of education shall ensure that evaluation procedures, including, but not limited to, observations, tests and interviews used to determine eligibility and placement of handicapped pupils shall:

1.-4. (No change.)

5. Be selected, administered and interpreted so that when a pupil has sensory, manual or communication impairments the results accurately reflect the ability which that procedure purports to measure, rather than the impairment **unless that is the intended purpose of the testing**;

6.-10. (No change.)

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

6:28-2.6 Mediation

(a) **For pupils age three through 21,** [When] **when** disputes arise under this chapter, mediation shall be available through the [local] district **board of education**, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. **For children below the age of three, mediation shall be available through the Department of Education through the Division of Special Education.** Mediation shall be provided in accordance with the following:

1. Attempts to resolve conflicts between the parent(s) and [a school] **the** district **board of education** prior to a request for a due process hearing are encouraged; however, a request for mediation is not a prerequisite to a hearing;

2.-4. (No change.)

(b) Mediation shall be provided as follows:

1.-6. (No change.)

7. Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement unless both parties agree or emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7[(c)](**h**).

6:28-2.7 Due process hearings

(a) A due process hearing may be requested in regard to the referral, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. **A due process hearing may also be requested for all disputes regarding the provision of programs and services for children below the age of three.** For pupils [below the age of three and] above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

(b) The parent(s) [or district board of education] **or adult pupil** may request a hearing after [the district board of education has sent] **receiving written notice of a proposed or denied action or after 30 calendar days have elapsed from the date of a written request by the parent(s) or adult pupil** for a change with regard to the pupil.

(**c**) The district board of education[, through its chief school administrator,] **or public agency responsible for the development of the pupil's individualized education program** may request a hearing when it is unable to obtain required [parental] consent to a proposed action[. The district board of education] **and** shall request a due process hearing if it denies the parent(s) **or adult pupil's** request for an independent evaluation.

(d) For pupils classified as eligible for day training, if a dispute arises regarding the failure to provide the program or a service mandated by the individualized education program, the Division of Developmental Disabilities or the Office of Education, Department of Human Services shall be named as respondent by the parents. If a dispute arises as to any other issue, the district board of education would be the named party.

(e) Due process hearings shall be conducted in the following manner:

1.-2. (No change.)

3. Upon receiving the Department of Education's acknowledgement, the parties shall begin to exchange relevant records and information according to the time limits in N.J.A.C. 1:6A[-3.3].

4. Within seven calendar days of receipt of the written request, the Department of Education shall conduct a conference.

i.-v. (No change.)

vi. If the conference results in transmittal, the Department of Education representative will prepare a written document at the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be immediately forwarded to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties. The Department of Education representative shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the conference, unless a later date is [agreed upon by both parties.] **granted by a hearing officer at the request of either party. If the parent or adult pupil does not attend the conference and is not available by individual or conference call to schedule a hearing date, a date shall be assigned within the required timelines.**

(f) Subject to adjournments granted by the hearing officer, a final decision shall be rendered not later than 45 days after the receipt of the request for a hearing.

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

[(d)](**h**) [The district board of education, through its chief school administrator, or the parent(s)] **Either party** may apply in writing for emergency relief as part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A[-3.1]. The request shall be supported by an affidavit. The applicant shall provide copies of the request to the other party.

1. (No change.)

[(e)](**i**) If the [district board of education] **public agency responsible for implementing the individualized education program** fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent(s). The request shall be made in writing to the Director of the Division of Special Education, Department of Education. On receipt of this request, implementation of the decision shall be assured according to Department of Education procedures.

[(f)](**j**) Pending the outcome of a due process hearing, no change shall be made to the pupil's classification, program or placement unless both parties agree or emergency relief is granted by the Office of Administrative Law according to [(d)](**h**) above.

6:28-2.8 Disciplinary action

(a) Educationally handicapped pupils are subject to the same disciplinary **district board of education policies and** procedures as nonhandicapped pupils,[. However, no educationally handicapped pupil may be disciplined if:

1. The pupil's behavior is primarily caused by his or her educational handicap; or

2. The program that is being provided does not meet the pupil's educational needs.

(b) Before a school staff member can discipline an educationally handicapped pupil, consideration shall be given to the nature of the offending behavior in light of the pupil's handicapping condition and educational needs, except as follows:

1. On a temporary basis, if there is ongoing peril of physical harm to self or others or of substantial disruption of the educational process; or

2. If there is a component of disciplinary action set forth in the pupil's individualized education program.

(c) When an educationally handicapped pupil is suspended, the principal shall forward, at the time of suspension, written notification and description of the reason(s) for such action to the parent(s) with a copy to the child study team. The child study team shall review the status of that pupil in order to:

1. Determine if the behavior which resulted in the suspension was primarily caused by the pupil's handicapping condition;

2. Determine if the pupil's individualized education program is appropriate; and

3. Prepare and forward to the principal and the parent(s) a written statement setting forth their conclusions as to (c)1 and 2 above and their recommendations, if any.

(d) An educationally handicapped pupil whose behavior is primarily caused by his or her educational handicap or whose program does not meet his or her educational needs:

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1. Shall not be suspended for more than a total of 10 school days during a school year if the suspensions constitute a significant change in placement, unless emergency relief is granted; and

2. Shall not be suspended more than 10 consecutive school days, unless emergency relief is granted.] **unless the pupil's individualized education program includes exemptions to those policies or procedures. The individualized education program shall be implemented, with the following exception:**

1. Prior to effecting any discipline which would result in a significant change in placement, the child study team shall conduct a reevaluation according to N.J.A.C. 6:28-3.7.

(b) The following standards shall be used in determining if a proposed discipline constitutes a significant change in placement:

1. If the proposed discipline involves expulsion or suspension for an indefinite period of time or for more than 10 consecutive school days, the expulsion or suspension constitutes a significant change in placement.

2. If the proposed discipline involves suspension of more than 10 nonconsecutive school days, the suspension shall be reviewed to determine if it creates a pattern of exclusion which constitutes a significant change in placement.

(c) When an educationally handicapped pupil is suspended, the principal shall forward, at the time of suspension, written notification and description of the reasons for such action to the parent(s) with a copy to the case manager. Such notification shall occur prior to the suspension if this action would result in the pupil being suspended for more than 10 days in the school year. The case manager shall review the status of the pupil in order to:

1. Determine if the suspension results in a significant change in placement;

2. Document the review and the determination made; and

3. If the suspension would result in a significant change in placement:

i. Immediately advise the principal that a reevaluation shall be conducted prior to the suspension; and

ii. Initiate a reevaluation.

(d) On completion of the reevaluation, the child study team shall determine if the pupil's behavior was primarily caused by his or her educational handicap and, if so, whether the pupil's current educational placement is appropriate.

1. If the pupil's behavior is determined to be primarily caused by the pupil's educational handicap, the district may not discipline the pupil.

2. If it is determined that the pupil's behavior is not related to his or her educational handicap, the district board of education may discipline the pupil. However, at no time shall the district board of education cease educational services to that pupil.

[(e) Before an educationally handicapped pupil can be considered for expulsion by a district board of education, the pupil shall be reevaluated by the child study team according to N.J.A.C. 6:28-3.7.]

(e) Upon making each of the determinations specified in (b), (c) and (d) above, the child study team shall prepare and forward to the principal and the parent(s) or adult pupil a written statement setting forth their conclusions and their recommendations, if any, and a statement that mediation or a due process hearing may be requested according to N.J.A.C. 6:28-2.6 or 2.7.

(f) If there is ongoing peril of physical harm to self or others or of substantial disruption to the educational process, and the suspension would result in a significant change in placement, the pupil may be temporarily suspended while the district immediately seeks emergency relief.

[(f)](**g**) Before a noneducationally handicapped pupil [is] **can be** considered for expulsion by a district board of education, the district board of education shall obtain [parental] consent **from the parent or adult pupil** for [referral] **evaluation** and the child study team shall conduct an initial evaluation according to N.J.A.C. 6:28-3.4 **to determine eligibility.**

[(g) The child study team shall submit a written report to the district board of education, the chief school administrator and the pupil's parent(s) stating the results of their reevaluation or initial evaluation required by (e) or (f) above.

1. This report shall indicate whether the pupil's behavior is primarily caused by a handicapping condition and whether the pupil's education program needs modification.

2. All decisions resulting from this report are subject to due process procedures according to this subchapter and N.J.A.C. 1:6A.]

6:28-2.9 Pupil records

(a) (No change.)

(b) The parent(s), adult pupil or their designated representative shall be permitted to inspect[,] **and** review [and appeal] the contents of the pupil's records maintained by the district board of education under N.J.A.C. 6:3-2[. When requested, this inspection shall occur] without unnecessary delay **and** before any meeting regarding the individualized education program.

(c) Any consent required for educationally handicapped pupils under N.J.A.C. 6:3-2 shall be obtained according to N.J.A.C. 6:28-1.3 "Consent" and 2.3(c).

6:28-3.3 Referral

(a) (No change.)

(b) Pupils identified in conformance with written procedures adopted by the **district** board of education as being potentially educationally handicapped and considered to require services beyond those available within the regular public school program shall be referred to the child study team. Referral to the child study team shall take place after written [parental consent] **notice** has been [received] **provided**.

1. When parental consent for [a pupil's referral to the child study team] **initial evaluation** is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(c)-(f) (No change.)

(g) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally handicapped pupil for whom a [local school] district **board of education** is responsible, that district **board of education** shall accept the pupil's identification by the Division of Youth and Family Services and shall request parental consent [to refer the pupil to its child study team] **for initial evaluation** according to this subchapter.

6:28-3.4 Evaluation

(a) [Following receipt of parental consent for referral of a pupil] **After notice of the referral has been provided**, the child study team shall meet and determine the need for an initial evaluation [and write an evaluation plan]. **If it is determined that an evaluation is needed, the child study team shall write an evaluation plan.** Prior to the development of the evaluation plan, a determination of the pupil's communication skills and dominance in English and the native language shall be completed. The parent(s) and adult pupil shall be provided with a copy of the evaluation plan [and notice according to N.J.A.C. 6:28-2.3]. **Consent shall be obtained prior to conducting the initial evaluation.** The evaluation plan shall include:

1. The specific information to be obtained **to assess in all areas of suspected disability**;

2.-4. (No change.)

(b)-(e) (No change.)

(f) [In addition to evaluations conducted by the school physician and the child study team evaluation] **Evaluation** by additional specialists may be required as listed in N.J.A.C. 6:28-3.5(c).

(g) (No change.)

(h) If the reports and evaluations of other New Jersey public school district child study team members, Department of Education approved clinics or agencies, **Educational Services Commissions or Jointure Commissions** or professionals in private practice are accepted by members of the child study team, such acceptance shall be noted in writing and shall become part of the report(s) of the child study team member(s). If a report or evaluation is rejected, a written rationale shall be provided.

(i) (No change.)

6:28-3.5 Determination of Eligibility

(a) When an initial evaluation is completed, a meeting according to N.J.A.C. 6:28-2.3[(f)](**h**) shall be convened. The child study team shall attend. The purpose of the meeting shall be to:

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1.-2. (No change.)

(b) (No change.)

(c) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, parent(s) and, if they choose to participate, the school principal and referring staff members. Classification according to the following definitions shall be based on all evaluations conducted:

1. (No change.)

2. "Chronically ill" means a health condition **such as tuberculosis, cardiac condition, leukemia, asthma, seizure disorder or other medical disability** which makes it impractical to receive adequate instruction through a regular school program [and characterized by (c)2i or ii below]. Evaluation by the school physician or his or her review and written acceptance of the medical report of another physician is required. The school nurse shall assist in the accumulation of the data necessary to determine eligibility.

[i. "Chronic illness" means a condition such as tuberculosis, cardiac condition, leukemia, asthma, seizure disorders or other medical disability.

ii. "Eligible for home instruction" means a health condition determined by the school physician to be temporary and to require instruction be provided to a pupil confined to home or hospital for at least a two-week period of time. The evaluation shall be conducted according to N.J.A.C. 6:28-3.4(g).]

3.-4. (No change.)

5. "Mentally retarded" means cognitive, social and academic functioning which is seriously below age expectations. Such functioning is comprehensive in nature being demonstrated in home, school and community setting, and characterized by one of the following:

i.-ii. (No change.)

iii. "Eligible for day training" means a level of functioning profoundly below age expectations whereby on a consistent basis the pupil [requires significant personal care and supervision and demonstrates a significant deficit in the ability to understand and respond to simple verbal or nonverbal communication, and to make known basic wants or needs] **is capable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.**

6-11. (No change.)

6:28-3.6 Individualized education program

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

(c) The basic plan of the individualized education program shall be developed with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and [those] **any additional** persons [attending a] **required to attend the** meeting according to N.J.A.C. 6:28-2.3[(f)]**(h)**.

(d) When a pupil has been classified as eligible for speech-language services or [eligible for home instruction] **the school physician has determined an educationally handicapped pupil needs home instruction,** the individualized education program meeting shall be as follows:

1. **For pupils classified as eligible for speech-language services,** [The] **the** meeting shall be attended by the parent(s) and, when appropriate, the pupil. [Depending on the classification, either the school physician or] **The** speech correctionist or speech-language specialist shall attend.

[2. A school nurse shall attend the meeting for a pupil eligible for home instruction on behalf of the school physician if so designated by the certified school personnel having knowledge of the pupil's educational performance shall participate in the meeting.

3. For a pupil eligible for home instruction, at least one of the certified school personnel having knowledge of the pupil's educational performance shall participate in the meeting.]

[4.]**2.** Other certified school personnel and the principal or designee may participate in the meeting.

3. When an educationally handicapped pupil has been determined by the school physician to need home instruction, a meeting shall be conducted to review and revise the individualized education program according to N.J.A.C. 6:28-3.6(j).

(e) The basic plan of the individualized education program shall include, but not be limited to:

1. (No change.)

2. A statement of current educational status, which describes the pupil's present levels of educational performance **and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, physical and health status, and where appropriate, language proficiency, communication style, physical education and recreation needs, prevocational, vocational and self-help skills;**

3.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-iii. (No change.)

iv. A description of exemptions from regular education program options including testing programs, **core course proficiencies** and State and local graduation requirements which includes a rationale for the exemptions;

v.-vi. (No change.)

vii. For educationally handicapped pupils age 14 and over, [the district board of education shall demonstrate that consideration has been given to] **goals and objectives which describe** the preparation of the pupil for [the] **one or more of the following post-secondary areas, as** appropriate: [post-secondary program,] **educational programs, vocational programs,** work [setting] **settings,** [adult services] or independent living **according to N.J.A.C. 6:28-4.7(b);**

viii.-x. (No change.)

xi. A statement describing the roles of special school personnel and their responsibilities for implementing the various aspects of the individualized education program; [and]

xii. The criteria, procedure and schedule to determine if the pupil's goals and objectives are being met[.]**; and**

xiii. Any exemptions from local disciplinary policies and/or procedures.

(f)-(j) (No change.)

(k) [Documentation] **Signatures** of those persons who participated in the development of the individualized education program shall be maintained and a copy of the individualized education program shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.

(l)-(m) (No change.)

(n) School personnel, adult pupils and the parent(s) of an educationally handicapped pupil shall be allowed to use an audio-tape recorder during the individualized education program meetings.

6:28-3.7 Reevaluation

(a) A reevaluation[,] and, **if the pupil will remain classified, an** individualized education program [if appropriate,] shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1.-4. (No change.)

5. When the reevaluation is completed[, the child study team shall attend a meeting according to N.J.A.C. 6:28-2.3(f) and, if appropriate, develop the basic plan of the individualized education program.] **those members of the district board of education child study team who have participated in the reevaluation shall attend a meeting according to N.J.A.C. 6:28-2.3(h) to determine eligibility and if the pupil remains eligible for special education and/or related services, the basic plan of the individualized education program shall be developed.**

6:28-3.9 Services to pupils in programs operated by the State of New Jersey

(a) For a pupil classified as eligible for day training attending an approved day program, the district board of education shall provide the services according to N.J.A.C. 6:28-3.2 through [3.8]**3.7.**

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

6:28-4.1 General requirements

(a)-(h) (No change.)

(i) When the individualized education program of an educationally handicapped pupil does not describe any restrictions, the pupil shall

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be included in the regular school program provided by the district board of education.

1. When instruction in health, physical education, industrial arts, fine arts, music, home economics[, vocational] and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities is provided to groups consisting solely of educationally handicapped pupils, the size of the groups and the age range shall conform to the requirements for special class programs described in this subchapter.

(j)-(k) (No change.)

6:28-4.2 Program options

(a) Educational program options include the following:

1.-6. (No change.)

7. An approved private school for the handicapped in the continental United States, when it is not appropriate to provide services according to (a)1 through 6 above. Placement in an approved private school for the handicapped shall only be made with the prior written approval of the Department of Education through its county office; [and]

8. Individual instruction at home or in other appropriate facilities[, excluding home instruction for medical reasons,] with the prior written approval of the Department of Education through its county office, only when it is not appropriate to provide a special education program for an educationally handicapped pupil [according to (a)1 through 7 above.] **according to N.J.A.C. 6:28-4.5; and**

9. An accredited nonpublic school which is not specifically approved for the education of educationally handicapped pupils according to N.J.A.C. 6:28-6.5.

6:28-4.4 Program criteria: special class programs, secondary, vocational and vocational rehabilitation

(a) Special class programs shall meet the following criteria:

1.-2. (No change.)

3. Depending on the educational handicap(s) of the pupils assigned to the special class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted, and/or teacher of the deaf or hard of hearing[. Teachers of the preschool handicapped shall additionally hold nursery school endorsement];

4.-7. (No change.)

(b) Secondary special class programs shall meet the following criteria:

1. Programs shall be in schools in which any combination of grades [seven] **six** through 12 are contained;

2. An educationally handicapped pupil enrolled on the register of a secondary special class program shall receive a minimum of three instructional periods with the certified teacher(s) of the handicapped who maintains primary instructional responsibility for the pupil;

3. In secondary special class programs where the organizational structure is departmentalized for general education pupils:

[2.]**i.** Enrollment in secondary special class programs may be increased by one-half the maximum class size for pupils with the same classification as noted in (a)6 above;

[3.]**ii.** For instructional purposes:

[i.](**1**) In all class groups comprised of pupils with a single classification, class sizes shall be according to (a)6 and 7 above; and

[ii.](**2**) In all class groups comprised of pupils with mixed handicaps, the group shall be limited to eight educationally handicapped pupils; [and]

4. [An educationally handicapped pupil enrolled on the register of a secondary special class program shall receive a minimum of three instructional periods with the certified teacher(s) of the handicapped who maintains primary instructional responsibility for the pupil. The remainder of the pupil's] **In addition to the requirement of (b)2 above,** instruction may be provided in the following settings, as appropriate:

i. (No change.)

ii. A regular education class instructed by a subject area teacher.

(**1**) The number of educationally handicapped pupils enrolled on a special class register who can attend any given instructional period in such classes shall be limited to four if program modification is required[.]; **and**

5. For class groups comprised of pupils with mixed handicaps, the maximum class size may be increased by no more than one-third with the addition of an aide.

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

6:28-4.5 Program criteria: home instruction

(a) [Instruction provided in lieu of classroom instruction for] **For** pupils [confined to] **determined by the school physician to need confinement at** their residence [and classified by the school physician as eligible for] **for at least a two week period of time,** home instruction shall meet the following criteria:

1.-4. (No change.)

5. The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation. [unless] **Educationally handicapped pupils may be** exempted in [the] **their** individualized education program **according to N.J.A.C. 6:28-3.6(e)5iv**;

6.-7. (No change.)

(b) A pupil classified as educationally handicapped shall have his or her individualized education program implemented through one to one instruction at home or in another appropriate setting when it can be documented that no other program option is appropriate at that time.

1. (No change.)

2. Approval [shall] **may** be obtained for a maximum of 60 calendar days **at which time renewal of the request may be made. Each renewal of the approval may be granted for a maximum of 60 calendar days**.

3.-4. (No change.)

(c) Instruction provided for pupils confined to a hospital, convalescent home or other medical institution **for at least a two week period of time and** [, classified] **determined** by the school physician [as eligible for] **to need** home instruction or classified by the child study team as educationally handicapped, shall meet the following criteria:

1. Instruction shall be provided by a district board of education, educational services commission, **State-operated facility** or jointure commission at the pupil's place of confinement;

2. (No change.)

3. Individualized instruction shall be provided through either:

i. (No change.)

ii. Instruction to small groups [of no more than three pupils, for no fewer than 15 hours per week;]. **The number of hours of instruction for the group shall be determined by multiplying the number of pupils in the group by five. The pupil to staff ratio shall not exceed the limit set by N.J.A.C. 6:28-4.4(a)6;** or

iii. (No change.)

6:28-4.6 Exceptions

(a) Exceptions to the requirements of this chapter shall be:

1.-2. (No change.)

3. Regarding length of school day and/or the academic year or class size or classification according to N.J.A.C. 6:28-4.4(a)6 or age range according to N.J.A.C. 6:28-4.4(a)4 or required hours or periods of instruction. **An exception shall not be required regarding the provision of an extended academic year program.**

6:28-4.7 Transition [of an educationally handicapped pupil from an elementary to a secondary school program.]

(**a**) Transition from **an** elementary [school] **program** to the secondary [school] **program** shall [be based on the recommendation of the child study team and shall be consistent with the pupil's individualized education program. Transition shall] be determined by factors including number of years in school; social, academic and vocational development; **and** chronological age[; and need for the opportunities of the secondary school]. **This determination shall be specified in the pupil's individualized education program according to N.J.A.C. 6:28-3.6.**

(b) For educationally handicapped pupils age 14 and over, planning for transition to adulthood shall include the following:

1. The individualized education program shall include goals and objectives which describe the preparation of the pupil for one or more of

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the following post-secondary areas, as appropriate: educational programs, vocational programs, work-settings or independent living;

2. Initial evaluation or reevaluation shall include assessment(s) to determine appropriate post-secondary outcomes;

3. The case manager shall be responsible for transition planning;

4. The individualized education program shall designate the person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate; and

5. Post-secondary resource professionals shall be included in meetings according to N.J.A.C. 6:28-2.3(h) as appropriate.

6:28-4.8 Diplomas and graduation

(a) An educationally handicapped pupil who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements according to N.J.A.C. 6:8-7, unless exempted in his or her individualized education program **with the written approval of the chief school administrator**. The individualized education program must specifically address these graduation requirements. The individualized education program shall specify which requirements would qualify the educationally handicapped pupil for a State endorsed diploma issued by the school district responsible for his or her education.

(b)-(e) (No change.)

6:28-5.1 General requirements

(a) [Only clinics] **Clinics** and agencies approved by the Department of Education may provide those contracted services to district boards of education delineated in this subchapter.

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

6:28-5.2 Approval procedures

(a) Annual approval of clinics and agencies shall require, but not be limited to, submission and evaluation of the following:

1.-2. (No change.)

3. A list of professional staff who will provide services which indicates each individual's certification or license and the function he or she will fulfill;

i.-ii. (No change.)

iii. Professional staff employed by a clinic or agency who work full time **according to N.J.A.C. 6:3-1.13** for a district board of education shall not provide service for the clinic or agency during the hours of that individual's public school employment; and

iv. (No change.)

4.-5. (No change.)

6. Assurance of an adequate accounting system according to generally accepted accounting principles; [and]

7. Assurance of a system for the collection, maintenance, confidentiality and access of pupil records which is according to N.J.A.C. 6:3-2[.]; **and**

8. Assurance of the maintenance of a log, which includes but shall not be limited to, a list of services provided indicating the date, time, location and professional staff providing the service.

SUBCHAPTER 6. SERVICES [FOR] IN NONPUBLIC [SCHOOL] **SCHOOLS** [PUPILS]

6:28-6.1 General requirements **for programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

[(a) This subchapter applies only to programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.]

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

6:28-6.2 Provision of programs and services **provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

(a)-(e) (No change.)

(f) Personnel providing a program or service under this subchapter shall meet appropriate certification requirements [and]. **Personnel** shall not be employed by the nonpublic school in which the pupil is enrolled **with the exception of personnel providing the types of instruction listed in N.J.A.C. 6:28-5.1(c)2ii and iii.**

(g)-(j) (No change.)

6:28-6.3 Fiscal management **provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

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

6:28-6.4 End of the year report **provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

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

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils

(a) According to N.J.S.A. 18A:46-14, educationally handicapped pupils may be placed in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils with the consent of the Commissioner or by an order of a court of competent jurisdiction.

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1. The nonpublic school is accredited. Accreditation means the ongoing, on-site evaluation of a nonpublic school by a governmental or independent educational accreditation agency which is based upon written evaluation criteria that address educational programs and services, school facilities and school staff;

2. A suitable special education program pursuant to N.J.S.A. 18A:46-14a, b, c, d, e, f, g or h cannot be provided to this pupil;

3. The most appropriate placement for this pupil is this nonpublic school;

4. The program to be provided will meet the requirements of the pupil's individualized education program;

5. The pupil shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18:7A-5c, d, e, f, and g and as implemented in N.J.A.C. 6:8-2.2, 6:8-4.3(a)3i(3)(A), (B) and (C), 3iii, iv and v, 5ii, 6i and ii, 6:8-6.1(a), 6:8.7-1(c)1 and (d)1. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(e)5iv.

6. The pupil shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, 18A:58-16, N.J.A.C. 6:29-7.1, 6:29-9.6 and 6:28-1, 2, 3, and 4. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(e)5iv.

7. The nonpublic school provides services which are nonsectarian;

8. The nonpublic school complies with all relevant State and federal antidiscrimination statutes;

9. Written notice has been provided to the pupil's parent(s) regarding this placement which has included that:

i. The nonpublic school is not an approved private school for the handicapped and that the local school district assumes the ongoing monitoring responsibilities for the pupil's program;

ii. No suitable special education program could be provided to this pupil pursuant to N.J.A.C. 18A:46-14; and

iii. This is the most appropriate placement available to this pupil;

10. The placement is not contested by the parents; and

11. The nonpublic school has been provided copies of N.J.A.C. 6:28, N.J.A.C. 1:6A and N.J.A.C. 6:3-2.

(c) The Commissioner's consent granted as part of a final determination in a due process hearing may be granted when:

1. The Administrative Law Judge of the Office of Administrative Law makes a factual determination that the certifications in N.J.A.C. 6:28-6.5(b) are met. If this is determined, the district board of education shall be responsible for monitoring the pupil's placement at least annually to ensure the program's ongoing compliance with N.J.A.C. 6:28-6.5(b); or

2. The district board of education and the parent(s) agree to a settlement of the matter which would include placement under P.L. 1989, c.152 and the Administrative Law Judge, on behalf of the Com-

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missioner, grants consent. Such consent may be granted if the district board of education makes the certifications in N.J.A.C. 6:28-6.5(b). A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through its county office.

(d) The district board of education shall be responsible to monitor the pupil's placement at least annually to ensure the program's ongoing compliance with the certifications.

6:28-7.1 General requirements

(a)-(g) (No change.)

(h) To provide a program of service under this subchapter, all professional personnel shall hold the appropriate New Jersey certification according to N.J.A.C. 6:11, commensurate with their assignments with the exception of personnel appointed prior to December 1, 1990 in the positions of director, executive director, assistant director, administrative assistant to the director and business manager.

6:28-7.4 Responsibilities of district boards of education

(a) The educational program of a handicapped pupil provided through contractual agreements as described in N.J.A.C. 6:28-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the services required in N.J.A.C. 6:28-3.

1. For pupils placed in programs described in N.J.A.C. 6:28-7.1(a), representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6:28-2.3[(f)] **(h)**.

6:28-8.1 General requirements

(a)-(g) (No change.)

(h) All education programs with the exception of home instruction shall be [scheduled] **provided** for at least four hours per day and no fewer than 180 days each year.

(i)-(m) (No change.)

(n) For pupils in State facilities who do not have identifiable districts of residence as defined by N.J.S.A. 18A:7B-12, the Departments of Human Services and Corrections through their Offices of Education shall adopt policies and procedures for high school graduation requirements in accordance with N.J.A.C. 6:8-7.1. Those policies and procedures shall be submitted to the Commissioner of Education for approval.

(o) Upon certification by the Department of Human Services or Corrections Office of Education that a pupil has succcessfully completed the graduation requirements, the Commissioner of Education will issue a State endorsed high school diploma to the pupil through the Department of Human Services or Corrections as appropriate.

6:28-8.4 Provision of programs

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

(c) All professional staff shall be appropriately certified to function in their area of assignment and their certification shall be on file in the respective department's education office and in the appropriate county office of the Department of Education.

1.-2. (No change.)

[3. When a class has educationally handicapped as well as noneducationally handicapped pupils, the assigned teacher shall hold certification as teacher of the handicapped.]

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

(g) For those pupils placed in day training centers, the Department of Human Services shall:

1. Provide an opportunity for the teacher having knowledge of the pupil to contribute to the development of the instructional guide section of the individualized education program according to N.J.A.C. 6:28-3.6(g), (h) **and** (i); and

2. (No change.)

(h)-(j) (No change.)

6:28-8.5 Eligibility to receive State funds

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

(c) [Annually the Department of Corrections and the Department of Human Services shall submit a composite education program budget for all programs and services under its jurisdiction according to N.J.S.A. 18A:7B-12.] **The entitlement shall be forwarded to the Departments of Corrections and Human Services in two payments, 90 percent on July 1, and 10 percent on April 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the Commissioners of Corrections and/or Human Services. These payments may be withheld pursuant to N.J.S.A. 18A:7B-5.**

6:28-8.6 Program review and approval

(a) Annually the Departments of Corrections and Human Services shall submit for approval detailed education program plans and budgets for all programs and services under their jurisdiction in a format prescribed by the Commissioner of Education.

[(a) Annually the] **(b) The** Department of Education shall review [all] educational programs provided [for educationally handicapped pupils by a department of State government] **by the Departments of Corrections and Human Services** for compliance with New Jersey Statutes Annotated, New Jersey Administrative Code and adherence to [there approved special education and budget] **approved education program plans and budgets**.

[(b)]**(c)** All [educational programs and] fiscal information shall be available for audit by the Department of Education.

6:28-9.2 Complaint investigation

(a) The Director of the Division of Special Education or his or her designee(s) shall be responsible for reviewing, investigating and taking action on any **signed,** written complaint of substance regarding the provision of special education and/or related services covered under this chapter. The Division of Special Education in conjunction with the county office of education, shall complete an investigation within 60 calendar days after a written complaint is received.

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

6:28-10.1 General requirements

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

(d) The Department of Education, in consultation with the Departments of Health and Human Services and the Developmental Disabilities Council, shall [monitor]:

1. Monitor and review annually the programs and services of each funded early intervention program according to N.J.A.C. 6:28-9.**1; and**

2. Conduct complaint investigations according to N.J.A.C. 6:28-9.2.

(e)-(k) (No change.)

(l) A due process hearing may be requested in regard to the provision of programs and services for children below the age of three according to N.J.A.C. 6:28-2.7.

6:28-11.5 Referral

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

(c) The parent(s) of a pupil being considered for referral to a child study team shall receive written [notification as described in N.J.A.C. 1:6A-1.1 et seq. and 6:28-2.3] **notice according to N.J.A.C. 6:28-3.3(b)**.

(d) When [parental] consent for [a pupil's referral to the child study team] **initial evaluation** is withheld, the district board of education may request a due process hearing according to N.JA.C. 6:28-2.7.

(e)-(j) (No change.)

6:28-11.6 Comprehensive evaluation

(a) [Following receipt of parental consent for referral of a pupil] **After notice of the referral has been provided,** the child study team shall meet to determine the need for a comprehensive evaluation [and, if appropriate, design]. **If it is determined that an evaluation is needed, the child study team shall write** an evaluation plan and designate a case manager. A determination of the pupil's communication skills and dominance in English and the native language shall be completed as part of the development of the evaluation plan. **Consent shall be obtained prior to conducting the initial evaluation.** The purpose of the evaluation shall be to:

1.-2. (No change.)

(b) The evaluation plan shall include:

1. The specific information to be obtained **to assess in all areas of suspected disability;**

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2.-5. (No change.)
(c)-(m) (No change.)

6:28-11.11 Program options
(a) Educational program options shall include the following:
1.-8. (No change.)
9. Individual instruction at home or in school, excluding home instruction for temporary medical reasons, with the prior written approval of the Department of Education through its county office, when it is not appropriate to provide a full-time special education program for an educationally handicapped pupil according to (a)1 through 8 above. **The number of hours of instruction provided shall be according to N.J.A.C. 6:28-4.5(b)4.**
(b) The following program criteria shall be met:
1.-2. (No change.)
3. Full-time special class programs shall meet the following criteria:
i.-v. (No change.)
vi. Depending on the class type designation of the full-time special education class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted or teacher of deaf or hard of hearing. [Teachers of the preschool handicapped shall additionally hold nursery school endorsement.]
vii. (No change.)

6:28-11.12 Full-time class types
(a) Preschool handicapped class types shall meet the following requirements:
1.-3. (No change.)
4. Age span shall be [two] **three** years.
5.-7. (No change.)
(b)-(o) (No change.)

INSURANCE

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act

Proposed Repeal: N.J.A.C. 11:5-1.25
Proposed New Rules: N.J.A.C. 11:5-6

Authorized By: The New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Authority: N.J.S.A. 45:15-6 and 45:15-16.32 (P.L. 1989, c.239).
Proposal Number: PRN 1990-237.

A **public hearing** will be held on:
Tuesday, June 5, 1990 at 9:30 A.M.
Real Estate Commission Hearing Room
Mary G. Roebling Building
20 West State Street
Conference Rooms 219 and 220
Second Floor
Trenton, New Jersey 08625

Please contact Miss Kathy Dirk at 609-292-8295 if you wish to be included on the list of speakers.

Submit written comments by June 20, 1990 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Eighth Floor
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Real Estate Commission has proposed the adoption of a new set of rules implementing the Real Estate Sales Full Disclosure Act (hereinafter "the Act"), P.L.1989, c.239, which was enacted into law on January 2, 1990. The Commission has also proposed to repeal its rule N.J.A.C. 11:5-1.25 which interpreted and implemented the provisions of the Land Sales Full Disclosure Act, N.J.S.A. 45:15-16.3 et seq., which was declared constitutionally invalid by the United States Court of Appeals for the Third Circuit in its decision in *Old Coach Development Corp., Inc. et al. v. Tanzman, et al.* 881 *F. 2d* 1227 (3d Cir. 1989). The New Jersey Legislature responded to that decision of the Third Circuit by promulgating the Act in order to continue to regulate the marketing of out-of-State real estate interests within New Jersey and to cure the constitutional deficiencies which the Court found to exist in the invalidated Land Sales Full Disclosure Act. The twin cornerstones of the Act and of these rules are full disclosure of all pertinent data by sellers and their agents, and confirmation that adequate financial assurances exist to ensure that promised improvements are delivered.

The new rules, which will be codified in N.J.A.C. 11:5-6, will apply to all developers of out-of-State real estate projects which are marketed in New Jersey through a common promotional plan, unless those projects qualify for an exemption as provided in the Act. The rules will also apply to licensed New Jersey real estate brokers who are designated by such developers as their primary or supplemental New Jersey brokers. The scope of these rules tracks the breadth of the provisions in the Act regulating the conduct of such developers and brokers in the marketing and sale of out-of-State properties to New Jersey residents.

The purpose of the rules is to assist persons who are subject to the jurisdiction of the Act in understanding the obligations imposed upon them by the Act, and in understanding the registration procedures and requirements, and the affirmative measures they must take in order to comply with the law. The effect of adopting these rules will be to afford notice to interested persons of these procedures and requirements. The need to adopt these rules lies in the fact that in order to efficiently implement the provisions of the Act, the Real Estate Commission must adopt and enforce procedures which will enable it to process applications for registration and to monitor the activities of registrants. By affording to affected parties notice of the nature of these procedures, their compliance with the requirements of the Act will be facilitated, which will enhance the efficiency of their business operations and of the Commission's functions.

The rules prescribe the form in which applications for registration, for limited exemptions, and proposed Public Offering Statements must be submitted to the Commission and specify the minimum enclosures/information which must be included in each such submission. The rules also identify the requirements which must be fulfilled in order to designate primary and supplemental New Jersey brokers as the official representatives of registered projects. The rules also recite the required fees payable on the various types of applications which may be made under the Act, the fee requirements pertaining to inspections by Commission representatives of projects for which applications for registration have been filed, and the annual reporting and termination requirements imposed by the Act upon registrants. On the issue of financial assurances, the rules require either adequate bonding or the escrowing of monies.

The rules also prescribe the procedures to be followed in filing amendments, updates and consolidations to registrations or to the Public Offering Statements on registered projects, with an indication of the fees attendant on those types of applications. The rules also specify minimum requirements pertaining to the advertising and promotional activities of registrants and their New Jersey broker representatives. The rules also describe the types of financial assurances which the Commission will require in order to confirm the ability of developers to complete improvements promised to purchasers, but which do not exist at the time of contract. Further, the rules specify minimum requirements pertaining to contracts supplied to New Jersey purchasers of out-of-State projects, including the necessity to include a seven-day rescission clause in such contracts. Finally, the rules delineate the criteria upon which projects may apply for a total or partial exemption from the registration requirements and the procedures which must be followed when applying for such exemptions.

Social Impact

The adoption of these rules will have a beneficial social impact upon the public and upon licensees and developers affected by the rules. Based upon past registrations, it is estimated that approximately 350 developers will apply for the registration of their projects, or for limited or total exemptions from the registration requirements in the Act. It is further estimated that approximately 150 New Jersey brokers will be involved in the representation of such developers.

By assisting brokers and developers in complying with the requirements of the Act, the adoption of these rules will enhance the consumer protection objectives of the statute. Two particular examples of the consumer

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protection aspects of the statute, which are also incorporated into the rules, are the requirement that a clear and comprehensive Public Offering Statement be supplied to prospective purchasers of out-of-State real estate, and that they be afforded an ample opportunity to read that statement prior to signing any purchase agreements, and the requirement that all such purchase agreements include an explicit rescission clause, informing prospective purchasers that they have seven days within which to cancel the contract after signing. The former requirement goes to the heart of the full disclosure objective of the Act, while the latter constitutes a substantial protection for prospective New Jersey purchasers by providing them with a "cooling-off period," during which they can reflect on the wisdom of their proposed purchase at a time and place where they are removed from the effects of any sales or marketing presentations. In this regard, it should be noted that the Commission proposes to require that the two significant advisory notices, one pertaining to the supplying and reading of the Public Offering Statement prior to signing a contract, and the other pertaining to the seven-day rescission clause, be written in both English and Spanish.

It is anticipated that the public will react favorably to the proposal of these rules. It is also anticipated that the licensee community and the developers potentially affected by the rules will also react in a generally favorable manner. Of course, some objections may be raised with regard to some of the filing and/or record keeping requirements. However, the Commission feels that the need to protect the public from the machinations of sharp or unethical practitioners warrants the imposition of these requirements upon the affected parties. In that light, the genesis of both the Act and its predecessor, the Land Sales Full Disclosure Act, can be traced to the extensive abuses which occurred throughout this century involving the sale of real estate located in one section of the country to persons residing in another section. Particularly serious abuses occurred with respect to real estate located in the Southwest and in the State of Florida. The substantial difficulties which members of the public encountered in obtaining any redress against the perpetrators of interstate land fraud schemes precipitated the adoption of consumer protection measures in this area of commerce, not only in New Jersey, but also at the national level and in many other states. The adoption of the Act and the promulgation of these rules is the natural outgrowth of the enactment of such legislation.

Economic Impact

The proposed rules will affect the out-of-State developers of real estate projects who wish to market their projects in New Jersey and the New Jersey broker licensees who represent such developers. In addition, the proposed rules will affect the residents of this State who will be subjected to the marketing and promotional activities of such developers and/or brokers and, most directly, those persons who ultimately conclude a purchase of an interest in an out-of-State real estate project. The information available to the Commission at this time indicates that approximately 15,000 New Jersey residents purchased an interest in out-of-State real estate, including timeshares, during 1988. The purchase price paid by such individuals ranged from approximately $8,000 to $15,000 for timeshare intervals to approximately $1,500,000 for house and lot packages in very exclusive areas.

Most applicants will incur the maximum filing fee of $3,000 as prescribed in the Act and additional preparation costs of from approximately $1,000 to $10,000, depending upon the scope of the project registered and whether the work is done in-house or through outside counsel.

It is anticipated that these rules will have a favorable economic effect on the public. The consumer protection aspects of the rules will assist members of the public in avoiding the serious economic consequences which can result from a bad decision to purchase a property they cannot afford, or a property which does not truly fulfill their needs or desires, or simply a bad piece of property. In addition, the financial assurance aspect of the rules will assist New Jersey purchasers in avoiding the problems which occur when purchases are made on the basis of promised improvements which ultimately are not delivered by the seller. While it is true that the cost of compliance with the Act and these rules may be passed on to members of the public through increased purchase prices, it is not anticipated that a substantial increase in such prices will result from the enactment of these rules. This is true because most developers not only register their projects with the State of New Jersey, but also with the Federal government and with other states. Consequently, the substantial costs incurred in gathering all the information required to be included in such registrations, and preparing the registration itself, is already calculated when purchase prices are established. While developers may have to "fine tune" their submissions when applying for registration in New Jersey, a substantial portion of the material compiled and of the effort required to make such application has, in many instances, already been performed in order to register with other jurisdictions and/or in the jurisdiction wherein the project is located. An exception to this exists, however, with regard to the requirement that a Public Offering Statement which comports with the Act must be compiled and submitted for approval, and if approved, supplied to all prospective New Jersey purchasers. The sufficiency of the disclosure to be made by the developer to prospective New Jersey purchasers is such a key aspect of the Act that the Commission concluded that it was imperative that such statements be tailored to the specific requirements of the Act, even if that entails imposing additional burdens and costs upon registrants.

It is not anticipated that the promulgation of these rules will have a substantial economic effect upon the Real Estate Commission. The Commission is required by the Act to implement and enforce its provisions, and to collect the fees it imposes upon applicants. The adoption of these rules does not expand the operations of the Commission beyond what is required to effectuate the purposes of the Act.

As indicated above, by enhancing the ability of developers and brokers to comply with the requirements of the Act, it is anticipated that the adoption of these rules will improve the efficiency of their operations. This should result in a monetary savings to such persons. The savings to the general public which will accrue from enhancing the consumer protection aspects of the Act will also accrue to the benefit of the developers and brokers, because when all parties have a complete understanding of the nature of the offering and of their rights under the law, costly disputes and potential litigation can be avoided.

Regulatory Flexibility Analysis

Generally, the type of small business, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which the rules apply are small real estate brokerage firms. It is unlikely that many small developers will be required to register their projects because the Act specifically exempts projects of less than 100 lots, parcels, units or interests, unless the project is a condominium, co-operative, timeshare, retirement community or other type of subdivision involving a homeowners association. As noted above, it is estimated that some 150 New Jersey brokers will be registered as either the brokers of record or as supplemental brokers for registered developers. Most, but not all, of these are small brokerage operations.

The reporting requirements imposed by the Act and the rules primarily involve the obligation of reporting to the Commission any material changes in the information previously supplied with an application for registration or renewal, or in the nature of the project or the environmental or financial factors affecting the project. In addition, developers are required to file annual reports updating the Commission on the status of registered projects. The primary record keeping requirements involve the proper escrowing of deposit payments and the maintenance of receipts for Public Offering Statements and Brokers Releases provided to prospective purchasers. In addition, copies of contracts signed by such purchasers must be maintained for seven years. Among the other compliance requirements are the obligation to include the registration number and a statement confirming that registration with the Commission does not constitute an endorsement of the project in all advertisements of registered projects.

In order to comply with the requirements of the Act and the rules, it is likely that developers would need to retain the services of an accountant and an attorney. As noted above, the initial costs of preparing a registration application could range from $1,000 to $10,000, depending on the size and nature of the project registered. However, these costs would not be incurred by the small business/brokerage firms representing such a project, but rather by the registrant itself. Again, because of the exemption provisions contained in the Act, it is unlikely that many registrants will be small businesses.

It is difficult to estimate the annual cost of compliance because the cost of compliance will vary in direct relation to the number and significance of material changes in the project or in factors affecting the project. If there were no material changes, annual compliance would generally be limited to proper recordkeeping and escrowing of monies, or the maintenance of adequate financial assurances, and the filing of an annual report. However, if there were material changes, compliance would entail the submission of applications for amendments to a registration and/or Public Offering Statement, with attendant costs. However, again, these costs would be incurred by the registrants and not by the brokers representing their projects.

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The rules are designed to minimize any adverse economic impact on smaller developers by providing for the possibility that such developers could secure a limited exemption, if they did not qualify for a full exemption from the requirements of the Act. Recipients of limited exemptions will not be required to file complete registration packages, nor to obtain approval of a New Jersey Public Offering Statement.

The rules do not establish different compliance or reporting requirements or timetables based upon the resources available to small businesses. This is true because the statute imposes annual reporting requirements upon all registrants. However, the rules do provide for the issuance of limited exemptions with a duration of two years in an effort to assist smaller developers in complying with the intent of the Act.

For the most part, the rules do utilize performance standards rather than design standards. However, one exception to this may be found in N.J.A.C. 11:5-6.3 where the forms of documents to be included in an application for registration are prescribed.

The rules do not go farther in exempting small businesses from the reporting and recordkeeping and other compliance requirements than is evidenced by the limited exemption provisions because the potential threat to the public welfare posed by even limited projects which involve the sale or rental of interests in resl estate can involve the payment of substantial funds by prospective purchasers or lessees. In order to safeguard the interests of such prospective purchasers or lessees in such smaller projects, it was necessary to impose many of the same reporting, recordkeeping and compliance requirements on the developers of those projects.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:5-1.25.

Full text of the proposed new rule follows:

SUBCHAPTER 6. RULES INTERPRETING AND IMPLEMENTING THE REAL ESTATE SALES FULL DISCLOSURE ACT, N.J.S.A. 45:15-16.27 ET SEQ.

11:5-6.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Real Estate Commission (hereinafter, the Commission) to implement the provisions of the Real Estate Sales Full Disclosure Act (hereinafter, the Act), N.J.S.A. 45:15-16.27 et seq. These rules are applicable to all applications and matters pertaining to and/or effected by the provisions of this Act.

(b) All registration and exemption applications and all correspondence and inquiries should be directed to: New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control, 20 West State Street, CN-328, Trenton, New Jersey 08625.

11:5-6.2 Definitions

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

"Advertising" means the publication, or causing to be published, of any information offering for sale, or for the purpose of causing or inducing any other person to purchase or acquire, an interest in the title to subdivided lands, including the land sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written or printed or photographic matter produced by any duplicating process producing 10 copies or more;
4. Billboards or signs;
5. Display of model homes or units;
6. Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone or any other electronic means; or
7. Material used by subdividers or their agents to induce prospective purchasers to visit the subdivision; particularly vacation certificates which require the holders of those certificates to attend or submit to a sales presentation by a subdivider or its agents.

"Advertising" does not mean: stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, or similar documents, prospectuses, property reports, offering statements or other documents required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government; all communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider's lands except when directed to the sale of additional lands.

"Applicant" means a person who or entity which has applied for the registration of real property of interests therein with the Commission pursuant to the Act or for a total or limited exemption from those registration requirements.

"Blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell, or a trust agreement affecting a subdivision or affecting more than one lot offered within a subdivision, except that term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Broker" or "salesperson" means any person who performs within this State as an agent or employee of a subdivider any one or more of the services or acts as set forth in this Act, and includes any real estate broker or salesperson licensed pursuant to N.J.S.A. 45:15-1 et seq. or any person who purports to act in any such capacity.

"Broker's Release" means the document issued by the Commission affirming that the broker to whom it is issued has been approved by the Commission as the designated New Jersey broker of record or as a supplemental broker of a registrant, and has been authorized by the Commission to commence solicitation and sales efforts on behalf of that registrant in New Jersey.

"Commission" means the New Jersey Real Estate Commission.

"Common promotional plan" means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where those lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name regardless of the number of lots, parcels, units or interests covered by each individual offering.

"Disposition" means the sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision if undertaken for gain or profit.

"Notice" means a communication by mail from the Commission executed by its secretary or other duly authorized officer. Notice to subdividers shall be deemed complete when mailed to the subdivider's address currently on file with the Commission.

"Offer" means every inducement, solicitation or attempt to encourage a person to acquire an interest in a subdivision if undertaken for gain or profit.

"Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Situs state" means the state, province, territory, protectorate, country or other jurisdiction situated outside of the State of New Jersey within which a subdivision is located.

"Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in a subdivision.

"Time-share estates" includes both "fee simple" and "right to use" time-share interests and means:

1. An "interval estate" meaning a combination of an estate for years in a lot, parcel or unit, during the term of which title rotates among the time-share owners, coupled with a vested undivided fee simple interest in the remainder in that unit as established by the declaration or deed creating the interval estate; or
2. A "time-span estate" meaning a combination of an undivided interest in a present estate in fee simple in a lot, parcel or unit established by the declaration or deed creating the time-span estate, coupled with the exclusive right to possession and occupancy of the parcel or unit during a regularly recurring period; or
3. A "vacation license" meaning the exclusive right to possession and occupancy of a lot, unit or parcel during a regularly recurring period established by club membership, lease or license.

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"Subdivider" or "developer" means any owner of subdivided lands or the agent of that owner who offers the subdivided lands for disposition.

"Subdivision" and "subdivided lands" mean any land situated outside the State of New Jersey whether contiguous or not, if one or more lots, parcels, units or interests are offered as part of a common promotional plan of advertising and sale and expressly means and includes such units or interests commonly referred to as a "condominium" defined in the "Condominium Act" P.L. 1969, c.257 (N.J.S.A. 46:8B-1 et seq.). In addition to condominiums, this definition shall also specifically include, but shall not be limited to, any form of homeowners association, any housing cooperative, any community trust or other trust device and any form of time-sharing.

11:5-6.3 Forms of documents

(a) Rules concerning documents with respect to the registration of subdivisions with the Commission and to the sale of interests in out-of-State subdivisions pursuant to the Act are as follows:

1. All statements of record submitted to the Commission shall be bound, referenced and properly indexed with the exception of those received from the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

2. All documents submitted to the Commission for filing shall, wherever possible, be typewritten on one side of the paper only. One copy of each exhibit or document shall be submitted, unless the Commission requests more than one copy. All documents submitted to the Commission shall not exceed 8½ x 14 inches. The Commission will make exceptions for documents which an applicant for registration cannot reasonably reduce, such as topographical maps, plat maps and surveys, if such documents can be folded to 8½ x 14 inches. Where the Commission requires certified documents and the applicant cannot obtain reduced certified documents, the applicant may reduce such documents and submit therewith an affidavit verifying such document. All documents submitted pursuant to these rules shall become part of the Commission's public records.

3. An applicant may submit photographs as part of the application for registration. Photographs shall not be used in lieu of the legal description of the registered property or any other required written documents.

4. An applicant may submit verified copies of original documents.

5. An affidavit or affirmation as prescribed in the Commission's forms shall be executed for each of the following documents:

i. Statement of record, partial statement of record;

ii. Application for consolidated registration;

iii. Application for amendment to Order of Registration;

iv. Annual report of registered properties;

v. Partner, officer, director or principal disclosure;

vi. Consent(s) to service of process; and

vii. Broker's Affidavit and application for release.

6. A certified report and statement of record of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, may be filed in lieu of a statement of record conforming to the requirements of the Act, provided the following documentation shall also be submitted:

i. Consent(s) to service of process;

ii. Audited financial statement(s);

iii. A statement detailing any bonding or security agreements entered into;

iv. Copies of all plats pertinent to the subdivision;

v. A copy of each contract to be used in the sale of property in the development to New Jersey purchasers;

vi. A list of the officers of the corporation;

vii. A copy of the articles or certificate of incorporation;

viii. Application/Affidavit of developer; and

ix. Such other additional documents or proofs that may be requested.

7. The acceptance of the certified report and statement of record of the Office of Interstate Land Sales Registration may be conditioned upon an acceptable on-site inspection by the Commission or its designee. No marketing or sales activity will be permitted in New Jersey until all the proper authorizations have been received by the applicant and broker from the Commission.

8. Any applicant who wishes to register a subdivision which has been similarly registered in this State or any other state where the requirements of that registration are substantially similar to those imposed by this subchapter, may submit a certified copy of the approved application for registration filed in such other jurisdictions. In the event the Commission finds upon review that such an application substantially conforms to the standards and requirements imposed by the Act and this subchapter, the Commission may register such property; provided, however, that prior to such registration, the Commission may require submission of such supplemental documents and information as it may deem necessary.

9. Nothing herein, or in the Act, shall be construed to require an applicant to whom an Order of Registration has previously been issued to file any additional documents or affidavits with the Commission other than notices of amendments or requests for approval of material change(s) and annual reports prior to the expiration of that Order of Registration.

11:5-6.4 Contents of applications for registration

(a) All applications for registration shall contain the following documents and information:

1. A form application provided by the Commission in which the applicant identifies the specific lots, parcels, units or interests to be registered. The application shall be accompanied by an affidavit, on a form provided by the Commission, signed by the applicant which affirms and attests that the applicant is familiar with the project being registered, the nature and content of the application for registration, the Act and the rules promulgated thereunder, and that the contents of the application are true and correct and conform with those requirements. A second affidavit to be completed by the designated New Jersey broker of record shall accompany the application. The broker's affidavit shall state that he is familiar with the registration and its contents or has physically inspected the property, or both, that he is familiar with the Act and the rules promulgated thereunder, and with the Real Estate Brokers and Salesmen Act, and that he is not aware of any information that would lead him to believe that the information in the registration application does not provide full and fair disclosure of the offering;

2. One copy of the proposed New Jersey Public Offering Statement;

3. A statement by the applicant confirming that all monies paid by New Jersey residents prior to their closing on a purchase or lease of an interest in the registered subdivision will be held in a separate trust account or will be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the trust account is maintained, as well as the name and address of any trustee or escrow agent. The statement shall also confirm that the applicant and broker will hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision are offered through installment sale contracts where closing and delivery of deed are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall also confirm that either:

i. All monies paid by New Jersey purchasers will be escrowed until the statutory seven-day rescission period has expired and a Deed in Trust memorializing the transaction has been recorded with the appropriate recording authority in the situs state and all statutory and other rescission periods have passed and all contingencies have been fulfilled; or

ii. That evidence acceptable to the Commission that a bond in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to closing has been posted by an unaffiliated third party surety on behalf of the applicant;

4. An irrevocable appointment of the Commission to accept, on behalf of the applicant, service of any lawful process in any proceeding arising under the Act against the applicant or his agents;

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5. A statement as to the states or other jurisdictions, including the Federal government, in which an application for registration, or similar documents, have been filed, and copies of any adverse orders, judgments or decrees by any regulatory agency, court, or administrative body, with the exception of orders approving advertising, entered against the applicant, any parent or subsidiary of the applicant, or any company related to or affiliated with the applicant with respect to the property for which the application for registration is being filed;

6. The name, address and principal occupation for the past five years of every principal officer and director of the applicant, and of every partner who owns a 10 percent or greater interest in the applicant, and of every shareholder who owns 10 percent or more of the stock of the applicant as of 30 days prior to the filing of the application for registration, with an indication of the nature and extent of their interest in the applicant;

7. Copies of the certificate or articles of incorporation, with all amendments thereto, if the applicant is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the applicant is organized under another form. In the event the applicant is not the legal title holder to the property being registered, the above documents shall be submitted for both the applicant and the legal title holder;

8. A legal description by metes and bounds or by lot and block numbers, section, township and range designation, or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map or plat shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

9. Copies of the deed or other instruments establishing title in the developer or other record owner and a current title search, title report, title insurance policy, title opinion from an independent attorney, or certificate or binder issued by a licensed title insurance company. The Commission may also require a copy of any agreement which grants the applicant the rights to dispose of the property interest on behalf of the title holder;

10. A statement or listing of any pending litigation, court orders, judgments or decrees which materially affect the sale or development of the offering or the financial stability of the applicant;

11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, creed or national origin;

12. A statement of the present condition of access to the development and the existence of any adverse conditions that affect the development that are known to the applicant, should be known or are readily ascertainable;

13. Copies of all contracts, agreements and acknowledgements which a purchaser or lessee may be required to execute in connection with this offering;

14. In the event there is, or will be, a blanket encumbrance affecting the development or a portion thereof, a copy of the document creating it and a statement of the consequences to a purchaser of a failure of the person bound to fulfill the obligations under the instrument, and of the manner in which the interest of the purchaser is to be protected in the event of such eventuality;

15. The audited financial statements of the applicant for the fiscal year. The term "financial statements" includes, but is not limited to, the following statements: auditor's report, balance sheet, statement of income, statement of changes in retained earnings, statement of changes in financial position, statement of changes in owner's equity, notes to financial statements and current profit and loss statement. The filing of the audited consolidated financial statements of a parent company of an applicant may be permitted if the subsidiary company is the registrant, applicant, co-registrant or guarantor. In the discretion of the Commission, it may accept or require alternative information evidencing the applicant's ability to complete the promised improvements to the development in lieu of the audited financial statements;

16. A statement concerning any filing for or adjudication of bankruptcy during the last five years by or with regard to the applicant, its predecessor, parent or subsidiary company and any principal owning more than a 10 percent interest in the subdivision at the time of the filing of the application for registration. These requirements shall not extend to limited partners or those whose interests are solely those of passive investors;

17. Copies of all easements and restrictions of record and any easements or restrictions not of record which are within the applicant's knowledge;

18. A statement as to the status of all applications for permits and/or compliance with any permits required or issued by any Federal, state, or local agencies or similar organizations which have the authority to regulate development or issue permits, approvals or licenses which may be material to the development, sale or other disposition of the lots, units, parcels or interests to be registered and the existing or proposed facilities, common areas or improvements thereof;

19. A statement indicating whether the applicant, or a parent or subsidiary of the applicant, or any of its current or former officers or principals have, during the past 10 years, been convicted of a crime involving any aspect of the real estate sales or securities business in this State, the United States or any other state or foreign jurisdiction and whether the applicant has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving real property disposition, or any administrative order or judgement by a court finding that the applicant or any such persons have engaged in any unfair acts and/or fraudulent or deceptive practices involving the disposition of real property or of other products or services;

20. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based upon full occupancy together with the estimated annual assessment and monthly charges to be assessed to each type of unit. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, the budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities, as certified by an independent certified public accountant, and shall state the risk if the applicant fails to sell out. The budget should also indicate whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the applicant's discontinuing the making of such payments upon the maintenance fee payable by each owner. The budget shall be accompanied by a letter of adequacy certified by an independent insurance agent or broker, or certified property manager, attesting that the budget was prepared in good faith and that the insurance coverage meets any standards required in the project documents and as required by situs state law;

21. A covering letter specifying the following information with regard to the project:

i. The nature of the project (that is, number of lots in each subdivision or number of condominium units in mid-rise, etc.);

ii. Certifying that the filing fee and other fees are correct as required by N.J.S.A. 45:15-16.27 et seq.;

iii. Identifying to whom all correspondence should be directed, with an address; and

iv. Identifying to whom Annual Report Notices and forms should be sent, with an address and telephone number; and

22. Such other additional information as the Commission may require, after review of an application for registration, to assure full and fair disclosure.

11:5-6.5 Public Offering Statements

(a) No registrant may dispose of any lot, parcel, unit or interest in a registered subdivision unless said registrant delivers to the purchaser a current New Jersey Public Offering Statement or approved equivalent, and affords the purchaser a reasonable opportunity to read the same before the purchaser signs the contract or purchase agreement.

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(b) The Public Offering Statement shall disclose fully and accurately the characteristics of the subdivision and the lots, parcels, units or interests offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the subdivision. The Public Offering Statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

1. The Public Offering Statement shall be in a form designated by the Commission. No change in form may be made without the consent of the Commission.

(c) The Commission may require an applicant to alter or amend the proposed Public Offering Statement in order to assure full and fair disclosure to prospective purchasers and may require the revision of a Public Offering Statement which it finds to be unnecessarily complex, confusing, illegible or incomplete.

(d) A Public Offering Statement shall not be deemed current unless it contains all amendments approved by the Commission.

(e) The Public Offering Statement shall contain the following information:

1. The name and address of the subdivision being offered, the name and principal address of the applicant and the name and address of the New Jersey broker of record;

2. A narrative description of the interest to be offered including; but not limited to; the rights and obligations of purchasers in their lots, parcels, units or interests and in the common elements;

3. A narrative description of the subdivision including, but not limited to, specific designation of the total number of lots, parcels, units or interests contained in the offering, the total number of lots, parcels, units or interests which will or may be constructed in the entire project, the present and proposed access to the development and the promised completion date of the present offering for sale and the estimated completion date of the entire development;

4. Relevant community information including, but not limited to, the existence and location of hospitals, health and recreational facilities, schools, fire and police protection, places of worship, streets, water supplies, levees, drainage control systems, irrigation systems, customary utilities, etc.;

5. A statement of the nature, type and capacity of improvements to be installed by the developer and the promised dates of completion for sections offered for sale and estimated dates of completion for sections not yet offered for sale (Note: The Public Offering Statement shall be amended to reflect promised dates of completion when sections which were not previously offered for sale are offered for sale), and a statement of any approvals not yet obtained, the acquisition of which is a precondition to the completion of such improvements, and whether the identified improvements will be dedicated to public use;

6. A statement of the proposed method of operation and management of the common elements and facilities, and of all fixed, estimated or proposed fees, assessments, and reserves for future replacement and repair of common elements. If there are no provisions for reserves, a statement indicating same shall be included;

7. A description of any management or service contract, lease or other contract or agreement affecting the use, maintenance or access from and to any and all of the common elements or community facilities, together with a statement as to the effect of each upon the purchaser;

8. A statement of the relationship, if any, between the applicant and any management or servicing agent or firm;

9. A statement explaining any restrictions on occupancy, on the right of alienation and on the right of alteration of the lot, parcel, unit or interest, and on the use of any common facilities or amenities;

10. The significant terms of any encumbrances, easements, liens and restrictions including, but not limited to, zoning regulations affecting such lands and each lot, parcel, unit or interest, as well as the use and zoning of adjoining lands;

11. A statement as to whether the property or any portion thereof is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property or any portion thereof is located in a Federally designated flood hazard area;

12. A statement as to whether the property or any portion thereof is subject to man-made forces that would tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use, landfills, dumps, nuclear or toxic waste facilities or other similar forces;

13. A statement of all current or estimated taxes;

14. A statement of all existing or proposed special taxes and proposed assessments or assessments of record and identifying who shall be responsible for payment thereof;

15. A statement of the estimated title closing or settlement costs to be paid by the purchaser that are charged by the applicant and its agents and any person or entity controlled by the applicant;

16. A statement explaining the warranty or guarantee given by the applicant, if any, and the rights and remedies of the purchaser;

17. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing will be held in a trust account or be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the trust account is maintained as well as the name and address of any trustee or escrow agent. The statement shall include the applicant's acknowledgement that he shall hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision are offered through installment sale contracts where closing and delivery of deed are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall also confirm that either:

i. All monies paid by New Jersey purchasers will be escrowed until the statutory seven-day rescission period has expired and a deed in trust memorializing the transaction has been recorded with the appropriate recording authority in the situs state and all statutory and other rescission periods have passed and all contingencies have been fulfilled; or

ii. That evidence acceptable to the Commission that a bond in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to closing has been posted by an unaffiliated third party surety on behalf of the applicant;

18. A statement printed in 10-point boldface type or larger, in English and Spanish, conspicuously located, which states that the purchaser has the right to cancel any contract or agreement for the purchase of any lot, parcel, unit or interest in the development, without cause, by sending or delivering written notice of cancellation to the developer or his agent by midnight of the seventh calendar day following the day on which such contract or agreement was executed and that all monies paid will be promptly refunded, and further stating that the purchaser should read the Public Offering Statement in its entirety before signing any contracts or paying any monies;

19. A statement indicating that, regardless of whether the registrant offers or recommends financing the purchase of an interest in the subdivision through a particular lender or lenders, alternate sources of financing are available;

20. Where applicable, a statement explaining the nature, type and amount of hazard and liability insurance supplied or to be supplied by the applicant or association and what the insurance covers and an explanation of the nature and type of hazard and liability insurance available to the owner, and the necessity of flood or hazard insurance; and

21. Any additional information required by the Commission to assure full and fair disclosure to prospective purchasers.

(f) Applicants and registrants shall immediately report to the Commission any material change in the information contained in any proposed or approved Public Offering Statement and shall simultaneously submit a request for approval of the appropriate amendment.

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1. Subsequent to the Commission having approved a Public Offering Statement, no revised Public Offering Statement shall be given to prospective purchasers without having first been filed with and approved by the Commission.

2. Applications for approval of an amended or corrected Public Offering Statement shall be made by filing a red-lined copy of the proposed Revised Public Offering Statement with the Commission and an application update.

(g) The Commission shall process and review requests for amendments to Public Offering Statements in accordance with the standards and procedures established in this section.

(h) The Public Offering Statement shall not be used for any promotional purposes before registration of the project, and thereafter only if used in its entirety.

1. No Public Offering Statement shall indicate, and no person shall represent or imply, that the Commission approves the merits of, or recommends the purchase of, an interest in the properties described in the offering.

11:5-6.6 Representation of applicants and registrants by New Jersey real estate brokers

(a) The applicant shall designate a currently licensed New Jersey real estate broker as its original broker of record with the initial application for registration, and such broker and any substituted or supplemental brokers must comply with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., and the rules promulgated thereunder. An applicant/registrant may substitute another broker for the one initially designated. The initially designated broker and all substituted brokers shall execute an affidavit in accordance with N.J.A.C. 11:5-6.4(a)1.

1. The applicant may designate, in addition to the broker of record, other additional brokers who may join in the disposition of the registered property subject to filing the proper application with the Commission. The additional brokers, known as supplemental brokers, shall also execute an affidavit as required by N.J.A.C. 11:5-6.4(a). Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey broker in any transaction, in accordance with N.J.A.C. 11:5-1.23(c).

(b) Only authorized brokers may receive commissions from the registrant.

(c) Only authorized brokers and persons licensed through them may distribute literature and provide and prepare contracts in New Jersey pertaining to registered property.

(d) All authorized brokers shall:

1. Prominently display the current broker's release;

2. Provide a copy of that release with a copy of the current New Jersey Public Offering Statement to all New Jersey purchasers prior to the signing of any contract; and

3. Obtain a signed and dated receipt for the same from the purchaser.

(e) Registrants shall maintain the signed and dated receipt for the New Jersey Public Offering Statement and a copy of the contract which the New Jersey purchaser signed for a period of seven years.

(f) New Jersey brokers may not represent unregistered subdivisions or sections of unregistered subdivisions unless such projects are exempted from registration pursuant to N.J.S.A. 45:15-16.32 and N.J.A.C. 11:5-6.19.

11:5-6.7 Fees with respect to the sale of interstate properties

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-6.19.

(c) Any request for approval of a material change in, or an amendment to, an application for registration and/or an Order of Registration and/or a Public Offering Statement shall be accompanied by a fee of $250. No fee shall be charged for amendments to applications or proposed Public Offering Statements made prior to the issuance of an Order of Registration.

(d) The Commission shall maintain a copy of every application for registration, together with all amendments thereto, that has been approved and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission will furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost of $0.50 per page.

(e) All fees paid are non-refundable.

11:5-6.8 Issuance by the Commission of a Notice of Filing

(a) Upon receipt of an application for registration in proper form and accompanied by payment of the required filing fee in the correct amount as prescribed by N.J.S.A. 45:15-16.34, the Commission shall, within 10 business days of its receipt of the same, issue a Notice of Filing to the applicant. The notice of filing shall not be construed as an approval of the registration or any portion thereof.

1. The date of filing shall be considered as the date when all required documents have been submitted in proper form and all fees, including the inspection fee, if requested, have been paid.

11:5-6.9 Inspection of properties by the Commission

(a) As provided in N.J.S.A. 45:15-16.41, the Commission, at its discretion, may make on-site inspections of any subdivision which is the subject of an application for registration, either before an Order of Registration has been issued or thereafter. In any instance where an Order of Registration has been issued prior to the subdivision being inspected by the Commission, such Order shall be considered conditional and subject to the results of the Commission's inspection of the premises. The Commission may at its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

11:5-6.10 Amendments to registration applications and Public Offering Statements

(a) The registrant shall immediately file with the Commission amendments to its registration application and/or Public Offering Statement reflecting any material change(s) in previously supplied information or documents, in order that the information provided purchasers is current.

(b) The definition of "material change" includes, but is not limited to, situations in which any significant change has occurred with respect to any man made or natural forces affecting the subdivision and/or in the size or character of the subdivision and/or in the promotional plan of disposition of the interests being offered, and specifically includes any situation having a significant adverse effect on the rights, duties or obligations of the applicant/registrant or of New Jersey purchasers. Changes in selling prices and advertising are not considered material changes. The Commission shall determine what is a material change.

1. The transfer of control of any association responsible for the maintenance of common areas and/or the operation of common facilities or amenities by the registrant to the owners of interests in the subdivision is a material change.

(c) Any change meeting the definition of "material change" shall not be made unless such change has been approved by the Commission by way of amendment to the New Jersey Public Offering Statement and Order of Registration. Amended Public Offering Statements shall be designated as "First Amended Public Offering Statement", "Second Amended Public Offering Statement", etc.

(d) The Commission shall process and review requests for amendments to Orders of Registration and Public Offering Statements in accordance with the standards and procedures established in the Act and this subchapter for the review of applications for registration. Requests for amendments shall be accompanied by a fee of $250.00, as provided in N.J.A.C. 11:5-6.7.

11:5-6.11 Annual reporting upon and the termination of registrations

(a) No later than 30 days after the anniversary date of the latest Order of Registration, and while the registrant retains any interest in the subdivision, the registrant shall file, on a form designated by the Commission, an annual report reflecting any material changes in the information contained in the original application for registration or in the most recent Annual Report previously filed.

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1. This requirement shall not diminish the obligation of the registrant to notify the Commission of material changes as they occur.

2. The annual report shall contain an audited financial statement showing the receipts and expenditures of any association serving the project and under the control of the registrant, which financial statements shall be compiled on a yearly basis, and certified if required by the situs state.

3. The yearly audit submitted with the annual report shall be the most current audit available. In no event may the date of the yearly audit be earlier than 18 months prior to the date of the annual report. The registrant will not have to file a separate audit with the Commission for any association controlled by the owners of interests in the subdivision.

(b) The registrant may file an application for termination of its obligations with the Commission in which the registrant shall certify the grounds for termination.

1. Upon a determination by the Commission that an annual report is no longer necessary for the protection of the public interest or that the registrant no longer retains any interest and no longer has any contractual, bond or other obligations in the subdivision, the Commission shall issue an order terminating the responsibilities of the registrant under the Act.

11:5-6.12 Home builders

Unless exempt pursuant to N.J.S.A. 45:15-16.32, a home builder selling house and lot packages offered as part of a common promotional plan, regardless of whether the lots are contiguous, is a "subdivider" as defined in N.J.S.A. 45:15-16.28, and therefore such offerings are subject to the Act and to this subchapter.

11:5-6.13 Grounds for denial of registration applications and for the revocation of Orders of Registration

A finding that an applicant or registrant has previously been determined to have engaged in unfair acts and/or fraudulent or deceptive practices by the Federal Trade Commission, or as set forth in the Federal Interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 U.S.C. §1701 et seq.), or to have violated the Act and/or similar acts in other States, may constitute grounds for the Commission to refuse to issue or to revoke an order of registration. The Commission shall not refuse to issue or to revoke an order without first providing the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:5-6.14 Advertising and sales promotions with respect to the sale or marketing of registered properties

(a) Advertisements that refer to the purchase price of any lot, unit, parcel or interest in real estate shall state the full purchase price and shall disclose any known or estimated additional assessments or costs to the purchaser.

1. In order to eliminate fictitious pricing or illusionary discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria.

2. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated.

(b) Advertising that contains statements regarding taxes shall not use terms such as "low" and "stable", but shall state what the current taxes are, or an accurate estimate of such taxes based on current tax rates or value ratios.

1. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the facts of the assessment and the estimated amount of the assessment.

2. Advertising shall not state that items or services are free when the cost thereof is included in the assessment.

(c) Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising, accompanied by the proposed date of completion, which shall also appear prominently in the advertising.

(d) Advertising shall not contain photographs, sketches or artist's conceptions unless the fact that these are conceptions are stated immediately adjacent to them in the advertisement.

(e) Advertising shall not refer in wording, photograph, sketch or conception to any recreation, medical, social, shopping or other facility that is not located within the subdivision unless it clearly states that the facilities are not located in the subdivision and states the approximate distance therefrom in miles via paved roads.

(f) Any model unit that is used as part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. If changes are to be made in the units other than landscaping, appliances, furnishings, heating, air conditioning, electrical or plumbing, a legible notice shall be conspicuously placed in the model, or picture photo or rendering of the model, advertising prospective purchasers of the change. In the event that there are items in the model that are available only at additional cost, legible notice informing purchasers that the items are available only at additional cost should be posted in a prominent place in the model.

(g) Any advertising of a registered subdivision in newspapers, periodicals or other means, whether to appear in New Jersey media or in interstate media which have a distribution in New Jersey, shall include the registration number assigned to that project by the Commission followed by the letters "NJREC" and the following statement: "This project is registered with the New Jersey Real Estate Commission. Registration does not constitute an endorsement of the merits or value of the project. Obtain and read the N.J. Public Offering Statement before signing anything." The Commission may also consider allowing a registrant to use a brief legend where there is no apparent harm to purchasers. The registrant shall first obtain the New Jersey Real Estate Commission's written permission to use the brief legend.

1. When properties or any interests therein are not registered with the Commission, nor wholly or partially exempt from the Act, and advertisements regarding such properties or interests are placed in any media which is distributed in or broadcast into the State of New Jersey, a disclaimer shall be included, indicating that the properties or interests are not registered with the New Jersey Real Estate Commission, and that the advertisement is not an offer to New Jersey residents.

2. As a result of their failure to register such properties or interests pursuant to N.J.S.A. 45:15-16.27 et seq., the owners of such properties or interests may not make, or cause to be made, an offer or disposition of the properties or interests in this State, nor direct any offer of such properties or interests originating outside of this State to a person or resident within this State.

(h) Reimbursement of travel expenses in cash or merchandise shall be subject to the following:

1. The promotional material shall clearly and conspicuously state the necessity of attendance at or submission to a sales promotion, the minimum length of time required to be spent at such sales promotion in order to qualify for reimbursement or other premium or inducement, the terms and conditions of the offer, and the retail value of any premiums offered.

2. "Travel expenses" may be reimbursed in cash or by merchandise.

3. Any advertisements, including reimbursement of travel expenses, offers of premiums, or other inducements shall also comply with the provisions of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

11:5-6.15 Compliance with situs state requirements

Any instrument evidencing the sale or disposition of an interest in a registered property shall be executed in accordance with the laws of the situs state. An applicant/registrant may be required to submit proof of compliance.

11:5-6.16 Improvements to be made at registered properties

(a) A property in a subdivision, or any part thereof, on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition unless completion of the improvement is assured by a court order, or government approved improvement district with sufficient taxing or other authority to raise adequate capital to assure completion, or a substantial completion bond or similar undertaking

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posted with a public authority and acceptable to the Commission, or by adequate reserves established and maintained in a trust or escrow account meeting the following criteria:

1. Such funds shall be kept and maintained in an escrow account separate and apart from the registrant's funds and from any other escrowed funds;

2. The account shall be established in a bank or trust company doing business in this State or the situs state, and approved by the Commission; and

3. The trust or escrow agreement shall have as its purpose the protection of the purchaser or prospective purchaser in the event of a failure to complete construction of promised improvements or a failure to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction.

(b) A property in a subdivision, or a part thereof, on which construction of a promised improvement not for public use, convenience or necessity is represented or implied, shall not be registered for disposition to the public where such improvement has not been completed, unless completion is assured by:

1. An adequate plan of development, including financial resources committed to carry out the plan as provided in (c) below, which plan is subject to the Commission's continuing review and approval; or

2. Adequate funds maintained in a trust or escrow account, or an irrevocable bank letter of credit.

(c) The Commission may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security adequate to assure a plan of development. In determining the security required, the Commission shall examine the status of improvements, the overall cost of improvements, the terms of purchaser contracts, the financial condition of the subdivider and such other data as it considers necessary. The Commission may consider whatever financial security has been posted with other governmental authorities in making its determination.

11:5-6.17 Street identification requirements

All registered properties comprised in whole or in part of lots or lot and house packages should be traversable by roads sufficiently improved to handle automobile traffic. In the alternative, the applicant may qualify for the registration of such property by including a statement in the Public Offering Statement indicating the conditions of access to the property and identifying the location of the filed map on which the property can be identified by purchaser.

11:5-6.18 Contracts for the purchase of an interest in a registered property

(a) All contracts or agreements for the disposition of a lot, parcel, unit or interest in a registered subdivision shall be fair and reasonable and shall not impose undue restrictions or hardships upon the purchaser. All contracts shall be in accordance with the laws of the situs state, except that they shall conform to the Real Estate Sales Full Disclosure Act and to this subchapter, and all conflicts shall be resolved to the satisfaction of the Commission.

(b) Any contract or agreement for the purchase of any lot, parcel, unit or interest in a registered subdivision may be cancelled without cause, by the purchaser sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed. Upon receipt of such a notice of cancellation, the developer or his agent shall promptly refund all monies to the purchaser.

(c) Every contract or agreement shall contain the following notice in 10-point boldfaced type or larger, in English and Spanish, directly above the space provided for the signature of the purchaser:

NOTICE to PURCHASER or LESSEE: You have the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement. You should read this entire contract and the Public Offering Statement on this project before signing any documents or paying any monies.

(d) All deposits, downpayments, or other funds paid to a registrant or its agents by a purchaser shall be held in a separate trust or escrow account in a banking or similar institution situated within this State or in the situs state, or deposited with an attorney licensed to practice law in this State, or in the situs state, until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the registered subdivision are offered through installment sale contracts where closing and delivery of deed are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, and in the event that the applicant/registrant has not produced evidence acceptable to the Commission that a bond in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to closing has been posted by an unaffiliated third party surety on behalf of the applicant, all monies paid by New Jersey purchasers shall be escrowed until the statutory seven-day rescission period has expired and a deed in trust memorializing the transaction has been recorded with the appropriate recording authority in the situs state, and until all statutory and other rescission periods have passed and all contingencies have been fulfilled.

11:5-6.19 Exemptions from the provisions of N.J.S.A. 45:15-16.27 et seq.

(a) Any person who believes that property may be exempt from the provisions of the Act, or who is contemplating marketing property in New Jersey which he believes may be exempt, may apply to the Commission for a Letter of Exemption. Such application shall be in written affidavit form and shall list the reasons why such property or proposed project may be exempt from the Act. Such an application for exemption shall be accompanied by a non-refundable fee of $80.00, as provided for in N.J.A.C. 11:5-6.7.

1. In the event the Commission shall determine that such property is exempt from the Act, it shall issue a Letter of Exemption setting forth the facts upon which the determination is based.

2. In the event the Commission shall determine that such property is not exempt from the provisions of the Act, it shall deny the request for exemption in writing, setting forth therein the facts upon which the determination is based, and shall send such writing to the applicant via certified mail, return receipt requested.

3. Any person who is aggrieved by such a determination is entitled to a hearing on such determination, provided said hearing is requested in writing no later than 30 days from the date of the applicant's receiving notice of such determination.

4. The Commission shall issue a determination as to whether a property is, or is not, exempt within 30 days of its receipt of a complete request for exemption, with the appropriate fee.

(b) If the nature of the property and/or of the proposed offering indicate that the applicant would be subject to the registration requirements of the Act, the applicant may apply to the Commission for a limited exemption. If the Commission determines that enforcement of the entire Act and of all these rules is not necessary in the public interest or for the protection of purchasers, due to the small amounts involved or the limited character of the offering, it may issue a limited exemption from registration to the applicant.

1. A limited exemption may be granted by reason of the small number of lots, parcels, units or interests to be offered only if all improvements necessary for the use of the property have been completed, or adequate surety and/or financial assurances for completion of promised improvements and amenities has been established. No limited exemption may be granted with regard to property contiguous or reasonably contiguous to property for which a limited exemption has previously been granted and which is being offered by the same applicant, or by a predecessor or successor in title to or an affiliate of that applicant.

2. A limited exemption may be granted by reason of the limited character of the offering where the nature of the property, or of the prospective purchasers to whom the property will be offered, is such that it is likely prospective purchasers will have expert advice concerning the purchase independent of that supplied by the applicant or his agents. An application for a limited exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. A limited exemption granted for this reason shall be confined to the group of offerees specified in the application.

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3. An application for a limited exemption shall specify the particular lots, parcels, units or interests for which exemption is sought. Any limited exemption granted shall be confined to those lots, parcels, units or interests so specified.

4. An application for a limited exemption shall include a narrative description that clearly describes the nature of the subdivision and the factual basis and reasons why the limited exemption should be granted.

5. The Commission shall assign a New Jersey exemption number beginning with the prefix "N.J.E." to each project to which a limited exemption is issued. This number shall thereafter appear on all publications or broadcasts of advertisements of the properties in the exempted project directed to citizens of this State, and in all national or regional advertising circulated within this State.

6. Any limited exemption granted shall remain in effect for a period of two years from the date of issuance indicated in the Letter of Exemption, unless revoked as described below.

7. Any limited exemption granted shall permit the recipient to offer the property to New Jersey residents without obtaining an Order of Registration. A limited exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the Act or this subchapter, or to revoke the limited exemption after notice and an opportunity to be heard.

8. A $250.00 non-refundable fee shall be tendered with any application for a limited exemption.

9. All applications for a limited exemption shall comply with the following minimum requirements:

i. The filing of an exemption application affidavit-questionnaire;

ii. The filing of proof of title and a plat map specifying the lots or units to be exempted, with colored shading;

iii. The requirements for the securing of all deposits, down payments, or funds of others as prescribed in this subchapter;

iv. The filing of satisfactory proof of surety and/or financial assurances for any promised improvements or amenities;

v. The advertisement standards and procedures established at 11:5-6.14; and

vi. The filing of any other documents that the Commission may deem necessary.

10. Any applicant granted a limited exemption by the Commission, pursuant to this subchapter, shall comply with the annual reporting requirements of N.J.S.A. 45:15-16.40 and N.J.A.C. 11:5-6.11.

11. No limited exemption granted hereunder shall be effective until a Letter of Limited Exemption is issued by the Commission to the applicant for the exemption.

12. A copy of the New Jersey Letter of Limited Exemption, or of a Public Offering Statement approved by the Commission, shall be provided to each New Jersey purchaser prior to their signing any contract for the purchase of an interest in property included within the limited exemption issued by the Commission, and a receipt obtained for the same shall be kept on file for seven years by the recipient of the limited exemption.

13. Any material change in the information reflected on the application for a limited exemption or on any documentation submitted in support of such application shall immediately void any exemption issued based upon such application. The Commission shall determine what constitutes a material change.

LABOR

(a)

DIVISION OF EMPLOYMENT SERVICES

Workfare

Proposed Readoption with Amendments: N.J.A.C. 12:35

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 44:8-114.

Proposal Number: PRN 1990-258.

Submit comments by June 20, 1990 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:35 expires on August 5, 1990. The Department of Labor (Department) has reviewed these rules and has determined that they are necessary for the purposes for which they were originally promulgated. To ensure the continuation of these rules, the Department proposes to adopt these rules with amendments to subchapters 1, 2, 3, and 5.

N.J.A.C. 12:35-1 sets forth the general provisions of the "Workfare" or "General Assistance Employability" rules. The Department has deleted the former title and citation section and added a purpose and scope section to clarify the reason for the rules and the applicability of the rules. Also, the Department has added a definition section to clarify the meanings of words and terms such as "participant," "recipient" and "municipal worksite agreement." Under this section, "participant" means a recipient who has been assigned to a worksite. "Recipient" means an employable person who is receiving general assistance from a municipal department. "Municipal worksite agreement" means an agreement between the New Jersey Department of Labor, Division of Employment Services and a municipal welfare department to establish a worksite for a recipient.

All of the additional proposed amendments are editorial in nature and are intended to clarify the rules and correct grammar and punctuation. For example, the acronyms "ES", "MWD" and "MWSA" which are used throughout the rules have been deleted and replaced, respectively, with the actual words "Employment Service," "municipal welfare department" and "municipal worksite agreement." The words "will" and "must" which appear throughout the rules have been deleted and replaced with "shall," which is more appropriate for rule writing. Also, in N.J.A.C. 12:35-1.5, formerly N.J.A.C. 12:35-1.4, the requirements in a worksite agreement notice are listed in column form as opposed to a sentence for readability. Finally, the proposed amendments are generally noted in the explanation of the subchapters which follows. The specific amendments in the text are self-explanatory.

N.J.A.C. 12:35-1.3, formerly N.J.A.C. 12:35-1.2, sets forth the registration and reporting requirements for recipients. The Department has added a new subsection (a) which sets forth that each recipient must register for workfare at his or her municipal welfare department and complete an Employment Service Form 511F which is available at the municipal welfare department. Also, the Department has made several editorial changes to N.J.A.C. 12:35-1.3 as noted above.

N.J.A.C. 12:35-1.4, formerly N.J.A.C. 12:35-1.3, sets forth the workers' compensation coverage requirements. In subsection (a), the Department has clarified that the municipal welfare department must submit the municipal worksite agreement to the Employment Service to ensure workers' compensation coverage for each participant. Also, the Department has made several editorial changes in N.J.A.C. 12:35-1.4 as noted above.

N.J.A.C. 12:35-1.5, formerly N.J.A.C. 12:35-1.4, sets forth the procedures for worksite assignment notices and the contents of these notices. The Department has made editorial changes to N.J.A.C. 12:35-1.5 as noted above.

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N.J.A.C. 12:35-1.6, formerly N.J.A.C. 12:35-1.5, sets forth the procedures and criteria used by the Department in its evaluation of worksite assignments. The Department has made several editorial changes to N.J.A.C. 12:35-1.6 as noted above.

N.J.A.C. 12:35-1.7, formerly N.J.A.C. 12:35-1.6, sets forth the procedures for monitoring attendance and worksite activity. The Department has made editorial changes to N.J.A.C. 12:35-1.7 as noted above.

N.J.A.C. 12:35-2 sets forth the locations where worksite activity may be established. The Department has made editorial changes to this subchapter as noted above.

N.J.A.C. 12:35-3 sets forth the procedures for scheduling worksite assignments. The Department has made editorial changes to this subchapter as noted above.

N.J.A.C. 12:35-4 sets forth the types of work allowable under worksite activities. No changes were made to this subchapter.

N.J.A.C. 12:35-5 sets forth the actions or behavior that constitute a failure to comply. The Department has made editorial changes to this subchapter as noted above.

Finally, the Department has made an editorial change to Attachment No. 1: "Labor and Industry Special Programs Manager" has been changed to "New Jersey Department of Labor, Employment Service Manager". The attachments have also been redesignated as appendices, in accordance with N.J.A.C. 1:30-2.8.

Social Impact

The State's General Assistance Employability Program (GAEP) or "Workfare" set forth at N.J.S.A. 44:8-114 requires employable persons who receive general assistance from a municipal welfare department to perform public work assigned by either the Department of Labor, Division of Employment Services or a municipal welfare department. Under the GAEP law, the Department is required to establish rules concerning the appropriateness of worksites. The readoption of these subchapters will allow recipients of general assistance and the Department to carry out their requirements under the GAEP Law.

Economic Impact

Participants in GAEP will not experience any direct financial benefit since the GAEP law requires them to work in return for their general assistance grant. However, participants in GAEP will gain beneficial work experience that may help them find jobs. Persons who obtain jobs may improve their quality of life and end their need for public assistance. Also, if persons find jobs and no longer need public assistance, the State and local governments will save tax dollars that can be directed toward other useful programs.

In order to implement the requirements of the GAEP law, the Department currently utilizes its existing staff and money appropriated by the Legislature. The proposed readoption with amendments represents a continuation of the Department's responsibilities under the GAEP law and, therefore, the Department must continue to utilize staff and appropriated money to implement GAEP. The proposed readoption with amendments, however, does not impose any additional expenditures beyond the current GAEP program.

Regulatory Flexibility Statement

The proposed readoption with amendments does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. These rules include requirements imposed upon the Division of Employment Services, municipal welfare departments and individuals participating in the program.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:35.

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

[12:35-1.1 Title and citation

These rules shall be known and may be cited as N.J.A.C. 12:35-1.1 et seq., Workfare.]

12:35-1.1 Purpose and scope

(a) These rules establish the general assistance employability program or workfare and set forth the appropriateness of worksite assignments.

(b) These rules apply to each person eligible to receive public assistance from a municipality.

12:35-1.2 Definitions

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

"Agency" means either a municipal welfare department or the Employment Service.

"Employment Service" means the New Jersey Department of Labor, Division of Employment Services.

"GA" means general assistance.

"General Assistance Employability Program or Workfare" means the program established by the New Jersey Department of Labor, Division of Employment Services, pursuant to N.J.S.A. 44:8-114.

"Municipal worksite agreements" means an agreement between the New Jersey Department of Labor, Division of Employment Services and a municipal welfare department to establish a worksite for a recipient.

"Participant" means a recipient who has been assigned to a worksite.

"Recipient" means an employable person who is receiving general assistance from a municipal welfare department.

"Worksite agent" means a paid employee of the agency for whom the worksite activity is being performed and who is authorized by that agency to conduct on-site supervision of participants and maintain time and attendance reports.

12:35-[1.2]**1.3** Registration and reporting [requirement's form] **requirements**

(a) Each recipient shall register for workfare at his or her municipal welfare department. The recipient shall complete Form 511F which is available at the municipal welfare department.

[(a) All]**(b) Each** employable general assistance recipient[s] not specifically exempted by the municipal welfare department [will] **from workfare shall** report to municipal worksites only after the Employment Service[/General Assistance Employability Programs staff] is in receipt of Form 511F and the [Municipal Worksite Agreement] **municipal worksite agreement**[, (MWSA)] from the municipal welfare department [(MWD)]. General assistance recipients may not be assigned to worksite activities until the [ES/GAEP staff] **Employment Service** has received both [form] Form 511F and the signed [MWSA] **municipal worksite agreement** (See the GA Manual at N.J.A.C. 10:85-3.2(g)).

[(b)]**(c)** The [MWD will] **municipal welfare department shall** submit [the] **Form** 511F to the appropriate **Employment Service** office [of the New Jersey Division of Employment Services (ES)]. Receipt of [the] **Form** 511F by [ES] **the Employment Service** shall fulfill **a recipient's** registration requirement [of receipts with ES].

[(c)]**(d)** Once registered with [ES] **the Employment Service**, a recipient remains registered as long as he or she remains on an employable general assistance grant and is not exempt from the work requirement.

[(d) All]**(e) Each** recipient[s] for whom a **Form** 511F is received shall be [called into the ES] **interviewed by the Employment Service** for an appraisal of their employability potential and referral to an appropriate worksite, employability development service and/or job.

12:35-[1.3]**1.4** Workers' Compensation coverage requirements

(a) To insure State Workers' compensation coverage for [all] **each** worksite participant[s] **each municipal welfare department shall file** a [Municipal Worksite Agreement] **municipal worksite agreement** [must be on file] with the Employment Service. (See [Attachment] **Appendix** 1).

(b) The municipal welfare director, [and] the worksite agent [(the worksite agent being a paid employee of the agency for whom the worksite activity is being performed and who has the authority from that agency for conducting onsite supervision of participants and maintaining time and attendance reports)] and a representative of the [ES must] **Employment Service shall** sign **the** [Municipal Worksite Agreements] **municipal worksite agreement**.

(c) The [ES will] **Employment Service shall** monitor and evaluate [all MWSA] **each municipal worksite agreement** within 14 days after receipt of the agreement from the municipal welfare director. The worksite agreement [will] **shall** be evaluated by [ES staff] **the Employment Service** based on the following criteria:

1. Working conditions are such that they do not represent a substantial risk to the individual's health and safety;

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2. That such employable persons [will] **shall** not be used to replace any regular employees of any department or unit of any municipality, county and state agency or nonprofit agency or institution; **and**

3. That the wage rate for the position covered by the [MWSA] **municipal worksite agreement** is commensurate with beginning regular employees similarly employed.

(d) If any of the above criteria is not met, [ES staff will] **the Employment Service shall** inform the municipal welfare director that the [MWSA] **municipal worksite agreement** is not acceptable and **that** no participants may be assigned to the worksite.

(e) Failure to comply with [ES] **Employment Service** recommendations [will] **shall** lead to the municipality's assumption of responsibility for liability coverage on that worksite[,] as [indicated] **set forth** in the GA Manual **at** N.J.A.C. 10:85-10.2(f).

12:35-[1.4]**1.5** Worksite assignments; notices

(a) [A] **The Employment Service shall prepare a** notice in duplicate [will be prepared] for each worksite participant. [and will be signed by the participant.] (See [Attachment] **Appendix** 2.) [The notice will inform the participant of his or her worksite job title job description, schedule (hours per month) the wage rate used to determine this schedule, whom to report to on the worksite, the address of the worksite and the date to report.] **Each notice shall contain the following information:**

1. The signature of the participant;

2. A description of the worksite job;

3. The schedule of hours per month;

4. The wage rate used to determine the schedule of hours per month;

5. The name of the person to whom the participant is required to report to on the worksite;

6. The address of the worksite; and

7. The date upon which the participant is to begin work.

(b) One copy of the worksite notice shall be retained by the participant; the other shall be kept in the participant's welfare department case folder.

(c) Municipal welfare directors shall forward an additional copy of the notice to the appropriate Employment Service office for evaluation for any worksite assignments made.

12:35-[1.5]**1.6** Worksite assignments; evaluations

(a) Worksite assignments [will] **shall** be made and evaluated by [ES/GAEP staff] **the Employment Service** based on the following criteria:

1. The [individual] assigned **individual** is capable of performing the duties involved at the worksite. The documented employment and academic/vocational training history of the participant, developed in consultation with the participant, shall be the basis of the worksite assignments.

2. Working conditions are such that they do not represent a substantial risk to the individual's health and safety.

3. The participant has a reasonable means of transportation to the worksite assignment. "Reasonable" [shall in this case] means at no cost to the participant. (See the GA Manual **at** N.J.A.C. 10:85-10.2(e)3.)

(b) If any of the criteria in (a) above [is] **are** not met, a worksite assignment will not be made by either [GAEP staff] **the Employment Service** or a [Municipal Welfare Director] **municipal welfare director**. When a [Municipal Welfare Director] **municipal welfare director** makes an inappropriate worksite assignment, [E.S. staff will] **the Employment Service shall** inform the **municipal** welfare director that the participant must be reassigned because the criteria in (a) above [is] **are** not being met. Reassignment may include job search orientation, active registrant pool, training worksite, or another worksite assignment if such is available. Failure to comply with the [ES/GAEP] **Employment Service** recommendations for reassignment [will] **shall** lead to the municipality's assumption of the responsibility for liability coverage on that worksite, as [indicated] **set forth** in the GA Manual[,] **at** N.J.A.C. 10:85-10.2(f).

12:35-[1.6]**1.7** Attendance and worksite activity; monitoring

Attendance and worksite activity [will] **shall** be monitored by the agency [(municipal welfare department or Employment Service)] that develops the [MWSA] **municipal worksite agreement** and makes the individual worksite assignments.

12:35-2.3 Establishment of training worksites

(a) Training worksites[,] in rehabilitative and educational agencies[,] may be established by [ES/GAEP] **the Employment Service** staff to allow registrants in need of these services to fulfill their worksite requirement by attending educational and vocational development classes or rehabilitative and therapeutic sessions.

(b) (No change.)

(c) A [Training Worksite Agreement must] **training worksite agreement shall** be on file with the [E.S.] **Employment Service** and [must] **shall** be signed by the municipal welfare director, the training agent and a representative of the [E.S.] **Employment Service**. (See [Attachment] **Appendix** 3).

12:35-2.4 Establishment of Job Search Orientation worksite

(a) Job Search Orientation worksite may be established by [ES/GAEP] **the Employment Service** staff to allow registrants with marketable employment skills to fulfill their worksite requirement by attending sessions for work search techniques and a monitored job search.

(b) Individuals assigned to this worksite activity will be required to supply documented employer contacts to [ES/GAEP] **the Employment Service** staff during the period assigned to the monitored worksearch. No participant shall remain in this activity more than three consecutive months without reassignment to a municipal worksite activity.

(c) A [Training Worksite Agreement will] **training worksite agreement shall** be used to establish this worksite activity.

12:35-3.1 Hours of work or training

(a) Persons assigned to a municipal worksite by either [N.J.E.S.] **the Employment Service** or the [MWD] **municipal welfare department** shall work only the number of hours equal to the amount of their grant divided by an hourly wage rate commensurate with beginning regular employees similarly employed.

(b) Persons assigned to a training worksite shall participate in accordance with the scheduling procedures of the training agency itself. A notice in duplicate will be prepared for each training worksite participant and will be signed by the participant and the [MWD/GAEP representative] **municipal welfare director**.

(c) (No change.)

12:35-3.2 Determination of prevailing wage rate

In [such] cases where there are no beginning regular employees similarly employed, the [N.J.E.S. will] **Employment Service shall** contact the local labor market analyst and determine the prevailing wage rate for that particular worksite assignment.

12:35-5.1 Patterns of behavior

(a) The following actions or patterns of behavior shall constitute a failure or refusal to participate in [ES/GAEP] **the General Assistance Employment Program** and will result in the [E.S.] **Employment Service** making a GA disqualification request to the municipal welfare department[.]**:**

1.-4. (No change.)

5. The record and employment history of the registrant shows that he or she has the required education, experience or aptitude to perform the assignment but fails to utilize these skills and experience to benefit from the activity. The determining factors would be the [GAEP staff's] reasonable judgment **of the Employment Service** as to whether the individual intentionally is performing at or near his or her potential as documented under N.J.A.C. 12:35-[1.5]**1.6**(a)1[.]**;**

6. A registrant fails to make a bona fide application for employment when asked to do so by [GAEP or other E.S. staff.] **the Employment Service;**

7. A registrant voluntarily leaves a training or rehabilitation worksite before completion of [said] **the** assignment without good cause[.]**;**

8. (No change.)

12:35-5.2 Notification of failure to comply

(a) (No change.)

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(b) The municipal welfare director shall determine whether good cause existed for a failure or refusal to participate and shall notify the [appropriate ES/GAEP staff] **Employment Service** of [their] **his or her** decision through the use of the NJES-1A. (See the GA Manual at N.J.A.C. 10:85-3.2(g)7, 10:85-10.6-10.7 and 10:85-7.3-7.4).

(c) Participants determined in noncompliance by the municipal welfare director shall be denied all [GA] **general** assistance according to regulations developed by the Division of [Public Welfare] **Economic Assistance**.

[ATTACHMENT No.] **APPENDIX** 1
GENERAL ASSISTANCE EMPLOYABILITY PROGRAM
Municipal Worksite Agreement

The State of New Jersey Department of Labor [and Industry], and the Department of Human Services, agree to establish the following worksite:

Municipality _____

Occupational Classification _____

(DOT CODE OR JOB TITLE)

Hourly Wage Rate _____

Public Works Project Agent _____

(Agency for whom public works project is performed)

Number of General Assistance Employable

Recipients to be Assigned _____

This worksite is established in accordance with P.L. 1979, Chapter 267.

Signed,

DATE _____ _____

[Labor and Industry
Special Programs Manager]
New Jersey Department of Labor,
Employment Service Manager

_____
Municipal Welfare Director

_____
Public Works Project Agent

[ATTACHMENT No.] **APPENDIX** 2

(No change in text.)

EDITOR'S NOTE: [Attachment] **Appendix 3, Training Worksite Agreement,** cited in N.J.A.C. 12:35-3.2, was not filed as part of these rules.

For information on this item, write:
Division of Employment Services
CN 058
Trenton, N.J. 08625

(a)

DIVISION OF WORKPLACE STANDARDS
Safe Dispensing of Retail Gasoline
Proposed New Rules: N.J.A.C. 12:196

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:3A-4 et seq., specifically 34:3A-11.

Proposal Number: PRN 1990-266.

Submit comments by June 20, 1990 to:
Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

On January 4, 1990, N.J.S.A. 34:3A-1 et seq., concerning safety standards for retail gasoline stations was adopted into law (P.L.189 c.263). This legislation provides, among other things, a prohibition of the self-service of gasoline and other inflammable liquids by customers.

The statute mandates the Department of Labor to adopt rules consistent with other State and Federal regulations, that address emergency procedures and standards concerning pump shutoff switches and other safety equipment to be used at gasoline stations, and standards for portable containers for fuel dispensed at gasoline stations.

N.J.A.C. 12:196-1.1 sets forth the purpose and scope of the new chapter, which is to provide standards for the prohibition of the self-service of gasoline, the training and certification of attendants, and the installation of safety signs and equipment at gasoline stations. The chapter is not applicable to marine service stations, the operation of service stations, for aircraft fueling, the dispensing of diesel fuel, or the operation of employer gasoline stations that are solely for the use of a company's employees and are not open to the public.

N.J.A.C. 12:196-1.2 is a definitions section, and provides definitions for closed container, flammable liquid, and fuel, among other terms.

N.J.A.C. 12:196-1.3 sets forth the attendant's duties, which include the safe dispensing of fuel into vehicles and motorcycles.

N.J.A.C. 12:196-1.4 addresses the training of attendants. Attendants must receive instructions concerning the dispensing of fuel, must have one day's worth of practical experience under the supervision of an experienced operator, and must demonstrate understanding of the instructions upon examination. The section also sets forth the necessary content of the instructions to be given to the attendants.

N.J.A.C. 12:196-1.5 concerns the certification of attendants, and provides that upon satisfactory completion of the attendant's training and examination, the retail dealer shall prepare a certificate which shall be available at each station for inspection.

N.J.A.C. 12:196-1.6 discusses the portable containers which are acceptable for holding fuel. The section provides that containers which are designed to hold 10 gallons or less must conform with the requirements of the New Jersey Uniform Fire Code, N.J.A.C. 5:18.

N.J.A.C. 12:196-1.7 requires emergency shut off switches to be provided at a place distant from dispensing devices. These devices are to be used to shut off power in an emergency, or when an unauthorized individual attempts to operate the pump.

N.J.A.C. 12:196-1.8 addresses sources of ignition, prohibits open flames and smoking in the vicinity of the pumps, and requires all engines to be off during fueling operations.

N.J.A.C. 12:196-1.9 provides that each station shall have at least one fire extinguisher within 100 feet of each pump, dispenser, underground fill pipe opening, and lubrication or service room pursuant to the New Jersey Uniform Fire Code, N.J.A.C. 5:18.

N.J.A.C. 12:196-1.10 requires signs to be posted in the fuel dispensing area.

N.J.A.C. 12:196-1.11 sets forth the documents referred to by reference, and N.J.A.C. 12:196-1.12 provides that the documents referred to are available for inspection at the Department.

Social Impact

The Legislature has determined that the self-service pumping of fuel is contrary to the health and safety interests of the public. The proposed new rules emphasize this fact, and ensure the continued safety and health of the public by providing safety standards for the dispensing of fuel.

Economic Impact

The proposed new rules will have some economic impact on gasoline station owners, as they will have to train attendants, provide certifications and signage for the pumping areas. Additionally, some owners will have to provide emergency shutoff switches. The cost of implementing these procedures, however, is expected to be minimal, especially when weighed against the safety interests.

The Department currently has no inspectors assigned to this function and is enforcing the self-service prohibition on a complaint basis. Because the enabling legislation provided no appropriation, the Department will have to divert inspectors from other program areas in order to enforce the statutory and regulatory requirements.

Regulatory Flexibility Analysis

The proposed new rules do impose some recordkeeping, reporting and compliance requirements on gasoline station owners, some of which are

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small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements include attendant training and certification, safety equipment and signage. The costs and need for professional services arising from these requirements will vary depending on the circumstances of each owner.

However, the Department is required by law to apply these rules to all service stations, except those exempted under N.J.A.C. 12:196-1.1, regardless of size, and, therefore, no exceptions or alternate provisions will be made for small businesses.

Full text of the proposal follows:

CHAPTER 196
SAFE DISPENSING OF RETAIL GASOLINE

SUBCHAPTER 1. REQUIREMENTS

12:196-1.1 Purpose; scope

(a) The purpose of this chapter is to provide reasonable standards for:

1. The prohibition of the self service of gasoline and other inflammable liquids at retail gasoline stations;

2. The training and certification of attendants; and

3. The installation of safety signs and equipment and the establishment of procedures to enhance safety at retail gasoline stations.

(b) The provisions of this chapter shall be applicable to:

1. The operation of retail gasoline stations; and

2. The training and certification of attendants at retail gasoline stations.

(c) The provisions of this chapter will not be applicable to:

1. The operation of marine service stations;

2. The operation of service stations for the fueling of aircraft;

3. The dispensing of diesel fuel; or

4. The operation of employer gasoline stations that are solely for the use of a company's employees and are not open to the public.

12:196-1.2 Definitions

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

"Approved" means acceptable to the Commissioner.

"Attendant" means a retail dealer or employee of a retail dealer.

"Closed container" means a container so sealed by means of a lid or other device that neither liquid nor vapor will escape from it at ordinary temperatures.

"Commissioner" means the Commissioner, New Jersey Department, of Labor, or his or her designee.

"Container" means any vessel of 60 U.S. gallons (227 liters or less capacity used for transporting or storing liquids.

"Flammable liquid" means a liquid having a flash point below 100 degrees Fahrenheit (37.8 degrees Centigrade) and having a vapor pressure not exceeding 40 pounds per square inch (psi) absolute (2.068 millimeters/mercury (mm/Hg) at 100 degrees Fahrenheit (37.8 degrees Centigrade) and shall be known as a Class I liquid.

"Fuel" means any liquid commonly or commercially known or sold as gasoline, or other inflammable liquid, which is sold for use as fuel in the internal combustion engines of motor vehicles.

"Gasoline station" means a place of business located in the State and used for the retail sale and dispensing of fuel into the tanks of motor vehicles.

"Inflammable liquid" means flammable liquid.

"Nationally recognized testing laboratory" means:

1. Underwriters Laboratories Incorporated, 333 Pfingsten Road, Northbrook, Illinois 60002;

2. Factory Mutual System, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062;

3. Applied Research Laboratories of Florida, Incorporated, 5371 NW 161 Street, Miami, Florida 33014;

4. Any testing laboratory that may be accepted by the Commissioner as a nationally recognized testing laboratory upon submission of testing procedures and logo types supporting a request by a laboratory for such recognition.

"Safety can" means an approved container of not more than five gallons (18.9 liters) capacity, having a spring-closing lid and spout cover and designed so that it will safely relieve internal pressure when subjected to fire exposure.

"Station" means gasoline station.

12:196-1.3 Attendant duties

(a) Service stations accessible to the public shall have an attendant on duty whenever the station is open for business.

(b) Only an attendant shall dispense fuel into fuel tanks or into containers.

(c) An attendant shall:

1. Dispense fuel into the tank of a motor vehicle only when the vehicle's engine is not in operation;

2. Dispense fuel into portable containers that meet the requirements of N.J.A.C. 12:196-1.7;

3. Prohibit any person who is not an attendant to dispense fuel into the tank of a motor vehicle or into any container; and

4. Be prohibited from smoking while dispensing fuel.

(d) Attendants shall require a motorcyclist to step away from his or her motorcycle while gasoline is being dispensed into their vehicle.

12:196-1.4 Training of attendants

(a) An attendant shall dispense fuel at a gasoline station only if the attendant has:

1. Received instructions from an experienced operator regarding the dispensing of fuel;

2. Had practical experience dispensing fuel under the direct supervision of an experienced operator for a period of not less than one full working day; and

3. Demonstrated his or her understanding of those instructions upon examination by the operator at the end of that period.

(b) The instructions required pursuant to (a) 1 above shall include:

1. A full explanation of the dispensing standards set forth at N.J.A.C. 12:196-1.3(c);

2. The location and operation of the remote switch or circuit breaker installed in accordance with N.J.A.C. 12:196-1.7; and

3. Training in the recognition of approved portable containers pursuant to N.J.A.C. 12:196-1.6.

12:196-1.5 Certification

(a) Upon satisfactory completion of the attendant's training and examination, the retail dealer who operates the station shall prepare a certificate for each person who dispenses fuel at his or her station, certifying that the person has met the training requirements of N.J.A.C. 12:196-1.4 above.

1. The certificate shall be signed by the person who received the training and the retail dealer and shall indicate who gave the training; and

2. The certiicate shall be available at each station for inspection by the Commissioner.

12:196-1.6 Portable containers

(a) An attendant shall only dispense fuel into a portable container which:

1. Is of sound metal construction or is of approved non-metal construction;

2. Has a tight closure with screwed or spring cover; and

3. Is fitted with a spout or so designed that the contents may be poured without spilling.

(b) Portable containers constructed of non-metallic materials shall conspicuously display an embossment by the manufacturer of the logogram of a nationally recognized testing laboratory.

(c) Gasoline shall not be dispensed into glass containers.

(d) Portable containers intended to hold 10 gallons (0.038 cubic meters) or less and to be used for gasoline or other flammable liquid shall be red in color as specified in the New Jersey Uniform Fire Code, N.J.A.C. 5:18. The name of the flammable liquid shall be prominently displayed on the container in bold letters of a contrasting color.

12:196-1.7 Remote emergency shut-off

(a) A clearly identified and easily accessible switch(es) or circuit breaker(s) shall be provided at a location remote from dispensing devices.

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1. The devices shall be used to shut-off the power in conformance with article 514 of the National Electrical Code (National Fire Protection Association (NFPA)-70), each of which is incorporated herein by reference, and NFPA-30A, to all dispensing devices in the event of an emergency, or when an individual other than an attendant attempts to operate the pump.

12:196-1.8 Sources of ignition

(a) No smoking or open flames shall be permitted in the areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.

(b) The attendant shall assure that the motors of all vehicles being fueled are shut off during fueling operations.

12:196-1.9 Fire control

The station owner shall insure that there is at least one listed fire extinguisher having a minimum classification of 20 B:C located so that there is an extinguisher within 100 feet (30 meters of each pump, dispenser, underground fill pipe opening, and lubrication or service room as required by the New Jersey Uniform Fire Code, N.J.A.C. 5:18.

12:196-1.10 Signs

(a) Warning signs shall be conspicuously posted in the dispensing area, incorporating all of the following or equivalent language:

1. It is unlawful to serve yourself. Wait for an attendant;

2. WARNING—It is unlawful and dangerous to dispense gasoline or other flammable or combustible liquid into any portable container unless the container is constructed of metal or is approved and is red in color;

3. No smoking; and

4. Stop motor.

12:196-1.11 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1. N.J.S.A. 34:3A-4 et seq.—Retail Gasoline Dispensing Safety Act;

2. N.J.A.C. 5:18—New Jersey Uniform Fire Code;

3. National Electrical Code (National Fire Protection Association—NFPA-70) (Automobile and Marine Service Stations Code (1978 Edition); and

4. National Fire Protection Association (NFPA)-30A—(Automotive and Marine Service Stations Code (1987 Edition)).

12:196-1.12 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days.

New Jersey Department of Labor
Division of Workplace Standards
28 Yard Avenue, Station Plaza No. 4
CN 386
Trenton, New Jersey 08625-0386

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE
POLICE TRAINING COMMISSION
Certification of Physical Conditioning Instructors
Proposed Amendment: N.J.A.C. 13:1-4.6

Authorized By: Police Training Commission, Robert T. Winter, Chairman and Director, Division of Criminal Justice.

Authority: N.J.S.A. 52:17B-71(h).

Proposal Number: PRN 1990-243.

Submit comments by June 20, 1990 to:

Leo A. Culloo
Administrator of Police Services
Police Training Commission
CN 085
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Physical conditioning has become an increasingly important component of police officer training. In order to standardize this training and provide proper instruction in all of the police academies under the jurisdiction of the Police Training Commission, it is proposed that all physical conditioning instructors be required to be certified.

Social Impact

The proposed amendment to N.J.A.C. 13:1-4.6 will standardize and improve the quality of physical conditioning instruction at all of the police academies throughout the State.

Economic Impact

Some of the schools which provide the courses required for certification by this proposed amendment charge a modest fee which will be borne by those law enforcement agencies which provide physical conditioning instructors to the police academies.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment relates solely to the training of police officers.

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

13:1-4.6 Certification requirements for instructors of certain subjects

(a) Applicants who seek certification to instruct in certain subjects must be certified as an instructor and also comply with the following requirements:

1.-4. (No change.)

5. An individual seeking certification as a physical conditioning instructor at a Commission-approved school must successfully complete a Commission-approved course in physical conditioning and training instruction. The course will provide for the implementation of the Police Training Commission Physical Conditioning Training Program and include Principles of Exercise Physiology or substantially equivalent educational materials.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
OFFICE OF AMUSEMENT GAMES CONTROL
Maximum Fee for Participation in Game
Proposed Amendment: N.J.A.C. 13:3-3.4

Authorized By: Alexander P. Waugh, Jr., Assistant Attorney General in Charge, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 5:8-78, 5:8-79, 5:8-80, and 5:8-107.

Proposal Number: PRN 1990-244.

Submit comments by June 20, 1990 to:

Peter B. Ellis, Executive Officer
Amusement Games Control Bureau
Division of Alcoholic Beverage Control
TRW Complex, 200 Woolverton Street
CN 087
Trenton, NJ 08625-0087

The agency proposal follows:

Summary

The amount which may be charged for any one game or accepted from any one player by the licensee for the privilege of participating in any game is properly determined by the Amusement Games Control Commissioner according to N.J.S.A. 5:8-107.

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The provisions of N.J.A.C. 13:3-3.4 that are proposed for amendment deal with the method of payment allowed for games authorized under Certification No. 2 (Arcade Games). The latest amendment to this rule (see R.1988 d.227, effective May 16, 1988) established new maximum charges allowed for each type of certification but the language is not clear as to the denomination of currency allowed. Specifically, it is unclear whether dollar bill acceptors may be used for those games whose maximum allowable charge was raised to $1.00. This amendment specifies when such bill acceptors may be used.

N.J.A.C. 13:3-3.4(d) states that maximum charge for any arcade game certified under Certification No. 2 shall not exceed $1.00, except that where an enhanced mode of play is permitted the maximum is $1.25 and the maximum denomination coin shall not exceed $0.25. This latter statement has been interpreted to mean that all games under Certification No. 2 are restricted to the maximum denomination of $0.25. The proposed amendment would restrict this statement to games with an enhanced play mode. These games typically offer from one to five lines of play which, at $0.25 per line, equals the $1.25 maximum and accounts for the larger maximum allowed in these games. The new language specifies those cases in which a dollar bill acceptor may be used.

Social Impact

There are 149 arcade licensees in the State, most of whom operate games which could be affected by the proposed amendment. Those licensees who decide to take advantage of the amendment would be providing their customers with a more convenient method of paying for certain games by not requiring them to obtain change. The licensee would hope to increase play on these machines by this added convenience. Due to the limited number and type of games which could take advantage of the dollar bill acceptor, it is unlikely that these changes would lead to excessive play by any patrons which would go against the spirit of amusement games. New games which were not previously offered in the New Jersey market could be presented for certification, thereby providing the public with new entertainment.

Economic Impact

The economic impact of the proposed amendment is minimal due to the number and type of games involved. In addition, the revised language is permissive and does not require any action to the licensees. Licensees who wish to take advantage of the change have the expense of modifying games by either adding dollar bill acceptors or altering existing acceptors to make them functional. Manufacturers and distributors of currently certified games which fall under this rule would have the option of marketing them with or without the dollar bill acceptors. Games not previously submitted for certification in New Jersey because they use dollar bill acceptors could be presented for certification with resulting revenues to the State for certification ($100.00 per certification) and for each machine added to a license ($10.00 per machine). Such revenue is unlikely to be significant.

Regulatory Flexibility Statement

The amendment would impact only on holders of amusement games (arcade) licenses, none of whom could be considered dominant in its field. Of the 149 arcade licenses issued, all are considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No additional reporting, record keeping or other compliance requirements would result from the amendment. There is no initial capital cost or annual cost imposed by this amendment.

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

13:3-3.4 Maximum fee for participation in game

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

(d) The maximum charge for participation in any arcade game certified in N.J.A.C. 13:3-7.9(a)2 under Certification No. 2 shall not exceed the maximum charge specified in the original or amended certification, but in no event shall the amount exceed $1.00, except that where a machine or device permits an enhanced mode of play [when additional coins are inserted, and provided that the number of tickets or tokens awarded are at least proportionately increased, the maximum denomination coin shall not exceed $0.25, and the cumulative total shall not exceed $1.25 when the maximum number of coins are inserted.] **the total shall not exceed $1.25. Dollar bill acceptors may be used only where the certification allows a charge of $1.00 for a single play. Dollar bill acceptors, if used, shall not accept more than one bill for a single play and in no event shall the machine accept multiple bills for credit or multiple play build up. Bill acceptors shall not accept bills larger than a $1.00 denomination. The maximum denomination currency for games permitting an enhanced mode of play shall not exceed $0.25, with a cumulative total of $1.25 when the maximum number of coins are inserted. The number of tickets or tokens awarded shall be at least proportionately increased when additional coins are inserted.** In establishing the maximum charge for an arcade machine or device, the Commissioner shall consider, but is not limited to, the following:

1. The type and nature of the machine or device;
2. The type of prize it is designed to award;
3. The [number of coins] **number and denomination of currency** required or permitted for play; and
4. The time required to complete a game or play.

(e)-(f) (No change.)

(a)

DIVISION ON CIVIL RIGHTS

Regulations Pertaining to Discrimination on the Basis of Handicap

Proposed Readoption: N.J.A.C. 13:13

Authorized By: Ollie H. Hawkins, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-6; 10:5-8(g), (h); 10:5-12(g), (h), (k).

Proposal Number: PRN 1990-267.

Submit comments by June 20, 1990 to:
Ollie H. Hawkins, Director
Division on Civil Rights
1100 Raymond Boulevard
Room 400
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:13 expires on June 17, 1990. The Division on Civil Rights has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change.

In 1972, the New Jersey Legislature passed an amendment to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., prohibiting discrimination in employment, housing, and public accommodation on the basis of physical handicap. The statute was further amended in 1978 to include a prohibition of discrimination based on mental handicap. The rules as readopted will continue to establish principles for the interpretation of the New Jersey Law Against Discrimination as it applies to physical and mental handicap, and to ensure that New Jersey Law remains in conformity with existing Federal regulations pertaining to discrimination against the handicapped. The rules are designed to provide continued guidance to employers, handicapped individuals and others who are impacted by the application of the New Jersey statute.

On the Federal level, the prohibition of employment discrimination embodied in the Civil Rights Act of 1964 is not extended to handicapped individuals. However, in passing the Rehabilitation Act of 1973, Congress did address the question of discrimination against the handicapped. Section 503 of the Rehabilitation Act of 1973 prohibits employment discrimination on the basis of handicap by Federal contractors and subcontractors with contracts in excess of $2,500. Section 504 of the Rehabilitation Act, as amended in 1974, protects participants and others involved in Federally funded programs from discrimination due to handicap.

The Division on Civil Rights' handicap rules were patterned after those promulgated under Section 504 of the Rehabilitation Act by various Federal agencies. The rules, however, are more comprehensive in that they also cover employers who are not Federal contractors or subcontractors with contracts in excess of $2,500. Further, those sections of the State rules dealing with job advertising and solicitation, job referrals, labor organizations and real property are either not currently covered by the aforementioned Federal regulations or are mentioned in very broad terms. Hence, New Jersey rules reach many more employers and thereby offer further protection to the largest group of inhabitants in the State who are physically, mentally, psychologically or developmentally disabled as defined in the statute.

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Subsequent to their adoption on June 17, 1985, the rules have provided immeasurable guidance to employers, owners of real property and places of public accommodation, realtors and handicapped individuals in interpreting and complying with the Law Against Discrimination. Moreover, the New Jersey Supreme Court has noted with approval relevant portions of the rules (see *Jansen v. Food Circus Supermarkets, Inc.*, 110 *NJ* 363 (1988)). Additionally, investigators in the Division on Civil Rights have relied upon the rules to provide guidance in the investigation and resolution of complaints filed within the agency.

Following are capsulizations of pertinent sections of the rules proposed for readoption:

N.J.A.C. 13:13-1 contains rules relating to the purpose and construction of the chapter and providing definitions for terms used therein.

N.J.A.C. 13:13-2.1 Job advertising and solicitation

The section first provides a clarification of N.J.S.A. 10:5-12(c) which prohibits discriminatory advertising in general. The types of advertising considered discriminatory are specified. This section also encourages employers to apply affirmative action precepts to their recruitment policies.

N.J.A.C. 13:13-2.2 Job referrals

This section outlines the conduct which may render employers, employment agencies, labor organizations, or other recruitment sources liable under the Act for discriminating against handicapped individuals in the area of job referrals.

N.J.A.C. 13:13-2.3 Employment criteria

This rule provides that any employment test or other selection criterion must be related to the ability of the prospective employee to perform the job for which the test or selection criterion is administered or applied.

N.J.A.C. 13:13-2.4 Pre-employment inquiries

This section prohibits the employer, employment agency, or labor organization from eliciting any information which would tend to divulge the existence of a handicap, unless such inquiries are aimed at determining whether an applicant for employment has a handicap which will impede work performance in the job being sought. This section also outlines the circumstances under which an employer may make inquiries as to an applicant's handicap, and indicates how an employer may lawfully condition an offer of employment on an applicant's successful completion of a medical examination.

N.J.A.C. 13:13-2.5 Reasonable accommodation

This rule explains the employer's obligation under the law to make reasonable changes in the work environment that will enable a handicapped employee or applicant to perform the particular job sought. However, this section makes clear that an employer need not accommodate such an employee or applicant if the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

N.J.A.C. 13:13-2.6 Wages and fringe benefits

This rule prohibits discrimination by employers against the handicapped in the terms, conditions, and privileges of employment.

N.J.A.C. 13:13-2.7 Labor organizations

This section gives specific application of the statute to labor organizations. In general, it is unlawful for a labor organization to discriminate against a handicapped individual with respect to membership, hiring, promotion, transfer, compensation, representation, grievances, or any other matter directly or indirectly related to membership in or employment by such an organization.

N.J.A.C. 13:13-2.8 Exception

This section provides examples which should help employers recognize instances whereby an individual's handicap reasonably precludes the performance of a particular employment.

N.J.A.C. 13:13-3 Real Property

The sections comprising this subchapter prohibit discrimination against the handicapped in a wide range of activities involving the use and disposition of real property. Incorporated provisions make unlawful discriminatory advertising and solicitation, and prohibit inquiries concerning the handicap of a prospective purchaser, tenant, or occupant. Also unlawful is discrimination on the basis of handicap in the terms of sale or rental, eviction and financing. Provisions contained in these sections underscore the consistencies among the prohibitions of handicap discrimination under the Law Against Discrimination and those included in regulations promulgated under the Fair Housing Act Amendments Act of 1988, 42 U.S.C. §3601 et seq.

N.J.A.C. 13:13-4 Access to Public Accommodations

This subchapter outlines the areas of potential liability of owners, lessees, proprietors, managers, superintendents, agents, or employees of any place of public accommodation stemming from the protection afforded handicapped individuals by the New Jersey Law Against Discrimination.

Social Impact

The rules proposed for readoption have sought to promote and expand employment and housing opportunities in the public and private sectors for handicapped individuals. The rules also assist in the mainstreaming of handicapped persons into society through the availability of additional employment, housing, and increased access to public accommodations.

The employment rules attempt to ensure that handicapped individuals have the opportunity to perform in positions of employment for which they are qualified. There has been a positive societal impact because the rules have had the cumulative result of allowing the handicapped to be valuable contributors to the workforce. Employers have been minimally impacted because employers are generally prohibited from discriminating against qualified handicapped employees or applicants, and employers are obligated merely to reasonably accommodate such handicapped individuals.

Since the rules were originally adopted, the problems facing handicapped individuals continue to exist. These rules will continue to guide employers and property owners seeking to comply with the handicap provisions of the Law Against Discrimination. Since their implementation, the Division has not received any unfavorable comments regarding the rules.

If these rules are not readopted, it would create uncertainty among potential respondents and increase the burden on them to interpret State and Federal case law and regulations in order to determine their responsibilities under the Law Against Discrimination. Moreover, failure to readopt these rules would jeopardize the status of the Division on Civil Rights as a substantially equivalent State agency certified to investigate and process cases which are dually filed with the United States Department of Housing and Urban Development (see 24 CFR Part 115.3).

Economic Impact

The rules proposed for readoption relating to employment of the handicapped have had no significant economic impact on employers since they represent no change in the legal obligations of those employers covered by Federal and State laws protecting handicapped workers. The rules merely codify existing judicial decisions which interpret the Law Against Discrimination, and in large measure are duplicative of regulations promulgated under the Federal Rehabilitation Act of 1973.

Further, the impact on the business operations and concurrent productivity and efficiency of employers has been minimal. There is no reason to believe that current economic conditions will change, which would cause the rules to have a more significant economic impact. It should be noted in this regard that the rules require that employment opportunities be extended to handicapped employees or applicants who are qualified for the positions sought. Also, employers need not accommodate an employee's limitation if such an accommodation would impose an undue hardship on the operation of its business. The rules list factors to be considered in the determination of whether the accommodation of a particular individual's handicap is required under the law. These factors include the overall size of the employer's business, the type of operation the employer is engaged in, and the nature and cost of the accommodation needed. Hence, the rules are specifically designed to advance the opportunities of handicapped individuals without excessively burdening employers. Finally, the rules clarify and capsulize existing law, and should, therefore, assist employers in preventing complaints of discrimination and in protecting themselves from potential liability under the New Jersey Law Against Discrimination.

Lastly, the cost of compliance with the rules relating to real property and public accommodations will be minimal since the performance sought is limited to the sale and rental of real property and the use of public accommodations which would otherwise have been occupied or utilized by the non-handicapped. Additionally with passage of amendments to the Fair Housing Act, these rules duplicate many provisions contained in regulations promulgated under the Federal Act.

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Regulatory Flexibility Analysis

The proposed readoption will not impose any reporting or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, small businesses are prohibited from discriminating against handicapped persons under the provisions of the rules, just as are larger businesses. Lesser requirements for small businesses cannot be provided under these rules, for to do so would be contrary to both State and Federal law and interpretive court decisions.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:13.

(a)

BOARD OF ACCOUNTANCY

Notification of Change of Address; Service of Process

Proposed Repeal and New Rule: N.J.A.C. 13:29-1.4

Authorized By: Board of Accountancy, John J. Meade, Executive Director.

Authority: N.J.S.A. 45:2B-6(g).

Proposal Number: PRN 1990-245.

Submit comments by June 20, 1990 to:
John J. Meade, Executive Director
Board of Accountancy, Room 507a
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Accountancy proposes to adopt a new, stronger and more specific rule regarding notification to the Board of change of address. Under the present rule, N.J.A.C. 13:29-1.4, licensees must notify the Board of any change of address within 60 days. The proposed rule requires that such notification be sent certified mail, return receipt requested, not later than 30 days following the change of address. Failure to notify the Board may result in disciplinary action as prescribed in N.J.S.A. 45:1-21(h) including, but not limited to, a civil penalty of $200.00. Furthermore, the proposed rule makes clear that the address of the licensee currently on file with the Board is the address that will be used for service of administrative complaints, as well as any other Board-initiated process. Communications to that address will be deemed adequate notice for the purposes of the New Jersey Administrative Procedure Rules, specifically N.J.A.C. 1:1-7.1 on service of notice.

Social Impact

In the past a number of individuals licensed by the Board of Accountancy have failed to keep the Board informed of changes of address, despite the existing requirement to do so. Because the Board's information is not always current, this failure to inform has caused delays in processing both complaints and license renewals.

The stronger and more detailed rule will, therefore, have a positive effect on the Board's ability to communicate with its licensees by keeping the Board's information more current. Licensees will benefit in that possession of a postal return receipt provides proof of compliance with the notification rule. Also, the new provision designating the address on file with the Board as the licensee's location for service of process should act as an added incentive to encourage compliance with the notification requirement.

Economic Impact

Since the Board's information concerning licensee addresses is not always current, mailings are sent out and returned as undeliverable. Undeliverable mail wastes Board funds; prompt notification will save the Board hundreds of dollars each year in personnel time and postage.

The economic impact on licensees will be the cost of sending notification of an address change by certified rather than ordinary mail.

Regulatory Flexibility Analysis

It is unclear whether the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., applies to licensed professionals; however, on the assumption it does, the following statement applies.

Many licensees of the Board of Accountancy fall under the broad definition of "small business" in the Regulatory Flexibility Act. While the proposed new rule establishes a more stringent reporting requirement for all Board licensees, in reality the rule merely codifies the Board's policy that licensees should keep the Board apprised of any change in address. Thus, although the proposed rule lessens the time for the reporting of address changes, as a practical matter it imposes no real burden because most licensees already comply voluntarily and in a timely manner with the Board policy. There are no other record keeping or compliance requirements in this proposed new rule.

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

[13:29-1.4 Change of address

A licensee of the Board of Accountancy shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given no later than 60 days following the change of address.]

13:29-1.4 Notification of change of address; service of process

(a) A licensee of the Board of Accountancy shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be sent to the Board by certified mail, return receipt requested, not later than 30 days following the change of address.

(b) Failure to notify the Board of any change of address pursuant to (a) above may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h), including, but not limited to, a civil penalty of $200.00.

(c) Service of any administrative complaint or other Board-initiated process at a licensee's address currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and commencement of any disciplinary proceedings.

(b)

STATE BOARD OF PROFESSIONAL PLANNERS

State Board of Professional Planner's Rules

Proposed Readoption with Amendment: N.J.A.C. 13:41

Authorized By: State Board of Professional Planners, Elwood R. Jarmer, President.

Authority: N.J.S.A. 45:14A-4.

Proposal Number: PRN 1990-246.

Submit comments by June 20, 1990 to:
Richard Weisman, Executive Director
State Board of Professional Planners, Room 500
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:41 is scheduled to expire on September 3, 1990. The State Board of Professional Planners has reviewed the current rules and has found them in general to be necessary and effective for the purposes for which they were originally promulgated. The current rules proposed for readoption have had an advantageous impact on the regulation of the profession by enabling the Board to have in place procedures which maintain high standards of practice, thus serving and protecting the public's best interests. The Board anticipates some rule changes in the near future; however, because of time constraints it is presently proposing the readoption of its rules with only one technical change: the deletion of N.J.A.C. 13:41-2.1, which states that the uniform penalty letter form appears in N.J.A.C. 13:27-5.1. That reference is incorrect, and the Board has been advised that the provision is not necessary, in any case.

This chapter presently contains four subchapters. Subchapter 1, Seal, sets forth rules regarding use of the licensed professional planner's seal. Subchapter 2, Forms, as stated above, speaks of the uniform penalty letter but is proposed to be deleted. Subchapter 3, General Provisions, includes a rule on the use of the terms "planners" or "planning" in the names of corporations, firms or partnerships, as well as the Board's fee schedule. Subchapter 4 details permissible division of responsibility in the submission of site plans and major subdivision plats.

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Social Impact

The readopted rules will enable the Board of Professional Planners to continue in place various procedures which ensure the highest possible level of professionalism for the benefit and protection of the public.

Economic Impact

There is no adverse economic impact created as a result of these rules upon the public, candidates for licensure, or licensees. Compliance with this chapter does entail certain costs for candidates for licensure as well as licensees, as set forth in the fee schedule. However, these costs are both reasonable and necessary. Without the fee schedule, the Board would not have sufficient funding to preserve and protect the public and insure that an acceptable level of planning is performed by those licensed to do so.

Regulatory Flexibility Analysis

The Board of Professional Planners currently licenses approximately 3,300 persons. If professional planners are deemed "small businesses" under the criteria set forth in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following statement is applicable:

The rules proposed for readoption contain compliance requirements related to use of the seal, payment of fees, and preparation of site plans and major subdivision plats. These requirements for the practice of professional planning may affect licensees who operate as small businesses. However, because these rules seek to promote and protect the public welfare, they must be uniformly and consistently applied; no differential treatment can be accorded to small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:41.

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

SUBCHAPTER 2. [FORMS] (**RESERVED**)

[13:41-2.1 Uniform penalty letter
This form letter appears in N.J.A.C. 13:27-5.1.]

(a)

DIVISION OF CONSUMER AFFAIRS KOSHER ENFORCEMENT BUREAU

Poultry Identification

Proposed Amendment: N.J.A.C. 13:45A-21.4

Authorized By: Lawrence M. O'Reilly, Deputy Attorney General in Charge, Division of Consumer Affairs.
Authority: N.J.S.A. 56:8-4.
Proposal Number: PRN 1990-247.

Submit comments by June 20, 1990 to:
Lawrence M. O'Reilly, Deputy Attorney General in Charge
Division of Consumer Affairs, Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Kosher Enforcement Bureau of the Division of Consumer Affairs is proposing to delete N.J.A.C. 13:45A-21.4(b) concerning kosher poultry identification requirements. In its place, the Bureau proposes a new subsection which spells out in detail the identification requirements regarding the sale of poultry and the responsibility for their placement; N.J.A.C. 13:45A-21.4(b) now specifically enumerates where and how plumbas are to be affixed on whole poultry and poultry parts. The responsibility of the slaughterer and/or wholesaler to ensure that the plumbas remain in place is restated in proposed N.J.A.C. 13:45A-21.4(c), which also repeats the present requirement that slaughterers and/or wholesalers may not refuse to accept returned poultry that is not properly identified, and must provide a refund for the returned item.

The specificity of this identification requirement for poultry is clearly in the best interests of those consumers who purchase kosher poultry. It provides protections consistent with N.J.A.C. 13:45A-21.4(a), while eliminating burdensome requirements on the slaughterhouses and wholesalers. By proper identification of food sold as kosher, the slaughterhouse and/or wholesaler can be held fully accountable for conformity with the kosher regulations in general, toward the end of ensuring that merchandise is as represented to the purchaser, a basic principle of the Consumer Fraud Act.

Social Impact

The proposed amendment will have a positive social impact upon the consumer of kosher food products. By specifying exactly where the plumbas are to be placed, the requirements will make it easier for the consumer to identify kosher poultry and will provide clearer guidance to persons preparing such poultry. The amended rule, as before, puts the responsibility for proper placement of the plumbas in the hands of the slaughterhouse and/or wholesaler and provides direct recourse for reimbursement where there is a failure to affix such labels properly.

The proposed amendment is less cumbersome for slaughterers and wholesalers as they no longer are required to attach a plumba to each and every piece of poultry. The new provisions, however, provide sufficient identification to ensure the integrity of the product.

Economic Impact

There will be no economic impact upon businesses inasmuch as the current rule requires that plumbas were to be affixed and remain on each and every portion of kosher poultry. The amended rule states that small unlabelled poultry parts may be bagged, if the bag is securely closed with a plumba. The requirement of individual labels is retained, however, for certain pieces, such as chicken and turkey breasts, legs, or thighs with back portion, as well as for whole poultry. As this practice basically mirrors current industry procedure, there is no additional labor required of the business; indeed, less labor is required. There is no reason, therefore, why there should be additional cost to the business or higher prices for the consumer.

Regulatory Flexibility Statement

Compliance will not create any capital, continuing, or other costs of compliance for "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the requirements are not imposed on small retail stores but on slaughterhouses and/or wholesalers, which are not "small businesses." In any case, since plumbas are required to be affixed and remain on each and every portion under the current rule, the amended rule, which permits labelled bags of certain items rather than individual identification, requires less labor rather than more.

The proposed amendment sets forth no reporting or record keeping requirements nor does it require additional professional services. Because the intent of the rule is to ensure compliance with the Consumer Fraud Act by requiring proper identification of poultry represented to be kosher, as well as to uphold professional standards by placing responsibility clearly in the hands of the slaughterhouse and/or wholesaler, no exemption is possible.

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

13:45A-21.4 Identification requirements
(a) (No change.)
[(b) The slaughterer and/or wholesaler of Kosher poultry is responsible to ensure that plumbas are affixed and remain on each and every portion. A New Jersey based slaughterer and/or wholesaler may not refuse to accept returned poultry that is missing the necessary plumbas and must provide a refund for same.]

(b) All poultry sold as kosher must have plumbas affixed at the slaughterhouse, as follows:

1. Turkey necks: 10 pounds (lbs.) or less, in a bag securely closed with a plumba;

2. Chicken necks: Five lbs. or less, in a bag securely closed with a plumba;

3. Chicken and turkey livers: Two lbs. or less, in a bag securely closed with a plumba;

4. Chicken and turkey gizzards: Two lbs. or less, in a bag securely closed with a plumba;

5. Chicken wings: Five lbs. or less, in a bag securely closed with a plumba;

6. Turkey wings: 10 lbs. or less, in a bag securely closed with a plumba;

7. Chicken and turkey thighs with back portion: Each piece is to have securely affixed thereto a plumba;

8. Chicken and turkey legs: Each piece is to have securely affixed thereto a plumba;

9. Chicken and turkey boneless breasts: Five lbs. or less, in a bag securely closed with a plumba;

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10. Chicken and turkey breasts: Each piece is to have securely affixed thereto a plumba;

11. Chicken and turkey boneless bottom meat: Five lbs. or less, in a bag securely closed with a plumba; and

12. Chicken and turkey whole poultry: Each piece is to have securely affixed thereto a plumba.

(c) The slaughterer and/or wholesaler of kosher poultry is responsible to ensure that plumbas are affixed and so remain, as stated in (b) above. Slaughterers and/or wholesalers may not refuse to accept returned poultry not identified in accordance with this section and must provide a refund for the returned item.

(a)

DIVISION OF CONSUMER AFFAIRS OFFICE OF WEIGHTS AND MEASURES

Commodities in Package Form; Weights and Measures

Proposed New Rules: N.J.A.C. 13:47K
Proposed Repeal: N.J.A.C. 13:47D

Authorized By: Thomas W. Kelly, State Superintendent, Office of Weights and Measures.

Authority: N.J.S.A. 51:1-61.

Proposal Number: PRN 1990-188.

Submit written comments by June 20, 1990 to:
Thomas W. Kelly, State Superintendent
Office of Weights and Measures
Division of Consumer Affairs
Dept. of Law and Public Safety
1261 Routes 1 & 9 South
Avenel, NJ 07001

The agency proposal follows:

Summary

The State Superintendent proposes to repeal the existing rules governing the exposure for sale and the sale of commodities in package form, N.J.A.C. 13:47D, which are obsolescent, and adopt, in their stead, modern rules at N.J.A.C. 13:47K to govern the exposure for sale and the sale of these commodities.

Due the extensive revision and modernization of these rules, the State Superintendent has determined that if the existing rules, N.J.A.C. 13:47D, only are revised, confusion between the old and new versions of the same rule, if they are continued under the present citations, will occur and the purpose for which the rules are modernized will be defeated. Packaging of more commodities is regulated under the proposed new rules than under those proposed for repeal, due to the 1986 revision of Title 51 of the New Jersey Statutes.

Subchapter 1 sets forth the weights and measures labeling requirements for food products, including bread; butter, oleomargarine, margarine, butter-like and/or margarine-like spreads; flour, corn meal, and hominy grits; fluid milk products; other milk products; and pickles.

Subchapter 2 sets forth the weights and measures labeling requirements for nonfood products, including paper napkins and paper towels; writing paper, notebook paper, and envelopes; tablets and books of writing paper; wrapping paper; gift-wrapping paper; facial tissues; toilet tissue; multiple packs of paper products; paper products for industrial use only; fence wire products; coatings; peat and peat moss; roofing and roofing materials; sealants; polyethylene products; insulation; solid fuel products; liquified petroleum gas in cylinders using tare weights; mulch; and kindling wood.

Subchapter 3 sets forth general requirements concerning presentation of price; allowable differences in commodity quantity declarations; and machine vended commodities.

Subchapter 4 contains commodity marking requirements, including, for both consumer and nonconsumer packages, declarations of identity, declarations of responsibility, and declarations of quantity; prominence and placement of information; requirements for specific commodities (for example, eggs, aerosols, and variety packages); exemptions from the subchapter requirements; and retail sale price representations.

Subchapter 5 sets forth allowances for packaging variations.

Social Impact

The existing rules, N.J.A.C. 13:47D, were originally promulgated in the mid-1950s and, due to a combination of court decisions and legislative mandate, have reached the point where revision, on a patchwork basis, of the existing rules will no longer serve to protect the public.

The modernized rules will allow commodities in package form, produced and/or packaged in New Jersey, to move freely in interstate and intrastate commerce and allow New Jersey merchants to comply with the regulatory schemes of adjoining states in an equitable manner because the new rules, N.J.A.C. 13:47K, are based, for the most part, on model rules and regulations formulated by the National Conference on Weights and Measures and the National Institute of Science and Technology (formerly the National Bureau of Standards) and as such, are observed nationwide.

Accordingly, the State Superintendent has decided that the best interests of the public will be best served by adopting entirely new rules to govern the sale and exposure for sale of commodities in package form rather than adopt a piecemeal revision of the existing rules.

Economic Impact

There will be additional costs to the regulatory agencies (State and local (county and municipal) weights and measures offices) above that which they now bear in terms of their day-to-day operations due to the fact that the new rules will bring a greater number of prepackaged commodities under their control. This cost is justified due to the greater degree of protection afforded the buying public when faced with the greater number of commodities that heretofore were not vended in prepackaged form and are now routinely prepackaged prior to shipment and sale at the retail level.

On the other hand, both buyers and sellers of prepackaged commodities will accrue an economic benefit upon the adoption of these rules because they accurately reflect conditions in today's marketplace and address the issue of equity in intra- and interstate commerce.

The State Superintendent does not anticipate the proposed new rules will significantly increase packaging costs, since the rules are substantially a codification of Federal and industry-recognized standards effective for some time. No increased consumer cost is expected. As with the rules proposed for repeal, violations of the proposed new rules will result in the imposition of penalties pursuant to N.J.S.A. 51:1-89 et seq.

Regulatory Flexibility Analysis

The proposed new rules will impact regulatory officials and merchants in the marketplace. Record keeping and compliance requirements are imposed on the latter, many of whom are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Of particular significance concerning record keeping are the new rules governing promotional offerings known as "cents off" representations, "introductory offers" and "economy size" packages. The State Superintendent has determined that the record keeping required will not be burdensome to small businesses, and that the greater protection afforded the public during such promotional offerings offsets the record keeping imposed.

The State Superintendent does not anticipate these new rules will significantly increase the capital cost of compliance, nor will the rules necessitate the employment of professional services. As uniformity in packaging and labeling for the protection of consumers is the objective of these rules, lesser requirements for small businesses are not provided so this objective may be met.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:47D.

Full text of the proposed new rules follows:

CHAPTER 47K
COMMODITIES IN PACKAGE FORM
WEIGHTS AND MEASURES

SUBCHAPTER 1. FOOD PRODUCTS

13:47K-1.1 Bread

(a) Each loaf and each unit of a twin or multiple loaf made or procured for sale, kept, offered, exposed for sale, or sold, whether or not wrapped or sliced, and each portion of a loaf that is prepackaged, shall have a weight per (a)1 or 2 below; provided, that the provisions of this section shall not apply to biscuits, buns or rolls of inch-pound sizes four ounces or less or of metric inch-pound sizes

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four ounces or less or of metric sizes 100 grams or less or to "stale bread" sold or expressly represented at the time of sale as such, and when so sold, the wrappers shall be deemed not to be packages for labeling purposes:

1. Inch-pound weights of 1/2 pound, 3/4 pound, one pound, 1-1/2 pounds, or a multiple of one pound.

2. Metric weights of 250 grams, 375 grams, 500 grams, 750 grams, or a multiple of 500 grams.

(b) Packages subject to the Federal Fair Packaging and Labeling Act, 15 U.S.C. §1451 et seq. must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

13:47K-1.2 Butter, oleomargarine, margarine, butter-like and/or margarine-like spreads

(a) For the purposes of this section "butter-like and/or margarine-like spreads" are those products that meet the Federal Standard of Identity for butter or margarine and oleomargarine (see 7 CFR Part 58P, 58.2621) except that they contain less than 80 percent fat and may contain other safe and suitable ingredients.

(b) Butter, oleomargarine, margarine, butter-like and/or margarine-like spreads shall be offered and exposed for sale and sold by weight per (b)1 or 2 below:

1. Inch-pound weights of 1/4 pound, 1/2 pound, one pound, 1-1/2 pounds, or a multiple of one pound.

2. Metric weights of 125 grams, 250 grams, 500 grams, 750 grams, or a multiple of 500 grams.

(c) Oleomargarine and margarine are not permitted in multiples of one pound, 500 grams, or multiples of 500 grams because Section 407(b)(2) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq., prohibits margarine and oleomargarine packaged in sizes greater than one pound.

(d) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

13:47K-1.3 Flour, corn meal, and hominy grits

(a) Wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, corn flower, corn meal, and hominy grits, whether enriched or not, shall be packaged, kept, offered, or exposed for sale, or sold only in weights per (a)1 or 2 below; provided, that inch-pound sizes less than two pounds or more than 100 pounds and that metric sizes less than one kilogram or more than 50 kilograms shall be permitted:

1. Inch-pound weights of two, five, 10, 25, 50, or 100 pounds.

2. Metric weights of one, 2.5, five, 10, 25, or 50 kilograms.

13:47K-1.4 Fluid milk products

(a) All fluid milk products, including, but not limited to, milk, lowfat milk, skim milk, cultured milks, and cream, shall be packaged for retail sale only in volumes per subsection (a)1 and 2 below; provided, that inch-pound sizes less than one gill and metric sizes less than 100 milliliters shall be permitted:

1. Inch-pound volumes of one gill, 1/2 liquid pint, 10 fluid ounces, one liquid pint, one liquid quart, 1/2 gallon, one gallon, 1-1/2 gallons, two gallons, 2-1/2 gallons, or multiples of one gallon.

2. Metric volumes of 125 milliliters, 250 milliliters, 500 milliliters, one liter, or multiples of one liter.

13:47K-1.5 Other milk products

(a) Cottage cheese, cottage cheese products, and other milk products that are solid, semi-solid, viscous, or a mixture of solid and liquid, as defined in the Pasteurized Milk Ordinance of the U.S. Public Health Service, as amended in 1965 (see Public Health Service, Food and Drug Administration, Publication 229, Title PMO grade A, 1985 Revision supplements through 1989), shall be sold in terms of weight; provided, that cottage cheese, cottage cheese products, sour cream, and yogurt shall be packaged for retail sale only in weights per (a)1 or 2 below and, provided further, that the total net weight of multiunit packages need not comply with (a)1 or 2 below if their individual units comply:

1. Inch-pound weights of one, two, three, four, five, six, eight, 12, 16, 24, 32, 64, 80 and 128 ounces avoirdupois.

2. Metric weights of 25, 50, 75, 100, 125, 150, 175, 200, 250, 375, 500, 750 grams; one, two, and four kilograms.

13:47K-1.6 Pickles

The declaration of net quantity of contents on pickles and pickle products, including relishes but excluding one or two whole pickles in a transparent wrapping, which may be declared by count, shall be expressed in terms of liquid measure. Sales of pickles from bulk may be by count.

SUBCHAPTER 2. NONFOOD PRODUCTS

13:47K-2.1 Inch-pound units requirement

Packages subject to the Federal Fair Packaging and Labeling Act shall be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

13:47K-2.2 Definitions

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

"Page" means one side of a sheet of paper used for writing purposes.

"Sheet" means the separate, individual piece of tissue or paper. In case of writing materials, "sheet" shall not be construed to mean "page."

"Usable unit" means an individual sheet or unit or any combination of sheets or units which can be removed or dispensed from any type of roll, container or other package form in a single operation.

13:47K-2.3 Paper napkins and paper towels

The declaration of quantity on a package of paper napkins or paper towels shall indicate the numerical count and the dimensions of the individual napkins or towels contained in the package.

13:47K-2.4 Writing paper; notebook paper; envelopes

(a) The declaration of quantity on a package of writing paper, notebook paper or envelopes shall indicate the number of sheets or envelopes, as the case may be, in the package.

(b) When the envelopes are included in a package of writing paper, the declaration shall indicate both the number of sheets of paper and the number of envelopes.

13:47K-2.5 Tablets and books of writing paper

The declaration of quantity on a package of tablets or books of writing paper shall indicate the number of tablets or books in a package.

13:47K-2.6 Wrapping paper

(a) The declaration of quantity on a package of wrapping paper in sheet form shall be in terms of either numerical count or of net weight.

(b) If the declaration is in terms of numerical count, it shall indicate both the dimensions of an individual sheet and the number of sheets in the package.

13:47K-2.7 Gift-wrapping paper

The declaration of quantity on a package of gift-wrapping paper, whether packaged as individual sheets or in roll form, shall indicate the numerical count and the dimensions of the individual sheets. Any linear dimensions in excess of 48 inches shall be expressed in terms of feet.

13:47K-2.8 Facial tissues

The declaration of quantity on a package of facial tissues shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

13:47K-2.9 Toilet tissue

The declaration of quantity on a package of toilet tissues in roll or sheet form shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

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13:47K-2.10 Supplementary quantity declaration

Any declaration or statement relating to the quantity of contents of a package of paper product that is in addition to or supplementary to the declaration required by law, regulation or rule shall be in juxtaposition with and be subordinated to the required declaration.

13:47K-2.11 Multiple packs

Multiple packs of paper products shall bear on the outside wrapper, clearly and conspicuously, a quantity declaration indicating the number of individual rolls or packages and the usable unit count and sheet size for each individual roll or package, unless such individual roles or packages are so labeled that the content of each is clearly visible through the outer wrapper.

13:47K-2.12 Paper products for industrial use only

Rolls or packages of paper products for industrial use only and not for resale need not be marked individually so long as the container in which such rolls or packages are packed is properly marked to show the quantity of the contents of such container.

13:47K-2.13 Folded facial tissues to be compactly packaged

Folded facial tissues shall be compactly folded and gaps between the edges of sheets shall be held to a minimum.

13:47K-2.14 Size of cartons

Cartons or any other package form in which paper products are packed shall not be larger than needed to hold their intended or represented contents.

13:47K-2.15 Size of tubes for rolled paper products

Tubes or any other device similarly used for rolled paper products shall not be larger than required to contain the minimum diameter of rolled paper product without damage.

13:47K-2.16 Fence wire products

(a) Rolls of fence wire products, when prepackaged in any manner prior to sale, or exposure for sale, at retail, shall be sold by:

1. Gauge of wire;
2. Height in terms of inches or centimeters, if applicable; and
3. Length in terms of rods, meters or feet.

13:47K-2.17 Coatings

Asphalt paints, coatings, and plastics shall be sold in terms of liquid measure.

13:47K-2.18 Peat and peat moss

(a) This section applies only with respect to organic matter of geological origin, excluding coal and lignite, originating principally from dead vegetative remains through the agency of water in the absence of air and occurring in a bog, swampland, or marsh, and containing an ash content not exceeding 25 percent on a dry-weight basis (dried in an oven at 105 degrees Centigrade (221 degrees Fahrenheit) until no further weight loss can be determined).

(b) The declaration of quantity of peat and peat moss shall be expressed in weight units or in cubic-measure units.

(c) Peat and peat moss sold in terms of weight shall be offered and exposed for sale only in pounds and/or kilograms.

(d) Peat and peat moss sold in terms of cubic measure shall be offered and exposed for sale only in cubic feet and/or liters. If the commodity is labeled in terms of compressed cubic measurement, the quantity declaration shall represent the quantity in the compressed state and the quantity from which the final product was compressed (the latter declaration not exceeding the actual amount of material that can be recovered).

13:47K-2.19 Roofing and roofing materials

(a) Roofing and roofing materials shall be sold either by the square, or by the square foot only if sold in inch-pound units, or by the square meter only if sold in metric units.

(b) As used in this section, the following words and terms shall have the following meanings:

1. The term "square meter" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover one square meter exclusive of side laps or side joints.

2. The term "square" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover an area of 100 square feet exclusive of side laps or side joints; provided, that, in the case of roofing or roofing material of corrugated design, the side lap or side joint shall be one full corrugation.

3. The term "square foot" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover one square foot (144 square inches) exclusive of side laps or side joints.

(c) When the declaration of quantity on a package of roofing or roofing material contains the term "square", it shall include, plainly and conspicuously, a numerical definition of the term "square"; for example, "One square covers 100 square feet of roof area."

1. The use of the common fraction one-third (1/3) is specifically authorized in the quantity statement of a package of roofing material when, and only when, used as the common fraction of the "square."

2. The primary declaration if in inch-pound units shall only be in terms of squares or square feet, and, if in metric units, shall only be in terms of square meters. There is no prohibition against the use of supplementary quantity declarations, such as shingle dimensions, but in no case shall the weight of the material be stated or implied. However, the use of numerical descriptions for rolls of felt roofing material may continue to be used.

13:47K-2.20 Sealants

Caulking compounds, glazing compounds, and putty shall be sold in terms of liquid measure, except that rope caulk shall be sold by weight.

13:47K-2.21 Polyethylene products

(a) Consumer and nonconsumer polyethylene products offered and exposed for sale shall be sold by:

1. Length and width;
2. Area in square feet or square meters;
3. Thickness in mils (one mil = 0.001 inch); and
4. Weight.

(b) The following consumer polyethylene products at retail shall be sold as follows:

1. Food wrap by:
i. Length and width; and
ii. Area in square feet or square meters.
2. Lawn and trash bags by:
i. Count;
ii. Dimensions;
iii. Thickness in mils (one mil = 0.001 inch); and
iv. Capacity.
3. Food and sandwich bags by:
i. Count;
ii. Dimensions; and
iii. Capacity which is calculated as twice the labeled width.
(1) The capacity statement does not apply to fold-over sandwich bags.

(c) The labeled statement of weight for polyethylene sheeting and film products under (a) above shall be not less than the weight calculated by using the following formula:

$W = T \times A \times 0.03613 \times D$, where

W = net weight in pounds

T = nominal thickness in inches

A = nominal length in inches times nominal width in inches

D = density in grams per cubic centimeter as determined by ASTM Standard D1505-68 "Standard Method of Test for Density of Plastics by the Density Gradient Technique" (or latest issue) 0.03613 is a factor for converting g/cm^3 to $lb/in.^3$.

13:47K-2.22 Insulation

(a) Packaged loose-fill insulation, except cellulose, shall declare the net weight with no qualifying statement; each package must contain at least the stated weight. In addition, the following information shall be supplied on the package: minimum thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 11, 19, and 22. This information shall also be supplied for any additional R-values listed.

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(b) The principal display panel of packaged loose-fill cellulose insulation shall declare the net weight with no qualifying statement; each package must contain at least the stated weight. In addition, the following information shall be supplied on the package: minimum thickness, maximum net coverage area, number of bags per 100 square feet, and minimum weight per square foot at R-values of 13, 19, 24, 32, and 40. This information shall also be supplied for any additional R-values listed.

(c) The principal display panel of packaged batt or blanket insulation shall declare the square feet of insulation in the package, and the length and width of the batt or blanket. In addition, R-value and thickness shall be declared on the package.

(d) Installed insulation shall be accompanied by a contract or receipt. For all insulation except loose fill and aluminum foil, the receipt shall show the coverage area, thickness, and R-value of the insulation installed. For loose-fill, the receipt shall show those three items plus the number of bags used. For aluminum foil, the receipt shall show the number and thickness of the air spaces, the direction of heat flow, and R-value. The receipt shall be dated and signed by the installer.

1. Example: This is to certify that the insulation has been installed in conformance with the requirements indicated by the manufacturer to provide a value of R-19 using 31.5 bags of insulation to cover 1500 square feet area.
Signed and dated.

13:47K-2.23 Solid fuel products

Anthracite, semi-anthracite, bituminous, semi-bituminous, or lignite coal, and any other natural, manufactured, or patented fuel, not in liquid or gaseous form, except fireplace and stove wood, shall be offered, exposed for sale, or sold by net weight when in package form.

13:47K-2.24 Liquified petroleum gas cylinder tare weights

(a) Whenever stamped tare weights on cylinders are employed in the sale of liquified petroleum gas, the following shall apply.

1. The allowable difference between the actual tare weight and the stamped tare weight for a new or used cylinder shall be one percent of the actual tare weight. The tare weight shall include the weight of cylinder (including paint), valve, and other permanent attachments. The weight of a protective cap shall not be included in tare or gross weights.

2. The tare weights of cylinders at a single place of business found to be in error predominantly in a direction favorable to the seller and near the allowable difference limit shall be considered to be not in conformance with these requirements.

13:47K-2.25 Mulch

(a) Mulches are defined as any product or material except peat or peat moss (see N.J.A.C. 13:47K-2.18) that is advertised, offered for sale, or sold for primary use as a horticultural, above-ground dressing for decoration, moisture control, weed control, erosion control, temperature control, or other simple purposes.

(b) All mulch shall be sold, offered, or exposed for sale in terms of volume measure: in inch-pound units in terms of the cubic yard or cubic foot; in metric units in terms of the cubic meter or liter.

13:47K-2.26 Kindling wood

(a) All kindling wood offered for sale, sold or distributed by avoirdupois net weight, except when sold in quantities of a bushel or half bushel.

(b) The quantity of contents either in terms of avoirdupois net weight or of the bushel or half bushel shall be declared on all containers used for this purpose.

SUBCHAPTER 3. GENERAL

13:47K-3.1 Presentation of price

Whenever an advertised, posted, or labeled price per unit of weight, measure, or count for any commodity includes a fraction of a cent, all elements of the fraction shall be prominently displayed, and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cent.

13:47K-3.2 Allowable differences: combination quantity declarations

(a) Whenever the method of sale for a bulk or packaged commodity requires the use of a statement that includes count in addition to weight, measure, or size, the following shall apply to the particular commodity:

1. For beverageware (pressed and blown tumblers and stemware), the allowable difference between actual and declared capacity shall be:

i. For inch-pound:

(1) Plus or minus 1/4 fluid ounce for items of five fluid ounce capacity or less;

(2) Plus or minus five percent of the stated capacity for items over five fluid ounce capacity.

ii. For metric:

(1) Plus or minus 10 milliliters for items of 200 milliliter capacity or less;

(2) Plus or minus five percent of the stated capacity for items over 200 milliliter capacity.

13:47K-3.3 Machine vended commodities

(a) All vending machines dispensing packaged commodities shall indicate:

1. Product identity;
2. Net quantity; and
3. Name, address, and telephone number of responsible party.

(b) The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

SUBCHAPTER 4. MARKING REQUIREMENTS

13:47K-4.1 Applications

(a) This subchapter shall apply to packages and to commodities in package form, but shall not apply to:

1. Inner wrappings not intended to be individually sold to the customer;

2. Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer or nonconsumer commodities, as defined herein;

3. Auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity;

4. Containers used for retail tray pack displays when the container itself is not intended to be sold (for example, the tray that is used to display individual envelopes of seasonings, gravies, etc., and the tray itself is not intended to be sold); or

5. Open carriers and transport wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by this subchapter.

13:47K-4.2 Definitions

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

"Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a commodity in package form. Where the term "package" is used in N.J.S.A. 51:1, it shall be construed to mean "commodity in package form" as herein defined. For the purpose of this definition, single unit produce items wrapped in clear film shall not be construed as commodities in package form.

"Consumer package: package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for

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consumption or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

"Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package, except that an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be considered a label requiring the repetition of label information required by this subchapter.

"Multi-unit package" means a package containing two or more individual packages of the same commodity, in the same quantity, intended to be sold as a multi-unit package, but where the component packages are labeled individually in full compliance with all requirements of this subchapter.

"Nonconsumer package: package of nonconsumer commodity" means any commodity in package form other than a consumer package, and particularly a package intended solely for industrial or institutional use for wholesale distribution.

"Person" means either singular or plural, and shall include any individual, partnership, company, corporation, association, and society.

"Petroleum products" means gasoline, diesel fuel, kerosene, or any product (whether or not such a product is actually derived from naturally occurring hydrocarbon mixtures known as "petroleum") commonly used in powering, lubricating, or idling engines or other devices, or is labeled as fuel to power camping stoves or lights. Therefore, sewing machine lubricant, camping fuels, and synthetic motor oil are "petroleum products" for the purposes of this regulation. Brake fluid, copier machine dispersant, antifreeze, cleaning solvents, and alcohol are not "petroleum products."

"Principal display panel or panels" means that part, or those parts, of a label that is, or are, so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. Wherever a principal display panel appears more than once on a package, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels."

"Random package" means a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with various weights; that is, packages of the same consumer commodity with no fixed pattern of weight.

13:47K-4.3 Declaration of identity: consumer package

(a) A declaration of identity on a consumer package shall appear on the principal display panel, and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

(b) A declaration of the identity on a consumer package shall appear generally parallel to the base on which the package rests as it is designed to be displayed.

13:47K-4.4 Declaration of identity: nonconsumer package

A declaration of identity on a nonconsumer package shall appear on the outside of a package and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

13:47K-4.5 Declaration of responsibility: consumer and nonconsumer packages

(a) Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer, or distributor. The name shall be the actual corporate name, or, when not incorporated, the name under which the business is conducted. The address shall include street address, city, State, and ZIP Code; however, the street address may be omitted if this is shown in a current city directory or telephone directory.

(b) If a person manufactures, packs, or distributes a commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed, unless such statement would be misleading. Where the commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such a commodity, such as "Manufactured for and packed by _____," "Distributed by _____," or any other wording of similar import that expresses the facts.

13:47K-4.6 Declaration of quantity: consumer packages

(a) The metric and inch-pound systems of weights and measures are recognized as proper systems to be used in the declaration of quantity. Units of both systems may be presented in a dual declaration of quantity.

1. Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

(b) Where this subchapter requires that the quantity declaration be in terms of the largest whole unit, the declaration shall, with respect to a particular package, be in terms of the largest whole unit of weight or measure, with any remainder expressed as follows:

1. For inch-pound units:

i. In common or decimal fractions of such largest whole unit; or

ii. In the next smaller whole unit, or units, with any further remainder in terms of common or decimal fractions of the smallest unit present in the quantity declaration.

2. For metric units, in decimal fractions of such largest whole unit.

(c) A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, shall appear on the principal display panel of a consumer package and, unless otherwise specified in this subchapter, shall be in terms of the largest whole unit.

1. The term "net weight" shall be used in conjunction with the declaration of quantity in units of weight. The term may either precede or follow the declaration of weight.

2. A declaration of quantity may appear on one or more lines of print or type.

(d) The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or dry measure if the commodity is dry, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particualr commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

1. A declaration of quantity in terms of weight shall be combined with appropriate declarations of the measure, count, and size of the individual units unless a declaration of weight alone is fully informative.

2. A declaration of quantity in terms of measure shall be combined with appropriate declarations of the weight, count, and size of the individual units unless a declaration of measure alone is fully informative.

3. A declaration of quantity in terms of count shall be combined with appropriate declarations of the weight, measure, and size of the individual units unless a declaration of count alone is fully informative.

(e) When inch-pound units are used, the following shall apply:

1. A declaration of quantity:

i. In units of weight, shall be in terms of the avoirdupois pound or ounce;

ii. In units of liquid measure, shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68 degrees Fahrenheit (68°F), except:

(1) In the case of petroleum products and distilled spirits, for which the declaration shall express the volume at 60 degrees Fahrenheit (60°F);

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(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature;

(3) In the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40 degrees Fahrenheit (40°F); and

(4) In the case of malt beverages, for which the declaration shall express the volume at 39.1 degrees Fahrenheit (39.1°F);

iii. In units of linear measure, shall be in terms of the yard, foot, or inch;

iv. In units of area measure, shall be in terms of the square yard, square foot, or square inch;

v. In units of volume measure, shall be in terms of the cubic yard, cubic foot, or cubic inch; and

vi. In units of dry measure, shall be in terms of the United States bushel of 2150.42 cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel.

2. Any of the following symbols and abbreviations, and none other, shall be employed in the quantity statement under (e) above on a package of commodity:

avoirdupois	avdp	ounce	oz
cubic	cu	pint	pt
feet or foot	ft	pound	lb
fluid	fl	quart	qt
gallon	gal	square	sq
inch	in	weight	wt
liquid	liq	yard	yd

i. There normally are no periods following, nor plural forms of symbol. For example, "oz" is the symbol for both "ounce" and "ounces." Both upper and lower case letters are acceptable.

ii. When the term "ounce" is employed in a declaration of liquid quantity, the declaration shall identify the particular meaning of the term by the use of the term "fluid"; however, such distinction may be omitted when, by association of terms (for example, as in "20 fluid ounces, 1 pint 4 ounces"), the proper meaning is obvious. Whenever the declaration of quantity is in terms of the dry pint or dry quart, the declaration shall include the word "dry."

(f) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first. Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2 (h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods and 16 CFR 500.9(b) for certain nonfood consumer commodities.

1. When metric units are used, a declaration of quantity:

i. In units of weight, shall be in terms of the kilogram, gram, or milligram;

ii. In units of liquid measure, shall be in terms of the liter or milliliter, and shall express the volume of 20 degrees Centigrade (20°C), except:

(1) In the case of petroleum products or distilled spirits, for which the declaration shall express the volume at 15 degrees Centigrade (15°C);

(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature; and

3. In the case of malt beverages or a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at four degrees Centigrade (4°C);

iii. In units of linear measure, shall be in terms of the meter, centimeter, or millimeter;

iv. In units of area measure, shall be in terms of the square meter or square centimeter; and

v. In units of volume other than liquid measure, shall be in terms of the liter and milliliter, except that the terms cubic meter and cubic centimeter will be used only when specifically designated as a method of sale.

2. Any of the following symbols of metric units, and none other, may be employed in the quantity statement on a package of commodity:

kilogram	kg	meter	m
gram	g	centimeter	cm
milligram	mg	millimeter	mm
liter	L or l	square meter	m^2
milliliter	mL or ml	square centimeter	cm^2
		cubic meter	m^3
		cubic centimeter	cm^3

i. Symbols, except for liter, are not capitalized unless the unit is derived from a proper name. Periods should not be used after the symbol. Symbols are always written in the singular form—do not add "s" to express the plural when the symbol is used.

ii. The "l" symbol for liter and "ml" symbol for milliliter are permitted; however, the "L" symbol and the "mL" symbol are preferred.

(g) For prescribed units, using the inch-pound system, the following shall apply:

1. The declaration of quantity shall be expressed in terms of:

i. In the case of length measure of less than one foot, inches and fractions of inches;

ii. In the case of area measure of less than one square foot, square inches and fractions of square inches;

iii. In the case of weight of less than one pound, ounces and fractions of ounces; and

iv. In the case of liquid measure of less than one pint, fluid ounces and fractions of fluid ounces; provided that

v. The quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than three decimal places.

(1) Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2(h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods, and 16 CFR 500.9(b) for certain non-food consumer commodities.

2. On packages containing one pound or more but less than four pounds, the declaration shall be expressed in ounces and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit; provided, that the quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places.

i. Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2(h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods, and 16 CFR 500.9(b)for certain non-food consumer commodities.

3. On packages containing one pint or more, but less than one gallon, the declaration shall be expressed in fluid ounces and, in addition, shall be followed by declaration in parentheses, expressed in terms of the largest whole unit.

4. On packages containing one foot or more, but less than four feet, the declaration shall be expressed in inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

5. On packages containing one square foot or more but less than four square feet, the declaration shall be expressed in square inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

6. In the case of a length measure of four feet or more, the declaration of quantity shall be expressed in terms of feet, followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches. In case of an area measure of four square feet or more; a weight of four pounds or more; or a liquid measure of one gallon or more, the declaration of quantity shall be expressed in terms of the largest whole unit.

7. For bidimensional commodities (including roll-type commodities) the quantity declaration shall be expressed as follows:

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i. If less than one square foot, in terms of linear inches and fractions of linear inches;

ii. If at least one square foot but less than four square feet, in terms of square inches followed in parentheses by a declaration of both the length and width, each being in terms of the largest whole unit; provided, that:

(1) No square inch declaration is required for a dimensional commodity of four inches width or less;

(2) A dimension of less than two feet may be stated in inches within the parenthetical declaration; and

(3) Commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see (i) below) require a declaration of unit area but not a declaration of total area of all such units;

iii. If four square feet or more, in terms of square feet followed in parentheses by a declaration of the length and width in terms of largest whole unit provided that:

(1) No declaration in square feet is required for a bidimensional commodity with a width of four inches or less;

(2) Bidimensional commodities, with a width of four inches or less, shall have length expressed in inches followed by a statement in parentheses of the length in largest whole unit (Example: 2 inches by 360 inches (10 yards)); and

(3) A dimension of less than two feet may be stated in inches within the parenthetical declaration; and

iv. No declaration in square units is required for commodities for which the length and width measurements are critical in terms of end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label.

(h) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first. Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2(h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods, and 16 CFR 500.9(b) for certain non-food consumer commodities.

1. For prescribed units as follows, using the metric system, the declaration of quantity shall be expressed in terms of:

i. In case of length measure of less than one meter, centimeters or millimeters;

ii. In case of area measure of less than one square meter, square centimeters and decimal fractions of square centimeters;

iii. In the case of weight of less than one kilogram, grams and decimal fractions of a gram, but if less than one gram, then in milligrams; and

iv. In the case of liquid or dry measure of less than one liter, milliliters; provided that

v. The quantity declaration appearing on a random weight package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than two decimal places.

(1) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

2. For prescribed units as follows, using the metric system, the declaration of quantity shall be expressed in terms of:

i. In case of length measure of one meter or more, in meters and decimal fractions to not more than two places;

ii. In case of area measure of one square meter or more, in square meters and decimal fractions to not more than two places;

iii. In case of weight of one kilogram or more, in kilograms and decimal fractions to not more than two places; and

iv. In case of liquid or dry measure of one liter or more, in liters and decimal fractions to not more than two places; provided that

v. The quantity declaration appearing on a random weight package may be expressed in terms of kilograms and decimal fractions carried out to not more than two decimal places.

3. For bidimensional commodities (including roll-type commodities), the quantity declaration shall be expressed:

i. If less than one square meter, in terms of length and width.

ii. If one square meter or more, in terms of square measure followed in parentheses by a declaration of length and width; provided that:

(1) Quantity declarations in bidimensional commodities with a width of 100 millimeter or less may be expressed in terms of width and length, only;

(2) Commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see (i) below) require a declaration of unit area but not a declaration of total area of all such units; and

(3) No declaration in square units is required for commodities for which length and width measurements are critical in terms of end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label.

(i) If the commodity is in individually usable units of one or more components or plies, the quantity declaration shall, in addition to complying with other applicable quantity declaration requirements of this subchapter include the number of plies and total number of usable units.

1. Roll-type commodities, when perforated so as to identify individual usable units, shall not be deemed to be made up of usable units; however, such roll-type commodities shall be labeled in terms of:

i. Total area measurement;

ii. Number of plies;

iii. Count of usable units; and

iv. Dimensions of a single usable unit.

(j) The following apply to the use of fractions in statements in declarations of net quantity:

1. A metric statement in a declaration of net quantity of contents of any consumer commodity may contain only decimal fractions.

2. An inch-pound statement in a declaration of net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds, except that:

i. If there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed; and

ii. If linear measurements are required in terms of yards or feet common fractions may be in terms of thirds.

3. A common fraction shall be reduced to its lowest term (Example: 2/4 becomes 1/2).

4. A decimal fraction shall not be carried out to more than two places, except that the quantity declaration appearing on a random package may be carried out to not more than three decimal places.

(k) The required quantity declaration may be supplemented by one or more declarations of weight, measure, or count, such declaration appearing other than on a principal display panel. Such supplemental statement of quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity contained in the package (for example, "giant" quart, "larger" liter, "full" gallon, "when packed ," "minimum," or words of similar import).

1. An equivalent statement of the net quantity of contents in terms of either the inch-pound or metric system is not regarded as a supplemental statement and such statement may also appear on the principal display panel; provided, that it conforms to both (e) and (f) above.

2. In all conversions for the purpose of showing an equivalent metric or inch-pound quantity to a rounded inch-pound or metric quantity, the number of significant digits retained should be such that accuracy is neither sacrificed nor exaggerated. As a general rule, converted values should be rounded down by dropping any digit beyond the first three. (Example: 196.4 grams becomes 196 grams or 1.759 feet becomes 1.75 feet.)

(l) In no case shall any declaration of quantity be qualified by the addition of the words "when packed", "minimum" or "not less than," or any words of similar import, nor shall any unit of weight, measure, or count be qualified by any term (such as "jumbo,"

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"giant," "full," or the like) that tends to exaggerate the amount of commodity.

(m) The average quantity of contents in the packages of a particular lot, shipment, or delivery shall at least equal the declared quantity, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage.

13:47K-4.7 Declaration of quantity: nonconsumer packages

(a) The metric and inch-pound systems of weights and measures are recognized as proper systems to be used in the declaration of quantity. Units of both systems might be combined in a dual declaration of quantity.

1. Although nonconsumer packages under this subchapter might bear metric declarations only, this subchapter should not be construed to supersede any labeling requirement specified in Federal law.

(b) A nonconsumer package shall bear on the outside a declaration of the net quantity of contents. Such declaration shall be in terms of the largest whole unit (see N.J.A.C. 13:47K-4.6(b)).

(c) The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of dry measure if the commodity is dry, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

(d) When inch-pound units are used, the following shall apply:

1. A declaration of quantity:

i. In units of weight, shall be in terms of the avoirdupois pound or ounce;

ii. In units of liquid measure, shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68 degrees Fahrenheit (68°F) except:

(1) In the case of petroleum products or distilled spirits, for which the declaration shall express the volume at 60 degrees Fahrenheit (60°F);

(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at frozen temperature;

(3) In the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40 degrees Fahrenheit (40°F); and

(4) In the case of malt beverages, for which the declaration shall express the volume at 39.1 degrees Fahrenheit (39.1°F);

iii. In units of linear measure, shall be in terms of the yard, foot, or inch;

iv. In units of area measure, shall be in terms of the square yard, square foot, or square inch;

v. In units of volume measure, shall be in terms of the cubic yard, cubic foot, or cubic inch; and

vi. In units of dry measure, shall be in terms of the United States bushel of 2150.42 cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel.

2. Any generally accepted symbol and abbreviation of a unit name may be employed in the quantity statement on a package of commodity. (For commonly accepted symbols and abbreviations, see N.J.A.C. 13:47K-4.6(e)2).

(e) When metric units are used, the following shall apply:

1. A declaration of quantity:

i. In units of weight, shall be in terms of the kilogram, gram, or milligram;

ii. In units of liquid measure, shall be in terms of the liter or milliliter, and shall express the volume at 20 degrees Centigrade (20°C); except

(1) In the case of petroleum products or distilled spirits, for which the declaration shall express the volume at 15 degrees Centigrade (15°C);

(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature; and

(3) In the case of malt beverages or a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at four degrees Centigrade (4°C);

iii. In units of linear measure, shall be in terms of the meter, centimeter, or millimeter;

iv. In units of area measure, shall be in terms of the square meter or square centimeter; and

v. In units of volume other than liquid measure, shall be in terms of the liter and milliliter, except that the terms cubic meter and cubic centimeter will be used only when specifically designated as a method of sale.

2. Only those symbols as detailed in N.J.A.C. 13:47K-4.6(f)2, and none other, may be employed in the quantity statement on a package of commodity.

(f) The average quantity of contents in the packages of a particular lot, shipment, or delivery shall at least equal the declared quantity, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage.

13:47K-4.8 Prominence and placement: consumer packages

(a) All information required to appear on a consumer package shall appear thereon in the English language and shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

1. The declaration or declarations of quantity of the contents of a package shall appear in the bottom 30 percent of the principal display panel or panels. For cylindrical containers, see also N.J.A.C. 13:47K-4.10(g) for additional requirements.

2. The declaration or declarations of quantity shall be in such a style of type or lettering as to be boldly, clearly, and conspicuously presented with respect to other type, lettering, or graphic material on the package, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface is permissible when all label information is blown, formed, or molded on the surface.

3. The declaration or declarations of quantity shall be in a color that contrasts conspicuously with its background, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface shall not be required to be presented in a contrasting color if no required label information is on the surface in a contrasting color.

4. The area surrounding the quantity declaration shall be free of printed information above and below, by a space equal to at least the height of the lettering in the declaration, and to the left and right, by a space equal to twice the width of the letter "N" of the style and size of type used in the declaration.

5. The quantity declaration shall be presented in such a manner as to be generally parallel to the declaration of identity and to the base on which the packages rest as it is designed to be displayed.

(b) The following governs the calculation of area of the principal display panel for purposes of type size.

1. The area of the principal display panel shall be as follows:

i. In the case of a rectangular container, one entire side that properly can be considered to be the principal display panel, the product of the height times the width of that side;

ii. In the case of a cylindrical or nearly cylindrical container, 40 percent of the product of the height of the container times the circumference; or

iii. In the case of any other shaped container, 40 percent of the total surface of the container, unless such container presents an obvious principal display panel (for example, the top of a triangular or circular package of cheese, or the top of a can of shoe polish), in which event the area shall consist of the entire such surface.

2. Determination of the principal display panel shall exclude tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars.

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3. The height of any letter or number in the required quantity declaration shall be not less than that shown in Table 1 below with the respect to the area of the panel, and the height of each number of a common fraction shall meet one-half the minimum height standards. In the case of the symbol for milliliter, the "m" shall meet the minimum height standard.

i. No number or letter shall be more than three times as high as it is wide.

Table 1
Minimum Height of Numbers and Letters

Area of principal display panel	Minimum height of numbers and letters	Minimum height: label information blown, formed, or molded on surface of container
5 square inches (in^2) and less	1/16 inch	1/8 inch
Greater than 5 in^2 and not greater than 25 in^2	1/8 inch	3/16 inch
Greater than 25 in^2 and not greater than 100 in^2	3/16 inch	1/4 inch
Greater than 100 in^2 and not greater than 400 in^2	1/4 inch	5/16 inch
Greater than 400 in^2	1/2 inch	9/16 inch

13:47K-4.9 Prominence and placement: nonconsumer packages

All information required to appear on a nonconsumer package shall be definitely and clearly stated thereon in the English language. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

13:47K-4.10 Requirements: specific consumer commodities, nonconsumer commodities, packages, containers

(a) For an individual package affixed to display card, or for a commodity and display card together comprising a package, the type size of the quantity declaration is governed by the dimensions of the display card.

(b) When cartons containing 12 eggs have been designed so as to permit division in half by the retail purchaser, the required quantity declaration shall be so positioned as to have its context destroyed when the carton is divided.

(c) The declaration of quantity on an aerosol package, and on a similar pressurized package, shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

(d) Requirements for the declaration of quantity on multi-unit packages are as follows:

1. Any package containing more than one individual "commodity in package form" (see N.J.A.C. 13:47K-4.2) of the same commodity shall bear on the outside of the package a declaration of the following:

i. The number of individual units;

ii. The quantity of each individual unit; and

2. The total quantity of the contents of the multi-unit package; provided, that any such declaration of total quantity shall not be required to include the parenthetical quantity statement of a dual quantity representation. (Example: soap bars, "6 Bars, Net Weight 75 grams each; Total Net Weight 450 grams").

3. Open multi-unit retail food packages under the authority of the Food and Drug Administration or the U.S. Department of Agriculture that do not obscure the number of units or prevent examination of the labeling on each of the individual units are not required to declare the number of individual units or the total quantity of contents of the multi-unit package, if the labeling of each individual unit complies with requirements so that it is capable of being sold individually.

(e) Any package containing individual units of dissimilar commodities (such as an antiquing or a housecleaning kit, for example) shall bear on the label of the package a quantity declaration for each unit. (Example: sponges and cleaner: "2 sponges, each 10 centimeters × 15 centimeters × 2 centimeters; 1 box cleaner, net weight 150 grams.")

(f) Any package containing individual units of reasonably similar commodities (such as, for example, seasonal gift packages, variety packages of cereal) shall bear on the label of the package a declaration of the total quantity of commodity in the package. (Example: plastic tableware: 4 spoons, 4 forks, 4 knives, 12 pieces total.)

(g) In the case of a cylindrical or nearly cylindrical containers, information required to appear on the principal display panel shall appear within that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(h) The measurement of container-type commodities shall be expressed as follows:

1. Commodities designated and sold at retail to be used as containers for other material or objects, such as bags, cups, boxes, and pans, shall be labeled with the declaration of net quantity as follows:

i. For bag-type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise).

(1) When the unit bag is characterized by two dimensions because of the absence of a gusset, the width and length will be expressed:

(A) For inch-pound units, in inches, except that a dimension of two feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot. (Examples: "25 BAGS, 17 inches × 20 inches" or "100 BAGS, 20 inches × 2 feet 6 inches" or "50 BAGS, 20 inches × 2-1/2 feet")

(B) For metric units, in millimeters, except a dimension of one meter or more will be expressed in meters with the remainder in terms of decimal fractions of the meter (Examples: "25 BAGS, 500 millimeters × 600 millimeters" or "50 BAGS, 750 millimeters × 1.2 meters")

(2) When the unit bag is gusseted, the dimensions will be expressed as width, depth, and length, as follows:

(A) For inch-pound units, in feet, with any remainder in terms of inches or the common or decimal fractions of the foot. (Examples: "25 BAGS, 17 inches × 4 inches × 20 inches" or "100 BAGS, 20 inches × 12 inches × 2-1/2 feet")

(B) For metric units, in millimeters, except a dimension of one meter or more will be expressed in meters with the remainder in terms of decimal fractions of the meter. (Examples: "25 BAGS, 430 millimeters × 100 millimeters × 500 millimeters" or "50 BAGS, 500 millimeters × 300 millimeters × 1.2 meters")

ii. For other square, oblong, rectangular, or similarly shaped containers, in terms of count followed by length, width, and depth, except depth need not be listed when less than 50 millimeters or two inches. (Examples: "2 PANS, 8 inches × 8 inches" or "2 PANS, 203 millimeters × 203 millimeters")

iii. For circular or other generally round-shaped containers, except cups, and the like, in terms of count followed by the diameter and depth, except depth need not be listed when less than 50 millimeters or two inches. (Examples: "4 PANS, 8 inches diameter × 4 inches" or "4 PANS, 200 millimeters diameter × 100 millimeters")

iv. Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit. (Examples: "24 CUPS, 6 fluid ounces capacity" or "24 CUPS, 250 milliliter capacity")

2. When the functional use of the container is related by label references in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references shall be a part of the net quantity statement and shall specify capacity as follows:

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i. For inch-pound units:

(1) Liquid measure for containers that are intended to be used for liquids, semisolids, viscous materials, or mixtures of solids and liquids. The expressed capacity will be stated in terms of the largest whole unit (gallon, quart, pint, ounce, with any remainder in terms of the common or decimal fraction of that unit). (Examples: Freezer Box—"4 BOXES, 1 quart capacity, 5 inches × 4 inches × 3 inches")

(2) Dry measure for containers that are intended to be used for solids. The expressed capacity will be stated in terms of the largest whole unit (bushel, peck), with a remainder in terms of the common or decimal fraction of that unit. (Examples: Leaf Bags—"8 BAGS, 6 bushel capacity, 3 feet × 5 feet")

(3) Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent containers. (Examples: Garbage Can Liners—"10 LINERS, 2 feet 6 inches × 3 feet 9 inches. FITS UP TO 30-GALLON CANS")

ii. For metric units, volume measure for all containers and liners. (Examples: "4 BOXES, 1 liter capacity. 150 millimeters × 120 millimeters × 90 millimeters"; "8 BAGS, 200 liter capacity, 85 millimeters × 1.5 meters" or "10 LINERS, 750 millimeters × 1 meter, FITS UP TO 120 LITER CANS")

3. For purposes of this section, the use of the terms "capacity," "diameter," and "fluid" is optional.

(i) The following are requirements for textile products, threads and yarns:

1. Wearing apparel (including nontextile apparel and accessories such as leather goods and footwear) sold as single-unit items, or if normally sold in pairs (such as hosiery, gloves, and shoes) sold as single-unit pairs, shall be exempt from the requirements for a net quantity statement by count, as required by N.J.A.C. 13:47K-4.6(d).

2. Bedsheets, blankets, pillowcases, comforters, quilts, bedspreads, mattress covers and pads, afghans, throws, dresser and other furniture scarfs, tablecloths and napkins, flags, curtains, drapes, dishtowels, dish cloths, towels, face cloths, utility cloths, bath mats, carpets and rugs, pot holders, fixture and appliance covers, nonrectangular diapers, slip covers, etc., shall be exempt from the requirements of N.J.A.C. 13:47K-4.6(g)7 and (h)3, provided that:

i. The quantity statement for fitted sheets and mattress covers shall state, in inches or centimeters, the length and width of the mattress for which the item is designed, and the size designation of the mattress, if the item is intended to fit a mattress identified as "twin", "double", "queen", "king", "California king", etc. (Example: "Double Sheet for 54 inch × 75 inch mattress.")

ii. The quantity statement for flat sheets shall state, in inches or centimeters, the length and width of the mattress for which the sheet is designed, followed in parentheses by a statement, in inches or centimeters, of the length and width of the finished sheet. The quantity statement shall also state the size designation of the mattress for which the sheet is designed, such as "twin", "double", "queen", "king", "California king", if the item is intended to fit such a mattress. (Example: "Twin Flat Sheet for 39 inch mattress (66 inch × 96 inch finished size).")

iii. The quantity statement for pillowcases shall state, in inches or centimeters, the length and width of the pillow for which the pillowcase is designed, followed in parentheses by a statement, in inches or centimeters, of length and width of the finished pillowcase. The quantity statement for pillowcases shall also state the size designation of the pillow for which the pillowcase is designed, for example, "youth," "standard," "queen", etc. if the item is intended to fit such pillows. (Example: "Standard Pillowcase for 20 inch × 26 inch pillow (20 inch × 30 inch finished size.)")

iv. The quantity statement for blankets, comforters, quilts, bedspreads, mattress pads, afghans, and throws shall state, in inches or centimeters, the length and width of the finished item. The quantity statement shall also state the length of any ornamentation and the size designation of the mattress for which the item is designed, if it is intended to fit, for example, a "twin", "double", "queen", "king", or "California king", etc. mattress.

v. The quantity statement for tablecloths and napkins shall state, in inches or centimeters, the length and width of the finished item. The quantity statement may also state parenthetically, in centimeters or inches, the length and width of the item before hemming and properly identified as such.

vi. The quantity statement for curtains, drapes, flags, furniture scarfs, etc., shall state, in inches or centimeters, the length and width of the finished item. The quantity statement also may state parenthetically, in inches or centimeters, the length of any ornamentation.

vii. The quantity statement for carpets and rugs shall state, in feet or meters, with any remainder in decimal fractions of the meter for metric sizes or common or decimal fractions of the foot or in inches for inch-pound sizes, the length and width of the item. The quantity statement also may state parenthetically, in inches or centimeters, the length of any ornamentation.

viii. The quantity statement for woven dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, etc., shall state, in inches or centimeters, the length and width of the item. The quantity statement for such items, when knitted, need not state the dimensions.

ix. The quantity statement for textile products such as potholders, fixture and appliance covers, non-rectangular diapers, slip covers, etc., shall be stated in terms of count and may include size designations and dimensions.

x. The quantity statement for other than rectangular textile products identified in (b)1 through 8 above shall state the geometric shape of the product and the dimensions that are customarily used in describing such geometric shape. (Example: "Oval Tablecloth 70 inches × 100 inches" representing the maximum length and width in this case).

xi. The quantity statement for packages of remnants of textile products of assorted sizes, when sold by count, shall be accompanied by the term "irregular dimensions" and the minimum size of such remnants.

3. Variety packages of textiles that are required by reason of N.J.A.C. 13:47K-4.6(d) to provide a combination declaration stating the quantity of each individual unit, shall be exempt from the requirements in this subchapter for:

i. Location (see N.J.A.C. 13:47K-4.8(a)1);

ii. Free area (see N.J.A.C. 13:47K-4.8(a)4); and

iii. Minimum height of numbers and letters (see N.J.A.C. 13:47K-4.8(b)3).

4. Sewing and handicraft threads shall be exempt from the requirements of N.J.A.C. 13:47K-4.6(g)6 and (h)2, provided that:

i. The net quantity statement for inch-pound sizes of sewing and handicraft threads shall be expressed in terms of yards.

ii. The net quantity statement for yarns shall be expressed in terms of weight.

iii. Thread products may, in lieu of name and address, bear a trademark, symbol, brand, or other mark that positively identifies the manufacturer, packer, or distributor, provided that such marks, employed to identify the vendor, shall be filed with the Superintendent.

iv. Each unit of industrial thread shall be marked to show its net length in terms of meters or yards or its net weight in terms of kilograms or grams or avoirdupois pounds or ounces, except that ready-wound bobbins that are not sold separately shall not be required to be individually marked to show the number of bobbins contained therein and the net meters or yards of thread on each bobbin.

(j) Packages of seeds intended for planting shall be in full accord with this subchapter except as follows:

1. The quantity statement shall appear in the upper 30 percent of the principal display panel.

2. The quantity statement shall be in terms of the largest whole unit of the metric system for all weights up to seven grams, and in grams or in ounces for all other weights less than 225 grams or eight ounces. Packaged seeds weighing 225 grams or eight ounces or more shall not be subject to this subsection.

3. The quantity statement for coated seed, encapsulated seed, pelletized seed, preplanters, seed tapes, etc., shall be in terms of count.

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13:47K-4.11 Exemptions

(a) Whenever any consumer commodity or package of consumer commodity is exempt from the requirements for dual quantity declaration, the net quantity required to appear on the package shall be in terms of the largest whole unit (except see N.J.A.C. 13:47K-4.10(d)1iii).

(b) A random package bearing a label conspicuously declaring the net weight, the price per kilogram or pound, and the total price shall be exempt from the type size, dual declaration, placement, and free area requirements of this subchapter. In the case of a random package packed at one place for subsequent sale at another, neither the price per unit of weight nor the total selling price need appear on the package, provided the package label includes both such prices at the time it is offered or exposed for sale at retail.

1. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempt by this section.

(c) Individually wrapped pieces of "penny candy" and other confectionary of less than 15 grams or 1/2 ounce net weight per individual piece shall be exempt from the labeling requirements of this subchapter when the container in which such confectionary is shipped is in conformance with the labeling requirements of this subchapter. Similarly, when such confectionary items are sold in bags or boxes, such items shall be exempt from the labeling requirements of this subchapter including the required declaration of net quantity of contents, when the declaration of the bag or box meets requirements of this subchapter.

(d) Individually wrapped and labeled packages of meat or meat products of less than 1/2 ounce net weight, which are in a shipping container, need not bear a statement of the net quantity of contents when the statement of the net quantity of contents on the shipping container is in conformance with the labeling requirements of this subchapter.

(e) Individual serving size packages of foods containing less than 15 grams or 1/2 ounce or less than 15 milliliters or 1/2 fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified in this subchapter.

(f) When individual cuts, plugs, and twists of tobacco and individual cigars are shipped or delivered in containers that conform to the labeling requirements of this subchapter, such individual cuts, plugs and twists of tobacco and cigars shall be exempt from such labeling requirements.

(g) Nothing in this subchapter shall be deemed to preclude the continued use of reusable (returnable) glass containers, provided that such glass containers ordered after the effective date of this subchapter shall conform to all requirements of this subchapter.

(h) Cartons of cigarettes and small cigars, containing 10 individual packages of 20, labeled in accordance with the requirements of this subchapter, shall be exempt from the requirements set forth in N.J.A.C. 13:47K-4.8(a)1 and (b)3 and N.J.A.C. 13:47K-4.10(d), provided that such cartons bear a declaration of the net quantity of commodity in the package.

(i) Packages of meat and meat products, poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides, and alcoholic beverages shall be exempt from those portions of this subchapter requiring dual declarations in customary units and specifying location and minimum type size of the net quantity declaration, provided that quantity labeling requirements for such products are specified in Federal Law, so as to follow reasonably sound principles of providing consumer information.

(j) Exemptions relating to fluid dairy products, ice cream and similar frozen desserts are as follows:

1. When packaged in 1/2 liquid pint and 1/2 gallon containers, fluid dairy products, ice cream and similar frozen desserts are exempt from the requirements for stating net contents of 8 fluid ounces and 64 fluid ounces, which may be expressed as 1/2 pint and 1/2 gallon, respectively.

2. When packaged in one liquid pint, one liquid quart, and 1/2 gallon containers, fluid dairy products, ice cream and similar frozen desserts are exempt from the dual net contents declaration requirements of N.J.A.C. 13:47K-4.6(g)3.

3. When measured by and packaged in measure containers as defined in "Measure Container Code of National Bureau of Standards Handbook 44," fluid dairy products, ice cream and similar frozen desserts are exempt from the requirement of N.J.A.C. 13:47K-4.8(a)1 that the declaration of net contents be located within the bottom 30 percent of the principal display panel.

4. Milk and milk products when measured by and packaged in glass or plastic containers of 1/2 pint, one pint, one quart, 1/2 gallon, and one gallon capacities are exempt from the placement requirement of N.J.A.C. 13:47K-4.8(a)1 that the declaration of net contents be located within the bottom 30 percent of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure, and the required net quantity of contents declaration is conspicuously blown, formed, or molded on, or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(k) Exemptions for single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water (for purposes of this subsection, hereinafter referred to as "these products") are as follows:

1. When packaged in glass, plastic, or fluid milk type paper containers of eight and 64 fluid ounce capacity, these products are exempt from the requirements of N.J.A.C. 13:47K-4.6(e)1ii, to the extent that net contents of eight fluid ounces and 64 fluid ounces (or two quarts) may be expressed as 1/2 pint (or half pint) and 1/2 gallon (or half gallon), respectively.

2. When packaged in glass, plastic, or fluid milk type paper containers of one pint, one quart and 1/2 gallon capacities, these products are exempt from the dual net contents declaration requirements of N.J.A.C. 13:47K-4.6(g)4.

3. When packaged in glass or plastic containers of 1/2 pint, one pint, one quart, 1/2 gallon and one gallon capacities, these products are exempt from the placement requirement of N.J.A.C. 13:47K-4.8(a)1 that the declaration of net contents be located within the bottom 30 percent of the principal display panel, provided that other label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(l) Bottles of soft drinks shall be exempt from the placement requirements for the declaration of the following:

1. Identity, when such declaration appears on the bottle closure; and

2. Quantity, when such declaration is blown, formed, or molded on or above the shoulder of the container and when all other information required by this subchapter appears only on the bottle closure.

(m) Multi-unit packages of soft drinks are exempt from the requirement for a declaration of the following:

1. Responsibility, when such declaration appears on the individual units and is not obscured by the multi-unit packaging, or when the outside container bears a statement to the effect that such declaration will be found on the individual units inside; and

2. Identity, when such declaration appears on the individual units and is not obscured by the multi-unit packaging.

(n) When packaged in four ounce, eight ounce, and one pound packages with continuous label copy wrapping, butter is exempt from the requirements that the statement of identity (N.J.A.C. 13:47K-4.3(b)) and the net quantity declaration (N.J.A.C. 13:47K-4.8(a)5) be generally parallel to the base of the package. When packaged in eight ounce and one pound units, butter is exempt from the requirement for location (N.J.A.C. 13:47K-4.8(a)1) of net quantity declaration and, when packaged in one pound units, is exempt from the requirement for dual quantity declaration (N.J.A.C. 13:47K-4.6(g)2).

(o) Cartons containing 12 eggs shall be exempt from the requirement for location (N.J.A.C. 13:47K-4.8(a)1) of net quantity declaration. When such cartons are designed to permit division in half, each half shall be exempt from the labeling requirements of this subchapter if the undivided carton conforms to all such requirements.

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(p) Packages of wheat flour in conventional two, five, 10, 25, 50 and 100 pound packages shall be exempt from the requirement in this subchapter for location (N.J.A.C. 13:47K-4.8(a)1) of the net quantity declaration and, when packaged in units of two pounds, shall be exempt also from the requirement for dual quantity declaration (N.J.A.C. 13:47K-4.6(g)2).

(q) On a principal display panel of five square inches or less, the declaration of quantity need not appear in the bottom 30 percent of the principal display panel if that declaration satisfies the other requirements of this subchapter.

(r) The principal display panel of a cosmetic marketed in a "boudoir-type" container including decorative cosmetic containers of the "cartridge," "pill box," "compact," or "pencil" variety, and those with a capacity of 1/4 ounce or less, may be a tear-away tag or tape affixed to the decorative container bearing the mandatory label information as required by this subchapter.

(s) Combination packages are exempt from the requirements in this subchapter for the following:

1. Location (see N.J.A.C. 13:47K-4.8(a)1);

2. Free area (see N.J.A.C. 13:47K-4.8(a)4); and

3. Minimum height of numbers and letters (see N.J.A.C. 13:47K-4.8(b)3).

(t) Margarine in one pound rectangular packages, except for packages containing whipped or soft margarine or packages containing more than four sticks, shall be exempt from the requirement in this subchapter for location (see N.J.A.C. 13:47K-4.8(a)1) of the net quantity declaration, and shall be exempt from the requirement for a dual quantity declaration (see N.J.A.C. 13:47K-4.6(g)2).

(u) Corn flour and corn meal packaged in conventional five, 10, 25, 50 and 100 pound bags shall be exempt from the requirement in this subchapter for location (see N.J.A.C. 13:47K-4.8(a)1) of the net quantity declaration.

(v) Prescription and insulin containing drugs subject to the provisions of Section 503(b)(1) or 506 of the Federal Food, Drug and Cosmetic Act shall be exempt from the provisions of this subchapter.

(w) Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of this subchapter that specify how measurement of commodities should be expressed, provided that:

1. The net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of linear meters or feet of usable film contained therein;

2. The net quantity of contents on packages of movie film is expressed in terms of the running time of the exposed film for that portion of film that is of entertainment value. "Entertainment value" is defined as that portion of a film that commences with the first frame of sound or picture, whichever comes first after the countdown sequence and ends with either the last frame of credits, the last frame of the phrase "The End", or the end of sound, whichever is last; and

3. The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. The length and width measurements of the individual exposures, expressed in millimeters or inches, are authorized as an optional statement. (Example: "36 exposures, 36 millimeters × 24 millimeters" or "12 exposures, 2-1/4 inches × 2-1/4 inches")

(x) Exemptions for paints and kindred products are as follows:

1. Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, when packed in one liquid pint and one liquid quart units, shall be exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)3.

2. Tint base paint may be labeled on the principal display panel, in terms of a quart or a gallon including the colorant selected by the purchaser, provided that the system employed ensures that the purchaser always obtains a quart or a gallon, and further provided that in conjunction with the required quantity statement on the principal display panel, a statement indicating that the tint base paint is not to be sold without the addition of colorant is presented, and further provided that the contents of the container, before the addition of colorant, is stated in fluid ounces elsewhere on the label.

i. Wherever the above conditions cannot be met, containers of tint base paint must be labeled with a statement of the actual net contents prior to the addition of colorant in full accord with all the requirements of this subchapter.

(y) Antifreeze, when packed in one liquid quart units, in metal or plastic containers, shall be exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)3.

(z) Motor oils, when packed in one liquid quart units, shall be exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)3. Additionally, motor oil in one liquid quart, one gallon, 1-1/4 gallon, two gallon, and 2-1/2 gallon units, bearing the principal display panel on the body of the container, is exempt from the requirements of N.J.A.C. 13:47K-4.3, Declaration of identity: consumer package, to the extent that the Society of Automotive Engineers (SAE) viscosity number is required to appear on the principal display panel, provided the SAE viscosity number appears on the can lid and is expressed in letters and numerals in type size of at least six millimeters or 1/4 inch.

(aa) Those products, including pillows, cushions, comforters, mattress pads and sleeping bags, that bear a permanent label as designated by the Association of Bedding and Furniture Law Officials or by the California Bureau of Home Furnishings shall be exempt from the requirements for location (N.J.A.C. 13:47K-4.8(a)1), size of letters or numbers (N.J.A.C. 13:47K-4.8(b)3 and (b)3i), free area (N.J.A.C. 13:47K-4.8(a)4) and the declarations of identity and responsibility (N.J.A.C. 13:47K-4.3(a) and 4.5), provided that declarations of identity, quantity, and responsibility are presented on a permanently attached label and satisfy the other requirements of this subchapter, and further provided that the information on such permanently attached label be fully observable to the purchaser.

(bb) Individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the point of retail sale, are exempt from the requirements of N.J.A.C. 13:47K-4.6, Declaration of quantity: consumer packages, while moving in commerce and while held for sale prior to weighing and marking, provided that the outside container bears a label declaration of the total net weight.

(cc) When a packaged consumer commodity is properly measured in terms of count only, or in terms of count and some other appropriate unit, and the individual units are fully visible to the purchaser, such packages shall be labeled in full accord with this subchapter except that those containing six or less items need not include a statement of count.

(dd) Packaged fishing lines and reels are exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)6, provided that length of line or capacity of reel as appropriate is presented in terms of meters or yards in full accord with all other requirements of this subchapter.

13:47K-4.12 Retail sale price representations

(a) The term "cents-off representation" means any printed manner consisting of the words "cents-off" or words of similar import (bonus offer, 2 for 1 sale, 1 c/ sale, etc.), placed upon any consumer package or placed upon any label affixed or adjacent to such package, stating or representing by implication that it is being offered for sale at a price lower than the ordinary and customary retail sale price.

1. Except as set forth in (b) below, the packager or labeler of a consumer commodity shall not have imprinted thereon a "cents-off" representation unless:

i. The commodity has been sold at an ordinary and customary price in the most recent and regular course of business where the "cents-off" promotion is made;

ii. The commodity so labeled is sold at a reduction from the ordinary and customary price, which reduction is at least equal to the amount of the "cents-off" representation imprinted on the commodity package or label.

iii. Each "cents-off" representation imprinted on the package or label is limited to a phrase that reflects that the price marked by the retailer represents the savings in the amount of the "cents-off" the retailer's regular price; for example, "Price Marked is _____ Cents Off the Regular Price," "Price Marked is _____ c/ off the Regular

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Price of This Package", provided the package or label may in addition bear in the usual pricing spot a form reflecting a space for the regular price, the represented "cents-off", and a space for the price to be paid by the consumer;

iv. The commodity at retail presents the regular price, designated as the "regular price," clearly and conspicuously on the package or label of the commodity or on a sign, placard, or shelf-marker placed in a position contiguous to the retail display of the "cents-off" marked commodity;

v. The following time limitations are met:

(1) Not more than three "cents-off" promotions of any single size commodity may be initiated in the same trade area within a 12-month period;

(2) At least 30 days must lapse between "cents-off" promotions of any particular size packaged or labeled commodity in a specific trade area; and

(3) Any single size commodity so labeled may not be sold in a trade area for a duration in excess of six months within any 12-month period; and

vi. Sales of any single size commodity so labeled in a trade area do not exceed in volume 50 percent of the total volume of sales of such size commodity in the same trade area during any 12-month period. The 12-month period may be the calendar, fiscal or market year provided the identical period is applied in this subparagraph and (a)1v above. Volume limits may be calculated on the basis of projections for the current year but shall not exceed 50 percent of the sales for the proceeding year in the event actual sales are less than the projection for the current year.

2. No "cents-off" promotion shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison; for example, where the retailer charges a price that does not fully pass on to the consumers the represented price reduction or where the retailer fails to display the regular price in the display area of the "cents-off" marked product.

3. The sponsor of a "cents-off" promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one year subsequent to the end of the year (calendar, fiscal or market) in which the "cents-off" promotion occurs.

(b) The term "introductory offer" means any printed matter consisting of the words "introductory offer" or words of similar import, placed upon a package containing any new commodity or upon any label affixed or adjacent to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than anticipated ordinary and customary retail price.

1. The packager or labeler of a consumer commodity may not have imprinted thereon an "introductory offer" unless:

i. The product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time;

ii. Each offer on a package or label is clearly and conspicuously qualified;

iii. No commodity so labeled is sold in a trade area for duration in excess of six months; and

iv. At the time of making the "introductory offer" promotion, the offerer intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the "introductory offer" promotion.

2. The packager or labeler of a consumer commodity shall not have imprinted thereon an "introductory offer" in the form of "cents-off" representation unless, in addition to the requirements in (b)1 above:

i. The package or label clearly and conspicuously and in immediate conjunction with the phrase "Introductory Offer" bears the phrase "_____ cents-off the after-introductory offer price."; and

ii. The commodity so labeled is sold at a reduction from the anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after-introductory offer price representation on the commodity package or label.

3. No introductory offer with a "cents-off" representation shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison; for example, where the retailer charges a price that does not fully pass on to consumers the represented price reduction.

4. The sponsor of an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one year subsequent to the period of the introductory offer.

(c) The term "economy size" means any printed matter consisting of the words "economy size," "economy pack," "budget pack," "bargain size," "value size" or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed or adjacent to such commodity, stating or representing directly or by implication that a retail sale price advantage is accorded the purchaser thereof by reason of the size of that package or the quantity of its contents.

1. The packager or labeler of a consumer commodity may not have imprinted thereon an "economy" size representation unless:

i. At the same time the same brand of the commodity is offered in at least one other packaged size or labeled form;

ii. Only one packaged or labeled form of that brand of commodity labeled with an "economy size" representation is offered; and

iii. The commodity labeled with an "economy size" representation is sold at a price per unit of weight, volume, measure, or count that is substantially reduced (that is, at least five percent) from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.

2. No "economy size" package shall be made available in any circumstances where it is known that it will be used as an instrumentality for deception; for example, where the retailer charges a price that does not pass on to the consumer the substantial reduction in cost per unit initially granted.

3. The sponsor of an "economy size" package shall prepare and maintain invoices or other records showing compliance with (b)1 above. The invoices or other records required by this paragraph shall be open to inspection and shall be retained for one year.

SUBCHAPTER 5. VARIATIONS

13:47K-5.1 Packaging variations

(a) Variations from the declared net weight, measure or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity, or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other practices in the same shipment, delivery, or lot compensate for such shortages. Variations above the declared quantity shall not be unreasonably large.

(b) Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce; provided that the phrase "introduced into intrastate commerce" as used in this subsection shall be construed to define the time and the place at which the first sale and delivery of a package is made within the State, the delivery being either:

1. Directly to the purchaser or to his agent; or

2. To a common carrier for shipments to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations shall not be permitted.

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13:47K-5.2 Magnitude of permitted variations

(a) The magnitude of permitted variations (MAV's) are those expressly set forth in this subchapter, as contained in the following tables:

(*>> means to and including in the following tables.)

Table 1
MAV's for an Individual Package Labeled by Weight

AVOIRDUPOIS UNITS			METRIC UNITS	
LABELED WEIGHT	MAV		LABELED WEIGHT	MAV
POUNDS OR OUNCES	DECIMAL POUNDS	FRACTIONAL OUNCES	GRAMS	GRAMS
up to and including 0.08 lb up to and including 1.28 oz.	10% of labeled weight		up to and including 36	10% of labeled weight
>0.08 *>> 0.12 lb >1.28 *>> 1.92 oz	0.008	1/8	>36 *>> 54	4
>0.12 *>> 0.18 lb >1.92 *>> 2.88 oz	0.012	3/16	>54 *>> 82	5
>0.18 *>> 0.26 lb >2.88 *>> 4.16 oz	0.016	1/4	>82 *>> 118	7
>0.26 *>> 0.34 lb >4.16 *>> 5.44 oz	0.020	5/16	>118 *>> 154	9
>0.34 *>> 0.46 lb >5.44 *>> 7.36 oz	0.024	3/8	>154 *>> 209	11
>0.46 *>> 0.58 lb >7.36 *>> 9.28 oz	0.028	7/16	>209 *>> 263	13
>0.58 *>> 0.70 lb >9.28 *>> 11.20 oz	0.032	1/2	>263 *>> 318	15
>0.70 *>> 0.84 lb >11.20 *>> 13.44 oz	0.036	9/16	>318 *>> 381	16
>0.84 *>> 0.94 lb >13.44 *>> 15.04 oz	0.040	5/8	>381 *>> 426	18
>0.94 *>> 1.08 lb >15.04 *>> 17.28 oz	0.044	11/16	>426 *>> 490	20
>1.08 *>> 1.26 lb	0.048	3/4	>490 *>> 572	22
>1.26 *>> 1.40 lb	0.052	13/16	>572 *>> 635	24
>1.40 *>> 1.54 lb	0.056	7/8	>635 *>> 698	25
>1.54 *>> 1.70 lb	0.060	15/16	>698 *>> 771	27
>1.70 *>> 1.88 lb	0.064	1	>771 *>> 852	29
>1.88 *>> 2.14 lb	0.070	1 1/8	>852 *>> 971	32
>2.14 *>> 2.48 lb	0.078	1 1/4	>971 *>> 1.125	35
>2.48 *>> 2.76 lb	0.086	1 3/8	>1.125 *>> 1.350	40
>2.76 *>> 3.20 lb	0.094	1 1/2	>1.350 *>> 1.600	45
>3.20 *>> 3.90 lb	0.11	1 1/3	>1.600 *>> 1.800	50
>3.90 *>> 4.70 lb	0.12	2	>1.800 *>> 2.100	55
>4.70 *>> 5.80 lb	0.14	2 1/4	>2.100 *>> 2.640	65
>5.80 *>> 6.80 lb	0.15	2 1/2	>2.640 *>> 3.080	70
>6.80 *>> 7.90 lb	0.17	2 3/4	>3.080 *>> 3.800	80
>7.90 *>> 9.40 lb	0.19	3	>3.800 *>> 4.400	85
>9.40 *>> 11.70 lb	0.22	3 1/2	>4.400 *>> 5.200	100
>11.70 *>> 14.30 lb	0.25	4	>5.200 *>> 6.800	115
>14.30 *>> 17.70 lb	0.28	4 1/2	>6.800 *>> 8.20	130

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>17.70 *>> 23.20 lb	0.31	5	>8.20 *>> 10.60	145
>23.20 *>> 31.60 lb	0.37	6	>10.60 *>> 14.30	170
>31.60 *>> 42.40 lb	0.44	7	>14.30 *>> 19.25	200
>42.40 *>> 54.40 lb	0.50	8	>19.25 *>> 24.70	230
Over 54.40	2% of labeled weight		Over 24.70	2% of labeled weight

Table 2
MAV's for an individual package labeled by count

Labeled Count	MAV
up to and including 17	0
18–50	1
51–83	2
84–116	3
117–150	4
151–200	5
201–240	6
241–290	7
291–345	8
346–400	9
401–465	10
466–540	11
541–625	12
626–725	13
726–815	14
816–900	15
901–990	16
991–1075	17
1076–1165	18
1166–1250	19
1251–1333	20
1334 and over	1.5% of labeled count rounded off to the nearest whole number

Table 3
MAV's for Individual Package Labeled by Length (Width) or by Area

Length

Inch-Pound Labeled Length (yards)	MAV (expressed as a percentage of the labeled length)	Metric Labeled Length (meters)
Up to and including 1	3%	Up to and including 1
>1 *>> 48	1.5%	>1 *>> 40
>48 *>> 96	2%	>40 *>> 85
>96 *>> 154	2.5%	>85 *>> 140
>154 *>> 330	3%	>140 *>> 300
>330 *>> 1100	4%	>300 *>> 1000
Over 1100	5%	Over 1000

Area

The MAV for packages labeled by area is 3% of the labeled area.

(b) Allowed variations from declared dimensions for textiles are as follows:

1. For an item with no declared dimension less than 24 inches or 60 centimeters, a minus variation greater than three percent of a declared dimension and a plus variation greater than six percent of a declared dimension should be considered unreasonable.

2. For an item with a declared dimension less than 24 inches of 60 centimeters, a minus variation greater than six percent of that declared dimension and a plus variation greater than 12 percent of that declared dimension should be considered unreasonable.

(c) For mulch, an individual package minus variation greater than five percent of the declared volume shall be considered unreasonable.

(d) Allowed variations from declared thickness for polyethylene products are as follows for any single measurement of thickness:

1. When the labeled thickness is less than one mil (0.001 inch), any individual thickness measurement of a polyethylene product may be as much as 35 percent below the labeled thickness (that is, at least 65 percent of the labeled thickness), as set forth in ASTM Standard D2103-86, "Standard Specification of Polyethylene Film and Sheeting," 1986.

2. When the labeled thickness is one mil or larger, any individual thickness measurement of a polyethylene product may be as much as 20 percent below the labeled thickness (that is at least 80 percent of the labeled thickness), as set forth in ASTM Standard D-4397-84, "Specification for Polyethylene Sheeting for Construction, Industrial and Agricultural Applications", 1984.

(e) The following table sets forth permitted variations for the boundaries of the gray area for different sizes of flour packages:

Column 1	Column 2	Column 3	Column 4
The labeled weight is	The average package error is minus and between zero and 3% of label weight	And any individual package error is minus and is between the MAV	MAV +3%
2 lb	–0.06 lb	–0.07 lb	–0.13 lb
5 lb	–0.15 lb	–0.14 lb	–0.29 lb
10 lb	–0.30 lb	–0.22 lb	–0.52 lb
20 lb	–0.60 lb	–0.31 lb	–0.91 lb
25 lb	–0.75 lb	–0.37 lb	–1.12 lb
50 lb	–1.50 lb	–0.50 lb	–2.00 lb
100 lb	–3.00 lb	–2.00 lb	–5.00 lb

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Administration

Enrollment Entry Age

Proposed Repeal: N.J.A.C. 17:1-12.7

Authorized By: Nicholas F. Caprio, Acting Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1990-233.

Submit comments by June 20, 1990 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

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Summary

The rules dealing with the elimination of the Police and Firemen's Retirement System's entry age limit and transfers are proposed to be deleted, since they are no longer applicable as a result of recent litigation. Recently, the courts have upheld the enforceability of the mandatory retirement and maximum enrollment ages for the PFRS (see *Boylan v. New Jersey,* 116 *N.J.* 236 (1989)). Also, these are rules governing interfund transfers between all State-administered retirement systems. Thus, the provisions of N.J.A.C. 17:1-12.7 are no longer valid or are otherwise covered within other rules adopted by the Division of Pensions.

Social Impact

The elimination of this particular rule will not have any effect upon the membership of the retirement systems or the public at large since the rule is no longer applicable due to the recent court decisions. The proposed deletion merely will eliminate rules that are no longer applicable or duplicate rules that are already in existence.

Economic Impact

The proposed deletion will not have any adverse, economic effect upon the membership of the retirement systems or the taxpaying public.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed repeal does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this repeal will not have any effect upon small business or private industry in general.

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

17:1-12.7 [Elimination of PFRS entry age limit; transfers] **(Reserved)**

[Any person whose position is included under the definition of "policeman or fireman" under Section 1 of P.L. 1944 c.255 (N.J.S.A. 43:16A-1 et seq.) who was denied enrollment in the Police and Firemen's Retirement System because of the entry age limit under Section 3 of this law, may transfer from the Public Employees' Retirement System to the Police and Firemen's Retirement System. The transfer application shall be filed no later than June 30, 1986. The transfer shall take effect on October 1, 1986. If person files a transfer application before June 30, 1986, and dies or retires before October 1, 1986, the transfer shall be effective and the person or his beneficiaries shall receive the retirement or death benefits provided under the Police and Firemen's Retirement System.]

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Records Retention
Proposed New Rule: N.J.A.C. 5:23-9.5

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1990-238.

Submit comments by June 20, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rule specified the documents that are required to be retained by each construction code office for the life of a building. It is in the interest of present and future owners of buildings and of the public generally that complete records of buildings' histories be maintained. It may be important to know, for example, when inspections took place and what their results were, or to have original plans and plans showing modifications available when repairs or renovations are planned.

Social Impact

This proposed new rule will ensure that sellers, purchasers, remodelers, occupants and citizens in general will have full information about the design and construction of existing structures. The Department is aware of numerous situations in which the failure to retain records has greatly complicated the subsequent purchase, occupancy and alteration of structures. With this rule in effect, sufficient information about existing buildings will always be available.

Economic Impact

This proposed new rule will be beneficial to owners and purchasers of properties because it will assure them easy access to documentation that would otherwise be expensive to obtain or to reproduce. Municipal construction offices will be required to retain numerous documents for the life of each structure. While some municipalities already retain these documents for the life of the structure, others may need to increase their records storage capacity. Storage problems may be alleviated by the use of microfilm.

Regulatory Flexibility Statement

This proposed new rule has no measurable effect on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule places record keeping requirements on construction offices in municipalities in the State of New Jersey.

Full text of the proposed new rule follows:

5:23-9.5 Records retention

(a) A construction office shall maintain, for the life of each structure wholly or partially within its jurisdiction, copies of the following documents: construction application, permit(s), any update(s), notice of unsafe structure, certificate of occupancy, ongoing inspection control card, elevator inspection, decision of construction board of appeals, cut-in card and the inspection and certificate logs (F-100A, F-110A, F-120A, F-130A, F-140A, F-170A and B, F-190A, F-240A, F-260A, F-290A, F-310A, F-340A, L-710A, L-720A).

(b) Copies of additional documents may be retained at the discretion of the construction official.

(c) A construction office shall retain copies of plans for Class I and Class II structures for at least the life of the structures and copies of plans for Class III structures for at least 10 years.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Condominium and Cooperative Conversion
Proposed Readoption: N.J.A.C. 5:24

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 2A:18-61.12 and 2A:18-61.38.
Proposal Number: PRN 1990-252.

Submit comments by June 20, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules regarding cooperative and condominium conversion, including both general provisions and the rules on senior citizen and disabled protected tenancy, N.J.A.C. 5:24, are scheduled to expire on September 1, 1990. The Department has reviewed these rules and finds that they continue to be necessary for the orderly and uniform administration of P.L. 1975, c.311, which provides protection from eviction for between three and eight years for tenants, regardless of age, condition or income, whose apartments are converted to condominium or cooperative units, and of P.L. 1981, c.226, which

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protects senior citizens and disabled tenants who meet income and residency requirements from eviction for up to 40 years.

Subchapter 1, General Provisions, includes requirements for the "notice of intent" and "full plan of conversion" that must be furnished to tenants. It also specifies what constitutes "comparable housing" and what a "reasonable opportunity to examine and rent" such housing must involve. Additionally, it includes various procedural requirements and sets forth standards of fair dealing applicable to any conversion.

Subchapter 2 implements P.L. 1981, c.226, the Senior Citizens and Disabled Protected Tenancy Act. It prescribes the content of application forms, the application procedure, requirements for eligibility, procedures for determining eligibility, subsequent determination of ineligibility, rules for local administrative hearings, rules concerning rent increases, procedural requirements for owners, rules for certification by local administrative agencies, and fees to be paid to these agencies.

Since the chapter was last readopted, several changes have been made in the text. N.J.A.C. 5:24-1.12(a) was amended, effective July 20, 1987, to add requirements regarding the offering of a discount. N.J.A.C. 5:24-2.3(c) was amended, effective May 2, 1988, to specify the conditions under which any lump-sum non-repeated distribution shall be considered as income. N.J.A.C. 5:24-2.5 was amended, effective August 1, 1988, to add subsection (c), regarding the right to review documentation upon which a determination is based. N.J.A.C. 5:24-2.7 was amended, effective August 1, 1988, to specify requirements for an application for an administrative hearing.

Social Impact

N.J.A.C. 5:24 protects tenants, particularly senior citizens and disabled tenants, from eviction from their homes for a specified period of time when the buildings in which they reside are converted to condominium or cooperative units. This protection allows time for the residents to make alternate plans, if necessary. The readoption of these rules is necessary to provide owners, tenants, converters and local administrative agencies with the necessary guidelines to implement P.L. 1975, c.311 and P.L. 1981, c.226. The readoption of this chapter will prevent confusion which may result without the clear direction provided in the rules.

Economic Impact

These rules remove the confusion and uncertainty which could lead to unduly precipitous eviction of tenants and unnecessary litigation as various parties attempt to sort out their rights and obligations. The costs involved could be significant to the parties involved, but cannot be determined specifically, due to the multiplicity of factors involved.

Regulatory Flexibility Statement

The rules place procedural and other requirements on owners or converters, most of whom would be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since these rules implement a statutory mandate, the Department is not able to establish differential rules based upon business size. The protection that must be provided to tenants is the same, regardless of the size of the business of the owner or the converter.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:24.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

New Jersey State Housing Code

Proposed Readoption: N.J.A.C. 5:28

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 2A:42-76.

Proposal Number: PRN 1990-251.

Submit comments by June 20, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the New Jersey State Housing Code is scheduled to expire on December 20, 1990. The Department has reviewed this Code and finds that it continues to be necessary as a model code for municipalities seeking to implement N.J.S.A. 2A:42-74 et seq. and 2A:42-85 et seq. and to be in compliance with N.J.A.C. 8:51, which is administered by the State Department of Health. When adopted by municipalities as part of the local ordinance, the provisions are enforced by local housing code enforcement personnel, in most cases, health officers.

Standards of habitability established by the model code, which may be adopted by municipalities include those for water supply, plumbing facilities, garbage and rubbish storage, lighting, ventilation, heating equipment, exitways, general maintenance, use and occupancy of space, and responsibilities of owners and occupants.

If adopted by a municipality, these standards would be imposed upon owners and occupants of dwellings within that municipality.

Social Impact

When adopted as ordinances by a municipality, these standards provide for the maintenance of the health and safety of the residents of that municipality. The municipalities benefit from having a model code which has been researched and is ready for use. Failure to readopt these rules would leave municipalities without a basic model housing code which they can adopt by reference and use to enforce N.J.S.A. 2A:42-74 et seq. and N.J.S.A. 2A:42-85 et seq. against property owners, resident and non-resident, whose properties contain serious code violations.

Economic Impact

The owners of the properties involved would bear the economic burden of maintaining their properties to conform to the standards delineated in N.J.A.C. 5:28. The municipalities gain economically in that they do not need to expend funds in the development of standards, but may incorporate N.J.A.C. 5:28 by reference into their ordinances. Without these standards, municipalities would be without clear housing requirements and would find it difficult to require the owners of properties to correct unsafe or unsanitary housing conditions.

Regulatory Flexibility Analysis

The standards contained in N.J.A.C. 5:28, when adopted by municipalities as part of their ordinances, impose requirements on property owners and residents regarding the structure, maintenance, and services provided in housing stock located within those municipalities. The standards must be met by the owners, who may elect to hire others to assist them in the fulfillment of their responsibilities. Some of those regulated may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, the number of small businesses cannot be identified, due to the variable nature of the housing market. Similarly, due to the multiplicity of factors involved, the capital costs involved cannot be determined. Given the statutory requirements imposed by N.J.S.A. 2A:42-74 et seq. and N.J.S.A. 2A:42-85 et seq., which were enacted for the purpose of protecting the public health, safety and welfare, differentiation based upon business size would not be appropriate.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:28.

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ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Rules of Practice and Procedure

Proposed Readoption with Amendments: N.J.A.C. 7:1

Proposed Recodification: N.J.A.C. 7:1-2 to 7:11-30

Proposed Recodification with Amendments: N.J.A.C. 7:1-7 to 7:1E-5

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-1 et seq., specifically 13:1B-3; 13:1D-9; 13:1F-1 et seq., specifically 13:1F-4; 13:1K-15 et seq.; 52:14B-1 et seq.; and Executive Order No. 34 (1976).

DEP Docket Number: 018-90-04.

Proposal Number: PRN 1990-261.

Submit written comments by July 20, 1990 to:
Judeth A. Piccinini, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

A **public hearing** concerning the readoption and amendment of N.J.A.C. 7:1-2 (to be recodified as N.J.A.C. 7:30-11) will be held:
Friday, June 8, 1990
1:00 P.M. to 2:00 P.M.
Gloucester County College
Tanyard Road
Room 430, Instructional Center
Sewell, New Jersey

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66 (1978), N.J.A.C. 7:1 expires on September 16, 1990. As required by the Executive Order, the Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. The Department proposes to readopt this chapter with minor changes and to recodify N.J.A.C. 7:1-2 and 7:1-7 as N.J.A.C. 7:30-11 and 7:1E-5, respectively, in order to place these subchapters with other rules of their administering divisions.

The Department of Environmental Protection is a designated executive agency formed in 1970 out of the reorganization of the Department of Conservation and Economic Development (N.J.S.A. 13:1D-1). In 1970, five divisions within the Department of Conservation and Economic Development combined with one division from the Department of Health to form the new Department of Environmental Protection (see N.J.S.A. 13:1D-18). The rules at N.J.A.C. 7:1 govern several aspects of practice and procedure before the Department of Enviromental Protection. At present, this chapter contains subchapters governing the general organization of the Department; debarment, suspension and disqualification from Department contracting; emergency containment and disposal of pesticides; and the preparation of hazardous substance discharge reports and notices. A brief summary of the history and content of each of these subchapters follows:

Subchapter 1 (N.J.A.C. 7:1-1), General Provisions of the Department of Environmental Protection, is divided into sections on the organization of the Department (N.J.A.C. 7:1-1.1) and the procedure to petition the Department for rulemaking (N.J.A.C. 7:1-1.2). N.J.A.C. 7:1-1.1, which describes the organization of the Department, was most recently amended on August 15, 1988 (see 20 N.J.R. 2058(a)). As an organizational rule, this section is exempt from the notice and hearing requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

N.J.A.C. 7:1-1.2, which contains the procedure to petition the Department for rulemaking, was adopted by the Department effective August 7, 1989 (see 21 N.J.R. 2302(a)). This rule was promulgated to comply with the dictates of the Administrative Procedure Act and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, which allow interested persons to petition any State agency to promulgate, amend, or repeal any rule, (N.J.S.A. 52:14B-4(f)), and direct State agencies to prescribe by rule the form of a petition for rulemaking and the procedures for its submission, (see N.J.A.C. 1:30-3.6(d)).

Subchapter 2 (N.J.A.C. 7:1-2, to be recodified as N.J.A.C. 7:30-11), Emergency Containment and Disposal of Pesticides, was adopted by the Department as an emergency rule effective August 25, 1971, in response to the passage of the Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 et seq. (see 3 N.J.R. 176). The Pesticide Control Act allows the Department to promulgate rules controlling the sale, purchase, transportation, labeling, use and application of pesticides, N.J.S.A. 13:1F-4. N.J.A.C. 7:1-2 addresses situations where industrial and agricultural upsets or malfunctions, fires, explosions, acts of God, or other casualties or unexpected circumstances result in the immediate need to dispose of large quantities of pesticides. In order to minimize the danger of pesticide contamination of soil, air or water, this subchapter requires persons to take immediate steps to remove or contain pesticides in cases of accidental release, and requires all pesticide disposal to be conducted in accordance with a disposal plan approved by the Department. The Department proposes to recodify this subchapter as N.J.A.C. 7:30-11 in order to include these rules as part of the Department's Pesticide Control Code, N.J.A.C. 7:30.

Subchapter 5 (N.J.A.C. 7:1-5), Debarment, Suspension and Disqualification from Department Contracting, was adopted by the Department effective October 13, 1976, in order to fulfill its responsibilities under Executive Order No. 34 (1976) (see 8 N.J.R. 510(c)). The Executive Order was issued to ensure that all persons supplying goods or services to the State, performing contracts, or otherwise executing public works with the assistance of and subject to the approval of the State meet a standard of responsibility for fair competition and honest performance in their dealings with the State. N.J.A.C. 7:1-5 lists causes and conditions for debarment or suspension from contracting with the Department, and specifies the procedures, period and scope of such debarment or suspension.

Subchapter 7 (N.J.A.C. 7:1-7, to be recodified as N.J.A.C. 7:1E-5), Hazardous Substance Discharge Reports and Notices, was adopted by the Department effective August 5, 1985, to implement the provisions of N.J.S.A. 13:1K-15 et seq., commonly known as the Hazardous Substance Discharge Reports and Notices Act (Act) (see 18 N.J.R. 1272(a)). The Act requires the owner or operator of an industrial establishment or property which was once the site of an industrial establishment to report to the municipality in which the industrial establishment or property is located and the local board of health any discharge of a hazardous substance which is required to be reported to the Department pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. The Act also requires the Department to adopt rules to carry out its provisions. Accordingly, N.J.S.A. 7:1-7 establishes reporting and notice procedures concerning discharges of hazardous substances to be followed by industrial establishments, the governing bodies of municipalities, local boards of health, and the Department pursuant to the Act. The Department proposes to recodify this subchapter as N.J.A.C. 7:1E-5 in order to include these rules as part of the Department's Rules on Discharges of Petroleum and Other Hazardous Substances, N.J.A.C. 7:1E. The Department is also proposing minor changes to this subchapter to update the telephone number and address to which hazardous substances discharges should be reported.

Subchapters 3, 4 and 6 (N.J.A.C. 7:1-3, 7:1-4 and 7:1-6) are reserved.

Social Impact

The readoption of N.J.A.C. 7:1-1 is expected to have a positive social impact by keeping the public informed about the organzational structure of the Department and the procedures by which interested persons may petition the Department for rulemaking. The provisions in this subchapter have served to facilitate the public's understanding of the Department, the public's interaction with the Department, and public participation in the Department's rulemaking process.

The readoption of N.J.A.C. 7:1-2 (to be recodified as N.J.A.C. 7:30-11) should have a positive social impact by sustaining the mechanism by which the Department minimizes the impact on public health, safety and welfare of the accidental release and disposal of pesticides.

Readopting N.J.A.C. 7:1-5 is expected to have a positive social impact by maintaining the existing standards of fair competition and honest performance for contractors in their dealings with the Department. The Department's implementation of the debarment and suspension provisions in this subchapter has served to protect public confidence in the Department's contracting procedures and contracted work, and to

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facilitate the Department's performance of this work in accordance with its legislative mandates.

The Department anticipates that readopting N.J.A.C. 7:1-7 (to be recodified as N.J.A.C. 7:1E-5) will also have a positive social impact. By requiring reporting and notice of certain types of hazardous substance discharges, the rules in this subchapter have helped to keep the public, through local municipalities and boards of health, informed of conditions affecting public health, safety and welfare. Without these provisions, the Department would be unable to implement the statutory requirement that this information be disseminated to the public.

Economic Impact

The readoption of N.J.A.C. 7:1-1 may have some positive economic impact on members of the public. Although readopting the Department's organizational rule will not have any direct economic impact on members of the public, readopting the Department's procedures for rulemaking petitions may have a positive economic benefit. By keeping members of the public informed of the procedure by which the Department evaluates requests for rulemaking, this subchapter may enable members of the public to identify areas of the Department's rules which may be amended or repealed to reduce their negative economic impact consistent with the Department's statutory mandates and identify areas in which the Department may develop new rules to improve the economic impact of its programs consistent with the Department's statutory mandates.

Readopting N.J.A.C. 7:1-2 (to be recodified as N.J.A.C. 7:30-11) is expected to have a positive economic impact on both the Department and members of the public. Without the requirements in this subchapter for immediate removal and proper disposal of pesticides, it is likely that air, water and soil contamination by pesticides would be significantly more widespread. This would result in much higher costs to the Department and to the public for remediating pesticide spills and their associated impacts on public health, safety and welfare.

Although the readoption of N.J.A.C. 7:1-5 may have a negative economic impact on contractors barred or suspended from contracting with the Department, the overall economic impact of readopting this subchapter is expected to be positive. Without rules on debarment and suspension, the Department would be powerless to limit its business with contractors who fail to maintain minimum standards of fair competition and honest performance in their dealings with the Department. The standards and procedures in this subchapter assist the Department in contracting out work as necessary to accomplish its goals as an agency. This protection has positive economic benefit for members of the public by ensuring that tax dollars for contracting do not go to dishonest or unscrupulous contractors. This protection may also benefit those fair and honest contractors who remain eligible for State contract awards. Thus, readopting these provisions will only deny economic benefit to those contractors seeking to profit from unfair competition and dishonest performance in their dealings with the Department.

The readoption of N.J.A.C. 7:1-7 (to be recodified as N.J.A.C. 7:1E-5) is expected to have a small detrimental economic impact on certain owners or operators of industrial establishments or property, and on the Department, by continuing to impose costs associated with reporting discharges of certain hazardous substances. However, by keeping the Department and members of the public, particularly local municipalities and boards of health, informed about discharges of hazardous substances, the readoption of this subchapter should have a positive economic impact by allowing affected parties to take appropriate measures to reduce the economic impact of such incidents.

Environmental Impact

The readoption of N.J.A.C. 7:1-1 may have some positive environmental impact. Although readopting the Department's organizational rule will not have any direct environmental impact, readopting the Department's procedures for rulemaking petitions may have a positive environmental benefit. By keeping members of the public informed of the procedure by which the Department evaluates requests for rulemaking, this subchapter may enable members of the public to identify areas of the Department's rules which may be amended, repealed or supplemented to improve their environmental impact.

Readopting N.J.A.C. 7:1-2 (to be recodified as N.J.A.C. 7:30-11) is expected to have a positive environmental impact by keeping in place requirements designed to minimize air, water and soil contamination by pesticides in cases of accidental release, and by continuing to require that pesticide disposal be conducted in an environmentally acceptable manner in accordance with an approved plan for disposal.

The readoption of N.J.A.C. 7:1-5 should have a positive environmental impact by maintaining minimum standards of competition and performance for Department contractors, thereby facilitating the Department's efficient operation and the attainment of its environmental protection goals.

The Department expects that readopting N.J.A.C. 7:1-7 (to be recodified as N.J.A.C. 7:1E-5) will also have a positive environmental impact, by keeping in place requirements that owners and operators of industrial establishments report certain discharges of hazardous substances. Without these provisions, the Department and local authorities would be unable to evaluate the environmental impact of such discharges or to remediate the detrimental environmental impacts of such discharges.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. the Department has determined that a significant portion of persons affected by the proposed readoption may be "small businesses" as defined in the Act. The readopted rules will affect small businesses in a number of ways. To take advantage of the readopted provisions on petitions for rulemaking, N.J.A.C. 7:1-1.2, small businesses will need to prepare petitions for rulemaking, which may require engineering, technical, and legal assistance for some rulemaking subjects. The extent and cost of such services will depend on the complexity of the rulemaking subject matter, but in most cases is expected to be minimal. To comply with the readopted rules at N.J.A.C. 7:1-2 and 7:1-7 (to be recodified as N.J.A.C. 7:30-11 and 7:1E-5), affected small businesses may be required to submit notices or reports of hazardous substance discharges, to contain or remove pesticide spills, or to submit plans for pesticide disposal to the Department. These actions may require engineering and technical support and legal assistance; the costs of such assistance will vary widely depending on the magnitude and nature of the pesticide spill or hazardous substance release. Last, the readopted rules at N.J.A.C. 7:1-5 will not directly impose any record keeping, reporting or compliance costs on affected small businesses. The Department anticipates that most small businesses will not incur additional capital costs in complying with the readopted rules in this chapter.

In developing the existing rules at N.J.A.C. 7:1-2 and 7:1-7 (to be recodified as N.J.A.C. 7:30-11 and 7:1E-5), the Department has balanced the need to protect the public and the environment from the adverse impacts of pesticide and hazardous substances releases against the economic impact of the rules. The Department has determined that to minimize the impact of N.J.A.C. 7:1-2 and 7:1-7 (to be recodified as N.J.A.C. 7:30-11 and 7:1E-5) on small businesses would endanger public health, public safety and the environment by undermining the reporting mechanisms in these subchapters to such an extent as to interfere with cleanup and response activities by the Department and local officials. Therefore, no exemption from coverage was provided in the existing rules, and there is no basis for exempting small businesses in the proposed readoption and recodification of these subchapters.

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

Full text of the proposed recodification of N.J.A.C. 7:1-2 and recodification and amendment of N.J.A.C. 7:1-7 follows (deletions indicated in brackets [thus]; additions in boldface **thus**):

Recodify existing N.J.A.C. 7:1-2 as **7:30-11** (No change in text.)

SUBCHAPTER [7.] **5.** HAZARDOUS SUBSTANCES DISCHARGE: REPORTS AND NOTICES

Recodify existing N.J.A.C. 7:1-7.1 to 7:1-7.2 as **7:1E-5.1 to 7:1E-5.2** (No change in text.)

[7:1-7.3] **7:1E-5.3** Definitions

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

. . .

"Agent(s) or officer(s) of the municipality" means a duly authorized representative of the municipality or local board of health pursuant to N.J.A.C. [7:1-7.7(e)] **7:1E-5.7(e)**.

. . .

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[7:1-7.4] **7:1E-5.4** General program information

Unless otherwise set forth pursuant to the provisions of this subchapter, all correspondence, questions, advice, requests for copies of the Department's [hazardous discharge report] **Communications Center Notification Report** forms, or other requests regarding this subchapter shall be directed to: Department of Environmental Protection, [Division on Waste Management, Field Operations, Compliance and Enforcement—Headquarters] **Division of Environmental Quality, Bureau of Communications and Support Services,** CN [407] **411**, Trenton, New Jersey 08625, [Attention: N.J.A.C. 7:1-7 Program,] (609) [588-3400] **292-7172**.

[7:1-7.5] **7:1E-5.5** Reporting responsibility of owners or operators of industrial establishments

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

(c) Unless submittted directly to the Department by the industrial establishment pursuant to (a)1[.] above, a copy of the written report required by (b) above shall be sent by the governing body of the municipality pursuant to N.J.A.C. [7:1-7.8(d)] **7:1E-5.8(d)** to:

New Jersey Department of Environmental Protection
[Division of Waste Management
Field Operations Compliance and
Enforcement Headquarters]
Division of Environmental Quality
Bureau of Communications and Support Services
CN [407] **411**
Trenton, New Jersey 08625
[Attention: Assistant Director
N.J.A.C. 7:1-7 Report]

(d) Any remedial actions, which may include sampling, containment, and/or disposal of hazardous substance(s), to be conducted at these sites shall be coordinated with the Department['s Division of Waste Management, Field Operations, Compliance and Enforcement—Headquarters, CN 407, Trenton, New Jersey (609) 588-3400].

[7:1-7.6] **7:1E-5.6** Reporting liability

(a) Any person reporting a hazardous discharge pursuant to N.J.A.C. [7:1-7.5] **7:1E-5.5** shall not, solely by submission of the written report required by N.J.A.C. [7:1-7.5(b)] **7:1E-5.5(b)**, incur liability for the cleanup of the hazardous discharge.

(b) (No change.)

[7:1-7.7] **7:1E-5.7** Reporting responsibility of the department

(a) When the Department obtains any information which leads it to suspect that a hazardous discharge has occurred it shall immediately notify, in writing and orally as specified in this section, the local board of health and the governing body of the municipality in which the hazardous discharge has occurred unless these entities have previously been notified of said hazardous discharge by the local board of health or the governing body of the municipality pursuant to N.J.A.C. [7:1-7.8(a)] **7:1E-5.8(a)**.

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

(e) The Department shall take appropriate action to verify that a hazardous discharge has occurred as suspected, including the authorization of agent(s) or officer(s) of the municipality or local board of health by an appropriate Department official to investigate the site of the suspected hazardous discharge:

1.-2. (No change.)

3. The agent(s) or officer(s) of the municipality shall report all findings to, and coordinate any further actions with, the Department as specified in N.J.A.C. [7:1-7.5(d)] **7:1E-5.5(d)**.

[7:1-7.8] **7:1E-5.8** Reporting responsibility of local officials

(a) Any governing body of a municipality or local board of health shall immediately notify the Department, in writing and orally as specified in this section, upon obtaining any information pursuant to N.J.A.C. [7:1-7.5(a)] **7:1E-5.5(a)** or from any other source that a hazardous discharge has occurred within their jurisdiction unless previously notified of a hazardous discharge by the Department pursuant to N.J.A.C. [7:1-7.7(a)] **7:1E-5.7(a)**.

(b) The governing body of the municipality or local board of health shall provide the Department with information regarding any hazardous discharge pursuant to (a) above on the [hazardous discharge report] **Communications Center Notification Report** forms provided by the Department or their equivalent, except if the information already has been provided for pursuant to N.J.A.C. [7:1-7.5(c)] **7:1E-5.5(c)**.

(c) In addition to the written report required by (b) above, the governing body of the municipality and local board of health shall also immediately notify the Department by telephone at (609) 292-7172. The Department Hotline dispatcher shall be provided with any information available as required by N.J.A.C. [7:1-7.5(b)] **7:1E-5.5(b)**.

(d) The written report required by (a) above shall be sent within [ten] **10** days of discovery of the hazardous discharge as specified in N.J.A.C. [7:1-7.5(c)] **7:1E-5.5(c)**.

[7:1-7.9] **7:1E-5.9** Procedures for inclusion[s] or exemption of groups with SIC codes from the definition of an industrial establishment

(a)-(g) (No change.)

Recodify existing N.J.A.C. 7:1-7.10 as **7:1E-5.10** (No change in text.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council
1990-91 Game Code
Proposed Amendments: N.J.A.C. 7:25-5

Authorized By: Fish and Game Council, Cole Gibbs, Acting Chairman.

Authority: N.J.S.A. 13:1B-29 et seq.

DEP Docket Number: 017-90-04.

Proposal Number: PRN 1990-262.

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

June 12, 1990 at 8:00 P.M.
Mercer County Community College
West Windsor Campus
1200 Old Trenton Road
Audio Visual Building, Room 110
West Windsor, New Jersey

Submit written comments by June 20, 1990 to:

George P. Howard, Director
Division of Fish, Game and Wildlife
Department of Environmental Protection
CN 400
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed 1990-91 Game Code, N.J.A.C. 7:25-5, states when, under what circumstances, in what location, by what means, and in what amounts and numbers, game birds, game animals and fur-bearing animals may be pursued, taken, killed or possessed.

Since the turn of the century, the Game Code has provided a system for the protection, propagation, increase, control and conservation of game birds, game animals, and fur-bearing animals in this State and for their use and development for public recreation and food supply. Yearly revisions based on scientific investigation and research ensure the greatest likelihood of success in reaching these goals.

The proposed amendments include the following revisions:

1. Most hunting season dates are adjusted to correspond with the 1990-91 calendar which takes into account both anticipated differences in hunting activity according to the day of the week, and the effects of the regulatory activities of neighboring states.

2. Weekly turkey permit quotas for Zones 8, 9, 11 and 20 have been increased by 10, 10, 15 and 10 permits respectively. Turkey Hunting Area 13 in eastern Ocean County has been opened and 10 permits have been allocated per hunting period (N.J.A.C. 7:25-5.7).

3. Leftover turkey and deer permits may be applied for during the initial mail-in period (N.J.A.C. 7:25-5.7, 5.28, 5.29, 5.30).

4. All persons, while their hunting licenses are void under authority of N.J.S.A. 23:3-22, are prohibited from making application for or other-

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wise procuring a turkey or deer hunting permit (N.J.A.C. 7:25-5.7, 5.28, 5.29, 5.30).

5. Permit allocations for beaver and otter trapping are adjusted to yield a net increase in order to achieve harvest objectives (N.J.A.C. 7:25-5.9, 5.10).

6. Beaver-otter trapping Zone 10 has been divided into two zones (10 and 16) and beaver-otter trapping Zone 12 has been divided into three zones (12, 17 and 18) in response to local population variations and varying management objectives (N.J.A.C. 7:25-5.9, 5.10).

7. The use of lead shot for waterfowl hunting has been prohibited Statewide and steel shot is required Statewide for all waterfowl hunting (N.J.A.C. 7:25-5.14).

8. The fall bow season is reduced from six weeks to three weeks, October 20-November 9, 1990, in zones 1 and 4 in order to provide for a more equitable distribution of the antlerless deer harvest among all either-sex seasons (N.J.A.C. 7:25-5.25).

9. The criteria for the issuance of additional permit muzzleloader and shotgun seasons permits for specific farms within oversubscribed deer management zones is provided for (N.J.A.C. 7:25-5.28, 5.29, 5.32).

10. Permit muzzleloader, permit shotgun and permit bow season quotas and season lengths are adjusted according to harvest objectives to yield a Statewide net increase in anticipated anterless harvest (N.J.A.C. 7:25-5.28, 5.29, 5.30).

11. The permit muzzleloader season is reduced from fourteen days to seven days, December 15-22, 1990, in zones 1 and 4 and is lengthened by one day in most other zones to help achieve population levels compatible with existing habitat and other land uses (N.J.A.C. 7:25-5.28).

12. Permit shotgun season lengths are increased for specific zones as follows: zero-days to one-day in Zone 26; one-day to three-days in Zones 25, 28, 33 and 47; three-days to six-days in Zones 6, 19, and 27; and, six-days to seven-days in Zones: 5, 7, 8, 10, 11, 12, 41 and 63 (formerly portions of Zone 27 and 29), including the first day of the firearm buck season, December 3, 1990 and December 12, 13, 14, 1990 and January 18, 19, and 26, 1990; for the purpose of achieving antlerless deer harvest objectives in these zones (N.J.A.C. 7:25-5.29).

13. Permit shotgun season lengths are decreased for specific zones as follows: Two-days to one-day in Zones: 37, 52 and 53; three-days to one-day in Zones: 30, 39 and 62; and six-days to three-days in Zone: 15; for the purpose of achieving antlerless deer harvest objectives in these zones (N.J.A.C. 7:25-5.29).

14. Deer management Zone 63, located in Salem County, is created from portions of Zones 27 and 29 for the purpose of establishing a separate deer management zone program (N.J.A.C. 7:25-5.28, 5.29, 5.30).

15. Deer management Zone 64, Monmouth Battlefield State Park located in Monmouth County, is created from portions of Zones 15 and 51 for the purpose of establishing a separate deer management zone program. The shotgun permit season length and quota is modified from a three-day season with 45 permits, to three one-day segments with 45 permits per segment to help ensure season harvest objectives (N.J.A.C. 7:25-5.29).

16. Portions of Deer Management Zones 19 and 23 boundary descriptions have been modified for clarification (N.J.A.C. 7:25-5.29).

17. Deer Management Zone 60, Round Valley Recreation Area located in Hunterdon County, is designated as a separate management zone in order to provide for direct shotgun permit application and issuance. Although the permit shotgun season remains three days, the season structure is modified from three consecutive days to December 3 and 12, 1990 and January 18, 1991 in order to increase the zone harvest (N.J.A.C. 7:25-5.29).

18. The permit bow season and quotas are eliminated in Zones 1 and 3 in order to provide for a more equitable distribution of the antlerless deer harvest among all either-sex seasons and are extended to Zones 31 and 43 in order to increase recreational opportunity for bow hunters (N.J.A.C. 7:25-5.30).

19. The deer hunting hours for Zone 38 are changed from 7:00 A.M.-5:00 P.M. to sunrise to 1/2 hour after sunset to conform to the Statewide shotgun permit deer season hunting hours (N.J.A.C. 7:25-5.31).

20. References to turkey and deer permit fees and application fees have been deleted as these are solely within the purview of the legislature and are subject to change after the promulgation of this Code.

The remaining changes have been made for clarification and correction of typographical errors.

Social Impact

Adjustments in the dates of small game seasons in order to account for 1990 calendar changes are minor with no social impact anticipated.

The relatively limited changes proposed for hunting seasons, permit quotas, and hunting areas should have a minimal adverse social impact, in that hunting activity will be further curtailed in some areas and at some times, from what has been permitted under prior codes.

However, the additional hunting areas and times which have been established, including those for deer and turkey hunting, should have a significant positive impact on increasing hunting opportunity. Adjustments that have been made to deer hunting quotas, season lengths, and hunting hours, should benefit all segments of the public in providing for healthier deer populations, long-term enhanced recreational hunting opportunities, and deer population levels compatible with other land uses.

The positive social impact anticipated includes the conservation, management, and the enhancement of the wildlife resource for continued recreational opportunities.

Economic Impact

There may be a small, short-term adverse economic impact on local retailers serving the hunting population as a result of changes in hunting seasons, permit quotas, and special permit seasons, and a slight adverse impact as a result of the expansion of the designated steel shot from selected areas, to the entire state.

However, these amendments to the Game Code should further the conservation and enhancement of the wildlife resource upon which a significant recreation and commercial industry is dependent, and therefore occasion a long-term economic boon.

Environmental Impact

The proposed amendments should have a positive environmental impact in continuing the conservation, management and enhancement of the State's wildlife resources based on documented changes in their populations, distributions and habitats.

Thus, the State ecosystem is also benefited by the amended rules.

Regulatory Flexibility Analysis

The proposed 1990-91 Game Code imposes reporting and compliance requirements on sportsmen engaged in recreational hunting. These requirements are not, therefore, imposed upon small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Game Code also regulates the activity of trappers, who may engage in such activity for their economic benefit. Such trappers may be considered small businesses. The proposed amendments to trapping rules N.J.A.C. 7:25-5.8 through 5.11 impose no additional reporting, record keeping or compliance requirements. Dates for the 1989-90 season are revised for the 1990-91 season, and the permit limits per zone are revised, where appropriate. The description of Beaver and Otter Zone 10 is revised, and new Zones 16 through 18 are added. These revisions should result in no increased capital cost to trappers, and cause no need for professional services to be engaged, in order to comply.

As there is no increased regulatory burden on trappers due to the proposed amendments, and given the Council's objective to both protect game resources and foster recreational opportunities related to game, no differentiation in requirements to exemptions related to business size are provided.

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

SUBCHAPTER 5. [1989-90] **1990-91** GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supersede the provisions of [1988-89] **1989-90** Game Code.

[(d) The "transportation tag" is defined as the tag portion of the hunting license or special permit which is removed and affixed to the animal immediately upon kill or removal from the trap. It is also a tag supplied by the Division with the beaver and otter trapping license.

(e) The " possession tag" is defined as the tag or metal seal affixed to the animal by Division personnel or designated agent.]

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

1. "Bag limit" means the amount of permitted take per person per season except in a permit season the "bag limit" is the amount of permitted take per permit per season.

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2. "Leftover permits" means those permits within the amount presented as the permit quota remaining after closure of the initial permit-granting process.

3. "Permit quota" means the maximum amount of permits allocated for a given locality, season, or species category.

4. "Possession tag" means the tag or metal seal affixed to the animal by Division personnel or designated agent.

5. "Transportation tag" means the tag portion of the hunting license or special permit which is removed and affixed to the animal immediately upon kill or removal from the trap. It is also a tag supplied by the Division with the beaver and otter trapping license.

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

7:25-5.2 Pheasant—Chinese ringneck (Phasianus colchicus torquatus), English or blackneck (P. c. colchicus, Mongolian (P. mongolicus), Japanese green (P. versicolor); including mutants and crosses of above

(a) The duration for the male pheasant season is November [11] **10**, to December [3, 1989] **1, 1990**, inclusive, and December [11, 1989] **10, 1990** through January [6, 1990] **5, 1991**, excluding December [13, 14 and 15, 1989] **12, 13, and 14, 1990** in those deer management zones in which a shotgun prmit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December [2, 1989] **1, 1990**, inclusive and December [11, 1989] **10, 1990** through March 31, [1990] **1991**, excluding November [10] **9** and December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May and all wildlife management areas is November [11] **10** to December [2, 1989] **1, 1990**, inclusive, and December [11, 1989] **10, 1990** through February [19, 1989] **18, 1990**, excluding December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer managment zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November [11, 1989] **10, 1990** are 8:00 A.M. to 1/2 hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to 1/2 hour after sunset.

(f) (No change.)

(g) The opening of the season on semi-wild preserves coincides with the listed Statewide opening of November [11, 1989] **10, 1990**.

(h) (No change.)

7:25-5.3 Cottontail rabbit (Sylvilagus floridanus), black-tailed jack rabbit (Lepus californicus), white-tailed jack rabbit (L. townsendii), European hare (L. europeus), chukar partridge (Alectoris graeca), and quail (Colinus virginianus)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November [11] **10** through December [2, 1989] **1, 1990**, inclusive, and December [11, 1989] **10, 1990** to February [19, 1990] **18, 1991**, excluding December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December [2, 1989] **1, 1990**, inclusive and December [11, 1989] **10, 1990** through March 31, [1990] **1991**, excluding November [10] **9** and December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November [11, 1989] **10, 1990**, 8:00 A.M. to 1/2 hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to 1/2 hour after sunset.

(e) (No change).

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the hunting of grouse is October [14] **13** through December [2, 1989] **1, 1990**, inclusive, and December [11, 1989] **10, 1990** to February [19, 1990] **18, 1991**, excluding December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized and excluding any extra deer permit season day(s) that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to 1/2 hour after sunset, with the exception of November [11, 1989] **10, 1990** when legal hunting hours are 8:00 A.M. to 1/2 hour after sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (Sciurus carolinensis)

(a) The duration of the season for the hunting of squirrels is October [14] **13** through December [2, 1989] **1, 1990**, inclusive, and December [11, 1989] **10, 1990** to February [20, 1990] **18, 1991**, excluding[,] December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December [2, 1989] **1, 1990**, inclusive, and December [11, 1989] **10, 1990** through March 31, [1990] **1991**, excluding December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to 1/2 hour after sunset, with the exception of November [11, 1989] **10, 1990** when legal hunting hours are 8:00 A.M. to 1/2 hour after sunset.

(e) (No change.)

7:25-5.6 (No change.)

7:25-5.7 Wild turkey (Melagris gallapavo)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or 10 days each. The hunting periods for all hunting areas shall be:

1. Monday, April [23, 1990] **22, 1991**-Friday, April [27, 1990] **26, 1991**

2. Monday, April [30, 1990] **29, 1991**-Friday, [4, 1990] **May 3, 1991**

3. Monday, May [7, 1990] **6, 1991**-Friday, May [11, 1990] **10, 1991**

4. Monday, May [14, 1990] **13, 1991**-Friday, May [18] **17, 1991** and Monday, May [21, 1990] **20, 1991**-Friday, May [25, 1990] **24, 1991**

5. Saturday, April [28, 1990] **27, 1991**; Saturday, May [5, 1990] **4, 1991**; Saturay, May [12, 1990] **11, 1991** and Saturday May [19, 1990] **18, 1991**

(b)-(e) (No change.)

(f) Method: The taking of one male wild turkey per special turkey permit with firearm or bow and arrow is permitted in any designated turkey hunting areas by holders of a special wild turkey permit.

1. Special wild turkey permits will be issued on an individual basis to holders of valid and current firearm or archery hunting licenses. Only one application per person may be submitted for the spring wild turkey season during the initial application period[.] **and only one application per person may be submitted for a leftover permit during the initial application period. All persons, while their hunting licenses**

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are void under authority of N.J.S.A. 23:3-22, are prohibited from making application for, or otherwise procuring a turkey hunting permit.

(g) (No change.)

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1. (No change.)

i.-iv. (No change.)

2. Only one application **for an initial permit and only one application for a leftover permit** may be submitted by any one individual during the prescribed application period. Duplicate applications will cause all applications by an individual to be void.

3. The application form shall be filled in to include: Name, address, [1990] **1991** firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, [1990] **1991**, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for [1990] **1991**, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4. Unless otherwise indicated, [a] **the** permit fee [of $12.00 per applicant] in the form of a check or money order made payable to "Division of Fish, Game and Wildlife", must accompany the completed application form.

5. Unsuccessful applicants will be notified by return of permit fees, less [a] **an** [$2.00] application fee **per permit applied for**. Any permit obtained by fraud is void.

6. Nothing contained herein shall preclude the Division from issuing unfilled permits on a first come-first served basis to any properly licensed bow and arrow hunter, firearm hunter or qualified farmer after the [regular] permit selection [day] **process**.

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any further information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, [1990] **1991**. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1990] **1991** Spring Turkey Hunting Season Permit Quotas are as follows:

[1990] **1991** SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	100	500	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	[50] **60**	[250] **300**	Warren, Hunterdon
9	[50] **60**	[250] **300**	Warren, Hunterdon, Morris
10	25	125	Essex, Middlesex, Morris, Somerset, Union
11	[25] **40**	[125] **200**	Middlesex, Mercer, Hunterdon, Somerset
13	**10**	**50**	**Burlington, Ocean**
14	50	250	Burlington, Ocean, Mercer, Monmouth
15	50	250	Burlington, Camden, Atlantic
16	60	300	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	[50] **60**	[250] **300**	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	[1,210] **1,265**	[6,050] **6,325**	

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

A. Monday, April [23, 1990] **22, 1991**-Friday, April [27, 1990] **26, 1991**

B. Monday, April [30, 1990] **29, 1991**-Friday, May [4, 1990] **3, 1991**

C. Monday, May [7, 1990] **6, 1991**-Friday, May [11, 1990] **10, 1991**

D. Monday, May [14, 1990] **13, 1991**-Friday, May [18, 1990] **17, 1991** and Monday, May [21, 1990] **20, 1991**-Friday, May [25, 1990] **24, 1991**

E. Saturday, April [28, 1990] **27, 1991**; Saturday, May [5, 1990] **4, 1991**; Saturday, May [12, 1990] **11, 1991** and Saturday, May [19, 1990] **18, 1991**

(l) (No change.)

(m) Turkey Hunting Areas are as follows:

1. Turkey Hunting Area No. 1: That portion of Sussex County lying within a continuous line beginning at the intersection of Routes 206 and 519 at Branchville; then northwest along Rt. 206 to its intersection with Rt. [521] **560**; then west along Rt. [521] **560** to its intersection with the Delaware River at Dingman's Ferry; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to Rt. 519; then south along Rt. 519 to the point of beginning at Branchville. The islands of Namanock, Minisink and Mashipacong lying in the Delaware River are included in the Hunting Area.

2.-11. (No change.)

12. Turkey Hunting Area No. 13: That portion of Burlington and Ocean Counties lying within a continuous line beginning at the intersection of the Garden State Parkway and Route 37; then east along Route 37 to the Atlantic Ocean at Seaside Heights; then south along the Atlantic Ocean to Little Egg Inlet; then west along the north shore of Great Bay and the Mullica River to the Garden State Parkway to the point of beginning.

Recodify existing 12.-17. as **13.-18.** (No change in text.)

7:25-5.8 Mink (Mustela vison), muskrat (Ondatra zibethicus) and nutria (Myocaster coypus) trapping only

(a) (No change.)

(b) The duration of mink, muskrat and nutria trapping season is as follows:

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1. Northern Zone: 6:00 A.M. on November 15, [1989] **1990** through March 15, [1990] **1991**, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, [1989] **1990** through March 15, [1990] **1991**, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, [1990] **1991**, inclusive.

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

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, [1990] **1991**, inclusive.

(c) Special Permit: A special [$7.00] permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications shall be received in the Trenton office during the period December 1, [1989] **1990**-December 26, [1989] **1990**. Applicants may apply for only one beaver trapping permit and shall provide their [1989] **1990** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—[7] **11**, Zone 2—[12] **9**, Zone 3—[1] **3**, Zone 4—[4] **5**, Zone 5—3, Zone 6—[10] **18**, Zone 7—3, Zone 8—[2] **1**, Zone 9—3, Zone 10—[11] **5**, Zone 11—[4] **3**, Zone 12—[5] **2**, Zone 13—0, Zone 14—1, Zone 15—0, **Zone 16—3, Zone 17—1, Zone 18—2**. Total [66] **73**. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March [3, 1990] **2, 1991**.

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

7:25-5.10 River otter (Lutra canandensis) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be February 1 through February 28, [1990] **1991**, inclusive.

(c) Special Permit: A special [$7.00] permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period December 1, [1989] **1990**-December 26, [1989] **1990**. Only 1 application per person may be submitted for trapping otter and applicants shall provide their [1988] **1990** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—[5] **8**, Zone 2—[6] **8**, Zone 3—[2] **3**, Zone 4—[4] **5**, Zone 5—4, Zone 6—[5] **9**, Zone 7—3, Zone 8—6, Zone 9—3, Zone 10—[7] **4**, Zone 11—5, Zone 12—[9] **2**, Zone 13—14, Zone 14—7, Zone 15—12, **Zone 16—4, Zone 17—2, Zone 18—5**. Total [92] **104**. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than March [3, 1990] **2, 1991**, where a pelt tag will be affixed and the caracass surrendered.

(f)-(h) (No change.)

(i) Beaver and Otter [Zone Descriptions] **Zones are described as follows**:

1.-9. (No change.)

10. Zone 10: [That portion of Burlington, Camden and Atlantic Counties lying within a continuous line beginning at the intersection of Rt. 623 (Taunton Rd.) and Rt. 541 near Medford, then southeast on Rt. 541 to its intersection with Rt. 532, then east on Rt. 532 to its intersection with Rt. 563 at Chatsworth, then south on Rt. 563 to its intersection with Rt. 30 at Egg Harbor, then northwest on Rt. 30 to its intersection with Rt. 561 near Hammonton, then northwest on Rt. 561 to its intersection with Rt. 73 at Blue Anchor then north on Rt. 73 to its intersection with Spur 536 (Taunton-Hopewell Rd.) near Tansboro then north on Spur 536 to its intersection with Rt. 623 near Taunton Lake, then north on Rt. 623 to its intersection with Rt. 541 near Medford, the point of beginning.] **That portion of Burlington, Camden and Atlantic Counties lying within a continuous line beginning at the intersection of Rt. 73 and Rt. 561 near Blue Anchor, then north on Rt. 73 to its intersection with Rt. 70 at Marlton, then east on Rt. 70 to its intersection with Rt. 541 at Medford, then southeast on Rt. 541 to its intersection with Rt. 532 at Medford Lakes, then east on Rt. 532 to its intersection with Rt. 206, then south on Rt. 206 to its intersection with Rt. 54, then southwest on Rt. 54 to its intersection with Rt. 561 near Hammonton, then northwest on Rt. 561 to its intersection with Rt. 73 near Blue Anchor, the point of beginning.**

11. (No change.)

12. Zone 12: [That portion of Atlantic, Gloucester, Camden and Cape May Counties lying within a continuous line beginning at the intersection of Rt. 322 and Spur 536 at Williamstown, then northeast on Spur 536 to its intersection with Rt. 73 near Tansboro, then south on Rt. 73 to its intersection with Rt. 561 at Blue Anchor, then southeast on Rt. 561 to its intersection with Rt. 30 near Hammonton, then southeast on Rt. 30 to the Absecon Lighthouse in Atlantic City, then south along the Atlantic Ocean to Sea Isle Boulevard (Rt. 625) in Sea Isle, then west on Sea Isle Boulevard to its intersection with Rt. 50 at Seaville, then northwest on Rt. 50 to its intersection with Rt. 557 near Buck Hill, then northwest on 557/555 to its intersection with Rt. 322 near Williamstown, then east on Rt. 322 to its intersection with Spur 536 at Williamstown, the point of beginning.] **That portion of Atlantic, Gloucester and Camden Counties lying in a continuous line beginning at the intersection of Rt. 322 and Spur 536 Williamstown, then northeast on Spur 536 to its intersection with Rt. 73 near Tansboro, then south on Rt. 73 to its intersection with Rt. 561 at Blue Anchor, then southeast on Rt. 561 to its intersection with Rt. 54 near Hammonton, then southwest on Rt. 54 to its intersection with Rt. 557 at Buena, then northwest on Rt. 557 to its intersection with Rt. 322/536 near Williamstown, then east on Rt. 322/536 to its intersection with Spur 536 Williamstown, the point of beginning.**

13.-15. (No change.)

16. Zone 16: That portion of Burlington and Atlantic Counties lying with a continuous line beginning at the intersection of Rt. 206 and Rt. 532 near Tabernacle, then southeast on Rt. 532 to its intersection with Rt. 563 at Chatsworth, then south on Rt. 563 to its intersection with Rt. 30 at Egg Harbor, then northwest on Rt. 30 to its intersection with Rt. 206, then north on Rt. 206 to its intersection with Rt. 532 near Tabernacle, the point of beginning.

17. Zone 17: That portion of Atlantic County lying within a continuous line beginning at the intersection of Rt. 557 and Rt. 54 at Buena, then northeast on Rt. 54 to its intersection with Rt. 30 at Hammonton, then southeast along Rt. 30 to its intersection with Rt. 50 at Egg Harbor, then southeast along Rt. 50 to its intersection with Rt. 557 near Buck Hill, then northwest on Rt. 557 to its intersection with Rt. 54 at Buena, the point of beginning.

18. Zone 18: That portion of Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Rt. 50 and Rt. 557 near Buck Hill, then northeast along Rt. 50 to its intersection with Rt. 30/563 at Egg Harbor, then southeast on Rt. 30/563 to the Absecon Lighthouse in Atlantic City, then south along the Atlantic Ocean to Sea Isle Boulevard (Rt. 625) in Sea Isle, then west on Sea Isle Boulevard to its intersection with Rt. 9 then north on Rt. 9 to its intersection with Rt. 50 at Seaville, then northwest on Rt. 50 to its intersection with Rt. 557 near Buck Hill, the point of beginning.

7:25-5.11 Raccoon (Procyon lotor), red fox (Vulpes vulpes), gray fox (Urocyon cinereoargenteus), Virginia opossum (Didelphis virginiana), striped skunk (Mephitis mephitis), long-tailed weasel (Mustela frenata), short-tailed weasel (Mustela erminea), and coyote (Canis latrans) trapping only

(a) (No change.)

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(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, [1989] **1990** to March 15, [1990] **1991**, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, [1990] **1991** to March 15, [1990] **1991**, inclusive.

(d)-(h) (No change.)

7:25-5.12 (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November [11, 1989] **10, 1990**, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall **not** take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1989-90] **1990-91** hunting seasons. The species of migratory game birds, including waterfowl, that may be taken or possessed and, unless otherwise provided, the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the [1989-90] **1990-91** hunting season.

(d)-(g) (No change.)

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service for the [1989-90] **1990-91** hunting season.

(i)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November [11, 1989] **10, 1990**. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the [1989-90] **1990-91** Game Code.

15.-19. (No change.)

(n) Seasons and [Bag Limits] **bag limits** are as follows:

1. Mourning dove (Zenaida macroura) are protected. There will be no open season on these birds during [1989-90] **1990-91**.

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (R. limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, [1989] **1990**, inclusive.

ii. (No change.)

(o) Woodcock[—]zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for woodcock are sunrise to sunset except on November [11] **10**, when the hunting hours are 8:00 A.M. to sunset.

(p)-(r) (No change.)

7:25-5.14 Special regulation limiting use of shotguns and shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting waterfowl and coot or any snipe, rail or gallinules after the season for hunting waterfowl commences any shotgun shell containing lead shot or lead pellets or have in possession or use any shotgun containing lead shot in [the following designated area of] New Jersey **including all territorial waters**.

[1. The State designated steel shot area for waterfowl hunting includes the counties and adjacent state-owned tidal waters of Atlantic, Cape May, Cumberland, Middlesex, Monmouth, Ocean, Salem, Hudson, Mercer, Gloucester and Burlington.]

[2.]**1.** Only shotgun shells containing steel pellets and only shotguns containing steel pellets shall be used for hunting waterfowl [in the designated steel shot area].

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

7:25-5.15 Crow [(Corvus spp.)] (**Corvus brachyrhynchos**)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August [14, 1989] **13, 1990** through March [24, 1990] **23, 1991**, inclusive, excluding December [4-9] **3-8** and December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to 1/2 hour after sunset, except on November [11, 1989] **10, 1990** when the hours are 8:00 A.M. to 1/2 hour after sunset.

(d) (No change.)

7:25-5.16 (No change.)

7:25-5.17 Raccoon (Procyon lotor) and Virginia opossum (Didelphis virginiana) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, [1989] **1990** to one hour before sunrise on March 1, [1990] **1991**. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December [4-9] **3-8** and on December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized and including any extra permit deer season day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, [1989] **1990** and from March 1 to May 1, [1990] **1991**. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March [10] **9** through September [22, 1990] **21, 1991**. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (Vulpes vulpes) and gray fox (Urocyon cinereoargenteus) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—September [30] **29** through November [10, 1989] **9, 1990**.

2. Firearm or Bow and Arrow—November [11, 1989] **10, 1990** through February [24, 1990] **23, 1991**, excluding December [4-9, 13, 14 and 15, 1989] **3-8, 12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of September [30] **29**-November [10, 1989] **9, 1990**. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to 1/2 hour after sunset on November [10, 1989] **9, 1990** and on other days from sunrise to 1/2 hour after sunset.

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

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7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November [10, 1989] **9, 1990**.

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

7:25-5.21 and 5.22 (No change.)

7:25-5.23 Firearms and missiles, etc.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon-Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their [1990] **1991** firearm hunting license may hunt for squirrels between January [27] **28** and February [19, 1990] **18, 1991** using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December [4-9, 1989] **3-8, 1990**, inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than No. 2 lead fine shot or T (.200 inch) steel shot.) A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the [1989] **1990** six-day firearm deer season and the permit muzzleloader rifle deer season.

2.-3. (No change.)

(g)-(p) (No change.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, on December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in those deer management zones in which a permit shotgun deer season is authorized, on any additional Permit Deer Season Day(s) if declared open, during the Six-Day Firearm Deer Season, or between 1/2 hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

(c)-(f) (No change.)

7:25-5.25 White-tailed deer (Odocoileus virginianus) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September [30] **29**-November [10, 1989] **9, 1990**, inclusive[.], **except in Zones 1 and 4 where the season shall be October 20-November 9, 1990.** Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

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

7:25-5.26 White-tailed deer winter bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from 1/2 hour before sunrise on January 2 to 1/2 hour after sunset on January [26, 1990] **25, 1991**, inclusive, excluding January [19 and 20, 1990] **18 and 19, 1991** in those management zones in which a shotgun permit season is authorized. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

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

7:25-5.27 White-tailed deer six-day firearm season

(a) Duration for this season will be December [4-9, 1989] **3-8, 1990** inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long, except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December [4 and 9, 1989] **3 and 8, 1990, and persons possessing Zone 5, 7, 8, 10, 11, 12, 41 or 63 shotgun permits may also take one deer of either sex and any age per permit on December 3, 1990 subject to the provisions of N.J.A.C. 7:25-5.29.** Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag["]." If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag["]."

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

(e) Hunting Hours: December [4-9, 1989] **3-8, 1990**, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or muzzleloader rifle.

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

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7:25-5.28 White tailed deer muzzleloader rifle, permit season (either sex)

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

(d) Duration of the muzzleloader rifle permit season is December [11, 12, 16, 18-23, 26-30, 1989 in zones 1-36, 40-51, 55, 57, 58 and 61; November 11-18, 1989 (first segment) and December 11-16, 18-21, 26-30, 1989 (second segment) in zones 37 and 52; December 11-30, 1989 and January 13 and 27, 1990 in zones 39 and 62; November 25-December 2, 1989 (first segment) and December 18-23 and 26-30, 1989 (second segment) in zone 53; December 11, 12, 14, 18-23 and 26-30, 1989 in zone 54.] **10, 11, 15, 17-22, 24, 26-29, 31, 1990 in zones 2, 3, 5-36, 40-51, 55, 57, 58, 61 and 63; November 10-17, 1990 (first segment) and December 10-28, 1990 (second segment) in zones 37 and 52; December 10-31, 1990 in zones 39, 54 and 62; November 24-December 1, 1990 (first segment) and December 10-31, 1990 (second segment) in zone 53; December 15-22, 1990 in zones 1 and 4** or any other time as determined by the Director. Legal hunting hours shall be sunrise to 1/2 hour after sunset E.S.T.

(e) (No change.)

(f) Method: The taking of two deer of either sex and any age or the taking of deer as designated for special hunts is authorized to holders of valid permits for muzzleloader rifle permit season in designated deer management zones. Only one deer may be taken in a given day per permit. The taking of two deer of either sex and any age or the taking of deer as designated for special hunts is authorized to holders of valid farmer permits for muzzleloader rifle permit season only on the farm occupied and designated on the permit application. Only one deer may be taken in a given day per permit.

1. Permits for muzzleloader rifle permit season will be issued on an individual basis to holders of valid and current firearm licenses and qualified farmers. Only one application per regular firearm license holder may be submitted, whether for muzzleloader rifle or shotgun permit seasons, during the initial application period. **During the initial application period, regular firearm license holders may also submit one application for either a left-over shotgun or muzzleloader deer permit in the event such permits are available following the initial drawing.** Duplicate or multiple applications will cause all applications to be void. **All persons, while their hunting licenses are void under the authority of N.J.S.A. 23:3-22, are prohibited from making application for, or otherwise procuring a muzzleloader deer permit.**

(g) (No change.)

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season [1989] **1990**" signing as provided on the back, and sending the stub, together with [a $17.00] **the** permit fee [per applicant] and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. Only one application whether for muzzleloader rifle or shotgun permit season, accompanied by the hunting license stub, may be submitted by any regular firearm license holder during the initial permit application period. **During the initial application period, regular firearm license holders may also submit one application for either a left-over shotgun or muzzleloader deer permit in the event such permits are available following the initial drawing.** [Duplicate or multiple permit applications made] **Applications for more than the allowable number of permits** during the initial application period will cause all applications by an individual to be void.

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, [1989] **1990** inclusive. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5. Unsuccessful applicants will be notified by return of permit fees, less [a $2.00] application fee **per permit applied** for. Any permit obtained by fraud shall be void.

6. Successful applicants will receive their permits by mail. Unless otherwise indicated [a] **the** permit fee [of $17.00] in the form of a check or money order, made payable to "Division of Fish, Game and Wildlife,"[,] must accompany the completed application form.

7. Nothing contained herein shall preclude the Division from issuing unfilled permits on a first come-first served basis to any properly licensed hunter or qualified farmer after the [regular] permit selection [day] **process**.

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15 [1989] **,1990**. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4. (No change.)

5. Nothing contained herein shall preclude the Division from issuing unfilled or unclaimed permits on a first come-first served basis to any qualified farmer or property licensed hunter after the [regular] permit selection [day] **process**.

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1989] **1990** Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

[1989] **1990** MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1989]	**1990**	Permit Quota [1989]	**1990**	Portions of Counties Involved
1	[1] **5**	[150]	**104**	[610]	**667**	Sussex
2	1	[109]	**148**	[455]	**480**	Sussex
3	1	[108]	**130**	[690]	**689**	Sussex, Passaic, Bergen
4	[1] **5**	[125]	**80**	[523]	**506**	Sussex, Warren
5	1	[355]	**512**	[1350]	**1400**	Sussex, Warren
6	1	[132]	**188**	700		Sussex, Morris, Passaic, Essex
7	1	[166]	**254**	[620]	**750**	Warren, Hunterdon
8	1	[329]	**473**	[1425]	**1500**	Warren, Hunterdon, Morris, Somerset
9	1	[111]	**116**	400		Morris, Somerset
10	1	[251]	**270**	[850]	**900**	Warren, Hunterdon
11	1	[145]	**150**	[470]	**550**	Hunterdon
12	1	[323]	**327**	[1098]	**1075**	Mercer, Hunterdon, Somerset
13	1	41		[200]	**225**	Morris, Somerset

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14	1	[90]	**134**	600		Mercer, Somerset, Middlesex, Burlington
15	1	[105]	**111**	[455]	**400**	Mercer, Monmouth, Middlesex
16	1	[90]	**120**	[400]	**380**	Ocean, Monmouth
17	1	[70]	**68**	[236]	**200**	Ocean, Monmouth, Burlington
18	1	[40]	**57**	[220]	**221**	Ocean
19	1	[46]	**87**	[250]	**325**	Camden, Burlington
20	1	[51]	**84**	[300]	**250**	Burlington
21	1	[135]	**142**	[511]	**450**	Burlington, Ocean
22	1	[17]	**30**	[100]	**110**	Burlington, Ocean
23	1	[150]	**221**	[700]	**675**	Burlington, Camden, Atlantic
24	1	[152]	**176**	[460]	**502**	Burlington, Ocean
25	1	[77]	**128**	[400]	**475**	Gloucester, Camden, Atlantic, Salem
26	1	[130]	**267**	[515]	**630**	Atlantic
27	1	[159]	**197**	[468]	**513**	Salem, Cumberland
28	1	[98]	**147**	[338]	**380**	Salem, Cumberland, Gloucester
29	1	[135]	**154**	[549]	**362**	Salem, Cumberland
30	1	[22]	**36**	[108]	**114**	Cumberland
31	1	[11]	**15**	[46]	**50**	Cumberland
32	1	[5]	**6**	[30]	**18**	Cumberland
33	1	[28]	**41**	[115]	**145**	Cape May, Atlantic
34	1	[94]	**165**	430		Cape May, Cumberland
35	1	[87]	**132**	[390]	**450**	Gloucester, Salem
36	1	14		140		Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	2	[81]	**85**	[250]	**223**	Burlington (Fort Dix Military Reservation)
38						Morris (Great Swamp National Wildlife Refuge)
39	3	[20]	**14**	[35]	**23**	Monmouth (Earle Naval Weapons Station)
40	1	9		80		Warren (Allamuchy State Park)
41	1	124		360		Mercer, Hunterdon
42	1	[9]	**20**	[40]	**50**	Atlantic
43	1	[19]	**48**	[90]	**107**	Cumberland
44	1	[15]	**20**	50		Cumberland
45	1	[40]	**56**	200		Cumberland, Atlantic, Cape May
46	1	[40]	**38**	125		Atlantic
47	1	[8]	**20**	[50]	**80**	Atlantic, Cumberland, Gloucester
48	1	[37]	**45**	[190]	**200**	Burlington
49	1	[5]	**4**	20		Burlington, Camden, Gloucester
50	1	[23]	**29**	[130]	**175**	Middlesex, Monmouth
51	1	[24]	**38**	[120]	**100**	Monmouth, Ocean
52	2	[22]	**35**	[100]	**63**	Ocean (Fort Dix Military Reservation)
53	4	[7]	**4**	[40]	**30**	Ocean (Lakehurst Naval Engineering Center)
54	[5] **3**	1		[4]	**6**	Morris (Picatinny Arsenal—ARRAD Com)
55	1		**10**	[0]	**40**	Atlantic (Federal Aviation Administration Technical Center)
56				0		Atlantic (Forsythe National Wildlife Refuge)
57	1	[25]	**20**	[50]	**40**	Atlantic (Forsythe National Wildlife Refuge)
58	1	12		60		Burlington, Ocean (Forsythe National Wildlife Refuge)
59				0		Salem (Supawna National Wildlife Refuge)
60						**Hunterdon (Round Valley Recreation Area)**
61	1	24		105		Atlantic (Atlantic County Parks)
62	3	[15]	**3**	[30]	**5**	Monmouth (Fort Monmouth)
63	**1**		**85**	**200**		**Salem**
Total		[4,772]	**6,069**	[19,261]	**19,994**	

(l) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be December [11, 12, 16, 18-23, 26-30, 1989] **10, 11, 15, 17-22, 24, 26-29, 31, 1990**.

2. Indicates the season dates will be November [11-18, 1989] **10-17, 1990** (first segment) and December [11-16, 18-21, 26-30, 1989] **10-28, 1990** (second segment).

3. Indicates the season dates will be December [11-30, 1989 and January 13 and 27, 1990] **10-31, 1990**.

4. Indicates the season dates will be November [25] **24**-December [2, 1989] **1, 1990** (first segment) and December [18-23 and 26-30, 1989] **10-31, 1990** (second segment).

5. Indicates the season dates will be December [11, 12, 14, 15, 18-23 and 26-30, 1989] **15-22, 1990.**

(m) (No change.)

(n) Muzzeloader rifle permit season permits not applied for by September 10, [1989] **1990** will be reallocated to shotgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun permit season (either sex)

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

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 20, 21, [23-26, 28, 31-34, 40, 43-47, 52-54] **23, 24, 26, 30, 32, 34, 37, 39, 40, 43-46, 52-55, and 62**; two deer of either sex and any age with a shotgun permit season permit in Zones 2, 5-17, 19, 22, [27, 29, 30, 35-37, 41, 42, 48-51] **25, 27-29, 33, 41, 42, 47-51, and 63**; three deer of either[-]sex and any age with a shotgun permit season permit in Zones [39,] 55-[59,] 61 and [62] **64**; and, six deer of either sex and any age in Zone 38. Only one deer may be taken in a given day per permit. Persons awarded Zone 9 and 13 shotgun permits may also take a deer with antlers at least three inches long on December [4 or 9, 1989] **3 or 8, 1990** with a regular firearm license, **and persons awarded Zone 5, 7, 8, 10-12, 41 or 63 shotgun permits may also take a deer with antlers at least three inches long on December 3, 1990** subject to the provisions of N.J.A.C. 7:25-5.27. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the permit shotgun deer season is from sunrise to 1/2 hour after sunset E.S.T. on the following dates:

1. December [13, 1989] **12, 1990** in Zones 1, 3, 4, 18, 20, 21, 23-26 [28, 31-34, 40, 43-47] **30-32, 34, 43-46**;

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2. December [13, 14, and 15, 1989] **12, 13 and 14, 1990** in Zones [6, 16, 19, 22, 27, 30, 42, 56-58, 61] **15, 16, 25, 28, 33, 42, 47, 56-58 and 61**;

3. December [13, 14, and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991** in [zones] **Zones** 2, [5, 7, 8, 10, 11, 12, 14, 15, 17, 29, 35, 36, 41, 48-51] **6, 19, 27, 29, 35, 36, 48-51**;

4. December [4, 9, 13, 14, and 15, 1989 and January 19, 20 and 27, 1990 in Zones 9 and 13 only] **3, 12, 13, and 14, 1990 and January 18, 19 and 26, 1991 in Zones 5, 7, 8, 10, 11, 12, 41 and 63**;

5. December [22 and 23, 1989 in Zone 37] **3, 8, 12, 13 and 14, 1990 and January 18, 19 and 26, 1991 in Zones 9 and 13**;

6. December [7, 8 and 9, 1989 and January 4, 5 and 6, 1990 in Zone 38] **29, 1990 in Zones 37 and 52**;

7. December [16, 1989 and January 13 and 27, 1990 in Zones 39 and 62] **6, 7 and 8, 1990 and January 10, 11 and 12, 1991 in Zone 38**;

8. December [23, 1989 in Zone 52] **15, 1990 in Zones 39, 54 and 62**;

9. [December 16, 1989 in Zones 53 and 54] **January 5, 1991 in Zone 53**;

10. December [16, 1989 and January 6 and 13, 1990 in Zone 55] **3, 4, 5, 12, 13 and 14, 1990 and January 18, 19 and 26, 1991 in Zone 59**;

11. December [4, 5 and 6, 1989 (first segment) December 13, 14 and 15, 1989 (second segment); and January 19, 20 and 27, 1990 (third segment) in Zone 59; or] **3 and 12, 1990 and January 18, 1991 in Zone 60**;

12. January 18, 19 and 26, 1991 in Zone 64; or

[12.] **13.** At other times as determined by the Director.

(e) (No change.)

(f) Method: The taking of a deer of either sex and any age with a shotgun under a shotgun permit season permit or a farmer shotgun permit season permit is permitted in designated deer management zones by holders of a shotgun permit season permit and, on their own property, by holders of a farmer shotgun permit season permit.

1. Shotgun permits for shotgun permit season will be issued on an individual basis to holders of valid and current firearm licenses and qualified farmers. Only one application, whether for shotgun or muzzleloader permit season, accompanied by the hunting license stub, may be submitted by regular firearm license holders for the initial permit drawing. **During the initial application period, regular firearm license holders may also submit one application for either a leftover shotgun or muzzleloader permit in the event such permits are available following the initial drawing.** [Duplicate or multiple applications made] **Applications for more than the allowable number of permits** during the initial application period will cause all applications by an individual to be void. **All persons, while their hunting licenses are void under the authority of N.J.S.A. 23:3-22, are prohibited from making application for, or otherwise procuring, a shotgun deer permit.**

(g) (No change.)

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season [1989] **1990**" signing as provided on the back, and sending the stub, together with [a $17.00] **the** permit fee [per applicant] and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. Permits for shotgun permit season will be issued on an individual basis to holders of valid and current firearm licenses. Only one application, whether for shotgun or muzzleloader permit season, accompanied by the hunting license stub, may be submitted by any one individual during the initial application period **and only one application, whether for a leftover shotgun or leftover muzzleloader permit, may be submitted by any one individual during the initial application period.** [Duplicate or multiple application made] **Applications for more than the allowable number of permits** during the initial application period will cause all applications to be void.

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, [1989] **1990**. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

4. Unsuccessful applicants will be notified by return of permit fees less the [$2.00] application fee **per permit applied for**. Any permit obtained by fraud is void.

5. Successful applicants will receive their permits by mail. Unless otherwise indicated, [a] **the** permit fee [of $17.00 applicant] in the form of a check or money order made payable to "The Division of Fish, Game and Wildlife" shall accompany the completed application form.

6. Nothing herein contained shall preclude the Division from issuing unfilled and unclaimed permits on a first come-first served basis to any properly licensed hunter after the [regular] permit selection [day] **process**.

(i) Farmer Shotgun Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, [1989] **1990**. There is no fee required, and all qualifed applicants will receive a farmer, shotgun permit season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1989] **1990** Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

[1989] **1990** SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1989]	**1990**	Permit Quota [1989]	**1990**	Portions of Counties Involved
1	1	249		[1361]	**1245**	Sussex
2	3	[614]	**603**	[1185]	**1376**	Sussex
3	1	[90]	**51**	[782]	**462**	Sussex, Passaic, Bergen
4	1	[66]	**40**	[473]	**267**	Sussex, Warren
5	[3] **4**	[2135]	**2152**	[3833]	**4195**	Sussex, Warren
6	[2] **3**	[287]	**433**	[1287]	**1203**	Sussex, Morris, Passaic, Essex
7	[3] **4**	[860]	**1216**	[1450]	**1962**	Warren, Hunterdon
8	[3] **4**	[2224]	**2694**	[3754]	**4345**	Warren, Hunterdon, Morris, Somerset
9	[4] **5**	[579]	**569**	[965]	**1262**	Morris, Somerset
10	[3] **4**	[1175]	**1650**	[1993]	**2662**	Warren, Hunterdon
11	[3] **4**	[624]	**891**	[1262]	**1437**	Hunterdon
12	[3] **4**	[1508]	**1560**	[2449]	**2736**	Mercer, Hunterdon, Somerset

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13	[4] **5**	[357]	**354**	[750]	**1000**	Morris, Somerset
14	3	[793]	**926**	[1736]	**1954**	Mercer, Somerset, Middlesex, Burlington
15	[3] **2**	[451]	**239**	[902]	**723**	Mercer, Monmouth, Middlesex
16	2	[159]	**114**	[694]	**479**	Ocean, Monmouth
17	3	[307]	**295**	[578]	**469**	Ocean, Monmouth, Burlington
18	1	[31]	**14**	[200]	**136**	Ocean
19	[2] **3**	[130]	**276**	[392]	**552**	Camden, Burlington
20	1	[60]	**36**	[300]	**199**	Burlington
21	1	[59]	**29**	[437]	**234**	Burlington, Ocean
22	2	[38]	**59**	[190]	**215**	Burlington, Ocean
23	1	[75]	**28**	[300]	**210**	Burlington, Camden, Atlantic
24	1	[40]	**26**	[300]	**192**	Burlington, Ocean
25	[1] **2**	[45]	**103**	[365]	**518**	Gloucester, Camden, Atlantic, Salem
26	1	0	**47**	0	**204**	Atlantic
27	[2] **3**	[196]	**368**	[592]	**681**	Salem, Cumberland
28	[1] **2**	[25]	**134**	[160]	**328**	Salem, Cumberland, Gloucester
29	3	[477]	**427**	[933]	**822**	Salem, Cumberland
30	[2] **1**	[46]	**35**	[90]	**105**	Cumberland
31	1	0		0		Cumberland
32	1	0		0		Cumberland
33	[1] **2**	[43]	**25**	[150]	**140**	Cape May, Atlantic
34	1	[24]	**39**	[200]	**232**	Cape May, Cumberland
35	3	[255]	**385**	[500]	**740**	Gloucester, Salem
36	3	39		140		Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	[5] **6**	[43]	**38**	[140]	**179**	Burlington (Fort Dix Military Reservation)
38	[6] **7**	190		600		Morris (Great Swamp National Wildlife Refuge)
39	[7] **8**	[77]	**64**	[60]	**32**	Monmouth (Earle Naval Weapons Station)
40	1	7		80		Warren (Allamuchy State Park)
41	[3] **4**	[586]	**623**	[903]	**1005**	Mercer, Hunterdon
42	2	[24]	**22**	[60]	**49**	Atlantic
43	1	0		0		Cumberland
44	1	[18]	**12**	50		Cumberland
45	1	0		0		Cumberland, Atlantic, Cape May
46	1	15		90		Atlantic
47	[1] **2**	[9]	**27**	[90]	**80**	Atlantic, Cumberland, Gloucester
48	3	[181]	**288**	[427]	**596**	Burlington
49	3	[25]	**32**	[60]	**64**	Burlington, Camden, Gloucester
50	3	[110]	**135**	[420]	**438**	Middlesex, Monmouth
51	3	[62]	**56**	[221]	**217**	Monmouth, Ocean
52	[8] **6**	[15]	**26**	[60]	**51**	Ocean (Fort Dix Military Reservation)
53	9	[10]	**26**	[50]	**47**	Ocean (Lakehurst Naval Engineering Center)
54	[9] **8**	[12]	**13**	[35]	**31**	Morris (Picatinny Arsenal—ARRAD Com)
55	[10] **9**	15		40		Atlantic (Federal Aviation Administration Technical Center)
56	2	28		20		Atlantic (Forsythe National Wildlife Refuge)
57	2	20		40		Atlantic (Forsythe National Wildlife Refuge)
58	2	20		50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59	[11] **10**	60		60		Salem (Supawna National Wildlife Refuge)
60	**11**		**50**		**120**	**Hunterdon (Round Valley Recreation Area)**
61	2	21		105		Atlantic (Atlantic County Parks)
62	[7] **8**	[19]	**10**	[25]	**20**	Monmouth (Fort Monmouth)
63	4	117		225		Salem
64	**12**		**90**	**135**		**Monmouth (Monmouth Battlefield State Park)**
Total		[15,628]	**18,111**	[34,353]	**37,829**	

(l) Shotgun permit season permit not applied for by September 10, [1989] **1990** may be reallocated to muzzleloader rifle, permit season applicants.

(m) The Season Dates [code] **Code** referred in the table in (k) above is as follows:

1. Indicates one-day shotgun permit season—December [13, 1989] **12, 1990**.

2. Indicates three-day shotgun permit season—December [13, 14, and 15, 1989] **12, 13, and 14, 1990**.

3. Indicates six-day shotgun permit season—December [13, 14 and 15, 1989] **12, 13 and 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991**.

4. Indicates [eight] **seven**-day shotgun permit season—December [4, 9, 13, 14, 15, 1989] **3, 12, 13, 14, 1990** and January [19, 20 and 27, 1990] **18, 19 and 26, 1991**.

5. Indicates [a two] **an eight**-day shotgun permit season—December [22 and 23, 1989] **3, 8, 12, 13, 14, 1990 and January 18, 19 and 26, 1991**.

6. Indicates a [six] **one**-day shotgun permit season—December [7, 8 and 9, 1989] **29, 1990** [and January 4, 5 and 6, 1990].

7. Indicates a [three] **six**-day shotgun permit season—December [16, 1989] **6, 7 and 8, 1990** and January [13 and 27, 1990] **10, 11 and 12, 1991.**

8. Indicates a one-day shotgun permit season—December [23, 1989] **15, 1990**.

9. Indicates a one-day shotgun permit season—[December 16, 1989] **January 5, 1991**.

10. Indicates [a] **three** three-day shotgun permit season **segments**—December [16, 1989 and January 6 and 13, 1990] **3, 4 and 5, 1990 (first segment); December 12, 13 and 14, 1990 (second segment); and January 18, 19 and 26, 1991 (third segment)**.

11. Indicates [three] **a** three-day shotgun permit season [segments]—December [4, 5 and 6, 1989 (first segment); December 13, 14 and 15, 1989 (second segment)] **3 and 12, 1990** and January [19, 20 and 27, 1990 (third segment)] **18, 1991**.

12. Indicates three one-day shotgun season segments—January 18, 19, and 26, 1991.

(n) (No change.)

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(o) Permit quotas for Zones 37, 38, 39, 40, [52-59, 61 and 62] **52-62 and 64** are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer management zones are located as follows:

1.-14. (No change.)

15. Zone No. 15: That portion of Monmouth, Mercer and Middlesex Counties lying within a continuous line beginning at the intersection of the New Jersey Turnpike and Rt. 522 near Jamesburg; then south on the Turnpike to its intersection with Rt. 195; then east on Rt. 195 to its intersection with Rt. 537 near Holmson; then northeast on Rt. 537 to its intersection with Rt. 522 in Freehold; then northwest on Rt. 522 to its intersection with the New Jersey Turnpike, the point of beginning. **Monmouth Battlefield State Park is excluded from this zone.**

16.-18. (No change.)

19. Zone No. 19: That portion of Burlington and Camden Counties lying within a continuous line beginning at the intersection of Rt. 530 and Rt. 206 near Birmingham; then south along Rt. 206 to its intersection with Rt. 532, Chatsworth Road; then east along Rt. 532 to its intersection with Buttersworth Bogs Road; then south and west along Buttersworth Bogs Road to its intersection with Bozartown Road; then southwest along Bozartown Road to its intersection with Dingletown Road; then southwest along Dingletown Road [to its intersection with Forked Neck Road] **which becomes Forked Neck Road and curves to the west**; then west along Forked Neck Road to its intersection with Rt. 206; then south along Rt. 206 to its intersection with Rt. 541, Stokes Road; then northwest along Rt. 541 to its intersection with **Willow Grove Road; then southwest on Willow Grove Road to its intersection with Atsion Road; then northwest on Atsion Road to its intersection with** Rt. 534, Jackson Road; then west along Rt. 534 to its intersection with Rt. 73; then north along Rt. 73 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 38; then east along Rt. 38 to its intersection with Rt. 530; then east along Rt. 530 to its intersection with Rt. 206 near Birmingham, the point of beginning.

20.-22. (No change.)

23. Zone No. 23: That portion of Burlington, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rts. 542 and 563 at Green Bank; then west along Rt. 542 to its intersection with Rt. 30 near Hammonton; then northwest along Rt. 30 to its intersection with Rt. 73; then north on Rt. 73 to its intersection with Rt. 534, Jackson Road; then east along Rt. 534 to its intersection with **Atsion Road; then southeast on Atsion Road to its intersection with Willow Grove Road; then northeast on Willow Grove Road to its intersection with** Rt. 541, Stokes Road; then southeast along Rt. 541 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with Forked Neck Road; then east along Forked Neck Road [to its intersection with Dingletown Road] which **becomes Dingletown Road, curving to the northeast**; then northeast along Dingletown Road to its intersection with Bozartown Road; then northeast along Bozartown Road to its intersection with Buttersworth Bogs Road; then east and north along Buttersworth Bogs Road to its intersection with Rt. 532, Chatsworth Road; then east along Rt. 532 to its intersection with Rt. 563 at Chatsworth; then south along Rt. 563 to Rt. 542 the point of beginning at Green Bank.

24.-26. (No change.)

27. Zone No. 27: That portion of Cumberland and Salem Counties lying within a continuous line beginning at the intersection of Rts. 77 and 40 at Pole Tavern; then northwest on Rt. 40 to its intersection with Rt. 48; then west on Rt. 48 through Penns Grove to the Delaware River; then south along the east bank of the [river to Rt. 49 at Pennsville;] **Delaware River to its intersection with the Salem Canal at Deepwater; then eastward along the south bank of the Salem Canal to its intersection with the Salem River; then southward along the west bank of the Salem River to its intersection with Rt. 49 at Salem**; then southeast on Rt. 49 to its intersection with Rt. 540 at Pecks Corner; then east along [Salem County Rt. 32 to its intersection with Rt. 540, then east along] Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to its intersection with Rt. 40 at Pole Tavern, the point of beginning.

28. (No change.)

29. Zone No. 29: That portion of Salem and Cumberland Counties lying within a continuous line beginning with the intersection of Rts. 77 and 49 at Bridgeton; then northwest on Rt. 49 [through Pennsville to the] **to its intersection with Alloway Creek at Quinton; then southwest along the northern bank of the Alloway Creek to its intersection with the** Delaware River; then south along the east bank of the Delaware River to the Cohansey River; then along the northwest bank of the Cohansey River to Bridgeton, the point of beginning.

30.-49. (No change.)

50. Zone No. 50: That portion of Monmouth and Middlesex Counties lying in a continuous line beginning at the intersection of the New Jersey Turnpike and Rt. 522 near Jamesburg; then southeast on Rt. 522 to its intersection with Rt. 537 at Freehold[,]; then southwest on Rt. 537 to its intersection with Rt. 33; then east on Rt. 33 to its intersection with the western edge of the fenced boundary of the Earle Naval Weapons Depot; then north and east along the fenced boundary of the Earle Depot to its intersection with County Route 38 (Wayside Road); then south on County Route 38 to its intersection with Rt. 547; then north on Rt. 547 and to its intersection with the Garden State Parkway; then north on the Garden State Parkway to its intersection with Rt. 36 near Eatontown; then east on Rt. 36 to the Atlantic Ocean; then north along the Atlantic coastline to the Raritan Bay; then south and west along the shore of Raritan Bay to the Raritan River; then continuing west along the south bank of the Raritan River to its intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to its intersection with Rt. 522, the point of beginning. **Monmouth Battlefield is excluded from this zone.**

51.-58. (No change.)

59. Zone **No.** 59: That portion of Supawna Meadows National Wildlife Refuge, U.S. Dept. of the Interior, designated as open for deer hunting, lying within Salem County.

60. Zone No. 60: That portion of Round Valley Recreation Area, designated as open for hunting, lying within Hunterdon County.

Recodify existing 60. and 61. as **61. and 62.** (No change in text.)

63. Zone No. 63: That portion of Salem County lying within a continuous line beginning at the intersection of the Salem Canal and the Delaware River at Deepwater; then eastward along the south bank of the Salem Canal to its intersection with the Salem River; then southward along the west bank of the Salem River to its intersection with Rt. 49 at Salem; then southeastward on Rt. 49 to its intersection with Alloway Creek at Quinton; then, southwest along the northern bank of the Alloway Creek to its intersection with the Delaware River; then northward along the east bank of the Delaware River and New Jersey State line to Finns Point and Fort Mott State Park; then northward along the New Jersey State Line through Killcohook National Wildlife Refuge to the Delaware River; then northwest along the east bank of the Delaware River; then northwestward along the east bank of the Delaware River and New Jersey State line to its intersection with the Salem Canal at Deepwater, the point of beginning. The Supawna Meadows National Wildlife Refuge (Zone 59) is excluded from Zone 63.

64. Zone No. 64: That portion of Monmouth Battlefield State Park, designated as open for hunting, lying within Monmouth County.

7:25-5.30 White-tailed deer bow permit season[,] (either sex)

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

(d) Duration of the bow permit season is from November [11, December 2, 1989 in Zones 1-3, 5-30, 33-36, 39-42, 44-51, 54, 55, 58, 59, 61 and 62; November 20 through December 2, 1989 in Zones 37 and 52; November 11-24, 1989 in Zone 53,] **10-December 1, 1990 in Zones 2, 5-31, 33-36, 39-51, 53-55, 58, 59 and 61-63; November 19-December 1, 1990 in Zones 37 and 52** or any other time as determined by the Director. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(e)-(g) (No change.)

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season [1989] **1990**, signing as provided on the back, and sending the stub together with [a $17.00]

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the permit fee [per applicant] and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. Only one application may be submitted per regular bow license holder during the initial application period **and only one application for a left-over permit may be submitted by any one individual during the initial application period.** Application for more than the allowable number of permits during the initial application period will cause all applications by an individual to be void. **All persons, while their hunting licenses are void under the authority of N.J.S.A. 23:3-22, are prohibited from making application for or otherwise procuring a bow deer permit.**

4. (No change.)

5. Unsuccessful applicants will be notified only by return of permit fees, less [a $2.00] **the** application fee. Any permit obtained by fraud is void.

6. Unless otherwise indicated, [a] **the** permit fee [of $17.00 per applicant] in the form of a check or money order made payable to "Division of Fish, Game and Wildlife" must accompany the completed application form.

7. (No change.)

8. Nothing herein contained shall preclude the Division from issuing unfilled or unclaimed permits on a first-come, first-served basis to any properly licensed hunter or qualified farmer, after the [regular] permit selection [day] **process.**

(i)-(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The [1989] **1990** Bow Permit Season Quotas (Either Sex) are as follows:

[1989] **1990** BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest [1989]	**1990**	Permit Quota [1989]	**1990**	Portions of Counties Involved
1	1	[72]	**0**	[840]	**0**	Sussex
2	1	[76]	**116**	[725]	**835**	Sussex
3	1	[40]	**0**	[750]	**0**	Sussex, Passaic, Bergen
4	1	0		0		Sussex, Warren
5	1	[262]	**326**	[2430]	**2400**	Sussex, Warren
6	1	[81]	**65**	[1000]	**900**	Sussex, Morris, Passaic, Essex
7	1	[127]	**189**	[1150]	**1300**	Warren, Hunterdon
8	1	[305]	**336**	[2500]	**2750**	Warren, Hunterdon, Morris, Somerset
9	1	[108]	**113**	1000		Morris, Somerset
10	1	[190]	**217**	[1300]	**1400**	Warren, Hunterdon
11	1	[77]	**118**	[850]	**940**	Hunterdon
12	1	[221]	**284**	[1800]	**1985**	Mercer, Hunterdon, Somerset
13	1	[68]	**72**	675		Morris, Somerset
14	1	[85]	**102**	1200		Mercer, Somerset, Middlesex, Burlington
15	1	[80]	**81**	[750]	**725**	Mercer, Monmouth, Middlesex
16	1	[59]	**61**	[800]	**600**	Ocean, Monmouth
17	1	[44]	**33**	[450]	**320**	Ocean, Monmouth, Burlington
18	1	[24]	**14**	[250]	**221**	Ocean
19	1	[27]	**34**	[265]	**325**	Camden, Burlington
20	1	[21]	**19**	[250]	**225**	Burlington
21	1	[52]	**23**	[500]	**235**	Burlington, Ocean
22	1	[16]	**21**	190		Burlington, Ocean
23	1	[60]	**49**	[600]	**450**	Burlington, Camden, Atlantic
24	1	[52]	**30**	[500]	**275**	Burlington, Ocean
25	1	[42]	**40**	[465]	**550**	Gloucester, Camden, Atlantic, Salem
26	1	[50]	**35**	[495]	**315**	Atlantic
27	1	[62]	**68**	[525]	**546**	Salem, Cumberland
28	1	[21]	**43**	[200]	**250**	Salem, Cumberland, Gloucester
29	1	[68]	**55**	[650]	**440**	Salem, Cumberland
30	1	[11]	**8**	[110]	**99**	Cumberland
31	1	[0]	**6**	[0]	**50**	Cumberland
32	1	0		0		Cumberland
33	1	[21]	**16**	135		Cape May, Atlantic
34	1	[41]	**49**	[400]	**300**	Cape May, Cumberland
35	1	[76]	**69**	[575]	**650**	Gloucester, Salem
36	1	11		140		Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex
37	2	[12]	**6**	[150]	**103**	Burlington (Fort Dix Military Reservation)
38	1	0		0		Morris (Great Swamp National Wildlife Refuge)
39	1	[11]	**9**	[50]	**34**	Monmouth (Earle Naval Weapons Station)
40	1	4		80		Warren (Allamuchy State Park)
41	1	[51]	**85**	650		Mercer, Hunterdon
42	1	[14]	**5**	[10]	**60**	Atlantic
43	1	[0]	**18**	[0]	**150**	Cumberland
44	1	[5]	**9**	50		Cumberland
45	1	[8]	**15**	150		Cumberland, Atlantic, Cape May
46	1	[4]	**14**	[100]	**75**	Atlantic
47	1	[8]	**15**	80		Atlantic, Cumberland, Gloucester
48	1	[35]	**45**	400		Burlington
49	1	4		40		Burlington, Camden, Gloucester

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50	1	[26]	**35**	[400]	**375**	Middlesex, Monmouth
51	1	[21]	**33**	[300]	**260**	Monmouth, Ocean
52	2	[3]	**2**	[50]	**25**	Ocean (Fort Dix Military Reservation)
53	[3] **1**	[4]	**3**	[40]	**30**	Ocean (Lakehurst Naval Engineering Center)
54	1	[6]	**8**	[28]	**30**	Morris (Picatinny Arsenal—ARRAD Com)
55	1	5		40		Atlantic (Federal Aviation Administration Technical Center)
56		0		0		Atlantic (Forsythe National Wildlife Refuge)
57		0		0		Atlantic (Forsythe National Wildlife Refuge)
58	1	5		50		Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	14		30		Salem (Supawna National Wildlife Refuge)
60						**Hunterdon (Round Valley Recreation Area)**
61	1	14		135		Atlantic (Atlantic County Parks)
62	1	[6]	**4**	[30]	**15**	Monmouth (Fort Monmouth)
63			**28**		**225**	**Salem**
64						**Monmouth (Monmouth Battlefield State Park)**
Total		[2,810]	**3,083**	[27,428]	**25,513**	

(l) The Season Dates Code referred to in the table in (k) above is as follows:

1. Indicates the season dates will be November [11] **10**-December [2, 1989] **1, 1990**.

2. Indicates the season dates will be November [20] **19** through December [2, 1989] **1, 1990**.

[3. Indicates the season dates will be November 11 through November 24, 1989.]

(m) Permit quotas for Zones 37, [38,] 39, 40, 52-[59] **55, 58, 59**, 61 and 62 are contingent upon approval by the appropriate land management agencies for these zones.

(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38).

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

(c) Duration of the Great Swamp Permit Shotgun Season Permit shall be from [7:00 A.M. E.S.T. to 5:00 P.M. E.S.T.] **sunrise to 1/2 hour after sunset** on the following dates: December [7, 8 and 9, 1989] **6, 7 and 8, 1990** and January [4, 5 and 6, 1990] **10, 11 and 22, 1991** or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d)-(i) (No change.)

7:25-5.32 Special Wildlife Management Permits

(a) (No change.)

(b) In granting this special wildlife management permit the Director shall consider any data available to him including, but not limited to, damage being done to crops or property, the biological condition of the animal or any other special management problem.

1. Issuance of additional permit shotgun and muzzleloader season deer permits for specific farms within oversubscribed deer management zones shall be based on the following criteria:

i. The farm must include an area of 10 acres or more, produce a gross income in excess of $500.00, be assessed as farm land and have a documented history of deer damage;

ii. The zone in which the farm is located must be oversubscribed in the initial permit drawing(s);

iii. The permit shall only be valid for the specific farm applied for and shall not be transferable; and

iv. Permits will be issued on the basis of not more than one permit per 10 acres.

(c) (No change.)

7:25-5.33 (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the [1989-90] **1990-91** season. However, hunting with firearms shall be prohibited on November [10, 1989] **9, 1990** on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

7:25-5.35 through 5.38 (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Manifesting and Reporting Requirements for Imported and Exported Hazardous Waste, Small Quantity Generator Requirements and Waste Pesticides Generated by Farmers

Proposed Amendments: N.J.A.C. 7:26-1.4, 7.4, 7.5, 7.6, 8.2, and 8.3

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 016-90-04.

Proposal Number: PRN 1990-263.

Submit comments by July 20, 1990 to:
Daren R. Eppley, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend the State's hazardous waste management rules governing hazardous waste exported to or imported from a foreign country, small quantity generator requirements, and waste pesticides generated by farmers.

The amendments conform to final regulations adopted by the United States Environmental Protection Agency (EPA) on August 8, 1986, at 51 Fed. Reg. 28,664. The Department is required to adopt equivalent amendments in order to maintain EPA authorization to administer the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., for the State.

Exports and Imports of Hazardous Waste

The amendments at N.J.A.C. 7:26-1.4 will add and define the terms "cosignee," "EPA," "EPA Acknowledgment of Consent," "primary exporter," "receiving country," and "transit country." The definition of "hazardous waste hauler" will be changed to "hazardous waste transporter."

The amendment at N.J.A.C. 7:26-7.4(b) will prohibit the export of hazardous waste to a foreign country except in compliance with the provisions of N.J.A.C. 7:26-7 and, specifically, this subsection dealing with notification, foreign consent and the EPA Acknowledgment of Consent.

The amendment at N.J.A.C. 7:26-7.4(c) will establish notification requirements and manifesting procedures to be followed when exporting hazardous waste to a foreign country. The primary exporter will have to notify the Department and EPA 60 days prior to shipment of the hazardous waste off site. The notification will have to identify the type and quantity of waste, frequency and total time period of exporting, the means of transport, points of entry and departure, transit countries, the foreign cosignee, and the ultimate means of treatment, storage, or disposal. The receiving country, prior to shipment, will have to give written

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consent of its intent to accept the hazardous waste prior to shipment. Also, requirements for notification, manifesting, and the return of hazardous waste to the United States when a shipment cannot be delivered to the designated or alternate consignee will be established.

The amendment at N.J.A.C. 7:26-7.4(d) will establish a reporting procedure to be followed when a manifest accompanying a shipment of exported hazardous waste is not returned to the primary exporter within the specified time period, or if the waste is returned to the United States.

The amendment at N.J.A.C. 7:26-7.4(f) will establish recordkeeping requirements for primary exporters of hazardous waste.

The amendment at N.J.A.C. 7:26-7.4(g) will set forth annual reporting requirements for exporters of hazardous waste.

The amendment at N.J.A.C. 7:26-7.5 will establish requirements for transporters of shipments of hazardous waste which are to be exported to or imported from a foreign country. In the case of exports, the hazardous waste would have to be accompanied by a manifest and EPA Acknowledgment of Consent. The transporter would have to return a copy of the manifest to the generator and give a copy of the manifest to United States Customs at the point of departure from the United States.

The amendment at N.J.A.C. 7:26-7.6 will replace the word "must" with "shall" in order to ensure that the rule is interpreted as a directive and will replace forms of the word "hauler" with forms of "transporter." The Department intends to make these uniform changes whenever possible in the rulemaking process.

The amendment at N.J.A.C. 7:26-8.2(a)16 will modify the hazardous waste exclusion for the reclamation of industrial ethyl alcohol so that the exclusion does not apply to industrial ethyl alcohol that is to be reclaimed in a foreign country.

Waste Pesticides Generated by Farmers

The amendment at N.J.A.C. 7:26-8.2(a)24 provides that pesticide wastes generated by farmers are not a hazardous waste if the farmer disposes of the waste on his own farm and in accordance with the pesticide label. Empty pesticide containers are also excluded if the farmer triple rinses each container with a solvent capable of removing the commercial chemical product. Pesticide wastes generated by farmers are already excluded from the requirements for hazardous waste facilities at N.J.A.C. 7:26-9.1(c)5.

Small Quantity Generator Requirements

The amendment at N.J.A.C. 7:26-8.3 will clarify the small quantity generator requirements. The amendments specify that certain requirements must be met in order for a small quantity generator's waste to be exempt from regulation under the State's hazardous waste management rules.

Social Impact

The amendments affecting hazardous waste exports will have a positive social impact. The amendments will help ensure that exported hazardous wastes are being treated, reused or disposed of in an environmentally safe, acceptable manner. The amendments will enable foreign governments to ensure that hazardous waste from the United States, specifically New Jersey, is not being improperly disposed of in their countries, by ensuring that the receiving country is aware of and approves of the shipment. The amendments impose additional manifesting and reporting requirements on those businesses shipping hazardous waste beyond national borders.

The amendments affecting imports of hazardous waste, small quantity generator requirements, and waste pesticides generated by farmers are minor clarifications of existing rules; therefore, no significant social impact from these amendments is expected.

Economic Impact

The amendments affecting exports of hazardous waste may have a limited adverse economic impact on certain businesses due to increased administrative and clerical expenses which companies exporting hazardous waste may incur in meeting the added reporting and notification requirements. However, because exported hazardous waste is currently required to be manifested and additional equipment is not needed, the Department anticipates that the regulated community will not be required to make major capital and other expenditures in order to comply with these amendments.

The amendments affecting imports of hazardous waste, small quantity generator requirements, and waste pesticides generated by farmers are minor clarifications of existing rules; therefore, no significant economic impact from these amendments is expected.

Environmental Impact

The amendments affecting exports of hazardous waste will have a positive environmental impact. The amendments will give foreign governments prior notice and power to reject or restrict hazardous waste shipments from the United States to destinations in their countries. Since the amendments facilitate better tracking of exported hazardous waste, they afford increased protection to the environment.

The amendments affecting imports of hazardous waste, small quantity generator requirements, and waste pesticides generated by farmers are minor clarifications of existing rules; therefore, no significant environmental impact from these amendments is expected.

Regulatory Flexibility Analysis

These amendments will apply to generators exporting, facilities importing, and transporters of hazardous waste as well as small quantity generators and farmers utilizing pesticides. In the cases of facilities importing hazardous waste, small quantity generators and farmers utilizing pesticides, the Department has determined, in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that these amendments will not impose additional reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Act, because the amendments are only technical corrections.

In the case of transporters of hazardous waste and generators ("primary exporters") exporting hazardous waste, several small businesses, as defined by the Act, engaging in these activities may be impacted. In order to comply with these amendments, affected small businesses will have to comply with the requirements described in the Summary above and set forth at N.J.A.C. 7:26-7.4 and 7.5. Since, at present, generators and transporters are subject to manifesting, recordkeeping, and reporting requirements, the amendments specifically addressing exports of waste are consistent with and a continuation of the present regulatory scheme for manifesting, recordkeeping, and reporting. Therefore, initial and annual capital costs for small businesses to comply with these requirements is expected to be minimal.

In developing these amendments, the Department has balanced the needed to protect the environment against the economic impact of the proposed amendments and has determined that to minimize the impact of the rules would endanger the environment, public health, and public safety. Furthermore, as stated in the Summary above, the Department is required to promulgate equivalent amendments to the Federal regulations in order to maintain EPA authorization to administer the State's hazardous waste management program under RCRA. Since the Federal regulations do not allow exemptions from compliance with these rules for small businesses, the Department may not grant such exemptions and remain equivalent; therefore, no exemption, from coverage is provided.

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

7:26-1.4 Definitions

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

. . .

"Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which hazardous waste will be sent.

. . .

"EPA" or USEPA" means the United States Environmental Protection Agency.

"EPA Acknowledgement of Consent" means the cable communication sent to the United States Environmental Protection Agency from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

. . .

"Hazardous waste [hauler] **transporter**" means any person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

. . .

"Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with N.J.A.C. 7:26-7.4(a) which specifies a treatment, storage, or disposal

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facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

. . .

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

. . .

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

. . .

7:26-7.4 Hazardous waste generator responsibilities

(a) (No change.)

(b) Any person who exports hazardous waste to a foreign [county] **country** [or imports hazardous waste from a foreign country into New Jersey must] **shall** comply with the requirements of this subchapter and with the special requirements of this section, **including recordkeeping and annual reporting requirements at (f) and (g) below.**

1. A person shall not export hazardous waste unless:

i. Notification is provided in accordance with (c) below;

ii. The receiving country has consented to accept the hazardous waste;

iii. A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest or for exports by water (bulk shipment) to the shipping paper; and

iv. The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

> **Note: In conjunction with the United States Department of State, EPA will provide a complete notification, described in (c) below, to the receiving country and any transit countries. Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of this subsection (b). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.**

[(c) When shipping hazardous waste outside the United States, the generator shall:

1. Notify the Administrator of the United States Environmental Protection Agency (USEPA) and the Department in writing four weeks before the initial shipment of hazardous waste to each county in each calendar year;

i. The waste must be identified by its EPA hazardous waste identification number and its United States Department of Transportation shipping description;

ii. The name and address of the foreign consignee must be included in this notice;

iii. These notices must be sent to: Hazardous Waste Export, Division of Oceans and Regulatory Affairs (A-107), United States Environmental Protection Agency, Washington, D.C. 20460 and New Jersey Department of Environmental Protection, Division of Waste Management Manifest Section, CN 028, Trenton, New Jersey 08625.

2. Require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee shall be used for this purpose.

3. Meet the requirements under this subchapter for the manifest, except that:

i. In place of the name, address, and EPA identification number of the designed facility, the name and address of the foreign consignee must be used;

ii. The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

4. Obtain the manifest as directed under N.J.A.C. 7:26-7.3(a)4.]

(c) When shipping hazardous waste outside the United States, a primary exporter shall:

1. Provide a complete notification to the EPA and a copy to the Department at least 60 days prior to the date the initial shipment is intended to be shipped off site. This notification may cover a period of up to 12 months.

i. Complete notification shall be in writing, signed by the primary exporter and contain, at a minimum, the following information:

(1) The name, mailing address, telephone number, and EPA identification number of the primary exporter.

(2) By consignee, for each hazardous waste type:

(A) The name and site address of the consignee and any alternative consignee;

(B) A description of the hazardous waste and the EPA hazardous waste number (from 40 C.F.R. Pt. 261, Subparts C and D), United States Department of Transportation proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste identified in 49 C.F.R. Pts. 171-177;

(C) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;

(D) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(E) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(F) A description of the means by which each shipment of the hazardous waste will be transported (for example, mode of transportation (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(G) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (for example, land or ocean incineration, other land disposal, ocean dumping, recycling); and

(H) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

2. Upon request by EPA, furnish to EPA any additional information which a receiving country requests in order to respond to a notification;

3. Send the notification to the Office of International Activities (A-106), EPA, 401 M Street, SW, Washington, D.C. 20460 and a copy to the New Jersey Department of Environmental Protection, Division of Hazardous Waste Management Manifest Section, CN 028, Trenton, New Jersey 08625, with "Attention: Notification to Export" prominently displayed on the front of each envelope. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (c)1 above. Where a claim of confidentiality is asserted with respect to any notification information required by (c)1 above, EPA may find the notification not complete until such a claim is resolved in accordance with 40 C.F.R. 260.2;

4. Provide EPA, the Department, and the receiving country through EPA with a written renotification of any change in the conditions specified in the original notification, including any exceedance of the original estimate of the quantity of hazardous waste, except that renotification is not required for changes of the telephone number reported under (c)1i(1) above, decreases in the quantity of hazardous waste reported under (c)1i(2)(D) above, or changes in the means of transportation reported under (c)1i(2)(F) above;

5. Not ship the hazardous waste prior to obtaining an EPA Acknowledgment of Consent, acknowledging the receiving country's consent to the changes requiring renotification, except that the receiving country's consent is not required for changes in the transit country information required under (c)1i(2)(E) or (c)1i(2)(H) above;

6. Obtain the manifest in accordance with N.J.A.C. 7:26-7.3(a)4, and complete the manifest in accordance with (a)4 above, except as modified by the requirements below:

i. In lieu of the name, site address, and EPA identification number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;

ii. In Special Handling Instructions and Additional Information, the primary exporter shall identify the point of departure from the United States;

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iii. In lieu of the name, site address and EPA identification number of a permitted alternate facility, the primary exporter shall enter the name and site address of any alternate consignee;

iv. The following statement shall be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent."; and

v. In lieu of the requirements of (a)6 above, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

(1) Renotify EPA and the Department, in accordance with (c)4 above, of a change in the conditions of the original notification to allow shipment to a new consignee and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

7. Attach a copy of the EPA Acknowledgment of Consent to the manifest required to accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with an EPA Acknowledgment of Consent which shall accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the copy of the EPA Acknowledgment of Consent to the shipping paper;

i. The hazardous waste shipment shall conform to the terms of the receiving country's written consent as stated in the EPA Acknowledgment of Consent (See (b)1iv above);

8. Provide the transporter with an additional copy of the manifest for delivery to the United States Customs official at the point the hazardous waste leaves the United States in accordance with N.J.A.C. 7:26-7.5(d)9iii; and

9. Require the consignee to confirm in writing the delivery of the hazardous waste to consignee's facility and to describe any significant discrepancies (as defined in 40 C.F.R. §264.72(a) for purposes of this section only) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(d) [A generator who ships hazardous waste outside the United States must] **In lieu of the requirements of (h) below, a** [generator] **primary exporter shall** file an Exception Report [(see], **in accordance with** (h) below[)], **with the Administrator of EPA and a copy to the Department** if:

1. The [generator] **primary exporter** has not received a copy of the manifest signed by the [hauler] **transporter** stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial [hauler] **transporter**; [or]

2. Within 90 days from the date the waste was accepted by the initial [hauler] **transporter**, the [generator] **primary exporter** has not received written confirmation from the foreign consignee that the hazardous waste was received[.] **in accordance with (c)9 above; or**

3. The waste is returned to the United States.

(e) (No change.)

(f) Recordkeeping requirements are as follows:

1. A generator [must] **shall** keep a copy of each manifest, signed in accordance with (a)5 above, for three years, and a signed copy from the owner and operator of the facility which received the waste. The signed copy [must] **shall** be retained as a record for at least three years from the date the waste was accepted by the initial [hauler] **transporter**.

2. A generator [must] **shall** keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1).

i. For all exports a primary exporter shall:

(1) Keep a copy of each notification of intent to export sent in accordance with (c)1 above for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent received in accordance with (c)5 above for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste received from the consignee in accordance with (c)9 above for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report submitted in accordance with (g) below for a period of at least three years from the due date of the report.

3. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department **or USEPA**.

(g) Annual reporting requirements are as follows:

1.-3. (No change.)

4. Any person exporting hazardous waste shall file with **the EPA and** the Department no later than March 1 of each calendar year, a report summarizing the types, quantities, frequency and ultimate destination of all such hazardous waste exported during the previous calendar year. **The report shall include the following information:**

i. The EPA identification number, name, and mailing and site address of the exporter;

ii. The calendar year covered by the report;

iii. The name and site address of each consignee;

iv. By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, the United States Department of Transportation (DOT) hazard class, the name and USEPA identification number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

v. Waste minimization information, which shall include the following:

(1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years dating to 1984 and, to the extent such information is available, for years prior to 1984; and

vi. A certification signed by the primary exporter which states:

"I certify under penalty of law 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. I am aware that there are significant civil and criminal penalties for submitting false information including the possibility of fine and/or imprisonment."

5. Reports required under (g)4 above shall be sent to: Office of the International Activities (A-106), United States Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 and New Jersey Department of Environmental Protection, Division of Hazardous Waste Management Manifest Section, CN 028, 401 East State Street, Trenton, New Jersey 08625.

(h) Exception reporting requirements are as follows:

1. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial [hauler must] **transporter shall** contact the [hauler] **transporter** and/or the owner or operator of the designated facility to determine the status of the hazardous waste and the Department at 609-292-[8341] **7081** to inform the Department of the situation.

2. A generator [must] **shall** submit an Exception Report to the Department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial [hauler] **transporter**. The Exception Report [must] **shall** include:

i.-ii. (No change.)

3.-4. (No change.)

(i)-(j) (No change.)

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7:26-7.5 Hazardous waste transporter responsibilities

(a) This section applies to all hazardous waste transporting, including the transporting of hazardous waste fuels[, except for the] **and the import or export of hazardous waste from or to a foreign country. This section does not apply to the** transportation of hazardous waste from one point to another on the site where the hazardous waste is generated, stored, or disposed. Hazardous waste transporter requirements are also found at N.J.A.C. 7:26-3.4(d), (e), (f), and (i).

(b) A [hauler] **transporter** of hazardous waste [must] **shall** also comply with N.J.A.C. [7:25-7.4] **7:26-7.4** if the [hauler] **transporter**:

[1. Transports hazardous waste into the United States from abroad; or]

[2.]**1.** (No change in text.)

[3.]**2.** Accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c).

i. A [hauler] **transporter** of hazardous waste who accepts a hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall compile a list of sites corresponding to each manifested shipment at which the [hauler] **transporter** accepts these hazardous wastes.

ii. The list of sites at which the [hauler] **transporter** accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall contain the waste owner's name and address, the address of the site, the quantity of waste accepted at the site, and the identification numbers of the manifest corresponding to the list.

iii. The [hauler] **transporter** shall attach a copy of the site list to the copy of the manifest and forward these to the Department in compliance with N.J.A.C. 7:26-7.4. The [hauler] **transporter** shall also retain a copy of this list on file for a period of three years and shall make this list available, upon request, to representatives of the New Jersey Department of Environmental Protection.

iv. The [hauler] **transporter** shall obtain a signed receipt from each site at which he accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, or X727 from generators exempted by N.J.A.C. 7:26-7.7(b) or (c), retain a copy of these receipts on file for a period of three years, and shall make these receipts available to the Department upon request.

v. The [hauler] **transporter** shall notify the USEPA and update the [hauler's] **transporter's** notification of hazardous waste activities to include generator activities in addition to [hauler] **transporter** activities.

(c) License issuance, renewal and revocation requirements are as follows:

1. Prior to operation, a hazardous waste [hauler] **transporter** shall obtain a hazardous waste [hauler] **transporter** license from the Department. A "hazardous waste [hauler] **transporter** license" is a form of approved registration, and shall be deemed the equivalent of an "approved registration" under N.J.S.A. 13:1E-5.

2. The application for a hazardous waste [hauler] **transporter** license shall be executed on forms provided by the Department, and shall state such information as required below, as well as any additional information that the Department may require. This information includes, but is not limited to, the following:

i.-iii. (No change.)

3. After July 2, 1984, any person who files an application for a hazardous waste [hauler] **transporter** license shall submit with the application the disclosure statement described in N.J.A.C. 7:26-16.4. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d).

4. (No change.)

5. Every hazardous waste [hauler] **transporter** license issued by the Department shall indicate on its face an annual renewal/expiration date, which shall be September 30. Prior to October 1 in each calendar year, each licensee shall submit to the Department a statement updating the information contained in the license application. Such information shall be submitted on forms supplied by the Department. In no case shall the submission of an updated licensing statement alter the conditions under which the license was granted.

6.-7. (No change.)

8. No person shall be issued a hazardous waste [hauler] **transporter** license nor shall any hazardous waste [hauler] **transporter** license be renewed if the applicant or licensee has failed to provide the accurate and complete information required to be submitted on the application for issuance or the updating statement for renewal.

9. No person shall be issued a hazardous waste [hauler] **transporter** license if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

10. The Department, after notice and opportunity for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, may revoke the license of a hazardous waste [hauler] **transporter** for the causes listed in this paragraph which are in addition to, and not a limitation of, any disqualifying reasons set forth in N.J.A.C. 7:26-16.8 and 16.9:

i.-iv. (No change.)

(d) General requirements are as follows:

1. A [hauler must] **transporter shall** not transport hazardous wastes without having received an EPA identification number.

2. A [hauler may] **transporter shall** not accept hazardous waste from a generator unless it is accompanied by a manifest, properly completed with all information required by State and Federal law and rules and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-7.4. **In the case of exports, the transporter shall not accept such waste from a primary exporter or other person:**

i. If the transporter knows that the shipment does not conform to the EPA Acknowledgment of Consent; and

ii. Unless, in addition to a manifest signed in accordance with the provisions of N.J.A.C. 7:26-7.4(a)5, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

3. The hazardous waste [hauler] **transporter** shall not accept hazardous waste from a generator or from another [hauler] **transporter** if it is not labeled as set forth at N.J.A.C. 7:26-7.2(a) or if the hazardous waste [,] does not reasonably fit the description of the manifest.

4. Before transporting the hazardous waste and in accordance with instructions on the manifest, the [hauler must] **transporter shall** sign and date the manifest, acknowledging acceptance of the hazardous waste from the generator. The [hauler must] **transporter shall** return a signed copy to the generator before leaving the generator's property.

5. The [hauler must] **transporter shall** ensure that the manifest accompanies the hazardous waste. **In the case of exports, the transporter shall ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.**

6. A [hauler] **transporter** who delivers a hazardous waste to another [hauler] **transporter** or to the designated facility [must] **shall**:

i. Obtain the date of delivery and the handwritten signature of that [hauler] **transporter** or of the owner and operator of the designated facility on the manifest; [and]

ii. (No change.)

iii. Give the remaining copies of the manifest to the accepting [hauler] **transporter** or designated facility.

7. The requirements of (d)5 and (d)6 above do not apply to water (bulk shipment) [haulers] **transporters** if:

i. The hazardous waste is delivered by water (bulk shipment) to the designated facility; [and]

ii. A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification and signature) **and, for exports, an EPA Acknowledgment of Consent** accompanies the hazardous waste; [and]

iii. The delivering [hauler] **transporter** obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; [and]

iv. The person delivering the hazardous waste to the initial water (bulk shipment) [hauler] **transporter** obtains the date of delivery and signature of the water (bulk shipment) [hauler] **transporter** on the manifest and forwards it to the designated facility; and

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v. A copy of the shipping paper or manifest is retained by each water (bulk shipment) [hauler] **transporter**.

8. For shipments involving rail transportation, the requirements of (d)5, 6 and 7 above do apply and the following requirements do apply:

i. When accepting hazardous waste from a non-rail [hauler] **transporter**, the initial rail [hauler must] **transporter shall**:

(1) (No change.)

(2) Return a signed copy of the manifest to the non-rail [haulers] **transporters**;

(3) Forward the approved manifest form to:

(A) The next non-rail [hauler of] **transporter, if** any; [or]

(B) (No change.)

(C) The last rail [hauler] **transporter** designated to handle the waste in the United States[.]; **and**

(4) (No change.)

ii. Rail [haulers must] **transporters shall** ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) **and, for exports, an EPA Acknowledgment of Consent** accompanies the hazardous waste at all times;

iii. Intermediate rail [haulers] **transporters** are not required to sign either the manifest or shipping paper;

iv. When delivering hazardous waste to the designated facility, a rail [hauler must] **transporter shall**:

(1)-(2) (No change.)

v. When delivering hazardous waste to a non-rail [hauler] **transporter** a rail [hauler must] **transporter shall**:

(1) Obtain the date of delivery and the handwritten signature of the next non-rail [hauler] **transporter** on the manifest; and

(2) (No change.)

vi. Before accepting hazardous waste from a rail [hauler] **transporter**, a non-rail transporter [must] **shall** sign and date the manifest and provide a copy to the rail [hauler] **transporter**.

9. [Haulers] **Transporters** who transport hazardous waste out of the United States [must] **shall**, in addition to all other applicable requirements of this subchapter [, indicate on the manifest the date the hazardous waste left the United States.]**:**

i. Indicate on the manifest the date the hazardous waste left the United States;

ii. Return a signed copy of the manifest to the generator; and

iii. Give a copy of the manifest to a United States Customs Official at the point of departure from the United States.

10.-19. (No change.)

(e) The Department and its authorized representatives shall have the power to enter and inspect vehicles [hauling] **transporting** or licensed to [haul] **transport** hazardous waste, while in operation on the highways of this State or at the [premise] **premises** or places of business of the owner or lessee of such vehicles.

(f) An unauthorized discharge of hazardous waste during transportation requires the following:

1. The hazardous waste [hauler] **transporter** shall:

i.-iv. (No change.)

2. If a discharge of hazardous waste occurs during transportation and an official (Federal, State or local government) acting within the scope of official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by [haulers] **transporters** who do not have EPA identification numbers and without the preparation of a manifest.

3. An air, rail, highway or water [hauler] **transporter** who has discharged hazardous waste [must] **shall**:

i.-iii. (No change.)

(g) It shall be considered a violation of this section for a hazardous waste [hauler] **transporter** to:

1.-3. (No change.)

(h)-(i) (No change.)

7:26-7.6 Hazardous waste facility operator responsibilities

(a) General requirements are as follows:

1. Every facility owner or operator [must] **shall** obtain an EPA identification number from the Department.

2. Except as hereinafter provided, the facility operator shall only accept hazardous waste shipments which are properly labeled and marked in accordance with these rules, and which are accompanied by a properly completed manifest unless no manifest is required pursuant to N.J.A.C. 7:26-8[.1 et seq]. All manifests for waste shipments destined for New Jersey [must] **shall** contain all elements of information listed in N.J.A.C. 7:26-7.4(a)4.

3. (No change.)

4. If after acceptance of the hazardous waste delivery, the facility operator determines that the waste is not as described in the manifest, the operator shall:

i. Attempt to reconcile the discrepancy with the waste generator or [hauler] **transporter**; [andler]

ii.-iii. (No change.)

5. The manifest facility [may] **shall** not ship the waste received to another facility unless prior written approval from the generator of the waste is obtained and all required manifest forms are executed.

6. (No change.)

(b) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his [/] **or** her agent, [must] **shall**:

1.-3. (No change.)

4. Immediately give the [hauler] **transporter** at least one copy of the signed manifest;

5.-7. (No change.)

(c) When importing hazardous waste from a foreign country, a person [must] **shall** meet all the requirements of this subchapter [for the manifest] **and this section. The manifest for imported hazardous waste shall be completed in accordance with N.J.A.C. 7:26-7.3** except that:

1. In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number [must] **shall** be used.

2. In place of the generator's signature on the certification statement, the United States importer or his/her agent [must] **shall** sign and date the certification and obtain the signature of the initial [hauler] **transporter**.

3. (No change.)

(d) If a facility receives, from a rail or water (bulk shipment) [hauler] **transporter**, hazardous waste which is accompanied by a shipping paper containing all information required on the manifest (excluding the EPA identification numbers, generator's certification and signatures), the owner or operator of the facility [must] **shall**:

1.-2. (No change.)

3. Immediately give the rail or water (bulk shipment) [hauler] **transporter** at least one copy of the manifest or shipping paper (if the manifest has not been reviewed); and

4. Within 30 days after delivery, send a copy of the signed and dated shipping paper to the generator; however, if the manifest has not been received within 30 days after delivery the owner or operator, or the owner's or operator's agent, [must] **shall** send a copy of the shipping paper signed and dated to the generator; and

5. (No change.)

(e) It shall be considered a violation of this section for a hazardous waste facility operator, or any other person, to:

1. (No change.)

2. Accept waste from a hazardous waste [hauler] **transporter** which is not authorized by the Department to transport that waste; or

3. (No change.)

(f) Reporting and recordkeeping requirements are as follows:

1. (No change.)

2. The owner or operator [must] **shall** prepare and submit two copies of an annual report to the Department by March 1 of each year, except for owners and operators of industrial waste management facilities which are subject to N.J.A.C. 7:14A-4.6. The report [must] **shall** include:

i.-iv. (No change.)

v. For each type of hazardous waste accepted, a report of the total quantity received and the quantities consigned to each treatment, recovery, or disposal process used. The report shall include the quantities of each waste type placed into storage and removed from

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storage during the reporting period. For off-site facilities, this information [must] **shall** be listed by the EPA identification number of each generator;

vi.-viii. (No change.)

ix. For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report [must] **shall** give the name and address of the foreign generator.

3. (No change.)

(g) (No change.)

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-15. (No change.)

16. Reclaimed industrial ethyl alcohol regulated by the Federal Bureau of Alcohol, Tobacco, and Firearms in the Federal Treasury Department**, except this exclusion does not apply in the case of exports; whereupon the person initiating a shipment for reclamation in a foreign country, any intermediary and/or transporter shall comply with N.J.A.C. 7:26-7.4(b) through (d), and 7.5(d), unless provided otherwise in an international agreement as specified in 40 C.F.R. 262.58**;

17.-21. (No change.)

22.-23. (Reserved.)

24. Waste pesticides generated by farmers from their own use, provided they are disposed of on-site, at the farm which generated the waste, in a manner consistent with the disposal instructions on the pesticide label. Empty pesticide containers are also excluded, provided each container is triple rinsed using a solvent capable of removing the commercial chemical product.

(b) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a) (No change.)

(b) Except for those wastes identified in (d) and (e) below, **and provided the requirements at (f) below are met,** a small quantity generator's hazardous wastes are not subject to regulation under N.J.A.C. 7:26-7[.1 et seq.] and N.J.A.C. 7:26-9[.1 et seq.] through 11[.1 et seq.].

(c) (No change.)

(d) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through [11.1 et seq.] **12. If the acutely hazardous waste in a calendar month is equal to or less than those quantities set forth below, then the small quantity generator's quantities of acutely hazardous waste are not subject to regulation under N.J.A.C. 7:26-7 through 12 provided the requirements at (f) below are met.**

1. A total of one kilogram of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15(a)5[.]**; or**

2. (No change.)

(e) (No change.)

(f) In order for hazardous waste generated by a small quantity generator**, in quantities equal to or less than those described at (a) above or at (d) above for acutely hazardous waste,** to be excluded from full regulation under this section, the generator [must] **shall**:

1.-3. (No change.)

(g)-(i) (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Regulated Medical Waste Generator Fees

Proposed Amendment: N.J.A.C. 7:26-3A.8

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 13:1E-1 et seq., particularly 13:1E-6, and 13:1E-48.1 et seq., particularly 13:1E-48.7.

DEP Docket Number: 019-90-04.

Proposal Number: PRN 1990-271.

A **public hearing** concerning these amendments will be held on:
Tuesday, June 5, 1990 at 9:00 A.M.
Thomas A. Edison College
101 West State Street
Trenton, New Jersey

Submit written comments by June 20, 1990 to:
Daren R. Eppley, 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 is proposing to amend the Regulated Medical Waste rules at N.J.A.C. 7:26-3A to reflect legislative changes made to the Comprehensive Regulated Medical Waste Act (Comprehensive Act), N.J.S.A. 13:1E-48.1 et seq. This amendment will affect only the generator fee portion of the regulated medical waste program.

On January 2, 1990, then-Governor Kean signed into law an amendment to the Comprehensive Act, P.L. 1989 c.240. The amendment requires the Department of Environmental Protection to set annual fees based on the volume of the regulated medical waste produced by the generator. This amendment also set fee maximums which could be assessed to five categories of generators. The proposed amendment at N.J.A.C. 7:26-3A.8 will incorporate the five categories and fee maximums set by the Legislature.

Social Impact

The overall social impact of the amendment will be minimal. The maximum amounts set for annual fees will not affect the social impact of the existing regulated medical waste program, but, instead, will allow the Departments of Environmental Protection and Health to continue working toward the important goals of the Comprehensive Act by properly regulating the management and disposal of medical waste and those who generate, transport, or dispose of it.

Economic Impact

The overall economic impact of the amendment will be positive. The fees imposed by this amendment for annual registration by hospitals, research facilities, and other generators will change. Generators of either small or moderate amounts of regulated medical waste will be positively impacted because their fees will be reduced. Larger generators will be affected more by the amendment since larger fees are required of them. However, the effect will still be minimal with additional costs to hospitals, for example, estimated at only $.10 to $.15 per patient day depending on the type of facility.

The newly amended regulated medical waste fees are expected to decrease the regulated medical waste generating industry's costs by approximately 3.8 million dollars from the existing fees. The new fees will provide the funding necessary for the Department of Environmental Protection and the Department of Health to better provide their respective services as required by the Comprehensive Act. While the revenue produced by these new fees will be insufficient to fund the Department's program as outlined in the July 17, 1989 rule proposal (see 21 N.J.R. 2109), revenues will be sufficient to support a base regulatory program to accomplish most of the requirements of the Comprehensive Act. Fees have been established at the maximums set by legislation to accomplish these base program goals.

The Departments' staffing and program costs remain the same as were outlined in its rule proposal of July 17, 1989 (see 21 N.J.R. 2109) which is incorporated herein by reference. The Department will make copies

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of the 1989 rule proposal available to interested parties upon request. The Departments' workplans also remain the same as outlined in the July 17, 1989 rule proposal but may be modified if revenue shortfalls occur.

In summary, the workplan for the regulated medical waste generator budget includes the following:

	Percentage of Workload
Registration	9.0
Report Analysis	6.0
Compliance Monitoring	45.0
Advisement/Education	5.0
Waste Flow Determination	2.0
Waste Reduction Analysis	2.0
Legal Support Services	9.0
Administrative Support	6.0
Clerical, Data Management and Supervisory Services	16.0
	100.0

In accordance with P.L. 1989, c.240, the Department is proposing to assess new fees for generators of regulated medical waste based upon the volume of regulated medical waste produced by the generator. 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 10,200 total generators made up of hospitals, blood banks, clinical laboratories, other licensed health care facilities, private practitioners and other organizations will register as regulated medical waste generators. The projection of the size of the regulated community was obtained from the Division of Solid Waste's Bureau of Registration and Permits Administration and is based on a random sample of generator registration forms received to date and generation data from the 1988 summary reports.

For computation of the annual generator fee, generators of regulated medical waste are divided into five categories according to the quantity of waste generated, as shown in the following table:

Generator Category	Pounds Generated Per Year	Projected No. Registration 1989/1990	Base Fee Category	Projected Revenue Generated
1	less than 50	8,139	$100.00	$813,900
2	50-200	1,836	$300.00	$550,800
3	200-300	20	$500.00	$10,000
4	300-1000	5	$1,000.00	$5,000
5	greater than 1,000	200	$3,500.00	$700,000
		10,200		$2,079,700

The registration year for generators shall extend from July 22 through July 21 of each year and shall be payable by August 20. 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. These proposed fees are derived from the aggregate costs associated with generator related activities 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.

Seventy-five percent of the registration revenue will be allocated to the Department of Environmental Protection, and 25 percent of the registration revenue will be allocated to the Department of Health as required by N.J.S.A. 13:1E-48.26. The following table summarizes the projected revenue allocation.

Total Projected Revenue	DEP (75%)	DOH (25%)
$2,079,700	$1,559,775	$519,925

Environmental Impact

The Department believes the amendment will have a positive environmental impact. Although the projected revenues from the proposed generator fee schedule may not be sufficient to implement the regulated medical waste program to the degree which the Department had envisioned, the revenues generated by the proposed fee schedule will allow the Department to provide, at a minimum, a base program for registering, inspecting and monitoring generators of regulated medical waste. The Department believes, as stated by the Legislature, that the goal of preventing the mishandling of medical waste and the impact of mishandled medical waste on the environment will be best achieved by a comprehensive tracking system. The amendment is promulgated in pursuance of greater environmental protection from the hazards associated with medical waste.

Regulatory Flexibility Analysis

The rule amendment will apply to all generators of regulated medical waste. It is estimated that of the total number of regulated medical waste generators affected by the proposed amendment, approximately 10,000 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 rule as amended, small businesses will have to register with the Department and pay an annual regulated medical waste generator fee.

Since the costs to businesses are directly related to the amount of waste generated, costs will be minimized for most small businesses which generate small volumes of waste. When compared to the original fee schedule, it is likely that most small businesses will incur decreased costs from complying with the amendments since approximately 80 percent of all registrants will be paying a $100.00 registration fee. Approximately 98 percent of all registrants will be paying less under the new schedule than they paid under the 1989 fee schedule.

In developing this amendment, 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

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] **five** categories as explained in the following table:

[Generator Category	Pounds Generated Per Year	Number of Generators	Base Fee for each category	Adjustment Rates
1	less than 300	N_1	F_1 = $528.50	R_1
2	300 to 1000	N_2	F_2 = $687.14	R_2
3	greater than 1000	N_3	F_3 = $845.78	R_3

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

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the projected number of generators who will be registering in generator category 1. The equation for the foregoing is:

N_1 (R_1 × 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 × 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 × F_3) = cost of providing services to generator category 3.]

Generator Category	Pounds Generated Per Year	Base Fee Category
1	less than 50	$100.00
2	50-200	$300.00
3	200-300	$500.00
4	300-1000	$1,000.00
5	greater than 1,000	$3,500.00

[iv.]i. (No change in text.)

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

(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 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 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) (No change.)

HEALTH
(a)

HOSPITAL REIMBURSEMENT

Hospital Rate Setting

Proposed Readoption with Amendments: N.J.A.C. 8:31B

Authorized By: Frances J.Dunston, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-56 and 26:2H-18d.

Proposal Number: PRN 1990-253.

Submit comments by June 20, 1990 to:
Beatrice E. Manning, Director
Reimbursement Systems Development,
Evaluation and Research; Room 602
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

N.J.A.C. 8:31B, Hospital Rate Setting rules, expires on October 15, 1990 pursuant to the requirements and criteria of Executive Order 66(1978). The Department of Health has reviewed the rules and, with the following exceptions, has determined them to be necessary reasonable and proper for the purpose for which they were originally promulgated. This chapter consists of seven subchapters as follows: General Provisions, Hospital Reporting of Uniform Bill-Patient Summary (Inpatient), Procedural and Methodological Regulations, Financial Elements and Reporting, Diagnosis Related Groups, Mobile Intensive Care Units (MICU) and Uncompensated Care Trust Fund.

Subchapter 1, General Provisions, is a proposed new text intended for clarification of the purpose and scope of the chapter and includes definitions for frequently used terms.

Subchapter 2, Hospital Reporting of Uniform Bill-Patient Summaries (Inpatient), provides the basis for a standard patient data reporting system to satisfy the requirements of P.L. 1978, c.83. This subchapter is designed to incorporate the National Uniform Bill (UB-82, HCFA-1450) as the common billing format for all payers and meets the reporting requirements for the Department of Health. This subchapter is proposed for readoption without change.

Subchapter 3, Procedural and Methodological Regulations, establishes the process through which the Commissioner of Health shall propose hospital rates to the Rate Setting Commission, the hospitals shall respond, and the Rate Setting Commission shall make final determinations. This subchapter further describes how the Commissioner shall arrive at the proposed rates. The subchapter is naturally separated into distinct parts which clearly identify the rate setting process.

Part I (N.J.A.C. 8:31B-3.2 through 3.36) describes the development of the hospital-specific Schedule of Rates utilizing the costs and data submitted by each hospital in a standard reporting format. The proposed amendments for these sections of the subchapter are necessary for citation accuracy, clarification, and deletion of adjustments made obsolete by rebasing. In N.J.A.C. 8:31B-3.19, the footnote reference to the Relative Intensity Measure (RIM) for nursing costs is being deleted since it was never implemented.

Part II (N.J.A.C. 8:31B-3.37 through 3.50) includes the components of a hospital's Schedule of Rates which a hospital shall charge and payers shall pay for Services Related to Patient Care, in order to produce net revenue equal to the Preliminary Cost Base. The schedule of Rates contains financial elements which are fixed relative to patient volume and others which are variable. A proposed amendment to N.J.A.C. 8:31B-3.38 removes the reference to Outpatient Dialysis Treatment and Home Dialysis as items on the Schedule of Rates, since rates for these services are no longer established by Chapter 83. Outlier categories have been reduced from five to four; low outliers, high outliers, low volume and transfers. These outlier categories now have rates and/or per diems included on the Schedule of Rates.

Part III (N.J.A.C. 8:31B-3.51 through 3.62) describes the hospital rate appeal process and the time frames that are acceptable for appeal submission. N.J.A.C. 8:31B-3.51, which defines the Statewide cap on Graduate Medical Education positions, has been changed to include a phrase

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providing for the automatic adjustment of the cap to include any subsequent Hospital Rate Setting Commission actions regarding a hospital's number of residents. N.J.A.C. 8:31B-3.60, relating to the corridor for the 1989 rate year, has been deleted and this section is now reserved.

Part IV (N.J.A.C. 8:31B-3.63 through 3.70) delineates the Hospital Rate Setting Commission time frames and procedures for rate implementation, modifications to the rates and any interim adjustments to the rates prior to closure at final reconciliation. The rules in this part also establish the appropriate hospital charges for Commission fees. There are no amendments in this part.

Part V (N.J.A.C. 8:31B-3.71 through 3.75) defines the general procedures for final reconciliation. The proposed amendments to N.J.A.C. 8:31B-3.71 and 3.73 provide for volume reconciliation of indirect costs and the technology factor, and delete sections that are no longer applicable to the final reconciliation process. N.J.A.C. 8:31B-3.73(a)6, regarding Medicare payments for rate years 1986 through 1988, is no longer applicable in 1990 and deletion is proposed. N.J.A.C. 8:31B-3.75 contains cosmetic changes and references to Home Dialysis and Outpatient Dialysis which have been deleted, since they are now excluded health services. The final reconciliation settlement period has been changed at N.J.A.C. 8:31B-3.75 to allow more flexibility in the timing of payment of undercollections and payback of overcollections.

Part VI (N.J.A.C. 8:31B-3.76 through 3.86) defines the role of the qualified utilization review organizations, and sets forth the procedures and minimum qualification criteria for becoming a certified utilization review organization (URO). This part also describes the use of URO review findings and establishes a method for financing the organizations. Definitions of terms specific to utilization review are also included. Proposed amendments to these rules are primarily stylistic. Some definitions in N.J.A.C. 8:31B-3.77 have been amended to be more consistent with other sections of the rules. A proposed amendment to N.J.A.C. 8:31B-3.78 reflects current practice, such as appeal resolution by the utilization review organization and the time frame for rendering an appeal decision. The proposed reorganization of N.J.A.C. 8:31B-3.79, Use of findings, provides an improved format for increased clarity, while keeping the content of the rule intact.

Part VII (N.J.A.C. 8:31B-3.87 through 3.90) contains the information required for the preparation of the Summary Report for the rate year. This summary is delivered by the Commissioner of Health to the Health Care Administration Board, the Hospital Rate Setting Commission, and the Senate and General Assembly Standing Committees on Institutions, Health and Welfare. No amendments are being proposed for this part.

Subchapter 4, Financial Elements and Reporting, provides for uniform reporting of the hospitals' financial elements. The deletion of a nonspecific citation is proposed for N.J.A.C. 8:31B-4.34. The proposed amendments to N.J.A.C. 8:31B-4.37 and 4.40 remove ambiguity in the application of the Income Poverty Guidelines and will not permit patients to become eligible for uncompensated care through placement of assets into their children's names. The proposed changes also clarify the collection procedure to be instituted when a patient defaults on a payment plan, based on ability to pay.

Subchapter 5, Diagnosis Related Groups, represent categories of hospital inpatients with similar characteristics. There are 25 Major Diagnostic Categories (Organ System Approach) with the appropriate Diagnosis Related Groups (DRGs) assigned and statistically set high and low outlier length of stay trim points for each DRG. There are no proposed amendments to this subchapter.

Subchapter 6, Mobile Intensive Care Units (MICU), regulated the rate review process for these units for 1981 only and is therefore obsolete and proposed for repeal.

Subchapter 7, Uncompensated Care Trust Fund, ensures equitable and appropriate collection and distribution of payment for uncompensated hospital care and, thereby, protects the fiscal solvency of the acute care general hospitals in the State. This fund ensures that residents who cannot pay for needed hospital care have equal access to care.

The proposed amendments to this subchapter correct a citation, restore monies to the Trust Fund reserve in a six-month period following the calendar year of use (instead of a one-year period), and provide for an additional penalty to be imposed by the Commission for delinquent hospital payments to the Trust Fund.

The proposed amendments to Appendix II, Cost Components and Proxies for the Economic Factor, are technical changes for clarification and consistency with N.J.A.C. 8:31B-3.26.

The proposed amendments to Appendix VI, Computation of Reasonable Direct Patient Care Costs, and Appendix VIII, Schedule of Rates as Adjusted for Compliance, reflect the changes proposed in subchapters 3 and 4.

Appendix IX, Volume Variability Adjustment, has been deleted because this methodology was discontinued with reform of the reimbursement system in 1989. Appendix X, Nursing Cost Allocation Methodology, has been deleted as a result of the deletion of the footnotes on Relative Intensity Measures in subchapter 3.

Social Impact

Readoption of N.J.A.C. 8:31B with amendments is expected to maintain the stability of the current hospital rate setting system. In doing so, its social impact remains the same as during the past five years. This impact is the containment of further increases in payments for hospital services and the continued sharing, by insured persons through their insurers, of the cost of otherwise uncompensated care provided by hospitals to the medically uninsured or underinsured. The provision of necessary and appropriate health care services to the public is assured by N.J.A.C. 8:31B-3.76 through 3.82.

Hospitals which are efficient and effectively utilized and which participate in and respond to the incentives and disincentives of the system will continue to have payment rates established at levels which promote financial solvency. This is a positive social impact as it ensures that communities will continue to have access to an adequate number of institutions needed for the provision of care and the training of health professionals.

The social impact of those few sections being proposed for readoption with change is negligible. The vast majority of sections remain unchanged. In subchapter 3, the proposed amendments to N.J.A.C. 8:31B-3.2, 3.5, 3.7, 3.11, 3.16, 3.19, 3.22, 3.24, 3.26, 3.28, 3.38, 3.51, 3.71, 3.72, 3.73, 3.75, 3.76 and 3.77, serve to correct citations, improve the clarity of the text and provide for consistency of the rules. An amendment to N.J.A.C. 8:31B-3.75 is proposed to allow flexibility in final reconciliation payment and payback periods, and will have no social impact. The proposed deletion of N.J.A.C. 8:31B-3.60 will have no social impact because it pertains to a previous rate year and is no longer in effect. The proposed change in N.J.A.C. 8:31B-3.78, regarding adjudication of appeals by a qualified utilization review organization, reflects the present practice and the new text in N.J.A.C. 8:31B-3.79 merely realigns the text, which appeared in the deleted section, to allow for improved clarity.

Under subchapter 4, the amendment to N.J.A.C. 8:31B-4.37 will increase equity in the Uncompensated Care Trust Fund and prevent the public from inappropriately qualifying for charity care by placing assets in the name of a child for the purpose of shielding the assets from use as payment for rendered hospital services. The proposed change to N.J.A.C. 8:31B-4.40 will close a loophole in the need for monies from the Trust Fund by assuring that hospitals target collection efforts appropriately.

The Department's proposal to repeal subchapter 6 is expected to have no social impact on the residents of the State. Mobile Intensive Care Unit services will continue to be available to the public and the quality of care provided will not be affected.

The proposed amendment to subchapter 7 at N.J.A.C. 8:31B-7.3 will allow the Uncompensated Care Trust Fund to be better able to meet its obligations if a patient defaults on a payment plan. Proposed changes to N.J.A.C. 8:31B-7.6 and 7.7 are for clarification only and have no social impact.

Economic Impact

The proposed readoption of N.J.A.C. 8:31B, with very few amendments, will continue to provide economic stability for the State's health care providers and payers. All acute care general hospitals in New Jersey have payment rates and statutory revenues determined according to N.J.A.C. 8:31B. Readoption of this chapter will ensure continued payment rates for these hospitals.

Under subchapter 3, the majority of the proposed amendments are to provide clarity and consistency within the rules and, therefore, no economic impact should be felt by the industry or the conusmer. The proposed amendment to N.J.A.C. 8:31B-3.75 will allow hospitals and the Department to stabilize the factor for marking-up hospital bills so that bills for different patients in the same DRG will be approximately the same from one month to the next.

Under subchapter 4, the proposed amendment to N.J.A.C. 8:31B-4.37 is mainly cosmetic and will therefore have little economic impact. One change, however, will adversely affect consumers who attempt to become eligible for charity care by placing assets under their children's names, and will lessen the financial burden of uncompensated care to the paying

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patients and third-party payers of the State. This proposed amendment will also clarify charity care eligibility for those consumers who are denied Medicaid benefits solely because they did not follow the appropriate process. The proposed change to N.J.A.C. 8:31B-4.40 prevents hospitals from the necessity to spend additional money if the patient defaults on the payment plan.

The proposed amendment to subchapter 7 at N.J.A.C. 8:31B-7.3 reduces the time period for recovering payments from the Uncompensated Care Trust Fund reserve to guard against default and the hospital can receive adequate funds; however, payers must pay over a shorter time period. The N.J.A.C. 8:31B-7.6 and 7.7 proposed changes are solely for clarification and have no economic impact.

Regulatory Flexibility Statement

The proposed readoption with amendments applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and, therefore, does not fall into the category of small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B.

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

SUBCHAPTER 1. GENERAL PROVISIONS

8:31B-1.1 Purpose and scope

The purpose of this chapter is to satisfy the requirements of P.L. 1978, c.83, and support the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost be available to inhabitants of the State. The rules in this chapter provide the procedures and methods by which the Department of Health and the Hospital Rate Setting Commission establish and maintain a fair and equitable system for determining hospital payments

8:31B-1.2 Definitions

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

"Adjusted admissions" means inpatient admissions increased to reflect outpatient activity and is calculated by admissions multiplied by total gross revenue divided by inpatient gross revenue.

"Base year" means the year from which historical cost data are utilized to establish prospective reimbursement in the rate year.

"Certified Revenue Base (CRB)" means the preliminary cost base, as approved by the Hospital Rate Setting Commission, which is sufficient to meet a hospital's needs in providing adequate and appropriate health care (see N.J.A.C. 8:31B-3.15).

"Chapter 83" refers to Public Law 1978, chapter 83, an Act concerning the provision of and payment for medical services and establishing a Hospital Rate Setting Commission.

"Current Cost Base" means the actual costs and revenue of the hospital as identified in the Financial Elements in the base reporting period for the purposes of rate setting (see N.J.A.C. 8:31B-3.16).

"Diagnosis Related Groups (DRGs)" means a patient classification system in which cases are grouped by shared characteristics of principal diagnosis, secondary diagnosis, age, surgical procedure, and other complications and consuming a similar amount of resources (see N.J.A.C. 8:31B-5.1).

"Equalization Factor" means the factor that is calculated based on defined Labor Market Areas and multiplied by hospital costs to permit comparability between differing regional salary costs in setting statewide standard costs per case (see N.J.A.C. 8:31B-3.22(d)).

"Financial Elements" means the reasonable cost of items approved as reimbursable under Chapter 83.

"GROUPER" means the logic that assigns cases into the appropriate Diagnosis Related Groups in accordance with the clinical and statistical information supplied.

"Hospital Rate Setting Commission (HRSC)" means the appointed body of five members having the responsibility for approving an appropriate Schedule of Rates for all hospitals each year (see N.J.A.C. 8:31B-1.1).

"Inliers" means inpatient cases who display common or typical patterns of resource use, are assigned to DRGs and have a length of stay within the high and low trim points (see N.J.A.C. 8:31B-5.3).

"Labor Market Area" means counties and municipalities in the State that are grouped in accordance with similar labor costs.

"Neonate" means a newborn less than 29 days of age.

"Outliers" means patients who display atypical characteristics relative to other patients in a DRG and have lengths of stay either above or below the trim points (see N.J.A.C. 8:31B-3.38(c)2 and N.J.A.C. 8:31B-5.3).

"Preliminary Cost Base" means the reasonable cost of the Financial Elements of the Current Cost Base, as adjusted for projected economic factors and Capital Facilities Allowance (see N.J.A.C. 8:31B-3.20).

"Rate Year" means the year in which current reimbursement takes place.

"Schedule of Rates" means the average amount of gross revenue per case that a hospital shall charge and payers shall pay for services related to patient care, in order to produce net revenue equal to the Preliminary Cost Base (see N.J.A.C. 8:31B-3.37).

"Trim points" means the high and low length of stay cutoff points assigned to each DRG.

"Uncompensated Care Trust Fund" means a fund established to administer the appropriate collection and distribution of payment for uncompensated hospital care (see N.J.A.C. 8:31B-7.1).

"Uniform Bill-Patient Summary" (also referred to as the UB-82) means a common billing and reporting form used by the hospital for each inpatient (see N.J.A.C. 8:31B-2).

"Utilization Review Committee" means a group of physicians in a designated hospital who review the health care provided to patients.

"Utilization Review Organization (URO)" means a group of physicians within a designated geographical area who review the health care provided to patients in area hospitals.

8:31B-3.2 Derivation of Preliminary Cost Base

(a) For a group of hospitals the Commissioner, on or before January 31,[[1]] of the rate year shall propose to the Commission a Preliminary Cost Base for the initial rate period. **For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year will be the year the fiscal year begins, for hospitals on a Fiscal Year beginning between July 1 and December 31, the rate year will be the year the fiscal year ends. A PCB for fiscal year hospitals will be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year.** The proposed Preliminary Cost Base for each hospital shall include:

1. The reasonable direct patient care costs as defined in N.J.A.C. 8:31B-[3.20 through 3.36.]**3.23;**

2. The reasonable indirect patient care costs calculated according to N.J.A.C. 8:31B-[3.20 through 3.36.]**3.24;**

3. The reasonable physician costs calculated according to N.J.A.C. 8:31-[3.20 through 3.36.]**3.23;**

4. The net income from other sources as defined in N.J.A.C. 8:31B-3.25[.];

5. An economic factor adjustment calculated according to N.J.A.C. 8:31B-3.26, which may be periodically adjusted in accordance with N.J.A.C. 8:31B-3.42 through 3.45 and N.J.A.C. 8:31B-3.71 through 3.86[.];

6. A capital component, as defined in N.J.A.C. 8:31B-3.27[.]; **and**

7. A technology factor as defined in N.J.A.C. 8:31B-3.26(b).

[[1]]For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year will be the year the fiscal year begins, for hospitals on a Fiscal Year beginning between July 1 and December 31, the rate year will be the year the fiscal year ends. A PCB for fiscal year hospitals will be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year.]

8:31B-3.5 Development of standards

(a) Based on the cost per case [so] developed, **in accordance with N.J.A.C. 8:31B-3.4,** the Commissioner shall develop standards for each Diagnosis Related Group. The standards shall be adjusted to account for significant differences in teaching responsibilities and in labor market areas. These standards are developed according to N.J.A.C. 8:31B-3.20 through 3.36.

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(b) The median cost per case, the Efficiency Standard, shall be used to identify presumptively excess cost; however, supplementary standards including, but not limited to, the lowest cost per case at any institution which has treated more than [ten] **10** patients in a given Diagnosis Related Group during the current cost base year, shall be used to identify potential areas for management review and action, and may be used by all parties in appeals. The Commissioner shall also calculate the mean cost per case, the Incentive Standard, which shall be used in developing the Proposed Schedule of Rates. Standards so developed shall remain unaffected during the rate period by any appeals and no adjustments, modifications or any other changes to the standards shall be made during a rate period, unless so ordered by the Commission. All standards developed herein may be used in evaluating effectiveness and efficiency [with respect to] **of** the health care system taken as a whole.

8:31B-3.7 Incentive standard, Preliminary Cost Base: Proposed Schedule of Rates

(a) Consistent with the purposes and intent of Chapter 83, P.L. 1978, the Commissioner shall propose for each institution a Preliminary Cost Base using the reasonable direct cost per case for each DRG **as described in N.J.A.C. 8:31B-3.23**. The Preliminary Cost Base [so derived] shall be adjusted for reasonable indirect patient care costs, net income from other sources, and [an economic factor applied to adjust for measured and projected inflation] **update factors.** These adjustments are described in N.J.A.C. 8:31B[3.20 through 3.36] **3.24 through 3.26.**

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

(d) For each institution, the Commissioner shall propose a Schedule of Rates for each Diagnosis Related Group adjusted to provide for the revenue requirements of the Preliminary Cost Base developed in (a) through (c) above. The [Basic Rate Order] **Schedule of Rates** developed for each institution[,] shall be adjusted for working capital, and for the equitable apportionment of uncompensated care. This methodology is described in N.J.A.C. 8:31B-3.37 through 3.50. An adjustment will be made for any [payor] **payer** differentials approved by the Commission pursuant to N.J.A.C. 8:31B-3.63 through 3.70.

(e) (No change.)

8:31B-3.11 Same Day Surgery

(a) Same Day Surgery is considered an alternative mode of health care delivery which the Department of Health considers to be efficient and worthy of encouragement. Same Day Surgery is intended to lower the cost of health care and provide the appropriate level of care to patients who are otherwise classified as inpatients. The patient, by definition:

1. Is identified on the Uniform Bill-Patient Summary (UB-PS) as a [one acute day but is] **131 or 136 bill type in accordance with N.J.A.C. 8:31B-2.1 and** discharged before midnight of the day of admission**, so admission date and discharge date are the same**;

2.-3. (No change.)

(b) (No change.)

8:31B-3.16 Current Cost Base

(a) (No change.)

(b) The Current Cost Base is used to develop the Preliminary Cost Base and Schedule of Rates through:

1.-3. (No change.)

[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;]

Recodify existing 5.-7. as **4.-6.** (No change in text.)

(c)-(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. The hospital's actual cost up to four percent above the 1982-1987 labor proxy will be added to the data base.]

8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

(a) Hospital case-mix **shall be determined as follows**:

1. Uniform Bill-Patient Summary (UB-PS) data pursuant to N.J.A.C. 8:31B-2.1[,] are used for determination of hospital case-mix. The appropriate patient records for the reporting period corresponding with the Financial Elements Report are classified into Diagnosis Related Groups (DRGs) (see the DRG List in N.J.A.C. 8:31B-5) using the following items as defined in the UB-PS rule (**see N.J.A.C. 8:31B-2.2**):

i. Principal diagnosis;

ii. Secondary diagnosis;

iii. Principal and other procedures;

iv. Age;

v. Sex;

vi. Discharge status;

vii. Birthweight (newborn) [(effective for billing purposes upon implementation of the New York Grouper Version 6: effective for reporting purposes to the Department of Health on March 20, 1989)];

viii. Severity of Illness (S.O.I.) indicators (effective upon implementation of methodology.

2.-4. (No change.)

(b) Measures of resource use are as follows:

1. For each patient with a UB-PS, measures of resource use are calculated. These measures of resource use per patient with a reliable record are multiplied by the estimated number of cases determined in (a) above, and the total inpatient estimate of each measure of resource use is then adjusted to the actual amount of each measure. Hospitals shall make reasonable efforts to correct unacceptable data. Outpatient case-mix measures of resource use are then obtained in the aggregate from data reported to the New Jersey State Department of Health (until outpatient information is available under a Rule on Hospital Reporting of **the** Uniform Bill-Patient [Summaries] **Summary** (outpatient)).

	Center	Measure of Resource Use	Calculation of Inpatients
	ROUTINE SERVICES		
MSA &	Medical-Surgical Acute Care Units	Patient Days[1]	Total LOS less ICU, CCU, NBN and OBS LOS ACU
PED &	Pediatrics		
PSA &	Psychiatric Acute Care Units		
PSY &	Psychiatric/Psychological Services		
OBS	Obstetrics		
BCU	Burn Care Unit		BCU LOS
ICU &	Intensive Care Unit	Patient Days[1]	ICU + CCU LOS
CCU	Coronary Care Unit		
NNI	Neo-Natal Intensive Care Unit	NNI Patient Days	Total ICU LOS for Newborn DRGs
NBN	Newborn Nursery	NBN Patient Days	Total LOS less ICU LOS
	AMBULATORY SERVICES		
EMR	Emergency Service	EMR Charges	EMR Admissions (Inpatient EMR Revenue EMR Admissions)
CLN	Clinics	CLN Charges	None[2][1]
HHA	Home Health Agency	OHS Charges	None
	ANCILLARY SERVICES		
ANS	Anesthesiology	ANS Charges	Direct
CCA	Cardiac Catheterization	CCA Charges	Direct
DEL	Delivery and Labor Room	DEL Charges	Direct

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DIA	Dialysis	DIA Charges	Direct
DRU	Drugs Sold to Patients	PHM Charges (DRU)	Direct
EKG & NEU	Electrocardiology and Diagnostic Neurology	EDG Charges	Direct
LAB	Laboratory	BBK Charges & Lab Charges	Direct
MSS	Medical Surgical Supplies Sold to Patients	CSS Charges (MSS)	Direct
NMD	Nuclear Medicine	NMD Charges	Direct
OCC & SPA	Occupational and Recreational Therapy & Speech Pathology and Audiology	OPM Charges	Direct
ORG & ORR	Organ Acquisition & Operating and Recovery Rooms	ORR Charges	Direct
PHT	Physical Therapy	PHT Charges	Direct
RAD	Diagnostic Radiology	RAD Charges	Direct
RSP	Respiratory Therapy	RSP Charges	Direct
THR	Therapeutic Radiology	THR Charges	Direct

2. (No change.)

(c) (No change.)

[[1]Patient days will be employed as the Measures of Resource Use to allocate MSA, PED, PSA, and OBS nursing costs until such time as Relative Intensity Measures (RIMs) for Case-mix Nursing Performance Study will be used. A RIM is a Measure of Resource Use which is derived from nursing activity, and is used to distribute reported general nursing costs based upon the relationship between nursing activity and costs. While patient days are used, the MSA, PED, PSA, OBS centers will be combined into ACU and ICU, and CCU will be combined into ICU. All other routine centers will remain as above. Effective when RIMs are implemented, patients cared for in the ICU, CCU, or NNI will have the Special Care Unit Days used as the cost calculation for Measure of Resource Use for the Length of Stay (LOS) in the Special Care Unit and the appropriate Relative Intensity Measure (RIM) equation will be utilized for all additional days.

[[2]Effective when RIMs are implemented, Patient Specific Attributes, as identified in Appendix X will replace the total LOS statistics. These characteristics captured from Uniform Bills—Patient Summaries include clinical characteristics and Length of Stay which have been demonstrated by research to account for variations in the consumption of nursing activity.]

[[3]]**[1]**Inpatient clinic visits shall be treated as separate outpatient clinic visits.

8:31B-3.22 Standard costs per case

(a) (No change.)

(b) Classification of Teaching (Major and Minor) and Non-Teaching Hospitals for purposes of determining indirect costs shall be as follows:

1. [Teaching] **Major teaching** hospitals are defined as those hospitals which, during the current cost base reporting period, meet all the following requirements:

i.-iii. (No change.)

2.-6. (No change.)

7. For all Graduate Medical Education programs which are subject to accreditation by the LCGME, or AOA, or, in the case of dental residents, the American Dental Association, accreditation must be maintained for residents in these programs to be used in determining the teaching categories described in (b)1 and 2 above. **Residents in unaccredited programs will not be recognized in the teaching methodology for determining direct patient care costs (see Appendix XI).**

8. (No change.)

(c) (No change.)

(d) Determination of labor equalization factor to calculate Statewide standard costs per case **shall be as follows**:

1. (No change.)

2. **The** Labor Market areas recognized in [1988] **1990** rate setting at N.J.A.C. 8:31B-3.22(d)3 will be used for rate setting in subsequent years.

3.-7. (No change.)

(e) Calculation of standards will be as follows:

1. (No change.)

2. Determination of Labor Unequalization Factor to Calculate Standard Cost Per Case of Each Labor Market Area.

i. An unequalization factor shall be calculated for the non-physician direct patient care costs of each hospital to account for differing prevailing compensation patterns across New Jersey's Labor Market Areas in the comparison of hospital and standard costs per case. The [state-wide] **Statewide** standard times and unequalization factor is the unequalized standard in terms of the hospital's Labor Market Area.

ii.-iii. (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.-3. (No change.)

4. The adjusted admissions to calculate these peer group standards will be [1986] **the base year** adjusted admissions.

5. The equalized peer group standard unit cost is unequalized using a hospital's equalization factor, and added to the peer group unequalized standard unit cost to form a hospital's unequalized indirect standard unit cost. [The unequalized standard unit cost will be blended with the hospital's specific unit cost, using 25 percent standard unit cost/75 percent hospital unit cost to create a blended rate. In 1988 only, if the blended rate would result in a gain or loss of revenue greater than two percent of the hospital's 1987 preliminary cost base, assuming 1986 volume, then the change in revenue will be limited to the two percent. Hospitals may appeal losses in reimbursement which are a result of volume decline during 1987 and 1988. These appeals will be subject to a statewide appeals budget equal to the revenue removed from the system due to downturns. No appeal will be allowed for losses due to the standard price. Hospitals which are recognized under N.J.A.C. 8:31B-3.22 as being specialized in nature may apply to the commissioner for a unit cost based on their own 1986 approved costs with no standard blended into the payment rate.]

6.-7. (No change.)

(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.-3. (No change.)

(e) Cost centers subject to screening **shall be as follows**:

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)	teaching/minor	Full time Equivalent	1.1

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Residents Physician	teaching non-teaching	RSD	
Phys. & Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	1.1
Education & 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 **and proxies** of the economic factor are shown in Appendix II. [The labor proxy used 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] **The** Statewide proportion of contracted services labor costs in the Labor 1 component will be increased by the percentage change in the cost of contracted services as measured [between June 1986 and June 1987 and June 1988] **by actual data** 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] **The** proportion of contracted services to total Labor 1 costs will be capped at six percent. Should the actual **rate year** 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 **in accordance with N.J.A.C. 8:31B-3.72(a)1.** [This treatment will continue for all rate years based on the 1986 base year.]

ii. The remaining proportion of [proxy] **the Labor 1 component** will be multiplied by the [Bureau of Labor Statistics] **percent of change in the** Average Hourly Earnings for Nonsupervisory Hospital Workers (Northeast) **as reported by the Bureau of Labor Statistics.**

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] **changes** which fix the future value of a proxy (that is, FICA). Components which are of particular importance may be projected through the use of the time series analysis on other relevant indicators.

[3. See Appendix II for Cost Components and Proxies for the Economic Factor.]

(b) (No change.)

8:31B-3.28 Calculation of initial infusion of working capital

(a) The initial infusion of working capital **is provided for when a hospital first enters the reimbursement system and** is mandatory for any institution which, in its base year, has uncompensated care equal to or greater than the median percentage across all hospitals. Institutions with less uncompensated care may still receive working cash infusion upon recommendation by the Commissioner and approval by the Commission.

(b) To determine if a hospital shall receive an initial infusion of working capital, as part of Reasonable Working Capital in N.J.A.C. 8:31B-4.46, the hospital's opening balances of unrestricted cash and investments, accounts receivable and trade accounts payable are examined. Initially, using Current Cost Base information supplied to the Department by the hospital under the Financial Elements and Reporting amendment entitled Uniform Cost Reporting Regulation (N.J.A.C. 8:31A-5.5), reasonable operating cash plus[1] excess accounts payable and principal on outstanding working capital loans is compared with unrestricted cash and investments on hand plus excess accounts receivable[3] (not to be less than zero) to determine any shortage or excess working cash.

1. Reasonable Operating Cash is defined as unrestricted cash and investments equal to seven days of New Revenues Related to Patient Care (that is, 2 percent of annual net revenues) as adjusted for abnormally high accounts receivable and accounts payable balances and for outstanding working capital loans.

2. Abnormally high accounts payable are defined as non-construction accounts payable in excess of 30 days of expenses for supplies, purchase services, non-capitalized leases, and other non-payroll related expenditures included in Costs Related to Patient Care.

3. Abnormally high accounts receivable are defined as accounts receivable, net of allowances and provisions for doubtful accounts, in excess of 60 days of net revenue Related to Patient Care.

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

(e) The initial calculation will be recalculated one more time to reflect cost data reconciled with the hospital's audited financial statement for the fiscal year immediately preceding the year of the hospital's Preliminary Cost Base. The hospital submits this data under the provisions of the Uniform Cost Reporting Regulation amendment. However many years the hospital receives this adjustment, it is a one-time adjustment to reflect cash deficiencies upon entry into the Chapter [38] **83** system, and there shall be no reimbursement for subsequent additional cash deficiencies.

(f) Any adjustment to account for the difference between this final calculation and the initial calculation shall be made at the time of automatic and periodic adjustments for economic factors described in N.J.A.C. 8:31B-3.71 through 3.86, subject to the two percent of net revenue yearly limitation described above.

[[1]Reasonable Operating Cash is defined as unrestricted cash and investments equal to seven days of New Revenues Related to Patient Care (i.e., 2 percent of annual net revenues) as adjusted for abnormally high accounts receivable and accounts payable balances and for outstanding working capital loans.

[2]Abnormally high accounts payable are defined as non-construction accounts payable in excess of 30 days of expenses for supplies, non-capitalized leases, and other non-payroll related expenditures included in Costs Related to Patient Care.

[3]Abnormally high accounts receivable are defined as accounts receivable, net of allowances and provisions for doubtful accounts, in excess of 60 days of net revenue Related to Patient Care.]

8:31B-3.38 Derivation from Preliminary Cost Base

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

(c) Basic [rate order:] **Rate Order shall be as follows:**

1. Each hospital shall receive from the Commission a rate order detailing the Schedule of Rates as follows:

SCHEDULE OF RATES

ITEM	RATE PER CASE
DIRECT COSTS RELATED TO PATIENT CARE	
DRG 1	$_____
DRG 2	$_____
DRG 3	$_____
CLINIC PATIENTS	$_____ [***]†
HOME HEALTH PATIENTS	$_____ [***]†
EMERGENCY SERVICE OUTPATIENTS	$_____ [***]†
[OUTPATIENT DIALYSIS TREATMENT	$_____ ****]
AMBULATORY SURGERY	$_____ [***]†
SAME-DAY PSYCHIATRY	$_____ [***]†
[HOME DIALYSIS	$_____ ****]

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INDIRECT FINANCIAL ELEMENTS	AMOUNT
INDIRECT COSTS RELATED TO PATIENT CARE	$_____
NET INCOME FROM OTHER SOURCES	$(_____)
CAPITAL FACILITIES ALLOWANCE	$_____
COMMISSION APPROVED WORKING CASH INFUSION	$_____
GRANTS ON BEHALF OF THE MEDICALLY INDIGENT	$(_____)
ESTIMATED UNCOMPENSATED CARE	_____%
ESTIMATED PERSONNEL HEALTH PROGRAM	_____%

NOTE: The Schedule of Rates shall be adjusted to reflect five percent working capital increases and _____ percent for payor differentials as specified by the Commission. Payor Class A shall pay _____ percent of this Schedule of Rates. Payor Class B shall pay _____ percent of this Schedule of Rates and all other Payor Classes shall pay 100 percent of this Schedule of Rates.

[***]†Patients receiving these services will be billed at controlled charges; however, this rate per visit will be used for purposes of reconciliation.

[****Effective (date of final adoption) outpatient and home dialysis services will not have rates set pursuant to N.J.A.C. 8:31B-4.62(1).]

2. The [five] **four** outlier categories are defined below and will have rates and/or per diems included on the Schedule of Rates as follows:

i.-iii. (No change.)

[iv. Clinical outliers: Patients assigned to a DRG with poorly defined clinical characteristics precluding valid comparison of patients within the DRGs.

(1) The rate per case and per diems are based upon the hospital specific or "Historical" cost. Inlier or outlier status determines the use of the inlier rate or outlier per diem rates.]

[v.] **iv.** (No change in text.)

3. (No change.)

(d) (No change.)

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) [Notification by hospitals: within] **Within** 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, **plus or minus subsequent adjustments as approved by the Commission,** and is offset corresponding decreases in resident costs in other New Jersey hospitals;

(2) (No change.)

ii.-x. (No change.)

[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.

i. (No change.)

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 **rate year** 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 included in future compounding.

iii. (No change.)

3. Notwithstanding the above, effective for the 1986 Proposed Schedule of Rates, hospitals may only appeal under the not accept option for Statewide increases in costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, 1985, **plus or minus subsequent adjustments as approved by the Commission**.

[8:31B-3.60 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.

(c) Total appeals approved resulting 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]**3.60**-3.62 (Reserved)

8:31B-3.71 Reconciliations and adjustments

(a) Certain automatic reconciliations and adjustments are necessary to insure that hospitals' net revenue collections align with the Commission approved Schedule of Rates especially with regard to the inclusion of both direct (variable) financial elements and indirect (**variable and fixed**) financial elements [which are not volume variable] as indicated in N.J.A.C. 8:31B-3.24, **and other financial elements,** and that [changes] **charges** are in a consistent ratio with costs by revenue center. Further, the Schedule of Rates must be periodically adjusted to reflect changes in inflation and the recalculation of certain indirect **and other** financial elements.

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

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but will affect the calculation of Commission Approved Revenue. Periodic adjustments are made for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments will be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, Implementation[.]**:**

1. Economic factor: The final economic factor shall be calculated for each year as soon as the necessary data are available. However, the labor component of the economic factor is to be prospective and final. If calculation of the final economic factor for the rate year shows a misprojection of the labor component **including the proportion of contracted services** the rate year labor component shall not be changed. Instead an equal and offsetting adjustment is to be made to the projected economic factor when the projected economic factor

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for the upcoming rate year is calculated. The projected economic factor shall be developed for the following year using as much actual data as is compatible with the timely issuance of hospital payment rates for that year. The annual recalculation of the economic factor pursuant to N.J.A.C. 8:31B-3.26, shall be based on each hospital's reported expenses of the current cost base by classification for the applicable rate period.

2.-3. (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. Except as specified [in (a)] above, reconciliation for direct patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. The Schedule of Rates so developed and approved, adjusted to actual measured economic inflation, shall be [applied to] **multiplied by** the hospital's actual case-mix **and volume** which was necessary and appropriate. Outliers, [patients that straddle years (i.e., patients admitted prior to implementing the new system and discharged following implementation), patients in DRGs with poorly defined clinical characteristics, and low volume cases] subject to appropriateness review by an approved utilization review, shall be included in the calculation of reconciliation.

[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.]

ii. Reconciliation for volume variable indirect costs, adjusted for actual measured economic inflation, will be based on the payment rates described in N.J.A.C. 8:31B-3.24(c)1 and 2 and the hospital's actual inpatient and same day surgery volume for the rate year.

iii.-iv. (No change.)

v. The technology adjustment as defined in N.J.A.C. 8:31B-3.26(b) and 3.51 will be reconciled to actual rate year case-mix and volume for direct patient care rates and actual volume for indirect volume variable rates.

2.-5. (No change.)

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

8:31B-3.75 Schedule of rates reconciliation

(a) Except for adjustments among [payors] **payers** and required bad debt reconciliation which may be made approximately on a lump sum or prospective basis, all other adjustments which may be required as a result of appeals implemented on an interim basis, under or over collection, audit, or other reconciliation procedures here required shall be made prospectively through an appropriate adjustment. The reconciliation adjustment shall be calculated so as to compensate for the required amount [within no more than 12 months] **over a specified period approved by the Hospital Rate Setting Commission**.

(b) To the extent that an institution's actual Net Revenues Related to Patient Care differ from the Commission approved Preliminary Cost Base, an adjustment to the current year PCB will be calculated. A compliance adjustment to the Rate Order will then be issued to include this adjustment and adjustments for actual uncompensated care, [payor] **payer** differentials, and net income from other sources, in order to align gross revenue and [payors] **payers** payments with net revenue requirements for the new prospective year.

1. Commission approved revenue: On an annual basis, within 90 days of receipt of all reports set forth in N.J.A.C. 8:31B-3.42 through 3.45, the Schedule of Rates, as adjusted for economic factors and other adjustments issued by the Commission during the year, will be calculated for the hospital's actual discharges and patient visits for a reported period. Reasonable direct patient care costs per case will be multiplied by the number of cases in each DRG, to determine reasonable direct patient care costs for patients assigned to a DRG. Actual outpatient volumes for Emergency Services (EMR), Clinics (CLN), Home Health Agency (HHA), Ambulatory Surgery, [Home Dialysis,] **and** Same Day Psychiatry[, and outpatient dialysis (DIA) groups] will be determined from the Uniform Cost Reporting Regulations. Outlier cases will be reconciled to the appropriate rate and/or per diem as described in N.J.A.C. 8:31B-[3.37]**3.38**.

2.-3. (No change.)

4. Application of reconciliation to Schedule of Rates **shall be as follows**:

i.-iii. (No change.)

iv. The [payor] **payer** discount calculation for each differential in N.J.A.C. 8:31B-**3.39 and** 3.40 shall be repeated for the actual gross Revenues Related to Patient Care of [payors] **payers** or [payor] **payer** classes receiving and not receiving differentials. The percentage point discount and mark up to the Schedule of Rates so determined shall be increased or decreased for the percentage difference from the prospective discount and mark up determined in N.J.A.C. 8:31B-3.39. Any adjustments to [payor] **payer** differentials approved by the Commission subsequent to those included in the initial Schedule of Rates shall also be included in the [payor] **payer** discount reconciliation.

v. A compliance adjustment to the Rate Order as shown [on] **in** Appendix VIII is determined by the Commissioner and implemented by hospitals and [payors] **payers**.

8:31B-3.76 Necessity and appropriateness of health care services

(a) **P.L.1978**, c.83 provides that reasonable payment may be made only for "appropriate and necessary health care services of high quality required by (each) hospital's mix of patients." In order to discharge this statutory obligation, two systems are required: The reimbursement system, payment by the case, establishes reasonable rates for ["typical cases;] patients who are correctly assigned to a Diagnosis Related Group (DRG). [However, in order to apply the "necessary and appropriate" standard to "atypical" cases, as well as those assigned to DRGs, a system to review appropriateness and necessity is required. Such activity will be conducted by a utilization review organization.] **A utilization review organization system is required to ensure that the hospital services which are provided are appropriate, necessary, and of high quality.**

(b)-(e) (No change.)

8:31B-3.77 Definitions

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

. . .

["Atypical cases," also referred to as "outliers", means patients whose resource consumption, as measured by length of stay, does not fall within the trim points for the diagnosis related group to which each patient would be assigned.]

. . .

"Inliers" (**"typical cases"**) means inpatient cases [who display common or typical patterns of resource use, and who are] assigned to DRGs, as identified in N.J.A.C. 8:31B-[5.2] **5.3(c) having lengths of stay within the high and low trim points**.

. . .

"Outliers" (**"atypical cases"**) means patients who display atypical characteristics relative to **other** patients [assigned to DRGs, or have been transferred from one New Jersey hospital to another. (See N.J.A.C. 8:31B-5.2). Outliers have lengths of stay either above or below the LOS trim points establised for any given DRG] **in a DRG (see N.J.A.C. 8:31B-3.38(c)2)**.

. . .

["Physical Advisor (P.A.)" means a currently licensed physician makes determinations and provides consultation on a referral basis

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to non-physician reviewers in cooperation with the Attending Physician on the appropriateness, quality and/or necessity of an individual's admission to or continued stay in a hospital.]

. . .

"Trim points" means high and low length of stay cutoff points [developed to determine when a case may appropriately be] assigned to [a] **each** DRG (**see N.J.A.C. 8:31B-5.3**). Cases falling outside trim points are classified as outliers (atypical cases).

["Typical cases" means patients whose resource consumption, as measured by length of stay, falls within the trim points promulgated by the Department for the diagnosis related group to which each patient is properly assigned.]

8:31B-3.78 Criteria for qualification

(a) Applicability: Each inpatient in each hospital selected by the Commissioner pursuant to **P.L.1978**, c.83, Section 5b, must be subject to review by a qualified utilization review organization concerning the necessity and appropriateness of inpatient admission and continuing stay. The minimum set of activities required to so qualify are set forth below:

1. All cases: With respect to all cases, **both typical and atypical,** a qualifying utilization organization:

i.-vi. (No change.)

vii. Shall provide for an appropriate mechanism by which to hear and adjudicate appeals by patients, payers, physicians, or the hospital concerning the determinations made pursuant to this subchapter. With respect to such review, the standards to be applied shall be consistent with the prevailing patterns of medical practice in the area or state, as appropriate;

viii. [and shall] **Shall** further provide, through the same mechanism, for appeals by individual patients in exceptional cases of DRG assignments which, although technically correct, may produce grossly inequitable or excessive payments. To initiate an appeal, a letter of request from the patient shall be considered as authorization for the Department to review and assess any necessary information pertinent to the hospitalization or charges in question. Upon demonstration, by substantial evidence, that application of the DRG system would result in inequitable consequences for the patient [or his insuror], the qualified utilization review organization may direct [treatment of the case as an outlier consistent with (a)1v above.] **that payment be based on an alternative to the DRG rate (for example, charges)**;

ix. Shall provide a second level of appeal. The patient, **physician, hospital,** or payer, not satisfied with the decision on the first level of **the DRG Assignment or Medical Necessity** appeal, may request an appeal to the second level by directly notifying the appropriate Utilization Review Organization[.];

[viii.]**x.** (No change in text.)

[ix.]**xi.** Shall render a decision in any appeal within [30] **90** working days from the date of receipt of the appeal by the qualified Utilization Review Organization (URO). The appellant, or his **or her** insuror, shall not be liable for payment to the hospital until a decision on the appeal has been made and communicated to the parties affected. A qualified URO shall not be deemed in receipt of an appeal if the hospital involved is more than one month delinquent in payment of the Commission approved rate to be paid to the URO by the hospital. Any amount not paid to the hospital because of its delinquency in payment to the URO, and the failure to hear an appeal shall not be recoverable by the hospital through bad debt of charity write-offs, but shall become a loss of revenue to the hospital.

(1) [Effective January 1, 1984, discharges subsequent to that date and all] DRG Patient Appeal requests [must] **shall** be submitted to the Department of Health for review within one year after [discharge date] **issuance of the bill by the hospital**. Any requests submitted thereafter will not be processed for appeal.

[2. Typical cases are defined as patients whose resource consumption, as measured by length of stay, falls within the trim points promulgated by the Department in accordance with (a)1v above, for the diagnosis related group to which each is properly assigned. With respect to such cases, a qualifying utilization review organization:]

[i.]**xii.** (No change in text.)

[ii.]**xiii.** (No change in text.)

[iii.]**xiv.** No change in text.)

[3. Atypical cases:

i. Atypical cases are patients whose resource consumption, as measured by length of stay, does not fall within the trim points for the diagnosis related group to which each is otherwise properly assigned. Such cases are termed outliers;

ii. With respect to such cases, the qualifying utilization review organization:

(1) Shall certify the medical necessity and appropriateness of the services, days, and where it is judged reasonable to do so, the items charged to such patients by the hospital;

(2) Shall institute such system of concurrent review as may be necessary in order to assure the timely discharge, or placement to the most efficient, appropriate level of care, consistent with high quality; and

(3) Shall audit the principal diagnosis in order to assure that each outlier has been assigned to the otherwise appropriate diagnosis related group.]

8:31B-3.79 Use of findings

(a) [Typical] **Findings shall be used in all** cases **as follows**:

1. (No change.)

[2. Adjustment of Payment: Misassigned DRGs: Using the apportionment procedure set forth in N.J.A.C. 8:31B-3.58, the qualifying utilization review organization shall direct the hospital and the Uniform Bill Intermediary to make an appropriate adjustment to the price per case where the DRG to which the patient is correctly assigned differs from the DRG on which payment was based. Similarly, the qualifying utilization review organization shall direct the hospital and the Uniform Bill Intermediary to classify cases as outpatients, to be billed as outpatients, when there is a finding of medical necessity for items and services rendered but no medical necessity for inpatient admission.

3. Apportionment of liability: Upon a prospective finding that certain days, services, or items will not be necessary, the qualifying review organization shall so advise the respective patient, attending physician, hospital, and payor. Once all involved parties have had due notice and have exhausted all appeals, under N.J.A.C. 8:31B-3.78(a)1vi above, the utilization review organization may direct the hospital to assign financial liability for such unnecessary days, services, or items to the patient. Accordingly, except for any grace days which a payor may agree to reimburse pursuant to N.J.A.C. 8:31B-3.79(b)2i below liability for the appropriate price per case discharge; and any further days or services shall, subject to prevailing contracts and statutes, be the sole liability of the patient to be reimbursed to the hospital at a rate, determined by the hospital, no greater than its charges for such days or services established in accordance with N.J.A.C. 8:31B-3.53 through 3.57. Revenues received by the hospital in accordance with this provision shall be treated as Expense Recoveries in accordance with N.J.A.C. 8:31B-4.62 through 4.67.

(b) [Atypical cases:] **Findings shall be used in atypical cases as follows:**

1. Denial of Payment: Unnecessary admissions: The qualifying utilization review organization shall direct the appropriate payor to deny payment concerning any admission for which medical necessity has not been certified; provided, however, that a payor may agree with any hospital to reimburse charges for a grace period, not to exceed three calendar days, after notification of the patient, physician, and hospital of the denial of admission certification.]

2. Adjustment of Payment **shall be made as follows**: [Outliers:]

i. (No change.)

[ii. Inappropriate level of care:

(1)]**ii. The following shall apply to a finding of an inappropriate level of care:** Should the qualifying utilization review organization determine that, for a portion of the patient's length of stay, the level of care is appropriate to a skilled nursing facility and/or intermediate care facility level-of-care, and that a hospital has documented a good faith continuing effort to obtain placement of the patient to the appropriate level-of-care, a Skilled Nursing Facility (SNF) and/or Intermediate Care Facility (ICF) rate, calculated as follows, will become the basis for determination of reasonable Direct Patient Care Costs for that portion of the stay in an atypical case.

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[(2)](1) Reimbursement for each eligible patient will be based upon a Statewide weighted average SNF or ICF per diem rate of Medicaid participating long-term care facilities, in effect as of January 1 of the rate year. Separate Statewide weighted average per diem rates will be calculated for both the Skilled (SNF) and Intermediate (ICF) levels of care patients as follows:

[(A)](2) (No change in text.)

iii. The following shall apply to a finding of misassigned DRGs: The qualifying utilization review organization shall direct the hospital and the Uniform Bill Intermediary to make an appropriate adjustment to the price per case where the DRG to which the patient is correctly assigned differs from the DRG on which payment was based. Similarly, the qualifying utilization review organization shall direct the hospital and the Uniform Bill Intermediary to classify cases as outpatients, to be billed as outpatients when there is a finding of medical necessity for items and services rendered, but no medical necessity for inpatient admission.

3. The following shall apply to apportionment of liability: Upon a prospective finding that certain days, services, or items will not be necessary, the qualifying review organization shall so advise the respective patient, attending physician, hospital, and payer. Once all involved parties have had due notice and have exhausted all appeals, under N.J.A.C. 8:31B-3.78(a)1vii, the utilization review organization may direct the hospital to assign financial liability for such unnecessary days, services, or items to the patient. Accordingly, except for any grace days which a payer may agree to reimburse pursuant to this section (N.J.A.C. 8:31B-3.79), liability for the appropriate price per case shall be fixed at the point in time at which the patient was eligible for discharge; and any further days or services shall, subject to prevailing contracts and statutes, be the sole liability of the patient to be reimbursed to the hospital at a rate, determined by the hospital, no greater than its charges for such days or services established in accordance with N.J.A.C. 8:31B-3.53 through 3.57. Revenues received by the hospital in accordance with this provision shall be treated as Expense Recoveries in accordance with N.J.A.C. 8:31B-4.62 through 4.67.

[iii. All cases:]**4. Reporting shall be accomplished as follows:** The qualifying utilization review organization shall report all denials and adjustments to the hospital, the appropriate physician, and the payer in a timely manner. All denials and adjustments shall be compiled by diagnosis related group and by hospital, and reported to both the Commission and the Department on, at least, an annual basis. However, except for adjustments made in accordance with N.J.A.C. 8:31B-3.71 through 3.86, any adjustment in a hospital's budget, or in a standard for a Diagnosis Related Group or set of Diagnosis Related Groups shall be made only by the Commission, upon recommendation by the Commissioner through a change in the rate period or schedule of Rates, approved by the Health Care Administration Board[.] ([See] **see** N.J.A.C. 8:31B-3.87[.]).

AGENCY NOTE: N.J.A.C. 8:31B Appendices I through XI currently appear in the code after subchapter 3. The appendices should appear at the end of the chapter, and are repositioned there as part of this proposed readoption. The appendices proposed for amendment appear in this proposal after the amendments to subchapter 7.

8:31B-4.34 Paid taxes

Taxes are monies paid to a governmental unit for conducting business related to direct patient care within its jurisdiction. Taxes are a financial element of the Preliminary Cost Base or Certified Revenue Base except for Federal, State, or local income, excess profit, or franchise taxes, taxes on property not used for direct patient care, and interest and/or penalties paid thereon. Taxes related to financing of operations through the issuance of bonds, property transfers, issuance or transfer of stocks, and the like, are not classified as taxes; rather, they are to be amortized or depreciated with the cost of the security or asset. Sales and real estate taxes paid by a hospital in the provision of Services Related to Patient Care **are to be** included as Paid Taxes. All sales and real estate taxes for Services Related to Patient Care are to be reported in the General Administrative Services cost center and also reported separately from other classifications of expense [per N.J.A.C. 8:31B-4, Part VI]. Employment related taxes, such as FICA, Unemployment Compensation, and Worker's Compensation, are to be classified as employee fringe benefits for all employees, including hospital based physicians. Monies received by a hospital which chooses to self-insure in lieu of payment of Unemployment Compensation taxes and the associated administrative costs of such a self insurance program are included as financial elements and classified as employee fringe benefits, if such monies are reasonably related to the hospital's unemployment compensation experience.

8:31B-4.37 Charity care and reduced charge charity care for indigent patients

(a) (No change.)

(b) Income eligibility criteria for identifying charity care patients are as follows:

1. The provisions of 42 U.S.C. 9902(2), the poverty income guidelines revised annually by the United States Department of Health and Human Services, are hereby incorporated by reference. (For further information on the poverty income guidelines, contact Joan Turek-Brezina, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201, telephone (202) 245-6141.) A person is eligible for charity care or reduced charge charity care if he or she falls into one of the following categories:

i. A person whose individual or, if applicable, family income, as determined by reference to (b)2 below, is less than **or equal to** 150 percent of the HHS Income Poverty Guidelines as adopted by the Department shall be eligible for charity care for necessary health services without cost.

ii. (No change.)

2. (No change.)

3. A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services after any applicable third party has paid; that percentage shall be calculated by the following:

i. Income as a Percentage of HHS Income Poverty Guideline as adopted by the Department			Percentage of Charges Paid by Patient
[From]	**Over**	**To**	
[151]	**150**	175	20
[176]	**175**	200	40
[201]	**200**	225	60
[226]	**225**	250	80

ii. (No change.)

4. Family income that must be considered for **an** eligibility determination includes **the income of all legally responsible individuals including, but not limited to,** a [spouse's income] **spouse and any minor children** for an adult and [parent's(s') income] **a parent and any minor siblings** for a minor child. **Only unearned income shall be considered for minor children and siblings.** A patient may document that a **parent** or spouse's income is not available and that **parent** or spouses' income will not be considered.

(c) Assets eligibility criteria for identifying charity care and reduced charge charity care patients are as follows:

1.-2. (No change.)

3. Family assets that shall be considered for eligibility determination include **the assets of all legally responsible individuals including, but not limited to,** a [spouse's assets] **spouse and any minor children** for an adult and [parent's(s) assets] a parent **and any minor siblings** for a minor child.

4. (No change.)

(d) Eligibility determination for charity care and reduced charge charity care shall be as follows:

1. Based on the criteria in (b) and (c) above, hospitals shall determine the eligibility for charity care or reduced charge charity care for all New Jersey residents who present characteristics indicating an inability to pay for services including, but not limited to: absence of third party insurance coverage; receipt of unemployment or welfare benefits; limited income; and expressions of difficulty with paying for care. A patient with third party insurance coverage may still be eligible for charity care and reduced charge charity care and shall

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be screened for eligibility if he or she presents other characteristics indicating an inability to pay for services. A patient who is eligible for, but not enrolled in, Medicaid (Title XIX), for the services in question may not be determined to be eligible for charity care.

i. Hospitals shall make arrangements for reimbursement for services from private and [federal] **Federal**, state and local governmental third party payers when a person is found to be eligible for such payment. Hospitals shall collect from any party liable to pay all or part of a person's bill, prior to attributing it to charity care. [Subject to waiver provisions, the] **The** Hospital shall, as part of this obligation, pursue reimbursement for the uncollectible copayments and deductibles of indigent participants in Title XVIII of the Social Security Act (Medicare).

ii. A patient who is categorically and income eligible for Medicaid but who is determined to be ineligible for failure to provide information or documentation or for other administrative reasons may not be determined to be eligible for charity care.

2.-7. (No change.)

(e)-(g) (No change.)

8:31B-4.40 Appropriate collection procedures

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

(d) Post-Discharge Follow-up/In-House Efforts: The hospital shall follow up periodically with the proper carrier until the amount owing has been paid in full. Except for denials due to lack of medical necessity, the patient shall be contacted and payment requested concerning any portion of the bill declined by third party carriers. With respect to these patients, self-pay patients and legally responsible individuals, collection procedures shall include but are not limited to:

1.-4. (No change.)

5. If a patient defaults on a payment plan based on ability to pay, the hospital may continue collection efforts from the point where they stopped as a result of a payment plan, except that if the urgent notification letter had already been sent another letter must be sent to inform the patient that the account will be sent for outside collection efforts.

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

SUBCHAPTER 6. [MOBILE INTENSIVE CARE UNITS] **(RESERVED)**

[8:31B-6.1 Purpose

(a) The 1981 regulation concerning the Mobile Intensive Care Units (MICU) rate review process shall apply to all hospitals which have received designation by the Commissioner of Health.

(b) This regulation will apply to hospitals under N.J.A.C. 8:31A and N.J.A.C. 8:31B for 1981.

8:31B-6.2 Objective

(a) To determine the reasonableness of costs required to provide advance life support functions through the use of the MICU system.

(b) With this objective in mind, there are two principles from which this methodology is derived:

1. The intensity of operations should be consistent across all MICU programs to ensure effective and efficient delivery of life support services.

2. The program costs and level of operation should be based on prudent management decisions.

8:31B-6.3 Reporting requirements

(a) For 1981, hospitals will report budgeted costs that accurately relate to their levels of operation. Thereafter, hospitals will report actual costs consistent with the reporting requirements under the Uniform Cost Reporting Regulation.

(b) In addition to the reporting requirements under the existing system, hospitals will report their most recent 12-month experience for the following:

1. Total number of runs made by the MICU;

2. Total number of runs aborted;

3. Total number of patients treated at the scene, but not transported;

4. Total number of patients treated in the emergency department, but subsequently released without inpatient admission;

5. Total number of admissions related to the MICU:

i. Total number admitted to ICU;

ii. Total number admitted to the ACU;

iii. Total number admitted to the CCU;

iv. Total number admitted to all other areas;

v. Total number of DOAs.

8:31B-6.4 Definitions

"MICU" means a vehicle which extends the hospital's intensive care capacity of advanced life support services to the streets. It is staffed by paramedics who are specifically trained to deal with life threatening emergencies.

"Run" means the simultaneous dispatching of a MICU and ambulance to a life threatening emergency where advanced life support services are administered through the use of telemetry communications with the base hospital.

"Aborted run" means any dispatching of a MICU that does not result in the administering of life support services.

"Unit of service": For 1981, the unit of service will be the number of mobile units and thereafter the number of admissions or runs will be used until empirical data can be gathered to demonstrate another unit of service is more appropriate.

8:31B-6.5 Computational techniques

(a) For the purpose of analyzing Mobile Intensive Care Unit programs, (MICU) cost requests will be segregated into four categories.

1. Eligible non-physician costs:

i. These costs are associated with direct non-physician patient care. They are generally not comprised of costs which are indirect or overhead. They are not comprised of costs which are already being reimbursed. Examples of eligible non-physician costs are:

(1) MICU coordinator;

(2) Training coordinator;

(3) Shift differentials;

(4) Dispatchers;

(5) Secretary;

(6) Shift supervisor;

(7) MICU associate/assistant coordinator;

(8) Staff paramedics;

(9) MICU nurses;

(10) Drivers;

(11) Fringes (lower or actual fringe percentage or submitted budgets).]

8:31B-7.3 Determination of uniform statewide uncompensated care add-on

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

(c) Any payments from the Trust Fund reserve made during the calendar year shall be restored through the Trust Fund during the following [one calendar year] **six month** period. [The uncompensated care add-on shall be calculated so that the entire appropriation of $15,000,000 is restored by the end of the calendar year 1988.]

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

8:31B-7.6 Documentation requirements

(a) Each hospital shall submit annually, or at longer intervals at the discretion of the Department, two copies of [the following written statements] **certain materials** relating to hospital uncompensated care and collection practices. **The materials shall include, but not be limited to, the following:**

1.-6. (No change.)

(b) The information required [under] **in** (a) above shall be submitted to the Department annually by December 1 **or by a later date, as determined by the Department**.

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

8:31-7.7 Audit

Uncompensated care audits shall be conducted [pursuant to] **to determine hospital compliance with** N.J.A.C. 8:31B-[4.38]**4.37** through 4.40.

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APPENDIX II
COST COMPONENTS AND PROXIES
FOR THE ECONOMIC FACTOR

LABOR 1.
COST COMPONENT: Non-physician Salaries. Physician's 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, 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, Northest (97 percent in 1987, and no less than 94 percent **beginning** in 1988 [and 1989]).
Percentage change in New Jersey contracted services hourly wage three percent in 1987, six percent **beginning** in 1988 [and 1989)]. Labor proxies of future years will be adjusted downward to reflect the actual [1988 and 1989 statewide] **rate year Statewide** proportion of contracted services if the actual proportion of contracted services is less than six percent. [This treatment will continue for all rate years based on the 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 through 1988].

. . .

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 VIII
SCHEDULE OF RATES AS ADJUSTED FOR COMPLIANCE

ITEM	RATE PER CASE	AMOUNT
. . .		
CLINIC PATIENTS	$ _____	
HOME HEALTH PATIENTS	$ _____	
EMERGENCY SERVICE OUTPATIENTS	$ _____	
[OUTPATIENT DIALYSIS TREATMENT	$ _____]	
AMBULATORY SURGERY	$ _____	
SAME-DAY PSYCHIATRY	$ _____	
. . .		

APPENDIX IX (**RESERVED**)

[Volume Variability Adjustment]

[At final reconciliation for rate years through 1988 the volume adjustment applies only to inpatient direct patient 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. The volume base year is the same as the preliminary cost base year. Hospital-specific direct patient care revenues and admissions in the base year serve as the starting points for measuring volume changes.

B. The admissions change component of the total volume change calculation is the ratio of rate year to base year admissions.[1]

C. Determination of the intensity change component of the total volume change calculation is made as follows:

1. Establish a hospital specific weighted average payment rate for the base year and for the rate base year utilizing base year payment rates. Only inlier revenues and cases are used to calculate the weighted average payment rate in the base and rate years.[2]

$$\text{Weighted Average Payment Rate} = \frac{\text{Case-Mix} \times \text{Schedule of Inlier Rates}^{3}}{\text{Total Inlier Cases}}$$

2. Determine the ratio of rate year to base year weighted average payment rates.

$$\text{i.e. } \frac{265.00}{200.00} = 1.325$$

D. Determining the overall average percentage change in volume/intensity between the base and rate years. This is calculated as follows:

Rate Year Admissions	× Rate Year Weighted Avg. Payment Rate— 1
Base Year Admissions	× Base Year Weighted Avg. Payment Rate

[1]Inlier, outlier, and SDS admissions will be used in the base year and rate year admission calculations. Newborn admissions and medically unnecessary admissions will not be used in the base year and rate year admissions calculations. Medically unnecessary admissions are those admissions determined to be unnecessary by a certified utilization review organization.

[2]SDS admissions and revenues will be included in the calculation of the base year weighted average payment rate. SDS admissions and revenues are not included in the calculation of the rate year weighted average payment rate.

[3]The total inpatient inlier revenue rate year is expressed in base year dollars, i.e.,
Base Year Total Inlier Revenue = Base Year Cost/Case × Base Year Cost-Mix
Rate Year Total Inlier Revenue = Base Year Cost/Case × Rate Year Case-Mix

Upside and Downside Volume Shifts

A. Volume is measured by the volume/intensity proxy described in the previous section.

B. For volume changes of between 0 percent and 10 percent between the base and rate years, in either direction, then

1. The hospital will receive the full variable cost proportion of any marginal revenues it receives in the rate year, plus an increasing percentage of the fixed portion of marginal revenue, if volume is increasing.

2. The hospital will receive a decreasing fraction of the fixed portion of any rate year revenue that has been lost due to a volume downturn.

C. For volume/intensity changes equal to or greater than 10 percent in the period between the base year and a given rate year, then

1. If volume is increasing, the hospital may keep all of the marginal revenue it gains.

2. If volume is decreasing, the hospital may not recover any of the revenue it loses.

D. The earned marginal revenue of the hospital is the adjusted marginal revenue and is a function of the variable and fixed costs of treating more patients or a more acute case-mix.

The earned marginal revenue of a hospital, if it has undergone an overall percent change in volume/intensity between 0 and 10 percent, will equal:

1. 100 percent of the supply-type revenue related to the increased volume. (This is revenue related to supplies; contracted services; other expenses; depreciation; lease costs; and physician salaries, fees, and fringes.)

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2. A variable percentage of the employee compensation revenue. The percentage of the compensation portion of marginal revenue which the hospital retains is calculated in accordance with section E below. (Revenue related to non-physician salaries and fringes).

E. For volume/intensity increases between 0% and 10 percent the following calculation is used to determine how much of marginal revenue may be kept by a hospital as earned marginal revenue:

Earned Marginal Revenue = 100% of the Supply Revenue + A variable % of Compensation Revenue ±

= (Supply %) × (Total Incremental Revenue)

(Variable % of Compensation) × (Compensation %) × (Total Incremental Revenue)

This relationship can be expressed by the following equation:

$$y = (m)(x) + (b)(f)(x)$$

where

y = marginal revenue due the institution (earned marginal revenue)
m = average variable cost percentage for the hospital's Direct Inpatient cost centers (supply costs as a percentage of total direct inpatient care costs).
x = total marginal inpatient revenue received by the hospital in the rate year (a function of volume/intensity changes)

$$b = \frac{(\text{Total \% change in volume/intensity between base and rate years})^2}{(10)^2}$$

f = average fixed cost percentage for the hospital's Direct Inpatient cost centers

Example: If the rate year is 1982, and the base year is 1979, if the total volume change as measured by the volume/intensity and admissions measures is 6 percent between the base and rate years, and

m = 40%
f = 60%
x = $1,000

$$b = \frac{(6)^2}{10^2} = \frac{36}{100} = .36$$

then:

$$y = (.40)(1000) + (.36)(.60)(1000)$$
$$y = 400 + 216 = \$616$$

This is the earned marginal revenue that the hospital may keep. The term b determines what portion of the fixed (compensation) cost percentage of marginal revenue will, in fact, be considered variable. As the size of the volume increase gets larger, more and more of the fixed cost proportion is considered variable. The logic of this formula is that, as volume changes over the period between base and rate years, the possible hospital response must shift from more efficient use of personnel to the hiring of more personnel.

If volume shifts by more than 10 percent in this period then all costs are considered variable, and the hospital is due all the marginal revenue.

F. If volume/intensity decreases between 0% and 10 percent between the base and the rate year, the following calculation is used to determine how much of the resulting lost revenue may be recovered by the hospital:

Recoverable Inpatient Revenue = (Compensation % of the Lost Revenue)

×

(Total direct inpatient care revenue lost by the hospital in the rate year, due to a decrease in admissions or case-mix intensity

×

(That percentage of the compensation part of lost revenue which the hospital should be allowed to keep).

OR

$$e = (h)(i)(1-g)$$

Where:

c = Recoverable inpatient revenue
h = Compensation portion of lost revenue
i = Total Lost Revenue

$$g = \frac{(\text{total \% Change is the Volume/Intensity Measure Between Base and Rate Year})^2}{(10)^2}$$

1-g = Recoverable percentage of the compensation portion of lost revenue

Thus: If a hospital loses $1000 in total direct inpatient revenue in the rate year, 60% of the lost revenue represents compensation revenue, and the total decline in volume/intensity between base and rate years was 6.0%.

h = .60

i = $1000

$$g = \frac{(6.0)^2}{(10)^2} = \frac{36}{100} = .36$$

1-g = 1 - .36 = .64

e = (h)(i)(1-g)

e = (.60)(1000)(.64)

e = 384

The hospital is allowed to keep 384. If the total volume decrease is greater than 10% the hospital loses all of the $1000.

G. The above formulae may be inapplicable in two situations:

1. A hospital's case-mix intensity may increase between the base year and the rate year, while total admissions do not change. However, the hospital's costs and revenues may actually decrease between the base and rate years. Such a situation would arise if the hospital's low length of stay inliers were increasingly shifted to low length of stay outlier status. In this situation, it will be assumed that the hospital has undergone no volume/intensity change. The hospital's rate year revenues will remain at the base year level plus the economic factor adjustment.

2. A hospital's case-mix intensity may decrease between the base and rate years, while its total admissions remain unchanged. However, the hospital's costs and revenues may actually increase between the base and rate years. Such a situation would arise if the hospital's high length of stay inliers were increasingly shifted to high length of stay outlier status. In this situation, it will be assumed that the hospital has undergone no volume/intensity change. The hospital will be allowed to keep the variable portion of the incremental (marginal) revenue.

If the hospital feels that some part of the fixed portion of incremental revenue should also be retained, it must bring an appeal to the Hospital Rate Setting Commission. The appeal must include proof that the increase in high length of stay outliers is outside of the hospital's control.

H. Treatment of Revenue Changes due to Strikes and Construction

In the circumstance of a strike or construction activity, a hospital may experience a revenue downturn in the rate year. Clearly, such a downturn is unrelated to shifts in admissions or case-mix intensity which might result from demographic movements (or from the incentives of a case-mix reimbursement system). The hospital should not automatically receive some portion of this lost revenue. Rather hospitals should identify and quantify the revenue lost for either of these specific reasons. They may request the right to recover this lost revenue by asking for an extraordinary adjustment before the Rate Setting Commission. The Department does not intend to allow the cost/volume methodology to interfere with (1) the normal processes of collective bargaining; or with (2) the ability of hospitals to schedule construction in such a way as to minimize the disruption of patient care activities.]

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APPENDIX X (**RESERVED**)

[Nursing Cost Allocation Methodology]

[I. Patient Assignment in order of priority

A. Pediatric : Patients under Age 18 in any MDC except #14 and #19
B. Same Day Stay : Patients admitted and discharged on the same day.
C. Nursing Resource Use Clusters (not applicable for ICU, CCU, and NNI days).
1. Patients in MDCs #13, $\#8_0$
2. Patients in MDCs #11, #12, $\#5_0$, $\#8_1$, $\#8_2$, $\#8_3$
3. Patients in MDCs #17, #19, $\#5_3$, #14, #21, #20
4. Patients in MDCs #16, #1, #2, #3, #23
5. Patients in MDCs $\#6_0$
6. Patients in MDCs #10, #9, $\#5_4$, $\#6_4$
7. Patients in MDCs #18, #7, $\#6_3$
8. Patients in MDCs $\#6_3$
9. Patients in MDCs $\#5_2$, #4, $\#6_2$

Note:

MDC subgroups in Nursing Resource Use Clusters
(i.e. X, X_2, X_3 = ICD-9-CM Codes representing "threat to life" from low to high according to accepted nursing judgement.
X_0 = ICD-9-CM codes not easily classified by accepted nursing judgement.

II. Relative Intensity Measure (RIM) Equations

A. Pediatric:
RIMS = 0.0 + 420.00 (LOS)
B. Same Day Stay:
1. Chemotherapy and Peritoneal Dialysis
RIMS = 0.0 + 420.00 (LOS)
2. Transfusions and Other Non-Surgery
RIMS = 15.807 + 257.185 (LOS)
3. Surgery
RIMS = 90.00 + 183.00 (LOS)
C. Nursing Resource Use Cluster 1
1. With Surgery
(a) LOS under 33 days
RIMS = 196.018 + 205.676 (LOS)
(b) LOS over 32 days and patient expired
RIMS = (196.018 + 205.676 (32)) + 308.514 (LOS-32)
(c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (196.018 + 205.676(32)) + (205.676 (LOS-32)
(d) LOS over 32 days for maintenance and all others
RIMS = (196.018 + 205.676 (32)) + 102.838 (LOS-31)
2. Without Surgery
(a) LOS under 32 days
RIMS = 542.852 + 33.398 ($LOS^{1.5}$)
(b) LOS over 31 days and patient expired
RIMS = (542.852 + 33.398 ($31^{1.5}$)) + 278.928 (LOS-31)
(c) LOS over 31 days with presence of complications and/or comorbidity
RIMS = (542.852 + 33.398($31^{1.5}$)) + 185.952 (LOS-31)
(d) LOS over 31 days for maintenance and all others
RIMS = (542.852 + 33.398 ($31^{1.5}$)) + 92.976 (LOS-31)
D. Nursing Resource Use Cluster 2
1. With Surgery
(a) LOS under 33 days
RIMS = 737.538 + 45.221 ($LOS^{1.5}$)
(b) LOS over 32 days and patient expired
RIMS = (737.538 + 45.221 ($32^{1.5}$)) + 383.715 (LOS-32)
(c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (737.538 + 45.221 ($32^{1.5}$)) +255.809 (LOS-32)
(d) LOS over 32 days for maintenance and all others
RIMS = (737.538 + 45.221 ($32^{1.5}$)) + 127.905 (LOS-32)
2. Without Surgery
a) LOS under 33 days
RIMS = 717.387 + 57.373 ($LOS^{1.5}$)
b) LOS over 32 days and patient expired
RIMS = (717.387 + 57.373 ($32^{1.5}$)) + 486.828 (LOS-32)
c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (717.387 + 57.373 ($32^{1.5}$)) + 324.551 (LOS-32)
d) LOS over 32 days for maintenance and all others
RIMS = (717.387 + 57.373 ($32^{1.5}$)) + 162.276 (LOS-32)
E. Nursing Resource Use Cluster 3
1. Emergency Admission
a) LOS under 33 days
RIMS = 437.067 + 11.623 (LOS^2)
b) LOS over 32 days and patient expired
RIMS = (437.067 + 11.623 (32^2)) + 557.904 (LOS-32)
c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (437.067 + 11.623 (32^2)) + 371.936 (LOS-32)
d) LOS over 32 days for maintenance and all others
RIMS = (437.067 + 11.623 (32^2)) + 185.968 (LOS-32)
2. Elective Admission
a) LOS under 33 days
RIMS = 364.482 + 69.749 ($LOS^{1.5}$)
b) LOS over 32 days and patient expired
RIMS = (364.482 + 69.749 ($32^{1.5}$)) + 591.840 (LOS-32)
c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (364.482 + 69.749 ($32^{1.5}$)) + 394.560 (LOS-32)
d) LOS over 32 days for maintenance and all others
RIMS = (364.482 + 69.749 ($32^{1.5}$)) + 197.280 (LOS-32)
F. Nursing Resource Use Cluster 4
1. Without Surgery and With Surgery
a) LOS under 33 days
RIMS = 379.943 + 58.084 ($LOS^{1.5}$)
b) LOS over 32 days and patient expired
RIMS = (379.943 + 58.084 ($32^{1.5}$)) + 492.861 (LOS-32)
c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (379.943 + 58.084 ($32^{1.5}$)) + 328.573 (LOS-32)
d) LOS over 32 days for maintenance and all others
RIMS = (379.943 + 58.084 ($32^{1.5}$)) + 164.287 (LOS-32)
G. Nursing Resource Use Cluster 5
1. Without Surgery and With Surgery
a) LOS under 33 days
RIMS = 617.645 + 19.169 (LOS^2)
b) LOS over 32 days and patient expired
RIMS = (617.645 + 19.169 (25^2)) + 424.800 (LOS-25)
c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (617.645 + 19.169 (25^2)) + 283.200 (LOS-25)
d) LOS over 32 days for maintenance and all others
RIMS = (617.645 + 19.169 (25^2)) + 141.60 (LOS-25)
H. Nursing Resource Cluster 6
1. Without Surgery and With Surgery
a) LOS under 33 days
RIMS = 525.223 + 54.527 ($LOS^{1.5}$)
b) LOS over 32 days and patient expired
RIMS = (525.223 + 54.527 ($32^{1.5}$)) + 462.678 (LOS-32)
c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (525.223 + 54.527 ($32^{1.5}$)) + 308.451 (LOS-32)
d) LOS over 32 days for maintenance and all others
RIMS = (525.223 + 54.527 ($32^{1.5}$)) + 154.226 (LOS-32)
I. Nursing Resource Use Cluster 7
1. Without Surgery and With Surgery (Except MDC 6_1)
a) LOS under 31 days
RIMS = 927.003 + 50.761 ($LOS^{1.5}$)
b) LOS over 30 days and patient expired
RIMS = (927.003 + 50.761 ($30^{1.5}$)) + 417.045 (LOS-30)
c) LOS over 30 days with presence of complications and/or comorbidity
RIMS = (927.003 + 50.761 ($30^{1.5}$)) + 139.015 (LOS-30)
d) LOS over 30 days for maintenance and all others
RIMS = (927.003 + 50.761 ($30^{1.5}$)) + 139.015 (LOS-30)
J. Nursing Resource Use Cluster 8
1. With Surgery
a) LOS under 32 days
RIMS = 706.995 + 46.329 ($LOS^{1.5}$)
b) LOS over 31 days and patient expired
RIMS = (706.995 + 46.329 ($31^{1.5}$)) + 386.925 (LOS-31)
c) LOS over 31 days with presence of complications and/or comorbidity
RIMS = (706.995 + 46.329 ($31^{1.5}$)) + 257.949 (LOS-31)
d) LOS over 31 days for maintenance and all others
RIMS = (706.995 + 46.329 ($31^{1.5}$)) + 128.975 (LOS-31)
K. Nursing Resource Use Cluster 9
1. With Surgery
a) LOS under 32 days
RIMS = 817.142 + 43.313 ($LOS^{1.5}$)
b) LOS over 31 days and patient expired
RIMS = (817.142 + 43.313 ($31^{1.5}$)) + 361.737 (LOS-31)

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c) LOS over 31 days with presence of complications and/or comorbidity
RIMS = (817.142 + 43.313 ($31^{1.5}$)) + 241.157 (LOS-31)
d) LOS over 31 days for maintenance and all others
RIMS = (817.142 + 43.313 ($31^{1.5}$)) + 120.579 (LOS-31)

2. Without Surgery
a) LOS under 33 days
RIMS = 411.006 + 59.502 ($LOS^{1.5}$)
b) LOS over 32 days and patient expired
RIMS = (411.006 + 59.502 ($32^{1.5}$)) + 504.891 (LOS-32)
c) LOS over 32 days with presence of complications and/or comorbidity
RIMS = (411.006 + 59.502 ($32^{1.5}$)) + 336.594 (LOS-32)
d) LOS over 32 days for maintenance and all others
RIMS = (411.006 + 59.502 ($32^{1.5}$)) + 168.297 (LOS-32)]

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Application and Review Process

Proposed Readoption: N.J.A.C. 8:33

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1990-254.

Submit comments by June 20, 1990 to:
Mary Lou Holl, Chief
Certificate of Need Program, Room 604
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), this chapter expires on October 7, 1990. In 1971, N.J.S.A. 26:2H-1 et seq. conferred central and comprehensive responsibility for health planning, health care cost containment, and related services on the State Department of Health. This responsibility includes the regulation of all publicly and privately owned health facilities: hospitals, nursing homes, residential care facilities, and other facilities for preventing, diagnosing, or treating diseases or injuries.

In brief, N.J.A.C. 8:33 defines the scope of the regulations, establishes guidelines and criteria for the submission of applications for Certificate of Need, and assigns fees based on the category of facility.

The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The existing rules contain a total of four subchapters that establish the administrative policies that govern the State's certificate of need process. The first of these subchapters is composed of general provisions which include specific procedures and policies for conducting Certificate of Need activities, including inquiry procedures, application filing fees, and batching cycle and application submission dates. The definitions of language and phrases specifically referred to in the Certificate of Need process are also included in this subchapter of the rules.

Subchapter 2 includes a description of access criteria, the requirements and details for submitting letters of intent, and the requirements for submitting applications requiring a new or change of building. This subchapter also contains requirements for application submissions concerning all changes of licensed beds within bed categories, the acquisition of equipment, the addition or change in the number of operating rooms and renal dialysis stations, as well as the requirements for filing applications relating to new or changing health care services.

Subchapter 3 describes the process of reviewing a certificate of need application. It enumerates the conditions for development of applications and specifies where they are to be sent and how many copies are to be included. Deadlines for batching cycles are also delineated. The process is then outlined in detail in this subchapter, including the completeness review process; notification to affected persons; role of the Statewide Health Coordinating Council; procedures and criteria for the Department of Health to follow during the review process; and procedures for written notification of findings on approved projects by the Department. The functions of the health systems agencies (local health planning agencies) are described, as well as the manner in which applications are modified and deferred during the process. In addition, the process of including conditions on approved applications and linking these conditions to subsequent review by the Licensing and Inspections Unit of the Department of Health is outlined.

Subchapter 4 describes the administrative review process including those items which are appropriate for administrative or internal Department of Health review. Examples of items appropriate for administrative review are addressed in this section, as are requests for extension in implementation dates; changes in cost, financing and scope; and demonstration and research projects.

There have been two significant amendments to this chapter since October 7, 1985. An amendment which became effective October 19, 1987 reduced the number of certificate of need review cycles from 12 to 10. This amendment also deleted the necessity of a second stage of architectural and cost review of certificate of need applications (formerly N.J.A.C. 8:33-4.15) because of the absence of Department of Health staff expertise to implement this further review process. A further amendment, effective on June 19, 1989, removed batching requirements from applications to convert acute beds to non-acute beds through merger/acquisition or other action to which N.J.A.C. 8:33-1.5 and 2.8 apply.

The rules are currently in the process of being revised in conjunction with the recommendations of the Statewide Health Coordinating Council Task Force on Efficiency. Revised rules are currently being reviewed by the Policy and Plan Development Committee of the Statewide Health Coordinating Council. The readoption of the current rules is being proposed to assure that rules are in place beyond the October 7, 1990 expiration date, if the revised rules have not been adopted by that date.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the state, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs. . . ."

The intent of N.J.A.C. 8:33 is to address the spirit and intent of the 1971 Health Care Facilities Planning Act, as amended, by maintaining a Certificate of Need Program that promotes quality, cost-effective, and accessible services to the 7,800,000 residents of the State of New Jersey.

Economic Impact

The rules proposed for readoption implement the provisions of State and Federal laws to provide for the protection and promotion of the health of the residents of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services. The chapter implements the policy of the State to provide hospital and related health care services of the highest quality, of demonstrated need, and accessible to all segments of the population at a reasonable cost. The certificate of need process has historically permitted rational development of health care services that, on average, eliminates in excess of 10 million dollars in surplus capital construction projects that are proposed annually by health care facilities.

Regulatory Flexibility Analysis

The rules proposed for readoption will be applicable to hospitals which employ well over 100 employees, as well as smaller entities that are not specifically affiliated with hospitals. The readoption merely extends the original rules which were enacted to establish the responsibility for and regulation of health planning and health care cost containment. The requirements contained in the rules do require personnel to perform a number of functions at a facility in order to provide effective health care services. Record keeping, reporting and other compliance requirements are contained in this chapter. Such record keeping, data reporting and other requirements will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing these rules, which include record keeping, data reporting and other compliance requirements, the Department has had to balance the economic impact of added personnel costs with the need to provide

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a safe and effective health care service. The Department has determined that to establish differential requirements for small businesses would endanger public health and safety, and, therefore, no exemption from compliance with this chapter is provided.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:33.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Standards and Criteria for the Demonstration of Extracorporeal Shock Wave Lithotripsy (ESWL) Services

Proposed Readoption: 8:33B

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1990-255.

Submit comments by June 20, 1990 to:
John J. Gontarski, Chief
Health Systems Review Program, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), this chapter expires on October 7, 1990. The current rules establish minimum standards and criteria for the appropriate regional distribution of Extracorporeal Shock Wave Lithotripsy Services throughout the State based on regional community need. The rules include sections that establish a Statewide demonstration period; minimum personnel, utilization, and data requirements; as well as assurances of adequate physical plant space and sufficient program or support services. In addition, the rules call for the regional distribution of ESWL resources while at the same time requiring these regional ESWL providers to assure accessibility of these services to all residents of the State who are in need of ESWL treatment.

Existing rules require periodic updating based upon the most recent experience with this technological modality. Since the ESWL rules became effective on October 7, 1985 amendments have been made to establish an additional third ESWL site and to add an additional section at N.J.A.C. 8:33B-1.12 regarding the need to establish a Statewide reimbursement rate. These amendments became effective on July 7, 1986. A subsequent amendment to extend the demonstration period by six months became effective on July 18, 1988.

Currently there are three extracorporeal lithotripsy services (ESWL) with certificate of need approval, operating in geographically balanced locations throughout the State of New Jersey, which were approved originally on a demonstration basis to provide data on this relatively new technology. These three ESWL centers are:

The Stone Center/University Lithotripsy Affiliates, Inc. in Newark.

The Mid-Atlantic Kidney Stone Center, in Marlton.

Central Jersey Health Care Corporation, in New Brunswick.

It is the policy of the Department at this time that the number of kidney lithotripsy centers that have been granted certificate of need approval are sufficient to serve the specific population targeted for this treatment (that is, individuals with ureter and kidney stones that are amenable to the technology of extracorporeal shock waves). This policy is based on the relatively small incidence and prevalance rates of kidney stone disease in the population and the presence of unused capacity at the existing three kidney lithotripsy sites in New Jersey. It should be emphasized, however, that other clinical applications of shock wave lithotripsy (that is, gallstones) are still under study by the Food and Drug Administration (FDA) which will require substantive amendment to these rules should these investigational lithotripsy devices gain FDA approval in the future.

The Department is therefore recommending readoption of the current rules at this time without changes.

Social Impact

ESWL has the advantage of eliminating surgical procedures for kidney stone removal and reducing costs and time usually associated with those surgical procedures and its related post-operative recovery period. Average national hospital stays for kidney stone operations are typically between one and two weeks. Hospital stays for lithotripter treatment are typically four days or less.

The recovery period associated with the lithotripter procedure is considerably shorter and significantly less painful than the recovery period associated with conventional surgical treatment of kidney stones. Individuals who suffer from kidney stones and must undergo surgery usually require a month's recuperative period. Individuals who undergo a lithotripter procedure are able to resume their normal lifestyle within a week of receiving the treatment.

The Department recognizes the profound impact this technology has had upon the health care delivery system and is, therefore, proposing to continue to have this service provided to residents of New Jersey in an effective and efficient manner.

Economic Impact

It has been estimated that approximately 100,000 kidney stone operations are performed annually in this country. The lithotripter treatment can potentially replace 90 percent of those kidney stone operations at an average savings of approximately $2,000 per treatment. This can result in national annual savings of over half a billion dollars. This cost savings is, in part, the result of ESWL having a shorter associated length of stay and being a less labor-intensive treatment modality. In addition, this non-invasive procedure allows for a faster recovery, and thereby reduces the number of workdays lost.

Lithotripsy can potentially replace surgical intervention in as many as 80 to 90 percent of those persons for whom surgical removal of kidney stones would have been the required treatment. This should result in the freeing up of surgical capacity within acute care facilities, thereby realizing greater efficiencies for the facilities.

While the lithotripter could have profound implications for those suffering from renal and ureteral calculi, it must be remembered that ESWL is a treatment which is targeted at a very small and specific population. There has been much discussion regarding the possibility of disintegrating other stones, namely gall stones, via shock waves; however, approval of this next generation of lithotripsy devices has been temporarily delayed by the Food and Drug Administration (FDA). Should the FDA approve lithotripsy devices for use in the treatment of gallstones, substantive amendments to these rules will be proposed in the future.

The lithotripter device is estimated to cost approximately $1.8 million. Appropriate site selection and facility renovation can cost a facility an additional $200,000 or more, depending on the capabilities desired. The productive life of the lithotripter is estimated to be approximately five years. It is, therefore, essential to provide for the appropriate regional distribution of this relatively costly treatment modality.

Regulatory Flexibility Statement

The requirements contained in these rules do require personnel to perform a number of functions at an ESWL facility in order to provide a safe and effective ESWL service. Record keeping, data reporting and other compliance requirements are included in the proposed readoption of these rules. Such record keeping and data reporting will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing these rules for readoption, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of this proposed readoption would endanger public health and safety and, therefore, no exemption from coverage is provided.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:33B.

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(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Ambulatory Care Facilities
Standards for Licensure
Proposed Readoption with Amendments: N.J.A.C. 8:43A

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1990-256.

Submit comments by June 20, 1990 to:
Robert J. Fogg, Director
Standards and Quality Assurance Program
Division of Health Facilities Evaluation and Licensing
Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Manual of Standards for Licensure of Ambulatory Care Facilities, N.J.A.C. 8:43A, is due to expire on September 3, 1990, in accordance with Executive Order 66(1978). The current form of the rules traces its existence to the adoption of new rules by the Department in 1985, at which time the previous rules were reorganized, simplified, and updated in a such way as to manifest the unity underlying the diversity of ambulatory care services provided in New Jersey (see 16 N.J.R. 3254(a); 17 N.J.R. 2110(b)). Although N.J.A.C. 8:43A has functioned effectively in the promotion of patient health and safety, the Department is planning to undertake a comprehensive revision of the rules in the near future with the purpose of enhancing the workability of the rules and rendering them consistent with licensure rules for other types of health care facilities which have been developed in the years since current N.J.A.C. 8:43A was adopted. Given the proximity of the expiration date of N.J.A.C. 8:43A, however, the Department is proposing the readoption of this chapter with amendments in order to avert expiration of the rules and to allow time for the Department to prepare a more extensive revision of N.J.A.C. 8:43A for proposal in the near future.

In addition to proposing the readoption of the current rules at N.J.A.C. 8:43A, the Department is proposing to amend N.J.A.C. 8:43A-12, the subchapter of the manual which addresses surgical services and which applies only to those ambulatory care facilities which provide such services. The purpose of this action is to add to this subchapter anesthesia-specific rules which were developed for incorporation, and have been incorporated, into the Manual of Standards for Hospital Facilities. These anesthesia-specific rules were developed as a result of the activities of the Department's Licensure Reform Project. These activities included extensive meetings with interested parties and distribution of a written opinion survey to all licensed hospitals. Addition of anesthesia standards to the hospital licensure rules in 1989 redressed a deficiency in the rules. The Department seeks to redress a similar deficiency in the licensure standards for ambulatory care facilities by integrating many of these hospital anesthesia standards, as refined by the Department in consultation with the Anesthesia Standards Advisory Committee of the Department, into N.J.A.C. 8:43A-12. In fact, promulgation of the hospital anesthesia standards at N.J.A.C. 8:43G-6 was accompanied by a commitment on the part of the Department to amend the licensure rules for ambulatory care facilities accordingly. This commitment rests on the belief that rules regarding anesthesia services should be a function of the nature of the services themselves rather than of the location in which the services are provided.

The current N.J.A.C. 8:43A serves as the basis for licensure of a variety of types of facilities which share the characteristic of providing preventive, diagnostic, and therapeutic services to persons who come to the facility to receive services and depart from the facility on the same day. All ambulatory care facilities provide such basic services as medical, nursing, and social work services. Ambulatory care facilities include, for example, family planning clinics, renal dialysis facilities, ambulatory surgery facilities, health maintenance organizations, and outpatient methadone maintenance programs.

The rules which are being proposed for readoption address both issues which concern the facility as a whole and issues which are specific to a particular type of service. Subchapters 2 and 3, which set forth the procedure which a facility must follow in order to apply for a license to operate in New Jersey and which state requirements for a policy and procedure manual for the organization and operation of the facility, exemplify rules of a facility-wide nature. In contrast, the rules included in subchapter 8 address, in detail, the nursing service of the facility. This subchapter includes a requirement for the designation of a director of nursing services, specifies some of the director's responsibilities as well as those of other nursing personnel, and specifies which nursing personnel may administer medication. In recognition of the diversity of ambulatory care facilities, subchapter 8 further states nursing requirements which are limited in application to those facilities which provide particular types of services—namely drug abuse treatment services, surgical services, and chronic, self care, and pediatric dialysis services. Similarly, other service-specific subchapters address the following: medical staff services, including the responsibilities of the medical director (subchapter 7); pharmaceutical services, including policies and procedures for drug administration and the storage of medications (subchapter 9); counseling services, including specific rules concerning drug abuse counseling (subchapter 10); and laboratory, radiological, and computerized tomography services including staffing (subchapter 11).

Other subchapters treat the following areas: staff qualifications, such as those of physicians, of the director of nursing services, and of social workers (subchapter 1); responsibilities of the governing authority (subchapter 4); appointment and responsibilities of the administrator (subchapter 5); patient care policies and the establishment of a patient care policy committee (subchapter 6); medical records, including information to be included on each patient record (subchapter 13); infection prevention and control, including the disposition of pathological and infectious waste (subchapter 14); emergency services and procedures, including fire drills and emergency medical services (subchapter 15); patient rights (subchapter 16); quality assurance, including the responsibilities of the multidisciplinary evaluation committee (subchapter 18); physical plant (subchapter 19); housekeeping, sanitation, and safety, including linen and laundry services (subchapter 17); and surgical services (subchapter 12).

Some of the proposed changes to N.J.A.C. 8:43A-12 derive from the current subchapter of the hospital licensure manual which addresses anesthesia services (N.J.A.C. 8:43G-6). Other additions are based upon subchapters 32 and 35 of the hospital manual (N.J.A.C. 8:43G), which concern same-day stay and postanesthesia care, respectively. The proposed changes also take into account amendments to the hospital anesthesia standards which are being developed by the Department with the assistance of the Anesthesia Standards Advisory Committee of the Department. A summary of the provisions of the proposed amendment to N.J.A.C. 8:43A-12 follows:

Proposed new rule N.J.A.C. 8:43A-12.2 is comprised of definitions of a number of terms which require clarification as a result of their technical nature and the manner in which they are employed throughout the subchapter. For example, a distinction is made between "conscious sedation" and "general anesthesia." This distinction is essential to the understanding of the rules regarding administration of anesthesia contained in proposed new rule N.J.A.C. 8:43A-12.3. Other defined terms include: "anesthesiologist," "anesthetic agent," "conduction anesthesia," "deep sedation," "local anesthetic," "monitoring," "special procedure," and "supervision."

The qualifications of staff who may perform surgical procedures, direct the anesthesia service, administer anesthetic agents, supervise the administration of anesthetic agents, and monitor patients are delineated in proposed new rule N.J.A.C. 8:43A-12.3. Due to the extent to which decisions of the physician director affect patient safety and quality of care, proposed N.J.A.C. 8:43A-12.3(c) would require the physician director of anesthesia services to be board-certified in anesthesiology or to have been made a Fellow of the American College of Anesthesiology before 1972. The rule would not prohibit the medical director of the facility from serving as director of anesthesia services. Proposed N.J.A.C. 8:43A-12.3(f), (h), and (k) specify the qualifications of persons who may administer anesthetic agents, including agents used for conscious sedation. Such persons would have to be continuously present, and, except in the case of conscious sedation or minor conduction blocks, would have to be separate from the individual who is performing the procedure.

The revised requirements for policies and procedures for surgical and anesthesia services at N.J.A.C. 8:43A-12.4 differ from the current require-

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ments in both content and organization. The addition of some new requirements permitted the proposed deletion or relocation of some of the current requirements and necessitated the revision of others. Proposed N.J.A.C. 8:43A-12.3(a) and (b), for example, would replace current N.J.A.C. 8:43A-12.2(a)5ii and 12, respectively. Rules regarding supervision of the administration of anesthetic agents in proposed N.J.A.C. 8:43A-12.3 would replace the less detailed N.J.A.C. 8:43A-12.2(a)5i. Additions at proposed N.J.A.C. 8:43A-12.4(a)4, 8, and 9 would provide for preanesthesia evaluation, patient preparation, intraoperative management, reporting of morbidity and mortality, and monitoring of patients in any special procedure room. New rules regarding postanesthesia care at N.J.A.C. 8:43A-12.10 and 12.13 have resulted in the proposed revision of current N.J.A.C. 8:43A-12.2(a)10, which requires evaluation by a physician after recovery from anesthesia, at proposed N.J.A.C. 8:43A-12.4(a)12. The current quality assurance requirement at N.J.A.C. 8:43A-12.2(a)14 would be expanded in proposed N.J.A.C. 8:43A-12.4(a)15 to include morbidity and mortality conferences, monitoring of patient outcomes, and report of all deaths in anesthetizing locations and unexpected intraoperative or postoperative events or outcomes related to anesthesia.

In addition to requiring the facility to maintain a record of all surgical procedures performed, as required by the current N.J.A.C. 8:43A-12.3, N.J.A.C. 8:43A-12.5, an amended recodification of N.J.A.C. 8:43A-12.3, requires that a preanesthesia note reflecting evaluation of the patient prior to administration of anesthesia, a record of anesthesia, and postanesthesia notes be made. The rule as proposed is intended to ensure that the patient is evaluated before and after surgery.

The proposed addition of new rule N.J.A.C. 8:43A-12.6 is based upon a concern for patient safety. The proposed rule would require the use of safety systems, such as alarm systems and the color-coding of all medical gas hoses and adapters, designed to protect patients from being placed into precarious situations. Proposed N.J.A.C. 8:43A-12.6(k) would allow until April 1, 1991 for the purchase of the necessary equipment by the facility.

In order to protect patients from the dangers associated with equipment malfunction, proposed new rule N.J.A.C. 8:43A-12.7 would require inspection of all anesthesia equipment at the beginning of each day of use and before each use. Equipment maintenance would have to conform with requirements established by the manufacturer, and the credentials of each servicing agent would have to be evaluated.

Proposed new rule N.J.A.C. 8:43A-12.8 addresses the recording of patient data and the availability and use of equipment for monitoring patients receiving anesthesia. The blood pressure, pulse rate, and respiration of patients receiving anesthesia would need to be recorded at least every five minutes. The rule calls for use of such technology as in-circuit oxygen analysis, pulse oximetry, end-tidal carbon dioxide monitoring, and electrocardiography. The Department maintains that use of the specified instrumentation is essential for the reduction of risk to the safety of patients undergoing surgery. As in the case of the safety system equipment required by proposed N.J.A.C. 8:43A-12.6, each facility would have until April 1, 1991 to purchase the necessary monitoring equipment.

Proposed new rule N.J.A.C. 8:43A-12.9 describes the general requirements of anesthesia staff education programs.

Proposed new rules N.J.A.C. 8:43A-12.10 through 12.14 concern postanesthesia care. Comprehensive policies and procedures, including criteria for admission to and discharge from the postanesthesia care unit, would be required by proposed N.J.A.C. 8:43A-12.10(b). The intent of proposed N.J.A.C. 8:43A-12.10(b)8 is to restrict patients who have received anesthesia from driving themselves home after discharge.

Requirements regarding postanesthesia care staff qualifications and availability are delineated in proposed N.J.A.C. 8:43A-12.11 and 12.12. The rules would require designation of a physical director and of a registered professional nurse with administrative responsibility for nursing care provided in the postanesthesia care unit. Among the areas in which registered professional nurses assigned to the unit would need to be trained are monitoring of cardiac function, basic cardiac life support, and critical care. Proposed N.J.A.C. 8:43A-12.11(d) and (e) would require that there be at least one registered nurse certified in advanced cardiac life support and one who has passed a course in critical care in the unit whenever there is a patient in the unit. Proposed N.J.A.C. 8:43A-12.12 would ensure that at least two health care personnel, including a registered nurse, are present whenever a patient is present in the postanesthesia care unit.

Care of the patient in the postanesthesia care unit is the subject of proposed N.J.A.C. 8:43A-12.13. The rule addresses the role of the anesthesia team during the transition to postanesthesia care, evaluation of the patient's condition during recovery from anesthesia, electrocardiographic monitoring, monitoring by pulse oximetry, access to end-tidal carbon dioxide monitoring, patient data to be included in the medical record maintained in the unit, and discharge from the unit.

Proposed N.J.A.C. 8:43A-12.14 would require that the postanesthesia care unit be maintained as a closed unit, adjacent to or within the operating suite. It further specifies the types of attire to be worn by staff and other individuals who enter the unit. Proposed N.J.A.C. 8:43A-12.14(d) lists equipment and services appropriate for a postanesthesia care unit, such as emergency equipment, pulse oximetry, respirometer, and peripheral nerve stimulator.

Social Impact

Since its adoption in 1985, the current N.J.A.C. 8:43A has worked well as an instrument through which the Department could fulfill obligations which follow from N.J.S.A. 26:2H-1 et seq., the Health Care Facilities Planning Act, regarding the health and safety of patients in facilities in New Jersey. The rules have been effective despite the diversity of facilities and services to which the rules pertain. The proposed readoption would ensure that the Department could continue to require that the care provided in ambulatory care facilities satisfy at least minimum operational standards while pursuing the development of a revised manual of standards.

Implementation of new hospital standards in 1989 regarding anesthesia services (N.J.A.C. 8:43G-6) has enhanced the efficacy of the licensure process for hospital facilities. Additional hospital standards for same-day stay and postanesthesia care (N.J.A.C. 8:43G-32 and 35) have been adopted and will become operative in July, 1990 (see 22 N.J.R. 548(a); 22 N.J.R. 441(b)). The Department maintains that many anesthesia-related deaths and injuries are preventable and that these hospital anesthesia standards should reduce the risk of injury and mortality for hospital patients in New Jersey. Given the similarity between the types of anesthesia used in hospitals and in ambulatory surgical facilities, the Department contends that it is necessary to adopt anesthesia-related standards for ambulatory care facilities similar to those adopted for hospital facilities.

The primary goal of N.J.A.C. 8:43A-12 as proposed is to protect the safety of patients in ambulatory care facilities which provide surgical and anesthesia services. Consequently, the proposed rules would establish minimum qualifications of personnel who may direct the anesthesia service, administer anesthetic agents, supervise administration of anesthetic agents, monitor patients. They would further require preanesthesia evaluation of patients and the recording of notes regarding the patient before and after surgery. The current requirement for quality assurance procedures would be expanded so as to require specific activities, such as the reporting of all deaths in anesthetizing locations to the Department. The proposed rules would require use of safety systems and monitoring equipment, in addition to inspection and maintenance of anesthesia equipment.

The primacy of patient safety is reflected by the proposed rules concerning postanesthesia care in ambulatory care facilities. The vulnerability of patients during the postanesthesia stage of treatment renders such rules necessary. The rules address issues with ramifications for patient safety, such as training of nurses assigned to the postanesthesia care unit, the presence of health care personnel whenever a patient is in the unit, and the physically closed nature of the postanesthesia care unit.

Economic Impact

Ambulatory care facilities provide a means by which health care costs may be contained. The variety of services which are offered through these diverse types of facilities on an outpatient basis allows patients and third-party payors to avoid, in many cases, higher costs associated with inpatient care in hospitals. Readoption of N.J.A.C. 8:43A would enable the Department to continue to inspect and license ambulatory care facilities on the basis of compliance with reasonable, functional standards and, thus, would promote the provision of safe, cost-effective patient care.

The amendments to N.J.A.C. 8:43A-12, Surgical Services, would require anesthesia-related equipment to conform to specified standards. The Department maintains that the proposed required features for anesthesia machines are essential to the provision of safe patient care and that the machines currently in use, therefore, should not require large expenditures in order to be brought into compliance with the proposed standards. Nevertheless, it is reasonable to expect that implementation of measures resulting in compliance with the proposed equipment standards, in addition to those standards addressing staff qualifications, would entail

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monetary expenditure on the part of the ambulatory surgical facility. The purchase of pulse oximeters and carbon dioxide monitors, for example, could represent a new expense. It is estimated that an instrument which includes a pulse oximeter, a carbon dioxide monitor, and a non-invasive blood pressure monitor can be obtained for approximately $10,000. Considering only those 16 facilities specifically designated as ambulatory surgical facilities or abortion clinics, assuming that there are four operating rooms per facility, and assuming that none of the operating rooms are presently equipped with pulse oximeters or carbon dioxide monitors, the total cost of equipping all of the resultant 64 operating rooms with pulse oximeters and carbon dioxide monitors would be approximately $640,000. This estimate does not take into account those ambulatory care facilities which are not specifically designated as ambulatory surgical facilities, but which do provide some surgical services. For those facilities needing to purchase an electrocardiogram monitor, the cost of the monitor would be approximately $7,500.

It should be noted that, besides the social advantages described above, a number of compensatory economic benefits would attend adoption of the proposed rules. For example, a decrease in liability insurance premiums for anesthesiologists in New Jersey has been observed since the hospital anesthesia standards, including the requirement for a Board-certified director, have gone into effect. This state of affairs is dependent upon a diminution in the number of malpractice claims. Adoption of safety-oriented standards for ambulatory surgical facilities, such as those proposed, would increase the probability that liability insurance premiums will continue to be reduced. Also, the economic consequences of the proposed rules' potential for preventing unnecessary injury and loss of life must, of course, be taken into consideration.

Regulatory Flexibility Analysis

The rules in this chapter apply to the 177 ambulatory care facilities which are licensed in New Jersey. These facilities can be considered small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments to the current rules at N.J.A.C. 8:43A-12 would affect only those ambulatory care facilities which provide surgical services. Among these amendments are reporting and recordkeeping requirements. The facility would be required to report all deaths in anesthetizing locations to the Department. The proposed amendments would add requirements for notes to be entered into the patient medical record prior to and following anesthesia. A record would have to be maintained of all service and maintenance performed on all anesthesia machines, ventilators, and vaporizers; records of inspections of anesthesia equipment would also have to be maintained. In each of these cases, it is evident that the proposed requirement would directly or indirectly serve the goal of enhancing patient safety in ways which are independent of facility size. Consequently, the Department contends that compliance with the proposed amendments is necessary for all ambulatory care facilities which provide surgical and anesthesia services.

The proposed readoption of the current rules would affect all licensed ambulatory care facilities by preventing the expiration of the reporting, recordkeeping, and other requirements presently in effect. As in the case of the proposed amendments, the current rules were written with the intention of protecting patient health and safety without imposing unnecessary requirements on the facilities. Accordingly, the current rules address such essential activities as the establishment of patient care policies and procedures to facilitate continuity of care to patients, the establishment of an infection prevention and control program, and the maintenance of patient medical records. The Department reaffirms the appropriateness and necessity of these rules for all ambulatory care facilities, regardless of facility size, and has, therefore, made no differentiation based upon business size, in the interest of public health.

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

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

SUBCHAPTER 12. SURGICAL AND ANESTHESIA SERVICES

8:43A-12.1 Services

(a) If the facility provides surgical services [in an operating room and recovery area] **to patients**, the surgical and anesthesia services provided shall be limited to those procedures approved by the governing authority and the medical staff.

(b) (No change.)

8:43A-12.2 Definitions

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

"Anesthesiologist" means a physician who has successfully completed an approved residency program in anesthesiology.

"Anesthetic agent" means any drug or combination of drugs administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia.

"Anesthetizing location" means any location in a health care facility where anesthetic agents are administered.

"Conduction anesthesia" means the administration of anesthetic agents to interrupt nerve impulses without loss of consciousness. Major conduction blocks include regional nerve blocks (epidural, caudal, and spinal anesthesia). Minor conduction blocks include local infiltration, local nerve blocks, and nerve blocks by direct pressure and refrigeration.

"Conscious sedation" means the administration of drugs to obtund, or dull or reduce the intensity of pain and awareness without the loss of defensive reflexes.

"Deep sedation" means the administration of drugs which results in some loss of defensive reflexes; the patient, however, remains arousable by strong stimulation.

"Defensive reflexes" means the ability of an individual to counteract noxious events, especially to defend the breathing passages against foreign material.

"General anesthesia" means the administration of drugs which causes loss of consciousness, that is, complete unawareness of routine surroundings. During general anesthesia the patient is unable to make meaningful responses to even the strongest stimulation.

"Local anesthetic" means an agent which produces a transient and reversible loss of sensation in a circumscribed portion of the body.

"Minor conduction block" means the injection of a local anesthetic to stop a painful sensation in a severely circumscribed area of the body (local infiltration or local nerve block), or the block of a nerve by direct pressure and refrigeration.

"Monitoring" means the observation of a patient using instruments to measure, display, and/or record (continuously or intermittently) certain physiologic variables such as pulse, blood pressure, and respiration.

"Operating room" means a unit for the performance of surgery.

"Practitioner" means a physician, a dentist, or a podiatrist.

"Regional anesthesia" means a major conduction block such as epidural, caudal, and spinal anesthesia.

"Special procedure" means patient care which requires entering the body with instruments in a potentially painful manner. Examples are: endoscopy (diagnostic and surgical), oral surgery, radiologic procedures, or emergency procedures.

"Special procedure room" means the specially equipped facility location in which special procedures are performed.

"Supervision" means direct oversight of nurse anesthetists and residents by a physician who has been granted privileges in anesthesia. The supervising physician is physically present in the operating room suite or postanesthesia care unit and has no direct patient care responsibilities other than for the paitents under the care of the personnel being supervised.

8:43A-12.3 Surgical and anesthesia staff; qualifications

(a) Surgical procedures shall be performed only by practitioners who are licensed to practice in New Jersey and who have been granted privileges to perform those procedures by the governing body of the facility, upon the recommendation of the medical staff, after medical review of each practitioner's documented education, training, experience, and current competence.

(b) A physician and a registered professional nurse, at least one of whom is certified in advanced cardiac life support by the American Heart Association, shall be present during all surgical procedures and shall be present in the facility as long as any patient remains in the facility.

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(c) There shall be a physician director of anesthesia services who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was made a Fellow of the American College of Anesthesiology before 1972. The medical director of the facility may serve as physician director of anesthesia services.

(d) The physician director of anesthesia services shall participate in the credentialing process and delineation of privileges of all personnel who administer anesthetic agents.

(e) Anesthetic agents administered with the purpose of creating conscious sedation, deep sedation, conduction anesthesia, or general anesthesia shall be administered in any location in the facility only in accordance with medical staff policies and procedures.

(f) All anesthetic agents, except those utilized for conscious sedation or as minor conduction blocks, shall be administered and monitored only by the following:

1. An anesthesiologist; or

2. Under the direct supervision of an anesthesiologist:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology.

(g) The administration, supervision, and monitoring of any anesthesia, except those agents utilized for conscious sedation or minor conduction blocks, shall be provided by an individual who is continuously present and separate from the individual who is performing the procedure.

(h) Anesthetic agents used for conscious sedation shall be administered only by the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation;

2. Under the direct supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification; or

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology.

(i) The administration of anesthetic agents utilized for conscious sedation shall be provided by an individual who is continuously present in the anesthetizing location during the procedure.

(j) The monitoring of patients who have been administered an anesthetic agent for the purpose of creating conscious sedation shall be provided by an individual who is continuously present for the primary purpose of anesthesia monitoring who is separate from the individual performing the procedure, and who is one of the following:

1. A physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation;

2. Under the direct supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer anesthetic agents used for conscious sedation:

i. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

ii. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification;

iii. A physician resident, a dental resident, or a student nurse anesthetist participating in a nationally approved graduate training program leading to a recognized specialty; or

iv. A registered professional nurse who is certified in advanced cardiac life support by the American Heart Association and who has training and experience in the use of monitoring devices; or

3. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology.

(k) Minor conduction blocks shall be administered and monitored only by one of the individuals identified in N.J.A.C. 8:43A-12.3(h). This individual shall be continuously present.

(l) Provision shall be made for remote monitoring of the patient if radiation or another direct hazard necessitates the removal of personnel.

8:43A-[12.2] **12.4** Policies and procedures

(a) The medical staff shall develop and implement written bylaws, rules, regulations, policies, and procedures for surgical and anesthesia services, in accordance with the governing authority and medical staff bylaws. The policies and procedures shall be reviewed **annually** and revised as [specified in the facility's policy and procedure manual(s)] **needed**, and shall include at least the following:

1.-3. (No change.)

4. Policies and procedures regarding preanesthesia evaluation, patient preparation, and intraoperative management;

[4.] **5.** Policies and procedures to ensure that every patient is examined by [physician] **practitioner** immediately prior to surgery;

[5.] **6.** Policies and procedures for use of analgesia and anesthesia, including types which may be used for each procedure, safety regulations, and **responsibilities and qualifications of** persons [responsible for administration] **who administer anesthesia and monitor patients**;

[i. A physician shall be immediately available in the facility when anesthesia is administered by a nonphysician (for example, by a podiatrist, dentist, or certified registered nurse anesthetist);

ii. Surgical procedures shall be performed only by practitioners who are licensed to perform such procedures in New Jersey and who have been granted privileges to perform those procedures by the governing body of the organization, upon the recommendation of the medical staff, after medical review of each practitioner's documented education, training, experience, and current competence;

6. Delineation of responsibilities, qualifications, and supervision required for persons responsible for administering anesthesia;]

7. Policies and procedures for **the preoperative and postoperative** recording of vital signs (blood pressure, temperature, respiration rate, and pulse) [prior to surgery and before discharge];

8. Policies and procedures for reporting of morbidity and mortality;

9. Policies and procedures for monitoring of patients in any special procedure room or other location where patients receive anesthesia;

[8. Pre- and postoperative] **10. Policies and procedures for postoperative** observation and care required for each type of procedure;

[9.] **11.** Methods to ensure that gross and microscopic tissue removed surgically or by any other procedure, including termination of pregnancy in accordance with the regulations of the New Jersey State Board of Medical Examiners, N.J.A.C. 13:35-4.2, is examined by a pathologist and a report of the findings is documented in the patient's medical/health record[:];

i. The facility shall ensure that the tissue is disposed of in accordance with N.J.A.C. 8:43A-14.6 of this chapter whether it is examined on the facility's premises or off the facility's premises[.];

[10. Duration] **12. Specification of the duration** of time the patient shall remain in the facility after surgery[. If the patient received anesthesia, he or she shall be evaluated by a physician after recovery from anesthesia and before discharge];

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[11.] **13.** (No change in text.)

[12. Designation of a physician qualified in resuscitative techniques to be present during all surgical procedures and to remain in the facility as long as any postoperative patients are in the facility;]

[13. Provision] **14. Policies and procedures for the provision** of written instructions to the patient (multilingual, if indicated) on pre- and postsurgical care, including, but not limited to, restrictions on food and beverages before surgery and procedures for obtaining help in the event of postoperative problems; and

[14.] **15.** Procedures for a systematic review and evaluation of patient care and surgical and anesthesia practices and techniques, as part of the audit and quality assurance (evaluation) system **of the facility**.

i. Quality assurance shall include morbidity and mortality conferences.

ii. Quality assurance activities shall include at least the monitoring of outcomes for patients receiving anesthetic agents.

iii. The facility shall notify the Director of Standards and Quality Assurance, Division of Health Facilities Evaluation and Licensing, New Jersey State Department of Health, by telephone at (609) 588-7737 or (800) 792-9770 within 24 hours, and in writing within 30 days, of all deaths in anesthetizing locations and unexpected intraoperative or postoperative events or outcomes related to anesthesia. The written report shall include a summary of the incident and the patient's risk status or American Society of Anesthesiology (ASA) Physical Status classification. Records of such reports and telephone calls shall be made available only to Department of Health personnel for official purposes and, for each report, to the specific facility to which the report pertains.

8:43A-[12.3] **12.5** Records

(a) The facility shall maintain a record of all surgical procedures performed which shall include the type of procedure performed, operative diagnosis, type of anesthesia used, personnel participating, postoperative diagnosis, and any unusual or untoward occurrence.

(b) A preanesthesia note, reflecting evaluation of the patient and of the patient record prior to administration of anesthesia, shall be made or reviewed by the physician administering or supervising the administration of anesthesia and entered into the medical/health record of each patient receiving anesthesia at any anesthetizing location.

(c) A record of anesthesia that conforms with policies and procedures developed by the medical staff shall be made for each patient receiving sedation or anesthesia at any anesthetizing location.

(d) Postanesthesia notes shall be entered into the patient's medical/health record early in the postoperative period by a member of the facility's anesthesia team and after the patient's discharge from the postanesthesia care unit by a member of the postanesthesia care unit staff.

8:43A-12.6 Anesthesia supplies and equipment; safety systems

(a) Diameter index safety systems or equivalent systems shall be used on all large cylinders of medical gases and wall and ceiling outlets of medical gases.

(b) Pin index safety systems with a single washer shall be used on all small cylinders to prevent interchangeability of medical gas cylinders.

(c) All medical gas hoses and adapters shall be color-coded.

(d) An oxygen failure-protection device ("fail-safe" system) shall be used on all anesthesia machines to announce a reduction in oxygen pressure and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced.

(e) A vaporizer exclusion ("interlock") system shall be used to assure that only one vaporizer, and therefore only a single agent, can be actuated on any anesthesia machine at one time.

(f) To prevent delivery of excess anesthesia during an oxygen flush, no vaporizer shall be placed in the circuit downstream of the oxygen flush valve.

(g) All anesthesia vaporizers shall be pressure-compensated in order to administer a constant non-pulsatile output.

(h) Accurate flow meters and controllers shall be used to prevent the delivery to a patient of an inadequate concentration of oxygen relative to the amount of nitrous oxide or other medical gas.

(i) Alarm systems shall be in place for high (disconnect), low (subatmospheric), and minimum ventilatory pressures in the breathing circuit for each patient under general anesthesia.

(j) There shall be a written protocol to identify those situations in which surgery may proceed when there are disabled alarms, depleted batteries and inactive sensors in oxygen monitors, improperly positioned breathing-circuit sensors, or other insufficiencies.

(k) Each facility shall have until April 1, 1991, to purchase equipment necessary to comply with the provisions of this section. Thereafter, facilities either shall have such equipment in place or else shall have written proof that, by April 1, 1991, an order for such equipment has been received by a manufacturer or legitimate vendor of the equipment. Such proof shall include an anticipated date of delivery. All such equipment shall be properly installed in a timely fashion after delivery and shall be used in conformance with this section.

8:43A-12.7 Anesthesia supplies and equipment; maintenance and inspections

(a) A record shall be maintained of all service and maintenance performed on all anesthesia machines, ventilators, and vaporizers. The record shall include machine identification; the name of the servicing agent; the work performed; and the date of the work. This maintenance shall conform with maintenance requirements established by the machine manufacturer. Credentials of each servicing agent shall be approved by the machine manufacturer or shall be determined by the physician director of anesthesia services to be equivalent to the credentials of manufacturers' servicing agents.

(b) All anesthesia equipment shall be inspected fully at the beginning of each day of use. A record of each such inspection shall be maintained for each machine. The inspection shall conform with a checklist that is supplied by the manufacturer of the machine, issued by the Federal Food and Drug Administration, or, alternatively, developed by the facility's anesthesia services and approved by the physician director of anesthesia services.

(c) All anesthesia equipment shall be inspected before each use. A record of each inspection shall be maintained for each machine and shall also be noted in the patient's anesthesia record. Each record may consist of a single phrase or check mark in a box on a form.

8:43A-12.8 Anesthesia supplies and equipment; patient monitoring

(a) An in-circuit oxygen analyzer shall monitor the oxygen concentration within the breathing circuit, displaying the percent oxygen of the total mixture, for all patients receiving general anesthesia.

(b) A respirometer (volumeter) measuring exhaled tidal volume shall be used whenever the breathing circuit of a patient under general anesthesia allows.

(c) The body temperature of each patient under anesthesia shall be continuously monitored.

(d) Pulse oximetry shall be performed continuously during administration of all anesthesia, including intravenous conscious sedation, at all anesthetizing locations, unless such monitoring is not clinically feasible for the patient. Any alternative method of measuring oxygen saturation may be substituted for pulse oximetry if the method has been demonstrated to have at least equivalent clinical effectiveness.

(e) End-tidal carbon dioxide monitoring shall be performed continuously during administration of all general anesthesia, unless such monitoring is not clinically feasible for the patient.

(f) An electrocardiogram monitor shall be used continuously on all patients receiving general anesthesia, regional anesthesia, or conscious sedation at any anesthetizing location.

(g) Blood pressure, pulse rate, and respirations shall be determined and charted at least every five minutes for all patients receiving anesthesia at any anesthetizing location.

(h) A precordial stethoscope or esophageal stethoscope shall be used when indicated on each patient receiving anesthesia. If necessary, the stethoscope may be positioned on the posterior chest wall or tracheal area.

(i) A peripheral nerve stimulator shall be available to any anesthetizing location to monitor the patient's extent of muscle paralysis from muscle relaxants. Another peripheral nerve stimulator shall be available within the postanesthesia care unit.

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(j) Each facility shall have until April 1, 1991, to purchase equipment necessary to comply with the provisions of this section. Thereafter, facilities either shall have such equipment in place or else shall have written proof that by April 1, 1991, an order for such equipment has been received by a manufacturer or legitimate vendor of the equipment. Such proof shall include an anticipated date of delivery. All such equipment shall be properly installed in a timely fashion after delivery and shall be used in conformance with this section.

8:43A-12.9 Anesthesia staff education and training

Anesthesia staff education programs and training sessions shall include, but not be limited to, patient safety and the inspection and use of equipment.

8:43A-12.10 Postanesthesia care policies and procedures

(a) Facilities providing anesthesia services shall have a postanesthesia care unit.

(b) The postanesthesia care unit shall have written policies and procedures which are reviewed annually, revised as needed, and implemented. These shall include at least:

1. Criteria for admission to and discharge from the unit;
2. Delineation of the primary medical responsibility for postanesthesia and postsurgical care of each patient in the unit, including authority to discharge;
3. Policies and procedures regarding monitoring of patients in the postanesthesia care unit, including availability of monitoring equipment;
4. Protocol of care for all patients;
5. Protocol for patient emergencies;
6. Policies and procedures regarding orders for intravenous administration of medications;
7. Requirements for documentation of patient status; and
8. A requirement that patients who receive anesthesia not drive themselves home after discharge and that they be accompanied home by another person who accepts responsibility for the patient. If the patient fails to comply with the requirement, the circumstances shall be documented in the patient's medical/health record.

8:43A-12.11 Postanesthesia care staff qualifications

(a) There shall be a physician director with overall responsibility for postanesthesia care. The physician director of anesthesia services may serve as physician director of postanesthesia care.

(b) There shall be a registered professional nurse with administrative responsibility for nursing care provided in the postanesthesia care unit.

(c) All registered professional nurses assigned to the postanesthesia care unit shall be trained in postanesthesia care, including at least:

1. Management of airway and ventilatory function;
2. Monitoring of cardiac function, arrhythmia recognition, and treatment of life-threatening emergencies;
3. Management of the patient during altered states of consciousness;
4. Management of monitoring and respiratory equipment;
5. Management of fluid lines, tubes, drains, and catheters;
6. Cardiopulmonary resuscitation;
7. Administration of drugs and identification of drug-related problems; and
8. Recognition of the actions and interactions of anesthetic techniques.

(d) All registered professional nurses in the postanesthesia care unit shall have training in basic cardiac life support. There shall be at least one registered professional nurse certified in advanced cardiac life support by the American Heart Association in the postanesthesia care unit whenever there is a patient in the unit.

(e) All registered professional nurses in the postanesthesia care unit shall have training in critical care. There shall be at least one registered professional nurse who has successfully completed a course in critical care in the postanesthesia care unit whenever there is a patient in the unit.

8:43A-12.12 Postanesthesia care staff time and availability

There shall be at least two health care personnel, one of whom is a registered professional nurse, present whenever a patient is in the postanesthesia care unit. Additional nursing staff shall be assigned on the basis of the volume and case mix of patients in the unit.

8:43A-12.13 Postanesthesia care patient services

(a) The patient shall be accompanied to the postanesthesia care unit by two individuals, one of whom, stationed at the patient's head, shall be a member of the anesthesia team.

(b) An oral report on the patient's condition shall be given to postanesthesia care unit nursing staff by a member of the anesthesia team when the patient is admitted to the postanesthesia care unit.

(c) A member of the anesthesia team shall stay with the patient in the postanesthesia care unit at least until the patient's vital signs, including blood pressure, pulse, and respiration, are recorded.

(d) The postanesthesia care unit shall continually evaluate the condition of each patient and maintain an accurate written report of his or her vital signs, with an objective scoring system used to track the patient's recovery from anesthesia from the time of admission to the unit until discharge.

(e) Electrocardiographic monitoring shall be conducted for each patient who has received general anesthesia, regional anesthesia, or conscious sedation, unless such monitoring is not clinically feasible for the patient.

(f) Each patient shall be monitored by pulse oximetry, unless such monitoring is not clinically feasible for the patient.

(g) The postanesthesia care unit shall have immediate access to end-tidal carbon dioxide monitoring.

(h) The medical record maintained for each patient in the postanesthesia care unit shall include at least such preoperative data as allergies, physical and mental impairments, prostheses, electrocardiogram, vital signs, radiologic findings, laboratory values, drug use, and mobility limitations.

(i) The medical record maintained for each patient in the postanesthesia care unit shall include at least such postoperative data as the patient's general condition, respiration, consciousness, circulation, special problems or precautions, summary of fluids received during surgery, and oxygen saturation.

(j) Patients shall be discharged from the postanesthesia care unit using discharge criteria, including authority to discharge, which have been developed through the postanesthesia policies and procedures specified at N.J.A.C. 8:43A-12.10(b).

8:43A-12.14 Postanesthesia care units and equipment

(a) Postanesthesia care units shall be adjacent to or within the operating suite.

(b) The postanesthesia care unit shall be maintained as a closed unit. Access to the restricted zone of the postanesthesia care unit shall be through or past a control center.

(c) All staff in the postanesthesia care unit shall be attired in scrub attire. Any other individuals who are permitted limited access shall wear scrub attire, cover gowns, or jumpsuits.

(d) Equipment and services available in the postanesthesia care unit shall include at least emergency equipment and drugs, pulse oximetry, equipment necessary for intubation and extubation, respirometer, various means of oxygen delivery, constant and intermittent suction, blood pressure monitoring, adjustable lighting, peripheral nerve stimulator, equipment which ensures protection of the patient's privacy, and immediate access to a ventilator.

(e) If the facility provides a second stage recovery area in addition to a postanesthesia care unit, the requirements of (a) through (d) above shall not apply to the second stage recovery area.

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(a)

PUBLIC HEALTH COUNCIL

Accident Prevention and Poison Control
Childhood Lead Poisoning
State Sanitary Code, Chapter XIII

Proposed Repeal: N.J.A.C. 8:51-7
Proposed New Rules: N.J.A.C. 8:51

Authorized By: Public Health Council, Milton Prystowsky, M.D., Chairperson.

Authority: N.J.S.A. 26:1A-7, 24:14A-1 et seq., specifically 24:14A-11; and 26:2-130 et seq., specifically 26:2-137.

Proposal Number: PRN 1990-264.

A **public hearing** concerning this proposal will be held on June 11, at 1:00 P.M. at:

Commissioner's Conference Room, 8th floor
New Jersey State Department of Health
John Fitch Plaza, CN 360
Trenton, N.J. 08625

Submit written comments by June 20, 1990 to:

Edmond D. Duffy, M.P.H.
Coordinator, Accident Prevention and
Poison Control Program
State Department of Health
CN 364
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Public Health Council proposes to repeal N.J.A.C. 8:51, Childhood Lead Poisoning, and to propose new rules, because substantial changes in the rules are necessary.

Lead poisoning is one of the most common preventable childhood diseases in the United States today. It is a serious condition found mostly in children ages one through six; caused by eating or breathing lead-containing substances such as:

leaded paint, in the form of flaked paint chips or chewable surfaces in houses built before 1960;
soil, dirt and dust in which children play;
leaded gasoline;
newspapers and magazines containing leaded colored pigments;
food stored in lead soldered cans or improperly glazed pottery;
some folk remedies containing lead.

Children and adults are at high risk of lead poisoning when lead dusts or fumes are present. To protect workers and occupants of dwelling units where the deleading process is being undertaken, certain precautions must be taken.

New epidemiologic, clinical and environmental evidence has indicated that lead produces adverse health effects at levels previously thought to be non-toxic. The revised recommendation in the 1985 Centers for Disease Control Statement, "Preventing Lead Poisoning In Young Children", reflect the current knowledge concerning screening, diagnosis, treatment, follow-up and environmental intervention for children with elevated blood lead and/or erythrocyte protoporphyrin levels. N.J.S.A. 26:2-130 et seq. mandates testing of every child determined to be at high risk. The current rules at N.J.A.C. 8:51-7 detail investigation and abatement requirements for local boards of health. The proposed new rules require local boards of health to perform investigations and abatements. The proposed new rules also establish criteria for the screening of children, as well as specifying the frequency for testing and follow up consistent with the Centers for Disease Control (CDC) recommendations. The Accident Prevention and Poison Control Program utilized data obtained from the second National Health and Nutrition Examination Survey (NHANES II), as well as a revised Community Potential Hazard Score to develop criteria for the reprioritization of New Jersey communities.

Data from NHANES II, conducted in the United States between 1976 and 1980, showed that four percent of children between six months and five years of age had elevated blood lead levels of 30 micrograms per deciliter (ug/dl) or higher. The prevalence of elevated lead levels was higher in black children (12.2 percent) than in white children (two percent). There was also a significant interaction between the degree of urbanization and race. In central cities, the percentage of children with elevated blood lead levels was significantly higher among blacks (18.6 percent) than among whites (4.5 percent). Even in smaller urban and rural areas, 10.2 percent of blacks had elevated blood lead levels as compared with fewer than two percent among whites. Young children from families (both white and black) whose incomes were under $6,000 had a significantly higher percent of elevated lead levels than those from families with incomes of $6,000 or more.

NHANES II data indicate that large numbers of persons with elevated lead remain undetected, especially among preschool black children from low income households. The Centers for Disease Control, in January 1985, revised the upper limit of a normal blood lead *downward* to 25 ug/dl. Therefore, even larger numbers of undetected elevations exist today than when NHANES II 1976-1980 data were completed.

With only one minor modification, the Department applied the findings of NHANES II to all 567 municipalities in New Jersey. Since New Jersey does not have urban areas of more than 1,000,000 persons, the Department defined what constituted the State's highest degree of urbanization as greater than 60,000 persons with greater than five percent of the population under five being black. For the lesser degree of urbanization or rural areas, the Department utilized the designations assigned in the 1980 census data.

Specific socioeconomic and demographic variables associated with childhood lead poisoning were used to compute a Community Potential Hazard Score. The information was obtained by Princeton University from the 1980 census and was applied to each of the 567 municipalities. Princeton University further refined these data by calculating the sum of the standardized scores to indicate how far above or below the State mean each municipality deviated. This enabled municipalities to be ranked from the highest to the lowest potential risk.

The Health Officers' Association has reviewed the proposed new rules and has provided input prior to consideration of these rules by the Public Health Council.

Proposed N.J.A.C. 8:51, Childhood Lead Poisoning, contains the following provisions:

Subchapter 1 contains the general provisions; scope, purpose and definitions.

Subchapter 2 contains the target population and screening schedule for local boards of health, as well as requirements for the screening methods, medical intervention, notification and counseling of parents or guardians of the test results.

Subchapter 3 contains the environmental investigation requirements whenever an elevated or high risk case of lead intoxification is found.

Subchapter 4 contains the methods of determining the presence of lead in surface coverings.

Subchapter 5 contains the standards for the reduction or elimination of the lead paint hazards.

Subchapter 6 contains the reporting requirements for private laboratories and for local boards of health.

Subchapter 7 contains the methods and safety standards to protect occupants and workers during the deleading process.

Subchapter 8 contains the methodology for the determination of community prioritization for lead poisoning and the screening criteria for communities in each priority designation.

Social Impact

Lead is a toxic heavy metal that is particularly damaging to the developing brain. Excessive absorption of lead is one of the most prevalent and preventable childhood health problems in the United States today. Lead metal and its oxides have been used for centuries in the manufacture of many items. It is a widely dispersed environmental hazard in New Jersey because of its extensive previous use in paint and gasoline. Lead, once absorbed, affects every cell in the body, but it especially affects the blood, kidneys and nervous system. The effects on the nervous system are serious, the severity depending on the amount and length of lead exposure. They include learning disabilities, mental retardation and possible death. Children are particularly susceptible to its toxic effects.

Recent research has indicated that even very small amounts of lead can have lasting toxic effects. Such evidence has necessitated a downward revision of the upper level of an acceptable blood lead by the Centers for Disease Control in their 1985 Statement.

Children who have suffered from the adverse effects of lead are frequently in need of special health and educational services in order to assist them to develop to their potential as productive members of society.

The Department has completed a community needs assessment of all 567 municipalities and has prioritized them from the highest risk (Priority I) to the lowest risk (Priority III). Based on these assessments, approx-

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imately 177,000 children from one through five years of age are considered to be at high risk of lead poisoning. Based on tests on 51,224 children from these communities in 1987, 1,159 children, or 2.3 percent, were found to have elevated levels of lead. In 1987, 272 children required medical treatment for lead poisoning. The well-being of these children is dependent on early detection followed by prompt medical and environmental intervention. The proposed rules will insure the implementation of the strategies necessary to reduce these serious health outcomes.

Economic Impact

Reducing exposure to lead and its consequences to health is not without costs. Sources of lead are many and each source has its own control or abatement cost. Such costs include: expenditures for screening, medical follow-up and treatment, home inspection and lead paint removal. However, early identification of affected children with appropriate medical and environmental intervention can prevent death or the development of complicating long term illness and disability, all of which are economically unfavorable outcomes. The increased vulnerability of a young child's nervous system to the catastrophic effects of excessive lead absorption is well documented. The long term positive cost benefit ratio to society of controlling lead exposure is widely accepted as demonstrated by action to remove lead from paint, gasoline, pipe and can solder, inks and glasses. The proposed rules may, in the short term, increase costs to landlords or owners of buildings in which children with elevated blood lead levels reside, screening programs and local boards of health serving high-risk children. However, in the long term, implementation of the proposed new rules should result in significant public and individual cost savings. Some small businesses, such as environmental consultants, home renovation contractors, painters, building supply companies and laboratories which process samples of blood and/or paint, may derive economic gain from this proposal.

Regulatory Flexibility Analysis

The proposed new rules place performance and/or design standards on the general public, landlords of buildings in which high risk children may reside, screening programs, laboratories which process samples of blood or paint and local boards of health. Some of this regulated group may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The costs of compliance cannot be accurately estimated, due to the varying impact of the requirements on individual small businesses. Some small businesses may be prepared to comply, without additional expense, and some may incur expenses for removal and replacement of paint, for example, which cannot be estimated at this point in time.

The Department has determined that, in the interest of the public health and welfare, it is not appropriate to establish differential requirements for small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:51-7.

Full text of the proposed new rules follows.

CHAPTER 51
CHILDHOOD LEAD POISONING
STATE SANITARY CODE CHAPTER XIII

SUBCHAPTER 1. GENERAL PROVISIONS

8:51-1.1 Scope

The rules in this chapter shall apply to children age one through five years, who are considered at high risk of lead poisoning, screening agencies, laboratories and individuals responsible for property in which high risk children reside.

8:51-1.2 Purpose

The purpose of this chapter is to protect at risk children from the toxic effect of lead exposure.

8:51-1.3 Definitions

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

"Child" means a person one through five years of age.

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

"Department" means the New Jersey Department of Health.

"Diagnosis" means the categorization of a child who has an elevated blood lead level or has another medically accepted indicator of lead toxicity.

"Elevated blood lead level" means an abnormal level of lead in the bloodstream at the level as defined in the latest revision of the Centers of Disease Control Statement—"Preventing Lead Poisoning in Young Children", available from the Centers for Disease Control, Atlanta, Georgia 30333.

"Elevated erythrocyte protoporphyrin (EP)" means an abnormal level of hemoglobin precursors at a level defined in the latest revision of the Centers of Disease Control Statement, "Preventing Lead Poisoning in Young Children".

"EPA" means the U.S. Environmental Protection Agency.

"HEPA" means a high efficient filter which is able to filter out fine particles.

"High risk of lead intoxication" means in a child a blood lead level equal to or greater than 40 micrograms per 100 milliliters whole blood and an erythrocyte protoporphyrin determination equal to or greater than 110 micrograms per 100 milliliters whole blood, or a confirmed concentration of lead in whole blood equal to or greater than 40 micrograms per 100 milliliters if no erythrocyte protoporphyrin determination is available.

"High risk neighborhood" means those areas whose high degree of risk has been identified by the local board of health, using methodology pursuant to N.J.A.C. 8:51-8.

"Lead toxicity" means a significantly elevated blood lead level, as defined in the latest revision of the Centers for Disease Control Statement, "Preventing Lead Poisoning in Young Children".

"NHANES II" means the second National Health and Nutrition Examination Survey, CDC National Center for Health Statistics.

"NIOSH" means the National Institute for Occupational Safety and Health.

"OSHA" means the Occupational Safety and Health Administration.

"Priority I" means any municipality designated pursuant to N.J.A.C. 8:51-8 at the highest risk for lead poisoning among its children.

"Priority II" means any municipality designated pursuant to N.J.A.C. 8:51-8 at a moderate risk for lead poisoning among its children.

"Priority III" means any municipality designated pursuant to N.J.A.C. 8:51-8.3 at a low risk for lead poisoning among its children.

"Screening" means applying detection technique to large numbers of presumably asymptomatic children to determine if they have been exposed to lead and, if so, what the risks of continued exposure are.

"Suspect room or area" means those locations which are accessible to a child which may be a source of lead exposure.

"Tight lead paint" means leaded paint which is firmly affixed to the surface upon which it is applied.

"WIC" means the Special Supplemental Food Program for Women, Infants and Children.

SUBCHAPTER 2. SCREENING

8:51-2.1 Target population and screening schedule

(a) Children one through five years of age who live in communities designated "Priority I" as determined by the Department of Health and set out in Appendix I of this chapter, incorporated herein by reference, are at high risk for lead poisoning.

(b) Children one through five years of age who live in communities designated "Priority II" as determined by the Department of Health and set out in Appendix II of this chapter, incorporated herein by reference, and who are in the following categories, are at high risk for lead poisoning:

1. The child is a Medicaid recipient;

2. The child's family income qualifies them for the WIC Program; and

3. The child is living in an identified high risk neighborhood.

(c) Each community designated Priority I or Priority II in accordance with this chapter, shall develop a screening schedule. It is recommended that any program screening high risk or other children for lead poisoning comply with the latest revision of "Preventing

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Lead Poisoning in Young Children", (Centers for Disease Control, Atlanta, Georgia, 30333) which is incorporated herein by reference, in establishing screening schedules and intervals.

8:51-2.2 Screening methods

Venous or capillary blood shall be used for screening tests. Sampling methods used in the field shall be compatible with laboratory capabilities. It is recommended that agencies comply with the recommendations found in the latest revision of "Preventing Lead Poisoning in Young Children" (Centers for Disease Control, Atlanta, Georgia 30333), which is incorporated herein by reference, in selecting a screening method.

8:51-2.3 Medical intervention

Local boards of health shall insure that any institution, agency or program providing lead screening services shall arrange for a diagnostic evaluation of any child who is found at screening to have lead toxicity. If the screening test was done on capillary blood, a venous blood lead level should be determined. Medical intervention, including follow up testing, shall be tailored individually for each child. Other children living in the same dwelling shall be referred for testing, diagnosis and treatment, if necessary.

8:51-2.4 Notification and counseling

The institution, agency or program which conducts a screening program shall notify, in writing, parents or guardians of children who have been tested of the results of testing, accompanied by an explanation in plain language of the significance of lead toxicity, the importance of treating the toxicity at an early age and the public services available for treatment. The family of the child shall also be notified that a hazard may exist in the dwelling and counseled on preventive measures.

SUBCHAPTER 3. ENVIRONMENTAL INTERVENTION

8:51-3.1 Investigation of elevated lead or lead toxicity cases

Whenever a child is determined to have an elevated blood lead level or lead toxicity, the local board of health shall conduct an epidemiologic investigation to identify lead sources in the child's environment. If the results of the epidemiologic investigation reveal any loose paint, including cracked, chipped, blistered, peeling or flaking paint, a determination of lead content of the painted surface in the suspect areas shall be made. If the paint is found to be leaded, the procedures found in N.J.A.C. 8:51-5, Standards for Repair on Premises Containing Lead Paint, shall be implemented. Other children in the suspect dwelling should be referred for screening and follow up in accordance with N.J.A.C. 8:51-2.

8:51-3.2 Investigation of high risk of lead intoxication cases

When a child is determined to have a high risk of lead intoxication as defined in N.J.A.C. 8:51-1.3, the local board of health shall conduct an epidemiologic investigation. Dwelling units shall be inspected and tested to determine whether the presence of lead paint is in excess of 1.0 percent by dry weight or one milligram or higher per square centimeter. If levels of lead paint in excess of one milligram or higher per square centimeter are found, N.J.A.C. 8:51-5, Standards for Repair on Premises Containing Lead Paint, shall be implemented. Other children in the suspect dwelling should be referred for screening and follow up in accordance with N.J.A.C. 8:51-2.

SUBCHAPTER 4. DETERMINATION OF LEAD IN DWELLING UNITS

8:51-4.1 Methods of determination of lead in surface coverings

(a) The methods of determination of lead in surface coverings shall be as specified in (b) or (c) below.

(b) The chemical determination of the lead content in paint by the quantitative measurements of samples of surface coverings shall be made in laboratories certified by the New Jersey State Department of Health, pursuant to N.J.A.C. 8:45-1. Lead content in paint in excess of 1.0 percent by dry weight shall be prohibited.

(c) The physical determination of the lead content in paint may be made by non-destructive measurements using X-ray fluorescence analyzers (X-R-F) or other instruments approved by the New Jersey State Department of Health, Accident Prevention and Poison Control Program. A lead content in paint of one milligram or higher per square centimeter of paint surface, when tested by this method, shall be prohibited.

8:51-4.2 Sampling and/or X-ray fluorescence analyzer

(a) Paint samples shall be collected and/or X-ray fluorescence analyzer readings shall be obtained from each suspect room and shall include both interior and exterior surfaces of a windowsill, door and door frame. In addition, paint samples and/or analyzer readings should be obtained from such other highly suspect areas as crib railings, play pen railings, toys, stairs or banisters and surfaces with loose paint. The preferred sampling locations shall include surfaces which have been or are accessible to being chewed or areas which are peeling or flaking.

(b) All paint samples should generally be limited to that part of the surface which may eventually be required to be removed.

SUBCHAPTER 5. STANDARDS FOR REPAIR ON PREMISES CONTAINING LEAD PAINT

8:51-5.1 Exterior surfaces

Lead paint on any exterior surface that is readily accessible to children and is determined by the local board of health to be causing a hazard to the occupants or anyone coming in contact with such surfaces shall be removed to the base surface or covered with a durable material approved by the Department pursuant to N.J.A.C. 8:51-5.5.

8:51-5.2 Interior surfaces

Loose lead paint on any interior surface, including cracked, chipped, blistered, peeling or flaking paint, shall be removed to the base surface wherever found.

8:51-5.3 Removal of tight lead paint

(a) Tight lead paint shall be removed to the base surface in the following areas, as indicated:

1. Windowsills: complete removal;
2. Windows and frames below the four-foot level: complete removal on exposed surfaces;
3. Doors below four-foot level: removal four inches back on hinge and latch edges and other sharp edges;
4. Door frames below four-foot level: complete removal;
5. Handrails: complete removal;
6. Spindles ("balusters"): removal on surfaces adjacent to walking areas;
7. Stair treads: removal four inches back from lip on top of tread and from lip to riser on bottom side; and
8. Any other chewable surface below the four foot level: removal four inches back from edge.

8:51-5.4 Removal not required

(a) Removal may be performed, but is not required, on the following surfaces:

1. Walls in good condition without broken areas;
2. Baseboards;
3. Skirtboards on staircases;
4. Step risers; or
5. Any surface below the four-foot level which does not present a chewable surface.

8:51-5.5 Covering

If paint is not removed as required in this subchapter, surfaces shall be covered with plasterboard, wallboard, wood paneling or similar durable material approved by the New Jersey State Department of Health, Accident Prevention and Poison Control Program, to a height of at least four feet above the floor.

8:51-5.6 Other repairs

Any condition, such as moisture or water damage, which causes peeling of paint, loosening of plaster or other structural deterioration shall be repaired prior to any repairs required by this subchapter.

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8:51-5.7 Access to areas being corrected

(a) No pregnant women or children under 12 years of age shall be allowed in the dwelling unit while paint removal is in progress.

(b) Areas being corrected shall be completely cleaned, vacuumed and damp mopped at the end of each work day so that children and/or pregnant women may return to the dwelling unit in safety.

8:51-5.8 Reinspection

(a) Upon completion of repair and prior to repainting, an inspection shall be made by the local board of health to determine if the hazard has been satisfactorily eliminated.

(b) All repairs may be finished with a suitable non-lead paint or other hard non-lead surface.

8:51-5.9 Safety standard for owner

When an owner has been notified to comply with this subchapter, the local board of health shall provide the owner of such dwelling units with a copy of N.J.A.C. 8:51-7 to be used when removing the lead paint.

SUBCHAPTER 6. REPORTING

8:51-6.1 Laboratories

(a) All laboratories shall immediately and completely report, on forms provided by the State Department of Health, results of laboratory examinations which indicate blood lead levels in children equal to or greater than an elevated level as defined in the latest revision of the Centers for Disease Control Statement "Preventing Lead Poisoning in Young Children" to:

1. The State Department of Health;
2. The local board of health; and
3. The physician submitting the specimen.

8:51-6.2 Monthly status report

Local boards of health shall report monthly to the Department all violations of this chapter and the status of enforcement procedures against owners of properties designated as a public nuisance pursuant to N.J.S.A. 24:14A-8.

8:51-6.3 Monthly statistical report

Local boards of health not using the laboratory services provided by the State Department of Health for blood lead, erythrocyte protoporphyrin or paint analysis shall provide the State Department of Health with a monthly statistical tabulation of analytic results.

8:51-6.4 Confidentiality of records

All records collected by the State Department of Health which identify individual patients, address information and laboratory tests results shall be confidential, and shall not be released without parental consent.

SUBCHAPTER 7. REMOVAL OF LEAD PAINT

8:51-7.1 Methods permitted in the reduction of lead paint hazards

(a) The following methods shall be permitted in the reduction of lead paint hazards:

1. Replacement;
2. Covering (least costly) including, but not limited to:
i. Plastic or metal "L"-shaped moldings;
ii. Plasterboard;
iii. Wallboard;
iv. Wood paneling; or
v. Similar durable material;
3. Scraping;
4. Use of heat (infrared lamps or electric heat guns); and
5. Chemical paint removers.

(b) Local fire codes should be reviewed for restrictions on the use of materials.

8:51-7.2 Methods prohibited in the reduction of lead paint hazards

(a) The following methods are prohibited in the reduction of lead paint hazards:

1. Sanding;
2. Gas fired torch; and
3. Abrasive or sand blasting.

(b) A waiver for the use of abrasive or sand blasting may be obtained on a determination of the local board of health for individual work sites.

8:51-7.3 Safety standards for the removal of lead paint

(a) The methods used in the removal of lead paint shall not present a hazard to health from fumes, dust, vapors or liquids by inhalation or absorption through the skin or the mucous membranes, either from removal materials or from the lead paint being removed.

(b) Scraping presents a danger of lead dust and/or particles in the eyes. To protect the eyes from dust, chips and flakes of paint, safety goggles should be worn. Scraping also presents a danger of inhalation or swallowing of lead dust and/or particles. To protect against such inhalation or swallowing, a NIOSH approved respirator for toxic dusts, equipped with a HEPA filter cartridge (color coded purple) should be used.

(c) The use of chemical paint removers presents a health hazard from the inhalation of vapors. To protect against such inhalation when working with solvents which evaporate readily, a NIOSH approved respirator for organic solvents in combination with a HEPA filter cartridge should be used. Adequate ventilation should be provided by open windows or fans when using chemical paint removers. The use of chemical paint removers also presents a health hazard from the absorption of solvents and paint removers through the skin. To protect against such absorption impervious gloves should be worn.

(d) The use of heat presents a health hazard from the inhalation of toxic lead fumes in concentrated amounts or in small concentrations over a period of time. To protect against such inhalation a NIOSH approved respirator for toxic dusts equipped with a HEPA filter cartridge (color coded purple) should be used.

(e) WARNING: Respirators are a poor substitution for controlling or preventing exposures with abatement methods which have lower lead exposure. Using an inappropriate respirator or one not properly fitted can be extremely hazardous. The paper dust mask available at hardware stores may not be adequate. Not only is protection inadequate, but the user may have a false sense of security.

8:51-7.4 Preparation for the removal of lead paint

(a) Workers and occupants of buildings where removal of lead paint is being undertaken should be notified of the health hazards, using the following, or similar, statement:

"Lead is a heavy metal which is toxic to humans. Lead poisoning affects every cell of the body, but especially the blood, kidneys and nervous system. The effects on the nervous system are serious, with the severity depending on the amount and the length of time of exposure. Adults and children are at high-risk of lead poisoning when lead dust or fumes are present and are most often poisoned by inhaling the lead dust or fumes.

The effects on adults include: persistent headaches, nausea, vomiting, visual disturbances, dizziness, poor appetite, loss of weight, cramps or constipation. If you have any or all of these symptoms, consult your physician at once.

Children are more susceptible to lead poisoning than adults. Children do not usually have easily identifiable symptoms, even when they have high blood lead levels. If symptoms do develop, brain damage has already occurred. Symptoms include: pallor or paleness, fatigue or tiredness, irritability, malaise, behavior changes and regression to a younger ability level. More serious symptoms include: weakness, clumsiness, abdominal pain, constipation, persistent vomiting and changes in consciousness. If your child has been exposed to lead, take the child to your physician or local health department for a blood sample which will be tested to show whether or not there is reason to be concerned."

(b) The worker shall select a deleading method that will produce the least amount of lead dust and/or fumes.

(c) The worker shall delead interior surfaces one room at a time, to minimize dispersion of lead.

(d) When deleading exterior surfaces, drop cloths shall be used to catch all wastes. Shrubs and trees shall be covered and dust and chips shall be removed from the ground promptly.

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(e) Plastic sheets or impervious drop cloths shall be used to cover all floors, carpets, furniture, heat and/or air conditioning ducts, vents, grates and equipment in the work area.

(f) The work area shall be sealed off from the remainder of the dwelling by taping doors and/or using plastic sheets until both work and clean up activities are complete.

8:51-7.5 General safety precautions for the removal of lead paint

(a) In accordance with N.J.A.C. 8:51-5.7, children and pregnant women shall not be permitted to remain in the dwelling unit while deleading is in process.

(b) All electrical connections shall be checked for proper grounding.

(c) All workers shall wear coveralls, gloves, shoe covers or separate work shoes, hat and goggles. All street clothes shall be kept in a clean area, separate from work clothes. All work clothes shall be removed before eating and after cleaning up the work area.

(d) Eating, drinking, smoking and chewing tobacco or gum shall be prohibited in areas where deleading is taking place. Storage of food and drink shall be prohibited in areas where deleading is taking place. Prior to eating, all persons shall wash their hands, arms and face with soap and warm water and shall rinse their mouths thoroughly.

(e) All persons entering the work area shall wear a properly functioning NIOSH approved respirator which is appropriate for the lead removal method to be used. The respirator face piece shall be washed at the end of each day and stored in a clean area.

8:51-7.6 Clean up after the removal of lead paint

(a) The clean up process is a critical element of the deleading process. Workers shall begin the daily clean up process by vacuuming all paint chips and dust, using an industrial vacuum cleaner equipped with HEPA filters which meet or exceed OSHA and EPA safety standards for the control of lead and other toxic dusts.

(b) Workers shall damp mop or sponge all surfaces within the work area daily, after the removal of lead paint.

(c) All waste products shall be placed in plastic bags and sealed at the end of each work day.

(d) After the completion of the deleading process, non-pregnant adult occupants shall wash down all surfaces within the deleaded area daily until no further dust is visible.

8:51-7.7 Disposal of waste products after the removal of lead paint

All waste containing lead concentrations of 5.0 milligrams/liter or higher shall be disposed of in an Environmental Protection Agency hazardous waste landfill or lead smelter pursuant to N.J.A.C. 7:26-8.12.

SUBCHAPTER 8. METHODOLOGY FOR DETERMINATION OF COMMUNITY PRIORITIZATION FOR LEAD POISONING

8:51-8.1 Screening criteria; Priority I

(a) Any municipality which has children at risk, as classified by NHANES II data, and whose sum of the standard scores is greater than one Standard Deviation (5.3841) above the State mean (0.000), shall be considered Priority I (see Appendix I, incorporated herein by reference).

(b) Every child one through five years of age who lives in the communities listed in Appendix I should be tested for lead poisoning at least once per year. Screening should be conducted in accordance with census tract ranking. Communities shall prioritize their census tracts from the highest to the lowest, based on the potential hazard score derived from the factors enumerated in Appendix IV, which is incorporated herein by reference.

(c) Case finding efforts by annual blood test should be conducted in settings which include, but are not limited to, the following:

1. Child health conferences;
2. WIC clinics;
3. Day care centers;
4. Nursery schools; and
5. Door to door in high risk neighborhoods.

(d) A community shall be reclassified as Priority II if all children age one through five have been tested during the year and no child has an elevated blood lead level as defined in the latest revision of the Centers for Disease Control Statement "Preventing Lead Poisoning in Young Children", available from the Centers for Disease Control, Atlanta, Georgia 30333.

8:51-8.2 Screening criteria; Priority II

(a) Any municipality which has children at risk, as classified by NHANES II data and census data, and whose sum of the standard scores is less than one Standard Deviation above the State mean shall be considered Priority II (see Appendix II, incorporated herein by reference).

(b) Every child one through five years of age who lives in the communities listed in Appendix II should be tested for lead poisoning at least once per year, if any of the following conditions are met:

1. The child is a Medicaid recipient;
2. The child's family income qualifies them for the WIC Program; and
3. The child is living in an identified high risk neighborhood.

(c) Screening should be conducted in accordance with census tract ranking. Communities shall prioritize their census tracts from the highest to the lowest based on the potential hazard derived from the factors enumerated in Appendix IV, which is incorporated herein by reference.

(d) Case finding efforts by annual blood test should be conducted in settings which include, but are not limited to, the following:

1. Child health conference;
2. WIC clinics;
3. Day care centers;
4. Nursery schools; and
5. Door to door in high risk neighborhoods.

8:51-8.3 Screening criteria; priority III

(a) Any municipality which has no children at risk, as classified by NHANES II data and census data, or which has no children under the age of five per the most recent census data, shall be considered Priority III (see Appendix III, incorporated herein by reference).

(b) Screening upon request should be made available through the local health department, although it is not required.

APPENDIX I

Childhood Lead Poisoning Prevention

Priority I Municipalities

County	Municipality	Total # Children at High Risk	Score	Rank
Atlantic		3483	1.5109	8
	Atlantic City	2166	15.35	16
	Pleasantville	959	13.934	21
	Egg Harbor City	358	6.175	55
Bergen		3321	-5.0894	17
	Englewood	1357	8.642	38
	Hackensack	1964	6.205	53

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Burlington		8118	-2.5889	12
	Wrightstown Boro	585	21.603	5
	Pemberton Boro	89	11.956	28
	New Hanover Twp.	677	10.591	32
	Mt. Holly Twp.	809	8.396	39
	North Hanover Twp.	1200	7.65	40
	Burlington City	621	7.115	45
	Pemberton Twp.	2841	6.686	48
	Burlington Twp.	793	6.653	49
	Bordentown City	278	6.437	51
	Beverly	225	5.613	66
Camden		8868	3.4126	5
	Camden City	7038	26.332	2
	Lawnside Boro	159	15.335	17
	Chesilhurst Boro	128	12.9	24
	Hi-Nella Boro	117	11.694	30
	Lindenwold	1426	5.889	61
Cape May		493	-4.0909	15
	Woodbine Boro	200	20.229	7
	Wildwood City	293	8.84	37
Cumberland		2665	4.8296	4
	Bridgeton City	1682	15.319	18
	Fairfield Twp.	409	11.595	31
	Commercial	398	7.384	42
	Deerfield	176	7.258	43
Essex		40594	16.7716	1
	Newark	28592	29.348	1
	East Orange	5770	25.688	3
	Orange	2192	19.961	8
	Irvington	4040	13.4	23
Gloucester		3816	-1.1002	10
	Paulsboro Boro	545	12.884	25
	Clayton	620	5.950	58
	Glassboro	859	5.897	60
	Swedesboro	778	5.713	64
	Woodbury	696	5.54	67
	National Park	318	5.522	68
Hudson		27647	11.9130	2
	Jersey City	17314	17.964	11
	Hoboken	3215	16.967	13
	Union City	3993	13.59	22
	East Newark Boro	125	9.655	34
	West New York Town	2250	9.432	35
	Weehawken Twp.	750	6.4487	50
Hunterdon			-6.6341	21
Mercer		7056	3.2454	6
	Trenton City	7056	19.45	9
Middlesex		5611	-3.1897	13
	New Brunswick	2366	14.951	20
	Perth Amboy	2883	10.446	33
	Jamesburg	362	5.676	65
Monmouth		7659	-2.1328	11
	Asbury Park	1308	23.631	4
	Long Branch	2128	12.137	27
	Shrewsbury Twp.	83	9.375	36
	Bradley Beach	326	7.599	41
	Red Bank	587	6.926	46
	Keansburg	858	6.746	47
	Neptune Twp.	1639	5.987	57
	Freehold Boro	730	5.94	59
Morris		856	-6.5684	20
	Victory Gardens Boro	93	16.971	12
	Morristown	763	6.194	54

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Ocean		3835	-6.3586	18
	Seaside Heights Boro	138	12.22	26
	Lakewood Twp.	3384	7.152	44
	Lakehurst Boro	313	5.761	63
Passaic		16419	7.5152	3
	Paterson	12058	20.934	6
	Passaic	4361	19.406	10
Salem		1057	2.3090	7
	Salem City	564	16.908	14
	Penns Grove	493	16.775	15
Somerset			-6.4549	19
Sussex		199	-4.6907	16
	Sussex Boro	199	6.3263	52
Union		13367	1.2475	9
	Plainfield	3374	15.293	19
	Elizabeth	7386	11.926	29
	Roselle	1213	6.048	56
	Hillside	1297	5.785	62
	Winfield	97	5.458	69
Warren			-3.8561	14

Total number of children under 5 years of age at high risk in Priority I Municipalities: 155,064

APPENDIX II

Priority II

Criteria: Any municipality which has children at risk per NHANES II data and census data whose sum of standardized score fell below ISD from State mean.

Atlantic County

Absecon City
Brigantine City
Buena Boro
Buena Vista Twp.
Egg Harbor Twp.
Folsom Boro
Galloway Twp.
Hamilton Twp.
Hammonton Town
Linwood City
Margate City
Mullica Twp.
Northfield City
Somers Point City
Ventnor City
Weymouth Twp.

Bergen County

Allendale Boro
Alpine Boro
Bergenfield Boro
Bogota Boro
Carlstadt Boro
Cliffside Park Boro
Closter Boro
Cresskill Boro
Demarest Boro
Dumont Boro
Elmwood Pk. Boro
E. Rutherford Boro
Edgewater Boro
Emerson Boro
Englewood Cliffs
Fairlawn Boro
Fairview Boro
Fort Lee Boro
Franklin Lakes Boro
Garfield City
Glen Rock Boro
Harrington Park Boro
Hasbrouck Heights Boro
Haworth Boro
Hillsdale Boro
Ho-Ho-Kus Boro
Leonia Boro
Little Ferry Boro
Lodi Boro
Lyndhurst Twp.
Mahwah Twp.
Maywood Boro
Midland Park Boro
Montvale Boro
Moonachie Boro
New Milford Boro
No. Arlington Boro
Northvale Boro
Norwood Boro
Oakland Boro
Old Tappan Boro
Oradell Boro
Palisades Pk. Boro
Paramus Boro
Park Ridge Boro
Ramsey Boro
Ridgefield Boro
Ridgefield Pk. Twp.
Ridgewood Village
River Edge Boro
River Vale Twp.
Rochelle Park Twp.
Rutherford Boro
Saddle Brook Twp.
Saddle River Boro
So. Hackensack Twp.
Teaneck Twp.
Tenafly Boro
Upper Saddle River Boro
Waldwick Boro
Wallington Boro
Washington Twp.
Westwood Boro
Woodcliff Lake Boro
Wood Ridge Boro
Wyckoff Twp.

Burlington County

Bass River Twp.
Bordentown Twp.
Chesterfield Twp.
Cinnaminson Twp.
Delanco Twp.
Delran Twp.
Easthampton Twp.
Edgewater Pk. Twp.
Evesham Twp.
Florence Twp.
Hainesport Twp.
Lumberton Twp.
Mansfield Twp.
Maple Shade Twp.
Medford Twp.
Medford Lakes Boro
Moorestown Twp.
Mt. Laurel Twp.
Palmyra Boro
Riverside Twp.
Riverton Boro
Shamong Twp.
Southampton Twp.
Springfield Twp.
Tabernacle Twp.
Westampton Twp.
Willingboro Twp.
Woodland Twp.

Camden County

Audubon Boro
Barrington Boro
Bellmawr Boro
Berlin Boro
Berlin Twp.
Brooklawn Boro
Cherry Hill Twp.
Clementon Boro
Collingswood Boro
Gibbsboro Boro
Gloucester City
Gloucester Twp.
Haddon Twp.
Haddonfield Boro
Haddon Heights Boro
Laurel Springs Boro
Magnolia Boro
Merchantville Boro
Mt. Ephraim Boro
Oaklyn Boro
Pennsauken Twp.
Pine Hill Boro
Runnemede Boro
Somerdale Boro
Stratford Boro
Voorhees Twp.
Waterford Twp.
Winslow Twp.
Wood Lynne Boro

Cape May County

Cape May City
Dennis Twp.
Lower Twp.
Middle Twp.
No. Wildwood City
Ocean City
Sea Isle City
Upper Twp.
W. Cape May Boro
Wildwood Crest Boro

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Cumberland County

Downe Twp.
Greenwich Twp.
Hopewell Twp.
Lawrence Twp.
Maurice River Twp.
Millville City
Stow Creek Twp.
Upper Deerfield Twp.
Vineland City

Essex County

Belleville Town
Bloomfield Town
Caldwell Boro
Cedar Grove Twp.
Essex Fells Boro
Fairfield Boro
Glen Ridge Boro
Livingston Twp.
Maplewood Twp.
Millburn Twp.
Montclair Town
No. Caldwell Boro
Nutley Town
Roseland Boro
So. Orange Village
Verona Boro
W. Caldwell Boro
W. Orange Town

Gloucester County

Deptford Twp.
E. Greenwich Twp.
Elk Twp.
Franklin Twp.
Greenwich Twp.
Harrison Twp.
Logan Twp.
Mantua Twp.
Monroe Twp.
Newfield Boro
Pitman Boro
S. Harrison Twp.
Washington Twp.
Wenonah Boro
W. Deptford Twp.
Westville Boro
Woodbury Heights Boro
Woolwich Twp.

Hudson County

Bayonne City
Guttenberg Town
Harrison Town
Kearny Town
No. Bergen Twp.
Secaucus Town

Hunterdon County

Alexandria Twp.
Bethlehem Twp.
Bloomsbury Boro
Califon Boro
Clinton Town
Clinton Twp.
Delaware Twp.
E. Amwell Twp.
Flemington Boro
Franklin Twp.
Frenchtown Boro
Glen Gardner Boro
Hampton Boro
High Bridge Boro
Holland Twp.
Kingwood Twp.
Lambertville City
Lebanon Boro
Lebanon Twp.
Milford Boro
Raritan Twp.
Readington Twp.
Tewksbury Twp.
Union Twp.
W. Amwell Twp.

Mercer County

E. Windsor Twp.
Ewing Twp.
Hamilton Twp.
Hightstown Boro
Hopewell Boro
Hopewell Twp.
Lawrence Twp.
Pennington Boro
Princeton Boro
Princeton Twp.
Washington Twp.
W. Windsor Twp.

Middlesex County

Carteret Boro
Cranbury Twp.
Dunellen Boro
E. Brunswick Twp.
Edison Twp.
Helmetta Boro
Highland Park Boro
Metuchen Boro
Middlesex Boro
Milltown Boro
Monroe Twp.
No. Brunswick Twp.
Old Bridge Twp.
Piscataway Twp.
Plainsboro Twp.
Sayreville Boro
So. Amboy City
So. Brunswick Twp.
So. Plainfield Boro
So. River Boro
Spotswood Boro
Woodbridge Twp.

Monmouth County

Aberdeen Twp.
Allentown Boro
Atlantic Highlands Boro
Avon By The Sea Boro
Belmar Boro
Brielle Boro
Colts Neck Twp.
Deal Boro
Eatontown Boro
Englishtown Boro
Fair Haven Boro
Farmingdale Boro
Freehold Twp.
Hazlet Twp.
Highlands Boro
Holmdel Twp.
Howell Twp.
Keyport Boro
Little Silver Boro
Manalapan Twp.
Manasquan Boro.
Marlboro Twp.
Matawan Boro
Middletown Twp.
Millstone Twp.
Monmouth Beach Boro
Neptune City Boro
Ocean Twp.
Oceanport Boro
Rumson Boro
Sea Girt Boro
Shrewsbury Boro
So. Belmar Boro
Spring Lake Boro
Spring Lake Heights Boro
Tinton Falls Boro
Union Beach Boro
Upper Freehold Twp.
Wall Twp.
W. Long Branch Boro

Morris County

Boonton Town
Boonton Twp.
Butler Boro
Chatham Boro
Chatham Twp.
Chester Boro
Chester Twp.
Denville Twp.
Dover Town
E. Hanover Twp.
Florham Park Boro
Hanover Twp.
Harding Twp.
Jefferson Twp.
Kinnelon Boro
Lincoln Park Boro
Madison Boro
Mendham Boro
Mendham Twp.
Mine Hill Twp.
Montville Twp.
Morris Twp.
Morris Plains Boro
Mountain Lakes Boro
Mt. Arlington Boro
Mt. Olive Twp.
Netcong Boro
Parsippany Troy Hills Twp.
Passaic Twp.
Pequannock Twp.
Randolph Twp.
Riverdale Boro
Rockaway Boro
Rockaway Twp.
Roxbury Twp.
Washington Twp.
Wharton Boro

Ocean County

Barnegat Twp.
Bay Head Boro
Beachwood Boro
Berkeley Twp.
Brick Twp.
Dover Twp.
Island Heights Boro
Jackson Twp.
Lacey Twp.
Lavallette Boro
Little Egg Harbor Twp.
Long Beach Twp.
Manchester Twp.
Ocean Twp.
Ocean Gate Boro
Pine Beach Boro
Plumsted Twp.
Point Pleasant Boro
Point Pleasant Beach Boro
Seaside Park Boro
So. Toms River Boro
Stafford Twp.
Tuckerton Boro

Passaic County

Bloomingdale Boro
Clifton City
Haledon Boro
Hawthorne Boro
Little Falls Twp.
No. Haledon Boro
Pompton Lakes Boro
Prospect Park Boro
Ringwood Boro
Totowa Boro
Wanaque Boro
Wayne Twp.
W. Milford Twp.
W. Paterson Boro

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Salem County

Alloway Twp.
Carneys Point Twp.
Elmer Boro
Elsinboro Twp.
Lower Alloway Creek Twp.
Mannington Twp.
Oldsmans Twp.
Pennsville Twp.
Pilesgrove Twp.
Pittsgrove Twp.
Quinton Twp.
Upper Pittsgrove Twp.
Woodstown Boro

Somerset County

Bedminster Twp.
Bernards Twp.
Bernardsville Boro
Bound Brook Boro
Branchburg Twp.
Bridgewater Twp.
Franklin Twp.
Green Brook Twp.
Hillsborough Twp.
Manville Boro
Montgomery Twp.
No. Plainfield Boro
Peapack Gladstone Boro
Raritan Boro
Somerville Boro
So. Bound Brook Boro
Warren Twp.
Watchung Boro

Sussex County

Andover Twp.
Byram Twp.
Frankford Twp.
Franklin Boro
Fredon Twp.
Green Twp.
Hamburg Boro
Hampton Twp.
Hardyston Twp.
Hopatcong Boro
Lafayette Twp.
Montague Twp.
Newton Town
Ogdensburg Boro
Sandyston Twp.
Sparta Twp.
Stanhope Boro
Stillwater Twp.
Vernon Twp.
Wantage Twp.

Union County

Berkeley Heights Twp.
Clark Twp.
Cranford Twp.
Fanwood Boro
Garwood Boro
Kenilworth Boro
Linden City
Mountainside Boro
New Providence Boro
Rahway City
Roselle Park Boro
Scotch Plains Twp.
Springfield Twp.
Summit City
Union Twp.
Westfield Town

Warren County

Allamuchy Twp.
Alpha Boro
Belvidere Town
Blairstown Twp.
Franklin Twp.
Frelinghuysen Twp.
Greenwich Twp.
Hackettstown Town
Harmony Twp.
Hope Twp.
Independence Twp.
Knowlton Twp.
Liberty Twp.
Lopatcong Twp.
Mansfield Twp.
Oxford Twp.
Phillipsburg Town
Pohatcong Twp.
Washington Boro
Washington Twp.
White Twp.

APPENDIX III

Priority III

Criteria: Municipalities with no children under 5 years of age per 1980 census data and/or with less than 1 child at risk per NHANES II data.

Atlantic County

Corbin City
Estelle Manor
Longport
Port Republic City

Bergen County

Rockleigh Boro
Teterboro Boro

Burlington County

Fieldsboro Boro
Washington Twp.

Camden County

Audubon Park Boro
Pine Valley Boro
Travistock Boro

Cumberland County

Shiloh Boro

Cape May County

Avalon Boro
Cape May Point Boro
Stone Harbor Boro
West Wildwood Boro

Essex County

None

Gloucester County

None

Hudson County

None

Hunterdon County

Stockton Boro

Mercer County

None

Middlesex County

None

Monmouth County

Allenhurst Boro
Interlaken Boro
Loch Arbour Village
Roosevelt Boro
Sea Bright Boro

Morris County

None

Ocean County

Barnegat Light Boro
Beach Haven Boro
Eagleswood Twp.
Harvey Cedars Boro
Mantoloking Boro
Ship Bottom Boro
Surf City Boro

Passaic County

None

Salem County

None

Somerset County

Far Hills Boro
Millstone Boro
Rocky Hill Boro

Sussex County

Andover Boro
Branchville Boro
Walpack Twp.

Union County

None

Warren County

Hardwick Twp.
Pahaquarry Twp.

APPENDIX IV

Community Potential Hazard Score—Lead Poisoning

Name of Community _____

Population _____

Year Structure Built		
1950-1959	_____	
1940-1949	_____	
1939 or Earlier	_____	
% Built prior to 1960		_____

Occupancy Status	Total	
Owner occupied	_____	
Renter occupied	_____	
Renter occupied White	_____	
Renter occupied Black	_____	
All year round occupied units	_____	
% Renter occupied		_____
% Renter occupied by Blacks		_____

Population at Risk	Total	
Population	_____	
All children under 5 years of age	_____	
% children under 5 years of age		_____
Total Black children under 5 years of age	_____	
% children under 5 years of age who are black		_____

Overcrowding	Total	
Persons per room 1.01-1.50	_____	
Persons per room 1.50 or more	_____	
Total more than 1 person per room	_____	
Occupied Housing Units	_____	
% with more than 1 person per room		_____

Poverty Status	Total

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Number of families	____	
Total with income below poverty level with related children under 6 only	____	
% with children below the poverty level		____
Total with female household only, no husband present—income below poverty level with related children under 6 only	____	
% families with female household only, no husband present—income below poverty level with related children under 6 only		____
Community Potential Hazard Score	____	

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Robert Kowalski, Chairman.

Authority: N.J.S.A. 24:6E-6(e).

Proposal Number: PRN 1990-257.

A **public hearing** concerning this proposal will be held on June 12, 1990 at 3:00 P.M. at the following address:

Hall Conference Room, Room 804
Department of Health, 8th Floor
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

Submit written comments by June 20, 1990 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 108, CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a list of acceptable generic drugs and their manufacturers which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For the past decade, whenever a product was proposed for addition to the List of Interchangeable Drug Products, the Drug Utilization Review Counsel (while not being legally bound to do so) has taken into consideration the Food and Drug Administration's (FDA's) advisory opinion on the "therapeutic equivalence" of the proposed generic. No product has been added knowingly to the List of Interchangeable Drug Products when the FDA's opinion has been that the generic was not proved therapeutically equal to the brand for which it was to be substituted.

In the January, 1990 Supplement to the FDA's List of Approved Drug Products with Therapeutic Equivalence Evaluations, the FDA formally changed its opinion on several generic products, downgrading them from a rating of "therapeutically equivalent" to one of "insufficient information" to assure therapeutic equivalence. These products had been added to the List of Interchangeable Drug Products (State Formulary) over the past few years, when their therapeutic equivalency rating was still acceptable.

In order to be consistent with its 10 years of precedence, the Drug Utilization Review Council proposes that all products now rated "BX" ("insufficient data") by the Food and Drug Administration should be deleted from the List of Interchangeable Drug Products.

Social Impact

The proposed deletions would have little social impact on prescribers, pharmacies or patients, because the brand name products and other generics remain on the market and would still be available.

Economic Impact

The proposed deletions will have a negative economic impact which would primarily affect the involved manufacturers, who would lose most current sales in New Jersey because their products would no longer be acceptable as legal substitutes for their respective brands.

To the extent that some of the generics cannot be returned to suppliers for credit, a secondary economic impact would also be felt by certain pharmacies that stocked medications made by these companies. The extent of that impact cannot be measured definitely.

A significant negative economic impact would also be felt by the New Jersey Medicaid Program. No data are available to estimate the increased expenses to the Medicaid Program due to several generics becoming unavailable, but in most instances other generics remain available for use.

Cash-paying consumers would also incur a negative economic impact. Based on averages from the Medicaid program, each cash paying consumer who could not receive a generic substitute would pay at least 50 percent extra per prescription. However, the number of prescriptions so affected cannot be determined.

Regulatory Flexibility Analysis

There are no reporting requirements accompanying this proposal for manufacturers, pharmacies, prescribers, or any other small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements involve the discontinuation of use of previously approved substitutes for specific branded drugs. The proposed amendments may affect a number of small businesses; specifically over 1,500 pharmacies and several small generic drug manufacturers. The Department has elected to treat small and large businesses alike, due to a concern for public health.

Full text of the proposal follows:

The Drug Utilization Review Council proposes to **delete** from the list of Interchangeable Drug Products the following products from the listed manufacturers:

Amitriptyline/perphenazine tabs 4/50	Chelsea
Baclofen tabs 10, 20 mg	Vitarine
Cephalexin tabs 250, 500 mg	Vitarine
Cephalexin caps 250, 500 mg	Vitarine
Cephalexin for susp 125, 250 mg	Vitarine
Cephradine caps 250, 500 mg	Vitarine
Clindamycin caps 75, 150 mg	Vitarine
Clonidine tabs 0.1, 0.2, 0.3 mg	Amer. Ther.
Desipramine tabs 10, 75, 100, 150	Vitarine
Diazepam tabs 2, 5, 10 mg	Superpharm
Doxycycline hyclate caps 50, 100 mg	Vitarine
Ergoloid mesylates tabs s/l 0.5 mg	Bolar
Fluphenazine tabs 1, 10 mg	Bolar
Ibuprofen tabs 400 mg	Superpharm
Indomethacin caps 25, 50 mg	Vitarine
Indomethacin ER caps 75 mg	Vitarine
Lorazepam tabs 0.5, 1, 2 mg	Amer. Ther.
Maprotiline tabs 25, 50, 75 mg	Bolar
Meclofenamate caps 50, 100 mg	Vitarine
Methyldopa tabs 125, 250 mg	Bolar
Methyldopa/HCTZ tabs 250/15, 250/25	Bolar
Methyldopa/HCTZ tabs 250/30, 250/50	Bolar
Orphenadrine ER tabs 100 mg	Bolar
Orphenadrine 25/ASA 385/caffeine 30 tabs	Par, Vitarine
Orphenadrine 50/ASA 770/caffeine 60 tabs	Par, Vitarine
Oxazepam caps 10, 15, 30 mg	Chelsea
Perphenazine tabs 8 mg	Chelsea
Phenytoin caps 100 mg	Bolar
Procainamide ER tabs 1000 mg	Bolar
Pramoxine/HC rectal foam	Copley
Propoxyphene naps/APAP tabs 50/325	Bolar
Tetracycline caps 250 mg	Vitarine
Tolbutamide tabs 250, 500 mg	Bolar
Trazodone tabs 50, 100 mg	Bolar
Triamterene/HCTZ tabs 75/50	Par, Vitarine
Trimipramine maleate caps 25, 50, 100 mg	Vitarine
Verapamil tabs 80 mg	Chelsea

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HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual

Proposed Readoption with Amendment: N.J.A.C. 10:49

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-3, 6, 7; 30:4D-12.

Agency Control Number: 90-P-4.

Proposal Number: PRN 1990-248.

Submit comments by June 20, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Administration Manual (N.J.A.C. 10:49) expires on August 12, 1990. The Division of Medical Assistance and Health Services has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable, and responsive to the purpose for which they were originally promulgated. The readoption of all 11 subchapters is necessary because they describe basic program requirements, which impact on all Medicaid recipients and providers participating in the New Jersey Medicaid Program. The Department is proposing the readoption of this chapter with one minor change to N.J.A.C. 10:49-1 Appendix A as indicated below.

N.J.A.C. 10:49-1 describes general provisions that are applicable to all Medicaid patients and to all providers that participate in the New Jersey Medicaid Program. The topics covered in this subchapter include procedures for identifying an eligible Medicaid patient, services that may be obtained by these Medicaid-eligible individuals, identification of the types of providers that are eligible to participate in the Medicaid program, procedures for enrollment, and causes for removal. Other topics covered include timely submission of claims, civil rights, free choice of Medicaid providers, confidentiality of records, patient certification and rules governing audits.

N.J.A.C. 10:49 was promulgated to set forth the basic requirements of the Medicaid program in one central location, rather than to repeat the entire text at the start of each manual relating to a specific service.

Other subchapters in the Administration Manual include such topics as the Availability of program policy issuances (N.J.A.C. 10:49-2), HealthStart (N.J.A.C. 10:49-3), fair hearings (N.J.A.C 10:49-5), administrative provisions (N.J.A.C. 10:49-6), provider reinstatement (N.J.A.C. 10:49-7), demonstration projects (N.J.A.C. 10:49-8), requirements applicable to shared health care facilities (N.J.A.C. 10:49-9), and prepaid health care services (N.J.A.C. 10:49-10).

There have been several amendments made to N.J.A.C. 10:49 since the last readoption. A significant addition to N.J.A.C. 10:49 since the last readoption was the inclusion of HealthStart services for pregnant women and children at N.J.A.C. 10:49-3. Providers of HealthStart maternity care services and HealthStart pediatric care providers receive reimbursement for providing a package of services to their Medicaid patients (see R. 1988, d.62 at 20 N.J.R. 278(b)).

A recent update to several sections of subchapter 1, including the Foreword, added Federal requirements regarding a required physical examination to establish disability and certain records that must be safeguarded (see R.1989 d.498 at 21 N.J.R. 2998(a); R.1989 d.499 at 21 N.J.R. 3000(a)).

While the additional Medicaid coverage provided under the Optional Categorically Needy Program is set forth at N.J.A.C. 10:72, amendments were made to N.J.A.C. 10:49-1 to include this group of eligible individuals (see R.1987 d.380 at 19 N.J.R. 1731(a)).

N.J.A.C. 10:49-1.12, the section governing timely claims, was amended twice. The initial amendment allowed all providers (except pharmacy providers) up to one year to submit a claim to Medicaid. The one-year time limit conforms with the basic Federal requirement for Medicaid claim submittal. Under this change, N.J.A.C. 10:49-1.12 became a centralized reference point for the time frames for provider claim submittals. (see R.1987 d.408 at 19 N.J.R. 1800(a)). The subsequent amendment allowed pharmaceutical providers the full 12 months in which to submit claims. The previous amendment had imposed a six-month time limit (see R.1988 d.541 at 20 N.J.R. 2915(a)).

The Division is making one change upon readoption. N.J.A.C. 10:49-1 Appendix A, which is the list of Medicaid District Offices (MDOs), their addresses and telephone numbers, is being repealed and replaced with an updated listing.

Social Impact

N.J.A.C. 10:49 potentially impacts on all Medicaid patients and all Medicaid providers because it is a basic description of general program requirements such as financial eligibility, covered services, provider enrollment and participation.

N.J.A.C. 10:49 should be continued because the public, especially those persons who provide or require Medicaid services, need to be informed of changes in Federal or State law or regulations which impact on the Medicaid program as a whole.

N.J.A.C. 10:49 needs to be readopted to insure continued receipt of Federal funding for the Medicaid program, because many of the sections in this subchapter are based on Federal requirements.

Economic Impact

Except for those costs associated with the general administration of the Medicaid program, there is no direct economic impact associated with this readoption.

With respect to Medicaid providers, there is no change in the method of reimbursement, whether fee-for-service, or cost-related. However, Medicaid providers should be aware of the documents used to indicate patient eligibility, and they should check the patient's current eligibility status each time treatment is rendered. Medicaid providers should submit claims within the required time frames. Claims that are not filed timely will be denied payment.

Generally, there is no cost to the Medicaid patient for services covered by the Medicaid program. However, patients in long term care facilities are required to contribute towards the cost of their care from their available income.

N.J.A.C. 10:49 needs to be readopted to insure continued Federal funding for the administrative mechanisms of the Medicaid program.

Regulatory Flexibility Analysis

Some of the requirements contained in N.J.A.C. 10:49 impact on Medicaid recipients and the agencies, such as the county boards of social services, that determine eligibility. A regulatory flexibility analysis is not required for those regulatory sections, such as N.J.A.C. 10:49-1.1 and 1.2, that impact primarily upon individual applicants rather than small businesses. However, there are sections such as N.J.A.C. 10:49-1.3, Eligible providers, and subchapters concerning HealthStart (N.J.A.C. 10:49-3), fair hearings (N.J.A.C. 10:49-5), administrative provisions (N.J.A.C. 10:49-6), and provider reinstatement (N.J.A.C. 10:49-7), that do impact upon providers generally. Some of these providers would be considered a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. in that they employ less than 100 full-time employees. The requirements in this chapter apply equally to all providers, because they are based upon Federal regulations which are generally applicable to all Medicaid providers. There is no differentiation based upon size. Providers are required to keep certain records regarding patient care and patient activities. Providers are also required to maintain sufficient records to enable them to submit claims correctly and accurately within the prescribed time frames. This proposed readoption does not impose any additional reporting, recordkeeping, or other compliance requirements on providers.

This proposed readoption does not impose any capital costs on providers.

In addition, providers are required by law to maintain sufficient records to fully disclose the name of the patients being treated, dates and nature of services, etc. (see N.J.S.A. 30:4D-12).

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:49.

Full text of the proposed repeal and new N.J.A.C. 10:49-1 Appendix A follows (additions in boldface **thus**; deletion in brackets [thus]):

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[APPENDIX A
MEDICAID DISTRICT OFFICES

County	Address	Telephone No.
Atlantic	1 So. New York Ave. Atlantic City, 08401	609-441-3620
Bergen	50 Main St. Hackensack, 07601	201-488-5667
Burlington	50 Rancocas Road Mt. Holly, 08060	609-261-0448
Camden	P.O. Box 1089 Parkade Bldg. 519 Federal St. Camden, 08101	609-757-2870
Cumberland (Cape May)	108 Landis Ave. Vineland, 08360	609-696-6560
Essex	155 Washington St. Newark, 07102	201-648-2470
Gloucester (Salem)	251 N. Delsea Drive Woodbury Plaza, Suite B Deptford, 08096	609-845-7185
Hudson	2815 Kennedy Blvd. Jersey City, 07306	201-433-8011
Hunterdon (Somerset)	84 Park Ave. Flemington, 08822	201-782-1130
Mercer	28 West State Street Trenton, 08608	609-292-7315
Middlesex	75 Paterson St. New Brunswick, 08903	201-246-0653
Monmouth	1200 Memorial Drive Asbury Park, 07712	201-775-5700
Morris (Sussex and Warren)	10 Park Place Morristown, 07960	201-267-1700
Ocean	1861 Hooper Ave. Toms River, 08753	201-255-6226
Passaic	100 Hamilton Plaza Paterson, 07505	201-977-4077
Union	125 No. Broad St. 6th Floor Hersh Towers Elizabeth, 07201	201-820-3135]

APPENDIX A
MEDICAID DISTRICT OFFICES

County	**Address**	**Telephone Number**
Atlantic	**1601 Atlantic Avenue, 7th Floor Atlantic City, NJ 08401**	**(609) 441-3620**
Bergen	**171-173 Main Street Hackensack, NJ 07601**	**(201) 488-5667**
Burlington	**50 Rancocas Road Mt. Holly, 08060**	**(609) 261-0448**
Camden	**1800 Davis Avenue East Building, Suite 301 Camden, NJ 08104**	**(609) 757-2870**
***Cumberland (Cape May)**	**108 Landis Avenue Vineland, NJ 08360**	**(609) 696-6560**
Essex (Newark)	**155 Washington Street Newark, NJ 07102**	**(201) 648-2470 (201) 648-3700**
Essex (Suburban)	**76 South Orange Avenue, 2nd Floor South Orange, NJ 07079**	**(201) 761-7441**
Gloucester (Salem)	**251 North Delsea Drive Deptford Center Deptford, NJ 08096**	**(609) 853-4177**
Hudson	**2815 Kennedy Boulevard, 2nd Floor Jersey City, NJ 07306**	**(201) 433-8011**
Hunterdon (Somerset)	**84 Park Avenue, 2nd Floor Flemington, NJ 08822**	**(201) 782-1130**
Mercer	**314-316 East State Street Trenton, NJ 08608**	**(609) 292-7315**
***Middlesex**	**25 South Main Street Bldg. B—Suite 5-6 Edison, NJ 08837**	**(201) 549-3884**
Monmouth	**Casino 9 220 Route 9 Howell, NJ 07731**	**(201) 308-1159**
Morris (Sussex and Warren)	**10 Park Place, 4th Floor Morristown, NJ 07960**	**(201) 267-1700**
Ocean	**1510 Hooper Avenue Toms River, NJ 08753**	**(201) 255-0731**
Passaic	**Law Building 66 Hamilton Street Paterson, NJ 07505**	**(201) 977-4077**
Union	**Hersh Towers 125 Broad Street, 6th Floor Elizabeth, NJ 07201**	**(201) 355-8860**
***Regional Director Northern Regional Office**	**100 Hamilton Plaza 6th Floor, Room 601 Paterson, NJ 07505**	**(201) 977-4541**

***Denotes office where the Regional Director can be reached.**

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services Manual
Provider Qualifications; Prior Authorization; Basis of Payment
Proposed Amendments: N.J.A.C. 10:50-1.1, 1.3, 1.5, 1.6, 2.6, 3.2, Appendix I and Appendix II
Proposed Repeal and New Rule: N.J.A.C. 10:50-1.4

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:40-6b(15), 30:40-7, 7a, b and c; 30:4D-12; 42 CFR 440.170(a).

Division Control Number: 89-P-16.

Proposal Number: PRN 1990-249.

Submit comments by June 20, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments and new rule concern transportation services, which is a required component of the Title XIX (Medicaid) program pursuant to 42 CFR 440.170(a). Some of the policies contained in these proposed amendments and new rule reflect codification of existing New Jersey Medicaid policies governing transportation. Under the Medicaid Program, transportation must be used to assist the patient in obtaining necessary medical examinations and treatments. In furtherance of this objective, the proposed amendments indicate that transportation service provided to a Medicaid recipient is reimbursable when the medical care provider/facility to which the patient is being transported either is a participating Medicaid provider or meets the requirements for participation, and the medical service rendered to the patient is a covered Medicaid service (see N.J.A.C. 10:50-1.6(b)).

There are basically three types of transportation providers for which the Division will make reimbursement—ambulance, invalid coach, and livery service. The Division will also make reimbursement for air ambulance and Mobile Intensive Care Unit (MICU). The amendments and new rule describe the basic criteria for being a transportation provider, any limitations on transportation services, and the basis of reimbursement. The amendments and new rule will enable Medicaid patients to be transported via the most appropriate means available in order to receive medical services.

The proposed amendments and new rule set forth the general policies for participation by transportation providers in the New Jersey Medicaid Program (see N.J.A.C. 10:50-1.3). Ambulance and invalid coach providers must obtain a Certificate of Need, and provider license and vehicle license(s), issued by the New Jersey Department of Health.

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Providers who wish to participate in the Medicaid program must forward photocopies of these documents to the fiscal agent for the New Jersey Medicaid program. With respect to renewals, the provider must forward copies of the license renewals to the fiscal agent.

A person who wishes to provide livery service must forward to the fiscal agent photocopies of the vehicle registration, license to operate a livery service, and a State of New Jersey Insurance Identification Card for each vehicle in the provider's fleet. In addition, the person must indicate the vehicle fleet number on the photocopy of the registration.

Transportation providers must agree to bill the New Jersey Medicaid Program for services provided by the billing entity only. If the provider seeks reimbursement for services performed by another organization, there must be full written disclosure to the Division, who must approve this arrangement.

With respect to ambulance service, the requirements are being recodified from N.J.A.C. 10:50-1.3(c) to N.J.A.C. 10:50-1.4. The substantive concept of reimbursing for ambulance when a patient is seriously ill remains in effect. The proposed new rule indicates that air ambulance is restricted to emergency conditions. The Division retains the option to utilize air ambulance in those situations where it could represent a significant cost savings.

With respect to a Mobile Intensive Care Unit/Advanced Life Support (MICU/ALS), Medicaid will reimburse only on a single claim submitted by the hospital. Transportation companies providing the ambulance/basic life support service must bill the hospital, not Medicaid.

The proposed new rule also sets forth the requirements for invalid coach services in N.J.A.C. 10:50-1.4(b). In essence, the patient can be wheelchair bound, or, if the patient is ambulatory, unable to take an alternate mode of transportation without assistance or supervision. The invalid coach driver and/or crew must comply with New Jersey Department of Health rules, and in addition, must provide portal-through-portal assistance of the patient. There are also several conditions listed in the rule for which invalid coach transportation shall not be used.

In the event that an invalid coach provider requires two or more persons to move an individual, the Division may pay an extra crew differential provided certain criteria are met. In essence, the patient must be wheelchair bound, and his or her place of departure or destination must have limited accessibility.

With respect to livery service, this is available to ambulatory patients. The rule describes the vehicle requirements and driver requirements (see N.J.A.C. 10:50-1.4(c).)

Prior authorization is not required for invalid coach when the patient's place of origin or destination is a nursing facility, commonly referred to as a long term care facility (LTCF). Invalid coach providers can transport the Medicaid patient and submit a claim form (MC-12) and transportation certification directly to the fiscal agent. Also, prior authorization will not be required for patients being transported to and from an ICF/MR. The Division will conduct post-payment reviews.

Also, the maximum period of time for which the Division may grant prior authorization is being extended from six months to 12 months, depending on the patient's condition. The 12-month period of authorization is not an absolute requirement. A shorter time period may be authorized depending on the patient's condition. Medicaid would not pay for transportation services after the expiration of the prior authorization period unless the request was renewed. In addition, the patient, family, or provider should notify the Medicaid District Office (MDO) if there was a significant change in the patient's condition.

The conditions for reimbursement are also being revised and developed in more detail. The definition of the term "loaded mile" remains basically the same, but is limited for both ambulance service and invalid coach service to one patient only. The provider may bill only for the patient traveling the greatest distance in a multiple-load situation. For livery service, the amount reimbursable for vehicle mileage accrued is on a per-passenger basis. However, when two or more passengers are being transported to and from the same place, only one "loaded mile" charge may be made.

For trips by ambulance and invalid coach in excess of 15 miles one way, loaded mileage is reimbursable at a higher rate beginning with the first mile. Providers must use the appropriate procedure code to be reimbursed at the higher rate. The proposed amendments also allow for reimbursement of waiting time, which is limited to a maximum of one hour on one-way trips.

Social Impact

The proposed amendments and new rule impact potentially on all Medicaid patients who need transportation to obtain medical services. The proposed amendments and new rule impact specifically on those Medicaid patients who need the assistance of one of the available modes of transportation to get to and/or from their residences to obtain a Medicaid covered service.

The proposed amendments and new rule impact on Medicaid transportation providers including ambulance, air ambulance, MICU's, invalid coach and livery services. The amendments define the conditions of participation, limitations on services, if any, and the basis of reimbursement. Medicaid transportation providers need to comply with the criteria in the Transportation Manual, and in this proposed amendment, in order to participate in the New Jersey Medicaid Program.

The extension of the prior authorization limit from six months to 12 months impacts on both recipients and providers. The opportunity for extension (of prior authorization) should benefit both groups.

Economic Impact

The proposed amendments have an economic impact on Medicaid recipients and providers as described below.

The expenditures for the extra crew service (proposed at N.J.A.C. 10:50-1.4(b)5) are included in the Division's annual appropriations.

The additional mileage allowance was included as part of a general fee increase, the notice of which appeared in the August 15, 1988 issue of the New Jersey Register at 20 N.J.R. 2101(a).

There is no cost to the Medicaid patient for transportation services.

Regulatory Flexibility Analysis

Some transportation providers, hereinafter referred to as "providers," may be considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, because some may employ less than 100 full-time employees. However, the requirements in the Transportation Services Manual apply equally to all providers in a given class. For example, the requirements are the same for all ambulance providers. The requirements are also the same for all providers of livery service. However, the requirements for ambulance providers might not be synonymous with those for livery service providers because the former service is rendered during an emergency and the latter is not. The requirements have been standardized to conform with criteria issued by the New Jersey Department of Health (DOH) and/or the New Jersey Division of Motor Vehicles (DMV).

These amendments do impose record keeping and other compliance requirements upon providers. All transportation providers are required to submit photocopies of certain documents to the fiscal agent to insure their continued participation in the New Jersey Medicaid Program.

The Division believes these requirements are necessary for the health, safety and general welfare of the Medicaid patients being transported. Compliance with the criteria contained in the proposed amendments will help insure that the vehicle is properly maintained and its operator duly qualified.

In addition, the Medicaid law requires that providers maintain sufficient records to fully document the name of the patient being treated, dates and notice of services, etc. (see N.J.S.A. 30:4D-12). A transportation provider who is already participating in the New Jersey Medicaid Program will incur certain annual expenditures, such as vehicle licensure, registration, and insurance in order to meet the requirements established by the New Jersey DMV. These proposed amendments do not affect these requirements.

The proposed amendments may or may not involve capital expenditures for a new provider. The amount of capital expenditures would depend on whether the provider had an established business and wished to voluntarily enroll as a Medicaid provider or whether the provider was just starting in business and needed capital for start-up costs, including the purchase of vehicles.

The proposed amendments are designed to minimize the adverse effect upon small businesses by not adding additional compliance requirements other than those already established. The Division attempted to reduce the reporting and record keeping requirements by removing prior authorization for invalid coach transportation for patients being transported to and/or from the Long Term Care Facility (LTCF), and by extending the maximum period of prior authorization from six months to 12 months.

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

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10:50-1.1 Scope

This manual describes the policies and procedures of the New Jersey Medicaid Program fo reimbursement of **approved** providers of transportation services. Questions about this manual may be directed to any Medicaid District [office] **Office** [MDO] (**MDO**) listed in [this subchapter] **N.J.A.C. 10:49-1 Appendix A** or to the Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625.

10:50-1.2 Definitions

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

. . .

"Patient" means a Medicaid recipient who is transported in an ambulance or invalid coach for the purpose of obtaining Medicaid-covered service.

. . .

10:50-1.3 General policies **for participation**

(a) The approval process for becoming a transportation service provider is as follows:

1. Each transportation provider must be individually approved for each type of service provided. The [New Jersey Department of Human Services,] Division of Medical Assistance and Health Services, **Department of Human Services,** [with the Prudential Insurance Company of America acting as Fiscal Agent for the Division, must approve each provider before reimbursement can be made to that provider for transportation service] **in conjunction with the fiscal agent for the New Jersey Medicaid Program, must approve each provider before reimbursement can be made to that provider for a transportation service.**

[2. Prerequisite for a New Jersey-based ambulance or invalid coach company for Title XIX (Medicaid) approval is possession of a Certificate of Need and license issued by the New Jersey Department of Health.]

2. Medicaid Provider Application (Form FD-20), Provider Agreement (Form FD-62) and the Ownership and Control Interest Disclosure Statement (HCFA-1513) may be obtained from the fiscal agent for the New Jersey Medicaid Program.

[3. As a condition of participation, the transportation provider agrees to bill the Medicaid program for services provided by the billing entity only. If the provider seeks reimbursement for services performed by any other organization or entity, whether a franchise, independent contractor, etc., full disclosure in writing of the financial and organizational arrangement between said entities must be made to, and approved in advance by, the Division of Medical Assistance and Health Services.]

3. Prerequisite for a New Jersey-based ambulance or invalid coach company for Title XIX (Medicaid) approval is possession of a Certificate of Need, provider license, and vehicle license(s) issued by the New Jersey Department of Health.

i. A potential provider seeking approval to provide ambulance and/or invalid coach service shall forward photocopies of the Certificate of Need approval letter, provider license, and vehicle license(s) to the fiscal agent for the New Jersey Medicaid Program.

ii. An approved provider of ambulance and/or invalid coach service shall forward to the fiscal agent for the New Jersey Medicaid Program photocopies of the provider license and vehicle license(s) when the licenses are renewed on an annual basis, and when additional vehicles are added to a provider's fleet. A provider shall also forward written notification to the fiscal agent when a vehicle is taken out of service.

[4. "Medicaid Provider Application" (Form FD-20), "Provider Agreement" (Form FD-62 and the "Ownership and Control Interest Disclosure Statement" (HCFA-1513) may be obtained from The Prudential Insurance Comapny of America, Provider Enrollment Unit, P.O. Box 5007, Millville, New Jersey 08332.

i. An applicant seeking approval to provide livery service must attach to the "Medicaid Provider Application" (Form FD-20) a photocopy of each Vehicle Registration issued by the New Jersey Division of Motor Vehicles. The applicant must also indicate on the photocopy of the Vehicle Registration the respective vehicle fleet number.

ii. A Medicaid-enrolled provider of ambulance and/or invalid coach service seeking approval to provide livery service must complete another "Medicaid Provider Agreement" (Form FD-20).]

4. A potential provider seeking approval to provide livery service shall attach to the Medicaid Provider Application (Form FD-20) the following documents, each of which shall bear the name of address of the livery company or the company's principal owner(s), for each vehicle in the provider's fleet:

i. A photocopy of the license to operate a livery service, issued by the clerk of the municipality in which the place of business is located;

ii. A photocopy of the State of New Jersey Insurance Identification Card, issued by the provider's insurance company; and

iii. A photocopy of the vehicle registration bearing the classification "Livery", issued by the New Jersey Division of Motor Vehicles.

(1) A potential provider shall also indicate on the photocopy of the vehicle registration the respective vehicle fleet number.

5. All documentation must bear the name and address of the livery company or the company's principal owner(s).

[5.] **6. An approved provider of livery service shall forward to the fiscal agent for the New Jersey Medicaid Program photocopies of the above-mentioned documents (license, registration and insurance) when the documents are renewed on an annual basis, and when additional livery service vehicles are added to a provider's fleet. A provider shall also forward written notification to the fiscal agent when a livery service vehicle is taken out of service.**

[6.] **7. A Medicaid-enrolled provider of ambulance and/or invalid coach service seeking approval to provide livery service shall complete another Medicaid Provider Application (Form FD-20) and attach the required photocopies as indicated above.**

[7.] **8. For livery service, specific requirements concerning vehicles and drivers are located at N.J.A.C. 10:50-1.4.**

[8.] **9.** The completed provider agreement, disclosure statement, and/or provider application shall be submitted to [:] **the fiscal agent for the New Jersey Medicaid Program.**

[The Prudential Insurance Company of America
Provider Enrollment Unit
P.O. Box 5007
Millville, New Jersey 08332]

[9.] **10.** Once approved, the applicant will receive a Medicaid provider number and an initial suuply of pre-printed claim forms from [The Prudential Insurance Comapny of America] **the fiscal agent for the New Jersey Medicaid Program**.

[(b) If a transportation service is operated by an organization which has established a policy of providing service without cost for a specific class of individuals, or individuals living within a given area, then it shall be understood that such service is also available without cost to patients falling within such category who are covered under the New Jersey Medicaid Program.]

(b) As a condition of participation, the transportation provider agrees to bill the New Jersey Medicaid Program for services provided by the billing entity only. If the provider seeks reimbursement for services performed by any other organization or entity, whether a franchise, independent contractor, etc., full disclosure in writing of the financial and organizational arrangement between said entities shall be made to, and approved in advance by, the Division of Medical Assistance and Health Services.

[(c) Ambulance service is reimbursable only under the following conditions:

1. When such service is not free and available in the community; or

2. When the use of any other method of transportation is medically contraindicated. Ambulance service is reimbursable when at the time the service is provided one or more of the following conditions exist, regarding the Medicaid eligible individual:

i. Is transported in an emergency situation, e.g., as a result of accident, injury, or acute illness; or

ii. Is unconscious or in shock; or

iii. Requires oxygen, ventilation, or other emergency treatment enroute; or

iv. Has to remain immobile because of a fracture that has not been set or the possibility of a fracture; or

v. Has sustainend an acute stroke or myorcardial infarction; or

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vi. Is experiencing severe hemorrhage; or
vii. Has suffered severe brain damage; or
viii. Requires intravenous therapy; or
ix. Is post cardiac catheterization; or
x. Is suffering from uncontrolled seizure disorders; or
xi. Is confined in a total body cast; or
xii. Condition includes hip spicas and/or other casts preventing hip flexion; or
xiii. Is confined in an isolette (incubator); or
xiv. Has undergone a tracheostomy (requiring suction); or
xv. Is heavily sedated; or
xvi. Is comatose; or
xvii. Is post pneumoencephalogram; or
xviii. Is suffering life threatening third degree burns; or
xix. Needs to be restrained due to likelihood of serious harm:
(1) Substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm;
(2) A substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or
(3) A very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community; or
xx. Is an American Heart Association Class IV patient with diseases of the heart. (Patients with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of cardiac insufficiency of the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.)
3. Note: It is recognized that there will be isolated instances necessitating ambulance transportation which do not meet the criteria above. Claims for these services will be honored providing the documentation of medical need is sufficient. Please note, however, that unavailability of other means of suitable transportation, such as an invalid coach, or the need for assistance in getting to or from the vehicle will not constitute medical necessity.
4. Although a physican must request transportation by ambulance, it is the responsibility of the transportation provider to ensure that the Medicaid recipient's illness, entered on the physician's prescription, is one more of the conditions listed in N.J.A.C. 10:50-1.3(c)2. If upon review, the information on the transportation claim form/physician's prescription shows that the Medicaid recipient's medical condition did not warrant travel by ambulance, the claim will be rejected.
(d) Helicopters or aircraft, under extenuating circumstances, may be used as a carrier to transport the sick, injured or disabled Medicaid-eligible patient.
1. Reimbursement is restricted to the emergency condition where transportation by air is medically considered the only acceptable form of travel and the conditions are such that its implementation is feasible. The Division of Medical Assistance and Health Services retains the option to utilize this form of transportation in such situations where, at its discretion, it could represent a significant cost savings when compared to ambulance or invalid coach service involving trips covering similarly long distances.
(e) Services not directly reimbursable by the New Jersey Medicaid Program include transportation by taxi, train, bus , and other public conveyances. Inquiry should be made to the county welfare agency for reimbursement in accordance with the public welfare financial assistance standards handbook.
(f) The Division of Medical Assistance and Health Services retains the right to consider on an individual basic other modes of transportation as the needs occur.
(g) Eligible transportation cost for covered persons who are required to make regular visits to medical facilities outside the immediate community are reimbursable only if the required services are not available within the community.
1. The licensed attending physician or a licensed physician knowledgeable about the case must recommend the mode of transportation to be used, and certify the special circumstances.]

[10:50-1.4 Livery service
(a) Livery service provided to an individual to and/or from nonmedical facilities, such as educational, vocational, or nutritional sites, is not Medicaid reimbursable. Livery service shall be limited to the transport of ambulatory passengers. Only a New Jersey-based company is eligible to participate in the New Jersey Medicaid Program as a provider of livery service.
(b) Vehicle requirements are as follows:
1. The vehicle used to provide livery service must not be more than five model years old at the time the service is provided and must have a seating capacity of not less than five nor more than ten persons, inclusive of the driver.
2. Any passenger car used to provide livery service must be a four-door vehicle.
3. In addition, every vehicle used to provide livery service must meet all of the following requirements:
i. Display a valid inspection decal issued by the New Jersey Division of Motor Vehicles;
ii. Display livery license plates; and
iii. Display external markings to indicate company name and vehicle number.
(c) The Division of Medical Assistance and Health Services will conduct periodic vehicle inspections to ensure compliance with these requirements.
(d) All drivers must be appropriately licensed as follows:
1. In accordance with N.J.S.A. 39:3-10.1, a driver of a motor vehicle with a capacity of more than six passengers used for the transportation of passengers for hire must possess a special driver's license issued by the New Jersey Division of Motor Vehicles.
2. An out-of-state resident who drives a livery service vehicle in the State of New Jersey must conform to the statutes relevant to livery service in his/her state of residence.
(e) All providers must make available their livery service to Medicaid-eligible individuals from 6 A.M. to 10 P.M., Monday through Saturday.]

10:50-1.4 Services covered by the New Jersey Medicaid Program
(a) Ambulance service is a covered service under the following conditions:
1. When such service is not free and available in the community;
2. When the service is provided to a patient as indicated in N.J.A.C. 10:50-1.6 (b); and
3. When the use of any other method of transportation is medically contraindicated and the service is provided to a patient who:
i. Is transported in an emergency situation, for example, as a result of accident, injury, or acute illness;
ii. Is unconscious or in shock;
iii. Requires oxygen, ventilation, or other emergency treatment enroute;
iv. Has to remain immobile because of a fracture that has not been set or the possibility of a fracture;
v. Has sustained an acute stroke or myocardial infarction;
vi. Is experiencing severe hemorrhage;
vii. Has suffered severe brain damage;
viii. Requires intravenous therapy;
ix. Is post cardiac catheterization;
x. Is suffering from uncontrolled seizure disorders;
xi. Is confined in a total body cast;
xii. Is confined in hip spicas and/or other casts preventing hip flexion;
xiii. Is confined in an isolette (incubator);
xiv. Has undergone a tracheostomy (requiring suction);
xv. Is heavily sedated;
xvi. Is comatose;
xvii. Is post pneumocencephalogram;
xviii. Is suffering life threatening third degree burns; or
xix. Needs to be restrained due to likelihood of serious harm:

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(1) Substantial risk of physical harm to the person himself or herself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm;

(2) A substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or

(3) A very substantial risk of physical impairment or injury to the person himself or herself as manifested by evidence that such person's judgment is so affected that he or she is unable to protect himself or herself in the community and that reasonable provision for his or her protection is not available in the community.

4. The Department recognizes that there will be isolated instances necessitating ambulance transportation which do not meet the criteria in (a)3 above. Claims for these services will be honored providing the documentation of medical need is sifficient. Unavailability of other means of suitable transportation, such as an invalid coach, or the need for assistance in getting to or from the vehicle will not constitute a medical necessity.

5. The ambulance crew shall comply with the duties of the staff as specified in New Jersey Department of Health rule N.J.A.C. 8:40-6.27.

6. An air ambulance or helicopter, under extenuating circumstances, may be used as a carrier to transport the sick, injured or disabled Medicaid-eligible patient.

i. The service is restricted to the emergency condition where transportation by air is medically considered the only acceptable form of travel and the conditions are such that its implementation is feasible. The Division of Medical Assistance and Health Services retains the option to utilize this form of transportation in such situations where, at the Division's discretion, it could represent a significant cost savings when compared to ambulance or invalid coach service involving trips covering similarly long distances.

7. Mobile Intensive Care Unit/Advanced Life Support (MICU/ALS) service and associated Ambulance/Basic Life Support (Ambulance/BLS) service are reimbursable by the Medicaid Program only when billed on a single claim by the hospital providing the MICU/ALS service. Transportation companies providing the Ambulance/BLS service associated with a MICU/ALS run shall bill the hospital providing the MICU/ALS service and shall not bill the Medicaid Program directly for this service.

(b) Invalid coach service is a covered service under the following conditions:

1. When the service is provided to a patient as indicated in N.J.A.C. 10:50-1.6 (b); and

i. If the patient is wheelchair bound; or

ii. If the patient is ambulatory but unable to take an alternative mode of transportation (such as taxi, bus, livery, or private vehicle) without assistance or supervision.

2. The invalid coach driver and/or crew shall comply with the duties of staff as specified in New Jersey Department of Health rule N.J.A.C. 8:40-4.13. In addition, the invalid coach driver and/or crew shall:

i. Provide "portal-through-portal" (door-through-door) assistance at the patient's place of departure and destination; and

ii. Provide assistance in the placement and removal of the patient into and out of the vehicle at the patient's place of departure and destination.

3. In accordance with New Jersey Department of Health rule N.J.A.C. 8:40-4.1, invalid coach service shall not be provided to a patient who requires (based upon current medical condition or past medical history):

i. Transportation in a prone or supine position or who is bed or stretcher bound;

ii. Constant attendance due to a medical and/or mental condition;

iii. Aspiration;

iv. Management or observation of intravenous fluids and/or intravenous medications;

v. Emergency medical services or other emergency services, such as emergency inter-hospital transfer;

vi. Treatment in the emergency department of a hospital (for other than routine, non-emergency, follow-up care of a previously diagnosed condition);

vii. Treatment in, or admission to, the obstetrical unit (labor and delivery suite) or the intensive and/or coronary care unit of a hospital; or

viii. Transportation in physical behavioral restraints.

4. The invalid coach shall carry no more than four patients at one time. All wheelchairs shall be restrained and the driver and all vehicle occupants shall wear automotive safety belts, as specified in New Jersey Department of Health rule N.J.A.C. 8:40-4.13.

5. The use of an extra crew for invalid coach services is covered when two or more persons are used to move an individual under the following circumstances:

i. The patient is wheelchair bound;

ii. The patient's place of departure or destination has no elevator service available; and

iii. The patient is unable to ambulate even with the assistance of another person, such as the invalid coach driver; and

(1) The patient's place of departure or destination is accessible only by means of five or more steps; or

(2) The patient's place of departure or destination is accessible only by means of two or more steps and the patient weighs 200 or more pounds.

(c) Livery service is a covered service under the following conditions:

1. When the service is provided to an individual as indicated in N.J.A.C. 10:50-1.6(b).

2. Livery service provided to an individual to and/or from non-medical facilities, such as educational, vocational, or nutritional sites, is not Medicaid reimbursable. Livery service shall be limited to the transport of ambulatory passengers. Only a New Jersey-based company is eligible to participate in the New Jersey Medicaid Program as a provider of livery service.

3. Vehicle requirements are as follows:

i. The vehicle used to provide livery service shall not be more than six model years old at the time the service is provided and shall have a seating capacity of not less than five nor more than 10 persons, inclusive of the driver. Each vehicle used to provide livery service shall be licensed, registered and insured as indicated in N.J.A.C. 10:50-1.3(a)4.

ii. Any passenger car used to provide livery service shall be a four-door vehicle.

iii. In addition, each vehicle used to provide livery service shall:

(1) Display a valid inspection decal issued by the New Jersey Division of Motor Vehicles;

(2) Display livery license plates; and

(3) Display external markings to indicate company name and vehicle number.

iv. The Division of Medical Assistance and Health Services will conduct periodic vehicle inspections to ensure compliance with these requirements.

4. All drivers shall be appropriately licensed as follows:

i. In accordance with N.J.S.A. 39:3-10.1, a driver of a motor vehicle with a capacity of more than six passengers used for the transportation of passengers for hire shall possess a special driver's license issued by the New Jersey Division of Motor Vehicles.

ii. An out-of-State resident who drives a livery service vehicle in the State of New Jersey shall conform to the statutes relevant to livery service in his or her state of residence.

5. All providers shall make available their livery service to Medicaid-eligible individuals from 6 A.M. to 10 P.M., Monday through Saturday.

10:50-1.5 Authorization for transportation services

(a) Prior authorization from the Medicaid District Office (**MDO**) is required for all transportation services except for **ground** ambulance service and livery service. **See (f) below for the policy concerning authorization for patients transported by invalid coach to/from a nursing facility.**

(b) Procedures for obtaining prior authorization are as follows:

1. Written request: The provider submits a "Transportation Claim" (Form MC-12) to the [Medicaid District Office] **MDO**. Upon receipt of this document, [the Medicaid District Office Medical Consultant] **a MDO professional staff person** reviews the information to verify medical necessity. If the request is approved, the mode of

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transportation is checked, an authorization number is assigned, and the [Medical Consultant] **professional staff person** signs the Form MC-12 in Item 16. If denied, however, the [Medical Consultant] **professional staff person** indicates in the space provided the reason for the denial. The Medicaid District Office retains the third copy of the Form MC-12 and forwards the Fiscal Agent and Provider copies to the provider.

2. Verbal request: The provider calls the [Medicaid District Office] **MDO** and requests prior authorization. [The Medicaid District Office] **A MDO professional staff person** completes a "Transportation Services—Information Sheet" (Form FD-60) and [the Medicaid District Office Medical Consultant] approves or denies the request. The provider is apprised by telephone of the [Medicaid District Office Medical Consultant's] **MDO's** decision. If the request is approved, an authorization number is given to the provider and is also entered on the Form FD-60 which is signed by the [Medicaid District Office Medical Consultant or the Medicaid District Office Director] **MDO professional staff person**. If denied, however, the [Medical Consultant] **MDO professional staff person** indicates in the space provided the reason for the denial. The [Medicaid District Office] **MDO** retains the third copy of the Form FD-60 and forwards the Fiscal Agent and Provider copies to the provider. After rendering the invalid coach service, the provider forwards a claim, accompanied by the Form FD-60, to [The Prudential Insurance Company of America] **the fiscal agent for the New Jersey Medicaid Program** for processing.

(c) (No change.)

(d) A request for invalid coach authorization may be approved for an extended period of time when, in the opinion of [the Medicaid District Office Medical Consultant] **MDO professional staff person**, the Medicaid-eligible individual's health condition will not improve to the extent that a lower mode of service would be appropriate during the period under consideration. An extended authorization may range from one month through [six] **12** months in duration.

1. When a provider of invalid coach service requests authorization for an extended period of time, either in writing or by telephone, the Form MC-12 or Form FD-60 shall be labeled "RECORD SHEET". It is not necessary for the provider to indicate the number of trips or the destination on the "RECORD SHEET["],"" as this information will not be known in advance. Claims for actual trips provided during the extended period of time shall be forwarded by the provider directly to [The Prudential Insurance Company of America] **the fiscal agent for the New Jersey Medicaid Program** for processing.

(e) (No change.)

(f) Authorization from the Medicaid District Office is not required for invalid coach service when a patient's place of origin or destination is a nursing facility or intermediate care facility for the mentally retarded. A nursing facility (formerly called a long-term care facility) is defined in N.J.A.C. 10:63-1.2. In these instances only, providers may render the invalid coach service and submit a Transportation Claim (Form MC-12) and Transportation Certification directly to the fiscal agent for the New Jersey Medicaid Program, without obtaining authorization from a Medicaid District Office. A post-payment review will be conducted on an ongoing basis to ensure the accuracy and validity of claims submitted for reimbursement.

1. The HCFA Common Procedure Coding System (HCPCS) number(s) used when billing the base allowance for invalid coach service in these instances must be followed by the modifier "XA", as indicated in N.J.A.C. 10:50-3.2.

10:50-1.6 [Basis of Payment] **Reimbursement policy**

[(a) "Transportation reimbursement allowance" is on a fee-for-service basis. The base allowance for ambulance and invalid coach services includes the placement and removal of a patient into and out of the vehicle at the point of origin and the point of destination. Livery service is designed for individuals who require no assistance in entering or exiting the vehicle.

(b) Transportation service provided to a Medicaid-eligible individual is reimbursable by Medicaid under the following conditions only:

1. The medical care provider/facility to which and/or from which the individual is being transported either participates as a provider in the Medicaid program or meets the requirements for participation as a provider in the Medicaid program, and

2. The medical service rendered to the Medicaid-eligible individual by the provider/facility is a covered Medicaid service (as listed in the N.J.A.C. 10:49-1.4) at the time the transportation is provided.

(c) "Loaded mile" is mileage accrued when a vehicle is actually carrying a patient/passenger. Mileage is measured as a straight line between two points on a map, that is, from the point at which the patient/passenger enters the vehicle to the point at which he or she exits the vehicle.

(d) "Waiting time" is that period of actual time in increments of 15 minutes and beyond 30 minutes following delivery of the patient to his destination, that is, hospital, x-ray department, long-term care facility, emergency room, doctor's office, and so forth, which may be considered as an added charge. There will be no reimbursement for waiting time on round trips, and it is limited to a maximum of one hour on one-way trips. An explanation of the need for waiting time must be attached to the MC-12 claim form.

(e) Aircraft transportation service shall be reimbursed on the basis of negotiated rate, not to exceed the charge made to noneligible recipients for the same service.]

(a) The following definitions shall apply for the purpose of reimbursement:

1. "Loaded mile" means mileage accrued when a vehicle is actually carrying a patient/passenger. Mileage for ground ambulance, invalid coach, and livery service is measured by odometer from the point at which the patient/passenger enters the vehicle to the point at which he or she exits the vehicle.

i. In a multiple-load situation for ambulance service and invalid coach service, the charge for loaded mileage and waiting time is applicable to one patient only. Reimbursement is limited to the distance traveled by the patient whose place of departure and destination represent the greatest distance. No mileage charge is permitted for additional patients whose distance traveled lies between these two points.

ii. For livery service, the amount reimbursable for vehicle mileage accrued is on a per-passenger basis. However, when two or more passengers are transported in the same vehicle at the same time from the same departure point to the same destination point, mileage may only be charged for one passenger.

iii. For trips by ambulance and invalid coach in excess of 15 miles one way, loaded mileage is reimbursable beginning with the first mile, at a higher rate as indicated in N.J.A.C. 10:50-3.2. The higher rate of reimbursement is applicable to both the one way trip and to the return trip.

(1) When billing for trips in excess of 15 miles one way, the HCFA Common Procedures Coding System (HCPCS) number used to identify mileage charges must be followed by the modifier "22", as indicated in N.J.A.C. 10:50-3.2.

2. "Transportation reimbursement allowance" means that claims are paid on a fee-for-service basis, as indicated in N.J.A.C. 10:50-3, HCFA Common Procedcure Coding System (HCPCS). For HCPCS code numbers and maximum fee schedule, see N.J.A.C. 10:50-3.2. The least expensive mode of transportation suitable to the recipient's needs is to be used.

3. "Waiting time" means that period of actual time in increments of 15 minutes and beyond 30 minutes following delivery of the patient to his or her destination, for ambulance and invalid coach service only. There is no reimbursement for waiting time on round trips, and it is limited to a maximum of one hour on one-way trips. Waiting time is applicable to one patient only in a multiple-load situation for invalid coach service. An explanation of the need for waiting time shall be attached to the claim (Form MC-12).

(b) Transportation service provided to a Medicaid recipient is reimbursable by the New Jersey Medicaid Program under the following conditions only:

1. The medical care provider/facility to which and/or from which the individual is being transported either participates as a provider in the Medicaid program or meets the requirements for participation as a provider in the Medicaid program; and

2. The medical service rendered to the Medicaid recipient by the provider/facility is a covered Medicaid service (as listed in N.J.A.C. 10:49-1.4) at the time the transportation is provided.

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(c) Air ambulance or helicopter reimbursement shall be based on a rate authorized by the Medicaid District Office, not to exceed the charge made to non-Medicaid recipients for the same service.

[(f)]**(d)** Hospital-based transportation service is reimbursable when a Medicaid-eligible individual is transported to the base hospital and admitted as an inpatient or treated as an outpatient. If the Medicaid-eligible individual is admitted, the hospital submits a claim for the service on Form UB-82 as a trailer. If the Medicaid-eligible individual is not admitted, the hospital submits a claim for the service on Form UB-82 as an outpatient service. A revenue code shall be used to identify the transportation service.

1. Hospital-based transportation service provided to a Medicaid-eligible individual who is transported to other than the base hospital is reimbursable on a fee-for-service basis in the same manner as a non-hospital-based transportation provider. In such instances, the hospital shall be enrolled as a transportation provider as defined in N.J.A.C. 10:50-1.2. A ["] Transportation Claim["] (Form MC-12) **and Transportation Certification** shall be used when submitting a claim for transportation services, as described in N.J.A.C. 10:50-2.5 **and 2.7**.

2. (No change.)

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

[(h)]**(f)** [If the carrier is owned by the Medicaid-participating LTC facility, and the service is required by an inpatient of that LTC facility, reimbursement is considered as part of the per diem rate. No further reimbursement is allowed.] **If a nursing facility transports a Medicaid recipient, reimbursement is considered as part of the per diem rate. No further reimbursement is allowed.**

[(i)] **(g)** No additional payment is made for the use of medical supplies and/or equipment. Exception: [Oxygen may be reimbursed at $6.00 per one-half hour with a one-half hour minimum in an ambulance or invalid coach.] **Oxygen is reimbursable on a per-occurrence basis when provided to a Medicaid recipient during an ambulance trip or invalid coach trip.**

(h) The appropriate modifier shall be entered on the Transportation Claim (Form MC-12) when billing for the following services:

1. Mileage, ambulance and invalid coach service, in excess of 15 miles one way (see N.J.A.C. 10:50-1.6(a) and 3.2(d)); and

2. Base allowance, invalid coach service, when a patient is transported to or from a nursing facility (see N.J.A.C. 10:50-1.5(f) and 3.2 (b)).

(i) If a transportation service is operated by an organization which has established a policy of providing service without cost for a specific class of individuals, or individuals living within a given area, then it shall be understood that such service is also available without cost to patients falling within such category who are covered under the New Jersey Medicaid Program.

(j) Services not directly reimbursable by the New Jersey Medicaid Program include transportation by taxi, train, bus, and other public conveyances. Reimbursement for arranging/providing these "lower mode" services shall be made by the appropriate county welfare agency/board of social services on behalf of the New Jersey Medicaid Program.

(k) Eligible transportation costs for Medicaid recipients who are required to make regular visits to medical facilities outside the immediate community are reimbursable only if the required services are not available within the community.

10:50-2.6 Combination Medicare/Medicaid claims

(a) Ambulance services reimbursable under Medicare and provided to a Medicare/Medicaid-eligible individual [must] **shall** be billed on the ["]Request for Medicare Payment-Ambulance["] (Form HCFA-1491C). Claims must be sent directly to the Medicare Carrier. [, The Prudential Insurance Company of America, Medicare B Division, P.O. Box 3000, Linwood, New Jersey 08221. The provider must indicate the Health Insurance Claim Number in Item 2 and the HSP (Medicaid) Case Number and Person Number in Item 5 on Form HCFA-1491C.] **The provider shall include on the claim form all the information required by the New Jersey Medicaid Program, such as:**

1. Health Insurance Claim Number (Item 2);

2. HSP (Medicaid) Case Number (Item 5); and

3. Medicaid Provider Number (Item 23).

10:50-2.8 Automated Data Exchange

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

(c) Requests for approval shall be submitted to[:] **the fiscal agent for the New Jersey Medicaid Program.**

[The Prudential Insurance Company of America
P.O. Box 471
Millville, New Jersey 08332]

10:50-3.2 HCPCS code number and maximum fee schedule

HCPCS Code	Mod.	Description	Maximum Fee Allowance
(a) (No change.)			
(b) INVALID COACH SERVICE			
A0130		Non-Emergency Transportation: Wheelchair Van NOTE: Invalid Coach Service, One Way, Per Patient	20.00
Y0060		Invalid Coach Service, Round Trip, Per Patient	40.00
	XA—Invalid Coach Service(s) to/from a nursing facility.		
		NOTE: The modifier "XA" must be used when a patient is transported to/from a nursing facility by invalid coach.	
Y0070		**Extra crew differential, one way**	**10.00**
Y0065		**Extra crew differential, round trip**	**20.00**
(c) (No change.)			
(d) MILEAGE			
A0020		Ambulance Service, (BLS) Per Mile, Transport, One Way [per loaded mile] NOTE: For Medicaid reimbursement purposes, mileage both one way and return/round trip is payable at $1.00 per loaded mile in both the ambulance and invalid coach. [NOTE: In a multiple-load situation, the charge for loaded mileage is applicable to one patient only. Reimbursement is limited to the distance traveled by the patient whose point of origin and point of destination represent the greatest distance. No mileage charge is permitted for additional patients whose distance traveled lies between these two points.]	1.00
[A0020 22]	**A0020-22**	Ambulance Service, (BLS) Per Mile, Transport, One Way [NOTE: For trips in excess of 15 miles one way, loaded mileage is reimbursable beginning with the first mile, at a higher rate as indicated under Maximum Fee Allowance, using HCPCS Code A0020 22. This applies to both ambulance and invalid coach services and is applicable to both the one way trip and to the return trip. In a multiple-load situation, the charge for loaded mileage is applicable to "one" patient only. Reimbursement is limited to the distance traveled by the patient whose point of origin and point of destination represent the greatest distance.	8/1/88 1.20 / 5/1/89 1.50

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No mileage charge is permitted for additional patients whose distance traveled lies between these two points.]

NOTE: **The higher rate is applicable for trips in excess of 15 miles one way, beginning with the first mile. The higher rate is reimbursable for ambulance and invalid coach services and is applicable to both the one way and to the return trip.**

HCPCS Code	Description	Maximum Fee Allowance
Y0260	Livery Service, Per Mile, Per Passenger	0.50

[NOTE: The amount reimbursable for vehicle mileage accrued is on a per-passenger basis. However, when two or more passengers are transported in the same vehicle at the same time from the same departure point to the same destination point, mileage may only be charged for one passenger.]

(e) WAITING TIME—AMBULANCE SERVICE—ONE WAY TRIP ONLY

[Y0050] **Y0005**	Waiting Time—Ambulance Service—One Way Trip Only	
	1/4 hour	2.50
	1/2 hour	5.00
	3/4 hour	7.50
	1 hour	10.00

NOTE: Reimbursable only on one way trips and only after 30 minutes have elapsed. It is reimbursable in 1/4 hour increments. Maximum reimbursement for waiting time is $10.00 (1 hour).

(f) (No change.)

(g) OXYGEN

A0070	Ambulance Service, Oxygen Administration and Supplies,	[6.00 per 1/2 hour] **12.00 per occurrence**
	Invalid Coach Service—Oxygen	[6.00 per 1/2 hour] **12.00 per occurrence**

[NOTE: Reimbursable in 1/2 hour increments after the first 1/2 hour has elapsed, for ambulance and invalid coach service.]

APPENDIX I

Instructions for the completion of the "Transportation Claim" (Form MC-12):

Items 1-12A: (No change.)

Item 12B: Insert **appropriate** HCPCS (procedure) codes **and modifiers** as specified in Subchapter 3 of this manual. The HCPCS (procedure) codes **and modifiers** must accurately reflect the service provided.

Item 12C-13B: (No change.)

Item 13C: Self-explanatory. (For the definition of emergency conditions, see N.J.A.C. 10:50-1.2.) (Not applicable for **invalid coach service or** livery service.)

Item 13D: Self-explanatory.

Item 14: Authorization request information. (Not applicable for **ambulance service,** livery service, **or invalid coach service when a patient's place of origin or destination is a nursing facility.**)

When requesting authorization for less than one month, indicate the number of trips and the month and year in which the service is expected to be provided. When telephone authorization is given, indicate the MDO-assigned authorization number in the space provided in Item 14.

[In a multiple-load situation, the charge for loaded mileage and waiting time is applicable to one patient only and must be billed on the claim form corresponding to that patient only. All other claim forms in a multiple-load situation must include only a base charge. Providers must submit all claims in a multiple-load situation batched together in one envelope.]

Occupancy: Indicate the number of patients in the vehicle.

Items 15-16: (No change.)

APPENDIX II

Instructions for the completion of the "Transportation Certification".

Section I, Items 1 and 2: Copy passenger's (recipient's) name, HSP (Medicaid) Case Number and Patient Person Number exactly as they appear on the Medicaid eligibility validation form.

Section I, Item 3: Indicate date of service and check appropriate box to indicate one way, round trip, or other.

Section I, Item 4: Enter address from which the passenger is transported.

Section I, Item 5: Enter address to which the passenger is transported.

Section I, Item 6: Enter address to which the passenger is returned, if different from Item 4.

Section I, Item 7: Check appropriate box.

Section I, Item 8: Check appropriate box.

Section I, Item 9: Check appropriate box. Not applicable for livery service.

Section II, Item A: Passenger's (recipient's) signature.

Section II, Item B: Driver's signature, printed name. In addition, the vehicle's fleet number is required for livery service. **The Vehicle Recognition Number, as indicated on the Vehicle License issued by the New Jersey Department of Health, is required for ambulance and invalid coach service.**

Section II, Item C: Office/facility representative's signature, printed name and title. Not applicable for livery service.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families

Proposed Readoption with Amendments: N.J.A.C. 10:123

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12

Proposal Number: PRN 1990-269.

Submit comments by June 20, 1990 to:
Kathryn A. Clark, Esq.
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:123 is scheduled to expire on July 29, 1990. The current rules have been reviewed pursuant to the Executive Order and have been found to continue to be reasonable, necessary and effective for the purpose for which they were originally promulgated.

The rules have been revised to update citations, to recodify certain sections, to codify a foreword, to add a scope statement at N.J.A.C. 10:123-2.1, to add a purpose and scope statement to N.J.A.C. 10:123-3 on personal needs allowances, to delete out-of-date and unnecessary Appendices, and to reposition the definitions section in N.J.A.C. 10:123-2.

This proposed readoption delineates the policy for receipt of Social Services Block Grant (SSBG) funds and directs the county welfare agencies to provide social services to Supplemental Security Income (SSI)

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recipients and other aged, blind or disabled persons residing in licensed sheltered boarding homes and rooming and boarding houses. These social services include, but are not limited to, complaint investigation, coordination and follow-up and the provision of information. The proposed readoption also provides for the allocation and distribution of the personal needs allowance for eligible residents of residential health care facilities and boarding homes, and also states the eligibility schedule for social services provided to individuals and families by the county welfare agencies.

This proposed readoption also reestablishes policy and procedures for the Division of Youth and Family Services and the county welfare agencies to follow in the ongoing implementation of the Rooming and Boarding House Act (Act) of 1979, P.L.1979, c.496 (N.J.S.A. 30:1A and 30:11A). In this Act, the Division of Youth and Family Services is responsible for maintaining a Central Registry of abuse, exploitation, unsafe conditions and unsanitary conditions in rooming houses, boarding houses and residential health care facilities and providing statistical data based on Central Registry cases and follow-up on these cases to assure that remedial action has been taken. The Division is also responsible for setting standards, policy and procedures for services to residents and monitoring services provided by county welfare agencies to eligible residents. The Division is assigned responsibility for maintaining a 24-hour toll-free hotline to receive complaints of abuse and exploitation and for referring these reports to the county welfare offices for investigation and follow-up. In order to implement this Act, the Division is charged with publicizing the services available through the county welfare agencies.

Also in this Act, the county welfare agencies are assigned various responsibilities, including, but not limited to, the investigation of complaints involving residents, the provision of services to eligible residents, the coordination of services provided by various State and local agencies, and assisting and visiting facilities on a regular basis. Standards for these responsibilities are included in N.J.A.C. 10:123, which restates the county welfare agency's right to full and free access to all facilities (rooming house, boarding house, and residential health care facilities) as authorized by the Rooming and Boarding House Act. Also included in these rules is an immunity from liability provision for persons making complaints about facilities and a statement that such complaints are confidential.

The Rooming and Boarding House Act gives responsibility to the Department of Community Affairs to establish standards governing safety, security, record keeping, living conditions and services in training and boarding houses, issuing and revoking licenses, inspecting facilities and enforcing these standards. Also under the Act, the Department of Health has the responsibility to adopt, promulgate and enforce similar standards for residential health care facilities. The responsibilities of the Division of Youth and Family Services and the county welfare agencies under these rules proposed for readoption are limited to the areas of service provision and abuse and exploitation investigations.

Further, this chapter contains the provisions governing the personal needs allowance, to be reserved by owners and operators of residential health care facilities and boarding homes, for the use of Supplemental Social Security Income (SSI) or General Public Assistance recipient residents. The personal needs allowance is adjusted yearly, based on the total annual Federal cost of living increase in the Supplemental Security Income rate. Currently, the personal needs allowance for 1990 is $59.00.

Lastly, this chapter gives the financial eligibility standards for individuals and families for social services provided by the county welfare agencies and funded through the Social Services Block Grant Program.

Proposed new subchapter 1 details the purpose, scope and the agreement of the Department of Human Services to comply with the Social Services Block Grant (SSBG) provisions.

Subchapter 2 describes the responsibility of the Division of Youth and Family Services and the county welfare agencies regarding boarding homes.

Subchapter 3 sets forth the standards for the personal needs allowances for certain residents of residential health care facilities and boarding homes.

Subchapter 4 includes the income eligibility schedule for social services for individuals and families, previously set forth as subchapter 1, as adopted in the May 7, 1990 New Jersey Register.

The following changes are being proposed at this time:

N.J.A.C. 10:123-1.1, Financial Eligibility, is recodified as N.J.A.C. 10:123-4. Proposed new N.J.A.C. 10:123-1.1 states that the subchapter contains DYFS rules regarding social services programs for individuals and families supported by Federal Social Services Block Grant funds.

N.J.A.C. 10:123-1.2 provides compliance with the Federal Omnibus Reconciliation Act of 1981, which amended Title XX of the Social Security Act establishing a Social Services Block Grant (SSBG) by stating the availability of the Federally required annual pre-expenditure report.

N.J.A.C. 10:123-1.3 contains the agreement of the Division to comply with the Federal requirements in accordance with the provisions of the annual pre-expenditure report, with Title XX of the Social Security Act and all applicable Federal regulations.

N.J.A.C. 10:123-2.1 states the purpose and scope of subchapter 2.

N.J.A.C. 10:123-2.2 gives the authority for the promulgation of these rules and further states the delegation of authority by the Commissioner of the Department of Human Services to the Division of Youth and Family Services to be the official designated lead agency in enforcing appropriate sections of the Act.

N.J.A.C. 10:123-2.3 defines DYFS responsibilities and supervision and is recodified as N.J.A.C. 10:123-2.4. Proposed new N.J.A.C. 10:123-2.3 lists the definitions of terms used within N.J.A.C. 10:123-2.

N.J.A.C. 10:123-2.4 defines county welfare agency responsibilities and is recodified as N.J.A.C. 10:123-2.5.

N.J.A.C. 10:123-2.5 describes full and free access and is recodified as N.J.A.C. 10:123-2.6.

N.J.A.C. 10:123-2.6 defines confidentiality and is recodified as N.J.A.C. 10:123-2.7.

N.J.A.C. 10:123-2.7 describes general reporting, and is recodified as N.J.A.C. 10:123-2.8.

N.J.A.C. 10:123-2.8 defines immunity and is recodified as N.J.A.C. 10:123-2.9. Former N.J.A.C. 10:123-2.9 is recodified as N.J.A.C. 10:123-2.3.

N.J.A.C. 10:123-3.1, Definitions, is recodified as N.J.A.C. 10:123-3.3. Proposed new N.J.A.C. 10:123-3.1 discusses the purpose of N.J.A.C. 10:123-3 dealing with the monthly personal needs allowance for each eligible rooming house, boarding house or residential health care facility resident.

N.J.A.C. 10:123-3.2 defines the amount of the monthly personal needs allowance and is recodified as N.J.A.C. 10:123-3.4. Proposed new N.J.A.C. 10:123-3.2 is a scope statement for N.J.A.C. 10:123-3 applying to all eligible rooming house, boarding house or residential health care facility residents.

N.J.A.C. 10:123-3.3 clarifies the definition of terms used within subchapter 3, formerly codified at N.J.A.C. 10:123-3.1, and adds a definition of eligible resident.

N.J.A.C. 10:123-3.4 recodified from N.J.A.C. 10:123-3.2, indicates the amount of the monthly personal needs allowance amounts under the newly adopted amendment adopted at 22 N.J.R. 661(a), effective February 20, 1990 which sets the Personal Needs Allowance at no less than $59.00 per month.

N.J.A.C. 10:123-4.1 recodified from N.J.A.C. 10:123-1.1, defines the Financial Eligibility for Social Services Programs for Individuals and Families.

Finally, Appendices A through I are deleted, as they are no longer current or necessary.

A number of technical changes have been included throughout the text as summarized below.

The name of the Federal funding program plan has been changed to the Social Services Block Grant Pre-Expenditure Report. This term is used consistently throughout the proposed readoption. Also, a reference to the "Commissioner" has been clarified to state that the Commissioner of the Department of Community Affairs is intended at N.J.A.C. 10:123-2.3.

One punctuation error in N.J.A.C. 10:123-3.3 has been corrected.

Social Impact

Subchapter 1 of the rules as proposed for readoption states the availability of the Social Services Block Grant annual Pre-Expenditure Report from the Department of Human Services.

The Social Services Block Grant Pre-Expenditure Report, which is submitted annually to the Federal government, sets general goals for a wide variety of human services, particularly supportive social services, in a number of areas including boarding homes. The report also identifies target populations for Social Service Block Grant services. Such target populations as they apply to rooming house, boarding home and residential health care facility residents currently fall into three categories: residents needing protection and/or information and referral services which are available without regard to income, Supplemental Security Income recipients and single individuals with an annual income of $15,000 or less. The availability of this report and the Division's compliance will benefit

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the clients by allowing the continued receipt of Federal funds for programs which benefit them.

The readoption of N.J.A.C. 10:123-2 will continue to assure the offering of social services to vulnerable adults living in rooming houses, boarding houses, and residential health care facilities, including the prompt investigation of complaints concerning the treatment and well-being of residents in these facilities.

The readoption of the personal needs allowance, N.J.A.C. 10:123-3, will have a beneficial impact on residents in that it allows residents who rely on Supplemental Security Income or General Public Assistance to maintain their spending power in equilibrium with the cost of living. The personal needs allowance will continue to be used at the residents' discretion to purchase clothing and incidentals which the residential health care facilities and boarding homes do not provide. Many residents of boarding home and residential health care facilities are frail, elderly or disabled and often lack the knowledge or the means to seek out needed services. The outreach to the clients by the county welfare agencies and the provision of information and referral, case management, transportation, recreation and other services funded under Social Service Block Grant monies and other services assure the health and well being of vulnerable residents. No negative social effects upon the public are anticipated from this proposed readoption. To the contrary, residents, family members and facility operators and concerned individuals usually feel that there is a positive social effect achieved when residents are receiving needed services.

The use of the financial schedule for individuals and families assures that services such as homemaker or transportation are available on an equitable basis to financially needy individuals even when they are not supported by Aid to Families with Dependent Children or Supplemental Security Income.

Provision of such services will allow individuals who are employed to maintain their employment while their social service needs are met through Social Services Block Grant funding.

Economic Impact

In State fiscal year 1990 (July 1, 1989 through June 30, 1990), New Jersey plans to expend $89,851,473 in Federal funds under its total SSBG program. This is comprised of the $84,811,749 annual SSBG allocation and the $5,039,724 that the Department has elected to transfer into the SSBG from the Low Income Energy Assistance Block Grant.

Of the total sum, approximately $23 million in SSBG funds goes to the county welfare boards for family preservation, adult services and boarding home social services programs. Of the $23 milion, approximately nine percent, or approximately $2.3 million is allocated to the boarding home social services program, 52 percent or approximately $11.7 million, is allocated to adult protective services and 39 percent or approximately $9 million is allocated to family preservation services.

These rules proposed for readoption impose no economic impact on rooming houses, boarding homes and residential health care facilities. Facilities are primarily required to provide access to and cooperate with county welfare agency staff who offer services and investigate complaints of abuse and exploitation and to disburse the personal needs allowance.

The economic impact on the residents, their families and concerned citizens will be positive, in the receipt of services and in the receipt of the personal needs allowance.

During the last five years, the Federal Supplemental Security Income (SSI) has increased in accordance with Federal cost of living adjustments. The personal needs allowance has also increased with each year in keeping with the increase in the SSI. The New Jersey supplement to the SSI for boarding homes ($31.25) and for residential health care facilities ($150.05) has remained constant throughout this period.

Regulatory Flexibility Statement

Although more than 90 percent of the over 1,700 residential health care facility and rooming and boarding home operators are small businesses, as such are defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the record keeping and reporting responsibilities imposed by these rules fall on the Division or on the county welfare agencies, and the Regulatory Flexibility Act does not apply in these instances.

The proposed readoption does not, in and of itself, impose any record keeping, reporting or compliance requirements on residential health care facility operators or require any capital expenditures or professional services. However, the approximately 500 residential health care facility operators will have to continue to disburse the personal needs allowance to eligible residents in compliance with rules of the Department of Community Affairs, N.J.A.C. 5:27-11.3 through 11.5, and the rules of the Department of Health, N.J.A.C. 8:43-4.7 and 4.13.

It is also within the purview of the Departments of Community Affairs and Health and local inspectors to set staffing levels, record keeping standards and fire and safety requirements and to require construction modifications for residential health care facilities, rooming houses and boarding homes.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:123.

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

CHAPTER 123
SOCIAL SERVICES PROGRAM FOR INDIVIDUALS AND FAMILIES

SUBCHAPTER 1. [FINANCIAL ELIGIBILITY] **SOCIAL SERVICES BLOCK GRANT PROVISIONS**

[10:123-1.1 Financial eligibility: income schedule

(a) Financial eligibility for services provided by the county welfare agencies and funded through the Social Services Block Grant program of the Social Security Act shall be determined using the following income schedule:

INCOME SCHEDULE

Family Size	Maximum Allowable Gross Income Per Month	Per Year
1	$1,264	$15,162
2	2,652	19,927
3	2,041	24,493
4	2,430	29,158
5	2,819	33,823
6	3,207	38,489
7	3,280	39,362
8	3,353	40,238
9	3,426	41,112
10	3,499	41,987
11	3,572	42,862
12	3,645	43,737

For each family member over 12, add $73.00 to the maximum allowable gross income per month.

(b) Persons whose gross monthly or annual family income does not exceed the maximums established in (a) above shall be eligible for services provided by the county welfare agency and funded by the Social Services Block Grant program.

(c) Persons who wish to appeal a determination of ineligibility for services based upon the income guidelines in (a) above shall proceed in accordance with N.J.A.C. 10:120-3.]

10:123-1.1 Purpose and scope

This subchapter contains the rules of the Division of Youth and Family Services regarding the social services programs for individuals and families which are supported by Federal Social Services Block Grant funds.

10:123-1.2 Pre-Expenditure Report availability

The Federal Omnibus Reconciliation Act of 1981, P.L. 97-35, which amended Title XX of the Social Security Act to establish a Social Services Block Grant (SSBG), requires the State to submit a Pre-Expenditure Report which outlines how the State plans to expend funds allocated to it for the program to furnish social services to individuals and families in accordance with the provisions of the annual Pre-Expenditure Report, and with Title XX of the Social Security Act. The Division of Youth and Family Services' social services programs which are supported by Federal SSBG revenues are included in the Department of Human Services' annual Pre-Expenditure Report, which is available from the Department, CN 700, Trenton, New Jersey 08625.

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10:123-1.3 Agreement with Federal requirements

The Department of Human Services, Division of Youth and Family Services, hereby agrees to administer the Social Services Block Grant Program to furnish social services to individuals and families in accordance with the provisions of the annual Pre-Expenditure Report, and with Title XX of the Social Security Act and all applicable Federal regulations.

10:123-2.1 Purpose **and scope**

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

(c) The provisions of this subchapter apply to all rooming houses, boarding houses and residential health care facilities in the State of New Jersey, and all the residents of such facilities.

10:123-2.3 Definitions

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services which are necessary to maintain a person's physical or mental health.

"Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or intended for single-room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel, or established guest house wherein a minimum of 85 percent of the units of dwelling space are offered for limited tenure only, any foster home as defined in N.J.S.A. 30:4C-26.1, and community residence for the developmentally disabled as defined in N.J.S.A. 30:11B-2, any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary, or higher education for the use of its students, any building arranged for single-room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the Department of Higher Education, and any facility or living arrangement operated by, or under contract with, any State department or agency, upon the written authorization of the Commissioner of the Department of Community Affairs.

"Department" means the Department of Human Services.

"Eligible resident" means a resident of a rooming house, boarding house, or residential health care facility who receives services under the latest New Jersey Social Services Block Grant Pre-Expenditure Report for the use of funds appropriated under Title XX of the Federal Social Security Act, and as otherwise defined in P.L. 1979, c.496 (the Rooming and Boarding House Act of 1979), N.J.S.A. 30:1A and 11A.

"Exploitation" means the act or process of using a person or his or her resources for another person's profit or advantage.

"Full and free access" means the lawful authority to enter any rooming house, boarding house, or residential health care facility without notice to meet with the residents and employees in private and, after notifying a person in charge, to inspect the premises and operations of any such facility and inspect any books, files, medical records, or other records that pertain to the residents of the facility and which are required by law or regulation to be maintained by the facility.

"Limited tenure" means residence at a rooming or boarding house on a temporary basis for a period lasting no more than 90 days, when a resident either maintains a primary residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

"Residential health care facility" means a facility, whether in single or multiple dwellings, whether public or private, whether incorporated or unincorporated, whether for profit or nonprofit, operated at the direction of or under the management of an individual or individuals, corporation, partnership, society, or association which furnishes food and shelter to four or more persons 18 years of age or older who are unrelated to the proprietor, and which provides dietary services, recreational activities, supervision of self-administration of medications, supervision of and assistance in activities of daily living and assistance in obtaining health services to any one or more of such persons, excluding, however, any community residence for the developmentally disabled as defined in N.J.S.A. 30:11B-2, any facility or living arrangment operated by or under contract with any State department or agency, upon the written authorization of the Commissioner of the Department of Health, and any privately operated establishment licensed under N.J.S.A. 30:11.

"Rooming house" means a boarding house wherein no personal or financial services are provided to the residents.

"Single-room occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq., and which is not used for limited tenure occupancy in a hotel, motel, or established guest house, regardless of the number of individuals occupying any room or rooms.

"Units of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged, or designed to be occupied for sleeping or dwelling purposes by one or more persons.

Recodify existing N.J.A.C. 10:123-2.3 through 2.8 as **10:123-2.4 through 2.9** (No change in text.)

[10:123-2.9 Definitions

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement: or the willful deprivation of services which are necessary to maintain a person's physical or mental health.

"Boarding house" means any building, together with any related structure, accessory building, and land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space around or intended for single-room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel, or established guest house wherein minimum of 85 percent of the units of dwelling space are offered for limited tenure only, any foster home as defined in Section 1 of P.L. 1962, c.137 (C.30:4C-26.1), and community residence for the developmentally disabled as defined in Section 2 of P.L. 1977, c.448 (C.30:11B-2), and dormitory owned or operated on behalf of any nonprofit institution or primary, secondary, or higher education for the use of its students, any building arranged for single-room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the Department of Higher Education, and any facility or living arrangement operated by, or under contract with, any State department or agency, upon the written authorization of the Commissioner.

"Department" means the Department of Human Services.

"Eligible resident" means a resident of a rooming house, boarding house, or residential health care facility who is eligible to receive services under the latest New Jersey Comprehensive Annual Services Program Plan for the use of funds appropriated under Title XX of the Federal Social Security Act, and as otherwise defined in P.L. 1979, c.496 (the Rooming and Boarding House Act of 1979).

"Exploitation" means the act or process of using a person or his resources for another person's profit or advantage.

"Full and free access" means the lawful authority to enter any rooming house, boarding house, or residential health care facility without notice to meet with the residents and employees in private and, after notifying a person in charge, to inspect the premises and operations of any such facility and inspect any books, files, medical records, or other records that pertain to the residents of the facility and which are required by law or regulation to be maintained by the facility.

"Limited tenure" means residence at a rooming or boarding house on a temporary basis for a period lasting no more than 90 days, when a resident either maintains a primary residence at a location other than the rooming or boarding house or intends to establish a primary

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residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

"Residential health care facility" means a facility, whether in single or multiple dwellings, whether public or private, whether incorporated or unincorporated, whether for profit or nonprofit, operated at the direction of or under the management of an individual or individuals, corporation, partnership, society, or association which furnishes food and shelter to four or more persons 18 years of age or older who are unrelated to the proprietor, and which provides dietary services, recreational activities, supervision of self-administration of medications, supervision of and assistance in activities of daily living and assistance in obtaining health services to any one or more of such persons, excluding, however, any community residence for the developmentally disabled as defined in Section 2 of P.L. 1977, c.448 (C.30:11B-2), and facility or living arrangement operated by or under contract with any State department or agency, upon the written authorization of the Commissioner of the Department of Health, and any privately operated establishment licensed under Chapter 11 of Title 30 of the Revised Statutes.

"Rooming house" means a boarding house wherein no personal or financial services are provided to the residents.

"Single-room occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the Hotel and Multiple Dwelling Law, P.L. 1967, c.76 (C.55:13A-1 et seq.), and which is not used for limited tenure occupancy in a hotel, motel, or established guest house, regardless of the number of individuals occupying any room or rooms.

"Units of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged, or designed to be occupied, for sleeping or dwelling purposes by one or more persons.]

SUBCHAPTER 3. PERSONAL NEEDS ALLOWANCE

[10:123-3.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings.

"Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space earned or intended for single-room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel, or established guest house wherein a minimum of 85 percent of the units of dwelling space are offered for limited tenure only, any foster home as defined in Section 1 of P.L. 1962, c.137 (C.30:4C-26.2), and community residence for the developmentally disabled as defined in Section 2 of P.L. 1977, c.448. (C.30:11B2), any dormitory owned or operated on behalf of any nonprofit institution or primary, secondary, or higher education for the use of its students, any building arranged for single-room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at any institution of higher education approved by the Department of Higher Education, and any facility or living arrangement operated by, or under contract with any State department or agency upon the written authorization of the Commissioner of the Department of Community Affairs.

"General Public Assistance" means assistance rendered to needy persons not otherwise provided for under the laws of this state, where such persons are willing to work but are unable to secure employment due either to physical or mental disabilities or inability to find employment, and includes what is commonly called relief or emergency relief. See N.J.S.A. 44:8-107 et seq. and N.J.A.C. 10:85.

"Limited tenure" means residence at a rooming or boarding house on a temporary basis for a period lasting no more than 90 days, when a resident either maintains a primary residence at a location other than the rooming or boarding house or intends to establish a primary residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

"Operator" means any individual who is responsible for the daily operation of any residential health care facility or boarding house.

"Personal needs allowance" means a monthly amount of money intended to meet those personal and incidental expenses or needs of Supplemental Security Income recipients in residential health care facilities or boarding houses which are not included among those services provided by the facility in accord with the respective licensure standards.

"Residential health care facility" means a facility, whether in single or multiple dwellings, whether public or private, whether incorporated or unincorporated, whether for profit or nonprofit, operated at the direction of or under the management of an individual or individuals, corporation, partnership, society, or association which furnishes food and shelter to four or more persons 18 years of age or older who are unrelated to the proprietor, and which provides dietary services, recreational activities, supervision of self-administration of medication, supervision of and assistance in activities of daily living and assistance in obtaining health services to any one or more of such persons, excluding, however, any community residence for the developmentally disabled as defined in Section 2 of P.L. 1977, c.488 (C.30:11B-2), and facility of living arrangement operated by or under contract with any State department or agency, upon the written authorization of the Commissioner of the Department of Health, and any privately operated establishment licensed under Chapter 11 of Title 30 of the Revised Statutes.

"Single-room, occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the Hotel and Multiple Dwelling Law, P.L. 1967, c.76 (C.55:13A-1 et seq.) and which is not used for limited tenure occupancy in a hotel, motel, or established guest house, regardless of the number of individuals occupying any room or rooms.

"Units of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged, or designed to be occupied, for sleeping or dwelling purposes by one or more persons.]

10:123-3.1 Purpose

The purpose of this subchapter is to ensure that each eligible resident of a rooming house, boarding house or residential health care facility has reserved to him or her a monthly amount as a personal needs allowance.

10:123-3.2 Scope

This subchapter applies to all eligible residents, as defined in this subchapter, of all rooming houses, boarding houses and residential health care facilities in the State of New Jersey as such are defined in this subchapter.

10:123-3.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings.

"Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or intended for single-room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel, or established guest house wherein a minimum of 85 percent of the units of dwelling space are offered for limited tenure only, any foster home as defined in Section 1 of N.J.S.A. 30:4C-26-1, and community residence for the developmentally disabled as defined in N.J.S.A. 30:11B-2, any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary, or higher education for the use of its students, any building arranged for single-room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at any institution of higher education approved by the Department of Higher Education, and any facility or living arrangement operated by, or under contract with any State department or agency upon the written authorization of the Commissioner of the Department of Community Affairs.

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"Eligible resident" means a resident of a rooming house, boarding house, or residential health care facility who receives services from agencies funded under the latest New Jersey Social Services Block Grant Pre-Expenditure Report for the use of funds appropriated under Title XX of the Federal Social Security Act, and as otherwise defined in the Rooming and Boarding House Act of 1979, N.J.S.A. 30:1A and 11A.

"General Public Assistance" means assistance rendered to needy persons not otherwise provided for under the laws of this State, where such persons are willing to work but are unable to secure employment due either to physical or mental disabilities or inability to find employment, and includes what is commonly called relief or emergency relief (see N.J.S.A. 44:8-107 et seq. and N.J.A.C. 10:85).

"Limited tenure" means residence at a rooming or boarding house on a temporary basis for a period lasting no more than 90 days, when a resident either maintains a primary residence at a location other than the rooming or boarding house or intends to establish a primary residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

"Operator" means any individual who is responsible for the daily operation of any residential health care facility or boarding house.

"Owner" means any person who owns, purports to own, or exercises control of any residential health care facility or boarding house.

"Personal needs allowance" means a monthly amount of money intended to meet those personal and incidental expenses or needs of Supplemental Security Income recipients in residential health care facilities or boarding houses which are not included among those services provided by the facility in accord with the respective licensure standards.

"Residential health care facility" means a facility, whether in single or multiple dwellings, whether public or private, whether incorporated or unincorporated, whether for profit or nonprofit, operated at the direction of or under the management of an individual or individuals, corporation, partnership, society, or association which furnishes food and shelter to four or more persons 18 years of age or older who are unrelated to the proprietor, and which provides dietary services, recreational activities, supervision of self-administration of medications, supervision of and assistance in activities of daily living and assistance in obtaining health services to any one or more of such persons, excluding, however, any community residence for the developmentally disabled as defined in N.J.S.A. 30:11B-2, any facility of living arrangement operated by or under contract with any State department or agency, upon the written authorization of the Commissioner of the Department of Health, and any privately operated establishment licensed under N.J.S.A. 30:11A.

"Single-room occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq. and which is not used for limited tenure occupancy in a hotel, motel, or established guest house, regardless of the number of individuals occupying any room or rooms.

"Units of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged, or designed to be occupied, for sleeping or dwelling purposes by one or more persons.

10:123-[3.2]**3.4** (No change in text.)

SUBCHAPTER 4. FINANCIAL ELIGIBILITY

10:123-4.1 Financial eligibility: income schedule

(a) Financial eligibility for services provided by the county welfare agencies and funded through the Social Services Block Grant program of the Social Security Act shall be determined using the following income schedule:

INCOME SCHEDULE

Family Size	Maximum Allowable Gross Income Per Month	Per Year
1	$1,264	$15,162
2	2,652	19,927
3	2,041	24,493
4	2,430	29,158
5	2,819	33,823
6	3,207	38,489
7	3,280	39,362
8	3,353	40,238
9	3,426	41,112
10	3,499	41,987
11	3,572	42,862
12	3,645	43,737

For each family member over 12, add $73.00 to the maximum allowable gross income per month.

(b) Persons whose gross monthly or annual family income does not exceed the maximums established in (a) above shall be eligible for services provided by the county welfare agency and funded by the Social Services Block Grant program.

(c) Persons who wish to appeal a determination of ineligibility for services based upon the income guidelines in (a) above shall proceed in accordance with N.J.A.C. 10:120-3.

[APPENDIX A

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Social and Rehabilitation Service
Community Services Administration
Washington, D.C. 20201

STATE PLAN FOR SOCIAL SERVICES PROGRAM TITLE XX OF THE SOCIAL SECURITY ACT

Instructions to State Agencies for Completing and Submitting the Preprinted State Plan for Social Services

I. CONTENT AND FORMAT

The preprinted State plan consists of the basic text, plus attachments which are an integral part of the plan. The content of the basic text is primarily in the form of affirmative statements, each of which represents the State's commitment to comply with the requirements of the specified regulations. CFR, P.R. and SRS references appear in the left margin.

For optional provisions and for requirements that provided choices, boxes (☐) are used. The State makes known whether it has picked up an option, or what choices it has made, by checking the appropriate boxes. Boxes are also provided for those items which have significance in terms of whether the program is State administered or locally administered and State supervised. The appropriate boxes for these items must also be checked. Blank spaces are provided for names of organizational units and for other items of specified information that are not uniform for all states.

Attachments provide information that is either:

1. Required by the statute or regulation; or
2. Necessary to give the Federal agency adequate knowledge of program content and operation.

The attachments are coded to correspond to the basic text sections to which they pertain. For example, if subsection 1.2 of the plan calls for an attachment, the latter is numbered 1.2-A. If it calls for more than one attachment, the others are numbered in sequence: 1.2-B, 1.2-C, and so forth. If an attachment contains information relating to two or more subsections, it is mentioned in each of those subsections. A form is provided for Attachment 1.1-A; others must be developed by the State, following the model attached to these instructions (Exhibit A). Attachments must be submitted in approvable form with any supplementary sheets they call for. They must be amended whenever necessary to keep them current. No material other than that specified is to be submitted as an attachment or supplement.

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II. PREPARATION OF PLAN: Specific instructions are not given for items that are self-explanatory.

A. Basic Text

1. Do not make any changes in the affirmative statements that represent the State's commitment to abide by established requirements.

2. Fill in the blanks with the appropriate names or other data.

3. Check all the boxes that are appropriate to the program as it operates in your State.

4. In the space provided at the bottom of each page, enter the effective date of the plan.

B. Attachments—General

1. Prepare all attachments required by your plan—as they are called for in the text.

2. IF A SEPARATE AGENCY ADMINISTERS OR SUPERVISES THE ADMINISTRATION OF THE SERVICES PROGRAM FOR THE BLIND UNDER TITLE XX, A SEPARATE STATE PLAN MUST BE SUBMITTED FOR THAT AGENCY.

C. Specific instructions for certain attachments.

1. 1.1-A Attorney General's Certification

Insert the name of the appropriate State agency, check the appropriate boxes and obtain from the Attorney General the satutory citation(s), type the Attorney General's name and obtain his signature. If a separate agency administers or supervises the administration of the service program for the blind under Title XX, a separate Attorney General's certification must be submitted.

2. 2.3-A Standards for Institutions
2.4-A and B Standards for Foster Care Homes
2.5-A Standards for Child Day Care Services

Each attachment must provide the name(s) and address(es) of the State authority or authorities designated the responsibility for establishing and maintaining standards for each type facility. Each attachment must include a statement that the responsibilities as stated in sections 2.3, 2.4 and 2.5 of this preprint have been assigned to this State authority or these State authorities.

3. 3.1-A Merit System

a. Laws, rules, regulations and policies. Attach a current list of citations of applicable laws, rules, regulations and policies, and amendments thereto, which provide assurance of conformity to the Federal merit system standards. (Regional merit system representatives are available for technical assistance in compiling this list). Submit amendments to the list wherever necessary to keep it current.

b. Statements of acceptance of Federal merit system standards by local agencies.

This provision applies only when a state changes from state administration to local administration of the plan. In such event, instructions for obtaining the statements will be provided.

4. ATTACHMENT 6.3-A Nondiscrimination

If current approved methods of administration under the civil rights requirements are on file in the regional office at the time that the preprinted plan is submitted, and if the State agency which submitted the methods of administration will now be the Title XX agency, a statement to that effect will suffice for the attachment.

If such material is not on file (or has not been approved), or if the previous State agency will not be the Title XX agency, the attachment must contain methods of administration developed or revised in consultation with the regional civil rights director, who must approve these methods before final approval can be given to the plan.

III. PREPARATION OF AMENDMENTS

A. Required by Federal Action (for example, publication of new or amended Federal regulations)

1. Whenever feasible, SRS will prepare and distribute revised pages for use by State agencies in amending plans. These will be distributed at the same time the regulations are issued.

Fill any blanks and check appropriate boxes on the revised page and submit with any required attachments.

B. Required by State Action (for example, State legislative changes of significant administrative action)

Prepare new or revised pages following the same type of simplified format.

C. Effective Dates

In submitting amendments, enter in the left margin next to the changed section the effective date of the change.

IV. TRANSMITTAL OF PLANS AND AMENDMENTS

A. Governor's Review

Submit the plan or amendment to the Office of the State Governor for review and comment (Reference: 45 CFR 204.1 and Office of Management and Budget Circular A-95).

B. Transmittal to SRS

1. After response from the Governor's Office or 45 days from the date of submittal to that office, whichever is earlier, send the plan or the amendments to the SRS regional commissioner, using transmittal form SRS-OPC-11.

2. Send six copies (including one signed copy) of the transmittal form and plan material.

3. Use, as the transmittal number, the calendar year and the consecutive number of the transmittal of Title XX plan material within the year (that is, 75-1, 75-2, and so forth).

C. Notification of Action by SRS

1. Upon approval of the plan or amendment by SRS, one copy of form OPC-11, with SRS approving official's signature, and one copy of the plan material will be returned to the State agency.

2. The SRS regional commissioner will contact the State agency concerning material that cannot be approved as submitted.

V. REQUESTS FOR ASSISTANCE

Send inquiries and requests for assistance in preparing and submitting plan material to the SRS regional commissioner.]

[APPENDIX B.

Attachment 1.1-A
ATTORNEY GENERAL'S CERTIFICATION

I certify that the Department of Institutions and Agencies is the appropriate State agency responsible for:

1. Administering the plan. The legal authority under which the agency administers the plan on a Statewise basis is N.J.S.A. 44:7-87 and 44:10-2, 3.

2. Supervising the administration of the plan by local political subdivisions. The legal authority under which the agency supervises the administration of the plan on a Statewise basis is contained in N.J.S.A. 44:7-87, 88 and 44:10-2, 3.

The agency's legal authority to make rules and regulations that are binding on the political subdivisions administering the plan is N.J.S.A. 44:7-87 and 44:10-3.

Dated: 9-17-75 Paul N. Watter
Deputy Attorney General]

[APPENDIX C.

Attachment 1.2-A
STATE PLAN UNDER TITLE XX OF THE SOCIAL SECURITY ACT
NEW JERSEY
Attachment 1.2-A State Agency Organization

The Department of Institutions and Agencies is the primary State agency providing human services in New Jersey. It administers them through six of its seven Divisions, the Commission for the Blind and the Garden State School District. In addition, the Department supervises services programs at all 21 county welfare boards.

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Organizational charts showing the Department's location within the State Government and its internal structure are attached. More detailed information on the services and structure of the Divisions within the Department of Institutions and Agencies and other Departments can be found in Section Two of the New Jersey Comprehensive Social Services Plan for FY'76.]

[APPENDIX D.

ORGANIZATION CHARTS

Editor's Note: The organization chart of State agencies providing social services and the organization chart of the New Jersey Department of Institutions and Agencies, Central Administration, which were adopted with these rules, are not reproduced herein. Further information on these charts may be obtained from the Department of Institutions and Agencies, 116 West State Street, Trenton, New Jersey 08625.]

[APPENDIX E.

Attachment 2.3-A
STATE PLAN UNDER TITLE XX OF THE SOCIAL SECURITY ACT
NEW JERSEY
Attachment 2.3-A Standards for Institutions

The State authorities with responsibility for establishing and maintaining standards for institutions are as follows:

1) The Division of Youth and Family Services (1 So. Montgomery Street, Trenton, New Jersey, 08625): Institutions for emotionally disturbed children, diagnostic centers and emergency shelters.

2) The Division of Correction and Parole (135 W. Hanover Street, Trenton, New Jersey, 08625): Correctional institutions and training schools.

3) The Division of Mental Health and Hospitals (135 W. Hanover Street, Trenton, New Jersey, 08625): State mental hospitals.

4) The Division of Mental Retardation (167 W. Hanover Street, Trenton, New Jersey, 08625): State training schools for the mentally retarded. Standards for private institutions for the mentally retarded are set by the Department of Health (John Fitch Plaza, Trenton, New Jersey, 08625) in cooperation with the Division of Mental Retardation.]

[APPENDIX F.

Attachment 2.4-A
STATE PLAN UNDER TITLE XX OF THE SOCIAL SECURITY ACT
NEW JERSEY
Attachment 2.4-A and B Standards for Foster Homes

The State authorities with responsibility for establishing and maintaining standards for foster homes are as follows:

2.4-A

The Division of Youth and Family Services (1 So. Montgomery Street, Trenton, New Jersey, 08625): Foster care for children.

2.4-B

The Division of Mental Retardation (167 W. Hanover Street, Trenton, New Jersey, 08625): Foster homes for retarded adults. The Division of Mental Health and Hospitals (135 W. Hanover Street, Trenton, New Jersey, 08625): Foster homes for the mentally disabled.]

[APPENDIX G.

Attachment 2.5
STATE PLAN UNDER TITLE XX OF THE SOCIAL SECURITY ACT
NEW JERSEY
Attachment 2.5 Standards for Child Day Care Services

The State authorities with responsibility for establishing and monitoring standards for Child Day Care Service are as follows:

The Division of Youth and Family Services (1 So. Montgomery Street, Trenton, New Jersey, 08625): The Division of Mental Retardation (167 W. Hanover Street, Trenton, New Jersey, 08625): Child Day Care Services operated by the Division of Mental Retardation.]

[APPENDIX H.

Attachment 3.1-A
STATE PLAN UNDER TITLE XX OF THE SOCIAL SECURITY ACT
NEW JERSEY
Attachment 3.1-A Merit System

The following statutes and regulations provide assurance of conformity to the Federal merit system as well as other standards of the United States Civil Service Commission:

1) The Revised Statutes of the State of New Jersey, Title II, Civil Services.

2) New Jersey Administrative Code, Title 4, Department of Civil Service.

3) New Jersey Department of Institutions and Agencies, Administrative Order 2:01, effective September 5, 1969.

These provisions apply to the State Civil Service System as well as the local jurisdictions operating under the provisions relating to State and local government service.]

[APPENDIX I.

Attachment 6.2-A
STATE PLAN UNDER TITLE XX OF THE SOCIAL SECURITY ACT
NEW JERSEY
Attachment 6.2-A Nondiscrimination

Currently approved methods of administration under the civil rights requirements are on file in the regional office of the Department of Health, Education and Welfare.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES
Personal Attendant Services Program
Reproposed New Rules: N.J.A.C. 10:123A

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4G-13 et seq.
Proposal Number: PRN 1990-235.

Submit comments by June 20, 1990 to:
Steven J. Valli
Office of Adult and County Social Services
Division of Youth and Family Services
CN 717
50 E. State Street
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 30:4G-21 (L. 1987, c.350, §9) requires the Commissioner of the Department of Human Services to promulgate rules to effectuate the purposes of the Personal Attendant Services Act. These reproposed rules will implement this law.

Proposed rules were previously published on February 6, 1989 at 21 N.J.R. 273(b). As a result of the comments received, and the Division of Youth and Family Services' (Division's) own internal and continuing review, the Division has developed these reproposed rules that incorporate significant changes. In reproposing these rules, it is appropriate that the Division address the written comments received from the February 6, 1989 proposal. The comments and responses reflect the prior proposed codification of these rules as N.J.A.C. 10:133. In this proposal, these rules are codified as N.J.A.C. 10:123A.

The Division received 38 written comments in response to the February 6, 1989 proposal governing the Personal Attendant Services Program. Twenty-five comments were received from consumers; six were received from county offices; two were from personal attendant provider agencies;

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one was received from a consumer advocacy group; three from other governmental units; and one from a county human services advisory council.

As a result of the Division's review of commenters' remarks with respect to the proposal, several changes have been made on reproposal. In its consideration of comments with regard to the provider fees proposed at N.J.A.C. 10:133-4.2 and the sliding fee scale proposed at N.J.A.C. 10:133-4.3, the Division determined that comments primarily directed at competitiveness of the provider fees and potential inequities in the application of the scale were meritorious. Thirty-three of the comments received, for example, contained remarks that criticized the proposed sliding fee scale as being disproportionately burdensome on the "middle income" population of those eligible for services under the Program. The Division has therefore made substantive and material changes to the sliding fee scale and the permissible provider fees.

COMMENT: Six commenters expressed the opinion that N.J.A.C. 10:133-2.1(a)6 should be narrowed to exclude individuals living in residential health care facilities, on the basis that such a facility does not provide "independent living" arrangements and also that services available in a residential health care facility may be duplicative of services available under the Personal Attendant Services Program (Program).

RESPONSE: The legislation that authorized the Program specifies that a person living "in a private house or apartment, rooming or boarding house or residential health care facility," if otherwise eligible, be provided services under the Program. The Division must comply with the legislative language in this regard and therefore has retained the language as proposed.

COMMENT: Two commenters disagreed with the wording of the proposed N.J.A.C. 10:133-1.3 definition of "chronic physical disability" insofar as its inclusion of the word "permanent." These commenters felt that persons with temporary but nonetheless "severe" conditions should be included as eligible for services.

RESPONSE: The Division must comply with the explicit terms of the legislation that included the noted language in the definition of "chronic physical disability." Subject to the availability of funding, the Division may not exceed nor may it limit the scope of the population intended to be served by the authorizing legislation.

COMMENT: One commenter expressed concern that client appeals of, for example, agency denial, reduction or termination of services should be conducted by a review board established by the State Personal Attendant Services Program Administrator. N.J.A.C. 10:133-3.4 as proposed provides for an initial informal hearing that may be followed by a formal hearing before an administrative law judge pursuant to N.J.S.A. 52:14B-1 et seq. if desired by the aggrieved individual.

RESPONSE: The Division has re-examined the noted provision and feels that the opportunity it has provided for both an informal and formal review process of Program determinations is more than adequate to provide due process opportunities to individuals seeking redress. Additionally, the suggestion made by the commenter with regard to creation of a review board raises issues of membership, confidentiality and objectivity to accomplish a purpose for which an existing and adequate structure exists.

COMMENT: One commenter criticized the requirement specified at N.J.A.C. 10:133-2.1 that a physician certify an individual as self-directing and requiring no assistance in the coordination of therapeutic regimes and that the personal attendant services will be adequate and appropriate to meet the person's needs on the basis that few physicians would have personal knowledge of the circumstances of the patient to be able to make such a certification. The same commenter requested that the categories of professionals permitted to conduct eligibility assessments be expanded to include persons with degrees in rehabilitation sciences.

RESPONSE: The Division disagrees with the contention of this commenter with respect to an attending physician's knowledge of the patient. While the Division does find meritorious the commenter's suggestion that the physician's role be limited to certification as to an individual's disability, the language noted as objectionable was taken verbatim by the Division from the legislation creating the Program and cannot be changed without legislative amendment.

COMMENT: Two commenters suggested that N.J.A.C. 10:133-2.1(a)5 be broadened so as not to preclude from eligibility an individual who has a "relative or informal caregiver available to provide the services that the individual needs."

RESPONSE: N.J.S.A. 30:4G-16 contains the following language:

"A person with a chronic physical disability who is between 18 and 65 years of age and is a resident of this State is eligible for the personal attendant services program if:

. . .

c. A relative or other informal caregiver is not available to provide the services that the person needs."

Although the quoted language is that of the authorizing legislation for the Program, the Division has interpreted the phrase "not available" to allow for the presence of a relative or other informal caregiver without affecting eligibility, in circumstances where that person is employed or attending a program of studies outside of the home during the hours that services are needed. The Division also interprets the same phrase to include verifiable physical or mental inability of a relative or other informal caregiver to provide needed services and situations where the provision of services exceeds the boundaries of common decency.

COMMENT: One commenter questioned whether the Program is intended to "supplant activities within post secondary educational environments which are normally to be provided by said institution pursuant to the Rehabilitation Act of 1973."

RESPONSE: The Division does not intend that the Program supplant any other program, whether State, Federal, county or municipal. The Program is intended to supplement existing resources.

COMMENT: Two commenters requested clarification as to the nature and degree of investigation required by the State in verifying the backgrounds of personal attendants and lack of convictions except for minor traffic offenses.

RESPONSE: Since the legislation is silent as to the performance of background investigations, the Division originally determined and continues to believe that the counties should be permitted the flexibility to govern the conduct of such investigations. There is no licensing or regulatory agency for personal attendants that sets background check requirements. The counties should therefore conduct a check or form an agreement with providers with whom they contract to conduct a check that satisfies them as to the character of each personal attendant.

COMMENT: One commenter questioned the wording of N.J.A.C. 10:133-4.1(b)3, which specifies that individuals who are living independently shall be given third priority within the Program. The commenter suggested changing the phrase "living independently" to "living independently or maintaining an independent role within a family unit."

RESPONSE: The phrasing of the legislation in limiting eligibility for the Program to situations where there is no caregiver available clearly evidences the legislative intent that the Program was not intended nor designed to replace family or others sharing living quarters as caregivers, but rather that the State should provide assistance to eligible individuals living alone and where there is no other available help of the type described in the legislation. The Division has therefore modified the language to conform to legislative intent.

COMMENT: One commenter requested the 18-year to 65-year age range be expanded to include those individuals who are gainfully employed and over 65 years of age.

RESPONSE: The authorizing legislation limits eligibility to those individuals between the ages of 18 and 65. The Division may not legally exceed the limits of the law.

COMMENT: One commenter requested a clarification as to whether the 10-minimum and 40-maximum hour limits set out in the rules means Program hours, or, rather, whether those limits are inclusive of other sources of service provided through other programs for which individuals may be eligible.

RESPONSE: The commenter accurately notes that the legislation specifies "no less than 10 and no more than 40 hours of personal attendant services from the program per week." The Division agrees that the legislation is clear in its phrasing. The Division also has a responsibility to ensure that its limited Program funds are not expended in duplication of services.

COMMENT: One commenter requests a clarification of the definition of "personal attendant services" in N.J.A.C. 10:133-1.3 as to what constitutes health related tasks and what types of situations require the supervision of a registered nurse.

RESPONSE: The Division emphasizes that the Personal Attendant Services Program is a non-medical program and Program funds may not be used for medically related services, including the supervision of registered nurses.

COMMENT: One commenter requested that the definition of designated county agency be enlarged to include independent living centers

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as one of those agencies considered appropriate to administer a personal attendant program.

RESPONSE: The authorizing legislation limits administering agencies to only county agencies. The Division may not engage agencies to administer the program other than those specified by the legislation. The Division notes, however, that independent living centers are free to participate in the Program as attendant or training providers, subject to contracting policies and procedures.

COMMENT: One commenter objected to the charging of a fee for assessment services, given the fact that 15 percent of the Program's $5,000,000 appropriation was designated for administrative expenses.

RESPONSE: When a county contracts with a provider to perform assessment services, the $70.00 fee noted in N.J.A.C. 10:133-4.2(c) is payable to the provider out of direct client services funds. When the county performs the assessment directly using employee time funded in whole or in part by Program dollars, the assessment is considered to have been performed as part of the administrative duties of that employee.

COMMENT: One commenter was concerned that future services to eligible individuals will be limited to the funds collected from present clients, once the program capacity is reached.

RESPONSE: As the program reaches its funding limits, the Division anticipates being able to document the need for increased funding to meet projected future program expansion.

COMMENT: One commenter indicated that although administrative costs are limited to 15 percent, actual costs could be higher if the county subcontracts for services. Also, he said that counties are not permitted to recoup all their costs when they contract directly with individual personal attendants.

RESPONSE: The Division must comply with the specific language of the enabling legislation, which states that "no more than 15 percent shall be expended by the state and the designated county agencies to meet administrative costs."

The Department of Human Services (Department) proposes to promulgate a new chapter at N.J.A.C. 10:123A in order to implement the Personal Attendant Services Program (Program). Based on the provisions of P.L. 1987, c.350, the Program provides between 10 and 40 hours of personal attendant services to persons between the ages of 18 and 65 with chronic physical disabilities administered by designated county agencies approved by the Commissioner of the Department of Human Services. Personal attendant services include routine, non-medical tasks that are directly related to maintaining the eligible individual's health and independence, in order to enable these individuals to remain in their homes and communities and to be employed or receive training or education related to employment, or to avoid institutionalization.

The reproposed new rules set forth requirements regarding the purchase of and contracts for the provision of personal attendant services. The rules include rates of reimbursement to providers for personal attendant services provided to eligible individuals, and a client sliding fee scale for payments by eligible individuals for services received.

These reproposed new rules had been proposed originally as N.J.A.C. 10:133. Besides the textual changes made in response to comments and the Division's continuing review, the reproposed new rules have been recodified. As part of the Division's reevaluation of its Administrative Code structure, it has been determined that the appropriate codification for these rules is N.J.A.C. 10:123A.

A summary of the provisions of the proposed new rules follows:

Proposed N.J.A.C. 10:123A-1.1 is a statement of the purpose of the chapter—to provide services to individuals with chronic physical disabilities through the Personal Attendant Services Program.

Proposed N.J.A.C. 10:123A-1.2 sets forth the scope of the rules.

Proposed N.J.A.C. 10:123A-1.3 contains definitions.

Proposed N.J.A.C. 10:123A-1.4 sets forth the target population and priority for services.

Proposed N.J.A.C. 10:123A-2.1 outlines the eligibility standards for receipt of services and makes allowances for the presence of a relative or informal caregiver under certain circumstances.

Proposed N.J.A.C. 10:123A-2.2 sets the standards for granting exceptions to the eligibility standards.

Proposed N.J.A.C. 10:123A-2.3 gives the procedure for requesting and granting of exceptions.

Proposed N.J.A.C. 10:123A-3.1 details the screening procedure.

Proposed N.J.A.C. 10:123A-3.2 gives the assessment process and time lines.

Proposed N.J.A.C. 10:123A-3.3 sets forth the requirements of the individual personal attendant services plan.

Proposed N.J.A.C. 10:123A-3.4 states the contents of the written notification given an applicant upon acceptance or denial of the application, and also gives the procedure for placement on a waiting list.

Proposed N.J.A.C. 10:123A-3.5 requires non-duplication of services and sets standards and priorities for service provision.

Proposed N.J.A.C. 10:123A-3.6 details situations under which services may or shall be terminated and procedures to be followed in terminating services.

Proposed N.J.A.C. 10:123A-3.7 provides procedures for review of denial, reduction or termination of services or failure to act upon a request for services within a reasonable time.

Proposed N.J.A.C. 10:123A-3.8 sets forth the method and time frame for requesting a hearing.

Proposed N.J.A.C. 10:123A-3.9 provides guarantees of confidentiality and restricts disclosure of information, except under certain circumstances.

Proposed N.J.A.C. 10:123A-4.1 sets forth standards for county agencies in contracting for services with other service providers.

Proposed N.J.A.C. 10:123A-4.2 gives the fees to be paid to contracting service providers or contracting individual attendants.

Proposed N.J.A.C. 10:123A-4.3 details the client sliding fee scale for personal attendant services.

Proposed N.J.A.C. 10:123A-4.4 sets the standards for adjustments in cost share.

Proposed N.J.A.C. 10:123A-4.5 gives the procedures for requesting adjustments in cost share.

Proposed N.J.A.C. 10:123A-5.1 details the requirements for personal attendants.

Proposed N.J.A.C. 10:123A-6.1 contains the requirements for the designated county agencies.

Proposed N.J.A.C. 10:123A-6.2 sets forth the duties of the designated county agency.

Proposed N.J.A.C. 10:123A-6.3 gives the procedure to be followed for disqualification of an agency, and the approval process.

Proposed N.J.A.C. 10:123A-6.4 sets forth the process to be used should an agency wish to appeal a disqualification.

Social Impact

The reproposed new rules will provide a positive social impact on the lives of individuals in New Jersey with chronic physical disabilities. The Program will provide a means by which individuals with physical disabilities can remain employed, pursue training or education for employment, and avoid long-term institutionalization.

The reproposed new rules will establish the procedure for the delivery of services to eligible individuals with physical disabilities between the ages of 18 and 65 in all 21 counties in the State of New Jersey. It is expected that the Program, through the provision of personal attendant services to persons with disabilities, will prevent costly and socially isolating long-term institutionalization. Such services will also enable persons with disabilities to be employed or prepare for employment in order to become self-sufficient therefore the social benefit for people with disabilities is of great significance. For the general public, the benefit of fuller integration of people with disabilities will provide for a more representative society.

Economic Impact

No adverse economic impact is anticipated from the reproposed new rules. The full cost of the Personal Attendant Services Program has been appropriated through the enabling legislation. Currently, $5,000,000 has been appropriated to implement this program, with $2,000,000 from general revenues and $3,000,000 from casino revenues. A maximum of 15 percent of this amount has been designated for administrative expenses.

A sliding fee schedule has been established to enable expansion of service to eligible persons under the Personal Attendant Services Program. The economic impact on the target population of physically disabled individuals is expected to be very positive. These individuals will be able to remain employed or will be able to prepare for employment, thus gaining the skills necessary for future economic self-sufficiency. The program will also prevent expensive institutionalization and therefore provide a cost-effective alternative to such long-term placements.

The providers of attendant services will also be positively affected through the reimbursement and payments to them for personal attendant services rendered. The jobs created will provide further economic benefit to the economy in New Jersey.

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Regulatory Flexibility Statement

The reproposed new rules do not require a regulatory flexibility analysis as they do not impose any reporting, record keeping, or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The providers under this program will all be entities of county government, such as County Offices on the Handicapped, Boards of Social Services, or components of the county departments of human services.

Full text of the proposal follows:

CHAPTER 123A
PERSONAL ATTENDANT SERVICES PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

10:123A-1.1 Purpose

Pursuant to the provisions of N.J.S.A. 30:4G-13 et seq. (P.L.1987, c.350), the Department of Human Services intends to provide support to individuals with chronic physical disabilities in meeting their daily needs for personal care and assistance with activities of daily living. The Personal Attendant Services Program has been created to provide this support.

10:123A-1.2 Scope

These rules apply to all activities and persons participating in the Personal Attendant Services Program, including, but not limited to, applicants, recipients, personal attendants, and county agencies administering the program.

10:123A-1.3 Definitions

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

"Applicant" means a person who applies for services under the Personal Attendant Services Program.

"Chore service" means basic, light housekeeping activities. This service does not include inside or outside maintenance of the dwelling or property.

"Chronic physical disability" means a severe impairment of a permanent nature which so restricts a person's ability to perform essential activities of daily living that the person needs assistance in order to maintain the person's independence and health.

"Client" means an individual who meets the standards of N.J.A.C. 10:123A-2.1 or has received an exemption under N.J.A.C. 10:123A-2.2, and is receiving services.

"Commissioner" means the Commissioner of the Department of Human Services.

"Department" means the Department of Human Services.

"Designated county agency" means a county office on the handicapped or other county agency designated by the county government, subject to approval by the Commissioner, to administer in that county the Personal Attendant Services Program. Approval by the Commissioner is based on the agency's experience in working with the disabled population and the capacity to comply with program requirements, provide information and referral services to disabled individuals, recruit and train personal care attendants and sub-contract with provider agencies.

"Division" means the Division of Youth and Family Services.

"Eligible individual" means a person who meets the standards of N.J.A.C. 10:123A-2.1, or who has received an exemption under N.J.A.C. 10:123A-2.2.

"Informal caregiver" means an individual who is 18 years of age or older residing in the household for other than the purpose of sharing expenses.

"Personal attendant" means a person other than a family member who meets the qualifications with regard to training, equivalent work experience or certification established in these rules (see N.J.A.C. 10:123A-5) and who provides personal attendant services to a person who is eligible for the Personal Attendant Services Program.

"Personal attendant service" means health and chore related tasks performed by a personal attendant and, if necessary, under the supervision of a registered professional nurse. Personal attendant services include, but are not limited to, assistance in essential daily activities such as bathing, dressing, and meal preparation; assistance with mobility, laundry and shopping; and driving or other forms of transportation.

"Program" means the Personal Attendant Services Program.

"Program administrator" means the professional employee of the Division charged with the administration of the Personal Attendant Services Program.

"Relative" means a person residing in the household, who is 18 years of age or older and is related to the eligible individual by blood or by law.

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

"Self-directing" means a person's ability to make and accept the consequences of his or her own decisions regarding daily activities as well as major life decisions. A self-directing person is his or her own legal guardian, has the capacity to manage and direct an attendant and is certified as self-directing by a physician and has been determined "self-directing" based on the results of an assessment conducted by a social worker with a master's degree in social work or a registered professional nurse with a Bachelor's degree (see N.J.A.C. 10:69D-2.1(a)7).

10:123A-1.4 Target population and priority for services

(a) For the purposes of the Personal Attendant Services Program, the target population is composed of those persons between the ages of 18 and 65 who have a chronic physical disability.

(b) Priority shall be given, in the following order, to eligible individuals who are:

1. Employed, full-time or part-time;
2. Receiving training or education related to employment;
3. At risk of inappropriate institutionalization; or
4. Living alone.

SUBCHAPTER 2. ELIGIBILITY

10:123A-2.1 Eligibility standards

(a) For the purposes of the Personal Attendant Services Program, an eligible individual shall meet the following standards:

1. An eligible individual is between the ages of 18 and 65 years of age and has a chronic physical disability;
2. An eligible individual is a resident of the State of New Jersey;
3. An eligible individual is in need of personal attendant services pursuant to a written personal attendant services plan prepared by the staff of the designated county agency in cooperation with the eligible individual;
4. An eligible individual is one who is capable of managing and supervising his or her personal attendant services, as determined by an assessment conducted by a social worker with a master's degree in social work or a registered professional nurse with a bachelor's degree, and who is certified as "self-directing" by a physician;
5. A relative or other informal caregiver is not available to provide the services that the person needs;
6. An eligible individual lives in a private house or apartment, rooming or boarding house, or residential health care facility, and the personal attendant services that the person shall receive are supplemental to, and not duplicative of, services provided to the person in the rooming or boarding house or residential health care facility pursuant to licensure requirements;
7. The attending physician for the eligible individual confirms in writing that the person is self-directed and requires no assistance in the coordination of therapeutic regimes, and that the personal attendant services will be adequate and appropriate to meet the person's needs; and
8. The eligible individual requires no less than 10 and no more than 40 hours of personal attendant services from the program.

10:123A-2.2 Exceptions to eligibility standards

(a) Exceptions to the eligibility standards in N.J.A.C. 10:123A-2.1 may be considered on a case-by-case basis by the Program Administrator.

(b) The Program Administrator shall grant an exception which allows for the presence of a relative or informal caregiver without affecting eligibility upon a showing of one or more of the following:

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1. The relative or informal caregiver is employed or is attending a program of studies outside of the home during the hours that services are requested;

2. The services requested cannot be reasonably performed during hours other than the hours requested;

3. A physical or mental inability of a relative or informal caregiver to provide needed services is verifiable; and/or

4. The provision of services exceeds the boundaries of common decency.

(c) Exceptions to the hours of service allowed under N.J.A.C. 10:123A-2.1(a)8 may be granted by the Program Administrator only upon a showing of unusual or emergent circumstances.

(d) Exceptions identified in (b) and (c) above shall be at the discretion of the Program Administrator based on funding available, other services received through other funding sources and a review of the facts presented on a case-by-case basis.

10:123A-2.3 Procedures for granting exceptions

(a) Individuals requesting exceptions shall follow the procedures listed below:

1. Persons eligible for personal attendant services who are requesting exceptions to N.J.A.C. 10:123A-2.2(b) and (c) shall make such requests in writing.

2. The written request for an exception shall be made to the Director of the designated county agency and shall indicate the specific exception requested and provide justification.

3. The Director of the designated county agency shall review the request and submit his or her recommended action along with a copy of the written request and the most recent assessment of the needs of the eligible person to the Personal Attendant Services Program Administrator.

4. The Personal Attendant Services Program Administrator may either accept, modify or reject the recommendation of the Director of the designated county agency.

SUBCHAPTER 3. SCREENING, SERVICES AND APPEALS

10:123A-3.1 Screening

(a) Upon applicant inquiry to the designated county agency regarding the Personal Attendant Services Program, county agency staff shall elicit information necessary to conduct pre-application screening and shall complete the screening within five working days of applicant inquiry.

(b) The applicant shall be notified in writing within five working days after completion of the county inquiry as to the results of their inquiry regarding participation in the Personal Attendant Services Program.

1. If the applicant is determined ineligible they shall be informed in writing of this determination and the right to appeal.

2. If the applicant appears eligible as a result of the inquiry, staff from the designated county agency shall inform the applicant in writing of this determination and enclose the application package which contains documents necessary to process the application. The disposition letter shall also advise the applicant of a future assessment to be conducted by a social worker with a master's degree in social work or a registered professional nurse with a bachelor's degree and inform the individual that application for the program does not guarantee receipt of services.

10:123A-3.2 Assessment

(a) A member of the staff of the designated county agency shall schedule an assessment within 30 days upon notification from the applicant to the designated county agency of completion of the application package which includes the following:

1. An Application and Statement of Understanding;

2. An Income Declaration with proof of income;

3. A Physician's Certification; and

4. A Client Plan of Service.

(b) Within 30 days from notification from the applicant of the completing of the application package, a social worker with a master's degree in social work or a registered professional nurse with a bachelor's degree shall perform a social evaluation of the applicant to determine if he or she meets the eligibility criteria.

(c) Within 30 days of notification from the applicant of the completion of the application package, a member of the staff of the designated county agency shall perform a financial evaluation to determine the ability of the person or the person's spouse to pay for personal attendant services according to the sliding fee scale established pursuant to N.J.A.C. 10:123A-4.3.

10:123A-3.3 Individual personal attendant services plan

(a) The services plan shall be designed to meet the applicant's specific needs for personal attendant services, based upon the social evaluation performed pursuant to N.J.A.C. 10:123A-3.2(b).

(b) A personal attendant services plan shall include both of the following:

1. A list of personal attendant services to be provided; and

2. The duration and frequency of personal attendant services.

(c) The eligible person and the designated county agency shall review the plan within 90 days after start-up of services and revise the plan as frequently as necessary.

(d) The designated county agency shall perform a comprehensive social and financial evaluation of the eligible person at 12-month intervals, commencing with the date of eligibility.

10:123A-3.4 Disposition of application

(a) The designated county agency shall notify the applicant in writing within 45 days from the date of application for services regarding the findings of the social and financial evaluations performed pursuant to N.J.A.C. 10:123A-3.2 (a), (b) and (c) and the applicant's right to appeal.

(b) If an applicant is determined eligible, in addition to (a) above the notification shall include the following:

1. An approved plan of service listing the services to be provided including the duration and frequency of personal attendant services;

2. An estimate of the total cost of personal attendant services; and

3. If applicable, an estimate of the amount of money that the eligible person or that person's spouse is required to pay toward personal attendant services.

(c) In the event an applicant is determined eligible for the personal attendant services program and funding prohibits the start-up of services within 30 days from the date of the county agency notification to the applicant regarding the results of the social and financial evaluation performed pursuant to N.J.A.C. 10:133-3.1(a) and (b), such applicant shall be placed on a waiting list for services. An applicant's position on a waiting list shall be determined pursuant to the priorities established in N.J.A.C. 10:133-1.4(a) and (b).

10:123A-3.5 Services

(a) Services provided to eligible individuals shall be supplemental to and not duplicative of services available through relatives, other informal caregivers or other service programs.

(b) For the purpose of the personal attendant services program, the following service standards shall be met:

1. Program funds shall not be used for medically related services, including the supervision of registered nurses. It is not the responsibility of the Personal Attendant Services Program to arrange for or provide skilled nursing, therapy, or related medical care and treatment services which the eligible individual may need.

2. Using an attendant as a personal driver may be allowed only when there are no other options available. In no instance shall any person serving as an attendant under the Personal Attendant Services Program provide driving or transportation services using his or her own vehicle or any other vehicle which is not owned, insured and registered by the eligible individual requesting this service. In addition, the eligible individual's insurance company shall have certified that the attendant is a fully covered driver under the policy.

3. Priority in the receipt of household management services shall be afforded to individuals who are living alone. Such services include, but are not limited to, light cleaning activities, laundry, meal preparation and errands. The program is not intended or designed to replace family or others sharing living quarters in the provision of household management services.

4. Personal attendant services provided for the purpose of receiving training or education related to employment shall be limited to transportation and personal care needs.

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10:123A-3.6 Termination of service

(a) Termination of service may be either voluntary or involuntary. Voluntary terminations involve verifiable situations in which eligible individuals agree to cessation of services. All other terminations are considered to be involuntary.

(b) Individuals terminated from services shall receive written notice, pursuant to N.J.A.C. 10:123A-3.6 above, prior to termination.

(c) Involuntary terminations shall be a result of non-compliance with program regulations and procedures which include, but are not limited to:

1. Failure to submit information necessary to determine or reaffirm social and financial program eligibility in a timely fashion;
2. Failure to comply with N.J.A.C. 10:123A-4.3(b) and (g);
3. Verifiable abuse or misuse of personal attendant services;
4. Continued non-acceptance and/or dismissal of personal attendants without proper justification; or
5. Aging out of program eligibility requirements.

10:123A-3.7 Adverse agency actions

(a) If services received or requested are to be denied, reduced or terminated, the county office shall provide written notice to the applicant or client at least 30 days prior to such an action.

(b) The written notice shall indicate the reason(s) for the action to be taken, citing the basis for the decision.

(c) In addition, all written notices shall contain the following statement:

1. "An applicant to or recipient of the Personal Attendant Services Program, who is dissatisfied with any decision regarding an eligibility determination or other matters pertaining to participation in the Personal Attendant Services Program, may file a request for an Administrative Review of that decision.

A request for an Administrative Review must be made within thirty days of the date of written notice of an adverse agency action.

At the option of the applicant or client, a request for an Administrative Review may be directed either to the Director of the designated county agency or to the State Program Administrator at the following address:

State Program Administrator
Personal Attendant Services Program
Division of Youth and Family Services
Office of Adult and County Social Services
CN 717
50 East State Street
Trenton, New Jersey 08625
(609) 292-7800"

10:123A-3.8 Administrative reviews

(a) An applicant or client may request an administrative review of an agency denial, reduction or termination of services, or a denial of a request for an exception, or a failure to act upon a request for services within a reasonable time.

(b) Requests for administrative reviews may be made either to the Director of the designated county agency or directly to the Program Administrator.

(c) Requests for administrative review must be in writing and must be made within 30 days of notice of an adverse agency action. A request for an administrative review will not operate as a stay of any adverse agency action.

(d) Upon receipt of a request for an administrative review, the director of the designated county agency shall forward to the Division of Youth and Family Services a copy of the request and all information pertinent to the issue. Upon completion of the administrative review, the applicant or client shall receive a copy of the written decision within 30 days from the date the written request for an administrative review was received by the designated county agency.

(e) Applicants or clients who disagree with the decision of the administrative review conducted in accordance with N.J.A.C. 10:123A-3.8(a) through (d) may request a hearing before an Administrative Law Judge pursuant to N.J.A.C. 10:123A-3.9. Instructions for such requests shall be incorporated into the written results noted in (d) above.

10:123A-3.9 Hearings and appeals

(a) Hearings under this chapter shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A hearing may be requested by calling or writing to the:

Administrative Hearings Coordinator
Division of Youth and Family Services
CN 717
50 East State Street
Trenton, New Jersey 08625
(609) 292-8715

(c) In all cases, a hearing must be requested within 30 days of receiving the administrative review decision noted in N.J.A.C. 10:123A-3.8(d).

10:123A-3.10 Confidentiality and disclosure of information

(a) All personally identifiable information regarding applicants or clients under this program obtained or maintained under this program shall be confidential and shall not be released without the written consent of the applicant or client or their authorized agent except as noted in (b) and (c) below.

(b) Disclosure of information without the consent of the applicant, client, or his or her authorized agent shall be limited to purposes directly connected with the program pursuant to State law and rules.

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or clients cannot be identified;
2. The release to the Attorney General or other legal representative of this State of information or files relating to the claim of any applicant, client or his or her authorized agent challenging the program's statutory or regulatory authority or a determination made pursuant thereto; or
3. The release of information or files to the State Treasurer or to his or her duly authorized representatives for an audit, review of expenditures, or similar activity authorized by law.

SUBCHAPTER 4. CONTRACTING AND FEES

10:123A-4.1 Contracting for services

(a) The designated county agency shall contract with other service providers, including private individuals, for the provision of personal attendant services.

(b) The designated county agency shall comply with the terms set forth in contract documents.

(c) The designated county agency shall develop a mechanism to employ individuals as personal attendants where appropriate and shall develop employment policies consistent with N.J.A.C. 10:123A-5 for individuals working as personal attendants.

10:123A-4.2 Provider fees

(a) Fees for services under the Personal Attendant Services Program shall be based on an hourly rate to be paid to the contracting service provider or contracting individual attendant for each hour of personal attendant service provided under this program.

(b) The reimbursement for personal attendant services shall be $8.00 per hour on weekdays and $9.00 per hour on weekends and holidays.

(c) The fee for assessments of eligible individuals shall be $70.00 for each initial assessment authorized by the designated county agency; $35.00 for annual re-assessments; and $20.00 for each follow-up assessment authorized by the designated county agency.

10:123A-4.3 Client fees

(a) The client fee for personal attendant services shall be based on the ability of the eligible person and/or the person's spouse to pay for these services. The client fee shall apply only to an eligible person and that person's spouse whose combined annual gross income exceeds the State's applicable income eligibility limit for social services established pursuant to the Social Services Block Grant Act (P.L. 97-35, 42 U.S.C. §1397 et seq.) and set forth at (d) below.

(b) Client failure to pay the appropriate client fee within 60 days of the date of billing pursuant to the client sliding fee scale at (d)

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below, without good cause, shall be grounds for termination or suspension from the Personal Attendant Services Program.

(c) The client sliding fee scale schedule below shall be applied to eligible individuals and their spouses. The percentage column indicated on the fee scale denotes the percentage of the total cost of the service to be paid by the client.

(d) The Client Sliding Fee Scale is as follows:

CLIENT SLIDING FEE SCALE
Annual Income

Single (One Person)	Family (Size 2)	Family (Size 3)	Family (Size 4)	Family (Size 5)	Percentage
0-15,162	0-19,827	0-24,493	0-29,158	0-33,823	0%
15,163-15,664	19,828-20,327	24,494-24,993	29,159-29,658	33,824-34,323	1%
15,665-16,164	20,328-20,857	24,994-25,493	29,659-30,158	34,324-34,823	2%
16,165-16,664	20,858-21,357	25,494-25,993	30,159-30,658	34,824-35,323	3%
16,665-17,164	21,358-21,857	25,994-26,493	30,659-31,158	35,324-35,823	4%
17,165-17,664	21,858-22,357	26,494-26,993	31,159-31,658	35,824-36,323	5%
17,665-18,164	22,358-22,857	26,994-27,493	31,659-32,158	36,324-36,823	6%
18,165-18,664	22,858-23,357	27,494-27,993	32,159-32,658	36,824-37,323	7%
18,665-19,164	23,358-23,857	27,994-28,493	32,659-33,158	37,324-37,823	8%
19,165-19,664	23,858-24,357	28,494-28,993	33,159-33,658	37,824-38,323	9%
19,665-20,164	24,358-24,857	28,994-29,493	33,659-34,158	38,324-38,823	10%
20,165-20,664	24,858-25,357	29,494-29,993	34,159-34,658	38,824-39,323	11%
20,665-21,164	25,358-25,857	29,994-30,493	34,659-35,158	39,324-39,823	12%
21,165-21,664	25,858-26,357	30,494-30,993	35,159-35,658	39,824-40,323	13%
21,665-22,164	26,358-26,857	30,994-31,493	35,659-36,158	40,324-40,823	14%
22,165-22,664	26,858-27,357	31,494-31,993	36,159-36,658	40,824-41,323	15%
22,665-23,164	27,358-27,857	31,994-32,493	36,659-37,158	41,324-41,823	16%
23,165-23,664	27,858-28,357	32,494-32,993	37,159-37,658	41,824-42,323	17%
23,665-24,164	28,358-28,857	32,994-33,493	37,659-38,158	42,324-42,823	18%
24,165-24,664	28,858-29,357	33,494-33,993	38,159-38,658	42,824-43,323	19%
24,665-25,164	29,358-29,857	33,994-34,493	38,659-39,158	43,324-43,823	20%
25,165-25,664	29,858-30,357	34,494-34,993	39,159-39,658	43,824-44,323	21%
25,665-26,164	30,358-30,857	34,994-35,493	39,659-40,158	44,324-44,823	22%
26,165-26,664	30,858-31,357	35,494-35,993	40,159-40,658	44,824-45,323	23%
26,665-27,164	31,358-31,857	35,994-36,493	40,659-41,158	45,324-45,823	24%
27,165-27,664	31,858-32,357	36,494-36,993	41,159-41,658	45,824-46,323	25%
27,665-28,164	32,358-32,857	36,994-37,493	41,659-42,158	46,324-46,823	26%
28,165-28,664	32,858-33,357	37,494-37,993	42,159-42,658	46,824-47,323	27%
28,665-29,164	33,358-33,857	37,994-38,493	42,659-43,158	47,324-47,823	28%
29,165-29,664	33,858-34,357	38,494-38,993	43,159-43,658	47,824-48,323	29%
29,665-30,164	34,358-34,857	38,994-39,493	43,659-44,158	48,324-48,823	30%
30,165-30,664	34,858-35,357	39,494-39,993	44,159-44,658	48,824-49,323	31%
30,665-31,164	35,358-35,857	39,994-40,493	44,659-45,158	49,324-49,823	32%
31,165-31,664	35,858-36,357	40,494-40,993	45,159-45,658	49,824-50,323	33%
31,665-32,164	36,358-36,857	40,994-41,493	45,659-46,158	50,324-50,823	34%
32,165-32,664	36,858-37,357	41,494-41,993	46,159-46,658	50,824-51,323	35%
32,665-33,164	37,358-37,857	41,994-42,493	46,659-47,158	51,324-51,823	36%
33,165-33,664	37,858-38,357	42,494-42,993	47,159-47,658	51,824-52,323	37%
33,665-34,164	38,358-38,857	42,994-43,493	47,659-48,158	52,324-52,823	38%
34,165-34,664	38,858-39,357	43,494-43,993	48,159-48,658	52,824-53,323	39%
34,665-35,164	39,358-39,857	43,994-44,493	48,659-49,158	53,324-53,823	40%
35,165-35,664	39,858-40,357	44,494-44,993	49,159-49,658	53,824-54,323	41%
35,665-36,164	40,358-40,857	44,994-45,493	49,659-50,158	54,324-54,823	42%
36,165-36,664	40,858-41,357	45,494-45,993	50,159-50,658	54,824-55,323	43%
36,665-37,164	41,358-41,857	45,994-46,493	50,659-51,158	55,324-55,823	44%
37,165-37,664	41,858-42,357	46,494-46,993	51,159-51,658	55,824-56,323	45%
37,665-38,164	42,358-42,857	46,994-47,493	51,659-52,158	56,324-56,823	46%
38,165-38,664	42,858-43,357	47,494-47,993	52,159-52,658	56,824-57,323	47%
38,665-39,164	43,358-43,857	47,994-48,493	52,659-53,158	57,324-57,823	48%
39,165-39,664	43,858-44,357	48,494-48,993	53,159-53,658	57,824-58,323	49%
39,665-40,164	44,358-44,857	48,994-49,493	53,659-54,158	58,324-58,823	50%
40,165-40,664	44,858-45,357	49,494-49,993	54,159-54,658	58,824-59,323	51%
40,665-41,164	45,358-45,857	49,994-50,493	54,659-55,158	59,324-59,823	52%
41,165-41,664	45,858-46,357	50,494-50,993	55,159-55,658	59,824-60,323	53%
41,665-42,164	46,358-46,857	50,994-51,493	55,659-56,158	60,324-60,823	54%
42,165-42,664	46,858-47,357	51,494-51,993	56,159-56,658	60,824-61,323	55%
42,665-43,164	47,358-47,857	51,994-52,493	56,659-57,158	61,324-61,823	56%
43,165-43,664	47,858-48,357	52,494-52,993	57,159-57,658	61,824-62,323	57%
43,665-44,164	48,358-48,857	52,994-53,493	57,659-58,158	62,324-62,823	58%
44,165-44,664	48,858-49,357	53,494-53,993	58,159-58,658	62,824-63,323	59%
44,665-45,164	49,358-49,857	53,994-54,493	58,659-59,158	63,324-63,823	60%
45,165-45,664	49,858-50,357	54,494-54,993	59,159-59,658	63,824-64,323	61%

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45,665-46,164	50,358-50,857	54,994-55,493	59,659-60,158	64,324-64,823	62%
46,165-46,664	50,858-51,357	55,494-55,993	60,159-60,658	64,824-65,323	63%
46,665-47,164	51,358-51,857	55,994-56,493	60,659-61,158	65,324-65,823	64%
47,165-47,664	51,858-52,357	56,494-56,993	61,159-61,658	65,824-66,323	65%
47,665-48,164	52,358-52,857	56,994-57,493	61,659-62,158	66,324-66,823	66%
48,165-48,664	52,858-53,357	57,494-57,993	62,159-62,658	66,824-67,323	67%
48,665-49,164	53,358-53,857	57,994-58,493	62,659-63,158	67,324-67,823	68%
49,165-49,664	53,858-54,357	58,494-58,993	63,159-63,658	67,824-68,323	69%
49,665-50,164	54,358-54,857	58,994-59,493	63,659-64,158	68,324-68,823	70%
50,165-50,664	54,858-55,357	59,494-59,993	64,159-64,658	68,824-69,323	71%
50,665-51,164	55,358-55,857	59,994-60,493	64,659-65,158	69,324-69,823	72%
51,165-51,664	55,858-56,357	60,494-60,993	65,159-65,658	69,824-70,323	73%
51,665-52,164	56,358-56,857	60,994-61,493	65,659-66,158	70,324-70,823	74%
52,165-52,664	56,858-57,357	61,494-61,993	66,159-66,658	70,824-71,323	75%
52,665-53,164	57,358-57,857	61,994-62,493	66,659-67,158	71,324-71,823	76%
53,165-53,664	57,858-58,357	62,494-62,993	67,159-67,658	71,824-72,323	77%
53,665-54,164	58,358-58,857	62,994-63,493	67,659-68,158	72,324-72,823	78%
54,165-54,664	58,858-59,357	63,494-63,993	68,159-68,658	72,824-73,323	79%
54,665-55,164	59,358-59,857	63,994-64,493	68,659-69,158	73,324-73,823	80%
55,165-55,664	59,858-60,357	64,494-64,993	69,159-69,658	73,824-74,323	81%
55,665-56,164	60,358-60,857	64,994-65,493	69,659-70,158	74,324-74,823	82%
56,165-56,664	60,858-61,357	65,494-65,993	70,159-70,658	74,824-75,323	83%
56,665-57,164	61,358-61,857	65,994-66,493	70,659-71,158	75,324-75,823	84%
57,165-57,664	61,858-62,357	66,494-66,993	71,159-71,658	75,824-76,323	85%
57,665-58,164	62,358-62,857	66,994-67,493	71,659-72,158	76,324-76,823	86%
58,165-58,664	62,858-63,357	67,494-67,993	72,159-72,658	76,824-77,323	87%
58,665-59,164	63,358-63,857	67,994-68,493	72,659-73,158	77,324-77,823	88%
59,165-59,664	63,858-64,357	68,494-68,993	73,159-73,658	77,824-78,323	89%
59,665-60,164	64,358-64,857	68,994-69,493	73,659-74,158	78,324-78,823	90%
60,165-60,664	64,858-65,357	69,494-69,993	74,159-74,658	78,824-79,323	91%
60,665-61,164	65,358-65,857	69,994-70,493	74,659-75,158	79,324-79,823	92%
61,165-61,664	65,858-66,357	70,494-70,993	75,159-75,658	79,824-80,323	93%
61,665-62,164	66,358-66,857	70,994-71,493	75,659-76,158	80,324-80,823	94%
62,165-62,664	66,858-67,357	71,494-71,993	76,159-76,658	80,824-81,323	95%
62,665-63,164	67,358-67,857	71,994-72,493	76,659-77,158	81,324-81,823	96%
63,165-63,664	67,858-68,357	72,494-72,993	77,159-77,658	81,824-82,323	97%
63,665-64,164	68,358-68,857	72,994-73,493	77,659-78,158	82,324-82,823	98%
64,165-64,664	68,858-69,357	73,494-73,993	78,159-78,658	82,824-83,323	99%
64,665-and Above	69,358-and Above	73,994-and Above	78,659-and Above	83,324-and Above	100%

(e) Each eligible person and that person's spouse shall provide verification of his or her income for determination of applicable fees upon application to the Personal Attendant Services Program and annually thereafter.

1. Acceptable verification includes, but is not limited to, pay stubs, W-2 form or a photostatic copy of the actual 1040 form filed with the Internal Revenue Service, business records, pension statements and/or correspondence from employers or agencies (for example, Social Security Administration, State employment agencies.)

(f) If the costs of an eligible person's personal attendant services are covered in whole or in part by another State or Federal government program or insurance contract, the government program or insurance carrier shall be the primary payer and the Personal Attendant Services Program shall be the secondary payer.

(g) The eligible person receiving personal attendant services shall sign weekly vouchers attesting to the hours of service rendered, and the personal attendant or provider agency shall then be paid by the designated county agency.

10:123A-4.4 Standards for adjustments in client fees

(a) Adjustments in client fees to eligible individuals shall be based on verifiable increased or decreased expenses which result from the eligible individual's disability which may include, but are not limited to, items such as:

1. Unreimbursed or unreimbursable medical expenses;
2. Transportation expenses; and/or
3. Adaptations to home or vehicle.

(b) Adjustments in client fees may also be considered when the following verifiable expenses are increased or decreased:

1. College tuition;
2. Alimony/child support; and/or
3. Emergency home repair expenses.

(c) Adjustments in client fees shall be re-evaluated annually or more frequently if necessary.

10:123A-4.5 Procedures for requesting adjustments in client fees

(a) Eligible individuals requesting adjustments in client fees shall submit a written request and justification to the designated county agency.

(b) Upon receipt of a written request and justification for a client fee adjustment, the designated county agency shall review the request and submit to the State Program Administrator materials pertaining to the request along with a recommendation regarding the appropriateness of the request and the amount of the adjustment.

(c) Upon receipt of the information described in N.J.A.C. 10:123A-4.5(b), the State Program Administrator shall review the request and recommendation and render a decision based on the facts presented.

(d) Upon receipt of a decision by the designated county agency from the State Program Administrator, the eligible individual shall be provided written notice regarding the disposition of the request for an adjustment in client fee.

(e) Adjustments in client fee which are approved shall be effective as of the first day of the calendar month succeeding the month in which the written request is received by the designated county agency.

SUBCHAPTER 5. PERSONAL ATTENDANTS

10:123A-5.1 Requirements for personal attendants

(a) All individuals desiring to serve as personal attendants under the Personal Attendant Services Program shall be at least 18 years of age and shall meet the following minimum requirements:

1. The personal attendant shall complete an approved training course authorized by the State Board of Nursing as a homemaker/

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home health aide, or a long term facility nurse aide course authorized by the Department of Health;

2. The personal attendant shall complete a certified training program in a hospital, rehabilitation facility, or a long-term care facility as an aide or personal attendant;

3. The personal attendant shall complete a training course offered by the Department of Human Services for personal attendants; or

4. The personal attendant shall have at least one year of past experience in the provision of personal attendant services for adults.

(b) Personal attendants who have not completed the training program described in (a)3 above shall be required to complete a training session on the philosophy of the personal attendant service program.

(c) Personal attendants shall have a current liability policy which covers personal injury and/or property damage, prior to employment. This liability policy shall be paid for by the attendant, when he or she is under an independent vendor contract with the county, or by the provider agency, when the attendant is an agency employee.

SUBCHAPTER 6. COMPLIANCE WITH LAWS

10:123A-6.1 Requirements of designated county agency

(a) All designated county agencies shall abide by all laws and rules concerning employment of individuals hired to administer or work in the Personal Attendant Services Program including, but not limited to, the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq. and the Immigration Reform and Control Act of 1986 (P.L. 99-603).

(b) All designated county agencies shall conduct a check, or form an agreement with providers with whom they contract to conduct a check, that satisfies them as to the appropriateness of each personal attendant.

(c) All designated county agencies shall establish a separate accounting regarding receipt and use of cost share monies collected to ensure cost share monies are used to expand program services. This separate accounting and supporting documentation shall be made available to the Program Administrator upon request.

10:123A-6.2 Duties of designated county agency

(a) Under the direction of the Division of Youth and Family Services, the designated county agency shall serve as the county level coordinator for the personal attendant services program and shall perform the following duties:

1. Ensure that the operation and performance of the county's personal attendant service program is in compliance with law and rules as specified by the Division;

2. Provide information and outreach for the personal attendant services program;

3. Complete the necessary forms to determine eligibility of potential clients;

4. Arrange for assessment and reassessment of eligible individuals;

5. Determine cost share amount when applicable;

6. Maintain and update individual client files;

7. Recruit individual personal attendant providers or serve as primary contact with an attendant provider agency;

8. Designate an individual to serve as primary contact person for eligible individuals and attendants involved in the program and document such contacts;

9. Assist eligible individuals in arranging for attendant services and document situations in which attendants are unavailable;

10. Refer persons to other agencies, programs and services for which they may be eligible;

11. Maintain fiscal records for the program or provide data for others to do so;

12. Prepare monthly reports for timely submission to the Division;

13. Serve as liaison to the Division for the program; and

14. Oversee local program including verification of weekly vouchers signed by eligible individuals and attendants attesting to hours of services rendered.

10:123A-6.3 Agency disqualification

(a) An agency may be disqualified from participation in Personal Attendant Service Program funding for good cause including, but not limited to, the following:

1. Failure or refusal to comply with program rules and/or contract requirements; or

2. Refusal to furnish the Division with files, reports or records as required by rule and/or contract requirements.

(b) The Division shall provide a 60 day written notice to the agency if it intends to pursue disqualification. The notice shall specify the Division's reasons for such action.

10:123A-6.4 Disqualification appeal process

(a) If the Division seeks to disqualify an agency for failure to comply with 10:123A-6.3(a)1 and 2, said agency shall be afforded an opportunity to request an administrative hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Abuse and Neglect Cases

Proposed Readoption: N.J.A.C. 10:129

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 9:6-8.36a, 30:1-12, 30:4C-4, 9:6-8.10a, 9:6-8.15 and 45 CFR 1340.14(i).

Proposal Number: PRN 1990-270.

Submit comments by June 20, 1990 to:
Kathryn A. Clark
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:129 will expire on July 15, 1990. The Department of Human Services, Division of Youth and Family Services has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order. The Division of Youth and Family Services proposes to readopt these rules without change.

Subchapter 1 of these rules was developed in accordance with the provisions of N.J.S.A. 9:6-8.36a, which required the Division and the county prosecutors to develop rules, which were then approved by the Attorney General. This was accomplished in 1979. The rules have remained unchanged since that time. It is the Division's interpretation of the statute that any change in these rules would require renegotiation with the county prosecutors and further approval by the Attorney General. Therefore the rules are proposed for readoption without change.

Subchapter 1 implements N.J.S.A. 9:6-8.36a of the Abuse and Neglect Law, N.J.S.A. 9:6-8.21 et seq., pertaining to the reporting by the Division of suspected child abuse and neglect cases to the county prosecutors as soon as children are identified as victims of suspected cases of abuse or neglect. The readoption of these rules will insure that referrals by the Division of suspected cases of child abuse or neglect to county prosecutors are continued in an appropriate and expeditious manner. No changes in Subchapter 1 are proposed.

In subchapter 2, N.J.A.C. 10:129-2.1 meets the Federal requirements of confidentiality (45 CFR 1340.14(i)) regarding all reports and records concerning reports of child abuse and neglect. Disclosure of such reports and records concerning such reports is strictly limited to the circumstances authorized in N.J.A.C. 10:129-2.1.

N.J.A.C. 10:129-2.2 is also Federally required. In 1985, the Division was informed by the Federal Regional Office that language in the New Jersey Statutes concerning child abuse was too broad to be considered consistent with Federal regulations governing sexual exploitation of children. In order to remedy this situation, N.J.A.C. 10:129-2.2 was adopted to define sexual abuse in terms which mirror Section 102(3) of P.L. 98-457.

N.J.A.C. 10:129-2.2 further indicates that the definition of sexual abuse contained in it elaborates on the definition of sexual abuse as that term is used in Title 9 of the New Jersey Statutes.

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As to subchapter 2, the Division also finds these rules to be necessary, reasonable and proper for the purposes for which they were originally promulgated. No change to subchapter 2 is made at this time.

Social Impact

The readoption of subchapter 1 will have little effect upon the general public. It directly affects only the Division and prosecutors procedurally. As such, it is necessary and should be continued so the Division can communicate suspected child abuse or neglect complaints efficiently with the intended purpose of expediting investigations by prosecutors.

The readoption of subchapter 2 will ensure that reports of child abuse and neglect, and records of such reports, are kept confidential, as required by Federal regulations. This will continue to benefit the subjects of such reports by providing them with confidentiality. Also, by remaining in compliance with Federal requirements, New Jersey will continue to receive Federal funds through the National Center on Child Abuse and Neglect (NCCAN).

Economic Impact

These rules will not impose a direct economic impact upon any member of the public. The economic impact on the State of New Jersey will be to continue New Jersey's compliance with Federal regulations, thereby enabling New Jersey to continue to receive Federal funds for child abuse and neglect programs. The level of Federal funding has been fairly consistent in this area for several years. In Fiscal Year 1990, the State will receive $231,410 from NCCAN.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption do not impose reporting, record keeping or other compliance requirements on small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq., the New Jersey Regulatory Flexibility Act. The proposed rules affect the Division, county prosecutors, and other State and local officials and agencies.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:129.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 47 in Cape May County
Proposed Amendment: N.J.A.C. 16:28A-1.33

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Safety Programs.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.

Proposal Number: PRN 1990-236.

Submit comments by June 30, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish "no stopping or standing" zone along Route N.J. 47 in Dennis Township, Cape May County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local government, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "no stopping or standing" zone along Route N.J. 47 on both sides, excepting designated bus stops and time-limited parking zones, within Dennis Township, Cape May County, was warranted, due to the conformation of the road, which creates a hazard unless stopping or standing is curtailed.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.33, based upon the request from the government and the traffic investigation.

Social Impact

The proposed amendment will establish a "no stopping or standing" zone along Route N.J. 47 in Dennis Township, Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for installation of the signs, which will cost approximately $117.00 for planning, engineering and installation, and approximately $7.00 per square foot for fabrication. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued pursuant to New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public.

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

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 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.-9. (No change.)

10. No stopping or standing in Dennis Township, Cape May County:

i. Along both sides:

(1) [From Oak Lane to a point 650 feet from Petersburg Road (Co. Rd. 610)).] **For the entire length within the corporate limits of Dennis Township, 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 shall be posted only in areas where an official township request has been submitted to the Department.**

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Time Limit Parking
Route U.S. 202 in Somerset County
Proposed Amendment: N.J.A.C. 16:28A-1.55

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1990-268.

Submit comments by June 20, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

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The agency proposal follows:

Summary

The proposed amendment will amend existing zones and will establish new "Time Limit Parking" zones along Route U.S. 202 in Bernardsville Borough, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Bernardsville Borough has requested specific footage changes, new zones, changes in time and duration, and loading zones.

Based upon requests from the Borough, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "Time Limit Parking" zones along Route U.S. 202 in Bernardsville Borough, Somerset County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.55, based upon the request from local government and the traffic investigation.

Social Impact

The proposed amendment will establish "Time Limit Parking" zones along Route U.S. 202 in Bernardsville Borough, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Borough of Bernardsville will bear the costs for "Time Limit Parking" zones signs and for the placement of the signs, which will total approximately $2,500. Motorists who violate the rule will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule", issued pursuant to New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public.

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

16:28A-1.55 Route U.S. 202

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

(d) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "Time Limit Parking" zones. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:

1. Time Limit Parking zones in Bernardsville Borough, Somerset County:

i. [Along the west side:] **Two-hour time limit parking, between 7:00 A.M. to 6:00 P.M.:**

(1) [Two-hour time limit parking, between 7:00 A.M. to 6:00 P.M.:] **Along the west side:**

(A) From **a point** 35 feet south of the southerly curb line of Anderson Hill Road [to a point 240 feet] **and extending 143 feet** southerly therefrom[.]**;**

(B) [From 35 feet south of Quinbly Lane to a point 400 feet south of the southerly curbline of Claremont Road.] **From a point 278 feet south of the southerly curb line of Anderson Hill Road to a point 400 feet south of the southerly curb line of Claremont Road;**

(C) Beginning at a point 313 feet south of the southerly curb line of Church Street to a point 78 feet southerly therefrom;

(2) Along the east side:

(A) From a point 158 feet south of the southerly curb line of Mt. Airy Road to the northerly curb line of Depot Square;

[(2) One half-hour time limit parking, between 7:00 A.M. to 6:00 P.M., from a point 275 feet south of the southerly curbline of Anderson Hill Road to a point 90 feet southerly therefrom.

ii. Along the east side:

(1) One half-hour time limit parking, between 7:00 A.M. to 6:00 P.M., beginning 85 feet south of the southerly curbline of Mt. Airy Road extending 50 feet southerly therefrom.

(2) Two-hour time limit parking, between 7:00 A.M. to 6:00 P.M., from a point 135 feet south of the southerly curbline of Mt. Airy Road to the northerly curbline of Depot Square.]

ii. One half-hour time limit parking, between 7:00 A.M. to 6:00 P.M.:

(1) Along the east side:

(A) From a point 64 feet south of the southerly curb line of Mt. Airy Road and extending 80 feet southerly therefrom;

(2) Along the west side:

(A) Beginning at a point 391 feet south of the southerly curb line of Church Street to a point 40 feet southerly therefrom;

(B) From a point 178 feet south of the southerly curb line of Anderson Hill Road and extending 100 feet southerly therefrom.

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Rules

Proposed Readoption with Amendments: N.J.A.C. 19:30

Proposed Repeals: N.J.A.C. 19:30-4 and 7

Proposed New Rules: N.J.A.C. 19:30-5

Authorized By: New Jersey Economic Development Authority, James J. Hughes, Jr., Executive Director.

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(k) and (l).

Proposal Number: PRN 1990-250.

Submit comments by June 20, 1990 to:
Gary Nadler, Manager of Administration
New Jersey Economic Development Authority
CN 990
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 19:30 is scheduled to expire on October 7, 1990. The New Jersey Economic Development Authority (Authority) has reviewed these rules and found them to be reasonable, necessary and proper for the reasons for which they were originally promulgated. A discussion of each subchapter, and amendments proposed for each, follows. The readoption of subchapter 1 is necessary in order that the Authority can continue the original intent of the rule; that is, to establish the Authority's general purpose, and to define words and terms used by the Authority in its administrative rules. The amendments are primarily necessitated by the provisions of N.J.S.A. 52:14B-4, which require an agency to adopt rules describing its organization and structure, to establish the manner in which the public may obtain information from the agency, and to formalize the procedure for interested persons to petition the agency on matters concerning agency rules. The amendments are summarized in the statements which follow.

N.J.A.C. 19:30-1.1 contains amendments to clarify the Authority's general objectives as stated in the New Jersey Economic Development Authority Act.

N.J.A.C. 19:30-1.2 contains an amendment to indicate that the definitions apply in chapter 30 as well as the newly-proposed N.J.A.C. 19:31, published in this issue of the New Jersey Register, and a clarifying amendment to the definition of the term "Authority" indicating that the term refers to the staff of the Authority.

N.J.A.C. 19:30-1.3 describes the organization and programs of the Authority.

N.J.A.C. 19:30-1.4 identifies the manner in which the public may obtain information about the Authority.

N.J.A.C. 19:30-1.5 describes records of the Authority which it proposes to have excluded from the public records requirements of N.J.S.A. 47:1A-1 et seq., the Public Right to Know Law. The statute provides that records may be excluded through adoption of a rule identifying which records will not be public records.

N.J.A.C. 19:30-1.6 through 1.8 contain the Authority's proposed rules to formalize the procedure for interested persons to petition the Authority to make, amend, or repeal any rule of the Authority. Included is the process which the Authority will follow upon receipt of a valid petition.

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The Authority's purpose in promulgating subchapter 2 was to provide a schedule of fees which the Authority would assess to applicants for Authority financial assistance. The Authority does not receive funding for its administrative costs through State appropriations; instead, it is empowered in the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 et seq., to require and collect such fees and charges as it shall determine to be reasonable to enable it to support its operations and carry out its programs of financial assistance. The Authority herein proposes to continue its rules concerning fees, with amendments described below, including recodification of this subchapter as subchapter 6. References below are to the rules as recodified.

In N.J.A.C. 19:30-6.1, language has been added to clarify that there is no application fee charged for an application under the Trade Adjustment Assistance Center program. This has always been the practice; however, that particular program was not considered when the original rule was promulgated, and therefore no mention was made of the fact that there was no application fee associated with it.

In N.J.A.C. 19:30-6.4(a)1, language has been added to help define refunding bonds, to which the particular fee applies. The added language takes the place of the definition of refunding bonds which was in the original rule, but is now deleted. The circumstances under which this fee will apply remain unchanged.

In N.J.A.C. 19:30-6.4(a)2, language has been changed to clarify what was meant by the term "supplemental issue," which is now deleted and replaced by the term "new money." The circumstances under which this fee will apply remain unchanged.

In N.J.A.C. 19:30-6.4(a)3 and (a)4, language has been added to replace the definitions of "related entity" and "unrelated entity" which appeared in the original rule but are now to be deleted. The circumstances under which the fee will apply remain unchanged.

In N.J.A.C. 19:30-6.4(a)5, language has been changed to provide examples of the circumstances under which this fee will apply, which the Authority feels is more precise in defining the intent of the subsection that was the language to be deleted. The circumstances under which this fee will apply in practice remain unchanged.

In N.J.A.C. 19:30-6.4(a)6, language has been added which broadens the scope of circumstances under which this fee will apply, to include granting approvals of transactions which may be accomplished without the actual execution of a document, which was a requirement under the rule as it existed.

In N.J.A.C. 19:30-6.4(a)7, a limit has been placed on the number of substitute bonds which can be executed for the fee of $25.00. As the rule presently exists, an unlimited number of substitute bonds could be requested for the fee of $25.00. The Authority has determined that a limit of ten such bonds is practical from the standpoint of its costs to execute these bonds. Further, language has been added to clarify that this fee will apply in circumstances where the Authority authorizes issuance of substitute bonds which may be printed by a third party, as opposed to requiring the actual execution of the bonds by hand by the Authority.

In N.J.A.C. 19:30-6.4(b), the added text is essentially the same as the text which appears at N.J.A.C. 19:30-2.6 in the present rule. It has been moved so as to be included in the section on post-closing fees, because it pertains only to those particular fees.

In N.J.A.C. 19:30-6.5, the Authority proposes to increase the amount of the fee charged for the sign which is to be erected at the site of a project which is receiving Authority financial assistance and which involves construction or renovation. The increase is from $50.00 to $75.00, and is proposed due to increased costs in manufacturing and handling of signs.

Subchapter 3 was promulgated by the Authority in accordance with N.J.S.A. 34:1B-1.5. The intent of the original rules was to encompass the principles outlined by the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., which requires payment of prevailing wages in construction contracts paid for in whole or in part with funds received through a public body. Because the statute defines public body to include any authority created by the Legislature of the State of New Jersey, the Authority is obliged to follow those requirements. Therefore, it proposes to readopt the rules, with several amendments described below. The rules require that prevailing wages, as determined and established by the New Jersey Department of Labor, be paid to workers employed in the performance of any construction contracts of $2,000 or more. As part of this readoption, the Authority is recodifying subchapter 3 as subchapter 4.

The Authority proposes to amend its definition of the term "construction contract" such that construction includes installation of equipment, and contract includes any agreement, oral or written.

The Authority also proposes to delete N.J.A.C. 19:30-3.5 concerning compliance enforcement by the Executive Director, and to replace it with a section stating that any violation is deemed a violation of the New Jersey Prevailing Wage Act, which will more correctly govern enforcement and penalties for noncompliance.

And, the Authority proposes to delete N.J.A.C. 19:30-3.6 concerning the effective date of the subchapter. The original rule exempted contracts on projects authorized prior to September 1, 1979. There are no longer any active Authority projects which were authorized before that date; therefore, there is no need for the exemption.

Proposed new rule N.J.A.C. 19:30-4.5 is added to clarify that a violation of the provisions of this subchapter shall be deemed a violation of N.J.S.A. 34:11-56.25 et seq.

The Authority proposes to repeal subchapter 4 and replace it with new rules on the topic at N.J.A.C. 19:30-5. While certain provisions of the rules proposed for repeal are to be contained in the proposed new rules, other provisions are to be discontinued, and these are significant enough to warrant a repeal and proposed new rules, rather than amendments.

The targeting rules, as this subchapter is known, provide for preferential consideration of financial assistance to projects which will be located in certain municipalities in New Jersey which are quantitatively identified as having greater economic need. The Authority has been targeting its financial assistance since July 1, 1979. Since that time, the Authority has provided $3 billion in financial assistance to nearly 2,000 projects in targeted municipalities. These projects have created over 52,000 permanent jobs, over 45,800 construction jobs, and enabled a total investment of nearly $4 billion. While these figures are significant, the objectives continue. As long as there are municipalities in New Jersey which are economically distressed, there is a need for the priority assistance which the targeting rules provide. Without the rules, the business expansion occurring in these distressed communities would probably be taking place in the more affluent, less needy locations in the State.

Municipalities are identified for eligibility in either of two ways: eligibility as an urban aid municipality as defined by the New Jersey Department of Community Affairs in N.J.S.A. 52:27D-178, or eligibility under the Authority's own formula based on unemployment, income, and ratables within the municipality. This aspect of eligibility is unchanged from the rules proposed for repeal. The rules proposed for repeal contain other components for eligibility which the Authority plans to discontinue in the proposed new rules.

Presently, N.J.A.C. 19:30-4.3 provides for eligibility based on special circumstances resulting from a natural or economic disaster, or on designation as a blighted area, or for specific projects that would employ a significant number of disadvantaged persons, or for specific hotel or motel projects which would significantly expand business and tourism. These classes of special eligibility are no longer deemed necessary.

Presently, N.J.A.C. 19:30-4.4 provides for an exemption to the locational eligibility restrictions for projects related to certain specific types of businesses which were considered to be particularly vital to New Jersey's overall economy. Rather than predefining those business types, the proposed new rules will provide for the Executive Director to establish special eligibility from time to time for specific activities, consistent with the Authority's stated objectives (see N.J.A.C. 19:30-1.1).

The Authority also proposes to eliminate the effective date provision presently at N.J.A.C. 19:30-4.5, which states that the rules apply to projects for which financial assistance was authorized on or after July 1, 1979. The Authority no longer has any active applications for financial assistance which were authorized prior to that date; therefore, this provision is unnecessary. The new rules will apply to all projects for which financial assistance is authorized on or after the date the rule becomes effective.

The original intent of subchapter 5, which the Authority proposes to recodify as subchapter 2, was to establish that there could be circumstances in which it would not be in the best interest of the Authority in its effort to accomplish the public purpose vested in it by the Legislature, to provide financial assistance to an applicant, to approve tenancy in an Authority-financed project, or to permit a contractor to be hired for work on an Authority-financed project. The scope of the rules was expanded to include prohibitions on activities that might give rise to a conflict of interest for Authority staff. The existence of the rules has enabled the Authority to maintain integrity in its activities on behalf of the State, and their readoption is necessary for the continuation of such integrity.

The rules provide the Authority with the discretion to decline to do business with any person who has committed certain criminal offenses,

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violated certain other laws, been debarred by a government agency, or is involved in circumstances which could create a conflict of interest for the Authority. The rules identify the circumstances which could result in the Authority declining to deal with a person, as well as the procedure the Authority will use in exercising the provision.

The amendments are proposed to clarify the intent of certain passages in the rules. Most notably, the original rules referred to debarment, which was defined as an exclusion from project contracting. In some instances in the rules, the intent was for the passage to also pertain to disqualification, meaning an exclusion from receiving financial assistance or from approval as a tenant. In those instances, the reference was expanded to include disqualification.

Subchapter 6 was promulgated by the Authority in accordance with N.J.S.A. 34:1B-5.4. The intent of the original rules was to encompass the principles outlined by the New Jersey Laws Against Discrimination (P.L. 1945, c.169), and the equal employment opportunity mandate in N.J.S.A. 10:5-36 et seq. (P.L. 1975, c.127), relating to affirmative action in minority hiring for construction projects receiving Authority financial assistance. The rules require any contractor involved in the performance of construction contracts undertaken in connection with projects receiving Authority assistance to make every effort to meet goals for hiring of minority workers and female workers on the project. They also provide for certain penalties to be assessed to contractors who do not comply.

Percentage goals for minority hiring and female hiring are established by the New Jersey Department of the Treasury. These percentages relate to the man-hours worked on the project in each construction trade. If a contractor is experiencing difficulty in finding minority workers and female workers, the contractor is expected to notify the Authority, the New Jersey State Employment Service, the New Jersey Bureau of Apprenticeship and Training, and at least two minority referral organizations for assistance.

To monitor compliance with the rules, the Authority requires contractors to submit certified payrolls to the Authority's Office of Affirmative Action on a weekly basis, in a form satisfactory to the Authority. A contractor not in compliance will be so notified and appropriate measures to correct the deficiency will be suggested. Failure to comply with the provisions of the rules will result in penalties as described in the text of the rule.

The objectives of the original rules remain valid and important today. The only amendment of any substance is the redefining of the term "minority" to be consistent with the definition used by the New Jersey Department of the Treasury, and the deletion of the paragraphs pertaining to the possible exemption from the requirements of the subchapter. With regard to the latter, the applicable laws mentioned above, which the Authority uses as the basis for its rule, do not provide for exemptions based on "special" circumstances. Therefore, the Authority's rules will likewise not provide for exemptions. In addition, the authority proposes to recodify this subchapter as subchapter 3.

The New Jersey Economic Development Authority ("Authority") is proposing to repeal N.J.A.C. 19:30-7, rules concerning the reallocation of private activity bond financing. The rules were originally adopted in response to the Federal Deficit Reduction Act of 1984, which placed a ceiling on the amount of private activity bonds that could be issued by each State. That Act further provided that the Governor of a State could develop a formula for allocating the State's ceiling amount among the various State-level issuing authorities. The Governor of New Jersey issued Executive Order No. 85(1984), allocating 100 percent of the State's ceiling amount to the Authority, but authorizing the Authority to reallocate portions of the State ceiling amount to other issuing authorities. Thus, the Authority became the single coordinator of the State's entire ceiling amount.

The Executive Order directed the Authority to promulgate a rule to carry out the coordinating of the State's private activity bond issuance, including the procedure for reallocating amounts to other issuing authorities. The Authority adopted such rules at N.J.A.C. 19:30-7.

Subsequently, Executive Order No. 185(1988) was issued, which superceded the prior Order. This Order places responsibility for 100 percent of the State's ceiling amount with the New Jersey Department of the Treasury, which is now charged with allocating amounts to the various issuing authorities, of which the Authority is one. In as much as the Authority no longer has the responsibility for reallocating private activity bond amounts, the rules which had been promulgated specifically to govern that procedure are no longer needed.

Social Impact

The proposed readoption with amendments of subchapter 1 will provide the general public with information about the Authority and its programs, so that those persons who may be able to utilize those programs can be aware of them. The rules provide the public with a point of contact for information about the Authority, as well as a formal mechanism to present views and opinions concerning the procedures of the Authority and to participate in the Authority's administrative rulemaking.

The proposed section on nonpublic information is considered essential to enable the Authority to maintain confidentiality with respect to the information it requires from prospective applicants for financial assistance, from prospective contractors and vendors, and from its own employees and prospective employees. Such information is personal and private, but is required by the Authority to maintain the highest integrity in the administration of its programs and the staffing of the agency. Restricting the general availability of such information will help to assure that complete and truthful information is obtained.

The fees charged by the Authority under subchapter 2 , to be recodified as subchapter 6, directly support and make possible the level of financing services and other assistance which the Authority has been able to provide. From 1975 to the present, the Authority has provided $7.7 billion in financing, stimulating over $9.7 billion in total investment, and creating over 125,000 permanent jobs and 122,900 construction jobs. Substantial ratables for the State's municipalities have resulted as well. The social impact of the Authority's activities are apparent from the infusion of capital, creation of jobs, and expansion of the economy.

The New Jersey Prevailing Wage Act, and hence the Authority's rules as in subchapter 3, to be recodified at subchapter 4, should have a positive social impact by eliminating substandard wage levels which do not promote the general welfare of those who are employed in the construction industry. The law aims at insuring that such employment is gainful, allowing the individual worker to maintain a degree of personal economic stability. This is generally considered a positive influence in establishing social balance and promoting social well-being. By readopting these rules, the Authority is continuing to assume a social responsibility to promote the objectives of the statute.

The real impact of the targeting rules in proposed new subchapter 5 is economic in nature. However, the social environment is presumably enhanced as well in those communities which experience business expansion and the creation of jobs and ratables as a result of the rules.

The purpose of subchapter 5, to be recodified as subchapter 2, is to assure that the Authority's financing, construction, and procurement activities are conducted with the maximum level of integrity and proprietary. The Authority believes that the existence of standards designed to exclude unlawful persons from involvement in Authority activities, at least until such time as prescribed in the rules that those persons have satisfactorily demonstrated that the exclusion may be removed, is beneficial to the Authority and therefore beneficial to the New Jersey public. Debarred or disqualified persons may experience a negative social impact, but this will occur due to their own misdeeds.

The proposed readoption of subchapter 6, to be recodified as subchapter 3, is intended to have a positive social impact by assuring continued progress in employment opportunities for, and upgrading of, minorities and females within the workforce. No negative impact is anticipated.

No social impact is anticipated from the proposed repeal of subchapter 7, since Executive Order No. 185(1988) effectively rendered the needs null and void.

Economic Impact

The readoption of subchapter 1 as proposed does not involve any costs to the public of any consequence. The only anticipated costs to the Authority would be the administrative cost of handling petitions, which would depend on the number and extent of petitions received. It is not anticipated that this would be significant in its extent.

Persons who avail themselves of Authority financing, or who apply for financial assistance from the Authority, incur the fees described in subchapter 2, to be recodified as subchapter 6. These fees would not render prohibitive the cost of applying for and/or obtaining financial assistance from the Authority. In fact, the intent of Authority financial assistance programs is to provide incentive financing, to make possible development projects that could otherwise not occur due to either the higher cost or unavailability of conventional financing. So, these fees do not impair the ability of applicants to avail themselves of Authority financing or post-closing transaction services.

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As mentioned under Social Impact, the continued expansion of the State's economy evidenced by increased employment and ratables provided through the Authority's programs is a most positive economic impact for the State and its people. The Authority believes that without the fees to be assessed under subchapter 2, it would not be able to operate some of its programs at all, and others could not operate at the same level of effectiveness to help expand New Jersey's economy.

No economic impact arises from subchapter 3, proposed to be recodified as subchapter 4, since the rules follow the requirements of the New Jersey Prevailing Wage Act. The Act serves to eliminate substandard wage levels.

The targeting rule at subchapter 4, to be recodified at subchapter 5, are intended to have a significant beneficial economic impact on those municipalities which have been lagging economically, suffering fiscal stress, and/or have large numbers of poor residents, by stimulating business development in these communities where such development might otherwise not occur. The impact is in the form of increased employment, increased ratables, and increased income in the communities. The expansion of the economy in these distressed municipalities also benefits New Jersey as a whole.

The only economic impact to result from the readoption of subchapter 5, to be recodified as subchapter 2, would be the loss of business opportunity for debarred or disqualified persons, again through their own misdeeds.

The assimilation of minority and female persons into the employment mainstream under subchapter 6, to be recodified as subchapter 3, carries with it increased opportunity for economic growth for both the minority and female population (increased income) and the general populace (increased spending by those earning the income).

Since Executive Order No. 185(1988) effectively nullified subchapter 7, no economic impact will result from its repeal.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for subchapter 1 because the rules do not impose any reporting, record keeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. They merely inform the public of the existence and purpose of the Authority, how the public may obtain further information about the Authority, and how to make use of the petition process. The petition rules prescribe a process available on a totally voluntary basis and contain no procedure that would present an undue burden on a small business. While the petition must contain the information required in the rules, the only costs involved for the petitioner are its preparation and filing with the Authority.

Subchapter 2, to be recodified as subchapter 6, results in fees to all applicants for Authority financial assistance, including those which are small businesses. The Authority cannot estimate the number or type of small business applicants that will be affected, because future applicants for financial assistance are not identifiable. However, the rules will not impose any reporting, record keeping or compliance requirements, other than fee payment, on small businesses. Small businesses are not exempted from these fees because the Authority feels that all who avail themselves of the Authority's incentive financing programs should share in offsetting the costs. The fees the Authority charges remain below the fees which borrowers could incur with conventional financing, and these fees must be assessed to all applicants so that revenues will more reasonably parallel the Authority's costs for processing its transactions.

Subchapter 3, to be recodified as subchapter 4, requires that all contractors, including small businesses be subject to the reporting, record keeping and compliance provisions contained therein. Since the New Jersey Prevailing Wage Act provides for no compliance differentiation for small businesses, none can be provided in the Authority's rules.

Proposed new subchapter 5 does not impose reporting, record keeping, or compliance requirements on small businesses. However, the provisions of the rules will apply to all applicants for Authority financial assistance, including small businesses. It is the Authority's view that to exempt small businesses from the provisions of the subchapter would be to encourage small business development in those municipalities where it is not needed most.

Subchapter 5, to be recodified as subchapter 2, imposes no reporting, record keeping or compliance requirements on small businesses. It is the Authority's view that any differentiation for small businesses in the standards or penalties to be established by this subchapter would be inappropriate, considering the intent of maximizing the integrity of Authority activities.

Subchapter 6, to be recodified as subchapter 3, requires small businesses which enter into construction contracts on Authority-financed projects to implement practices for hiring of minority and female workers. The Authority is bound to follow the rule adopted by the New Jersey Department of the Treasury (N.J.A.C. 17:27-7.3), which does not differentiate with regard to small businesses in requiring compliance with the rule. Therefore, the Authority may not do so in its rule.

No requirements are imposed upon small businesses due to the proposed repeal of subchapter 7.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:30.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C 19:30-4 and 7.

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

SUBCHAPTER 1. GENERAL PROVISIONS

19:30-1.1 Purpose and objectives

(a) These rules are established to effectuate, and shall be applied so as to accomplish, the general purposes of "The New Jersey Economic Development Authority Act" (N.J.A.C. 34:1B-1 et seq.; P.L. 1974 c.80), and the following specific objectives:

1.-2. (No change.)

3. To assist in the economic development or redevelopment of political subdivisions within the State; [and]

4. To contribute to the prosperity, health and general welfare of the State and its inhabitants by [inducing] **making available financial and other assistance to induce** manufacturing, industrial, commercial and other employment-promoting enterprises to locate, remain, or expand within the State[.]; **and**

5. To protect and enhance the quality of the natural environment.

19:30-1.2 Definitions

The following words and terms, when used in this chapter **and in N.J.A.C. 19:31,** shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Authority" means the **staff of the** New Jersey Economic Development Authority [established by the Act].

"Executive Director" means the Executive Director of the New Jersey Economic Development Authority.

Words or terms which are defined in the Act are used in this chapter **and in N.J.A.C. 19:31** as defined in the Act.

19:30-1.3 Organization

(a) The governing body of the New Jersey Economic Development Authority, in but not of the Department of Commerce and Economic Development, consists of the Commissioner of Commerce and Economic Development, the Commissioner of Environmental Protection, the Commissioner of Labor, the Commissioner of Community Affairs, the State Treasurer, and four members and three alternate members appointed by the Governor with the advice and consent of the State Senate (collectively referred to as Members). The Authority is chaired by the Commissioner of Commerce and Economic Development.

(b) The Authority maintains the following functional divisions to administer its programs:

1. The Division of Project Development issues tax-exempt bonds:

i. To manufacturing firms to meet capital financing needs;

ii. For certain exempt activities as defined in the United States Internal Revenue Code;

iii. To benefit certain nonprofit organizations; and

iv. To refund eligible projects.

2. The Division of Project Development also issues taxable bonds for projects not eligible for tax-exempt bonds;

3. The Division of Finance guarantees loans and makes direct loans for fixed-asset financing and for working capital;

4. The Division of Real Estate Development develops modern business parks and commercial facilities to provide improved, affordable building space for businesses and other users in urban centers and other areas in need of economic expansion or diversity; and

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5. The Trade Adjustment Assistance Center operates a Federally funded program of consulting services for manufacturers whose employment and either sales or production have declined due to foreign competition.

19:30-1.4 Public information

The public may obtain general information concerning Authority programs by contacting the Public Affairs Office, New Jersey Economic Development Authority, 200 S. Warren St., CN 990, Trenton, N.J. 08625.

19:30-1.5 Nonpublic information

(a) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:

1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the members, or to any other state agency or instrumentality;

2. All personnel records;

3. All records concerning applications for employment with the Authority;

4. All records concerning personal, financial or proprietary information submitted by applicants for Authority assistance;

5. All records concerning personal, financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;

6. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the Members, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and

7. Any other reports, corrersponden ce or other documents or data which the Authority in its discretion deems to be nonpublic pursuant to N.J.S.A. 47:1A-1 et seq.

19:30-1.6 Petitions for rules

Purusant to N.J.S.A. 52:14B-4(f), interested persons may petition the Authority for the promulgation, amendment or repeal of any rule by the Authority.

19:30-1.7 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 and signed by the petitioner, the following information:

1. The full name and address 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 matter, including any relevant organization, affiliation, or economic interest; and

4. The statutory authority under which the Authority may take the requested action.

(b) The petitioner shall send the petition to the following address:

Executive Director
New Jersey Economic Development Authority
200 S. Warren St., CN 990
Trenton, N.J. 08625

(c) Any materials submitted to the Authority not in substantial compliance with (a) and (b) above shall not be deemed to be a valid petition for rulemaking requiring further action pursuant to N.J.S.A. 52:14B-4(f).

19:30-1.8 Procedure of the Authority

(a) Upon receipt of a petition in compliance with N.J.A.C 19:30-1.6, the Authority shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register, to include:

1. The date the petition was received by the Authority;

2. The name and address of the petitioner;

3. The substance or nature of the rulemaking which is requested; and

4. The problem or purpose behind the request.

(b) Within 30 days of receiving the petition, the Authority shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which will include:

1. The name of the petitioner;

2. Certification by the Executive Director that the petition was considered pursuant to law;

3. The substance or nature of the Authority action; and

4. A brief statement of reasons for the Authority 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 the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

AGENCY NOTE: Subchapter 2 is recodified with amendments as subchapter 6. Subchapter 5, recodified with amendments as subchapter 2, follows:

SUBCHAPTER [5.]**2.** DISQUALIFICATION[OF APPLICANTS AND] DEBARMENT [OF CONTRACTORS] **CONFLICT OF INTEREST**

19:30-[5.1]**2.1** Definitions

[(a)] For purposes of this [subsection] **subchapter, the following words and terms shall have the following meanings:**

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Authority project contracting" means any arrangement giving rise to an obligation [to supply anything or] to perform any service in connection with the construction of a project financed **with, and paid for** in whole or in part with [the] Authority assistance, including the service of architects, engineers and professional planners.

"Debarment" means an exclusion from contracting with the Authority and exclusion from Authority project contracting on the basis of a lack of responsibility evidenced by an offense or [failure] **inadequacy of performance** for a reasonable period of time commensurate with the seriousness of the offense or in adequacy of performance.

"Disqualification" means an exclusion from receiving Authority financial assistance or from being a tenant in an Authority-financed project.

["Person" means any natural person, company/firm, association, corporation or other entity."]

19:30-[5.2]**2.2** Causes for disqualification/debarment of persons

(a) The Authority may decline to give financial assistance**, or approval as a tenant in an Authority-financed project,** to any person, or may debar a person from Authority project contracting [with] **for any one of** the following causes:

1.-2. (No change.)

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276 b, c);

4. Violation of any law[s] governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;

5. (No change.)

6. Violation of any law[s] governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any law[s] governing the conduct of occupations or professions [or]**of** regulated industries;

8. Violation of any law[s] which may bear upon a lack of responsibility or moral integrity;

9. (No change.)

10. Debarment by any department, [or] agency**, or instrumentality** of the [Executive Branch of] **State or Federal** government[.];

11. Violation of any of the following prohibitions on vendor activities representing a conflict of interest**, or failure to report a solicitation as set forth in (a)11ii below**:

i.-v. (No change.)

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19:30-[5.3]**2.3** Conditions affecting the **disqualification**/debarment of a person(s)

(a) The following conditions shall apply concerning **disqualification**/debarment:

[1. Debarment shall be made only upon the approval of the Authority.]

[2.]**1.** The existence of any of the causes set forth in N.J.A.C. 19:30-[5.2]**2.2**(a) shall not necessarily require that a person be **disqualified**/debarred. In each instance, the decision to **disqualify**/debar shall be made within the discretion of the Authority unless otherwise required by law, and shall be rendered in the best interests of the [State] **Authority**.

[3.]**2.** All mitigating factors shall be considered in determining the seriousness of the offense or [failure] **inadequacy of performance**, and in deciding whether **disqualification**/debarment is warranted.

[4.]**3.** The existence of a cause set forth in N.J.A.C. 19:30-[5.2]**2.2** (a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the **disqualification**/debarment shall be removed upon the request of the **disqualified**/debarred person unless other cause for **disqualification**/debarment exists.

[5.]**4.** The existence of a cause set forth in N.J.A.C. 19:30 [5.2] **2.2**(a)9 **and 11** shall be established by evidence which the Authority determines to be clear and convincing in nature.

[6.]**5.** Debarment for the cause set forth in N.J.A.C. 19:30 [5.2] **2.2**(a)10 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:30-[5.2]**2.2**(a)1 through 8 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

19:30-[5.4]**2.4** Procedures; period of **disqualification**/debarment

(a) When the Authority seeks to **disqualify**/debar a person or his affiliates, the person or persons shall be furnished with a written notice stating that:

1. **Disqualification**/debarment is being considered;
2. The reasons for the proposed **disqualification**/debarment; and
3. An opportunity **for a hearing** will be afforded to such person or persons [for a hearing] if the hearing is requested **in writing and the request is received by the Authority** within seven days from the date of personal delivery or the date of **receipt of the** mailing of such **disqualification/debarment** notice.

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 54:14B-1 et seq.). Where any **Federal or** State department [or], **agency, or instrumentality** has already imposed debarment upon a party, the Authority may also impose a similar debarment without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) [Debarment] **Disqualification/debarment** shall be a reasonable, definitely stated period of time which as a general rule shall not exceed five years. [Debarment] **Disqualification/debarment** for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of **disqualification**/debarment should not be imposed.

(d) Except as otherwise provided by law, a **disqualification**/debarment may be removed or the period thereof may be reduced in the discretion of the Authority, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause **or causes** for which the **disqualification**/debarment was imposed.

(e) A disqualification/debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(f) The offense or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

19:30-[5.5]**2.5** (No change in text.)

19:30-[5.6]**2.6** Authority discretion

Nothing contained in this subchapter is intended to limit the discretion of the Authority **or the members** in determining eligibility for financial assistance **or eligibility of tenants,** or [to refrain] **in refraining** from contracting with any person. The purpose of this subchapter is to provide notice of certain offenses or failures which may result in disqualification for assistance or debarment. Project applicants, **tenants,** and contractors must meet any other applicable standards and policies.

19:30-[5.7]**2.7** (No change in text.)

AGENCY NOTE: Subchapter 3 is recodified with amendments as subchapter 4. Subchapter 6, recodified with amendments as subchapter 3, follows:

SUBCHAPTER [6.]**3.** AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

19:30-[6.1]**3.1** Definitions

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

["Authority" means the New Jersey Economic Development Authority, in but not of the Department of Commerce and Economic Development.]

"Construction contract" [shall mean] **means** any contract, subcontract, or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with a project receiving Authority assistance **and paid for in whole or in part with funds received through Authority assistance.**

"Contractor" means any party who enters into a construction contract with the project owner/applicant, or any party to whom funds will be disbursed for payment of construction work, including any subcontractor of the contractor.

["Executive Director" means the Executive Director of the Authority.]

["Minority" means any person who is Black American, Spanish surnamed, a woman, or an American Indian.]

"Minority worker" means any worker as defined by the New Jersey Department of the Treasury rule set forth in N.J.A.C. 17:27-2.1.

"Project owner/applicant" means the entity **which** or individual [which] **who** has applied for, or is the recipient of, Authority financial assistance.

19:30-[6.2]**3.2** Application of affirmative action regulations

(a) Every contractor involved in [the construction of a project receiving Authority assistance] **a construction contract** is required to undertake a program designed to employ minority workers **and female workers** in accordance with the [minority] hiring goals **to be** established by the [New Jersey Department of Labor] **Affirmative Action Office, New Jersey Department of the Treasury (see N.J.A.C. 17:27-7.3).** [All construction done in connection with such a project is subject to the application of this subchapter.]

(b) The project owner/applicant shall be responsible for the performance of its contractors under this subchapter.

19:30-[6.3]**3.3** Compliance

(a) A contractor will be considered in compliance with this subchapter only if the contractor has made every effort to meet the minority hiring goals **and female hiring goals** for each trade or craft employed on the project. [Minority hiring goals are established by

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the New Jersey Department of Labor for each county in New Jersey.] The goals are expressed as percentages of the total [man-] hours worked on the project in each trade. The Authority will publish these goals as part of its Affirmative Action program. At a minimum, the contractor must take the following steps in this effort:

1. Notify the Authority and at least two minority referral organizations of the contractor's [manpower] **labor** needs, and request referrals of minority workers **and female workers**. The contractor shall leave standing requests for referrals of minority workers **and female workers** with the local unions, the State Employment Service, New Jersey Bureau of Apprenticeship [&] **and** Training, and at least two referral sources designated from time to time by the Authority until such time as the contractor has met its [minority] hiring goals;

2. Give notice of employment opportunities to [any] **all** minority workers **and female workers** who have been listed with the contractor as awaiting available vacancies;

3. Employ qualified minority workers **and female workers** who have been listed with the contractor as candidates for available vacancies; **and**

4. Keep complete and accurate records of all requests for worker referrals and [man-] hours worked.

19:30-[6.4]**3.4** Monitoring by the Authority

(a) The Authority will maintain an Office of Affirmative Action, the staff of which will review contractor performance for compliance with this subchapter. Each contractor will be required to submit to the Office of Affirmative Action, on a weekly basis, certified payroll records identifying the name, address, Social Security number, race, [number of hours worked in each craft or trade, hourly wage rate and gross earnings of minority and nonminority workers] **hourly wage rate, gross earnings of, and number of hours worked in each craft or trade by, minority, female, and other workers**. The office of Affirmative Action will make field inspections of project sites, and may perform audits of records relating to construction activities on the project.

(b) The project owner/applicant and the contractor [are required to] **shall** identify an officer or employee who will coordinate the Affirmative Action program and act as liaison with the Authority's Office of Affirmative Action.

(c) Each project owner/applicant and contractor shall resolve any questions regarding this subchapter with the Authority's Office of Affirmative Action prior to the execution of any construction contracts in connection with a project receiving Authority assistance.

(d) The Authority may prioritize its monitoring of construction contracts based on available staff, cost, nature, timing and extent of the work to be performed under the contract, the number of workers needed to perform the contract, and any other relevant factors.

19:30-[6.5]**3.5** Contract provisions

(a) Every construction contract [executed in connection with projects receiving Authority assistance] must require that:

1.-2. (No change.)

3. The contractor must make every effort to employ minority workers **and female workers** at a level consistent with the applicable [county employment goal prescribed by the New Jersey Department of Labor] **hiring goals**.

4. The contractor **must** submit employment reports to the Authority on a weekly basis.

5. The contractor **must** submit such certificates to the Authority as are required by the Application for Financial Assistance.

6. (No change.)

7. The contractor shall comply with any rules promulgated by the New Jersey Department of Treasury pursuant to P.L. 1975, c.127 as amended and supplemented from time to time.

19:30-[6.6]**3.6** Failure to comply

(a) In the event the Authority determines that a contractor is not in compliance with this subchapter, the Authority will notify the contractor, the project owner/applicant, the construction lender, and the agent or trustee, in writing, of the steps the contractor should take to be considered in compliance.

(b) If the contractor fails to comply or otherwise respond after receipt of the notice in (a) above, the Authority may take action against the contractor or project owner/applicant including:

1. Direct the project owner/applicant, agent or trustee to withhold 10 percent of any disbursements to that contractor of bond proceeds or construction funds obtained with Authority assistance;

2. Institute debarment proceedings to preclude a contractor from contracting on Authority projects **(see N.J.A.C. 19:30-2); and**

3. Refer reported violations to the Attorney General for enforcement action under **the** "Law[s] Against Discrimination."

19:30-[6.7]**3.7** Executive Director to enforce regulation

[(a)] The Executive Director may require applicants for Authority assistance and recipients of Authority assistance to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority as are necessary to carry out the purposes of this subchapter. The Executive Director shall take such steps as are necessary to ensure compliance with this subchapter.

[(b) The Executive Director may, for good cause shown, grant exemptions from the requirements of this subchapter. In granting an exemption, the Executive Director may consider such factors as the cost, nature, and extent of the work to be performed under a particular contract, the availability of qualified minority workers, the length of time in which the work is expected to be performed, the percentages of minority workers in the total work force in the immediate labor area, the number of employees needed to perform the work under the contract, and the efforts which a contractor has made to comply with the requirements of this subchapter prior to seeking such exemption.

1. Exemptions may also be granted to any contractor or project owner/applicant who demonstrates that the work to be performed under a particular contract will be performed under an existing federally approved or sanctioned affirmative action program in accordance with the affirmative action program of a municipality or state agency.]

SUBCHAPTER [3.]**4.** PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

19:30-[3.1]**4.1** Definitions

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

["Authority" means the New Jersey Economic Development Authority in but not of the Department of Commerce and Economic Development.]

"Construction [Contract] **contract**" [shall mean] **means** any contract, subcontract**, or agreement, whether written or oral,** for construction, reconstruction, demolition, alteration, [or] repair work, [or] maintenance work, **or construction related to installation of equipment,** undertaken in connection with a project **receiving Authority assistance** and paid for in whole or in part with funds received through [the assistance of the Authority] **Authority assistance.**

["Executive Director" means the Executive Director of the Economic Development Authority.]

"Prevailing [Wage Rate] **wage rate**" means the prevailing wage rate established by the Commissioner of the New Jersey Department of Labor from time to time in accordance with the provisions of N.J.S.A. 34:11-56.30 for the locality in which the Project is located.

19:30-[3.2]**4.2** Payments of prevailing wages in Projects receiving assistance

[Every recipient] **Recipients** of assistance from the Authority for [Projects] **projects,** as defined in N.J.S.A. 34:1B-3, as a condition for receipt of such assistance, shall in all construction contracts in the amount of $2,000 or more, require that wages paid to workers employed in the performance of the construction contracts be not less than the prevailing wage rate for such work.

19:30-[3.3]**4.3** Assurances required

(a) [Every recipient] **Recipients** of assistance [from the Authority] **for construction contracts** shall deliver a certificate to the Authority

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(or designated agent for the Authority), upon completion of the [Project] **project**, signed by an authorized representative of the recipient, representing and confirming that:

1. It has complied and has caused its contractors and subcontractors to comply with the requirements of N.J.A.C. 19:30-[3.2]**4.2** and attaching true copies of all such construction contracts with contractors and subcontractors; or

2. [That it]**It** has not entered into any construction contracts subject to the provisions of N.J.A.C. 19:30-[3.2]**4.2**.

19:30-[3.4.]**4.4** Contract provisions required

(a) Each recipient of assistance from the Authority shall in all construction contracts in the amount of $2,000 or more require that:

1. (No change.)

2. Contractors and subcontractors keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and [to] preserve such records for two years from the completion date of the [Project] **project**.

[19:30-3.5 Executive Director to enforce compliance

The Executive Director may require applicants for Authority assistance and recipients of Authority assistance to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority that are necessary to carry out the purposes of this subchapter. The Executive Director shall take such steps as are necessary to ensure compliance with this subchapter.

19:30-3.6 Effective date

The provisions of this subchapter shall apply to all projects for which financial assistance initially has been authorized by a resolution of the members of the Authority adopted on or after September 1, 1979. Projects authorized by such official action of the members of the Authority prior to September 1, 1979 shall be exempt from the provisions of this subchapter.]

19:30-4.5 Violation

A violation of the provisions of this subchapter shall be deemed a violation of N.J.S.A. 34:11-56.25 et seq.

SUBCHAPTER 5. TARGETING OF AUTHORITY ASSISTANCE

19:30-5.1 Priority consideration for projects in economically distressed localities

(a) Subject to Federal tax law compliance and certain other legal restraints, all projects located anywhere in the State of New Jersey may qualify for assistance from the Authority if they meet certain economic needs. Nevertheless, the Authority recognizes the special needs of certain municipalities and accordingly affords them priority consideration in offering its assistance. Such municipalities are eligible locations for a period of one year or longer.

(b) Qualification under this subchapter is not tantamount to project approval. Projects must also meet eligibility standards set forth in N.J.A.C. 19:31.

19:30-5.2 Municipalities eligible for priority consideration

(a) Municipalities meeting either of the following criteria are considered eligible locations:

1. Eligibility under P.L. 1987, c.439, which designates certain municipalities as "New Jersey Urban Aid Municipalities" based on a formula including, but not limited to:

i. Population exceeds 15,000;

ii. At least one publicly financed dwelling unit for low income families;

iii. The number of children receiving "Aid to Families of Dependent Children" exceeds 250;

iv. The municipality's equalized tax rate exceeds the State equalized tax rate; and

v. The municipality's equalized valuation of real property per capita is less than the State equalized valuation per capita.

2. Eligibility under the Authority's formula, which requires that three of the four following standards are met:

i. Unemployment rate above the State average;

ii. Per capita income lower than the State average;

iii. Ratables per capita less than the State average;

iv. A total number of unemployed persons of 1,000 or more.

(b) A municipality shall remain on the list of eligible locations for a period of one year after the municipality ceases to meet the criteria in (a)1 and 2 above.

19:30-5.3 Special eligibility list

The Executive Director shall, from time to time, establish a list of municipalities and activities by Standard Industrial Classification Number, eligible for Authority assistance, notwithstanding the requirements of N.J.A.C. 19:30-5.2 and 19:31, based on the Authority's objectives as indicated in N.J.A.C. 19:30-1.1.

AGENCY NOTE: Subchapter 5 is recodified with amendments as subchapter 2. Subchapter 2 recodified with amendments as subchapter 6 follows:

SUBCHAPTER [2.]**6.** FEES

19:30-[2.1]**6.1 Application fee**

A non-refundable fee of $500.00 shall accompany every application for Authority assistance, except for an application under the Urban Centers Small Loan Program for which the fee is $250.00**, and except for an application under the Trade Adjustment Assistance Center program for which there is no application fee**. The non-refundable application fee of $500.00 for a guarantee of a bond issued by the Authority is in addition to the bond application fee.

19:30-[2.2]**6.2** (No change in text.)

19:30-[2.3]**6.3** (No change in text.)

19:30-[2.4]**6.4** Post-closing fees

[(a) For purposes of this section, the following definitions apply:

1. "Refunding bond" means:

i. A bond, the proceeds of which are used to satisfy the outstanding obligation of a prior Authority-issued bond (and the term of which exceeds the term of the Authority-issued bond being satisfied); or

ii. A modification agreement which extends the maturity date of an outstanding Authority-issued bond or any modification to existing bond documents making any change to or waiver of the existing payment terms of the bond.

2. "Related entity" means a person or organization of persons previously identified to and approved by the Authority.

3. "Unrelated entity" means a person or organization of persons not previously identified to and approved by the Authority.]

[(b)](**a**) The fees in this section are due and payable upon closing of the bond amendment, approval of change of ownership, or signing of amendment, consent, waiver, etc.

1. For refunding bonds **issued to refinance or change the terms of outstanding Authority bonds**, an amount equal to one-half of the closing fee (see N.J.A.C. 19:30-[2.3]**6.3**(a)) shall be charged.

2. For **combination** refunding **and new money** bonds [with a supplemental issue], an amount equal to one-half of the closing fee (see N.J.A.C. 19:30-[2.3]**6.3**(a)) shall be charged on the refunding portion and the closing fee (see N.J.A.C. 19:30- [2.3]**6.3**(a)) shall be charged on the [supplemental] **new money** portion.

3. For [processing an approved] change of ownership [application for the transfer] of 50 percent or more of the project property or ownership interest in the borrower to an unrelated entity, **or to a related entity not previously approved by the Authority for the project,** a $1,500[.00] fee shall be charged.

4. For [processing an approved] change of ownership [application for:

(i) The transfer] of the project property or ownership interest in the borrower to a **previously Authority-approved** related entity, or

[ii. The] **for the** transfer of less than 50 percent of the project property or ownership interest in the borrower to an unrelated entity (excluding a limited partner, or a shareholder holding or about to hold an ownership interest in the borrower of 10 percent or less), a $750.00 fee shall be charged.

5. For [amending or modifying existing bond documents for which a new bond is not issued] **changing project location or description, or**

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changing loan document provisions on bond-financed projects, a $750.00 fee shall be charged.

6. For executing [any] **a** document **or granting a consent or waiver** related to [a closed] **an** Authority-assisted project, a fee of $100.00 shall be charged.

7. For executing **(up to ten bonds) or authorizing issuance of** substitute bonds [in connection with a bond transfer], a fee of $25.00 per project, per occurrence shall be charged.

(b) When a transaction does not by its terms fall into one of the above categories, the Authority in its discretion shall determine the appropriate category based on the substance of the transaction. The categorization of the transaction on U.S. Department of the Treasury, Internal Revenue Service Form 8038 will be a significant factor in the determination of the fee.

19:30-[2.5]**6.5** Sign fee

Applicants requesting financial assistance from the Authority, where part of the project consists of construction or renovation, will be sent a sign, upon granting of [preliminary] approval by the members [of the Authority], which is to be erected at the project site indicating that the financing was made available through the Authority. The applicant will be charged [$50.00] **$75.00** for the sign which is payable upon receipt of the sign.

[19:30-2.6 Determination of fee

When a transaction does not be its terms fall into one of the above categories, the Executive Director shall determine the appropriate category based on the substance of the transaction. The categorization of the transaction on U.S. Department of the Treasury, Internal Revenue Service Form 8083 will be a significant factor in the determination of the fee.]

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Bond Financing Program
Loan Guarantee Program
Direct Loan Program
Urban Centers Small Loan Program
Export Revolving Line of Credit
New Jersey Trade Adjustment Assistance Center
Proposed New Rules: N.J.A.C. 19:31

Authorized By: New Jersey Economic Development Authority, James J. Hughes, Jr., Executive Director.

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(k) and (l).

Proposal Number: PRN 1990-276.

Submit comments by June 20, 1990 to:
Gary Nadler, Mgr. of Administration
New Jersey Economic Development Authority
CN 990
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules at N.J.A.C. 19:31 describe the assistance programs which the New Jersey Economic Development Authority ("Authority") has available to support a wide range of development activities. The Authority was created to retain and expand job opportunities, enlarge the tax base of the State and its local governments, and encourage economic growth and diversity. To carry out its legislative mandate, the Authority has been empowered to administer several assistance programs which are described in separate subchapters in the proposed new chapter. Each subchapter identifies the standards of eligibility, the process of making application, and the review and approval process conducted by the Authority for the particular program which is the topic of the subchapter.

N.J.A.C. 19:31-1 describes the Authority's program of bond financing. The Authority issues bonds which are typically sold in the public market or purchased by lending institutions or privately-owned entities, and the proceeds are then loaned to businesses for specific projects. Tax-exempt bonds may be issued to enable manufacturers to meet capital financing needs and also to benefit certain nonprofit activities and other specified projects. Taxable bond financing may be arranged to help companies obtain long-term loans for fixed asset and working capital needs at attractive interest rates.

N.J.A.C. 19:31-2 describes the Authority's program of loan guarantees, through which the Authority guarantees repayment of part of the principal of a conventional loan or of an Authority bond financing. Loan guarantees are available to assist businesses which may need additional security to obtain private financing. Guarantees may be provided for up to 10 years, not to exceed 90 percent of the loan amount, to a maximum guarantee of $1.5 million for fixed asset financing and $1 million for working capital loans.

N.J.A.C. 19:31-3 describes the Authority's program of direct loans, through which the Authority lends funds directly to businesses unable to obtain sufficient credit even with an Authority guarantee. Loans are available in a maximum amount of $500,000 for fixed assets and $250,000 for working capital, for a maximum term of 10 years.

N.J.A.C. 19:31-4 describes the Authority's Urban Centers Small Loan program, through which the Authority lends funds directly to owners and operators of retail and commercial businesses in downtown areas who are unable to obtain funding from conventional sources. Loans range from $5,000 to $50,000, and the funds must primarily be used to renovate, remodel or expand the facility. The maximum term of these loans is 10 years. This program is available only in Urban Aid municipalities, as defined in the Authority's targeting rules (proposed as N.J.A.C. 19:30-5 elsewhere in this issue of the New Jersey Register).

N.J.A.C. 19:31-5 describes the Authority's program of export financing, through which the Authority extends revolving lines of credit for the production of goods and services for export to businesses which are unable to obtain funding from conventional sources. Lines of credit are available up to an amount of $250,000, and the funds must be used to finance the purchase of materials or for other production costs for specific orders.

N.J.A.C. 19:31-6 describes the Authority's Trade Adjustment Assistance Center program, which is a program of consulting assistance to manufacturing firms which have experienced difficulties due to foreign competition.

Social Impact

The Authority's assistance programs are intended to encourage and make possible economic development which might not occur without their availability. Each program has a specific focus as to the type of economic activities which can be supported, and the nature of the assistance which is available. With this array of capabilities, the Authority can carry out its mandate to strengthen New Jersey State and local economies and stimulate economic growth.

Economic Impact

The Authority's assistance programs have resulted in a total investment in the economy of over $9.7 billion, and in total job creation of over 125,000 permanent jobs and 122,900 construction jobs. This economic expansion would not have occurred, or certainly not at a level approaching such numbers, without the Authority's programs.

Regulatory Flexibility Analysis

Applicants for assistance from the Authority's programs could include small businesses as defined under N.J.S.A. 52:14B-16 et seq., and such applicants will incur costs in making application to the Authority.

The processing fees described in N.J.A.C. 19:30-6, proposed for recodification from N.J.A.C. 19:30-2 elsewhere in this issue of the New Jersey Register, will be assessed. These fees are necessary for the Authority to obtain the revenue needed to offset its costs of program administration, and they are below the fees which would be incurred with conventional financing.

Applicants may also incur the cost of hiring a certified public accountant to prepare the necessary financial statements to accompany the application. The Authority's requirement for financial statements is not onerous, and is customary for lending institutions. It is an essential component of the financial analysis which must be carried out thoroughly in order for the Authority to properly administer its assistance programs.

The Authority considers these requirements to be the minimum necessary to insure secure and efficient assistance programs, and no exemption is therefore provided for small businesses.

Full text of the proposed new rules follows:

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CHAPTER 31
AUTHORITY ASSISTANCE PROGRAMS

SUBCHAPTER 1. BOND FINANCING PROGRAM

19:31-1.1 Program description

(a) The Authority is empowered to issue tax-exempt and taxable bonds, the proceeds of which can be used to provide low-interest loans to businesses and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables.

(b) Most bond financings are not guaranteed by the Authority or the State, and are payable solely from revenues generated by the project being financed.

(c) The general credit of neither the Authority nor the State is pledged to secure the bonds.

19:31-1.2 Bond purchaser

(a) The applicant shall secure a written commitment from a bond purchaser.

(b) A bond purchaser shall be:

1. A commercial bank or other institutional lender;
2. An underwriter or placement agent;
3. A privately owned entity; or
4. An individual.

(c) A bond purchaser cannot be a substantial user or owner of the project (as defined by the Internal Revenue Code) or be related to the project owner.

(d) A bond purchaser other than a commercial bank or institutional lender must submit an Application to Purchase Bonds, which will be reviewed by the Authority to determine acceptability to purchase a bond. This application includes requests for identification of, or information about:

1. The officers, directors, partners, owners and stockholders of the applicant;
2. Litigation involving the applicant;
3. Applicant's counsel, principal banks of account, and accountant; and
4. Financial statements of applicant.

(e) The bond purchaser establishes the amount, term, interest rate, collateral, etc., for the bond in negotiation with the applicant.

19:31-1.3 Bond financing

(a) Typically, the bonds are secured by a loan agreement and a mortgage on project assets.

(b) The funds raised by the bond issue are loaned by the Authority to pay for eligible project costs. The borrower signs an agreement with the Authority pledging to make payments sufficient to cover principal and interest on the bond. This agreement is then assigned to the bond purchaser.

(c) The borrower makes payments directly to the bond purchaser or trustee.

19:31-1.4 Eligibility standards

(a) Generally, to be eligible for bond financing:

1. A project must serve a public purpose; that is, maintain or expand employment in New Jersey, assist in the economic development or redevelopment of a municipality, maintain or increase the tax base of the municipality, and maintain or diversify business and industry in the State; and

2. Applicants must represent to the Authority that they would not proceed with their project in the present time, place, or scope without the Authority's assistance.

(b) The Authority generally will not approve financial assistance to a project involving relocation within New Jersey if the relocation will result in a job loss and/or hardship for the existing employees or if the relocation endangers the maintenance of tax ratables in a particular community.

(c) There is no minimum size for borrowings under the program, but loan requests of less than $500,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Code (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project. The interest income earned is exempt from most Federal and New Jersey State taxes.

(e) Taxable bonds issued through the Authority are not subject to the IRC. Loans may be made to borrowers for various projects and purposes including, but not limited to:

1. Office buildings;
2. Healthcare financings;
3. Warehouses and distribution facilities;
4. Manufacturing projects;
5. Commercial and retail projects;
6. Debt refinancing; and
7. Working capital needs.

19:31-1.5 Application procedures

(a) A prospective applicant should consult with the Authority to determine if the project is eligible.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) The Application includes requests for information about:

1. The applicant's business, including financial statements and projections;
2. The project to be undertaken;
3. The officers, directors, partners, owners and stockholders of the applicant;
4. Litigation involving the applicant;
5. Other users of the project, if applicable;
6. Municipal approvals, if applicable;
7. Contractors, subcontractors, architects, engineers, and planners who will work on the project, if known;
8. Equipment to be purchased as part of the project; and
9. The relocation of any part of the applicant's or user's business, if applicable.

(d) Applications are logged in and assigned a number and project officer for review and processing.

(e) Applications are assigned to a bond counsel firm from the Authority's list of designated bond counsel to review the project for eligibility under Federal and State law (see N.J.A.C. 19:31-1.6). At the time of application, applicants may request assignment of one of the designated bond counsel firms, which request may be approved by the Authority at its discretion.

(f) Applications are processed through several levels of staff review, and may then be recommended for consideration and official action of the Members of the Authority (Members) at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-1.6 Bond counsel review and fees

(a) The Authority is represented in bond transactions by bond counsel, a private law firm with particular experience and expertise in this specialized area of law. The bond counsel firm:

1. Reviews Applications to determine eligibility under Federal and State law;
2. Assists the Authority in drafting the necessary resolutions to be adopted concerning projects;
3. Publishes notice of public hearing;
4. Drafts financing documents to be used in the transaction;
5. Prepares certain Federal forms for filing with the IRS relating to bond financing;
6. Delivers an opinion at the settlement of the transaction indicating, among other things:

i. The project qualifies for Authority assistance;

ii. The Authority has taken all necessary steps to accomplish the transaction; and

iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

(b) Bond counsel fees are paid by the applicant usually at the closing of the transaction, and may, subject to certain limitations, be included as a project cost to be financed out of the Authority bond issue.

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(c) The borrower also is responsible for paying other professional fees associated with financing the project, including, but not limited to:

1. Printing fees;
2. Real estate commissions;
3. Consulting fees; and
4. Bond purchaser counsel fees.

(d) Applicants may be charged a fee by bond counsel even though the project does not close with Authority bonds.

19:31-1.7 Approval process

(a) Only the Members acting at a duly constituted public meeting can authorize or approve assistance to a project. These public meetings will satisfy the requirements for public hearings in accordance with the IRC. The Authority staff is not empowered to authorize or approve such assistance.

(b) The following approvals are required:

1. A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.

i. Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.

ii. If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.

iii. A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;

2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:

i. Receipt of a written commitment acceptable to the Authority from a bond purchaser;

ii. Substantial agreement among the interested parties as to the form and substance of the financing documents; and

iii. Availability under the State volume cap for bond financing in accordance with the IRC; and

3. Approval of the Governor.

(c) Bond counsel may prepare a combination resolution granting both preliminary and final bond approval at a single meeting, if the requirements set forth in (b)1 and 2 above have been met.

(d) The bond closing must occur within a specified period of time, usually not exceeding 90 days from the date of final bond approval.

19:31-1.8 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

19:31-1.9 Post-closing review

The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond.

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

19:31-2.1 Program description

(a) The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

(b) There are two types of guarantees available: Fixed Asset Guarantees and Working Capital Guarantees.

1. Under the Fixed Asset Guarantee program:

i. The Authority may guarantee the lesser of $1.5 million or 90 percent of the principal amount of the financing;

ii. The financing can either be a conventional loan, or a taxable or tax-exempt bond financing (see N.J.A.C. 19:31-1);

iii. Proceeds of guaranteed conventional loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

iv. Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

2. Under the Working Capital Guarantee program:

i. The Authority may guarantee the lesser of $1 million or 90 percent of the principal amount of the financing;

ii. The financing can be either a conventional loan or a taxable bond, as tax-exempt bonds cannot be used to provide working capital; and

iii. The loan proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(c) Both the Fixed Asset Guarantee and the Working Capital Guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term.

19:31-2.2 Eligibility standards

(a) Generally, preference for guarantees is given to projects which:

1. Are job intensive;
2. Will create or maintain tax ratables;
3. Are located in an economically distressed area; and/or
4. Represent an important economic sector of the State.

(b) For fixed asset financing guarantees, the applicant will be required to invest at least 10 percent equity into the project.

19:31-2.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;
8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and
9. A formal commitment letter from the lender providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-2.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's pro-

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jections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-2.5 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-2.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) The Authority is empowered to make direct loans to applicants which are unable to obtain funding from conventional sources even with the help of an Authority guarantee.

(b) Direct loans are available in a maximum amount of $500,000 for fixed asset financing and $250,000 for working capital.

(c) Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings.

(d) Proceeds of working capital loans can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(e) Interest on fixed asset and working capital loans is equal to the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing.

(f) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay.

19:31-3.2 Eligibility standards

(a) Generally, preference for direct loans is given to projects which:

1. Are job intensive;

2. Will create or maintain tax ratables;

3. Are located in an economically-distressed area; and/or

4. Represent an important economic sector of the State.

(b) For fixed asset loans, the applicant will be required to invest at least 10 percent equity into the project.

(c) The applicant must demonstrate to the Authority that it is unable to obtain conventional, affordable financing on its own or with the availability of an Authority guarantee.

19:31-3.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-3.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, like-

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lihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-3.5 Approval process

(a) Only the Members can approve a direct loan.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-3.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 4. URBAN CENTERS SMALL LOAN PROGRAM

19:31-4.1 Program description

(a) The Authority is empowered to make direct loans to owners and operators of retail and commercial businesses located in downtown urban areas who are unable to obtain funding from conventional sources to upgrade their properties and to remain in such areas.

(b) Applicants may be eligible for loans in amounts ranging from $5,000 to $50,000.

(c) Proceeds of loans are to be used primarily to renovate, remodel or expand the interior and/or exterior of the facility, but a limited amount of the funds can be used for working capital.

(d) Interest on these loans is equal to the lower of one percent below the Federal Discount Rate at the time of approval or at time of loan closing, with a minimum of four percent and a maximum of 10 percent.

(e) The term of the loan is a maximum of 10 years, although the repayment schedule is usually for a shorter term based on the applicant's ability to repay.

19:31-4.2 Eligibility standards

To be eligible, an applicant must be located in the downtown area of a targeted municipality (see N.J.A.C. 19:30-5).

19:31-4.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

7. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts payable; and/or

3. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-4.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

5. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

6. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

7. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing the above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-4.5 Approval process

(a) Only the Members can approve an Urban Centers loan.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

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(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant, and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-4.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 5. EXPORT REVOLVING LINE OF CREDIT

19:31-5.1 Program description

(a) The Authority is empowered to extend revolving lines of credit for production of goods and services for export to applicants which are unable to obtain funding from conventional sources.

(b) Lines of credit are available up to an amount of $250,000.

(c) Funds provided under this program must be used to finance the purchase of materials and other production costs for specific, firm contracts and can be used for pre- and post-expert working capital.

(d) Interest on advances under the line of credit is set at the Federal Discount Rate at the time of each borrowing.

(e) The amount of each borrowing, including principal and interest, is payable in full upon collection of the accounts receivable created as a result of the specific contract.

(f) Generally, any borrowing under the line of credit is to be repaid within 180 days of the advance.

19:31-5.2 Eligibility standards

(a) Eligibility criteria for the export revolving line of credit are as follows:

1. The applicant is in or entering the export market for goods or services, at least 50 percent of the cost of which must be added in New Jersey; and

2. The applicant must have a firm contract to sell;

i. The contract payment must be secured by an irrevocable, assignable, and United States bank-confirmed letter of credit; or

ii. The accounts receivable must be accepted and insured by the Foreign Credit Insurance Association.

19:31-5.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-5.4 Evaluation process

(a) Once all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of the applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing the above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval or disapproval.

19:31-5.5 Approval process

(a) Only the Members can approve an Export Revolving Line of Credit.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

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3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant, and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-5.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 6. NEW JERSEY TRADE ADJUSTMENT ASSISTANCE CENTER

19:31-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Certification" means the process of determination by the USDOC that a company is eligible to apply for assistance under this program.

"Certified Firm" means a company which has been determined to be eligible to apply for assistance under this program.

"Petitioner" means a manufacturing or producing company seeking assistance under this program.

"TAAC" means the New Jersey Trade Adjustment Assistance Center.

"USDOC" means the United States Department of Commerce.

19:31-6.2 Program description

(a) The Authority operates a TAAC for the State of New Jersey under a cooperative agreement with the International Trade Administration of the USDOC.

(b) The TAAC works with manufacturing/producing firms (generally, Standard Industrial Classification Numbers 2000 to 3999) whose sales or production and employment have declined due to the impact in the marketplace of like or directly competitive imported products.

(c) After a petitioner achieves certification, the TAAC may assist in the development of a business plan in order to identify the specific types of assistance needed.

(d) If the plan is approved by USDOC, the TAAC is empowered to provide project management and partial funding from USDOC to implement the assistance.

19:31-6.3 Eligibility standards

(a) To be eligible, a manufacturing/producing company must have a decline in sales or production in the aggregate or for a product representing 25 percent of sales, and a decline in employment of at least five percent.

(b) The decline must be due to the competition of imported products, which products must represent an increasing share of the U.S. market.

(c) Determinations on eligibility are made by the USDOC in response to a petition package submitted, with the assistance of the TAAC.

19:31-6.4 Application and approval process

(a) The petitioner should consult with the TAAC to determine its potential eligibility.

(b) In response to a request for assistance from a potentially-eligible petitioner, TAAC will work with the petitioner in preparing the petition for certification.

(c) If certification is granted, the certified firm may be assisted by the TAAC in developing the business plan and accompanying information to be submitted to the USDOC.

(d) If the plan is accepted by the USDOC, the TAAC may assist in obtaining implementation assistance, using business consultants, and in obtaining funding for the assistance.

(e) All approvals are made by the USDOC.

19:31-6.5 Cost of implementation assistance

(a) The certified firm is required to share in the costs.

(b) The determinations of the actual cost sharing will be made by USDOC, which may not provide more than 75 percent of the costs up to a dollar limit (set by USDOC, and revised from time to time).

(a)

CASINO CONTROL COMMISSION

Applications

Form of Application: Personal History Disclosure Forms 1A, 2A and 4A

Proposed Amendment: N.J.A.C. 19:41-7.14

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-70(a).

Proposal Number: PRN 1990-260.

Submit comments by June 20, 1990, to:

Steven M. Ingis
Assistant Counsel, Casino Control Commission
3131 Princeton Pike Building No. 5
CN 208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 19:41-7.14 requires all applicants, licensees, registrants or persons required to be qualified under the Casino Control Act to complete and submit all appropriate application, registration, Business Enterprise Disclosure and Personal History Disclosure Forms as directed by the Casino Control Commission or Division of Gaming Enforcement. The Forms referred to in this rule have been adopted but are not reproduced therein.

The Casino Control Commission, pursuant to its authority under N.J.S.A. 5:12-63(c) and 5:12-70(a), proposes to repeal Personal History Disclosure Form 1, adopted pursuant to N.J.A.C. 19:41-7.14, and adopt in its place Personal History Disclosure Form 1A. The Form 1A is a significantly streamlined version of the Form 1, eliminating approximately 50 questions and substantially reducing the level of inquiries for such matters as family history, residence and employment. The Commission further proposes to amend Personal History Disclosure Forms 2A and 4A to be consistent in format with each other and with the proposed Personal History Disclosure Form 1A. The principal change in Personal History Disclosure Forms 2A and 4A is that the statement of truth, included in all three of the above forms, will be in both English and Spanish. The proposed Form 1A is 65 pages long, the 2A is 27 pages long, and the 4A is 17 pages long, and the Commission perceives no need to publish them in full. Information on these proposed forms may be obtained from the Casino Control Commission, Princeton Pike Office Park, Building No. 5, CN 209, Trenton, New Jersey 08625. Copies of these proposed forms are also on file with the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 301, Trenton, New Jersey 08625.

Social Impact

The proposed Form 1A is considerably shorter, simpler, more concise and less demanding than the present Form 1. Completion of Form 1A will require less time and effort than has been the case with Form 1. The proposed Form 1A has been designed to make the minimum demands upon applicants while at the same time supplying the Casino Control Commission and the Division of Gaming Enforcement with sufficient initial information to commence the mandatory investigation of all applicants, which is necessary for an informed decision on their fitness for licensure or qualification. The inclusion of a statement of truth in both English and Spanish in Forms 1A, 2A and 4A will have a beneficial effect for those Spanish-speaking applicants.

Economic Impact

The proposed amendment is not anticipated to have any significant impact on the regulatory costs of the Commission or the Division of Gaming Enforcement. There will be minor administrative costs in printing new forms. It is anticipated that applicants may experience a positive economic benefit because it would take less time and effort to complete Personal History Disclosure Form 1A.

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Regulatory Flexibility Statement

The proposed amendment may affect some small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16; however, it does not impose any additional reporting, record keeping and other compliance requirements on these businesses. The proposed amendment will significantly reduce the time and effort required to submit a Personal History Disclosure Form 1A, making it easier for gaming related casino service industries (N.J.S.A. 5:12-92(a)) and their qualifiers to submit license applications. Therefore, small businesses would benefit by the reduced time and paperwork in completing a license application form.

OFFICE OF ADMINISTRATIVE LAW NOTE: The current text of N.J.A.C. 19:41-7.14 is not proposed for revision. The proposed Personal History Disclosure Forms 1A, 2A and 4A were submitted as part of this notice of proposal but are not reproduced herein. Copies of these forms can be obtained from:

Casino Control Commission
Princeton Pike Office Park, Building No. 5
CN 208
Trenton, New Jersey 08625; or
Office of Administrative Law
Quakerbridge Plaza, Building 9, CN 301
Trenton, New Jersey 08625

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF DAIRY INDUSTRY

Milk Processors, Dealers and Subdealers

Readoption with Amendments: N.J.A.C. 2:52

Proposed: March 19, 1990 at 22 N.J.R. 888(a).

Adopted: April 30, 1990 by Woodson W. Moffett, Jr., Director, Division of Dairy Industry.

Filed: May 1, 1990 as R.1990 d.271, **with substantive and technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:12A-1 et seq., specifically, 4:12A-7 and 20.

Effective Date: May 1, 1990, Readoption; May 21, 1990, Amendments.

Expiration Date: May 1, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: Comment was received from one milk dealer, the Board Chairman of the New Jersey Milk Industry Association. He stated that because, in a recent court case, the Division was unable to fully protect the confidential information supplied on the report required by N.J.A.C. 2:52-1.6(a)2, the dealers no longer want to divulge this information.

RESPONSE: The Division agrees. Although the report has been helpful, it is not essential to the effective administration and enforcement of the Milk Control Act. Therefore, all of the referenced paragraph is being deleted upon adoption and the paragraphs 3 through 6 are being recodified as 2 through 5.

Note: It is the intention of the Department of Agriculture to repeal, as part of an emergency rulemaking, the rules at N.J.A.C. 2:52-6.1 and 6.2, herein amended. Please see the adopted Emergency Repeals and Concurrent Proposed Repeals to N.J.A.C. 2:52-6 and 2:53-3 and 4 in this issue of the New Jersey Register. Until such time as the concurrent proposed repeals are permanently adopted, it is appropriate to bring forth these rules as amended.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:52.

Full text of the adopted amendments follows.

2:52-1.4 Books and records required

(a) The books and records shall include but not be limited to the following:

1.-7. (No change.)

8. Copies of any and all agreements pertaining to the licensed business, including, but not limited to, sales or leases of property and/or equipment, rentals of property and/or equipment, loans received or granted, routes leased, sold or purchased, and contracts relating to the sale or purchase of milk or milk products.

2:52-1.6 Reports required

(a) All processors, dealers and subdealers shall file reports on forms supplied by the Division of Dairy Industry as follows:

1. On or before the 20th day of each month for the preceding month a report of all milk products purchased and sold during the month, which report shall include information as to the source of milk supplies and the destination and quantities of products sold.

i.-iii. (No change.)

*[2. On or before the 20th of the month for the preceding month a report of the following:

i. Gifts of value aggregating more than $25.00 during any calendar month, including milk and milk products, to any customer served by the licensee or a dealer of the licensee. The report shall show any promises of gifts, gifts that are given, and the weekly sales in dollars when gifts are given;

ii. Loans of money, including any guarantee or procurement of another to guarantee or any underwriting of any financial obligation of any customer served by the licensee or solicited by the licensee or a dealer of the licensee. The report will also show the terms of the loan;

iii. Names of all wholesale customers, including dealers and subdealers, acquired and/or lost during the previous month. Trade names, addresses, current milk license numbers (if applicable) and, for lost accounts, the reason given for making the change shall also be included.

iv. The lowest net prices charged (after all rebates, discounts, and allowances) during the month for milk and milk products delivered to stores in New Jersey and the lowest net prices charged to stores, subdealers or dealers for milk sold at the plant dock;

v. Negative reports shall be required;

vi. The following licensees shall be exempt from the reporting requirements of this paragraph:

(1) Subdealers selling only to home-delivery customers;

(2) Dealers and subdealers having monthly sales of less than 250,000 pounds of fluid milk and fluid milk products;

(3) Dealers and subdealers selling only products other than whole white, low-fat or skim milk and not affiliated with or a subsidiary of a company selling such products; and

(4) Dealers selling only through their own stores.]*

Recodify 3. through 6. as **2.** through **5.** (No change in text.)

2:52-2.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-2.1(a)1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period except that if the Director determines that there is probable cause that the offer to serve a new customer is below cost and in violation of the Milk Control Act, action on the notice may be delayed pending investigation and/or cost analysis.

2:52-3.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-2.1(a)1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period except that if the Director determines that there is probable cause that the offer to serve a new customer is below cost and in violation of the Milk Control Act, action on the notice may be delayed pending investigation and/or cost analysis.

2:52-6.1 Sales below cost prohibited

It shall be unlawful and a violation of these regulations for any dealer licensee to directly or indirectly be a party to, or assist in, any transaction to sell or offer to sell milk and milk products within the State of New Jersey, or for sale in the State of New Jersey at less than the cost thereof as hereinafter defined; but nothing in this regulation shall prevent a dealer from meeting the price or offer of a competitor for a product or products of like quality and nature in similar quantities; provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:52-6.2 Cost defined

The term "cost" as used herein shall include, but not be limited to, the basic cost of raw or reconstituted milk or derivatives thereof as determined in accordance with the joint State-Federal orders administered by the Division of Dairy Industry and the United States Department of Agriculture in the State of New Jersey; the cost of any added ingredients; and all other costs associated with the business of the dealer for example, but not limited to, the cost of material, labor, salaries of executives and officers, the cost of receiving, cooling, processing, manufacturing, storing and distributing the products sold; rent, depreciation, selling expense, maintenance charges, delivery expense, license fees, taxes, insurance, advertising, advertising allowances, gifts, free service and all other costs as may be incurred, allocated proportionately to each unit of product sold in accordance

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with generally accepted accounting principles. The proportioned allocation may be adjusted to reflect efficiencies in packaging different sized containers.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Subcodes

Adopted Amendments: N.J.A.C. 5:23-3.14, 3.15, 3.16, 3.17, 3.20 and 3.21

Proposed: March 19, 1990 at 22 N.J.R. 909(b).
Adopted: April 24, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: April 26, 1990 as R.1990 d.253, **without change.**
Authority: N.J.S.A. 52:27D-123 and 124.
Effective Date: May 21, 1990.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-3.14 Building subcode
(a) Rules concerning the building subcode adopted are as follows:
1. Pursuant to authority of P.L. 1975, c. 217, the Commissioner hereby adopts the model code of the Building Officials and Code Administrators International Inc., known as the "BOCA National Building Code/1987," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode of New Jersey subject to the modification stated in (b) below.
i. Copies of this code may be obtained from the sponsor at: BOCA, International, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.
ii. (No change.)
2. (No change.)
3. The 1989 Accumulative Supplement to the BOCA National Building Code/1987 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.
(b) (No change.)
(c) The following articles or sections of the 1989 Accumulative Supplement to the building subcode are modified as follows:
1. The following amendment is made to Article 1 of the building subcode, entitled "Administration and Enforcement":
i. Sections 101.6, 108.2, 108.2.1, 111.4, 115.2, 115.2.3.2, 115.5, 122.1, 122.4 are deleted.
2. The following amendments are made to Article 2 of the building subcode, entitled "Definitions":
i. (No change.)
ii. The definition, "Posted use and occupancy" is amended to delete the words "Section 122.0" and substitute in lieu thereof "N.J.A.C. 5:23-3.5".
3. (No change.)
4. The following amendments are made to Article 8 of the building subcode, entitled "Means of Egress":
i. Sections 812.4, 812.4.1.2 and 812.4.4, are amended to delete the phrase "15-pounds (73N)" and substitute in lieu thereof "8-pounds (39N)".
ii. Section 815.4 is amended to delete the second sentence and substitute in lieu thereof "Barrier Free accessibility shall be in accordance with the Barrier-Free Subcode".
iii. Section 815.5 is amended to delete the third sentence and substitute in lieu thereof "Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode".
5. The following amendment is made to Article 11 of the building subcode, entitled "Structural Loads":
i. Section 1113.4.1 is amended to add the phrase "unless established otherwise by the Department" at the end of the second sentence.
Recodify existing 4. as 6. (No change in text.)
7. The following amendment is made to Article 32 of the building subcode, entitled "Repair, Alteration, Addition to, and Change of Use of Existing Buildings":
i. Article 32 is deleted in its entirety.
Recodify existing 5. as 8. (No change in text.)

5:23-3.15 Plumbing subcode
(a) Rules concerning subcode adopted are as follows:
1.-2. (No change.)
3. The 1988 and 1989 supplements to the National Standard Plumbing Code/1987 are adopted by reference with modifications as cited in (c) and (d) below as part of the plumbing subcode for New Jersey.
(b)-(c) (No change.)
(d) The 1989 supplement to the 1987 National Standard Plumbing Code is adopted with the following amendments:
1. (No change.)
2. Chapter 7 of the Plumbing Subcode, entitled "Plumbing Fixtures," is amended as follows:
i. (No change.)
ii. Table 7.24.1 Note #1 is amended to delete the words, "for handicapped requirements see local, state and national ordinances" and substitute, in lieu thereof, the words "for handicapped requirements see the State Barrier Free Subcode, N.J.A.C. 5:23-7."
3. Appendix D of the Plumbing Subcode, entitled "Water conservation," is amended as follows:
i. (No change.)
ii. Item D.7 is amended to delete the last sentence beginning 'Self-closing faucet" and add a note after the first sentence to read "Note: See the State Barrier Free Subcode, N.J.A.C. 5:23-7."

5:23-3.16 Electrical subcode
(a) Rules concerning subcode adopted are as follows:
1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the Model Code of the National Fire Protection Association known as the "National Electrical Code/1990," including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.
i. (No change.)
2. The National Electrical Code/1990, including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."
(b) The following chapters or articles of the electrical subcode are amended as follows:
1.-3. (No change.)
4. Chapter 5 of the electrical subcode, entitled "Special Occupancies," is amended as follows:
i. In Article 550, entitled "Mobile Homes and Mobile Home Parks," delete from the title the words "Mobile Homes and".
(1) (No change.)
(2) Part B, entitled "Mobile Homes," comprising sections 550-5 through 550-15, is deleted in its entirety with the exception of section 550-5(a), which shall be retained.
ii. In Article 551, entitled "Recreational Vehicles and Recreational Vehicle Parks," delete from the title the words "Recreational Vehicles and."
(1) (No change.)
(2) Parts B, C, D, E and F, comprising sections 551-10 through 551-60, are deleted in their entirety.

5:23-3.17 Fire protection subcode
(a) Rules concerning subcode adopted are as follows:
1. Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the following portions of the building, electrical and mechnical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.
i. BOCA National Building Code 1987 with 1989 Accumulative Supplement of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):

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(1)-(6) (No change.)

(7) Section 2301.0 and 2302.0 of Article 23—Roofs and Roof Coverings;

(8)-(11) (No change.)

ii. National Electrical Code/1990 of the National Fire Protection Association (N.J.A.C. 5:23-3.16).

(1)-(4) (No change.)

iii. BOCA National Mechnical Code/1987 with 1989 Accumulative Supplement of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.20).

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

2. (No change.)

(b) (No change.)

5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1.-2. (No change.)

3. The 1989 Accumulative Supplement to the BOCA National Mechanical Code/1987 is adopted by reference with modifications cited in (c) below as part of the mechanical subcode for New Jersey.

(b) (No change.)

(c) The following sections of the 1989 Accumulative Supplement to the mechanical subcode are modified as follows:

1. The following amendment is made to Article 1 of the mechanical subcode, entitled "Administration and Enforcement":

i. Section M-101.5 is deleted in its entirety.

Recodify existing 1. as 2. (No change in text.)

3. The following amendment is made to article 9 of the mechanical subcode, entitled "Flammable and Combustible Liquid Storage Systems":

i. Section M-900.1 is amended to add the sentence "For those tanks that fall under the scope of the Department of Environmental Protection's Underground Storage Tank Systems regulations, N.J.A.C. 7:14B, the requirements of this article that conflict with DEP regulations shall be inapplicable."

Recodify existing 2. as 4. (No change in text.)

5:23-3.21 One and two family dwelling subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/1989", including all subsequent revisions and amendments thereto, as the one and two family dwelling subcode for New Jersey subject to the modifications stated in (b) below.

i. Copies of this code may be obtained from BOCA International, 4051 West Flossmoor Road, County Club Hills, Illinois 60478-5795.

(b) The following articles or sections of the one and two family building subcode are modified as follows:

1. Chapter 1 entitled "Administrative" is amended as follows:

i. Sections R-101 through R-114 are deleted and substitute in lieu thereof UCC regulations.

ii. Section R-115 is amended to change the definitions as follows:

(1)-(4) (No change.)

(5) The definition of the term "Story (first)" is amended to add, after the word "grade," the phrase "except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is more than 6 feet above grade, more than 6 feet above the finished ground level for more than 50 percent of the total building perimeter, or more than 12 feet above the finished ground level at any point.

2. Chapter 2 entitled "Building Planning" is amended as follows:

i. Sec. R-201.2 is amended to modify Table R-201.2 to read as follows:

ii. Sec. R-202.1 in the first and third lines, delete "3 feet" and substitute in lieu thereof, "5 feet";

iii. Sec. R-209.1—Opening Protection—Delete and substitute in lieu thereof the following: "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1-3/4 inches in thickness or approved equivalent. A raised sill shall also be provided between garage and adjacent interior spaces with a minimum height of 4 inches";

iv. Sec. R-209.2—Separation Required—Delete and substitute in lieu thereof the following: "Private garages located beneath rooms shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than 1 hour fire-resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of 1/2-inch gypsum board or equivalent applied to the garage side";

v. Sec. R-212 under the second exception in the second line, delete "8½ inches" and substitute in lieu thereof, "8 inches";

R-214.1, in the third line delete "four or more risers" and substitute in lieu thereof, "three or more risers";

vi. Sec. R-215.1 is amended to delete the second paragraph;

vii. Sec. R-215.2 is amended to delete the words "or in buildings" to end of paragraph;

viii. Sec. R-216.2.4, after the words "foam filled doors" add the phrase "except for fire doors";

ix. Add new Sec. R-220 "Height and Area Limitations."

"The provisions of this subcode are limited to Use Group R-4 (detached one and two-family dwellings), 5B construction, with no more than 2 stories or 35 feet in height and 4,800 square feet in area per floor."

3. (No change.)

4. Chapter 4 is amended as follows:

i. Sec. R-401.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7";

Recodify existing i. as ii. (No change in text.)

iii. Sec. R-404.2, in second paragraph, fifth line, delete "one-third the thickness" and substitute "one half the thickness".

Recodify existing iii. as iv. (No change in text.)

5. Chapter 6 is amended as follows:

i. Sec. R-601.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

6. Chapter 7 is amended as follows:

i. Sec. R-701.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

7. Chapter 8 is amended as follows:

i. Sec. R-801.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

8. Chapter 9 is amended as follows:

i. Sec. R-901.7 is amended to add the following phrase after 1800°F.: "and embedded in medium duty refractory mortar complying with ASTM C105." Delete the "EXCEPTION";

ii. Sec. R-903.2, in the last line, change "10 inches" to "12 inches";

iii. Sec. R-903.5, in the second line, change "3/8 inches . . . all imposed loads" to "4 inches solid masonry or equivalent";

iv. Sec. R-903.7, in the second and fourth lines, change "2 inches" to "4 inches";

v. Sec. R-904.1 item #4, is amended to add after the word "opening" the following: "for a fireplace having an opening of less than 6 square feet. The hearth of a fireplace with a larger opening shall extend a minimum of 20 inches beyond the face of the fireplace opening and a minimum of 12 inches on each side of the fireplace opening." Also, in Item #5 of Sec. R-904.1, delete and substitute in lieu thereof: "Factory Built Fireplaces shall be listed, labeled and tested according to UL 127, and installed according to their listing";

vi. Sec. R-905—At the end of the section, add "Factory built fireplace stoves shall be tested according to UL 737."

9. Part IV—Mechanical, is amended as follows:

i. Section M-1001, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

Recodify existing i.-v. as ii.-vi. (No change in text.)

Recodify existing 7.-8. as 10.-11. (No change in text.)

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Table No. R-201.2
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

ROOF LIVE LOAD (lbs./sq. ft.)	ROOF SNOW LOAD (lbs./sq. ft.)	WIND PRESSURE (lbs./sq. ft.)	SEISMIC CONDITION BY ZONE	SUBJECT TO DAMAGE FROM WEATHERING	FROST LINE DEPTH	SUBJECT TO DAMAGE FROM TERMITE	DECAY
20 See note 1	20 See notes 1, 4	34 see note 5 24 See note 6 18 See note 7	See note 3	Severe See note 2	2'-6" (Southern Area) 3'-0" (Northern Area) See notes 2, 4	Yes	Yes

Notes:

1. Roof live and snow loads are not additive.
2. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy structural requirements of this code. The grade of masonry units shall be determined from ASTM C34, C55, C62, C73, C90, C145, C216, or C652 listed in Section S-26.201. The frost line depth may require deeper footings than indicated in Figure No. R-303.
3. New Jersey is divided into two zones. Zone 1 consists of Monmouth and Burlington Counties and all counties to the south. Zone 2 consists of Mercer and Middlesex Counties and all counties to the North.
4. The enforcing agency having jurisdiction may establish values other than the ones listed for "roof snow load," and "frost line depth" if warranted by documented local climatic and geographic conditions.
5. Wind pressure for Atlantic, Cape May, Monmouth and Ocean counties, and Bass River, Washington, Woodland townships in Burlington County.
6. Wind pressure for Bergen, Camden, Cumberland, Essex, Gloucester, Hudson, Mercer, Middlesex, Morris, Passaic, Salem, Somerset, Union, and Burlington (except for Bass River, Washington, Woodland townships) counties.
7. Wind pressure for Hunterdon, Warren and Sussex counties.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Rules

Readoption: N.J.A.C. 5:80

Proposed: February 5, 1990 at 22 N.J.R. 277(b).
Adopted: March 29, 1990 by the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Filed: April 20, 1990 as R.1990 d.248, **without change.**

Authority: N.J.S.A. 55:14K-5g.

Effective Date: April 20, 1990.
Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:80.

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Debarment and Suspension from Agency Contracting

Conflicts of Interest

Adopted Amendments: N.J.A.C. 5:80-18.1, 18.2 and 18.3

Adopted New Rule: N.J.A.C. 5:80-18.8

Proposed: November 6, 1989 at 21 N.J.R. 3350(a).
Adopted: February 15, 1990 by the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Filed: April 20, 1990 as R.1990 d.247, **without change.**

Authority: N.J.S.A. 55:14K-5g and Governor Kean's Executive Order No. 189(1988).

Effective Date: May 21, 1990.
Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:80-18.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

. . .

"Agency contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the Agency, other than by virtue of State or Agency employment, or to supply anything to or to perform any service for a private or public person where Agency provides substantial financial assistance and retains the right to approve or disapprove the cost, nature or quality of the goods or service or the person who may supply or perform the same.

. . .

"Person" means any natural person, company, firm, association, corporation or other entity that is engaged in or offers or proposes to be engaged in Agency contracting.

. . .

5:80-18.2 Causes for debarment of a person

(a) In the public interest, the Agency may debar a person for any of the following causes:

1.-14. (No change.)

15. Any violation of the prohibited activities listed at N.J.A.C. 5:80-18.8(a) or failure to report violations of prohibited activities as required under N.J.A.C. 5:80-18.8(b).

5:80-18.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1.-4. (No change.)

5. The existence of a cause set forth in N.J.A.C. 5:80-18.2(a)9-12 and 15 shall be established by evidence which the Agency determines to be clear and convincing in nature.

6. Debarment for the causes set forth in N.J.A.C. 5:80-18.2(a)13 and 14 shall be proper, provided that one of the causes set forth in N.J.A.C. 5:80-18.2(a)1-12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the

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record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

5:80-18.8 Prohibited activities of persons; reporting requirement

(a) In order to ensure that all persons meet a standard of responsibility which assures the Agency, State of New Jersey and its citizens that such persons will both compete and perform honestly in their dealings with the Agency and avoid conflicts of interest, all persons are prohibited from engaging in the following activities:

1. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Agency member or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such member or employee, or to any partnership, firm, or corporation with which such member, employee or member of their immediate family is employed or associated, or in which such member or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

2. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Agency member employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Agency. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any individual, firm or entity with which such member or employee is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the member or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

3. No person shall influence, or attempt to influence or cause to be influenced, any Agency member or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said member or employee.

4. No person shall cause or influence, or attempt to cause or influence, any Agency member or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the person or any other individual or entity.

(b) All persons shall report to the Attorney General of New Jersey and the Executive Commission on Ethical Standards the solicitation of such persons of any fee, commission, compensation, gift, gratuity or other thing of value by an Agency member or employee.

(c) The prohibited activities in (a)1 through 4 above shall not be construed to prohibit a person from offering or giving gifts to or contracting with an Agency member or employee, nor be construed to prohibit an Agency member or employee from receiving gifts from or contracting with a person, and shall not be grounds for debarment pursuant to N.J.A.C. 5:80-18.2(a)15, provided that such activities are offered or made under the same terms and conditions that are available to members of the general public and are consistent with any rules promulgated by the Executive Commission on Ethical Standards.

(d) The Agency shall include the prohibited activities and reporting requirements in (a) and (b) above in requests for proposals by the Agency and in all contracts with every person.

Recodify existing 5:80-18.8 through 18.12 as 18.9 through 18.13. (No change in text.)

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Nonpublic Records

Adopted New Rule: N.J.A.C. 5:80-28.1

Proposed: November 6, 1989 at 21 N.J.R. 3351(a).

Adopted: February 15, 1990 by the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.

Filed: April 20, 1990 as R.1990 d.246, **without change.**

Authority: N.J.S.A. 55:14K-5g and N.J.S.A. 47:1A-2.

Effective Date: May 21, 1990.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 28. NONPUBLIC RECORDS

5:80-28.1 Nonpublic records

(a) The documents, files, data and other records of the New Jersey Housing and Mortgage Finance Agency which are listed below shall not be deemed to be public records pursuant to N.J.S.A. 47:1A-1 et seq. Such records shall not be available for inspection, examination or copying by members of the public or by any other individual except authorized members and employees of the Agency or except as provided by order of the Governor of New Jersey, a court of competent jurisdiction, or applicable law.

1. All confidential reports, executive memoranda and evaluations submitted to the Executive Director of the Agency, the members of the Agency or to any other State Agency;

2. All personnel records;

3. All records concerning applications for employment with the Agency;

4. All records concerning personal or financial information submitted by applicants for or tenants of rental housing units financed by the Agency;

5. All records concerning personal or financial information submitted by applicants for or recipients of any single family mortgage loan or home improvement loan of the Agency;

6. All records concerning personal or financial information, including Agency form, Certification and Questionnaire, submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Agency; and

7. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the members of the Agency, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this subchapter.

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules
Municipal Adjustments
Adjustment Process
Adopted Amendment: N.J.A.C. 5:92-8.2

Proposed: March 5, 1990 at 22 N.J.R. 730(a).

Adopted: April 18, 1990 by the New Jersey Council on Affordable Housing, William A. Angus, Jr., Acting Chairman.

Filed: April 26, 1990 as R.1990 d.254, **without change.**

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: May 21, 1990.

Expiration Date: June 16, 1991.

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Summary of Public Comments and Agency Response:

COMMENT: Although the amendment could be reorganized for clarification purposes, the proposed amendment is very welcome in that it eliminates the flat exclusion of slopes in excess of 15 percent from the lands available for low and moderate income housing.

RESPONSE: The Council believes the amendment is clear. It allows communities to regulate inclusionary development on steep slopes to the same extent it regulates non-inclusionary development. The amendment also allows communities to permit inclusionary development on slopes in excess of 15 percent. However, the Council may, upon its own initiative, exclude sites in whole or in part when excessive slopes threaten the variability of an inclusionary development.

Full text of the adoption follows.

5:92-8.2 Adjustment process

(a) (No change.)

(b) The Council shall determine the amount and location of vacant and undeveloped land within a municipality. Specific parcels of vacant and developable lands shall be excluded as potential sites for low and moderate income housing based on the following criteria:

1.-2. (No change.)

3. Environmentally sensitive lands shall be excluded as follows:

i. (No change.)

ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or New Jersey Department of Environmental Protection, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent as determined from the U.S.G.S. Topographic Quadrangles which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of floor hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this regulation shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

iii. (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

List of Hazardous Constituents for Groundwater Monitoring

Adopted New Rule: N.J.A.C. 7:26-8.21

Adopted Amendments: N.J.A.C. 7:14A-6.15 and 7:26-12.2

Proposed: December 18, 1989 at 21 N.J.R. 3844(a).

Adopted: April 27, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: April 30, 1990 as R.1990 d.259, **without change.**

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6, and N.J.S.A. 58:10A-1 et seq., particularly 58:10A-5.

DEP Docket Number: 053-89-11.

Effective Date: May 21, 1990.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

The new rule and amendments were proposed on December 18, 1989. The public comment period closed February 16, 1990. **No comments were received.**

Full text of the adoption follows.

7:14A-6.15 Criteria for groundwater protection and response

(a)-(h) (No change.)

(i) The owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

1.-7. (No change.)

8. If the owner or operator determines, pursuant to (i)7 above, that there is a statistically significant increase for any parameters or any constituents specified pursuant to (i)1 above at any groundwater monitoring well at the compliance point, the owner or operator shall:

i. (No change.)

ii. Immediately sample the groundwater in all monitoring wells and determine, if present, the concentration of all hazardous constituents identified in N.J.A.C. 7:26-8.21 and other permit-limited pollutants that are present in groundwater;

iii. Establish a background value for each N.J.A.C. 7:26-8.21 hazardous constituents that has been found at the compliance point under (i)8ii above, as follows:

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

iv. Within 45 days, submit to the Department an application for a permit modification to establish a compliance monitoring program meeting the requirements of (j) below. The application shall include the following information:

(1) An identification of the concentration of any N.J.A.C. 7:26-8.21 hazardous constituents found in the groundwater monitoring well at the compliance point;

(2)-(3) (No change.)

v. (No change.)

9-11. (No change.)

(j) An owner or operator required to establish a compliance monitoring program under this subsection shall, at a minimum, discharge the following responsibilities:

1.-5. (No change.)

6. The owner or operator shall analyze samples from all groundwater monitoring wells at the compliance point for all hazardous constituents contained in N.J.A.C. 7:26-8.21 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer, uppermost zone of groundwater or any other groundwater aquifer that may be impacted by the discharge. If the owner or operator finds N.J.A.C. 7:26-8.21 hazardous constituents in the groundwater that are not identified in the permit as hazardous constituents to be monitored, then the owner or operator shall report the concentrations of these additional hazardous constituents to the Department within seven days after completion of the analysis.

7.-13. (No change.)

(k) (No change.)

7:26-8.20 (Reserved.)

7:26-8.21 Hazardous constituents for groundwater monitoring

(a) The following table lists the hazardous constituents for which groundwater samples are to be analyzed when such analysis is required, pursuant to the detection monitoring program of N.J.A.C. 7:14A-6.15(i) or the compliance monitoring program of N.J.A.C. 7:14A-6.15(j), or both.

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List of Hazardous Constituents for Groundwater Monitoring[1]

Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100	200
			8270	10
Acenaphthylene	208-96-8	Acenaphthylene	8100	200
			8270	10
Acetone	67-64-1	2-Propanone	8240	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	10
Acrolein	107-02-8	2-Propenal	8030	5
			8240	5
Acrylonitrile	107-13-1	2-Propenenitrile	8030	5
			8240	5
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-	8080	0.05
		1,4,4a,5,8,8a-hexahydro- (1α,4α,4aβ,5α,8α,8aβ)-	8270	10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010	5
			8240	100
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine	8270	10
Aniline	62-53-3	Benzenamine	8270	10
Anthracene	120-12-7	Anthracene	8100	200
			8270	10
Antimony	(Total)	Antimony	6010	300
			7040	2,000
			7041	30
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester	8270	10
Arsenic	(Total)	Arsenic	6010	500
			7060	10
			7061	20
Barium	(Total)	Barium	6010	20
			7080	1,000
Benzene	71-43-2	Benzene	8020	2
			8240	5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100	200
			8270	10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100	200
			8270	10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100	200
			8270	10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100	200
			8270	10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100	200
			8270	10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010	3
			7090	50
			7091	2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5β,6β)-	8080	0.05
			8250	10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2β,3α,4β,5α,6β)-	8080	0.05
			8250	40
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3α,4β,5α,6β)-	8080	0.1
			8250	30
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5α,6β)-	8080	0.05
			8250	10
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'-[methylenebis (oxy)]bis[2-chloro-	8270	10
Bis(2-chloroethyl)ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-	8270	10
Bis(2-chloro- 1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether	106-60-1	Propane, 2,2'-oxybis[1-chloro-	8010	100
			8270	10
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	8060	20
			8270	10
Bromodichloromethane	75-27-4	Methane, bromodichloro-	8010	1
			8240	5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010	2
			8240	5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8270	10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060	5
			8270	10

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Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Cadmium	(Total)	Cadmium	6010	40
			7130	50
			7131	1
Carbon disulfide	75-15-0	Carbon disulfide	8240	5
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010	1
			8240	5
Chlordane	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-	8080	0.1
		2,3,3a,4,7,7a-hexahydro-	8250	10
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010	2
			8020	2
			8240	5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy- ethyl ester	8270	10
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-	8040	5
			8270	20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010	5
			8240	10
Chloroform	67-66-3	Methane, trichloro-	8010	0.5
			8240	5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120	10
			8270	10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040	5
			8270	10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8270	10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010	50
			8240	5
Chromium	(Total)	Chromium	6010	70
			7190	500
			7191	10
Chrysene	218-01-9	Chrysene	8100	200
			8270	10
Cobalt	(Total)	Cobalt	6010	70
			7200	500
			7201	10
Copper	(Total)	Copper	6010	60
			7210	200
m-Cresol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	40
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
4,4'-DDE	72-55-9	Benzene 1,1'-(dichloroethylidene)bis[4-chloro-	8080	0.05
			8270	10
4,4'-DDT	50-29-3	Benzene 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-	8080	0.1
			8270	10
Dialfate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2- propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100	200
			8270	10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010	1
			8240	5
1,2-Dibromo-3-chloropropane; DBCP	96-12-5	Propane, 1,2-dibromo-3-chloro-	8010	100
			8240	5
			8270	10
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo	8010	10
			8240	5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060	5
			8270	10
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010	2
			8020	5
			8120	10
			8270	10

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Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-	8010	5
			8020	5
			8120	10
			8270	10
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010	2
			8020	5
			8120	15
			8270	10
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8240	5
Dichlorodifluoromethane	75-71-8	Methane, dichlorodifluoro-	8010	10
			8240	5
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-	8010	1
			8240	5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-	8010	0.5
			8240	5
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010	1
			8240	5
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010	1
			8240	5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040	5
			8270	10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-	8010	0.5
			8240	5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010	20
			8240	5
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010	5
			8240	5
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β,6aα,7β,7aα)-	8080	0.05
			8270	10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060	5
			8270	10
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	8270	10
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	8270	10
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	8270	10
alpha, alpha-Dimethylphenethylamine	122-09-8	Benzeneethanamine, α,α-dimethyl-	8270	10
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-	8040	5
			8270	10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060	5
			8270	10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	10
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040	150
			8270	50
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-	8040	150
			8270	50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090	0.2
			8270	10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090	0.1
			8270	10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150	1
			8270	10
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060	30
			8270	10
1,4-Dioxane	123-91-1	1,4-Dioxane	8015	150
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)- S-[2-ethyl]ester	8140	2
			8270	10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aβ,6α,9α,9aβ)-	8080	0.1
			8250	10

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Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β,9aα)-	8080	0.05
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα, 2β,2aβ,3α,6α,6aβ,7β,7aα)-	8080 8250	0.1 10
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β,2aβ,4β, 4aβ,5β,6aβ,6bβ,7R*)-	8080 8270	0.2 10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020 8240	2 5
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015 8240 8270	10 5 10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	10
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester	8270	10
Fluoranthene	206-44-0	Fluoranthene	8100 8270	200 10
Fluorene	86-73-7	9H-Fluorene	8100 8270	200 10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	8080 8270	0.05 10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ,2α,5α, 5aβ,6β,6aα)	8080 8270	1 10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120 8270	0.5 10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	8120 8270	5 10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120 8270	5 10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120 8270	0.5 10
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	8270	10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone	591-78-6	2-Hexanone	8240	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno[1,2,3-cd]pyrene	8100 8270	200 10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015	50
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-	8270	10
Isophorone	76-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090 8270	60 10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta- [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	8270	10
Lead	(Total)	Lead	6010 7420 7421	40 1,000 10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015 8240	5 5
Methapyrilene	91-80-5	1,2,Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienyimethyl)-	8270	10
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2,trichloroethylidene)bis[4-methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010 8240	20 10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010 8240	1 10
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010 8240	15 5
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010 8240	5 5

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Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Methyl ethyl ketone; MEK	78-93-3	2-Butanone	8015	10
			8240	100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010	40
			8240	5
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015	2
			8240	5
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	8140	0.5
			8270	10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015	5
			8240	50
Naphthalene	91-20-3	Naphthalene	8100	200
			8270	10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010	50
			7520	400
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	50
Nitrobenzene	98-95-3	Benzene, nitro-	8090	40
			8270	10
o-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040	5
			8270	10
p-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040	10
			8270	50
4-Nitroquinoline 1-oxide	56-57-5	Quinoline, 4-nitro-, 1-oxide	8270	10
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	10
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8270	10
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-	8270	10
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosomorpholine	59-89-2	Morpholine, 4-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	10
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	10
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester	8270	10
Polychlorinated biphenyls; PCBs	See Note 7	1,1'-Biphenyl, chloro derivatives	8080	50
			8250	100
Polychlorinated dibenzo-p-dioxins; PCDDs	See Note 8	Dibenzo[b,e][1,4]dioxin, chloro derivatives	8280	0.01
Polychlorinated dibenzofurans; PCDFs	See Note 9	Dibenzofuran, chloro derivatives	8280	0.01
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloroethane	76-01-7	Ethane, pentachloro-	8240	5
			8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	10
Pentachlorophenol	37-86-5	Phenol, pentachloro-	8040	5
			8270	50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)	8270	10
Phenanthrene	85-01-8	Phenanthrene	8100	200
			8270	10
Phenol	108-95-2	Phenol	8040	1
			8270	10
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	8140	2
			8270	10
2-Picoline	109-06-8	Pyridine, 2-methyl-	8240	5
			8270	10
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015	60
			8240	5
Pyrene	129-00-0	Pyrene	8100	200
			8270	10
Pyridine	110-36-1	Pyridine	8240	5
			8270	10

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Common name[2]	CAS RN[3]	Chemical abstracts service index name[4]	Suggested methods[5]	PQL (μg/L)[6]
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)	8270	10
Selenium	(Total)	Selenium	6010	750
			7740	20
			7741	20
Silver	(Total)	Silver	6010	70
			7760	100
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020	1
			8240	5
Sulfide	18496-25-8	Sulfide	9030	10,000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	Dibenzo [b,e][1,4]dioxin, 2,3,7,8-tetrachloro-	8280	0.005
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010	5
			8240	5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010	0.5
			8240	5
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-	8010	0.5
			8240	5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Tetraethyl dithiopyrophosphate; Sulfotepp	3689-24-5	Thiodiphosphoric acid ($[(HO)_2P(S)]_2O$), tetraethyl ester	8270	10
Thallium	(Total)	Thallium	6010	400
			7840	1,000
			7841	10
Tin	(Total)	Tin	7870	8,000
Toluene	108-88-3	Benzene, methyl-	8020	2
			8240	5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	8001-35-2	Toxaphene	8080	2
			8250	10
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8270	10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8240	5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1-2-trichloro-	8010	0.2
			8240	5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010	1
			8240	5
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-	8010	10
			8240	5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040	5
			8270	10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010	10
			8240	5
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Total)	Vanadium	6010	80
			7910	2,000
			7911	40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8240	5
Vinyl chloride	75-01-4	Ethene, chloro-	8010	2
			8240	10
Xylene (total)	1330-20-7	Benzene, dimethyl-	8020	5
			8240	5
Zinc	(Total)	Zinc	6010	20
			7950	50

1. The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

2. Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

3. Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

4. CAS index names are those used in the 9th Cumulative Index.

5. Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

6. Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. CAUTION: The

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PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds: PQLs are not a part of the regulation.

7. Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

8. This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. The PQL shown is an average value for PCDD congeners.

9. This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans. The PQL shown is an average value for PCDF congeners.

7:26-12.2 Permit application

(a)-(f) (No change.)

(g) The following additional information regarding protection of groundwater is required from owners and operators of all hazardous waste surface impoundments, land treatment units, landfills, underground storage tanks and all other hazardous facilities subject to groundwater monitoring requirements under N.J.A.C. 7:14A-6;

1.-3. (No change.)

4. A description of any plume of contamination that has entered the groundwater from the facility at the time that the application is submitted that:

i. (No change.)

ii. Identifies the concentrations of each hazardous constituent identified in N.J.A.C. 7:26-8.21 throughout the plume or identifies the maximum concentration of each hazardous constituent identified in N.J.A.C. 7:28-8.21 in the plume.

5.-8. (No change.)

(h)-(l) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Listing of Polychlorinated Biphenyls (PCBs) as a Hazardous Waste

Adopted Amendments: N.J.A.C. 7:14A-4.7; 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 and 12.1

Adopted New Rule: N.J.A.C. 7:26-8.20

Proposed: May 1, 1989 at 21 N.J.R. 1047(a).

Adopted: April 25, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: April 30, 1990 as R.1990 d.260, **with substantive and technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6, and N.J.S.A. 58:10A et seq., particularly 58:10A-4.

DEP Docket Number: 017-89-04.

Effective Date: May 21, 1990.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

These rules were proposed on May 1, 1989. Nine commenters submitted written comments during the public comment period which closed on June 30, 1989. No public hearing was held. A summary of the comments received and the agency response follows:

I. Comments Concerning General Issues:

COMMENT: One commenter stated that the United States Environmental Protection Agency ("USEPA") will soon issue final rules requiring the manifesting of most PCB waste and imposing financial responsibility requirements. See Proposed PCB Notification and Manifesting Rule 53 Fed. Reg. 37436 (Sept. 26, 1988).

A second commenter suggested that the State await the final USEPA manifest rules to ensure that the two systems are compatible. USEPA, New Jersey, and industry will be best served by a single set of rules that avoid any need for double manifesting.

A third commenter noted that the proposed amendments give the impression that the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. ("TSCA") does not adequately provide for the tracking of PCB wastes. TSCA requires detailed record keeping of generator and disposal facilities (see 40 C.F.R. 761.180). In addition, USEPA is currently considering requiring that all shipments of PCB wastes be accompanied by a Hazardous Waste Manifest. The commenter supports this strengthening of TSCA.

One commenter claimed that the Department should not adopt its own regulations, which will result in duplicative and overlapping requirements. In several instances, the Department has proposed requirements which are more stringent than the Federal program which, if adopted, will be overly burdensome on regulated entities.

This commenter claimed that the proposed amendments will be particularly burdensome on companies with multistate operations by requiring multiple compliance programs. This could lead to uncertainties in compliance requirements and to possible inconsistencies in implementation. The intent of Congress was to retain the PCB waste management system under TSCA rather than transfer it to RCRA, as evidenced by the authority granted to USEPA in Section 6(e)(1) of TSCA (15 U.S.C. §2605(e)(1)). The Department should reconsider its proposed rulemaking.

RESPONSE: The Department disagrees. As stated in the Summary of the proposal, the Department maintains that there are areas not covered by TSCA (for example, certain manifesting and financial assurance requirements for TSD facilities) that need to be addressed. The amendments being adopted will address the Department's concerns. The Department has determined that the regulations at 40 C.F.R. 761 are not sufficient to adequately protect human health and the environment in New Jersey and is adopting additional requirements accordingly.

USEPA has adopted manifesting requirements under TSCA (See 54 FR 52716). The manifesting requirements USEPA proposed for PCBs do not include a requirement to send copies of the manifest to the State. The Department believes that it is necessary for it to be able to track these wastes, which will not be possible under the manifesting scheme proposed by USEPA under TSCA. The Department's concerns were not addressed by the manifesting requirements that were proposed by EPA under TSCA. The Department's concerns are addressed by the manifesting requirements that were proposed and they are being adopted without change. The Department's requirements are otherwise consistent with those of USEPA.

New Jersey is not the only state that regulates PCBs as hazardous waste. Other states, including New York and California, also regulate these materials. There should be no uncertainties in compliance. Generators, transporters and owners or operators of hazardous waste management facilities are all expected to be aware of all applicable regulations and to comply with them.

COMMENT: One commenter stated that TSCA §18 preempts state regulation of PCBs and that the Department should delay any rulemaking until USEPA has acted on the issue. A second commenter stated that Congress has preempted states from regulating PCB waste disposal by three different mechanisms. Congress' first mechanism provides that once USEPA has issued certain regulations, including those under TSCA §6(e) governing PCBs, "no State . . . may . . . establish . . . any requirement which is applicable to such substance . . . or an article containing such substance . . . and which is designed to protect against [a] risk [of injury to health or the environment]" without USEPA approval of the requirement. See TSCA §18(a)(2)(B), 15 U.S.C. §2617(a)(2)(B). Accordingly, because USEPA has issued comprehensive PCB regulations under TSCA §6(e), the Department's proposal regarding PCB waste disposal is constitutionally unauthorized.

Congress' intent in TSCA §18(a) to preclude states from enacting PCB regulations is confirmed by its establishment of a special procedure for states in TSCA §18(b). TSCA §18(b) provides that a state may issue a health or environment-related PCB rule as long as it demonstrates to USEPA that (1) its rule would give a significantly higher degree of protection than EPA's PCB rules; (2) compliance with the state rule would not result in violation of EPA's rules; and (3) its rule would not unduly burden interstate commerce.

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Congress' second preemptive mechanism is the comprehensive manner in which it has addressed PCB management in TSCA §6(e). TSCA §6(e) provides for regulation of every facet of the handling of PCBs—not only their management once they are discarded and become waste materials, but also all other phases of management from the moment of their creation as a product. TSCA calls for rules regarding PCB manufacture, processing, distribution in commerce, use, marking, and disposal. Under rules of Federal preemption, such legislation, which is sufficiently "pervasive as to make the reasonable inference that Congress left no room for the States to supplement it," preempts state regulation of the entire field of PCB disposal. This even includes certain areas in which Congress or USEPA may not have regulated explicitly.

Thus, the fact that many of USEPA's PCB regulations do not apply to materials below 50 ppm of PCBs does not save any portion of the Department's proposed amendments regarding wastes containing less than 50 ppm of PCBs. To the extent that USEPA has chosen not to regulate PCBs under 50 ppm, it is because the Agency has determined that PCBs at such levels pose no unreasonable risk of injury to health or the environment, and so should not be regulated.

Finally, New Jersey is prevented from regulating PCB disposal because it would create an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

The Congressional intent to create one set of uniform, national rules precluding state regulation is found in TSCA §6(e) governing PCBs. Although RCRA and TSCA were enacted virtually simultaneously, Congress chose to address the disposal of only one chemical material, PCBs, under TSCA rather than RCRA. Through TSCA, Congress banned all future PCB manufacture to eliminate these materials from the environment. To achieve this goal, Congress recognized that a shifting pattern of state and local ordinances could thwart the effectiveness of its national scheme, and it therefore enacted TSCA §18, generally preempting state PCB regulation.

Allowing state or local governments to add to or effectively change the federal PCB program likely would have the opposite effect of that desired by Congress. USEPA anticipates issuing final regulations in this area within the near future. These regulations should make the Department's proposed regulations unnecessary. Two sets of overlapping regulations would be confusing to the regulated community—and a waste of Department resources. The Department should reconsider or delay until after USEPA's final rules are issued.

Imposing additional or conflicting state requirements on PCB disposal also is likely to substantially reduce the current incentive on the part of PCB users to remove and dispose of PCBs in advance of USEPA's regulatory phaseout deadlines. This would thwart, rather than advance, Congress' goal of expeditious elimination of PCBs from the environment.

RESPONSE: The Federal statutory and regulatory programs under TSCA do not preclude states from adopting and enforcing regulations which are either broader in scope or more stringent than Federal requirements. The proposed rules are consistent with USEPA's currently adopted rules at 40 C.F.R. 761. The statutory scheme and legislative history of TSCA clearly demonstrate Congress' intent to preserve the authority of states to regulate the disposal of toxic wastes, including PCBs. Although Congress included an express federal preemption provision in Section 18 of TSCA, it concurrently recognized the importance of allowing the states to regulate local matters pertaining to the safety and health of their citizens, such as the disposal of PCBs. As a result, Congress specifically exempted the disposal of toxic wastes from the preemption provision of Section 18. EPA has reviewed New Jersey's proposed PCB regulations and deemed them acceptable, pending a few minor changes.

COMMENT: One commenter contended that the summary of the proposal deviates from current scientific opinion about the apparent human health effects of PCBs. The commenter stated that PCBs are conservatively classified as suspected human carcinogens and believes additional regulation of PCBs is not warranted.

RESPONSE: The Department finds there is sufficient evidence that PCBs pose a hazard to human health and the environment to warrant regulating them as hazardous wastes. The Department has prepared a Basis and Background document in support of the listing of PCBs as hazardous wastes. In 40 C.F.R. 761.20, EPA states: ". . . that any exposure of human beings or the environment to PCBs, as measured or detected by any scientifically acceptable analytical method, may be significant . . ."

COMMENT: One commenter submitted a lengthy study on the carcinogenic properties of PCBs. The commenter contended that the available epidemiologic data do not show a causal relationship between PCB exposure and human cancer. The commenter seemed to imply that there is no need for the Department to regulate PCBs as hazardous wastes, since there is not sufficient evidence to conclusively prove that they cause cancer in humans.

RESPONSE: The Department has thoroughly reviewed the data submitted by the commenter. The commenter cited some data which the Department had cited in its Basis and Background document and cited additional epidemiologic data in support of his position.

The commenter cited a number of retrospective mortality studies of persons who were exposed to PCBs in the workplace. In two such studies cited by the commenter [Brown and Jones (1981) and Brown (1987)], the studies reviewed causes of death as reported on death certificates for a group of electrical capacitor workers. The study did not show a statistically significant increase in the overall cancer rate for workers exposed to PCBs, nor was there a statistically significant increase in the incidence of certain site specific cancers. The commenter also cited studies by Bertazzi, et al. (1982, 1987) which also examined cancer mortality among workers exposed to PCBs in the workplace. The study showed a statistically significant increase in cancer deaths among males and a statistically significant increase in cancers of the gastrointestinal tract. The study, however, did not show a correlation between length of exposure and incidence of cancer and in some cases of male cancer mortality, there was little opportunity for direct PCB exposure.

The commenter also considered a study by Kuratsune (1986) which examined cancer mortality in the Japanese "Yusho" patients, who had consumed PCBs in contaminated rice oil. The Department had reviewed an earlier study by Kuratsune on the same topic. Kuratsune found statistically significant increases in cancer mortality among male "Yusho" patients for all cancers combined and for lung cancers and liver cancers as well. The commenter expresses some doubt that these were entirely due to PCB ingestion, citing evidence that there was an unusually high incidence of liver cancer generally in the area where the patients lived. Other related studies [Miyata et al. (1985), Kashimoto et al. (1985) and Masuda (1985), all of which were reviewed by the Department] provide evidence that the increased cancer incidence may be attributable to polychlorinated dibenzo-furans (PCDFs) which contaminated the PCBs and not to the PCBs themselves. The commenter concludes that there is no clear evidence of a causal relationship between PCB exposure and human cancer.

The Department has considered the data and has concluded that while there is some question whether PCBs cause cancer in humans, there is sufficient evidence that they are possible human carcinogens and should, therefore, be regulated. The Department has reviewed the data the commenter presented and while not all the studies provide evidence of a statistically significant correlation between PCB exposure and cancer, it is well to consider that such restrospective studies of death certificates tend to under report cancer deaths. This is so because there was a stigma attached to the disease in the past.

The Department does not consider carcinogenesis in humans as the sole factor in determining whether or not to regulate a material as a hazardous waste. Persistence in the environment, the potential for any constituent or toxic degradation product of a constituent (for example PCDFs) to migrate into the environment if the material is mismanaged, bioaccumulation potential, other risks to human health or the environment and action taken by other government agencies are also factors considered by the Department as per N.J.A.C. 7:26-8.8. In addition, the International Agency for Research on Cancer issued a monograph in 1987 evaluating the carcinogenic risks associated with PCBs and found sufficient evidence to classify them as animal carcinogens and said there was some evidence that they were human carcinogens. Although available data was limited, according to the IARC monograph, different studies consistently showed an increased susceptibility to hepatobiliary cancer on exposure to PCBs. After consideration of these other factors, the Department has determined that PCBs are a sufficient threat to human health and the environment and do warrant regulation as hazardous wastes.

COMMENT: One commenter submitted data regarding the carcinogenicity of different PCB mixtures in animals. The commenter contends that highly chlorinated (at least 60 percent chlorine content) PCBs are carcinogenic in only one animal species and less chlorinated PCBs are either not carcinogenic or are substantially less potent than the more highly chlorinated mixtures. The commenter seems to imply that at least some PCBs do not pose a significant hazardous and do not require regulation as hazard wastes.

RESPONSE: The Department has reviewed data submitted by the commenter in support of his position. The Department had previously

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reviewed some of the same studies cited and had previously included them in its Basis and Background document supporting the listing of PCBs as hazardous wastes in the May 1, 1989 proposed amendments to the hazardous waste rules. The Department believes the animal test data is significant and supports its position that PCBs should be regulated as hazardous wastes. For example, in studies of Arochlor 1260 cited by the commenter [Norback and Weltman (1985) and Kimbrough et al. (1975)] rats were fed PCBs for up to 29 months. Throughout that time, at intervals, parts of some rats' livers were removed and examined. Progressively more serious liver damage, from increased cell size after one month to benign tumors at 12 months and malignant tumors at 15 months and later, were observed. Hepatocellular neoplasms were observed in 96 percent of the treated female rats and 15 percent of the treated males by the end of the study. The commenter believed this was not significant, since these neoplasms were not malignant and did not metastasize. Similarly in a study by Kimbrough et al. (1975), female rats fed 100 ppm Arochlor 1260 for 21 months showed malignant liver tumors in 24 of the 184 surviving animals and benign tumors in an additional 144 of the survivors. This compares with only 1 of 173 surviving control animals that developed malignant liver cancer and none of which developed benign liver tumors. The incidence of cancer in the exposed population was statistically significant. Similar results were noted in a study of Clophen A60 and Clophen A30 by Schaeffer et al. in 1984. Mouse feeding studies with Arochlor 1254 by the National Cancer Institute ("NCI") in 1978 and Kimbrough and Linder (1974) showed a small dose-related increase in the incidence of combined benign and malignant tumors. In mouse studies by Ito et al. (1973), 100 percent of the group receiving 500 ppm of Kanechlor 500 showed either benign or malignant liver tumors. None of the controls showed these effects. In 1985, M. Ward writing in *Environmental Health Perspectives* reevaluated the NCI data and found a significantly increased occurrence of potentially pre-neoplastic lesions and tumors in the livers and stomachs of rats fed Arochlor 1254. Control animals did not show such lesions and tumors.

In the words of the commenter, "There is clear evidence that some of the highly chlorinated commercial PCB mixtures are tumorigenic in animals." The Department agrees that the data show statistically significant increases in cancer incidence upon exposure to PCBs in at least two species (rat and mouse) and both sexes. The commenter presented evidence that some of the PCB mixtures that contain less chlorine are less carcinogenic than those that contain higher percentages of chlorine. The Department considered this when it was deciding how to regulate PCBs. However, since PCBs generally and especially used PCBs occur as mixtures of the various congeners, it is not practical to regulate PCBs differentially on the basis of percent chlorination. As the commenter says ". . . all commercial PCB products have some congeners in common. Thus it is possible that all Arochlors contain some tumorigenic congeners." In addition, although there is data showing possibly less serious health effects from less chlorinated PCBs, these substances are not without potential hazards themselves, especially if one considers nonmalignant tumors and other changes to the liver in addition to cancerous tumors. The Department believes it is important to consider health effects other than cancer. Although it is difficult to definitively state that animal carcinogens pose an equal threat to humans due to the difficulty of extrapolating across species, the Department has an obligation to approach such data conservatively in order to provide adequate protection to the most sensitive members of the population. In light of these factors, the Department has adopted these regulations listing PCBs as hazardous wastes.

COMMENT: One commenter held that the Department should not require the use of registered transporters for PCB hazardous wastes since they are not required under TSCA.

RESPONSE: The Department disagrees and has retained the requirement to use registered transporters for PCB wastes. There is no evidence that PCBs are less hazardous to transport than other wastes. Such registered transporters are required for other hazardous wastes and the Department sees no compelling reason for setting different standards for PCB wastes.

COMMENT: One commenter recommended that the Department include a provision in the rules prohibiting the crushing, baling or compacting of appliances or other goods which may contain PCB capacitors. The commenter pointed out that such handling results in the release of PCBs and contamination of large volumes of waste material with PCBs.

RESPONSE: The Department agrees that improper handling of appliances or other goods which may contain PCB capacitors can be a serious problem. It should be noted, however, that only intact small PCB capacitors are exempted from the hazardous waste management regulations. If the capacitors are crushed, they are fully regulated as hazardous waste and all material contaminated with the PCB capacitor fluid is also hazardous waste.

COMMENT: Two commenters disagreed with the Department's statement in the Summary of the proposal that there have been numerous violations of Federal PCB regulations and that PCBs have been mixed with waste oil and used to oil roads. Some commenters contend that such practices are now less common and the amendments proposed by the Department are not necessary. One commenter stated that violations of existing Federal regulations do not constitute adequate justification for these amendments.

RESPONSE: The Department strongly disagrees. Although it is true that mismanagement of PCBs was more blatant in the past, that does not necessarily imply that current management practices offer the most possible protection of the environment. Under Federal TSCA regulations, PCB transformers are presently being withdrawn from service. As a result, large volumes of PCB containing transformer fluid will have to be handled and disposed of. The Department wants to be able to ensure that this volume of PCB waste is properly managed. These amended rules will enable the Department to require generators, transporters and facilities to manage these materials in ways which are protective of human health and the environment. By subjecting PCBs to full regulation as a New Jersey hazardous waste, the Department will be able to take enforcement action against persons who improperly handle these wastes. The Department has decided that additional controls beyond those provided by TSCA are necessary.

COMMENT: One commenter suggested that the amended rules be made effective as of the beginning of the new calendar year to avoid complication of hazardous waste recordkeeping.

RESPONSE: Because there would be a long delay in implementing these amended rules if the commenter's suggestion was followed, the Department has decided to make these amended rules immediately effective. This delay would pose a continued threat to the environment by allowing disposal that is inconsistent with the rules.

COMMENT: The Summary states that "PCBs have been voluntarily manifested in New Jersey since 1978." The commenter presumes this refers to the use of the unpublished waste code X387. However, this seems to contradict the use of X727 (transformer oils) which are listed because they contain PCBs and are required to be manifested according to the commenter. If waste transformer oils containing PCBs are not included in the current listing of X727, then X727 should not be deleted, but should be retained for use in identifying non-PCB transformer oils.

RESPONSE: The commenter has misinterpreted the rule. PCB wastes which did not fit the X727 or X725 listing descriptions had previously been coded as C387, the code for waste streams containing PCBs as a constituent. These waste streams may be designated as hazardous by either the generator or the Department. The X727 waste code included all transformer oils, whether or not they contained PCBs. The Department determined that transformer oils that do not contain PCBs do not requirement management as hazardous waste. Since PCB-containing transformer oils will be regulated if they contain more than 50 ppm PCBs and these are the wastes which pose a threat to the environment, the Department deleted the listing for X727.

II. Comments Concerning Specific Citations:

COMMENT: With reference to N.J.A.C. 7:26-1.4, USEPA Method 8080 should not be the only allowable test for determining the presence and concentration of PCBs. The Department should allow the use of other methods. By limiting the choice of analyses to this one method, the Department effectively is disallowing the use of any other method, such as Method FM-20 of EPA/540/2-88/005, "Field Screening Methods Catalog, User's Guide". This is an onsite field laboratory method employing a gas chromatograph. In other sections of the Department's hazardous waste regulations (that is, N.J.A.C. 7:26-8.12, Characteristic of EP Toxicity) the Division allows for use of equivalent methods approved by the Department.

RESPONSE; The Department has retained the requirement to use USEPA Method 8080. This method is familiar to the majority of laboratories, its accuracy has been widely validated, and it offers three methods of preparation (liquid-liquid extraction, sonication and Sohxlet extraction) which make it adaptable to a variety of media. By requiring all laboratories to use the same method, the results from different laboratories will be standardized and comparable.

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COMMENT: With reference to N.J.A.C. 7:26-1.4, one commenter requested that the definition of PCBs exclude inadvertently generated mono- and di-chlorinated biphenyls. The Federal TSCA regulations allow the deduction of the concentration of monochlorinated biphenyls divided by 50 and the deduction of the concentration of di-chlorinated biphenyls divided by five. Inadvertently generated PCBs are PCBs that are formed during the production of different substances and occur as impurities in the finished products.

RESPONSE: The Department has decided not to allow the deduction of a percentage of the mono- and di-chlorinated biphenyls in determining the concentration of PCBs. The Department's definition of PCBs at N.J.A.C. 7:26-1.4 specifies the use of USEPA Method 8080 for determining the presence and concentration of PCBs. As explained above, the Department maintains that this test method is the most appropriate for determining the concentration of PCBs. This method, like other methods, uses gas chromatography to separate out the various isomers and show their relative concentrations, but cannot resolve mono- and di-chlorinated isomers as precisely as would be needed to determine the precise concentrations of those isomers. Consequently, the Department will not amend the definition of PCBs. Additionally, it is the method that most laboratories are familiar with. This method is applicable to many types of situations and affords as much information as any of the other available methods.

COMMENT: With reference to N.J.A.C. 7:26-1.4, which edition of USEPA publication SW-846 should be used?

RESPONSE: The most recent edition should always be used. This requirement is incorporated by reference at N.J.A.C. 7:26-8.19(b)4.

COMMENT: With reference to N.J.A.C. 7:26-7.4(a)13 and N.J.A.C. 7:26-7.7(e), one commenter fully supports the exemptions from generator responsibilities and from manifesting for direct intra-company shipments of PCB wastes. The exemptions would ensure consistency between State and Federal regulations while minimizing disruptions of current compliance practices being followed by those entities subject to the existing TSCA program.

A second commenter stated that the existing storage for disposal requirements under TSCA permit the temporary storage of certain PCB items in areas that do not meet the requirements of an Annex III storage facility (as defined in TSCA §761) for up to 30 days from the date of their removal from service (see §761.65). The commenter temporarily stores TSCA regulated PCB wastes at its secured operation facilities for a less than thirty-day period prior to transferring the wastes to its Annex III storage facility. The proposed amendments will not allow the commenter to continue this practice, but would require the commenter to immediately transport all such wastes from the spill site back to its Annex III storage facility. This requirement will greatly increase operational costs without any commensurate benefit to the environment. The commenter urges the Department to revise the proposed amendments to allow such temporary storage (less than 30-day period prior to transferring to an Annex III facility) at generator owned facilities.

According to another commenter, this requirement appears to apply to both generators storing PCBs from their own intra-company operations as well as to commercial facilities. On September 26, 1988 (53 FR 37436), USEPA proposed that commercial storers (as defined at 40 C.F.R. 761.3) obtain USEPA approval, including developing closure plans and demonstrating financial assurance. By proposing to subject commercial facilities to these permitting-type standards adequate controls will be in place. USEPA specifically did not propose requiring approvals of those non-commercial waste storers (who are typically the generators who place intra-company generated PCBs into temporary storage prior to offsite shipment).

Another commenter noted that existing Federal TSCA rules allow PCB waste storage for a period which may be almost a year long. This gives the generator time to find a disposal or treatment facility, get on their treatment schedule, sign a treatment contract and finally arrange for transportation. The amendment should specify that PCB storage time be the same as is now allowed in the Federal TSCA rules (up to one year), without the storage facility being a "registered" facility (as is required under RCRA rules).

RESPONSE: The Department believes the requirement to submit a notification at N.J.A.C. 7:26-9.1(c)17 is minimally burdensome and is necessary so that the Department can know where such wastes are being stored and so those storage facilities can be inspected to determine whether or not they are in compliance with the regulations. Storage facilities which are in compliance with N.J.A.C. 7:26-9.1(c)17 may store PCB hazardous wastes for up to one year. The commenters' suggestions are inconsistent with the Department's regulation of other hazardous wastes. The commenters have presented no compelling reasons to set up less stringent standards for PCB management. The exemption allows generators to store PCB hazardous wastes for up to one year. This is an adequate amount of time to contract for disposal.

COMMENT: With reference to N.J.A.C. 7:26-7.7(e), one commenter stated with reference to intra-company PCB shipments that power companies do not own individual utility pole locations and so would technically not qualify for the exemption from manifesting PCB wastes between sites owned by the generator. N.J.A.C. 7:26-7.7(e) should be changed to read "... owned and/or operated". A second commenter stated that because under the Federal TSCA, there are many requirements regarding transporting of materials with 50 ppm or more of PCBs, an additional exemption from the requirement to use a registered hauler should be added at N.J.A.C. 7:26-7.4 for intra-company shipments on company-owned vehicles that would parallel the exemption from the manifest rules granted at N.J.A.C. 7:26-7.7(e)1.

RESPONSE: The Department agrees with the first commenter and has made the change. The intent of the rule was to allow utilities to transport electrical equipment from the site where it is operated to a central storage facility without requiring a manifest. With reference to the second comment, if a generator is exempt from the manifesting requirements of N.J.A.C. 7:26-7.7(e)1, it is also exempt from using a registered transporter.

COMMENT: With reference to N.J.A.C. 7:26-8.2(a)22, one commenter questioned the limitation on the exclusion from the hazardous waste definitions of PCB-containing small capacitors to those small capacitors "from household appliances". USEPA TSCA rules, 40 C.F.R. 761.60(b)(2)(ii), allow all small capacitors to be disposed of as municipal solid waste except for disposal by present or former PCB capacitor or PCB equipment manufacturers.

No need has been demonstrated for distinguishing between home appliance and other types of small capacitors. Interpretation issues will be presented in defining a home appliance small capacitor. Most PCB-containing small capacitors were used in fluorescent light ballasts, which presumably are home appliances, yet, most such light fixtures are used in locations other than homes.

A second commenter stated that N.J.A.C. 7:26-8.2(a)22iii should be amended to permit the disposal of capacitors in federally approved hazardous waste facilities, as well as in solid waste landfills.

A third commenter suggested that the exemption allow generators to send capacitors to a registered TSCA facility as well as to a landfill that can accept ID 27 waste. Another commenter pointed out that ID 27 waste was not municipal solid waste as was stated in the proposal.

RESPONSE: The Department agrees with all of the commenters and has changed N.J.A.C. 7:26-8.2(a)22 upon adoption to include all small capacitors and to allow them to be disposed of at TSCA approved facilities as is currently allowed under the Federal regulations. Upon reevaluation, the Department has decided that since all small capacitors present the same degree of environmental hazard, regardless of source, the definition should include those from sources other than household appliances. Additionally, N.J.A.C. 7:26-8.2(a)22iii of the proposal has been corrected and ID 27 waste is now correctly described as industrial solid waste in accordance with the Department's solid waste management rules at N.J.A.C. 7:26-2.13.

COMMENT: With reference to N.J.A.C. 7:26-8.3(j), one commenter stated that the Department should delete the requirement that all quantities of PCB waste are subject to regulation. There is no small quantity generator ("SQG") exemption under the proposed amendments. Under current regulations, generators of other wastes regulated as hazardous who only produce small quantities of waste may be exempted from some requirements by operation of N.J.A.C. 7:26-8.3.

RESPONSE: The Department has retained the proposed requirement in order to be consistent with TSCA, which regulates all quantities of PCB waste.

COMMENT: With reference to N.J.A.C. 7:26-8.13(b), undrained PCB contaminated transformers should not be considered hazardous waste. They are most appropriately considered useable equipment. The resale of PCB containing transformers purchased before July 1, 1979 for their intended use is expressly permitted under Federal regulations (40 C.F.R. 761.20(c)(1)). New Jersey's rules as amended do not address this issue directly. Accordingly, it is unclear if it is New Jersey's intention to prohibit the resale of PCB transformers which would otherwise meet the requirements of 40 C.F.R. 761.20(c)(1).

RESPONSE: Undrained PCB containing electrical equipment which is in use is not covered under these rules; however, such equipment would be regulated as hazardous waste when sent for disposal or rendered unfit

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for its original intended use. These rules only apply to wastes, not to products.

COMMENT: With reference to N.J.A.C. 7:26-8.13(b), the Department states its intention to regulate electrical, hydraulic or "other equipment" containing or having previously contained PCBs. The term "other equipment" should be defined in accordance with USEPA's definition at 40 C.F.R. 761.3 which states:

"PCB equipment means any manufactured item, other than a PCB Container or a PCB Article Container, which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment and fluorescent light ballasts and fixtures".

RESPONSE: The Department disagrees. PCBs were used in a wide variety of equipment. To avoid allowing any PCBs or PCB-contaminated equipment to go unregulated, the term "other equipment" was used. Other equipment encompasses any equipment containing PCBs which was not specifically listed.

COMMENT: With reference to N.J.A.C. 7:26-8.13, the rule as amended lists PCB hazardous waste. This is not an appropriate place to list these wastes.

RESPONSE: In an earlier rulemaking, the Department proposed to recodify the other New Jersey listed X-wastes to a new section N.J.A.C. 7:26-8.20 (see 22 N.J.R. 288(a), February 5, 1990). On adoption of this rule, the Department is recodifying the PCB hazardous wastes into N.J.A.C. 7:26-8.20, not N.J.A.C. 7:26-8.13(b). A section in N.J.A.C. 7:26-8.20 will be reserved for the other New Jersey X-wastes for use when the rule recodifying them is adopted.

COMMENT: With reference to N.J.A.C. 7:26-8.13, the Department should not use waste codes X750, X751, X752, X753, or X754 for PCB hazardous waste because the regulated community currently regards those as "unpublished codes" and uses them for non-hazardous waste. The commenter enclosed an example of a manifest using such a code.

RESPONSE: The Department performed a computer search of its hazardous waste data bank for the enclosed manifest. It was not recorded in the data management system as X751, as was listed on the manifest. The code was corrected to X900 when the manifest was originally submitted. Generators should not be using X750-X754 for non-hazardous waste.

COMMENT: With reference to N.J.A.C. 7:26-8.13(b), one commenter stated that by listing PCBs at that citation, those wastes will become subject to the "derived from" rule at N.J.A.C. 7:26-8.1(c)2 and the mixture rule at N.J.A.C. 7:26-8.1(b)2. Accordingly, all materials which come in contact with or were mixed with any of these listed wastes will become that waste. This could have a significant and unnecessary adverse economic impact on the regulated community. For example, leachate and rainwater at a waste oil facility would become mixture rule X-coded hazardous wastes and any alternatives available under current TSCA policies would be prohibited unless the waste were to be delisted pursuant to N.J.A.C. 7:26-8.17(c).

RESPONSE: The Department realizes that listing PCBs as hazardous waste will bring them under the mixture rule and the 'derived-from' rule and maintains that applicability of these rules is appropriate. The mixture rule applies to all listed hazardous wastes and the derived-from rule applies to all hazardous wastes. These rules serve to prevent persons from evading regulation by diluting hazardous waste with other material or from disposing of hazardous residues as non-hazardous waste. The same concerns apply to PCB wastes. The Department sees no reason to rescind the proposal to list PCBs as hazardous wastes.

COMMENT: One commenter stated that TSCA does not regulate the disposal of drained electrical equipment bodies which contained PCBs at a concentration less than 500 ppm. The Department's inclusion of this category in its proposed amendments at N.J.A.C. 7:26-8.13 will drastically increase disposal costs without any equivalent benefit to the environment. USEPA, in its decision not to regulate drained PCB contaminated transformers (<500 ppm PCB), has indicated that they do not threaten the environment.

A second commenter stated that the description of Hazardous Waste Number X752 should be changed to include only drained electrical, hydraulic or other equipment which contained liquids with 500 ppm or more of PCBs by weight, unless drained or otherwise decontaminated in compliance with the procedures as set forth in the Federal regulations promulgated pursuant to TSCA. A third comment stated that the Department is proposing to regulate as hazardous an entire universe of wastes, many of which are bulky in nature, which are specifically excluded under the Federal TSCA regulations.

Furthermore, for those PCBs or PCB items required to be incinerated pursuant to TSCA, provisions are made at 40 C.F.R. 761.60(e) to demonstrate that an alternative method of destruction is equivalent. In certain cases, the alternative methods employed have been so effective as to enable regulated entities to enter into commerce PCB items which once held high-to-moderate levels of PCBs.

If drained equipment is regulated as hazardous wastes, the Division would be placing overly burdensome requirements on entities doing business in New Jersey. With the current national shortage of permitted hazardous waste landfill space, critical capacity would be needlessly taken up since landfilling is the only feasible method for disposing of bulky drained equipment.

With reference to N.J.A.C. 7:26-8.4(e) concerning residues of hazardous wastes in empty containers, this commenter suggested that the Department revise the requirement to state that containers which held PCBs below 500 ppm are only subject to N.J.A.C. 7:26-8.4(e)1, 2, and 5 to be considered empty.

RESPONSE: Even drained electrical or hydraulic equipment which only contained oil with 50 ppm PCBs may still contain significant amounts of dielectric fluid, since the interior of such equipment is often very convoluted and can trap fluids inside. The Department maintains that such drained equipment may still contain sufficient quantities of PCBs to pose an environmental hazard and has retained the listing for drained electrical or hydraulic equipment.

COMMENT: With reference to N.J.A.C. 7:26-8.13(b)9, 10, and 13, the use of the term "PCB-contaminated" is confusing because this term has a different meaning under the federal TSCA regulations. It is suggested that this term be changed to "PCB liquids", "PCB solids" and "sludge and dredge material containing 50 ppm or more PCBs by weight."

RESPONSE: The Department agrees and has made the change. The meaning of the section remains the same.

COMMENT: With reference to N.J.A.C. 7:26-9.1 and 12.1, the Department should reconsider the unconditional ban on the incineration of materials containing any levels of PCBs. PCBs can be found in hundreds of substances and products, including many types of paper goods. The incineration ban could seriously disrupt the development of resource recovery as one of the State's primary solid waste disposal options.

RESPONSE: The Department has not unconditionally banned the incineration of PCBs. PCBs may be incinerated in a properly permitted incinerator. The devices exempted at N.J.A.C. 7:26-9.1 and 12.1 are not incinerators, but industrial boilers or furnaces. Under certain conditions those boilers or furnaces may burn hazardous wastes (but not PCB hazardous wastes) that are generated on-site or transported intra-company, intra-state. The incineration of non-hazardous wastes, including non-hazardous paper goods, at resource recovery facilities has not been addressed in this rulemaking. Such activities are addressed in the rules for resource recovery facilities at N.J.A.C. 7:26-2.

COMMENT: The summary appears to allow ". . . the burning of waste oil containing less than 50 ppm PCBs in a boiler" as long as it is subject to air pollution control permit requirements and to hazardous waste management rules. However, in the proposed amendments at N.J.A.C. 7:26-9.1, the following condition appears which would instead eliminate the burning of any PCBs. The exemption reads as follows:

"(c) The standards and requirements [for hazardous waste facilities] of this subchapter [9] do not apply to:

"9. The owner or operator of an industrial boiler or industrial furnace burning a hazardous waste, provided the following conditions are met:

[New:] "x. The material being burned contains no PCBs of any concentration.

This appears to contradict the Summary.

The commenter also noted that in its permit to construct, install or alter control appartus, it is allowed to burn PCBs at up to 50 ppm under the exemption at N.J.A.C. 7:26-9.1(c).

RESPONSE: The Department has clarified N.J.A.C. 7:26-9.1(c)9x to state "the material being burned contains no PCB hazardous waste." The clarification makes N.J.A.C. 7:26-9.1(c)9x consistent with proposed N.J.A.C. 7:26-12.1.

COMMENT: With reference to N.J.A.C. 7:26-9.1(c)17i, the Department should clarify that generators of other than PCB hazardous wastes who manage these wastes in accordance with N.J.A.C. 7:26-8.3, Special requirements for hazardous wastes generated by small quantity generators, or N.J.A.C. 7:26-9.3, Accumulation of hazardous waste for 90 days or less, are not required to obtain a hazardous waste facility permit in order to also store PCB waste. Proposed N.J.A.C. 7:26-9.1(c)17i implies that co-management of PCBs and other hazardous wastes could result in the need for a hazardous waste facility permit pursuant to N.J.A.C. 7:26-12. It is not uncommon to co-manage such waste in common storage

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areas, while still adhering to the different, on-site storage limits placed on the materials under the applicable State and Federal regulations.

RESPONSE: The commenter seems confused about the applicability of the small quantity generator exemption to generators of PCB waste. The small quantity generator exemption applies to the total amount of waste generated, including PCBs. Therefore, if a generator had 51 kilograms of PCBs and 50 kilograms of another hazardous waste, he would be a fully regulated generator and not a small quantity generator. Such a generator could, if he met the qualifications, qualify under N.J.A.C. 7:26-9.1(c)17 for the PCB waste but would be a fully regulated generator for non-PCB waste, since one's status as a generator (fully-regulated or small quantity) is determined by the total amount of waste generated.

COMMENT: With reference to N.J.A.C. 7:26-9.1(c)17, the exemption is confusing, and seems contradictory because of the word "solely" in paragraph 17. Subparagraphs i and ii are confusing when read with paragraph 17. Additionally, the use of the term "facility" in paragraph 17 is confusing. It would seem to preclude generators from storing waste in compliance with N.J.A.C. 7:26-9.3.

RESPONSE: The Department will clarify the provision by removing the word "solely" from paragraph 17, and instead has inserted the substantive standard in the provision. In addition, subparagraph i will be amended to make it clear that in order to qualify for the exemption, the facility may not store, treat or dispose of any hazardous waste which requires a permit and may not treat or dispose of PCB hazardous wastes. A generator accumulating hazardous waste for 90 days or less in compliance with N.J.A.C. 7:26-9.3 is not considered to be storing hazardous waste and is not operating a hazardous waste storage facility; so paragraph 17, as written, does not preclude generators from accumulating hazardous waste on-site in compliance with N.J.A.C. 7:26-9.3.

COMMENT: With reference to N.J.A.C. 7:26-9.2(b)5 and 6, one commenter objects to prohibiting the disposal of PCB wastes and drained PCB-containing equipment in any landfill. The commenter states that TSCA permits the propoer disposal of PCB wastes in solid form, such as spill cleanup material and drained transformers in either an Annex II landfill or by incineration in an Annex I incinerator. The commenter adds that the Department should recognize the potentially inadequate capacity of the available approved Annex I incinerators and not restrict the ability of generators to opt for disposal in Annex II landfills as allowed by TSCA.

A second commenter stated that since these amendments prohibit land disposal of such wastes within the State, New Jersey may have difficulty in meeting the requirement that it certify to the Federal government that it has the capacity to dispose of hazardous wastes generated within the State for a period of 20 years. Other states may soon deny New Jersey access to their disposal capacity if New Jersey takes regulatory positions that indicates an unwillingness to take responsibility for its own waste. Moreover, for clarity, the phrase, "except in conformance with the federal TSCA, 42 U.S.C. §2601 et seq., and regulations thereto" should be added to N.J.A.C. 7:26-9.2(b)5.

A third commenter requested modification of the prohibition against any land disposal of any drained electrical or other equipment (Hazardous Waste Number X752) to allow for such disposal when the equipment has first been drained, or otherwise decontaminated, in compliance with the procedures as set forth in the federal regulations promulgated pursuant to TSCA. By disallowing land disposal of such equipment, which is often bulky in nature, the Department is unnecessarily precluding the use of the most feasible method to dispose of such items.

RESPONSE: The prohibition on land disposal of PCBs and PCB equipment should not significantly affect New Jersey's hazardous waste management capacity because there are currently no TSCA permitted land disposal facilities for PCBs in New Jersey. Other disposal methods will continue to be used. The Department believes that because of the persistence of PCBs in the environment and their tendency to be magnified through the food chain, land disposal is not a satisfactory option for managing PCB wastes, particularly in a densely populated state such as New Jersey. Much equipment tends to trap fluids inside and may result in a substantial amount of PCBs being landfilled. However, the Department has decided to remove the prohibition on land treatment. Land treatment, under proper conditions, may be a means of detoxifying and degrading PCBs and other organic compounds. Applications for permits for land treatment will be considered and applicants will have an opportunity to show that such treatment is effective and poses no undue hazard to human health and the environment. The Department will not issue a permit for a land treatment unit unless a treatment demonstration has been performed and the applicant can show that PCBs have been adequately treated and pose no threat (see N.J.A.C. 7:26-14A-4.7). Additionally, the ban on landfilling PCBs applies only in New Jersey. PCB hazardous wastes may be landfilled in the receiving state if that is allowed.

COMMENT: With reference to N.J.A.C. 7:26-11.4(a)14, which requires solid waste landfills that accept PCB waste containing less than 50 ppm to comply with certain State and Federal requirements for hazardous waste facilities, one commenter recommended that it be deleted. Accepting such nonhazardous wastes would require municipal landfills to comply with hazardous waste and TSCA regulations which would be a significant burden but would provide little environmental benefit.

RESPONSE: The Department agrees and N.J.A.C. 7:26-11.4(a)14 has been deleted. Such wastes are not hazardous wastes, and certain consumer products are allowed by the Food and Drug Administration to contain inadvertently generated PCBs at concentrations of less than 50 ppm.

AGENCY NOTE: Upon adoption, the Agency is recodifying at N.J.A.C. 7:26-8.20(b) waste listings originally codified at N.J.A.C. 7:26-8.13(b). This will make this rule consistent with another recently proposed rule (see 21 N.J.R. 288(a), February 5, 1990). In addition, N.J.A.C. 7:26-1.4, and N.J.A.C. 7:26-8.20 have been clarified to explain that the level of 50 ppm must be determined on a dry weight basis. With reference to N.J.A.C. 7:26-8.4(e), the Department has deleted language concerning cleaning methods which are equivalent to Federal procedures (see 40 C.F.R. 761) in order to be consistent with TSCA regulation, and avoid a situation in which a generator complies with State regulation but would not meet Federal requirements. With reference to N.J.A.C. 7:26-9.1(c)17, the Department inadvertently used the word "after" instead of "before" on proposal. Upon adoption, "before" is used in order to be consistent with other standards for existing facilities (see, for example, N.J.A.C. 7:26-12.3(i)). Proposed N.J.A.C. 7:26-8.2(a)22 is recodified as paragraph (a)24 due to the adoption of N.J.A.C. 7:26-8.2(a)22 and 23 in the May 7, 1990 New Jersey Register.

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

7:14A-4.7 Standards for hazardous waste land treatment units

(a)-(o) (No change.)

[(p) PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, being any solid waste with concentrations of PCBs of 50 ppm or greater by weight, shall not be placed in land treatment units.]

7:26-1.4 Definitions

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

. . .

"PCB hazardous waste" means any hazardous waste as defined at N.J.A.C. 7:26-*[8.13(b)]***8.20(b)***, numbers X750 to X754 inclusive, being any solid waste with concentrations of PCBs of 50 parts per million (ppm) or greater by ***dry*** weight.

. . .

"Polychlorinated biphenyls" or "PCBs" means any chemical substance or combination of substances that is limited to the biphenyl molecule that has been chlorinated to varying degrees. This includes weathered PCBs. The presence and concentration of PCBs shall be determined by Method 8080 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

. . .

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

1.-12. (No change.)

13. A generator exempted according to N.J.A.C. 7:26-7.7(e) shall comply with the full requirements of this section upon off-site shipment of the hazardous waste for final disposition.

(b)-(j) (No change.)

7:26-7.7 Exemption from manifest rules

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

(e) A generator who generates PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is exempt from the requirements at N.J.A.C. 7:26-7.4 for that PCB hazardous waste which is transported intrastate provided the following requirements are met:

1. The PCB hazardous waste is transported intra-company only, meaning between sites owned ***or operated*** by the same company,

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between sites owned by a parent and its subsidiary corporations, or between sites owned ***or operated*** by subsidiaries of the same parent corporation;

2. The generator's storage facility is in compliance with the requirements at N.J.A.C. 7:26-9.1(c)17;

3. The shipment is direct between the generator-owned ***or operated*** site of generation, that is, where the substance becomes a solid waste as defined at N.J.A.C. 7:26-1.6, and the generator's storage facility;

4. The generator complies with all relevant provisions of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, at 40 C.F.R. pt. 761 (1987), including recordkeeping requirements. Any such records must be available for review by the Department; and

5. The generator complies with the requirements of N.J.A.C. 7:26-7.4 upon off-site shipment of the hazardous waste for final disposition.

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-23. (No change.)

*[22.]****24.*** Small capacitors *[from household appliances]*, provided that:

i. The capacitor contains less than 1.36 kilograms (kg.) (three pounds) of dielectric fluid. (Capacitors whose total volume is less than 1,639 cm^3 (100 cubic inches) or whose total weight is less than 4.08 kg. (nine pounds) shall be deemed to contain less than 1.36 kg. of dielectric fluid);

ii. The capacitor is intact and not leaking at the time of disposal;

iii. The capacitor is disposed of as *[municipal]* ***industrial*** solid waste (I.D. 27); and

iv. The generator of the capacitor has not at any time manufactured PCBs, PCB-containing electrical equipment, or PCB-containing capacitors.

(b) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a) (No change.)

(b) Except for those wastes identified in (d), (e), and (j) below, a small quantity generator's hazardous wastes are not subject to regulation under N.J.A.C. 7:26-7 and 7:26-9 through 11.

(c)-(i) (No change.)

(j) If a generator generates a PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, all quantities of that hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through 12.

7:26-8.4 Residues of hazardous waste in empty containers

(a) Any hazardous waste remaining in either an empty container or an empty inner liner removed from a container, the term "empty" defined in (b) through (e) below, is not subject to regulation under N.J.A.C. 7:26-7 through 11.

1. Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in (b) through (e) below, is subject to regulation under N.J.A.C. 7:26-7 through 11.

(b) Except as provided in (c), (d), and (e) below, a container or an inner liner removed from a container that has held any hazardous waste is empty if:

1. (No change.)

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

(c) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(d) A container or an inner liner removed from a container that has held an acute hazardous waste identified in N.J.A.C. 7:26-8.13, 8.14, or 8.15(a)5 is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating;

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner; and

3. The container or inner liner has been:

i. Triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

ii. Cleaned by another method that has been shown in the scientific literature or by tests conducted by the generator to achieve equivalent removal; or

iii. (No change.)

(e) A container or inner liner which held PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating;

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner;

3. The container or inner liner has been triple rinsed in accordance with procedures described at 40 C.F.R. pt. 761 (1987) with a suitable solvent containing 50 ppm PCBs or less, the solubility of PCBs in the solvent being five percent or more by weight*[, or the container or inner liner has been cleaned by an equivalent method approved in advance in writing by the Department and that has been shown in the scientific literature or in tests conducted by the generator to be equivalent]*;

4. Any inner liner that prevented contact between the waste and the container is removed; and

5. All requirements of the Federal Toxic Substances Control Act, U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto have been complied with.

(f) For the purposes of this section, the definition of "container" does not include electrical, hydraulic, or other equipment containing or previously having contained PCBs.

7:26-8.13 Hazardous waste from non-specific sources

(a) (No change.)

(b)

NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic 1.-6. (No change.)		
7. (No change in text.)		
*[9. X750	PCB-contaminated liquids containing 50 ppm or more by weight of PCBs	(T)
10. X751	PCB-contaminated solids containing 50 ppm or more of PCBs by weight	(T)
11. X752	Drained electrical, hydraulic, or other equipment which contained liquids with 50 ppm or more of PCBs by weight	(T)
12. X753	Undrained electrical, hydraulic or other equipment containing liquids with 50 ppm or more of PCBs by weight	(T)
13. X754	PCB-contaminated sludge or dredge material with 50 ppm or more of PCBs by weight	(T)]*

***7:26-8.20 State hazardous waste from non-specific sources**

(a) (Reserved.)

(b)

NJ Hazardous Waste Number	**Hazardous Waste**	**Hazardous Code**
Generic		
1. X750	**PCB liquids containing 50 ppm or more by dry weight of PCBs**	**(T)**
2. X751	**PCB solids containing 50 ppm or more by dry weight of PCBs**	**(T)**
3. X752	**Drained electrical, hydraulic or other equipment which at the time of draining contained liquids with 50 ppm or more of PCBs by dry weight**	**(T)**

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4. X753	**Undrained electrical, hydraulic or other equipment containing liquids with 50 ppm or more of PCBs by dry weight**	**(T)**
5. X754	**Sludge or dredge material containing 50 ppm or more of PCBs by dry weight**	**(T)***

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-8. (No change.)

9. The owner or operator of an industrial boiler or ***an*** industrial furnace burning a hazardous waste, provided the following conditions are met:

i.-ix. (No change.)

x. The material being burned contains no *[PCBs of any concentration]* ***PCB hazardous waste***.

10.-16. (No change.)

17. The owner or operator of a hazardous waste facility which is used *[solely]* for the storage of PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, generated by the owner or operator of the facility, provided the following conditions are met:

i. The facility does not store***, treat, or dispose of*** any other hazardous waste for which a hazardous waste facility permit is required and does not treat or dispose of PCB hazardous waste. If a facility does not meet the criteria of this paragraph, then it *[must]* ***shall*** obtain a hazardous waste facility permit pursuant to N.J.A.C. 7:26-12 in order to store PCB hazardous waste; and

ii. The facility is constructed and operated in full compliance with the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, including the requirement at 40 C.F.R. §761.65 (1987) to dispose of the PCB hazardous waste within one year of placing it into storage; and

iii. The owner or operator of an existing facility, as defined at N.J.A.C. 7:26-1.4, files the notice of his or her intent to store PCB hazardous waste***,*** pursuant to this paragraph***,*** with the Department on or *[after (90 days after the effective date of these amendments)]* ***before August 19, 1990***; or

iv. The owner or operator of a new facility files notice of his or her intention to store PCB hazardous waste pursuant to this paragraph with the Department prior to the commencement of storage activities.

v. The notice required in (c)17iii and iv above shall be in writing and shall include:

(1) The facility name, address, I.D. number;

(2) The generator name, address, I.D. number, if different from (c)17v(1) above;

(3) The date the facility began or will begin operation;

(4) A description of the design and capacity of the facility;

(5) A description of the state, composition, waste code, and method of containment for all wastes stored and/or to be stored at the facility;

(6) A site plan, showing all necessary details of the storage facility; and

(7) An originally-signed certification stating the following:

I (insert name of owner or operator), certify that (insert facility name, address and I.D. number) is designed, constructed, and operated in compliance with all relevant regulations adopted pursuant to the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (1976) and effective on (insert date on which certification is signed).

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application 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. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate, or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true.

(Date) (Name)

(Title)

(Signature)

; and

vi. The certification required by (c)17v above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

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

7:26-9.2 General prohibitions

(a) (No change.)

(b) No person shall cause, suffer, allow, or permit:

1. The installation or other use of any new underground storage tank for the purpose of containing a liquid hazardous waste except that commercial service stations may install and use new underground storage tanks for storing waste oil provided the tank has a capacity of less than 1001 gallons;

2. The conversion of any underground storage tank in use or ready for use on the effective date of this subchapter for the purpose of containing a liquid hazardous waste;

3. The use of any existing underground hazardous waste storage tank unless:

i. Monitoring in compliance with N.J.A.C. 7:14A-6 is performed;

ii. Such use is limited to the specified lifetime of the tank; and

iii. The tank is managed in compliance with N.J.A.C. 7:26-10.5(e)6;

4. The use of hazardous waste piles;

5. The disposal of any PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, in any landfill, surface impoundment, or any hazardous waste facility by underground injection or by any other land disposal method;

6. The disposal of any drained or undrained PCB-containing electrical or other equipment, as specified at N.J.A.C. *[7:26-8.13(b)11 and 12]* ***7:26-8.20(b)***, New Jersey Hazardous Waste numbers X752 and X753, in landfills or by any other land disposal method; or

7. The disposal of any PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, in any incinerator which does not meet the requirements of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto.

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

7:26-10.6 Surface impoundments

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

(e) Operational and maintenance standards for surface impoundments include the following:

1.-11. (No change.)

12. PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, shall not be placed in a surface impoundment.

(f)-(h) (No change.)

7:26-10.7 Hazardous waste incinerators

(a)-(e) (No change.)

(f) Any person responsible for operating a hazardous waste incinerator shall comply with the following:

1.-8. (No change.)

9. In addition to compliance with all applicable New Jersey statutes and rules, incinerators used to dispose of waste containing *[PCBs at any concentration must]* ***PCB hazardous waste shall*** comply with all requirements of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto.

(g)-(m) (No change.)

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7:26-10.8 Hazardous waste landfills
(a)-(d) (No change.)
(e) Operational standards for hazardous waste landfills include the following:
1.-9. (No change.)
10. The following shall not be placed in a hazardous waste landfill:
i. (No change.)
ii. Non-containerized liquid waste;
iii. (No change.)
iv. Acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15(a)5, and toxic waste (T), as listed in N.J.A.C. 7:26-8.15(a)6, unless the owner or operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26-7.4(a); or
v. PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4;
11.-22. (No change.)
(f)-(j) (No change.)

7:26-11.3 Surface impoundments
(a)-(g) (No change.)
(h) PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, shall not be placed in a surface impoundment.

7:26-11.4 Hazardous waste landfills
(a) Operational standards for hazardous waste landfills include the following:
1.-12. (No change.)
13. PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, shall not be placed in a hazardous waste landfill.
[14. Solid wastes containing less than 50 ppm by weight of PCBs may be placed in a hazardous waste landfill provided that, in addition to complying with all applicable State statutes and rules, the owner or operator of the landfill complies with all requirements of the Federal Toxic Substances Control Act (TSCA), 42 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, specifically 40 C.F.R. §761.75 (1987).]
(b)-(d) (No change.)

7:26-12.1 Scope and applicability
(a) (No change.)
(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or to construct or operate the following hazardous waste facilities:
1.-6. (No change.)
7. The owner or operator of an industrial boiler or industrial furnace burning hazardous waste provided the following conditions, as well as those set forth at N.J.A.C. 7:26-9.1(c)9, are met:
i.-vii. (No change.)
viii. The hazardous waste shall be burned no more than 90 days after it is generated and the following conditions shall be met:
(1)-(3) (No change.)
(4) For waste which is placed in above ground tanks, the following requirements shall be met:
(A) (No change.)
(B) The waste must be managed in conformance with N.J.A.C. 7:26-9.3(b)1-5 and 8 as well as N.J.A.C. 7:26-9.1(c)9viii(2) and (3);
ix. The device is not a cement kiln; and
x. The waste to be burned does not contain any PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4.
8.-11. (No change.)
(c)-(g) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE
Bureau of Shellfisheries
Oysters
Readoption: N.J.A.C. 7:25A

Proposed: February 5, 1990 at 22 N.J.R. 283(a).
Adopted: April 18, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: April 23, 1990 as R.1990 d.250, **without change.**

Authority: N.J.S.A. 13:1D-9, 50:1-5, 50:1-23, and 50:1-27.

DEP Docket Number: 002-90-01.
Effective Date: April 23, 1990.
Expiration Date: April 23, 1995.

Summary of Public Comments and Agency Responses:
The readoption without change of the rules of the Department of Environmental Protection governing the management of and harvest from the State oyster resource in the Delaware Bay, N.J.A.C. 7:25A, was proposed on February 5, 1990 at 22 N.J.R. 283(a). The Department **did not receive any written comments** on the proposal during the public comment period ending April 6, 1990.

Full text of the readoption may be found in the New Jersey Administrative Code at 7:25A.

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT
Radioactive Mixed Waste
Adopted Amendments: N.J.A.C. 7:26-1.4, 8.2, 9.13 and 12.3

Proposed: May 1, 1989 at 21 N.J.R. 1053(a).
Adopted: April 27, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: April 30, 1990 as R.1990 d.261, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 022-89-04.
Effective Date: May 21, 1990.
Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:
These amendments were proposed on May 1, 1989 at 21 N.J.R. 1053(a). Three commenters submitted written comments during the comment period which closed on June 30, 1989.

COMMENT: It appears that the Department is accepting delegation from the United States Environmental Protection Agency (EPA) for the radioactive mixed waste program, despite lack of any clear results from the NJDEP survey questionnaire. The small universe of regulated entities may not be comparable to the administrative burden which these entities will suffer in becoming treatment, storage or disposal (TSD) facilities under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.

RESPONSE: The Department is required to adopt the radioactive mixed waste amendments in order to maintain equivalency with the Federal RCRA program and to retain authorization of the State's hazardous waste management program regardless of the universe of regulated entities. The Department conducted the survey in April 1989 in order to inquire about the possible universe of radioactive mixed waste and its generators. The survey was not a factor in the decision to proceed with rulemaking.

COMMENT: The commenter strongly suggests that this notice be sent to all New Jersey holders of U.S. Nuclear Regulatory Commission (USNRC) and New Jersey State radioactive materials licenses. In this manner, the Department will reach all the potentially affected facilities.

RESPONSE: Prior to initiating this rulemaking, an April 1989 survey on radioactive mixed waste was sent to over 800 New Jersey USNRC-licensed facilities to inform potential generators of the radioactive mixed

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waste rule. In addition to the notice of this proposed rulemaking in the May 1, 1989 New Jersey Register, the Department also gave notice of the proposed rule in the Trenton Times and Newark Star Ledger newspapers.

COMMENT: Since USNRC-licensed facilities generate only small quantities of radioactive mixed wastes and since such wastes are properly managed, the costs of obtaining and complying with a hazardous waste treatment, storage or disposal (TSD) facility permit are disproportionate to the risks to the environment, public health, and public safety. The commenter believes a TSD facility permit is not required to ensure the protection of the environment, public health, and public safety and alternatively suggests the Department adopt a storage quantity below which a TSD facility permit is not required.

RESPONSE: USEPA has determined that it is necessary and appropriate to manage radioactive mixed waste under the hazardous waste management program. The New Jersey Department of Environmental Protection is required by USEPA to provide regulation of the hazardous waste portion of radioactive mixed waste in order to retain Federal authorization to implement RCRA. Generators of radioactive mixed waste may be able to qualify for small quantity generator status as provided at N.J.A.C. 7:26-8.3. Even if generators qualify for the small quantity generator exemption for the hazardous waste portion, the material is still subject to radioactive waste handling and disposal requirements. All generators of hazardous waste are subject to certain requirements in order to protect the public and the environment. In light of USEPA's determination, the Department, at this time, sees no reason to provide an exemption in the case of radioactive mixed waste.

COMMENT: Does the amended exclusion at N.J.A.C. 7:26-8.2(a)4 include high-level radiological waste such as spent fuels?

RESPONSE: Any matrix containing a hazardous waste as defined in N.J.A.C. 7:26-8.1 and a radioactive waste subject to the Atomic Energy Act of 1954, 42 U.S.C. §2011 et seq., is a radioactive mixed waste. Such wastes are subject to the State's hazardous waste rules regardless of further subclassification of the radioactive waste constituent as high-level, low-level, transuranic, etc.

COMMENT: When a waste is not listed as a hazardous waste and process knowledge does not verify any of the characteristics of a hazardous waste, it is necessary to perform testing. The Department should consider the risks associated with additional worker exposure in order to perform this sampling and analysis.

RESPONSE: A generator must test for characteristics of hazardous waste if process knowledge does not verify hazardous waste characteristics of the waste. Laboratories which are certified to do such testing are required to have appropriate safety procedures in place.

COMMENT: The Department should give considerable thought to the adequate training which must be provided on a site-specific basis to its radioactive mixed waste inspectors.

RESPONSE: The Department's radioactive mixed waste inspectors will be adequately trained by the Department's Bureau of Radiation Protection and the USNRC and by some of the facilities themselves. The Department will take adequate precautions to protect the health of its inspectors.

COMMENT: A six month to one year time period should be allotted for generators of radioactive mixed waste to come into compliance with the requirements of the radioactive mixed waste rules, that is, containment, administration, storage, inspection, etc.

RESPONSE: Although the provisions of N.J.A.C. 7:26-12.3(j) would allow generators of radioactive mixed waste 180 days from the effect of this rule to come into compliance, the Department agrees with the comment and has decided to delay regulation of radioactive mixed waste until April 1, 1991.

COMMENT: The radioactive mixed waste regulation exceeds the Federal interpretation and conflicts with the Federal program.

RESPONSE: The Department's overall hazardous waste program is more stringent than the Federal program; however, some of the regulatory language in the New Jersey hazardous waste program is equivalent to the Federal program. In order for the Department to retain authorization of its hazardous waste management program, it must be equivalent to or more stringent than the Federal hazardous waste management program under the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. The radioactive mixed waste rule is equivalent to the Federal program, does not exceed Federal interpretation, and is not in conflict with the Federal program.

COMMENT: Transporters of radioactive mixed waste are licensed by the USNRC. Since there are no mixed waste disposal facilities located in New Jersey, this additional licensing places an unwarranted burden on the transporters and, consequently, on the generators.

RESPONSE: Radioactive mixed waste has components which are radioactive and hazardous and as such are subject to regulation under both the Atomic Energy Act and the Resource Conservation and Recovery Act. The USNRC licenses transporters for radioactive waste, not hazardous waste. Furthermore, the USEPA has directed states seeking authorization or seeking to retain authorization for the RCRA program to implement rules which regulate the hazardous waste components of radioactive mixed waste. Therefore, transporters of radioactive mixed waste in New Jersey must obtain a hazardous waste transporter license in accordance with N.J.A.C. 7:26-7.5.

COMMENT: New Jersey classification of hazardous waste includes several classifications for waste oils. If radioactive mixed waste oils are to be disposed or treated in a state which does not recognize waste oils as a hazardous waste, generators in New Jersey may be excluded from disposing of waste oils in a USNRC-licensed facility which is not licensed for hazardous wastes.

RESPONSE: Waste oils sent to facilities outside of New Jersey for treatment or disposal are governed by the waste rules of the receiving state. NRC-licensed facilities in states which do not classify waste oils as hazardous waste are not prohibited from accepting radioactive waste oils from New Jersey generators. However, the waste oil must be manifested as a hazardous waste from New Jersey with the appropriate New Jersey waste code. It is important to keep in mind that if the waste oil exhibits characteristics of hazardous waste (D waste) and is sent for purposes other than burning for energy recovery or recycling, it is a federally regulated hazardous waste.

COMMENT: The Federal program provides an exemption for contaminated shielding, usually lead, and for recycled scrap metal. The Department should provide all of the exemptions of the Federal program to allow disposal of these materials at USNRC-licensed disposal facilities.

RESPONSE: New Jersey has excluded many items from the hazardous waste rules. These exclusions are found at N.J.A.C. 7:26-8.2 which includes an exclusion for hazardous scrap metal when recycled. Lead shielding which is recycled would meet this exclusion. However, in the case of disposal, materials which are considered hazardous in New Jersey but not in the disposal state would have to be shipped out of New Jersey under manifest. Since disposal is determined by the receiving state, a hazardous waste manifest is required even if the radioactive mixed waste is neither generated nor disposed of in New Jersey but only passing through the State in transit. Therefore, radioactive mixed waste materials which are considered non-hazardous radioactive waste in the receiving state may be disposed of at a USNRC-licensed facility in the receiving state.

COMMENT: The Economic Impact evaluation provides no estimated costs but relies on the requirements imposed by the USEPA to provide for the regulation of radioactive mixed wastes. A thorough evaluation of the costs of these regulations is necessary.

RESPONSE: It is not possible to produce a detailed listing of costs associated with the radioactive mixed waste rule since costs will vary with each regulated person. The costs involved depend on such factors as the volume and the nature of the wastes involved and management practices at each facility. However, the Department recognizes that persons who are required to become hazardous waste treatment, storage or disposal (TSD) facilities as a result of this rule may incur a substantial economic burden. For example, see N.J.A.C. 7:26-4A for fees associated with the handling of hazardous wastes.

COMMENT: A transporter of scintillation fluids suggests that the Department adopt the Federal 10-day transfer facility exemption for containers of hazardous waste (40 C.F.R. 263.12) because the Department's current rules, which do not allow for a holding period for transporters of hazardous waste, would have a significant negative economic impact on the transporter's business.

RESPONSE: The Department is currently considering a form of a conditional 10-day transfer facility exemption. However, until such time as a final determination is made, hazardous waste picked up at or near the close of business may be held at the transporter's site to allow for delivery on the next business day. If the holding period is to exceed the normal 48-hour period on a weekend, or the 72-hour period involving a weekend plus a holiday, the transporter must notify the Division of Hazardous Waste Management (Enforcement Element) of such intention as well as the mitigating circumstances.

COMMENT: The summary contends that this proposal will avoid dual State-Federal regulation. Although this is in reference to the RCRA

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requirements, dual, State-Federal regulation is imposed in that the requirements of the USNRC and the State are both imposed on the generator of radioactive mixed wastes.

RESPONSE: The summary of the proposed radioactive mixed waste rules addresses the regulatory requirements of the hazardous waste portion of radioactive mixed waste as well as informs the regulated community about the existence of regulatory requirements of the radioactive waste portion of radioactive mixed waste under the Atomic Energy Act, 42 U.S.C. §2011 et seq. The Department understands that State-Federal dual regulations will be imposed on generators as to the components of radioactive mixed waste; however, when the Department becomes authorized for this portion of the RCRA program, it will avoid dual, State-Federal regulation of the hazardous waste component.

COMMENT: There are currently no disposal facilities licensed for the receipt of most radioactive mixed waste. The implementation of this regulation will have the effect of requiring generators of radioactive mixed wastes to become permitted hazardous waste storage facilities.

RESPONSE: The Low-Level Radioactive Waste Policy Amendments Act, Public Law 99-240, January 15, 1986, made the states responsible for the disposal of low-level radioactive wastes (LLRW), including radioactive mixed waste, generated within a state (or compact region) after December 31, 1992. (See 42 U.S.C. §2021a through 2021j). A New Jersey disposal facility is projected to become available in 1995. At the present time, generators of radioactive mixed waste have no alternative but to store most of the radioactive mixed waste on-site. Therefore, many generators will be required to obtain a TSD facility permit commencing April 1, 1991.

COMMENT: The USNRC radioactive waste disposal regulations include the requirement for waste form stabilization prior to disposal. One USNRC approved waste form stabilization method is solidification in asphalt. The oil content in the asphalt may preclude disposal of radioactive waste in USNRC licensed disposal facilities solely due to the New Jersey rules listing waste oil as a hazardous source.

RESPONSE: If the waste to be solidifed in asphalt is a radioactive mixed waste, then it must be disposed at a facility licensed to handle both radioactive waste and hazardous waste. However, the use of asphalt to stabilize only radioactive waste will not create a radioactive mixed waste unless the asphalt was determined to be a characteristic hazardous waste (D waste). The listings for waste oil at N.J.A.C. 7:26-8.13(b) do not include a listing for asphalt. If waste oil is used in the production of asphalt, the waste oil must have been treated to standards acceptable to the Department, whereupon the waste oil would be considered a product and no longer subject to regulation as a hazardous waste. Exemptions from the hazardous waste classification of waste oil also appear at N.J.A.C. 7:26-8.2(a).

COMMENT: The inclusion of radioactive waste treatment equipment as solid waste management units does not provide any additional protection to the environment or the public. The existing USNRC requirements provide protection while maintaining the specific requirements unique to radioactive wastes.

RESPONSE: If the treatment equipment is used to treat radioactive mixed waste, then the facility is required to become a hazardous waste treatment, storage or disposal (TSD) facility and comply with TSD facility requirements at N.J.A.C. 7:26-9 and 12, including corrective action requirements which would be part of the joint permit issued by the Department and USEPA.

Summary of Agency Initiated Changes:

The Department is, on adoption, amending the definition of "existing hazardous waste facility" at N.J.A.C. 7:26-1.4 to reflect the mechanism for embracing newly regulated facilities at N.J.A.C. 7:26-12.3(j).

The Department is, on adoption, adding N.J.A.C. 7:26-9.13(b)1vi to clarify that owners or operators of existing surface impoundments, landfills, or land treatment units, which become hazardous waste facilities pursuant to N.J.A.C. 7:26-12.3(j), must acquire liability coverage for nonsudden accidental occurrences within 180 days of becoming subject to regulation. Although this is already required by N.J.A.C. 7:26-12.3(e), the Department feels there is a need to clarify and specify this requirement.

The Department is deleting the words "hazardous wastes" in reference to newly regulated facilities in N.J.A.C. 7:26-12.3(j) to clarify the language. The intent of this paragraph is to embrace into the hazardous waste management system those facilities which become hazardous waste facilities due to a State statutory or rule amendment effective after the facility initially commenced operation, but which was not already subject to regulation prior to the amendment. The last sentence in paragraph (j) is revised for clarity.

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

7:26-1.4 Definitions

. . .

"Existing hazardous waste facility" or "Existing facility means *[a]**:*

1.* *A hazardous waste facility which was in operation, or for which construction has commenced, on or before November 19, 1980. Construction had commenced if the owner or operator had obtained all necessary Federal permits as well as any permit required by the Division's predecessor, the Solid Waste Administration, and either:

*[1.]***i.*** (No change in text.)

*[2.]***ii.*** The owner or operator had entered into contractual obligations—which could not be cancelled or modified without substantial loss—for the construction of the facility to be completed within a reasonable time*[.]***; or***

2. A facility which becomes subject to regulation as a hazardous waste facility and is required to obtain a hazardous waste facility permit pursuant to N.J.A.C. 7:26-12 solely because of a State statutory or rule amendment effective after the facility initially commenced operation and which has timely filed for existing facility status in accordance with N.J.A.C. 7:26-12.3.

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous wastes for the purpose of this subchapter:

1.-3. (No change.)

4. Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. ***Commencing April 1, 1991 and subsequent thereto,*** *[This]* ***this*** exemption does not include, however, the hazardous waste portion of mixtures of radioactive wastes ***and hazardous wastes***.

5.-21. (No change.)

(b) (No change.)

7:26-9.13 Liability requirements

(a) (No change.)

(b) Coverage for nonsudden accidental occurrences shall meet the following requirements:

1. An owner or operator of a surface impoundment, landfill or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury or property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. The liability coverage may be demonstrated in one of five ways, as specified in (b)1i, ii, iii, iv and v below:

i.-v. (No change.)

vi. For existing facilities brought under regulation pursuant to N.J.A.C. 7:26-12.3(j), liability coverage for nonsudden accidental occurrences shall be demonstrated within 180 days of the facility's becoming subject to N.J.A.C. 7:26-12.

7:26-12.3 Existing facilities

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

(j) A *[hazardous waste]* facility that is required to obtain a hazardous waste facility permit pursuant to this subchapter solely because of a State statutory or rule amendment effective after the facility initially commenced operation may be eligible for existing facility status provided the owner or operator of the facility complies, and thereafter remains in compliance, with all existing facility requirements under this section within 180 days of the facility's becoming subject to this subchapter. This provision shall not apply to any *[hazardous waste]* facility that has been denied a hazardous waste treatment, storage, or disposal facility permit, whose existing facility

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status has been terminated, or a facility subject to (i) above. To be eligible for existing facility status, *[within 180 days after becoming subject to this subchapter,]* an owner or operator of a newly regulated hazardous waste facility shall***, within 180 days after becoming subject to this subchapter***:

i. Notify the United States Environmental Protection Agency as required by Section 3010 of the Federal Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.);

ii. File a Part A application for the facility in accordance with N.J.A.C. 7:26-12.2(d); and

iii. Operate the facility in accordance with N.J.A.C. 7:26-9 and 11.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Noise Control

Adopted New Rules: N.J.A.C. 7:29

Proposed: February 5, 1990 at 22 N.J.R. 307(b).
Adopted: April 23, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: April 30, 1990 as R.1990 d.262, **without change.**
Authority: N.J.S.A. 13:1D-1 et seq., 13:1G-1 et seq.
DEP Docket Number: 001-90-01.
Effective Date: May 21, 1990.
Expiration Date: May 21, 1995.

Summary of Public Comments and Agency Responses:

N.J.A.C. 7:29 expired on March 31, 1990, pursuant to Executive Order No. 66(1978). Pursuant to N.J.A.C. 1:30-4.4(f), the rules proposed for readoption are adopted herein as new rules.

COMMENT: The existing rules on noise emanating from power vessels need to be revised. Tests show that 86 dBA (decibels) motorboat noise emissions measured 50 feet away at full throttle are equal to 90 dBA noise emissions at the transom of the same vessel stationary at idle. However, it is much safer and simpler for marine police to measure noise at idle than at full throttle. Test results will also be more accurate, so the State will be able to make a larger percentage of boaters conform to noise control restrictions. The commenter intends to file a petition for rulemaking, with full documentation and endorsements, asking the Department to make this change in test method.

RESPONSE: The Department will be glad to review the documentation for the petition for rulemaking after the petition is received. The current readoption proposal affects N.J.A.C. 7:29 only. "Motorcraft Noise Control" rules are found at N.J.A.C. 7:6-6.3, and are not affected by the current readoption of chapter 29.

Full text of the adopted new rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:29.

HEALTH

(b)

HOSPITAL REIMBURSEMENT

Notice of Administrative Correction
Hospital Rate Setting
Notification Appeal and Review
N.J.A.C. 8:31B-3.51

Take notice that the Department of Health has discovered an error in the current text of N.J.A.C. 8:31B-3.51. Because a proposed and adopted amendment to N.J.A.C. 8:31B-3.51 in 1989 (see 21 N.J.R. 131(b) and 2073(a)) which did not mention or specifically recodify what was paragraph (b)4 as (b)3, the paragraph was inadvertently omitted from the Code update incorporating the adopted amendment. The punctuation error of the paragraph ending in a colon is also corrected through this notice. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface **thus**):

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: within 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.-2. (No change.)

3. Notwithstanding the above, effective for the 1986 Proposed Schedule of Rates, hospitals may only appeal under the not accept option for Statewide increases in costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, 1985.

(c)

HOSPITAL REIMBURSEMENT

Diagnosis Related Groups (DRG) List

Adopted Amendment: N.J.A.C. 8:31B-5.3

Proposed: December 18, 1989 at 21 N.J.R. 3873(b).
Adopted: April 27, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: April 30, 1990 as R.1990 d.265, **with substantive 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: May 21, 1990.
Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

The New York State GROUPER Version 7.0 has been further refined to allow a case to be assigned to DRG 742, Bone Marrow Transplant, from Major Diagnostic Categories (MDCs) 1-14, 16-23, and 25. DRG 742 had previously been allowed only when a case was assigned to MDCs 16, 17 or 18. This is the only change from proposal to adoption.

COMMENTER: New Jersey Hospital Association

COMMENT: The impact of the New GROUPER and the trim point modifications is unknown since the changes have not been modeled by the Department. Consequently, the Department has not informed hospitals of the specific impact of the changes. In the past, the length of stay adjustment would have acted as a buffer because it provided hospitals with a financial incentive to reduce length of stay by comparing the hospital's current high outlier, inlier, and low outlier case mix with base year performance. However, this adjustment has been eliminated for the 1990 rate year. As a result, a significant financial penalty is imposed on hospitals that succeed in reducing patients' lengths of stay below the high or low trim points.

RESPONSE: The Department believes that there are still financial incentives for a hospital to reduce lengths of stay. Since the trim points have changed for many DRGs, the calculation of the new payment rates includes the higher cost of patients that were previously high outliers. This increased inlier rate should then benefit the hospital that can decrease lengths of stay and resource consumption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

8:31B-5.3 Listing of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Groups follows:

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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	4	55
(002)	CRANIOTOMY AGE FOR TRAUMA AGE >17	3	51
(004)	SPINAL PROCEDURES	3	44
(005)	EXTRACRANIAL VASCULAR PROCEDURES	2	25
(006)	CARPAL TUNNEL RELEASE	1	14
(007)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W CC	2	42
(008)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W/O CC	1	12
(009)	SPINAL DISORDERS & INJURIES	2	25
(010)	NERVOUS SYSTEM NEOPLASMS W CC	3	39
(011)	NERVOUS SYSTEM NEOPLASMS W/O CC	2	22
(012)	DEGENERATIVE NERVOUS SYSTEM DISORDERS	2	36
(013)	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	2	22
(014)	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	3	38
(015)	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	2	20
(016)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W CC	2	27
(017)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W/O CC	2	20
(018)	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	2	26
(019)	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	2	15
(020)	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	3	27
(021)	VIRAL MENINGITIS	2	15
(022)	HYPERTENSIVE ENCEPHALOPATHY	2	19
(023)	NON-TRAUMATIC STUPOR & COMA	2	23
(024)	SEIZURE & HEADACHE AGE >17 W CC	2	23
(025)	SEIZURE & HEADACHE AGE >17 W/O CC	2	13
(026)	SEIZURE & HEADACHE AGE <18	1	9
(027)	TRAUMATIC STUPOR & COMA, COMA >1 HR.	2	23
(028)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W CC	2	27
(029)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W/O CC	2	16
(030)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE <18	1	10
(031)	CONCUSSION AGE >17 W CC	2	20
(032)	CONCUSSION AGE >17 W/O CC	1	9
(033)	CONCUSSION AGE <18	1	5
(034)	OTHER DISORDERS OF NERVOUS SYSTEM W CC	2	25
(035)	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	2	15
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(530)	CRANIOTOMY W MAJOR CC	6	94
(531)	NERVOUS SYSTEM PROCEDURES EXCEPT CRANIOTOMY W MAJOR CC	6	93
(532)	TIA, PRECEREBRAL OCCLUSION, SEIZURE & HEADACHE W MAJOR CC	3	41
(533)	OTHER NERVOUS SYSTEM DISORDERS W MAJOR CC	4	60
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
(737)	VENTRICULAR SHINT REVISION AGE <18	2	21
(738)	CRANIOTOMY AGE <18 W CC	4	52
(739)	CRANIOTOMY AGE <18 W/O CC	2	31
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

MAJOR DIAGNOSTIC CATEGORY 02: DISEASES AND DISORDERS OF THE EYE

		OUTLIER TRIM POINT LOW	HIGH
(036)	RETINAL PROCEDURES	1	6
(037)	ORBITAL PROCEDURES	1	9
(038)	PRIMARY IRIS PROCEDURES	1	4
(039)	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	1	7
(040)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	1	6
(041)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE <18	1	5
(042)	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	1	12
(043)	HYPHEMA	2	8
(044)	ACUTE MAJOR EYE INFECTIONS	2	14
(045)	NEUROLOGICAL EYE DISORDERS	2	15
(046)	OTHER DISORDERS OF THE EYE AGE >17 W CC	2	25

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(047)	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	1	18
(048)	OTHER DISORDERS OF THE EYE AGE <18	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(534)	EYE PROCEDURES W MAJOR CC	2	34
(535)	EYE DISORDERS W MAJOR CC	2	29
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	42
(050)	SIALOADENECTOMY	1	7
(051)	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1	5
(052)	CLEFT LIP & PALATE REPAIR	1	7
(053)	SINUS & MASTOID PROCEDURES AGE >17	1	8
(054)	SINUS & MASTOID PROCEDURES AGE <18	1	9
(055)	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1	6
(056)	RHINOPLASTY	1	4
(057)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE >17	1	8
(058)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE <18	1	3
(059)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	1	2
(060)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE <18	1	5
(061)	MYRINGOTOMY W TUBE INSERTION >17	1	11
(062)	MYRINGOTOMY W TUBE INSERTION <18	1	12
(063)	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	2	15
(064)	EAR, NOSE, MOUTH & THROAT MALIGNANCY	2	26
(065)	DYSEQUILIBRIUM	2	13
(066)	EPISTAXIS	2	11
(067)	EPIGLOTTITIS	2	10
(068)	OTITIS MEDIA & URI AGE >17 W CC	2	17
(069)	OTITIS MEDIA & URI AGE >17 W/O CC	2	10
(070)	OTITIS MEDIA & URI AGE <18	2	8
(071)	LARYNGOTRACHEITIS	1	7
(072)	NASAL TRAUMA & DEFORMITY	1	8
(073)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE >17	1	10
(074)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE <18	1	12
(168)	MOUTH PROCEDURES W CC	2	32
(169)	MOUTH PROCEDURES W/O CC	1	8
(185)	DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE >17	2	11
(186)	DENTAL EXTRACTIONS & RESTORATIONS AGE <18	2	9
(187)	DENTAL EXTRACTIONS & RESTORATIONS	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(536)	ENT & MOUTH PROCEDURES EXCEPT MAJOR HEAD & NECK W MAJOR CC	2	28
(537)	ENT & MOUTH DISORDERS W MAJOR CC	2	38
(735)	MOUTH, LARYNX OR PHARYNX DISORDERS WITH TRACHEOSTOMY	5	74
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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MAJOR DIAGNOSTIC CATEGORY 04: DISEASES AND DISORDERS OF THE RESPIRATORY SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(075)	MAJOR CHEST PROCEDURES	3	36
(076)	OTHER RESP SYSTEM O.R. PROCEDURES W CC	3	37
(077)	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	2	16
(078)	PULMONARY EMBOLISM	3	26
(079)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	3	37
(080)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	2	28
(081)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE <18	2	18
(082)	RESPIRATORY NEOPLASMS	2	28
(083)	MAJOR CHEST TRAUMA W CC	2	23
(084)	MAJOR CHEST TRAUMA W/O CC	2	11
(085)	PLEURAL EFFUSION W CC	2	26
(086)	PLEURAL EFFUSION W/O CC	2	16
(087)	PULMONARY EDEMA & RESPIRATORY FAILURE	2	22
(088)	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	2	27
(089)	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	2	28
(090)	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	2	16
(091)	SIMPLE PNEUMONIA & PLEURISY AGE <18	2	11
(092)	INTERSTITIAL LUNG DISEASE W CC	2	27
(093)	INTERSTITIAL LUNG DISEASE W/O CC	2	16
(094)	PNEUMOTHORAX W CC	2	22
(095)	PNEUMOTHORAX W/O CC	2	13
(096)	BRONCHITIS & ASTHMA AGE >17 W CC	2	21
(097)	BRONCHITIS & ASTHMA AGE >17 W/O CC	2	13
(098)	BRONCHITIS & ASTHMA AGE <18	2	8
(099)	RESPIRATORY SIGNS & SYMPTOMS W CC	2	16
(100)	RESPIRATORY SIGNS & SYMPTOMS W/O CC	2	9
(101)	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	2	22
(102)	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	2	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(475)	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3	46
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(538)	MAJOR CHEST PROCEDURES W MAJOR CC	4	51
(539)	RESPIRATORY PROCEDURES EXCEPT MAJOR CHEST W MAJOR CC	5	73
(540)	RESPIRATORY INFECTIONS INFLAMMATIONS W MAJOR CC	4	58
(541)	RESPIRATORY DISORDERS EXCEPT INFECTIONS, BRONCHITIS & ASTHMA W MAJOR CC	3	42
(542)	BRONCHITIS & ASTHMA W MAJOR CC	2	29
(631)	BPD AND OTHER CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PERIOD	2	19
(632)	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	2	10
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
(740)	CYSTIC FIBROSIS	3	24
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	48
(105)	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	3	34
(106)	CORONARY BYPASS W CARDIAC CATH	4	35
(107)	CORONARY BYPASS W/O CARDIAC CATH	3	24
(108)	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	3	33
(109)	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	2	28
(110)	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	4	50
(111)	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2	20
(112)	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2	20
(113)	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	5	73

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(114)	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	4	49
(115)	PERM CARDIAC PACEMAKER IMPL W AMI, HEART FAILURE OR SHOCK	4	44
(116)	PERM CARDIAC PACEMAKER IMPL W/O AMI, HEART FAILURE OR SHOCK	2	30
(117)	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	2	19
(118)	CARDIAC PACEMAKER DEVICE REPLACEMENT	2	21
(119)	VEIN LIGATION & STRIPPING	1	13
(120)	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	3	45
(121)	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	3	30
(122)	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	2	18
(123)	CIRCULATORY DISORDERS W AMI EXPIRED	2	22
(124)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	2	16
(125)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1	7
(126)	ACUTE & SUBACUTE ENDOCARDITIS	5	56
(127)	HEART FAILURE & SHOCK	2	26
(128)	DEEP VEIN THROMBOPHLEBITIS	2	22
(129)	CARDIAC ARREST, UNEXPLAINED	2	13
(130)	PERIPHERAL VASCULAR DISORDERS W CC	2	25
(131)	PERIPHERAL VASCULAR DISORDERS W/O CC	2	16
(132)	ATHEROSCLEROSIS W CC	2	18
(133)	ATHEROSCLEROSIS W/O CC	2	13
(134)	HYPERTENSION	2	18
(135)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	2	23
(136)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	2	11
(137)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE <18	2	23
(138)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	2	22
(139)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	2	13
(140)	ANGINA PECTORIS	2	16
(141)	SYNCOPE & COLLAPSE W CC	2	21
(142)	SYNCOPE & COLLAPSE W/O CC	2	12
(143)	CHEST PAIN	2	10
(144)	OTHER CIRCULATORY SYSTEM DIAGNOSIS W CC	2	24
(145)	OTHER CIRCULATORY SYSTEM DIAGNOSIS W/O CC	2	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(543)	CIRC DISORDER EXCEPT AMI ENDOCARDITIS, CHF & ARRHYTHMIA W MAJOR CC	2	37
(544)	CHF & CARDIAC ARRHYTHMIA W MAJOR CC	3	45
(545)	CARDIAC VALVE PROCEDURE W MAJOR CC	5	70
(546)	CORONARY BYPASS W MAJOR CC	4	49
(547)	OTHER CARDIOVASCULAR PROCEDURES W PUMP W MAJOR CC	4	57
(548)	OTHER CARDIOTHORACIC PROCEDURES W PUMP W MAJOR CC	4	54
(549)	OTHER CARDIOVASCULAR PROCEDURES W/O PUMP W MAJOR CC	5	81
(550)	NON-MAJOR CARDIOVASCULAR PROCEDURES W MAJOR CC	3	53
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

MAJOR DIAGNOSTIC CATEGORY 06: DISEASES AND DISORDERS OF THE DIGESTIVE SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(146)	RECTAL RESECTION W CC	3	39
(147)	RECTAL RESECTION W/O CC	2	18
(148)	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	4	41
(149)	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	22
(150)	PERITONEAL ADHESIOLYSIS W CC	3	34
(151)	PERITONEAL ADHESIOLYSIS W/O CC	2	17
(152)	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2	25
(153)	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	11
(154)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3	40
(155)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	2	22
(156)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE <18	2	21
(157)	ANAL & STOMAL PROCEDURES W CC	2	21

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(158)	ANAL & STOMAL PROCEDURES W/O CC	1	8
(159)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	2	20
(160)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	1	8
(161)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	2	16
(162)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	1	5
(163)	HERNIA PROCEDURES AGE <18	1	5
(164)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	3	29
(165)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	2	14
(166)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	2	15
(167)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	2	7
(170)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	3	44
(171)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	2	16
(172)	DIGESTIVE MALIGNANCY W CC	2	29
(173)	DIGESTIVE MALIGNANCY W/O CC	1	13
(174)	GASTROINTESTINAL HEMORRHAGE W CC	2	20
(175)	GASTROINTESTINAL HEMORRHAGE W/O CC	2	11
(176)	COMPLICATED PEPTIC ULCER	2	17
(177)	UNCOMPLICATED PEPTIC ULCER W CC	2	20
(178)	UNCOMPLICATED PEPTIC ULCER W/O CC	1	8
(179)	INFLAMMATORY BOWEL DISEASE	2	20
(180)	GASTROINTESTINAL OBSTRUCTION W CC	2	25
(181)	GASTROINTESTINAL OBSTRUCTION W/O CC	2	13
(182)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W CC	2	19
(183)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W/O CC	1	9
(184)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE <18	1	8
(188)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	2	20
(189)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	1	8
(190)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE <18	1	9
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(551)	GASTROENTERITIS W MAJOR CC	2	37
(552)	DIGESTIVE SYSTEM DISORDERS EXCEPT GASTROENTERITIS W MAJOR CC	3	40
(553)	DIGESTIVE SYSTEM PROCEDURES EXCEPT HERNIA PROCEDURES W MAJOR CC	4	64
(554)	HERNIA PROCEDURES W MAJOR CC	2	37
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	4	59
(192)	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	3	33
(193)	BILIARY TRACT PROC W CC EXCEPT ONLY TOTAL CHOLECYST W OR W/O C.D.E.	4	42
(194)	BILIARY TRACT PROC W/O CC EXCEPT ONLY TOTAL CHOLECYSTECTOMY W OR W/O C.D.E. (COMMON DUCT EXPLORATION)	3	27
(195)	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	3	27
(196)	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	2	19
(197)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	2	21
(198)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	2	11
(199)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	3	41
(200)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2	29
(201)	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2	41
(202)	CIRRHOSIS & ALCOHOLIC HEPATITIS	2	28
(203)	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	2	29
(204)	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	2	22
(205)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W CC	2	25

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(206)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W/O CC	2	13
(207)	DISORDERS OF THE BILIARY TRACT W CC	2	20
(208)	DISORDERS OF THE BILIARY TRACT W/O CC	2	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(555)	PANCREAS, LIVER & OTHER BILIARY TRACT PROCEDURES W MAJOR CC	5	64
(556)	CHOLECYSTECTOMY AND OTHER HEPATOBILIARY PROCEDURES W MAJOR CC	3	45
(557)	HEPATOBILIARY AND PANCREAS DISORDERS W MAJOR CC	3	40
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
(741)	LIVER TRANSPLANT	NA	NA
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES OF MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

		OUTLIER TRIM POINT LOW	HIGH
(209)	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	3	34
(210)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	4	46
(211)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	3	32
(212)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE <18	2	29
(213)	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	3	40
(216)	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2	36
(217)	WOUND DEBRID & SKIN GRAFT EXC HAND, FOR MUSCULOSKEL & CONN TISS DIS	2	42
(218)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W CC	3	35
(219)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W/O CC	2	17
(220)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE <18	2	12
(221)	KNEE PROCEDURES W CC	2	23
(222)	KNEE PROCEDURES W/O CC	1	10
(223)	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	2	17
(224)	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	1	7
(225)	FOOT PROCEDURES	1	12
(226)	SOFT TISSUE PROCEDURES W CC	2	30
(227)	SOFT TISSUE PROCEDURES W/O CC	1	9
(228)	MAJOR THUMB OR JOINT PROC, OR OTHER HAND OR WRIST PROC W CC	1	9
(229)	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	1	4
(230)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES OF HIP & FEMUR	1	14
(231)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES EXCEPT IP & FEMUR	1	8
(232)	ARTHROSCOPY	1	12
(233)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W CC	3	39
(234)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W/O CC	1	13
(235)	FRACTURES OF FEMUR	3	49
(236)	FRACTURES OF HIP & PELVIS	3	34
(237)	SPRAINS, STRAINS & DISLOCATIONS OF HIP, PELVIS & THIGH	2	24
(238)	OSTEOMYELITIS	3	38
(239)	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISSUE MALIGNANCY	3	36
(240)	CONNECTIVE TISSUE DISORDERS W CC	2	27
(241)	CONNECTIVE TISSUE DISORDERS W/O CC	2	18
(242)	SEPTIC ARTHRITIS	2	24
(243)	MEDICAL BACK PROBLEMS	2	18
(244)	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	2	25

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(245)	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	2	16
(246)	NON-SPECIFIC ARTHROPATHIES	2	15
(247)	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDER	2	14
(248)	TENDONITIS, MYOSITIS & BURSITIS	2	13
(249)	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1	12
(250)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W CC	2	21
(251)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W/O CC	1	9
(252)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE <18	1	5
(253)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG, EXC FOOT AGE >17 W CC	2	28
(254)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG, EXC FOOT AGE >17 W/O CC	2	13
(255)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG, EXC FOOT AGE <18	1	10
(256)	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	2	16
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(471)	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	5	59
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(558)	MAJOR MUSCULOSKELETAL PROCEDURES W MAJOR CC	6	77
(559)	OTHER MUSCULOSKELETAL PROCEDURES W MAJOR CC	4	54
(560)	MUSCULOSKELETAL DISORDER EXCEPT MEDICAL BACK & FRACTURE OF FEMUR W MAJOR CC	4	56
(561)	MEDICAL BACK W MAJOR CC	3	43
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***
(755)	BACK & NECK PROCEDURES W SPINAL FUSION W CC	3	41
(756)	BACK & NECK PROCEDURES W SPINAL FUSION W/O CC	2	19
(757)	BACK & NECK PROCEDURES W/O SPINAL FUSION W CC	3	39
(758)	BACK & NECK PROCEDURES W/O SPINAL FUSION W/O CC	2	19

MAJOR DIAGNOSTIC CATEGORY 09: DISEASES OF THE SKIN, SUBCUTANEOUS TISSUE AND BREAST

		OUTLIER TRIM POINT LOW	HIGH
(257)	TOTAL MASTECTOMY FOR MALIGNANCY W CC	2	17
(258)	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	2	9
(259)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	2	19
(260)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	1	4
(261)	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1	4
(262)	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	1	8
(263)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W CC	5	70
(264)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W/O CC	2	35
(265)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W CC	2	27
(266)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W/O CC	1	8
(267)	PERIANAL & PILONIDAL PROCEDURES	1	7
(268)	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1	7
(269)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W CC	2	28
(270)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W/O CC	1	11
(271)	SKIN ULCERS	3	39
(272)	MAJOR SKIN DISORDERS W CC	2	30
(273)	MAJOR SKIN DISORDERS W/O CC	2	18
(274)	MALIGNANT BREAST DISORDERS W CC	2	29
(275)	MALIGNANT BREAST DISORDERS W/O CC	1	6
(276)	NON-MALIGNANT BREAST DISORDERS	1	8
(277)	CELLULITIS AGE >17 W CC	2	27
(278)	CELLULITIS AGE >17 W/O CC	2	18
(279)	CELLULITIS AGE <18	2	11

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(280)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W CC	2	18
(281)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W/O CC	1	9
(282)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE <18	1	7
(283)	MINOR SKIN DISORDERS W CC	2	25
(284)	MINOR SKIN DISORDERS W/O CC	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(562)	MAJOR SKIN & BREAST DISORDERS W MAJOR CC	3	50
(563)	OTHER SKIN DISORDERS W MAJOR CC	3	36
(564)	SKIN & BREAST PROCEDURES W MAJOR CC	5	74
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	80
(286)	ADRENAL & PITUITARY PROCEDURES	3	34
(287)	SKIN GRAFT & WOUND DEBRID FOR ENDOC, NUTRIT & METABOLIC DISORDERS	5	63
(288)	O.R. PROCEDURES FOR OBESITY	2	14
(289)	PARATHYROID PROCEDURES	2	20
(290)	THYROID PROCEDURES	2	10
(291)	THYROGLOSSAL PROCEDURES	1	3
(292)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W CC	4	63
(293)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W/O CC	2	15
(294)	DIABETES AGE >35	2	24
(295)	DIABETES AGE <36	2	17
(296)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	2	32
(297)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	2	21
(298)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE <18	2	14
(299)	INBORN ERRORS OF METABOLISM	1	15
(300)	ENDOCRINE DISORDERS W CC	2	26
(301)	ENDOCRINE DISORDERS W/O CC	2	17
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(565)	ENDOCRINE, NUTRITIONAL & METABOLIC PROCEDURES EXCEPT LOWER LIMB AMP W MAJOR CC	5	80
(566)	ENDOCRINE, NUTRITIONAL & METABOLIC DISORDERS W MAJOR CC	3	44
(735)	MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	5	74
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
(740)	CYSTIC FIBROSIS	3	24
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***
(753)	COMPULSIVE NUTRITION DISORDER REHABILITATION	6	85

MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT

		OUTLIER TRIM POINT LOW	HIGH
(302)	KIDNEY TRANSPLANT	4	50
(303)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NEOPLASM	3	34
(304)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W CC	3	33
(305)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W/O CC	2	17
(306)	PROSTATECTOMY W CC	3	29
(307)	PROSTATECTOMY W/O CC	2	16

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(308)	MINOR BLADDER PROCEDURES W CC	2	35
(309)	MINOR BLADDER PROCEDURES W/O CC	2	13
(310)	TRANSURETHRAL PROCEDURES W CC	2	17
(311)	TRANSURETHRAL PROCEDURES W/O CC	1	6
(312)	URETHRAL PROCEDURES AGE >17 W CC	2	15
(313)	URETHRAL PROCEDURES AGE >17 W/O CC	1	8
(314)	URETHRAL PROCEDURES AGE <18	2	14
(315)	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	3	40
(316)	RENAL FAILURE	2	30
(317)	ADMIT FOR RENAL DIALYSIS	1	8
(318)	KIDNEY & URINARY TRACT NEOPLASMS W CC	2	32
(319)	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1	11
(320)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	2	32
(321)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	2	14
(322)	KIDNEY & URINARY TRACT INFECTIONS AGE <18	2	11
(323)	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	2	11
(324)	URINARY STONES W/O CC	1	7
(325)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	2	22
(326)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	2	12
(327)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE <18	1	11
(328)	URETHRAL STRICTURE AGE >17 W CC	2	19
(329)	URETHRAL STRICTURE AGE >17 W/O CC	1	7
(330)	URETHRAL STRICTURE AGE <18	1	5
(331)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	2	27
(332)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	2	15
(333)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE <18	1	11
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(567)	KIDNEY & URINARY TRACT PROCEDURES EXCEPT KIDNEY TRANSPLANT W MAJOR CC	5	74
(568)	RENAL FAILURE W MAJOR CC	3	47
(569)	KIDNEY & URINARY TRACT DISORDER EXCEPT RENAL FAILURE W MAJOR CC	3	40
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	25
(335)	MAJOR MALE PELVIC PROCEDURES W/O CC	3	19
(336)	TRANSURETHRAL PROSTATECTOMY W CC	2	22
(337)	TRANSURETHRAL PROSTATECTOMY W/O CC	2	12
(338)	TESTES PROCEDURES, FOR MALIGNANCY	2	20
(339)	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1	11
(340)	TESTES PROCEDURES, NON-MALIGNANCY AGE <18	1	4
(341)	PENIS PROCEDURES	2	14
(342)	CIRCUMCISION AGE >17	1	11
(343)	CIRCUMCISION AGE <18	1	4
(344)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY	2	14
(345)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	1	10
(346)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	2	25
(347)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1	11
(348)	BENIGN PROSTATIC HYPERTROPHY W CC	1	12
(349)	BENIGN PROSTATIC HYPERTROPHY W/O CC	1	4
(350)	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	2	11
(351)	STERILIZATION, MALE	1	1
(352)	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(570)	MALE REPRODUCTIVE DISORDERS W MAJOR CC	2	34

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(571)	MALE REPRODUCTIVE PROCEDURES W MAJOR CC	3	52
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX, OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	31
(354)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W CC	2	24
(355)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W/O CC	2	14
(356)	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	2	11
(357)	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	3	31
(358)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	2	15
(359)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	2	9
(360)	VAGINA, CERVIX & VULVA PROCEDURES	1	5
(361)	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1	8
(362)	ENDOSCOPIC TUBAL INTERRUPTION	1	3
(363)	D&C CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	1	9
(364)	D&C CONIZATION EXCEPT FOR MALIGNANCY	1	9
(365)	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2	30
(366)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	3	38
(367)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	1	11
(368)	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	2	12
(369)	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(572)	FEMALE REPRODUCTIVE DISORDERS W MAJOR CC	2	41
(573)	NON-RADICAL FEMALE REPRODUCTIVE PROCEDURES W MAJOR CC	3	39
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

MAJOR DIAGNOSTIC CATEGORY 14: PREGNANCY, CHILDBIRTH, AND THE PUERPERIUM

		OUTLIER TRIM POINT LOW	HIGH
(370)	CESAREAN SECTION W CC	2	12
(371)	CESAREAN SECTION W/O CC	2	8
(372)	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	2	9
(373)	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	1	5
(374)	VAGINAL DELIVERY W STERILIZATION &/OR D&C	2	6
(375)	VAGINAL DELIVERY W O.R. PROC EXCEPT STERILIZATION &/OR D&C	1	6
(376)	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	2	10
(377)	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1	8
(378)	ECTOPIC PREGNANCY	2	8
(379)	THREATENED ABORTION	1	10
(380)	ABORTION W/O D&C	1	4
(381)	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	1	5
(382)	FALSE LABOR	1	3
(383)	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	2	11
(384)	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(650)	HIGH RISK CESAREAN SECTION W CC	2	26
(651)	HIGH RISK CESAREAN SECTION W/O CC	2	16
(652)	HIGH RISK VAGINAL DELIVERY W STERILIZATION AND/OR D&C	2	10
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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MAJOR DIAGNOSTIC CATEGORY 15: NORMAL NEWBORN AND OTHER NEONATES WITH CERTAIN CONDITIONS ORIGINATING IN THE PERINATAL PERIOD

		OUTLIER TRIM POINT LOW	HIGH
(600)	NEONATE, DIED WITHIN ONE DAY OF BIRTH	1	1
(601)	NEONATE, TRANSFERRED <5 DAYS OLD	1	4
(602)	NEONATE, BIRTH WT <750G, DISCHARGED ALIVE	3	46
(603)	NEONATE, BIRTH WT <750G, DIED	3	48
(604)	NEONATE, BIRTH WT 750-999G, DISCHARGED ALIVE	11	73
(605)	NEONATE, BIRTH WT 750-999G, DIED	5	53
(606)	NEONATE, BIRTH WT 1000-1499G, W SIGNIF O.R. PROC, DISCHARGED ALIVE	17	105
(607)	NEONATE, BIRTH WT 1000-1499G, W/O SIGNIF O.R. PROC, DISCHARGED ALIVE	9	73
(608)	NEONATE, BIRTH WT 1000-1499G, DIED	3	46
(609)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	9	68
(610)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	11	81
(611)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	7	69
(612)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	5	58
(613)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	5	60
(614)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	4	53
(615)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	11	85
(616)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	5	56
(617)	NEONATE, BIRTH WT 2000-2499 G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	5	56
(618)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	3	49
(619)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	3	48
(620)	NEONATE, BWT 2000-2499G, W/O SIGNIF O.R. PROC, W ONLY NORM NEWBORN DIAG.	2	10
(621)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	24
(622)	NEONATE BIRTH >2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	6	61
(623)	NEONATE BIRTH WT >2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	2	46
(624)	NEONATE, BIRTH WT >2499G, W MINOR ABDOMINAL PROCEDURE	2	9
(625)	NOT VALID	NA	NA
(626)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	3	48
(627)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	2	22
(628)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	22
(629)	NEONATE, BWT >2499G, W/O SIGNIF O.R. PROC, W ONLY NORMAL NEWBORN DIAG.	1	6
(630)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	12
(635)	NEONATAL AFTERCARE FOR WEIGHT GAIN	3	51

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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	40
(393)	SPLENECTOMY AGE <18	2	16
(394)	OTHER O.R. PROCEDURES OF BLOOD AND BLOOD FORMING ORGANS	1	11
(395)	RED BLOOD CELL DISORDERS AGE >17	2	18
(396)	RED BLOOD CELL DISORDERS AGE <18	2	13
(397)	COAGULATION DISORDERS	2	16
(398)	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	2	19
(399)	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	1	10
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(574)	BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL DISORDERS W MAJOR CC	2	32
(575)	BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL PROCEDURES W MAJOR CC	4	68
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
(742)	BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISORDERS AND POORLY DIFFERENTIATED MALIGNANCY, AND OTHER NEOPLASMS NEC

		OUTLIER TRIM POINT LOW	HIGH
(400)	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	3	36
(401)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3	37
(402)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1	10
(403)	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2	35
(404)	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1	17
(405)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18	2	23
(406)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W CC	3	38
(407)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W/O CC	2	17
(408)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W OTHER O.R. PROC.	2	23
(409)	RADIOTHERAPY	2	31
(410)	CHEMOTHERAPY	1	7
(411)	HISTORY OF MALIGNANCY W/O ENDOSCOPY	1	6
(412)	HISTORY OF MALIGNANCY W ENDOSCOPY	1	3
(413)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W CC	3	38
(414)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W/O CC	1	14
(473)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3	48
(576)	ACUTE LEUKEMIA W MAJOR CC	5	69
(577)	MYELOPROLIF DISORDERS OF POORLY DIFF NEOPLASMS W MAJOR CC	2	36
(578)	LYMPHOMA & NON-ACUTE LEUKEMIA, W MAJOR CC	4	59
(579)	PROCEDURES FOR LYMPHOMA, LEUKEMIA, MYELOPROLIF DISORDERS W MAJOR CC	6	82
(735)	MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	5	74
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
(742)	BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND PARASITIC DISEASES (SYSTEMIC)

		OUTLIER TRIM POINT LOW	HIGH
(415)	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3	45
(416)	SEPTICEMIA AGE >17	3	35
(417)	SEPTICEMIA AGE <18	2	17
(418)	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	2	22

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(419)	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	2	20
(420)	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	2	15
(421)	VIRAL ILLNESS AGE >17	2	13
(422)	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE <18	2	7
(423)	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	2	20
(580)	SYSTEMIC INFECTIONS & PARASITIC DISORDERS W MAJOR CC	3	45
(581)	SYSTEMIC INFECTIONS & PARASITIC DISORDERS/PROCEDURES W MAJOR CC	7	99
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
(742)	BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 19: MENTAL ILLNESS

		OUTLIER TRIM POINT LOW	HIGH
(424)	O.R. PROCEDURE W PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	5	79
(425)	ACUTE ADJUST REACTION & DISTURBANCE OF PSYCHOSOCIAL DYSFUNCTION	2	22
(426)	DEPRESSIVE NEUROSES	2	25
(427)	NEUROSES EXCEPT DEPRESSIVE	2	28
(428)	DISORDERS OF PERSONALITY & IMPULSE CONTROL	2	30
(429)	ORGANIC DISTURBANCES & MENTAL RETARDATION	3	56
(430)	PSYCHOSES	3	40
(431)	CHILDHOOD MENTAL DISORDERS	3	46
(432)	OTHER MENTAL DISORDER DIAGNOSES	2	17
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***
(743)	OPIOID ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	9
(744)	OPIOID ABUSE OR DEPENDENCE W CC	2	23
(745)	OPIOID ABUSE OR DEPENDENCE W/O CC	2	18
(746)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	11
(747)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W CC	2	24
(748)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W/O CC	2	20
(749)	ALCOHOL ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	9
(750)	ALCOHOL ABUSE OR DEPENDENCE, W CC	2	24
(751)	ALCOHOL ABUSE OR DEPENDENCE, W/O CC	2	17

MAJOR DIAGNOSTIC CATEGORY 21: INJURY, POISONING, AND TOXIC EFFECTS OF DRUGS

		OUTLIER TRIM POINT LOW	HIGH
(439)	SKIN GRAFTS FOR INJURIES	2	24
(440)	WOUND DEBRIDEMENTS FOR INJURIES	2	36
(441)	HAND PROCEDURES FOR INJURIES	1	12
(442)	OTHER O.R. PROCEDURES FOR INJURIES W CC	2	33
(443)	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	2	19
(444)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W CC	2	18
(445)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W/O CC	1	9
(446)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE <18	1	8
(447)	ALLERGIC REACTIONS AGE >17	1	10
(448)	ALLERGIC REACTIONS AGE <18	1	7
(449)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	2	22
(450)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	1	12
(451)	POISONING & TOXIC EFFECTS OF DRUGS AGE <18	1	10
(452)	COMPLICATION OF TREATMENT W CC	2	19

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(453)	COMPLICATION OF TREATMENT W/O CC	2	12
(454)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W CC	2	23
(455)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W/O CC	1	9
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(582)	INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC	2	33
(583)	PROCEDURES FOR INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC	5	69
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***
(752)	LEAD POISONING	2	10

MAJOR DIAGNOSTIC CATEGORY 22: BURNS

		OUTLIER TRIM POINT LOW	HIGH
(456)	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2	37
(457)	EXTENSIVE BURNS W/O O.R. PROCEDURE	2	19
(458)	NON-EXTENSIVE BURNS W SKIN GRAFT	4	50
(459)	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROCEDURE	2	27
(460)	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	2	20
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(472)	EXTENSIVE BURNS W O.R. PROCEDURE	8	98
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

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	1	18
(462)	REHABILITATION	5	61
(463)	SIGNS & SYMPTOMS W CC	2	29
(464)	SIGNS & SYMPTOMS W/O CC	1	12
(465)	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	5
(466)	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	6
(467)	OTHER FACTORS INFLUENCING HEALTH STATUS	1	23
(633)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	2	29
(634)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	2	8
(636)	INFANT AFTERCARE FOR WEIGHT GAIN, AGE >28 DAYS <1 YEAR	3	51
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	129
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***
(754)	TERTIARY AFTERCARE	3	47

MAJOR DIAGNOSTIC CATEGORY 24: HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTIONS

		OUTLIER TRIM POINT LOW	HIGH
(700)	HIV WITH SPECIFIED RELATED CONDITION, AGE <13	2	32
(701)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W OPIOID USE, AGE >12	4	51
(702)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W/O OPIOID USE, AGE >12	5	70
(703)	(NOT VALID)	NA	NA
(704)	HIV RELATED MALIGNANCY, W OPIOID USE, AGE >12	5	58
(705)	HIV RELATED MALIGNANCY, W/O OPIOID USE, AGE >12	4	50

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(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	2	26
(711)	HIV WITH OTHER RELATED CONDITION, W/O OPIOID USE, AGE >12	2	30
(712)	HIV W/O SPECIFIED RELATED CONDITION, AGE <13	1	24
(713)	HIV W/O SPECIFIED RELATED CONDITION, W OPIOID USE, AGE >12	7	65
(714)	HIV W/O SPECIFIED RELATED CONDITION, W/O OPIOID USE, AGE >12	3	34

MAJOR DIAGNOSTIC CATEGORY 25: MULTIPLE SIGNIFICANT TRAUMA

		OUTLIER TRIM POINT	
		LOW	HIGH
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	53
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	54
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	37
(730)	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5	98
(731)	HIP, FEMUR AND LIMB REATTACHMENT PROC FOR MULTIPLE SIGNIFICANT TRAUMA	6	79
(732)	OTHER O.R. PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	4	57
(733)	HEAD, CHEST AND LOWER LIMB DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	3	46
(734)	OTHER DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	2	31
***(742)**	**BONE MARROW TRANSPLANT**	**11**	**81***

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Reimbursement Methodology for Graduate Medical Education

Adopted Amendment: N.J.A.C. 8:31B—Appendix XI

Proposed: March 5, 1990 at 22 N.J.R. 735(a).

Adopted: April 27, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: April 30, 1990 as R.1990 d.266, **with 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: May 21, 1990.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Made Between Proposal and Adoption:
The Department has deleted "Rehabilitation", replacing it with "Occupational Medicine" at B.I(a)14, to be in conformance with the annual national list of graduate medical education programs accredited by the American Medical Association.

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

APPENDIX XI

Reimbursement Methodology for Graduate Medical Education

A. (No change.)

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.-9. (No change.)
10. Medicine/Pediatrics
11. Nephrology (Renal Disease)
12. Neurology
13. Physical Medicine and Rehabilitation
14. Preventive Medicine *[and Rehabilitation]* ***/Occupational Medicine***
15. Pulmonary Diseases (Medical Diseases of the Chest)
16. Rheumatology
17. Psychiatry
18. 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, 532-533, 539-544, 548-553, 557, 562-563, 566, 568-570, 574-578, 580-581, 701-702, 704-705, 707-708, 710-711, 713-714, 735-736, 743-751, 753.

II. Surgery
(a) Included programs:
1.-17. (No change.)
18. Trauma
19. Urology
20. Vascular Surgery, General
(b) Included DRGs:
001-8, 036-047, 049-069, 071-073, 075-077, 103, 105, 107-111, 113-114, 119-120, 146-171, 185-187, 191-201, 209-213, 216-239, 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, 530-531, 534-538, 545-547, 554-556, 558-561, 564-565, 567, 571, 579, 582-583, 730-734, 741-742, 755-758.

III. Obstetrics/Gynecology
(a) (No change.)
(b) Included DRGs: 353-384, 572-573, 650-652.

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IV. Pediatrics
(a) (No change.)
(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, 600-649, 653-700, 712, 737-740, 752, 754.

V. (No change.)
C. (No change.)

(a)

REPORTABLE DISEASES

Reporting of Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome

Adopted New Rules: N.J.A.C. 8:57-2

Proposed: December 18, 1989 at N.J.R. 3905(a).
Adopted: April 9, 1990 by the Public Health Council, Milton Prystowsky, M.D., Chairman.
Filed: April 20, 1990 as R.1990 d.244, **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. 26:1A-7.

Effective Date: May 21, 1990.
Operative Date: June 4, 1990.
Expiration Date: June 4, 1995.

Summary of Public Comments and Agency Responses:

Virtually all of the commenters expressed their concern and opposition to the reporting provisions of P.L. 1989, c.303, Section 2, which was signed January 12, 1990. This law, however, being an act of the Legislature, is not within the control of the Department of Health and the comments concerning the statute are not considered germane to the purpose of the public hearing on the proposed rules. These comments generally support the proposed rules which exclude named reporting of HIV infection.

The following are the individuals or organizations that testified on these rules and/or submitted written comments.

AIDS Coalition to Unleash Power (ACT-UP), represented by:
James Provenzano
Jack Ben-Levi
James Davies
David Robinson
Clarance Tranke-Puta

New Jersey Women and AIDS Network, represented by:
Dr. Diane Palladino
Lorraine E. Stanley

Citizen Commission on AIDS for New York City and Northern New Jersey, represented by Gary L. Stein, Esq., M.S.W.

AIDS Interfaith Network of New Jersey, represented by the Reverend Laura Lee Kent-Smith

New Jersey Health Officers' Association, represented by David Byrnes

New Jersey State Department of the Public Advocate, represented by Thomas S. Smith, Jr., John V. Jacobi, and Catherine A. Hanssens

Family Planning Association of New Jersey, represented by Katharine Pinneo

Association for Practitioners of Infection Control, represented by Anne Maher

COMMENT: The Public Advocate indicated that the proposed rules generally reflect an attempt to reconcile the rights of persons seeking testing and treatment for HIV infection with the public health community's need to develop adequate data to guide its response to the continuing epidemic. The proposed rules plainly evidence an attempt to strike an appropriate balance. Concern was expressed, however, that the proposed rules fail, in two respects, to adequately address the need and the right of those seeking testing and treatment to maintain control over private physician-patient information within the practitioner's office. The Public Advocate asks that N.J.A.C. 8:57-2.4 be modified to permit physicians performing HIV testing to do so without requiring that the physician maintain a record of the test subject's name and address, and that N.J.A.C. 8:57-2.2(b) be modified to centralize the recordkeeping and reporting requirements of the rules in an institution's chief medical officer, and not in the superintendent. This approach would supposedly centralize the institutional reporting responsibility within a medical versus administrative context, and would serve to limit the number of people involved with the information.

RESPONSE: The Department agrees practitioners should meet their responsibility to limit the number of people who have knowledge of confidential patient information. However, to force changes in office based recordkeeping extends beyond the power of reporting rules. Such change should come through licensure rules. Moreover, these comments reinforce a negative stereotype for patients with HIV infection by setting them apart so much from other patients. HIV counseling and testing is part of a continuum of medical and counseling care provided to persons who might be infected with human immunodeficiency virus. Such a continuum of care cannot be provided in an anonymous setting, and therefore the person potentially infected with HIV often loses the benefit of needed services if HIV testing is done anonymously. The Department does not believe that in most health care settings that anonymous HIV testing gives maximal benefit to the person being tested, nor that effective follow-up care can be given by the health care provider. The Department believes that anonymous HIV testing should be discouraged, and that emphasis should be given to maintaining confidentiality of all aspects of HIV testing.

The Department is aware that some individuals will insist on anonymous testing, even if that is not considered the optimal way to provide appropriate care, and that such individuals will refuse testing if it is not anonymous. While the Department feels strongly that confidential, rather than anonymous, HIV testing is the much preferred approach, it would rather see a person anonymously tested than not tested at all. Thus, the rules provide for a limited number of sites about New Jersey where people who insist on anonymous HIV testing can be so tested.

The Department has established in its communicable disease rules that the superintendent is an institution's responsible authority, which follows State law on this subject. The provisions of the proposed rules are consistent and in keeping with this perspective. The rules allow the reporting to be delegated by the person having control or supervision of the institution. In most cases it is expected that this function will be delegated to the institution's infection control practitioner, or to a nurse, so that for practical purposes the information will be kept within a medical setting.

COMMENT: A number of commenters supported the collection of statistics and data for the purposes of public health control and maintenance. Support was also received for the collection of non-identifying data on those infected with HIV in order to help the Department of Health better ascertain the dimensions of the HIV epidemic and the focus of that epidemic which has disproportionately affected the poor inner-city minority populations.

Commenters were gratified to see that people who are HIV-infected will not be denied access to various facilities and transportation systems. It was indicated that this provision encourages everyone to have a more enlightened view of how this disease is actually spread. Support was also voiced for the requirement that laboratories would report both the total number of tests performed as well as those which indicate HIV infection.

The Family Planning Association was concerned, however, that the requirement for reporting identifying information within 24 hours places a great burden on the family planning providers who are already overwhelmed with paperwork. The Association recommended that, since the Department had no immediate plans to contact or trace these people, that reporting be performed on a quarterly schedule.

RESPONSE: The proposed requirements for reporting HIV infection within 24 hours of identification are consistent with the Department's general reporting provisions as contained in the communicable disease rules. While the Department is recommending quarterly reporting for clinical laboratories, it is opposed to quarterly reporting by other providers for the following reasons: Clinical laboratories are essentially reporting statistical, computer generated data, which will be used by the Department to verify information submitted from other sources. Physicians, agencies, institutions, and other entities required to report within the 24-hour period, are providing information on individuals with specific risk factors which the Department needs to evaluate more regularly. The Department is concerned that quarterly reporting on individuals may result not only in a loss of data, but a lack of reporting in a useful and timely manner. The Department will accept reporting within the reasonable amount of time of one week if undue burden is experienced by an agency.

COMMENT: There was concern expressed by one commenter that even though name, address and telephone number are not HIV-reportable items in the present proposed rules, there is no indication that they will not be required in the future.

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RESPONSE: The Department agrees with this analysis; however, any future modification in HIV reporting to contain personal identifiers would require amendment through the regulatory process which is a public process characterized by hearings and public comment periods—similar to the process presently occurring with these proposed rules.

COMMENT: One commenter indicated that physicians and heads of institutions who are required to report their own names, addresses and telephone numbers may not feel protected against public stigma and discrimination. This could lead to failure to report or a reduction in the number of physicians and heads of institutions who currently are encouraging testing and are assisting in efforts of early detection and medical intervention.

RESPONSE: A physician's responsibility to report their own identifying information when reporting disease is not only standard public health procedure, but has already been in effect with the reporting of AIDS and ARC since October 1986. The Department has not heard of, or encountered, any difficulties or concerns about this provision in relation to AIDS/ARC reporting in the three years that it has been in effect, and does not expect it to be a deterrent in regards to HIV reporting.

COMMENT: Many commenters expressed concern that if there is no guarantee of a large number of easily accessible anonymous testing sites, the very people the Department is encouraging to be tested may be even more reluctant to do so and may, therefore, continue to spread the disease, introduce more virus to their own bodies, and fail to receive important medical care.

RESPONSE: The Department's position on the desirability of confidential rather than anonymous testing and of the provision of anonymous test sites for those people who insist on anonymous testing has already been noted above. Consistent with this position, it is the intention of the Department not to have large numbers of anonymous test sites, but to assure that the sites that are established are geographically distributed for accessibility throughout New Jersey.

COMMENT: One commenter suggested that N.J.A.C. 8:57-2.1(b) specifically contain reference to the most accurate laboratory test, which in their opinion is the Western Bloc test.

RESPONSE: The Department specifically included the provision that the State Commissioner of Health determine the laboratory results which indicate infection with HIV to enable the most up-to-date testing available. The immunoblot test is presently the most accurate confirmatory test available at this particular time. It is anticipated that the Commissioner of Health would require this test, or another well established confirmatory test, as necessary to indicate infection with HIV. Specific laboratory tests were not included in the rules because technical changes in the field are developing rapidly and there may be better laboratory tests developed for the detection of HIV in the near future. To include a specific test reference within the rules would necessitate amendment through the regulatory process and delay the provision of the most up-to-date testing procedures for the detection of HIV.

COMMENT: One commenter indicated that there are well known and widespread problems with discrimination by nursing homes, and even by ambulance services, so the lack of mention of penalties and enforcement is unacceptable in N.J.A.C. 8:57-2.5. There was also concern that there were no provisions specifying penalties and enforcement methods in N.J.A.C. 8:57-2.7 for anyone violating anonymity and/or confidentiality of people testing positive, or diagnosed with an opportunistic infection. Such violations would significantly hinder public health control measures by frightening people away from testing, and from the health care system.

RESPONSE: The Department believes that penalties for breaches in confidentiality or for discriminatory actions are more appropriately covered in the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1) and the new reporting law P.L. 1989, c.303, both of which contain penalties for offenses. Moreover, the Department of Health can and has invoked certain licensure penalties if patients receive inferior care due to their having HIV infection.

COMMENT: One commenter requested that the rules be amended to include a mandated informed consent provision which would require that each individual be informed that a positive HIV test result will mean that their name, address, and any other identifying information requested will be reported to the State Department of Health.

RESPONSE: The provision of specific informed consent for HIV testing has been a long-standing policy of the Department and advisories to this effect have been sent to health care providers. The Department is taking steps to assure that specific informed consent for HIV testing is being performed in health care settings where the Department exerts regulatory control. The Department will explore whether or not it has the authority over other health care providers to issue such rules concerning informed consent for HIV testing. However, the Department does not believe that these rules, which are being proposed to replace current rules which are expiring, should be delayed while this issue is being explored. The Department will continue to work on the issue of informed consent as part of the licensure rules as opposed to reporting rules.

There was specific concern expressed that informed consent should contain information that the patient who is HIV infected would be reported to the Department of Health. The Department's proposed new rules do not require personal identifiers with the reporting of HIV infection; therefore, even though informed consent should contain information that non-identifying statistical data may be reported to the Department, and this recommendation will be sent by the Department to health care providers in the future, it is not necessary to be in rules.

COMMENT: After expressing support for the Department's proposal, one commenter recommended that an additional provision be included to pass seroprevalence data, without names, back to local communities, so that politicians could see the impact of AIDS and HIV on their communities.

RESPONSE: The Department of Health does provide aggregate data to communities on a regular basis, but does not provide data on small numbers of cases to communities in order to protect individual confidentiality, because local communities may be able to identify individuals when detailed data on small numbers of persons are given to them.

COMMENT: One commenter indicated that, taken as a whole, he did not oppose the Department's proposed rules on AIDS and HIV reporting. It was felt, however, that clarification was needed regarding the reporting requirements for those who elect anonymous testing and subsequently seek out medical advice or treatment. There was uncertainty expressed as to whether the physician providing treatment must then report information regarding this patient to the Department of Health. It was recommended that reporting requirements be waived in these situations.

Concern was also presented that the Department has modified the current AIDS reporting rules by requiring recording of the person's address. This provision was opposed as an unnecessary intrusion of privacy.

RESPONSE: It is the Department's position that a physician treating an individual who has been anonymously tested might be required to report the case to the Department of Health, depending on the circumstances of the treatment. However, personal identifiers are not to be made part of the physician's report to the Department of Health, so that the patient's anonymity will not be compromised.

In regards to the recording of address with AIDS reporting, the Department does perform follow-up for vital status related to AIDS patients and, on occasion, needs an individual's address in order to accomplish this activity.

COMMENT: One commenter suggested that physicians be better educated on the interpretation of the HIV test.

RESPONSE: The Department agrees and, in conjunction with The Academy of Medicine of New Jersey, has developed a manual entitled "Identification and Management of Asymptomatic HIV-Infected Persons in New Jersey: A Practical Protocol for New Jersey Clinicians." This protocol contains a specific section which addresses "Obtaining and Interpreting HIV Tests."

COMMENT: The Department has received numerous inquiries regarding the start date for HIV reporting and feels that it should provide specific notification when the reporting of persons infected with HIV should begin.

RESPONSE: The addition of HIV reporting will begin when an accurate, secure reporting system can be put in place. In order to have meaningful reporting of HIV infection, the Department has to prepare and print reporting forms, prepare a data management package for the appropriate input and analysis of reports, and provide an educational program for health care providers. Implementation of a new system will likely require at least 10 months due to current budgetary constraints. The Department has included the provision of clarifying language in N.J.A.C. 8:57-2.2(a), (b) and (c) to specifically notify physicians, institutions, and laboratories of the date on which the reporting of persons infected with HIV should begin.

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

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SUBCHAPTER 2. REPORTING OF ACQUIRED IMMUNODEFICIENCY SYNDROME AND INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS

8:57-2.1 Applicability; definition of AIDS and HIV infection

(a) The provisions of this subchapter are applicable to cases of Acquired Immunodeficiency Syndrome (AIDS) and infection with human immunodeficiency virus (HIV). The provisions of N.J.A.C. 8:57-1 shall not apply to any case of AIDS or infection with HIV.

(b) Laboratory results indicative of infection with HIV shall mean laboratory results showing the presence of HIV or components of HIV, or of laboratory results showing the presence of antibodies to HIV. The State Commissioner of Health shall determine the laboratory test results which indicate infection with HIV for the purpose of these rules.

(c) Acquired immunodeficiency syndrome (AIDS) means a condition affecting a person who has a reliably diagnosed disease that meets the criteria for AIDS specified by the Centers for Disease Control of the United States Public Health Service.

8:57-2.2 Reporting HIV infection

(a) Every physician attending a person found to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such a condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall include the name and address of the reporting physician, the municipality of residence, gender, race and birth date of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, and such other information, as may be required by the State Department of Health, except that the name, address or telephone number of the person infected with HIV shall not be required to be reported to the State Department of Health. A physician shall not report a person infected with HIV if the physician is aware that the person having control or supervision of an institution named in (b) below is reporting that person as being infected with HIV, or if the physician is aware that the person has previously been reported to the State Department of Health as being infected with HIV. ***Physicians will be notified by the State Department of Health of the date on which reporting of persons infected with HIV should begin.***

(b) The person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, penal institution, clinic, blood bank, or special facility testing for HIV, in which any person is determined to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such a condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall state the municipality of residence, gender, race, and birth date of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, the name of the attending physician, the name and address of the institution, and such other information as may be required by the State Department of Health, except that the name, address or telephone number of the person infected with HIV shall not be required to be reported to the State Department of Health. The person having control or supervision of the institution shall not report a person infected with HIV if it is known that a physician is reporting the person or that the person has previously been reported to the State Department of Health as being infected with HIV. The person having control or supervision of the institution may delegate this reporting activity to a member of the staff, but this delegation does not relieve the controlling or supervising person of the ultimate report responsibility. ***Institutions will be notified by the State Department of Health of the date that reporting of persons infected with HIV should begin.***

(c) Every clinical laboratory shall report every three months to the State Department of Health the number of specimens tested for HIV, components of HIV and antibodies to HIV that are sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey, as well as the number of such tests indicating infection with HIV, and such other information as may be required by the State Department of Health, except that the name, address or telephone number of the patient shall not be required to be reported to the State Department of Health. The manner of reporting shall be determined by the State Department of Health. The report shall be sent within *[thirty]* ***30*** days of the close of each three-month reporting period. ***Laboratories will be notified by the State Department of Health of the date that reporting of persons infected with HIV should begin.***

8:57-2.3 Reporting AIDS

(a) Every physician attending any person ill with AIDS shall, within 24 hours of the time AIDS is diagnosed, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall include the name and address of the reporting physician, the name, address, gender, race, and birth date of the person ill with AIDS, the date of onset of the illness meeting the criteria for the diagnosis of AIDS, and such other information as may be required by the State Department of Health. Such report should be made whether or not the patient previously had been reported as having HIV infection. The report of AIDS will be deemed to also be a report of HIV infection.

(b) The person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, penal institution, or clinic, in which a person is ill with AIDS shall, within 24 hours of the time AIDS is diagnosed, report such condition in writing directly to the State Department of Health on forms provided by the State Department of Health. The report shall state the name, address, gender, race and birth date of the person ill with AIDS, the date of onset of the illness meeting the criteria for the diagnosis of AIDS, the name of the attending physician, the name and address of the institution, and such other information as may be required by the State Department of Health. Such report should be made whether or not the patient previously had been reported as having HIV infection. The report of AIDS will be deemed to also be a report of HIV infection. The person having control or supervision of the institution may delegate this reporting responsibility to a member of the staff, but this delegation does not relieve the controlling or supervising person of the ultimate reporting responsibility.

8:57-2.4 Testing procedures

No physician or institution may direct that a person be tested for HIV, a component of HIV, or antibodies to HIV, unless the name and address of the person whose specimen is being tested is known and recorded by the physician or institution, except that the State Commissioner of Health may designate facilities which are permitted to test for antibodies to HIV without obtaining the name and address of the person being tested. The name and address of the person being tested are not required to be reported to the State Department of Health.

8:57-2.5 Exceptions to communicable disease classification of AIDS and HIV

(a) AIDS or HIV infection shall not be considered a communicable disease for purposes of admission to, attendance in, or transportation in any of the following:

1. Nursing homes and other health care facilities;
2. Rooming and boarding homes, and shelters for the homeless;
3. Ambulances and other public conveyances; and
4. Educational facilities.

8:57-2.6 Access to information

As provided by N.J.S.A. 26:4-2, the information reported to the Department shall not be subject to public inspection, but is subject to access only by the State Department of Health for public health purposes.

8:57-2.7 Failure to comply with reporting requirements

(a) Physicians failing to fulfill the reporting requirements of this subchapter may receive written notification of this failure. Physicians failing to meet these reporting requirements, despite warning, shall be subject to fine, as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures shall be subject to other actions, including notification of the Board

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of Medical Examiners of the State Department of Law and Public Safety, and appropriate hospital medical directors or administrators.

(b) The person having control or supervision over any institution, who fails to fulfill the aforementioned reporting obligations, may receive written notification of this failure. Superintendents failing to meet these reporting requirements, despite warning, shall be subject to a fine, as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification of the State Department of Health, Division of Health Facilities Evaluation, other appropriate licensing review organizations, and other appropriate agencies.

(c) Laboratory supervisors failing to fulfill the aforementioned reporting and specimen submission obligations may receive written notification of this failure. Supervisors failing to meet these requirements, despite warning, shall be subject to fines as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification to the State Clinical Laboratory Improvement Services.

(a)

REPORTABLE DISEASES

Reportable Occupational and Environmental Diseases and Poisons

Adopted New Rules: N.J.A.C. 8:57-3.1 and 3.2

Proposed: December 18, 1989 at 21 N.J.R. 3907(a).
Adopted: April 9, 1990 by the Public Health Council, Milton Prystowsky, M.D., Chairman.
Filed: April 20, 1990 as R.1990 d.245, **without change.**

Authority: N.J.S.A. 26:1A-7.

Effective Date: May 21, 1990.
Operative Date: June 4, 1990.
Expiration Date: June 4, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

8:57-3.1 Reporting of occupational and environmental diseases and poisonings by hospitals

(a) The chief administrator or other persons having control or supervision over any hospital in which any person has been diagnosed with any of the diseases or poisonings listed in (b) and (c) below shall, within 30 days after discharge, report such disease or poisoning to the State Department of Health and to the health officer having jurisdiction over the territory in which such hospital is located. Health officers who receive reports of diseases or poisonings required under (b) and (c) below shall send a copy thereof to the health officer having jurisdiction over the territory in which such person resides within seven days of receipt of the report. The disease or poisoning shall be considered diagnosed if it is listed as a primary or secondary diagnosis on the discharge summary.

(b) The following diseases are declared to be reportable to the parties specified in (a) above for purposes of this section. All diseases listed herein coded according to the 9th ICD revision are to be reported in the manner prescribed by (d) below:

1. Extrinsic allergic alveolites, ICD code 495, 495.0, 495.1, 495.2, 495.3, 495.4, 495.5, 495.6, 495.7, 495.8, 495.9;
2. Coal workers pneumoconiosis, ICD code 500;
3. Asbestosis, ICD code 501;
4. Silicosis, ICD code 502;
5. Pneumoconiosis, other dust inorganic, ICD code 503;
6. Pneumonopathy due to organic dust, ICD code 504;
7. Pneumoconiosis, unspecified, ICD code 505;
8. Bronchitis, Pneumonitis, inflammation both acute and chronic and acute pulmonary edema due to fumes and vapors, ICD code 506.0, 506.1, 506.2, 506.3, 506.4 and 506.9; and
9. Respiratory conditions due to unspecified external agents, ICD codes 508.8 and 508.9.

(c) Poisoning due to the following and not the result of a suicidal attempt shall also be reported to the parties specified in (a) above in the manner prescribed by (d) below.

petroleum products	ICD 981
benzene	ICD 982.0
carbon tetrachloride	ICD 982.1
carbon disulfide	ICD 982.2
chlorinated hydrocarbons	ICD 982.3
nitroglycol	ICD 982.4
non-petroleum-based solvents	ICD 982.8
corrosive aromatics	ICD 983.0
acids	ICD 983.1
alkalies	ICD 983.2
caustic unspecified	ICD 983.9
inorganic lead	ICD 984.0
organic lead	ICD 984.1
mercury	ICD 985.0
arsenic	ICD 985.1
manganese	ICD 985.2
beryllium	ICD 985.3
antimony	ICD 985.4
cadmium	ICD 985.5
chromium	ICD 985.6
other specified metals	ICD 985.8
unspecified metals	ICD 985.9
petroleum gases	ICD 987.0
other hydrocarbon gas	ICD 987.1
nitrogen oxides	ICD 987.2
sulfur dioxide	ICD 987.3
freon	ICD 987.4
chlorine	ICD 987.6
hydrogen cyanide	ICD 987.7
other gases	ICD 987.8
unspecified gas, fume, vapor	ICD 987.9
hydrogen cyanide	ICD 989.0
pesticides	ICD 989.2, 989.3 and 989.4

(d) The report required by (a) above shall state on forms supplied by the State Department of Health the name and current ICD code of the disease or poisoning and shall indicate whether this condition was a primary or secondary diagnosis. The following information on the person diagnosed with such disease or poisoning shall also be furnished: name, home address, medical record number, year of birth, sex, race, name and address of employer. The report shall also include the name of the attending physician, the reporting hospital, the date of discharge and such other information as may be required by the State Department of Health.

8:57-3.2 Reporting of occupational and environmental diseases and poisonings by physicians

(a) The physician attending any person who is ill or diagnosed with any of the diseases or poisonings listed in (b) below shall, within 30 days after such disease or poisoning has been diagnosed or treated, report such disease or poisoning to the State Department of Health.

(b) The following diseases and poisonings are declared to be reportable to the State Department of Health for purposes of this section. All diseases listed herein are to be reported in the manner prescribed by (c) below:

1. Asbestosis;
2. Silicosis;
3. Pneumoconiosis, other and unspecified;
4. Occupational asthma;
5. Extrinsic Allergic Alveolitis; and
6. Lead poisoning, adult (blood lead $\geq$ 25 milligrams per deciliter; urine lead $\geq$ 80 milligrams per liter).

(c) The report required by (a) above shall state the name of the disease or poisoning and the name of the reporting physician. The following information on the person ill or diagnosed with such dis-

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ease or poisoning shall also be furnished: name, year of birth, sex, home address, telephone number, name and address of employer at the time of exposure, and the date of onset of illness.

(a)

CHRONIC DISEASE EPIDEMIOLOGY AND DISEASE CONTROL

Cancer Registry

Adopted Recodification with Amendments: N.J.A.C. 8:57-6 to N.J.A.C. 8:57A

Proposed: December 18, 1989 at 21 N.J.R. 3909(a).

Adopted: April 12, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (in consultation with the Public Health Council).

Filed: April 20, 1990 as R.1990 d.242, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2-104 et seq.

Effective Date: May 21, 1990.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

In determining a diagnosis of cancer, pathologists and other clinicians occasionally use ambiguous terms to describe the malignancy. Such terms as "suggestive of cancer" or "suspicious of cancer" are often confusing to the interpretation of the final diagnosis. Therefore, the Department has added upon adoption N.J.A.C. 8:57A-1.2(b), defining which ambiguous terms it considered diagnostic of cancer. The Department believes that publication of these ambiguous terms in the rule will clarify its operating procedure and will provide guidance to pathologists and others in the use of these terms.

The Department has included "Myelofibrosis with myeloid metaplasia" on the reportable list because it is sometimes used as a synonym of Myelosclerosis with myeloid metaplasia which is a reportable condition.

COMMENT: Only one comment was received regarding the proposal. Dr. George Hill, M.D., of UMDNJ, requested information to clarify which ambiguous terms the Department considers diagnostic of cancer. He also requested that the Registry utilize existing data prior to requesting it of hospitals.

RESPONSE: The Department has changed proposed N.J.A.C. 8:57A-1.2 to list the ambiguous terms collected. Dr. Hill was informed that the Registry always uses existing data when available. A written response was sent to Dr. Hill.

Full text of the recodification can be found in the New Jersey Administrative Code at N.J.A.C. 8:57-6, pending updating of the Code to reflect the recodification.

Full text of the adopted amendments to the recodification follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 57A
CANCER REGISTRY

SUBCHAPTER 1. CANCER REGISTRY

8:57A-1.1 Reporting of cancer

(a) (No change.)

(b) The administrative officer of every health care facility shall be responsible for reporting to the State Department of Health every case of cancer or other specified tumorous and precancerous disease when it is initially diagnosed or first admitted or treated for any reason in that facility. A report shall also be given for each subsequent primary cancer diagnosed in an individual.

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

(e) Health care insurers and other third party health care payors may report to the State Department of Health cases of cancer, based upon selection criteria in a request from the Cancer Registry.

(f) The information to be reported shall be provided upon forms supplied by the State Department of Health. The forms shall be completed entirely, or supplemental information shall be supplied by submitting copies of the history and physical section of the medical records and the discharge summary. A hospital tumor registry abstract form may be used, provided that information required by the State Commissioner of Health is recorded therein according to standardized definitions utilized by the State Department of Health. Machine readable data may also be submitted, provided the data meet criteria and standards set by the Department of Health.

Recodify existing (f)-(k) as (g)-(l) (No change in text.)

8:57A-1.2 Reportable list

(a) If a diagnosis includes the following words the case *[must]* ***shall*** be reported:

CANCER
MALIGNANT
CARCINOMA
SARCOMA
LYMPHOMA
LEUKEMIA

(b) Any cases of the reportable diagnoses listed in this chapter which contain the following ambiguous terms in the final diagnosis shall also be reported:

PROBABLE
SUSPECT
COMPATIBLE WITH
CONSISTENT WITH*

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

*[(d)]***(e)* All conditions which are listed on the following reportable list shall be reported by each New Jersey facility.

. . .

BREAST

. . .

Glycogen rich carcinoma

. . .

GASTRO-INTESTINAL TRACT (esophagus, stomach, intestine, appendix, colon, anus)

. . .

Immunoproliferative small intestinal disease

. . .

HEMATOPOIETIC/TYMPHOID (including blood, bone marrow, lymph nodes, spleen, and tumors of hematopoietic or lymphoid histogenesis found in other sites.)

. . .

Gamma heavy chain disease (Franklin's Disease)

. . .

Immunoproliferative Disease, NOS

. . .

Myelofibrosis with myeloid metaplasia

. . .

LUNG AND BRONCHUS

. . .

Pulmonary blastoma

. . .

OVARY

. . .

Mucinous cystadenoma, borderline malignancy (pseudomucinous cystadenoma, borderline malignancy)

. . .

Papillary cystadenoma, borderline malignancy
Pappillary mucinous cystadenoma, borderline malignancy
Papillary mucinous tumor of low malignant potential
Papillary serous cystadenoma, borderline malignancy (papillary serous tumor of low malignant potential)

. . .

PANCREAS

. . .

Pancreatoblastoma
Papillary cystic tumor (+)

. . .

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SKIN

. . .

Squamous cell carcinoma-Regional or Distant only

. . .

SOFT TISSUE (Including retroperitoneum, peripheral nerve)

. . .

Angiomyxoma (+)

. . .

Myofibromatosis (congenital generalized fibromatosis)

. . .

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: October 16, 1989 at 21 N.J.R. 3292(a).

Adopted: April 20, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: April 30, 1990 as R.1990 d.264, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 21, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received addressing the products affected by this adoption.

The following products and their manufacturers were **adopted:**

Albuterol tabs 2, 4 mg	**Lemmon**
Quinine sulfate tabs 260 mg	**Zenith**

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Copley
Albuterol tabs 2, 4 mg	Superpharm
Aspirin ER tabs 800 mg	Sidmak
Betamethasone valerate lotion 0.1%	Clay-Park
Chlordiazepoxide/amitrip. 5/12.5, 10/25	Par
Clonidine/chlorthal. tabs 0.1, 0.2, 0.3 mg	Cord
Cyclobenzaprine tabs 10 mg	Par
Cyclobenzaprine tabs 10 mg	Superpharm
Disopyramide ER caps 100, 150 mg	Chelsea
Divalproex EC tabs 125, 250, 500 mg	Par
Erythromycin EC tabs 250, 333 mg	Upjohn
Erythromycin topical soln 2%	Clay-Park
Fenoprofen tabs 600 mg	Barr
Fluocinonide soln 0.05%	Copley
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Iodinated glycerol elixir 60 mg/5 ml	PharmBasics
Loperamide caps 2 mg	Cord
Loxapine caps 5, 10, 25, 50 mg	Cord
Minocycline caps 50, 100 mg	W-C
Potassium Cl ER tabs 10 mEq	Adria
Sulfacet./prednisolone 10%/0.2% oph. sol	Iolab
Sulfanilamide vaginal cream 15%	Clay-Park
Sulindac tabs 150, 200 mg	Mutual
Sulindac tabs 150, 200 mg	Par
Verapamil ER tabs 240 mg	Invamed
Verapamil tabs 40, 80, 120 mg	Invamed

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 22 N.J.R. 214(c) and 22 N.J.R. 1136(b).

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: February 20, 1990 at 22 N.J.R. 596(a).

Adopted: April 20, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: April 30, 1990 as R.1990 d.267, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 21, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received addressing the products affected by this adoption.

The following products and their manufacturers were **adopted:**

Albuterol tabs, 2, 4 mg	**Cord**
Albuterol tabs, 2, 4 mg	**Lederle**
Albuterol tabs, 2, 4 mg	**Sidmak**
Amiloride/HCTZ tabs 5/50	**Barr**
Atropine sulfate ophth soln 1%	**Pharmafair**
Belladonna alks/phenobarbital elix	**Cenci**
Carisoprodol tabs 350 mg	**Cord**
Cephalexin caps 250, 500 mg	**Bristol-Myers**
Chlorzoxazone tabs 500 mg	**Royce**
Fenoprofen calcium tabs 600 mg	**Zenith**
Hydromorphone tabs 1, 2, 3, 4 mg	**Halsey**
Metoclopramide tabs 10 mg	**Cord**
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	**Sidmak**
Salsalate tabs 500, 750 mg	**Cord**
Silver sulfadiazine cream 1%	**Sherwood**
Triamcinolone/nystatin cream, oint	**Pharmafair**

The following products and their manufacturers were **not adopted**:

Morphine sulfate suppos. 5, 10, 20, 30 mg	Roxane

The following products were **not adopted but are still pending**:

APAP/codeine 300 mg/30 mg tabs	Pharmafair
Albuterol tabs, 2, 4 mg	Barr
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Betamethasone valerate cream, oint 0.1%	Pharmafair
Betamethasone valerate lotion 0.1%	Pharmafair
Butalbital/APAP tabs	Pharmafair
Carbinoxamine/pseudoephedrine drops 2/25	Hi-Tech
Carbinoxamine/pseudoephedrine syr 4/60/5	Hi-Tech
Cyclobenzaprine tabs 10 mg	Cord
Dexchlorpheniramine syrup 2 mg/5 ml	PharmBasics
Digoxin tabs 0.125, 0.25 mg tabs	Halsey
Diphenoxylate/atropine 2.5/0.25 tabs	Pharmafair
Epinephrine (levo) ophth soln 1%, 2%	Pharmafair
Erythromycin base EC/ER tabs 250, 333 mg	Barr
Erythromycin ethylsucc. susp 200/5, 400/5	Barr
Erythromycin ophth oint	Pharmafair
Erythromycin stearate tabs 500 mg	Barr
Flurazepam caps 15, 30 mg	Cord
Hydrochlorothiazide tabs 50 mg	Pharmafair
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Iodochlorhydroxyquin/HC 3%/1% cream	Pharmafair
Lidocaine topical soln 4%	PharmBasics
Lithium citrate syrup 8 mEq/5 ml	PharmBasics
Morphine sulfate oral solution 20 mg/ml	Upsher-Smith
Naphazoline/pheniramine .025%/.3% ophth	Pharmafair
Nifedipine caps 10 mg	Chase
Nifedipine caps 10 mg	Cord
Norethindrone/Ethin. estra. tabs 1/.035	Gedeon-Richter
Oxybutynin tabs 5 mg	Sidmak
Pancrelipase caps	Ph.Del.Sys.
Phenylephrine ophth soln 10% (viscous)	Pharmafair
Phenylephrine ophth soln 2.5%	Pharmafair
Phenylephrine/pyrilamine/CP tannate susp	Copley

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Phenylephrine/pyrilamine/CP tannate tabs	Copley
Potassium Chloride powder 20 mEq	USA American
Potassium chloride soln 40 mEq/15 ml	Cenci
Potassium gluconate elixir 20 mEq/15 ml	Cenci
Prednisone oral soln 5 mg/5 ml	PharmBasics
Propoxyphene napsylate/APAP 100/650	Cord
SMZ/TMP susp 200/40	Barr
Sodium fluoride tabs 2.2 mg	Pharmafair
Sulindac tabs 150, 200 mg	Cord
Sulindac tabs 150, 200 mg	Lemmon
Thioridazine tabs 10, 25, 50 mg	Mutual
Tolmetin sodium caps 400 mg	Purepac
Trazodone tabs 50, 100 mg	Cord

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 3, 1989 at 21 N.J.R. 1790(a).

Adopted: April 20, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: April 30, 1990 as R.1990 d.263, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 21, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received addressing the products affected by this adoption.

The following product and its manufacturer was **adopted:**

Amantadine caps 100 mg	**Invamed**

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Purepac
Albuterol tabs 2, 4 mg	Danbury
Amiloride/HCTZ tabs 5/50	Danbury
Amiloride/HCTZ tabs 5/50	PharmBasics
Amoxapine tabs 25, 50, 100, 150 mg	Chelsea
Amoxapine tabs 25, 50, 100, 150 mg	Watson
Atenolol/chlorthalidone tabs 50/25, 100/25	Par
Carisoprodol/aspirin tabs 200/325	Par
Clindamycin HCl caps 75, 150 mg	Danbury
Clonazepam tabs 0.5, 1, 2 mg	PharmBasics
Cyclopentolate ophth soln 1%	Paco
Dexamethasone/neomycin/polymyxin B ophth	Paco
Doxepin caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Doxycycline tabs 100 mg	Pharbita
Erythromycin ER caps 250 mg	AmerTher
Fluocinolone acetonide cream 0.01, 0.025%	G&W
Fluocinolone acetonide oint 0.025%	G&W
Folic acid tabs 1 mg	Charlotte
Ibuprofen tabs 400 mg	Pharbita
Ibuprofen tabs 400, 600, 800 mg	Invamed
Indomethacin caps 25, 50 mg	Danbury
Loperamide caps 2 mg	Mylan
Lorazepam tabs 0.5 mg	PharmBasics
Methyldopa/HCTZ tabs 250/15, 250/25	Invamed
Metoclopramide inj. 5 mg/ml	Lemmon
Metoclopramide tabs 10 mg	Invamed
Metoclopramide tabs 10 mg	Sidmak
Minocycline caps 100 mg	Danbury
Nifedipine caps 20 mg	Purepac
Oxazepam caps 10, 15, 30 mg	Danbury
Prazepam caps 20 mg	PharmBasics
Prazosin caps 1, 2, 5 mg	Chelsea
Prednisolone acetate ophth soln 1%	Paco
Procainamide ER tabs 500 mg	Invamed
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Invamed
Ritodrine inj. 10 mg/ml, 15 mg/ml	TEVA
Sulfacetamide sodium ophth soln 10%	Paco
Thiothixene caps 20 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Mylan
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Timolol tabs 5, 10, 20 mg	Chelsea
Tobramycin ophth soln 0.3%	Paco
Trazodone tabs 150 mg	Chelsea
Tropicamide ophth soln 1%	Paco
Verapamil tabs 40 mg	Purepac
Vincristine inj. 1 mg/ml	TEVA

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 21 N.J.R. 2997(a), 21 N.J.R. 3664(a), 22 N.J.R. 214(b) and 22 N.J.R. 1137(a).

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

State Colleges

Readoption: N.J.A.C. 9:6

Proposed: March 5, 1990 at 22 N.J.R. 755(b).

Adopted: April 30, 1990 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: April 30, 1990 as R.1990 d.268, **without change.**

Authority: N.J.S.A. 18A:64-6 and 18A:3-14.

Effective Date: April 30, 1990.

Expiration Date: April 30, 1995.

Summary of Public Comments and Agency Responses:

The Board of Higher Education received one comment on the proposed readoption from the President of the Council of New Jersey State College Locals (AFT). During the comment period, the staff of the Board met extensively with representatives of the New Jersey State College Governing Boards Association with regard to the proposal. The Board agreed to notice for the receipt of public comments several substantive changes to this chapter. However, to avoid a gap in the effectiveness of this chapter, the entire chapter is being readopted at this time without change with a separate proposal to be submitted which sets forth the proposed amendments to this chapter.

COMMENT: N.J.A.C. 9:6-3.7, Limitations for Professorial Classification, should be eliminated as the rules have a severely negative effect on faculty morale and result in artificial restrictions to faculty advancement.

RESPONSE: This section of the chapter is part of a proposed amendment which is currently receiving public comments as a result of publication in the New Jersey Register (see 22 N.J.R. 1216(a)). The Board believes that any comments regarding this section should be addressed as part of that proposal.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:6.

HUMAN SERVICES

(c)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Special Hospital Services

Proposed Readoption with Amendment

Readoption with Amendment: N.J.A.C. 10:53

Proposed: March 5, 1990 at 22 N.J.R. 765(a).

Adopted: April 26, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

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Filed: April 27, 1990 as R.1990 d.256, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6a(1)(2); 30:4D-7, 7a, b and c; 30:4D-12; 1863(f) and 1905(h) of the Social Security Act; 42 CFR 440.10; 42 CFR 440.160; 42 CFR 482.1.

Effective Date: April 27, 1990, Readoption.
May 21, 1990, Amendments.

Expiration Date: April 27, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency Initiated Changes:

The Division of Medical Assistance and Health Services (the Division) is making a change to the text of N.J.A.C. 10:53-1.12(b) upon adoption. The proposed text of the rule indicated that a psychiatric facility, which provides inpatient services to children under 21, shall have the facility or program accredited by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO). This requirement remains exactly the same as contained in the proposal.

The Division is adding an additional means of accreditation for these specialized psychiatric facilities treating patients under 21. A facility that meets the more stringent Medicare (Title XVIII) Conditions of Participation can qualify as a Medicaid (Title XIX) provider so long as all other criteria for participation are satisfied. The basis for the Division's action is a letter dated March 30, 1990 (in response to a Division request) from the Health Care Financing Administration's Regional Office indicating that a facility which meets either the Medicare Conditions of Participation or has been accredited by JCAHO has met this particular standard of Medicaid participation.

The change should be less burdensome to providers seeking Medicaid approval because they can qualify under either criteria. If the proposed rule were adopted without the change, then a facility that was approved by Medicare would also have to obtain JCAHO accreditation. The Federal government has indicated JCAHO accreditation is not required for a facility that has been approved by Medicare.

It should also be noted this issue pertains only to inpatient psychiatric services provided to patients under 21. There is no change being made to N.J.A.C. 10:53-1.12(a), which pertains to psychiatric facilities generally.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:53.

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

10:53-1.12 Approved private psychiatric hospitals

(a) An approved private psychiatric hospital is one which meets all of the following conditions:

1. Licensed by the State of New Jersey as a psychiatric hospital or licensed as a psychiatric hospital by the appropriate agency under the laws of the respective state in which the hospital is located;

2. Meets the requirements of Medicare (Title XVIII of the Social Security Act) participation and certification as a psychiatric hospital and has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX);

3. Meets the special Medicare standards relative to staffing requirements and clinical records; and

4. Has signed an agreement to participate and abide by the rules and regulations of the New Jersey Medicaid Program.

[(b) In addition to (a)1 and 4 above, a psychiatric facility which provides inpatient services to children under 21 years of age shall have facility or program accreditation by the Joint Commission on the Accreditation of HealthCare Organizations (JCAHO).]

***(b) A psychiatric facility that provides inpatient services to children under 21 years of age shall:**

1. Meet the requirements of (a)1, 2, 3 and 4 above; or

2. In addition to (a)1 and 4 above, shall have facility or program accreditation by the Joint Commission on the Accreditation of Health Care Organization (JCAHO).*

(a)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program

Miscellaneous Program Requirements

Adopted New Rule: N.J.A.C. 10:87-2.29

Adopted Amendments: N.J.A.C. 10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.21, 2.23, 2.28, 2.31, 2.34, 2.35, 2.36, 2.37, 2.38, 3.1, 3.6, 3.7, 3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12, and 11.31

Adopted Repeal: N.J.A.C. 10:87-2.20

Proposed: January 16, 1990 at 22 N.J.R. 139(a).

Adopted: April 30, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: April 30, 1990 as R.1990 d.270, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4B-2, the Hunger Prevention Act of 1988 (P.L. 100-435), the Disaster Assistance Act of 1988 (P.L. 100-387), the Food Security Act of 1985 (P.L. 99-198), related Federal regulations at 7 CFR Parts 271 through 273, 54 FR 12169, 54 FR 24149, 54 FR 24510, and 54 FR 24518.

Effective Date: May 21, 1990.

Expiration Date: January 27, 1994.

Summary of Public Comments and Agency Responses:

Text has been revised at N.J.A.C. 10:87-2.20(j)1 and 2.38(a)9 to correctly identify the Veterans Administration as the Department of Veterans Affairs.

The New Jersey Department of the Public Advocate, Division of Public Interest Advocacy, submitted the following comments:

COMMENT: The Department recommended that General Assistance recipients be included among the public assistance recipients who are considered categorically eligible to receive food stamps.

RESPONSE: The initial rulemaking at 51 FR 28196, which promulgated the categorical eligibility regulations and final rulemaking at 54 FR 24510, specifically excluded General Assistance recipients from categorical eligibility. Further, 7 CFR 273.2(j) is clear in the treatment of GA applicants/recipients, which states "Households in which all members are applying for State agency administered general assistance (GA) shall, at a minimum, be provided with applications for food stamp benefits and be referred to the appropriate food stamp office for an eligibility determination. Under certain circumstances, these households may be able to apply jointly for their GA and Food Stamp benefits but shall not be considered categorically eligible for food stamps."

COMMENT: The Department of the Public Advocate recommended that GA recipients deemed disabled under N.J.S.A. 44:8-108 should be included among the class of individuals who are automatically considered disabled for purposes of food stamp eligibility.

RESPONSE: Federal regulations, as defined at 7 CFR 271.2, concerning disability and those concerning verification required as set forth at 7 CFR 273.2(f)(1)(viii) do not authorize the Department of Human Services to expand the definition of disability to include individuals receiving assistance under the GA program. It should be noted that 7 CFR 273.2(j) contains numerous references concerning ineligibility of GA applicants/recipients for categorical eligibility.

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

10:87-2.2 Household defined

(a) A household may be composed of any of the following individuals or groups of individuals:

1.-3. (No change.)

4. Elderly and disabled individual living with others: An individual who is 60 years of age or older (and the spouse of such individual) living with others who is unable to purchase and prepare meals

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because he or she suffers from a disability considered permanent under the Social Security Act or suffers from some other physical or mental nondisease-related, severe, permanent disability may be a separate household (see definition of elderly or disabled in N.J.A.C. 10:87-2.38 and verification requirements in N.J.A.C. 10:87-2.20(i)). However, the gross monthly income of the household with which the individual resides cannot exceed the gross monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7. This income determination shall be made in accordance with the following procedures:

i.-ii. (No change.)

5. An applicant household that has customarily purchased and prepared food separately in the past but, because of changes in financial or other circumstances, is now temporarily buying and preparing food with others, shall be considered a separate household, providing it intends to return to its former status upon receipt of food stamps. The applicant household's statements on past and intended practices shall suffice, except when the information provided is questionable according to the criteria at N.J.A.C. 10:87-2.20(i). If the applicant household does not return to its former status, the actual household composition will prevail and will be considered a client-reportable change in accordance with N.J.A.C. 10:87-9.5(a). The 10-day period for reporting that the applicant household has not returned to its former status will commence upon receipt of food stamp benefits.

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

10:87-2.3 Nonhousehold members, boarders and excluded household members

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

(c) Excluded household members: The following individuals residing with a household shall be excluded from the household when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of an excluded household member shall be considered available to the remaining household members in accordance with N.J.A.C. 10:87-7.14. Excluded household members may not participate in the program as separate households.

1.-3. (No change.)

4. Questionable citizenship status: Individuals whose citizenship is questionable (see N.J.A.C. 10:87-2.21(b) regarding verification of questionable citizenship).

10:87-2.14 Household cooperation

To determine eligibility for program benefits, the application must be completed and signed, the household (or its authorized representative) interviewed, and certain information (see N.J.A.C. 10:87-2.20 and 2.21) must be verified. If the household refuses to cooperate with the CWA in completing this process, the application shall be denied at the time of refusal.

10:87-2.17 Refusal to cooperate with Quality Control reviews

(a) The household shall be determined ineligible if it refuses to cooperate in a State or Federal Quality Control review. If a household is terminated for refusal to cooperate with a quality control reviewer, the household may reapply but shall not be determined eligible until one of the following conditions is met:

1. The household cooperates with the reviewer.

2. If a household that was terminated for refusal to cooperate with a State quality control reviewer reapplies after 95 days from the end of the annual review period, the household shall not be denied for its failure to cooperate with a State quality control reviewer during the completed review period, but must provide verification prior to certification, in accordance with N.J.A.C. 10:87-2.20(k). The annual review period ends on September 30 of each year.

3. If a household that was terminated for refusal to cooperate with a Federal quality control reviewer reapplies after seven months from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with N.J.A.C. 10:87-2.20(k) prior to certification. The annual review period ends on September 30 of each year.

10:87-2.19 Interview process

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

(e) Waiver of office interview: The office interview shall be waived for any household which is unable to appoint an authorized representative (see N.J.A.C. 10:87-2.7) and which has no household members able to come to the food stamp office because they are elderly or disabled, as defined in N.J.A.C. 10:87-2.38. The CWA shall waive the office interview on a case by case basis for any household which reports it is unable to appoint an authorized representative and has no members able to come to the Food Stamp office because of transportation difficulties or similar hardships.

1. Hardships: Hardship conditions include, but are not limited to: illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work hours which preclude an in-office certification. If a waiver is granted, the CWA shall document the reason for the determination in the case record.

2.-4. (No change.)

(f)-(h) (No change.)

10:87-2.20 Mandatory verification

(a) The CWA shall verify the following information in (b) through (k) below prior to certification for households initially applying for food stamp benefits.

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

(i) Household composition: The CWA shall verify any factors affecting the composition of a household if questionable.

1. Individuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the CWA.

2. Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors at N.J.A.C. 10:87-2.38, shall be responsible for proving such claims in accordance with (j) below.

(j) Disability determinations shall be processed as follows:

1. The CWA shall verify disability, as defined in N.J.A.C. 10:87-2.38, as follows:

i. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)2, 3, and 4, the household shall provide proof that the disabled individual is receiving benefits under Titles I, II, X, XIV, or XVI of the Social Security Act;

ii. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)6, the household shall present a statement from the *[Veteran's Administration (VA)]* ***Department of Veterans Affairs (DVA)*** which clearly indicates that the disabled individual is receiving *[VA]* ***veteran's*** disability benefits for a service-connected or nonservice-connected disability and that the disability is rated or paid at the total rate by *[VA]* ***DVA***;

iii. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)7 and 8, proof by the household that the disabled individual is receiving *[VA]* ***veteran's*** disability benefits is sufficient verification of disability;

iv. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)5 and 9, the CWA shall use the Social Security Administration's (SSA) most current list of disabilities considered permanent under the Social Security Act for verifying disability. If it is obvious to the caseworker that the individual has one of the listed disabilities, the household shall be considered to have verified disability. If disability is not obvious to the caseworker, the household shall provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the nonobvious disabilities listed as the means for verifying disability under N.J.A.C. 10:87-2.38(a)5 and 9;

v. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)10, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare;

vi. For individuals to be considered disabled under N.J.A.C. 10:87-2.38(a)11, the CWA shall verify that the individual receives the qualifying medical assistance identified at N.J.A.C. 10:87-2.38(a)11;

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2. For disability determinations which must be made relevant to the provisions of N.J.A.C. 10:87-2.2(a)4, the CWA shall use the SSA's most current list of disabilities as the initial step for verifying if an individual has a disability considered permanent under the Social Security Act. However, only those individuals who suffer from one of the disabilities mentioned in the SSA list who are unable to purchase and prepare meals because of such disability shall be considered disabled for the purpose of this provision. If it is obvious that the individual is unable to purchase and prepare meals because he or she suffers from a severe physical or mental disability, the individual shall be considered disabled for the purpose of the provision even if the disability is not specifically mentioned on the SSA list. If the disability is not obvious, the caseworker shall verify the disability by requiring a statement from a physician or licensed or certified psychologist certifying that the individual (in the physician or psychologist's opinion) is unable to purchase and prepare meals because he or she suffers from one of the nonobvious disabilities mentioned in the SSA list or is unable to purchase meals because he or she suffers from some other disease or nondisease-related disability. The elderly and disabled individual (or his or her authorized representative) shall be responsible for obtaining the cooperation of the individuals with whom he or she resides in providing the necessary income information about the others to the CWA for purposes of this provision.

(k) The CWA shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a State quality control reviewer, and reapply after 95 days from the end of the annual review period. The CWA shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a Federal quality control reviewer and reapply after seven months from the end of the annual review period.

10:87-2.21 Verification of questionable information

(a) The CWA shall verify all other factors of eligibility not described at N.J.A.C. 10:87-2.20 prior to certification only if they are questionable and affect the household's eligibility or benefit level. To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with information received by the CWA prior to certification. When determining if information is questionable, the CWA shall base the decision on each household's individual circumstances. The fact that a household's expenses exceed its income may be grounds for a determination that further verification may be required. However, this fact shall not, in and of itself, be grounds for a denial. The CWA shall instead explore with the household how it is managing, whether or not the household receives excluded income or has resources, and how long the household has managed under these circumstances. Certain special procedures described in this section shall be followed when information concerning one of the following eligibility requirements is questionable.

(b) (No change in text.)

(c) Deductible expenses: Deductible expenses other than utility costs which exceed the standard or heating utility allowance shall be verified if questionable and if allowing the expense would actually result in a deduction. In accordance with N.J.A.C. 10:87-5.10(a)5iv(1) and (2), the CWA shall verify that the household is entitled to a utility allowance.

1.-3. (No change.)

(d) Liquid resources and loans: The CWA shall verify liquid resources and whether or not moneys received by the household are loans whenever such items are questionable.

1.-2. (No change.)

(e) (No change in text.)

10:87-2.23 Sources of verification

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

(d) Responsibility for obtaining verification:

1. The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The CWA shall assist the household in obtaining this verification provided the household is cooperating with the CWA as specified in N.J.A.C. 10:87-2.14. Households may supply documentary evidence in person, through the mail or through an authorized representative. However, the CWA shall not require the household to personally present verification at the food stamp office. The CWA shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application.

2. (No change.)

10:87-2.28 Verification subsequent to initial certification

(a) At recertification, the CWA shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than $25.00. Previously unreported medical expenses and total recurring medical expenses which have changed by more than $25.00 shall also be verified at recertification.

(b) Questionable information: The CWA shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25.00 or less, unless the information is incomplete, inconsistent, or outdated. Other information which has changed may be reverified at recertification. Unchanged information shall not be verified unless the information is incomplete, inconsistent, inaccurate, or outdated. Verification under this section shall be subject to the same verification procedures as apply to initial verification.

(c) Changes: Changes reported during the certification period shall be subject to the same verification procedures that apply at initial certification, except that the CWA shall not verify changes in income, total medical expenses or actual utility expenses if the amount has changed by $25.00 or less, unless the information is incomplete, inconsistent, inaccurate, or outdated.

1. Change in household composition: If the change reported is a change in household composition, the CWA shall verify through the ALFX system that no household member is participating in the Food Stamp Program as part of another household (see N.J.A.C. 10:87-2.21(e).

(d) Social Security numbers: Newly obtained Social Security numbers shall be verified at recertification in accordance with verification procedures in N.J.A.C. 10:87-2.20(h).

10:87-2.29 Denial of the application

Households that are found to be ineligible shall be sent a notice of denial as soon as possible, but not later than 30 days following the date the application was filed. If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the CWA to express an interest in pursuing the application, the CWA shall send the household a notice of denial on the 30th day following the date of application. The household shall file a new application, if it wishes to participate in the Program. In cases where the CWA was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the CWA may also deny the application on the 30th day if the CWA provided assistance to the household in obtaining verification when required, as specified in N.J.A.C. 10:87-2.23(d), but the household failed to provide the requested verification.

10:87-2.31 Delays in processing

(a) (No change.)

(b) Failure to appear for two interviews: If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the CWA to express interest in pursuing the application, the CWA shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. See (c)5 below for households which express interest in pursuing the application after failing to appear for two scheduled interviews.

(c) Determining cause: The CWA shall determine the cause of the delay. A delay shall be considered the fault of the household if the household has failed to complete the application process even though the CWA has taken all the action required to assist the household. The CWA must have taken the following actions before a delay can be considered the fault of the household:

1.-2. (No change.)

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3. Incomplete verification: In cases where verification is incomplete, the CWA must have provided the household with a statement of required verification, offered to assist the household in obtaining required verification, and allowed the household sufficient time to provide the missing verification.

4.-5. (No change.)

(d)-(g) (No change.)

10:87-2.34 Special procedures for expediting services

(a) The CWA shall use the following procedures when expediting certification and issuance.

1. Verification procedure: In order to expedite the certification process, the CWA shall use the following verification procedures:

i. (No change.)

ii. All reasonable efforts shall be made to verify, within the expedited processing standards, the household's residency, income statements (including a statement that the household has no income), liquid resources and all other verification factors required in N.J.A.C. 10:87-2.20 and 2.21 through collateral contacts or readily available documentary evidence;

(1) (No change.)

iii.-vii. (No change.)

2. (No change.)

3. Certification period: Households which are certified on an expedited basis and have provided all necessary verification required in N.J.A.C. 10:87-2.20 and 2.21 prior to certification shall be assigned a normal certification period (see N.J.A.C. 10:87-6.19). If verification is postponed, the CWA shall certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the option of the CWA, shall assign the normal certification period warranted by the household's circumstances. However, in no event will benefits be continued past the month of application if verification is not obtained. Federally mandated reduction, suspension, or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households.

i.-iv. (No change.)

4.-5. (No change.)

10:87-2.35 AFDC eligibility determination (PA households)

(a) Action on the food stamp portion of the application shall not be delayed nor the application denied on the grounds that the AFDC eligibility determination has not been made.

1.-4. (No change.)

5. Denial of AFDC: A household whose AFDC application is denied shall not be required to file a new food stamp application but shall have its food stamp eligibility determined or continued on the basis of the original application filed jointly for AFDC and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

10:87-2.36 Categorically eligible AFDC/SSI households

(a) Any household, except those listed in (c) below, in which all members are authorized to receive AFDC/SSI benefits shall be considered categorically eligible for the Food Stamp Program unless the household is institutionalized or disqualified for any reason from receiving food stamps.

1. Residents of public institutions applying jointly for SSI and food stamp benefits shall not be categorically eligible upon a finding by the Social Security Administration (SSA) of potential SSI eligibility prior to release. Those individuals shall be considered categorically eligible when a final SSI eligibility has been made and the individual has been released from the institution.

Renumber 1. through 3. as 2. through 4. (No change in text.)

(b) (No change.)

(c) No household shall be considered categorically eligible for food stamps if any member of that household is disqualified for:

1.-2. (No change.)

3. The head of the household is disqualified for failure to comply with the work requirements contained in N.J.A.C. 10:87-10.

4. Such households are subject to all food stamp eligibility criteria and benefit determination provisions and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

(d) The factors which are deemed for food stamp eligibility without the verification required by N.J.A.C. 10:87-2.20 and 2.21 because of AFDC/SSI status are:

1.-5. (No change.)

(e) If any of the following factors are questionable, the CWA shall verify, in accordance with N.J.A.C. 10:87-2.21, that the household which is considered categorically eligible contains:

1.-3. (No change.)

4. Includes no person disqualified as specified in (c) above (see also N.J.A.C. 10:87-10 and 10:87-11.1).

(f)-(h) (No change.)

(i) The CWA shall conduct a single interview at initial application for both AFDC and food stamp purposes. AFDC households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs.

Renumber i. through ii. as 1. through 2. (No change in text.)

(j) For households applying for both AFDC and food stamps, the verification procedures described in N.J.A.C. 10:87-2.20 and 2.21 shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both AFDC eligibility and food stamp eligibility, the CWA may use the AFDC verification rules.

1. (No change in text.)

(k)-(m) (No change.)

(n) For a household filing a joint application for food stamps and AFDC/SSI benefits, or a household that has an AFDC/SSI application pending and is denied food stamps but is later determined eligible to receive AFDC/SSI benefits and is otherwise categorically eligible, the CWA shall provide benefits using the original application and any other pertinent information occurring subsequent to that application, except for residents of public institutions who apply for AFDC/SSI benefits prior to their release from the public institution. Benefits shall be paid from the beginning of the period for which AFDC/SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later.

1. (No change.)

(o) Any household determined AFDC/SSI eligible which is categorically eligible within the 30-day food stamp processing time shall be provided benefits in accordance with N.J.A.C. 10:87-2.30. Benefits shall be prorated in accordance with current procedures. However, no food stamp benefits shall be paid for a month in which such household is ineligible for receipt of AFDC/SSI benefits, unless the household is eligible as an NPA case.

(p) Households that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable or the date of the original food stamp application, whichever is later.

(q) The CWA shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's AFDC and/or SSI eligibility. The household shall be informed on the notice of denial to notify the CWA if its AFDC or SSI benefits are approved. Households who file joint applications for food stamps and AFDC/SSI and are subsequently denied may be required to file a new food stamp application or have their food stamp eligibility determined or continued on the basis of the original applications.

(r) (No change.)

(s) Households whose AFDC/SSI applications are denied shall not be required to file a new food stamp application, but shall have their food stamp eligibility determined or continued on the basis of the original applications. The CWA may, in evaluating food stamp eligibility or benefit levels, use any other documented information obtained subsequent to the application, which may have been used in the AFDC/SSI determination.

(t) Categorical eligibility shall be assumed at recertification, in the absence of a timely AFDC redetermination. If a recertified household

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is subsequently terminated from AFDC benefits, the procedures in N.J.A.C. 10:87-9.5 shall be followed, as appropriate.

10:87-2.37 Procedures for SSI jointly processed households

(a)-(e) (No change.)

(f) The CWA shall ensure that information required by N.J.A.C. 10:87-2.20, 2.21 and 2.22 is verified prior to certification for households initially applying for food stamps. Households shall be provided the opportunity to provide verification from another source if all necessary SSI benefit payment information is not available on/through the State Data Exchange (SDX) or Beneficiary Data Exchange (BENDEX) (see N.J.A.C. 10:87-2.22).

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

10:87-2.38 Elderly or disabled household members

(a) An elderly or disabled member of a food stamp household is defined as a member who:

1.-8. (No change.)

9. Is a surviving spouse or surviving child of a veteran and considered by the ***D***VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them;

10. Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled, based upon the criteria used under Title XVI of the Social Security Act; or

11. Receives medical assistance benefits as a disabled individual under:

i. Medicaid Only (Aged, Blind, and Disabled);

ii. AIDS Community Care Alternatives Program;

iii. Community Care Program for the Elderly and Disabled;

iv. Model Waivers I, II, or III (Medicaid Community/Home Care Waivers);

v. Home Care Expansion Program;

vi. Medically-Needy Program; or

vii. New Jersey Care Program.

10:87-3.1 Applicability

Nonfinancial eligibility factors in this section shall apply equally to all applicant households (see N.J.A.C. 10:87-2.20 and 2.21 for verification requirements).

10:87-3.6 U.S. citizen defined

For the purposes of N.J.A.C. 10:87-3.5, the United States shall be defined as the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Swain's Island, American Samoa, and the Northern Mariana Islands. Citizenship shall be verified only if questionable in accordance with N.J.A.C. 10:87-2.20(c).

10:87-3.7 Eligible alien

(a) (No change.)

(b) Ineligible alien as a member of the household: The presence of a person in the household who is ineligible for participation in the program because of his or her alien status shall not prevent the remainder of the household from being certified for program benefits, if eligible (see also N.J.A.C. 10:87-2.20(c)).

(c) (No change.)

10:87-3.8 Eligible aliens; listing

(a) With the provision that all other eligibility requirements are met, the following aliens shall be eligible for participation in the Food Stamp Program:

1. Immigrants: An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act. (However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in (a)8 and 9 below) (see N.J.A.C. 10:87-2.20(c) for verification);

2. Continuous residence: An alien who entered the United States prior to January 1, 1972, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.20(c) for verification);

3. Conditional entry after March 31, 1980: An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.20(c) for verification);

4. Conditional entry prior to April 1, 1980: An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(a)(7) of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.20(c) for verification);

5. (No change.)

6. Emergent reasons: An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General (see N.J.A.C. 10:87-2.20(c) for verification);

7. Deportation withheld: An alien living within the United States from whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion (see N.J.A.C. 10:87-2.20(c) for verification);

8.-11. (No change.)

10:87-3.11 Awaiting verifications

(a) If verification of eligible alien status or citizenship as required by N.J.A.C. 10:87-2.20(c) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the alien(s) whose status is unverified or individual whose citizenship is questionable shall be treated in the same manner as an excluded member as specified in N.J.A.C. 10:87-7.14(c) and considered available in determining the eligibility of the remaining household members.

(b) (No change.)

10:87-4.3 Resources defined

(a) The resources of a household shall include the following which shall be recorded by the CWA in sufficient detail to permit verification if necessary (see N.J.A.C. 10:87-2.20, 2.21 and 4.5).

1.-3. (No change.)

10:87-4.5 Verification of resource information

Resource information shall be verified prior to certification only if questionable (see N.J.A.C. 10:87-2.21).

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1.-7. (No change.)

8. Property essential for employment: Property, such as farm land, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his or her self-employment from farming.

9.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of resources excluded by Federal statute:

i.-iii. (No change.)

Renumber v. through xiv. as iv. through xiii. (No change in text.)

18.-19. (No change.)

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10:87-4.12 Treatment of licensed vehicles

(a) The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. Vehicles totally excluded: The entire value of any licensed vehicle shall be excluded if the vehicle meets any one of the criteria below. If found to apply, this exclusion shall continue when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

i.-ii. (No change.)

iii. Vehicle essential to employment: The vehicle is necessary for long distance travel, other than daily commuting, which is essential to the employment of a household member (or excluded individual whose resources are being considered available to the household); for example, the vehicle of a traveling salesperson or of a migrant farmworker following the work stream. A licensed vehicle which has previously been used by a self-employed household member engaged in farming, but which is no longer used over 50 percent of the time in farming because the household member has terminated his or her farming self-employment, shall continue to be excluded as a resource for one year from the date the individual terminated the self-employment from farming.

iv.-vi. (No change.)

(b)-(f) (No change.)

10:87-5.1 Applicability

(a) All households which do not contain an elderly or disabled member, shall meet both the net and gross income eligibility standards set forth in N.J.A.C. 10:87-12.3 and 12.4, respectively, in order to be eligible for program participation, with the exception of (b) below. Households which contain an elderly or disabled member shall meet the net income eligibility standards in N.J.A.C. 10:87-12.3. Net food stamp income shall be determined in accordance with procedures contained in this subchapter.

(b) (No change.)

10:87-5.2 Responsibilities regarding the reporting of income

(a) Responsibilities for the reporting of income shall be as follows:

1. (No change.)

2. Responsibility of CWA: The CWA shall determine that the total income to the household, as reported by the applicant during the certification or recertification interview, is completely identified on the FSP-901, and in sufficient detail to permit verification (see also N.J.A.C. 10:87-2.20(b)).

10:87-5.4 Earned income

(a) For the purposes of determining net food stamp income, earned income shall include:

1.-3. (No change.)

4. Training allowances: Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the Work Incentive Program (WIN) or Realizing Economic Achievement (REACH) to the extent they are not a reimbursement (see N.J.A.C. 10:87-5.9(a)9iii(1)).

5. (No change.)

6. Earnings to participants in on-the-job training programs under JTPA, provided that the participant is not under 19 years of age and under the parental control of another adult member and the programs are administered under Section 204(5), Title II, of JTPA. JTPA participants under 19 years of age who are under the parental control of another adult household member shall have their JTPA earnings treated as excluded income in accordance with N.J.A.C. 10:87-5.9(a)15xi.

10:87-5.6 Income of excluded individuals

(a) (No change.)

(b) Income of individual excluded for other causes: The earned or unearned income of individuals excluded from the household for failing to comply with the requirement to provide a Social Security number (see N.J.A.C. 10:87-2.20(h)) or for being an ineligible alien (see N.J.A.C. 10:87-3.8(a) et seq. for listing of eligible aliens) or for having questionable citizenship status (see N.J.A.C. 10:87-2.21(b)) shall continue to be counted as income, less the pro rata share for that individual, to the remaining household members. Procedures for calculating this pro rata share are described in N.J.A.C. 10:87-7.14.

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1. (No change.)

2. Vendor payments: A payment made in money on behalf of a household shall be considered a vendor payment when a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend who is not a household member pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household.

i.-v. (No change.)

vi. An emergency public or general assistance payment provided to a third party on behalf of a household containing a migrant or seasonal farmworker shall be treated as an excluded vendor payment, provided that the farmworker is in the jobstream.

3.-7. (No change.)

8. Loans: All loans, including loans from private individuals as well as commercial institutions, are excluded from income and resources. Additionally, deferred payment educational loans that provide income assistance beyond that used for tuition and mandatory fees shall be excluded if the lender/financial aid office of the school specifically designates portions of the loan as educational expenses rather than living expenses (see N.J.A.C. 10:87-2.21(d)).

9.-14. (No change.)

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i.-v. (No change.)

Renumber vii. through xi. as vi. through x. (No change in text.)

xi. Job Training Partnership Act: Any allowances or payments provided to individuals participating in programs under the Job Training Partnership Act of 1982 (Public Law 97-300). Earnings provided to individuals participating under JTPA on-the-job training programs shall be excluded if the participants are under 19 years of age and are under the parental control of another adult household member, and the programs are administered under Section 204(5), Title II, of JTPA.

Renumber xiii. through xv. as xii. through xiv. (No change in text.)

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-4. (No change.)

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1 unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i. (No change.)

ii. Shelter costs of unoccupied home: Shelter costs for a home not occupied temporarily by the household because of employment or training away from home, illness, or abandonment because of a natural disaster or casualty loss, shall be deductible (see N.J.A.C. 10:87-2.21(c) for verification requirement. The following conditions must be met in order to qualify for this deduction:

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

iii.-iv. (No change.)

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10:87-6.3 Application for recertification

(a) (No change.)

(b) If an application for recertification is submitted after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with N.J.A.C. 10:87-6.2(c).

1.-2. (No change.)

3. If the household contains a member who is a migrant or seasonal farmworker, the household's allotment shall not be prorated, if the household participated in the Program within 30 days prior to the date of the application.

(c) (No change.)

(d) For all households that the CWA elects the timeframe for providing missing verification, as outlined in N.J.A.C. 10:87-2.20 through 2.28, and the end of the timeframe falls after the end of that household's current certification period, the household shall not be subject to proration for the first month following the end of its current certification period, if it has provided the missing verification and is otherwise eligible.

10:87-6.19 Certification periods

(a) The CWA shall establish a definite period of time or "certification period" within which a household shall be eligible to receive benefits. A Federally mandated reduction, suspension, or cancellation of allotments in a given month shall have no effect on the certification period assigned to a household. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and such verification as required by N.JA.C. 10:87-2.20 and 2.21.

(b) (No change.)

10:87-7.6 Determining monthly income from self-employment

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

(c) Determination of adjusted net monthly income: The monthly net self-employment income shall be added to any other earned income received by the household.

1.-4. (No change.)

5. Households who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income shall be afforded the option to annualize the allowable costs of producing self-employment income from farming, when the self-employment farm income is annualized.

10:87-7.16 Residents of drug/alcoholic treatment and rehabilitation programs and group living arrangements

(a)-(h) (No change.)

10:87-7.18 Deeming of income and resources of alien sponsors

(a)-(e) (No change.)

(f) Verification: The sponsored alien and his or her spouse are responsible for providing the CWA with any information necessary to determine the income and resources of the alien's sponsor and the sponsor's spouse. The alien and his or her spouse shall also be responsible for demonstrating to the CWA that the sponsor also sponsors other aliens, how many, and for obtaining any necessary cooperation from the sponsor.

1.-2. (No change.)

3. The CWA shall verify the information obtained pursuant to (f) above. The CWA shall verify the information which the CWA determines is questionable and which affects household eligibility and benefit level in accordance with procedures established at N.J.A.C. 10:87-2.21 for verifying questionable information.

4. (No change.)

(g) (No change.)

10:87-9.5 Changes

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

(c) CWA responsibilities: The CWA shall not impose any food stamp reporting requirement on the household except as noted above. Neither shall the CWA treat the submission of the report of change as a waiver of the household's right to a notice of an adverse action.

1. (No change.)

2. Action on reported change: The CWA shall advise the household of its responsibilities to report changes within the required time period. The CWA is required to take prompt action on all changes reported by the household to determine if the change affects the household's eligibility or allotment. Even if there is no change in allotment, the CWA shall document the change in the case record, provide another change report form to the household, and notify the household of the receipt of the change report and effect of the change, if any, on its benefits. Restoration of lost benefits shall be provided to any household if the CWA fails to take action on a change which increases benefits within the time limits specified below.

i. (No change.)

ii. Changes which increase benefits and require issuance of a supplementary ATP: For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50.00 or more in the household's gross monthly income, the CWA shall make the changes effective no later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the CWA to adjust the following month's allotment, the CWA shall issue a supplementary ATP by the 10th day of the following month.

(1)-(2) (No change.)

(3) Verification: Verification required by N.J.A.C. 10:87-2.20 through 2.23, must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original benefit level. In cases where the CWA has determined that a household has refused to cooperate, as defined in N.J.A.C. 10:87-2.14 through 2.17, the CWA shall terminate the household's eligibility.

iii. Changes that reduce benefits: If the household's benefit level decreases or the household becomes ineligible as a result of the change, the CWA shall issue a notice of adverse action within 10 days of the date the change was reported, unless one of the exemptions to the notice of adverse action in (g) and (h) below applies. The decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. Verification required by N.J.A.C. 10:87-2.20 through 2.23, must be obtained prior to recertification.

3. (No change.)

(d)-(i) (No change.)

(j) Notice of adverse action: Prior to any action to reduce or terminate a household's benefits within the certification period, the CWA shall provide the household timely and adequate advance notice before the adverse action is taken.

(k) Changes not requiring advance notice: Individual notices of adverse action are not required when:

1.-8. (No change.)

9. Disqualified drug/Alcoholic treatment center or group living arrangement facility: Residents of a treatment center or group living arrangement which lost its certification from the appropriate State agency.

10.-12. (No change.)

10:87-10.7 Exemptions from the work registration requirement

(a) (No change.)

(b) The following persons shall be exempt from the work registration requirement:

1.-6. (No change.)

7. Persons subject to registration under other programs: Persons registered for work in accordance with program requirements of General Assistance are exempt, provided that they are participating in a General Assistance work or training activity. AFDC recipients who are subject to and complying with any REACH work or training requirement shall be exempt.

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i. Recipients of GA are exempt from the food stamp work registration requirement while they are participating in any work or training activity mandated by GA regulations. GA recipients who are not participating in a GA work or training activity shall be subject to food stamp work registration, including FSETP participation, unless they are exempt from work registration under other exemptions in this subsection.

ii. Recipients of non-Federally funded AFDC benefits who are subject to and complying with REACH requirements are exempt from the food stamp work registration requirement.

iii. Recipients who are exempted from the food stamp work registration requirement either due to participation in a GA work activity, or receipt of non-Federally-funded AFDC benefits, shall be disqualified from the Food Stamp Program if they fail to comply with a comparable REACH or GA work or training requirement. Prior to terminating the recipient or household, the CWA shall verify that the individual failed to comply with a GA or REACH requirement which is the equivalent of the food stamp work requirements provided at N.J.A.C. 10:87-10.9 and 10.17 through 10.19. The disqualification procedures are outlined at N.J.A.C. 10:87-10.20.

iv. If the recipient failed to comply with a GA or REACH activity that is not comparable to a food stamp work or training requirement, then the household or individual shall not be disqualified. The individual, however, shall then be required to comply with food stamp work registration. An individual or household shall not be disqualified if the noncomplying member meets one of the other exemption criteria in this section.

8.-10. (No change.)

10:87-10.12 Verification of voluntary quit and good cause

(a) To the extent that the information given by the household is questionable as defined in N.J.A.C. 10:87-2.21, the CWA shall request verification of the household's statements.

(b)-(f) (No change.)

10:87-11.31 Methods of collection

(a)-(h) (No change.)

(i) CWAs are prohibited from commencing or continuing the collection of a food stamp claim against an overissued household which is awaiting the outcome of a bankruptcy court petition.

CORRECTIONS

(a)

THE COMMISSIONER

Medical and Health Services
Special Medical Units
Adopted Repeal and New Rules: N.J.A.C. 10A:16-11

Proposed: February 5, 1990 at 22 N.J.R. 310(c).
Adopted: April 19, 1990 by William H. Fauver, Commissioner, Department of Corrections.
Filed: April 23, 1990 as R.1990 d.249, **without change.**
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: May 21, 1990.
Operative Date: May 29, 1990.
Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment letter in response to the repeal and new rules for Special Medical Units, which is addressed below.

COMMENT: Commenter urged the New Jersey Department of Corrections to increase staff at the Special Medical Units because the number of diagnosed Acquired Immune Deficiency Syndrome cases has increased in the past year and is expected to continue to rise.

RESPONSE: A specific number of custody and professional services staff is not set forth in N.J.A.C. 10A:16-11.5. This provides flexibility as needed when patient levels increase or decrease.

COMMENT: Commenter urged employment of additional full-time staff and was critical of the policy which permits subcontracting of professional services or use of agency-assigned nurses.

RESPONSE: The wide range of specialists to provide the services which are needed in the Special Medical Units are not available as full-time employees, nor would it be cost effective to employ these people full-time. For example, a patient suffering from a rare form of cancer can be referred to a specialist in treating these diseases. Such expertise is provided by outside consultants. The "ancillary contract services" referred to in N.J.A.C. 10A:16-11.12(a)2 ensures that all needed treatment modalities will be available. The Department of Corrections must be able to secure nurses from agencies when it proves impossible to locate full-time nursing staff.

COMMENT: Commenter suggested that special training, tools and support services be provided to all staff of the Special Medical Unit.

RESPONSE: N.J.A.C. 10A:16-11.24 provides for training for both staff and inmates in the use of protective garments, personal hygiene and accident reporting. The Department of Corrections believes that the present program is adequate to meet these needs.

COMMENT: Commenter asked that N.J.A.C. 10A:16-11.4(a) include a minimum of one full-time doctor and one full-time nurse as Special Medical Unit Classification Committee (S.M.U.C.C.) members at all times.

RESPONSE: Commenter misunderstood the function of the Special Medical Unit Classification Committee (S.M.U.C.C.). The S.M.U.C.C. makes decisions regarding housing, job assignments, educational activities and other classification related matters. Medical information is fully available to assist the decision-making process, but it would be a misuse of a doctor or nurse's time to burden him or her with S.M.U.C.C. duties.

Full text of the adoption follows.

SUBCHAPTER 11. SPECIAL MEDICAL UNITS

10A:16-11.1 Applicability

This subchapter shall be applicable to all Special Medical Units within the New Jersey Department of Corrections.

10A:16-11.2 Criteria for admission to a Special Medical Unit (S.M.U.)

(a) The Health Services Unit of the Office of Institutional Support Services (O.I.S.S.) shall authorize placement of inmates, who are confirmed Acquired Immune Deficiency Syndrome (A.I.D.S.) cases, in a Special Medical Unit (S.M.U.) when:

1. Their condition does not require acute care hospitalization; but
2. The medical condition of the inmate precludes housing in other medical units within correctional facilities of the Department of Corrections.

10A:16-11.3 Authority of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) Only male inmates that have been diagnosed and found to have Acquired Immune Deficiency Syndrome (A.I.D.S.) shall be assigned by the Inter-Institutional Classification Committee (I.I.C.C.) to a Special Medical Unit (S.M.U.) which houses male inmates.

(b) Female inmates that have been diagnosed and found to have Acquired Immune Deficiency Syndrome (A.I.D.S.) shall be assigned to the Special Medical Unit at the Edna Mahan Correctional Facility for Women.

10A:16-11.4 Special Medical Unit Classification Committee (S.M.U.C.C.)

(a) The members of the Special Medical Unit Classification Committee (S.M.U.C.C.) shall include, but are not limited to:

1. The chairperson;
2. A representative from the custody staff;
3. A representative from the professional staff;
4. A representative from the medical staff; and
5. A representative from the Office of Institutional Support Services (O.I.S.S.) professional staff.

(b) The Special Medical Unit Classification Committee (S.M.U.C.C.) shall review the assignment of an inmate to a Special Medical Unit (S.M.U.) to determine the program to which the inmate will be assigned.

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(c) The Special Medical Unit Classification Committee (S.M.U.C.C.) is authorized to monitor an inmate's Special Medical Unit (S.M.U.) program, and conduct case and in-person reviews.

(d) The Special Medical Unit Classification Committee (S.M.U.C.C.) may permit or preclude an inmate's participation in programs depending upon the inmate's ability to participate without posing a security or clinical threat to the inmate's condition or, to the operation of a Special Medical Unit (S.M.U.).

(e) An inmate's case shall be reviewed:

1. At the completion of the period of orientation;

2. Every three months after orientation; or

3. More frequently than every three months, if deemed appropriate by a member of the Special Medical Unit Classification Committee (S.M.U.C.C.)

(f) Whenever necessary for appropriate decision making, the inmate will be required to appear before the Special Medical Unit Classification Committee (S.M.U.C.C.) unless the inmate refuses to appear without the use of force.

(g) Written decisions on all Special Medical Unit Classification Committee (S.M.U.C.C.) case reviews shall be placed in the inmate's classification folder and copies shall be forwarded to the inmate unless security considerations preclude such disclosures.

10A:16-11.5 Special Medical Unit (S.M.U.) staff

(a) The staff of a Special Medical Unit (S.M.U.) is comprised of:

1. The administrator in charge of the Special Medical Unit (S.M.U.);

2. The custody supervisor;

3. The custody staff; and

4. The professional services staff (for example, social workers, psychologists, chaplains and medical staff).

(b) The staff of a Special Medical Unit (S.M.U.) is responsible to the Special Medical Unit Classification Committee (S.M.U.C.C.) for program development, implementation and assessment.

(c) The concerns of both the custody and the professional services staff members shall be given equal consideration in decision making regarding the development of programs for a Special Medical Unit (S.M.U.)

10A:16-11.6 Orientation

(a) Upon assignment of an inmate to a Special Medical Unit (S.M.U.), the inmate shall begin a period of orientation and intense supervision which shall not exceed seven days. During this period, the inmate shall be assessed to determine the inmate's:

1. Clinical condition;

2. Attitude;

3. Level of cooperation; and

4. Willingness to work and participate in program activities.

(b) The assessment of the inmate shall be accomplished by:

1. The submission of daily progress reports by custody staff members to the custody supervisor for submission to the administrator in charge of the Special Medical Unit (S.M.U.); and

2. The submission of a written evaluation of the inmate, by the Special Medical Unit (S.M.U.) social worker and other staff members, to the Special Medical Unit Classification Committee (S.M.U.C.C.) at the completion of the orientation period.

(c) Within 24 hours following an inmate's placement in a Special Medical Unit, except when placement is made on a weekend or a holiday, the custody supervisor shall:

1. Familiarize the inmate with the rules of conduct within the Special Medical Unit (S.M.U.);

2. Provide the inmate with a copy of the Institution's Inmate Handbook;

3. Provide the inmate with the written rules and regulations of the Special Medical Unit (S.M.U.);

4. Determine if the inmate has any difficulties which require immediate referral for special medical or social services; and

5. Notify the social worker of the placement and convey any special instructions regarding the inmate.

(d) If an inmate is placed in a Special Medical Unit (S.M.U.) on a weekend or a holiday, the custody supervisor shall perform the tasks listed in (c) above within 24 hours following the weekend or holiday.

(e) Within 72 hours following an inmate's placement in a Special Medical Unit (S.M.U.), except when placement is made on a weekend or a holiday, the social worker shall review with the inmate the assignment of the inmate to the Special Medical Unit and any unique problems referred by the custody supervisor which require immediate attention.

(f) If an inmate is placed in a Special Medical Unit (S.M.U.) on a weekend or holiday, the social worker shall, within 72 hours following the weekend or holiday, review with the inmate the assignment of the inmate to the Special Medical Unit and any unique problems referred by the custody supervisor which require immediate attention.

(g) The Professional Service staff shall be advised by the custody supervisor that an inmate has been assigned to the Special Medical Unit (S.M.U.). The social worker shall meet with the newly assigned inmate during orientation and advise the inmate of the programs and services available within the S.M.U.

(h) During orientation, the newly assigned inmate shall be permitted to participate in Special Medical Unit (S.M.U.) activities while his or her program is being developed. Any limitations determined at the time of the inmate's admission to the S.M.U., by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services or his or her designee, shall be considered during the development of the inmate's program.

(i) At the completion of the inmate's orientation, the Special Medical Unit Classification Committee (S.M.U.C.C.) shall review and approve or disapprove the continuation of the program developed for the inmate upon admission to the Special Medical Unit (S.M.U.).

10A:16-11.7 Personal items

(a) During orientation, all of the inmate's personal belongings shall be thoroughly searched and returned to the inmate within 24 hours unless extenuating circumstances exist (for example, transfers from another correctional facility, major disturbances, etc.).

(b) All contraband, including razors and spoons, shall be removed from the inmate's possession.

(c) Decisions regarding items not permitted for retention within the Special Medical Unit (S.M.U.) shall be made in accordance with N.J.A.C. 10A:1-11, Personal Property of Inmates.

10A:16-11.8 Work opportunities

(a) Each inmate shall be afforded an opportunity to participate in a work program designed to respond to the needs of the inmate and the Special Medical Unit (S.M.U.). The custody supervisor shall familiarize the inmate with the work program during the initial orientation interview.

(b) The administrator in charge of the Special Medical Unit (S.M.U.) and/or the custody supervisor may, at his or her discretion, devise other work opportunities in which the inmate may participate upon approval by the special Medical Unit Classification Committee (S.M.U.C.C.).

(c) An inmate shall receive the work assignment of cell sanitation upon initial assignment to a Special Medical Unit (S.M.U.). Each inmate shall be responsible for the cleanliness of his or her cell. Cleaning equipment shall be provided for the inmate to clean his or her cell at least once per week.

(d) Commutation and work time credits shall be given to inmates pursuant to N.J.A.C. 10A:9-5, Commutation and Work Time.

(e) Inmates shall be paid for work assignments in accordance with the established inmate wage scale.

(f) At the beginning of each three months of assignment to a Special Medical Unit (S.M.U.), every inmate shall be given the opportunity to confirm his or her continuation in the work program via an in-person work review with the Special Medical Unit Classification Committee (S.M.U.C.C.).

(g) Removal and lay-in action from the work program may be initiated by the custody supervisor or by the Special Medical Unit (S.M.U.) officers. Removal and lay-in action from the work program shall be reviewed by the Special Medical Unit Classification Committee (S.M.U.C.C.) for appropriate confirmation.

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10A:16-11.9 Community release activities

Any inmate with confirmed Acquired Immune Deficiency Syndrome (AIDS) which status is either active or in remission is not eligible for community release activities (such as, furloughs, work release, residential release, etc.).

10A:16-11.10 Disciplinary action within a Special Medical Unit (S.M.U.)

(a) The Department of Corrections' Inmate Discipline Program shall be in full force and effect in a Special Medical Unit (S.M.U.). Any restrictions of privileges placed upon an inmate in a Special Medical Unit (S.M.U.) shall be in accordance with N.J.A.C. 10A:4, Inmate Discipline.

(b) Disciplinary action initiated by any staff member shall be referred to the Disciplinary Hearing Officer/Adjustment Committee and, where appropriate, to the Special Medical Unit Classification Committee (S.M.U.C.C.) for confirmation.

10A:16-11.11 Psychological and social work services

Crisis intervention, problem solving and short and long term counseling programs shall be provided within a Special Medical Unit (S.M.U.) on an individual and/or congregate level.

10A:16-11.12 Medical Services

(a) The Office of Institutional Support Services (O.I.S.S.) Health Servcies Unit shall provide the following services to a Special Medical Unit (S.M.U.):

1. Medical examinations and treatment as prescribed by the consultant physician and approved by the O.I.S.S. Director of Medical Services;
2. Ancillary contract services as needed;
3. Liaison services between the O.I.S.S. Health Services Unit and the Medical Department of the correctional facility by the O.I.S.S. Health Services Unit Nursing Supervisor; and
4. Dental services by contracted consultants.

(b) Routine medication dispensing and emergency medical support, to include psychiatric services, shall be provided by the Medical Department of the correctional facility.

(c) Daily sick call shall be conducted by a physician or other qualified health personnel at the correctional facility.

10A:16-11.13 Religion

Spiritual programs and counseling shall be provided to inmates in a Special Medical Unit (S.M.U.) on an individual and congregate basis.

10A:16-11.14 Legal activities

(a) Each inmate shall have access to an Inmate Law Library and to legal assistance consistent with the program needs of the Special Medical Unit (S.M.U.) to which the inmate is assigned.

(b) The Education Department of the correctional facility shall coordinate the needs of inmates for legal materials with the paralegal representative (if assigned). The inmate paralegal shall conduct interviews with inmates in an appropriately suited area determined by the administrator in charge of the Special Medical Unit (S.M.U.).

(c) Attorneys and court related personnel shall be granted contact visits with a Special Medical Unit (S.M.U.). Such visits must be approved and pre-scheduled by the administrator in charge of the Special Medical Unit (S.M.U.) 24 hours in advance of the visit by calling the Special Medical Unit (S.M.U.) office Monday through Friday during regular working hours.

(d) Visits of attorneys and court related personnel shall be conducted in a room or area designated by the administrator in charge of the Special Medical Unit (S.M.U.). No staff member shall monitor the conversations between an inmate and his or her attorney(s).

10A:16-11.15 Recreation

Inmates in a Special Medical Unit (S.M.U.) shall be permitted exercise and recreation activity to the extent of their physical abilities to participate, dependent upon medical factors as determined by the Director of Medical Services of the Department of Corrections and the attending physician(s).

10A:16-11.16 Correspondence, legal correspondence, publications and packages

(a) Inmates in a Special Medical Unit shall receive and forward correspondence, publications and packages in accordance with:

1. N.J.A.C. 10A:18-2, Correspondence;
2. N.J.A.C. 10A:18-3, Legal Correspondence;
3. N.J.A.C. 10A:18-4, Publications; and
4. N.J.A.C. 10A:18-5, Packages.

10A:16-11.17 Visits

(a) Visits to a Special Medical Unit shall be approved, scheduled or disapproved in accordance with N.J.A.C. 10A:18-6, Visits, and the written rules and regulations of the Special Medical Unit.

(b) Special Medical Units provide for contact visits only.

(c) In the event that an inmate or a visitor violates the rules and regulations pertaining to visits as outlined in N.J.A.C. 10A:18-6, Visits, or in the written rules and regulations of a Special Medical Unit, the administrator in charge of the Special Medical Unit (S.M.U.), the custody supervisor, or their designees may discontinue the visit and initiate disciplinary measures. The Special Medical Unit Classification Committee (S.M.U.C.C.) may approve, disapprove or restrict a visitor should either the inmate or the visitor fail to adhere to the rules of the visit program.

10A:16-11.18 Telephone calls

Inmates in a Special Medical Unit may use public telephones in accordance with N.J.A.C. 10A:18-8, Telephone, and written regulations of the Special Medical Unit (S.M.U.).

10A:16-11.19 Congregate activities

(a) Congregate activities shall be developed during the inmate's orientation process with specific consideration for physical disabilities and infection control guidelines.

(b) The Special Medical Unit Classification Committee (S.M.U.C.C.) may, at its discretion, approve an inmate for participation in any one or all congregate activities.

(c) The Special Medical Unit Classification Committee (S.M.U.C.C.) may also rescind the inmate's participation in congregate activities should the inmate fail to cooperate in the program, or the S.M.U.C.C. may temporarily restrict the inmate's participation in congregate activities because of physical illness.

10A:16-11.20 Food

(a) All meals in a Special Medical Unit (S.M.U.) shall be prepared and served in accordance with the Food Service System of the correctional facility as approved by the Office of Institutional Support Services (O.I.S.S.).

(b) Inmates in a Special Medical Unit (S.M.U.) shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet that is prescribed by the medical staff.

10A:16-11.21 Showers

(a) Each inmate in the general population of a Special Medical Unit (S.M.U.) shall be permitted to shower once daily.

(b) Each inmate in Disciplinary Detention within a Special Medical Unit (S.M.U.) shall be permitted to shower once every other day.

10A:16-11.22 Haircuts

(a) Each inmate shall be afforded an opportunity to have a haircut once monthly. Each inmate desiring a haircut must place his or her name on the barber's list.

(b) All haircutting equipment shall be monitored while in use and secured when not in use.

10A:16-11.23 Reading material

(a) Reading material shall be made available for inmates assigned to a Special Medical Unit (S.M.U.).

(b) Inmates may obtain reading material by submitting their requests to the social worker.

10A:16-11.24 Training

(a) The Office of Institutional Support Services (O.I.S.S.) Director of Medical Services shall be responsible for ensuring that a program of training is provided to all staff and inmates concerning infection control and isolation precautions which include:

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1. Use of protective garments;
2. Personal hygiene; and
3. Accident reporting.

(b) All new staff and inmates shall receive training upon assignment to a Special Medical Unit (S.M.U.).

(c) The training program shall be reviewed and updated as is deemed advisable by the Director of Medical Services, Health Services Unit of the Office of Institutional Support Services (O.I.S.S.).

10A:16-11.25 Program assessment reports

(a) The staff of a Special Medical Unit (S.M.U.) must submit to the administrator in charge of the Special Medical Uint (S.M.U.) a progress report for each inmate assigned to the S.M.U.

(b) Shift officers designated by the custody supervisor shall complete a progress report on each inmate daily during the orientation period, and every three months for the remaining time the inmate is assigned in the Special Medical Unit (S.M.U.).

(c) The custody supervisor shall review the progress reports submitted by the correction officers and submit these reports to the administrator in charge of the Special Medical Unit (S.M.U.) at the completion of the orientation period.

(d) The administrator of a Special Medical Unit (S.M.U.) shall make program assessment reports available to the Special Medical Unit Classification Committee (S.M.U.C.C.) for all scheduled routine reviews, which occur every three months after the period of orientation.

(e) The professional staff of a Special Medical Unit (S.M.U.) shall complete and forward to the Special Medical Unit Classification Committee (S.M.U.C.C.) a progress report on each inmate at the completion of the orientation period, and every three months thereafter for the scheduled inmate routine review.

10A:16-11.26 Procedures and post orders

(a) Each correctional facility which has a Special Medical Unit (S.M.U.) shall develop written procedures and post orders for the Special Medical Unit (S.M.U.) that are consistent with this subchapter.

(b) Special Medical Unit (S.M.U.) procedures and post orders shall be reviewed and dated annually.

(c) Post orders shall be submitted before September 15 of each year to the appropriate Assistant Commissioner, and to the Office of the Deputy Commissioner for review and approval.

(a)

STATE PAROLE BOARD

Parole Board Rules

Adopted Amendments: N.J.A.C. 10A:71-1.3, 3.2, 3.21 and 7.18

Proposed: March 19, 1990 at 22 N.J.R. 899(a).

Adopted: April 25, 1990 by the New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Filed: April 27, 1990 as R.1990 d.257, **with a technical change** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-123.48(d).

Effective Date: May 21, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The State Parole Board did not receive any comments of a negative nature in regards to the proposed amendments. The State Parole Board did receive letters in support of the proposed amendments from the Department of Law and Public Safety—Division of Criminal Justice and from an institutional Superintendent of the Department of Corrections—State Prison Complex.

At N.J.A.C. 10A:71-3.2(c)8, a date definite (May 21, 1990) is provided, at a more appropriate location, to replace the reference to the amendment's effective date.

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

10A:71-1.3 Parole release hearings, board panel and board hearings

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

(c) In addition to appropriate Board personnel and correction officers, if security considerations so warrant, parole release hearings, Board panel and Board hearings shall be open only to such persons as authorized by the Board panel or Board with the consent of any inmate who may be present for a hearing on his or her case. The inmate's consent shall be in writing and made a part of the Board's record on the inmate.

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

10A:71-3.2 Calculation of parole eligibility terms

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

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1.-6. (No change.)

7. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book eligibility date shall be established by adding the additional term to the current book eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only.

8. If an inmate*[, denied parole release on or after (the effective date of this amendment),]* has been returned to confinement from the Intensive Supervision Program for any reason and if the inmate's parole eligibility date has passed at the time the inmate is returned to confinement, the following provisions shall apply in the case of an inmate denied parole release ***on or after May 21, 1990***:

i. A new book eligibility date shall be established by adding the additional term established pursuant to N.J.A.C. 10A:71-3.21 to the date of the inmate's return to confinement.

ii. In the case of an adult inmate, the new book date shall include commutation credits based on the additional term only.

iii. In the case of an adult inmate, only work and minimum credits earned from the date of the inmate's return to confinement shall be applied in the calculation of the actual eligibility date. In the case of a young adult inmate, program participation credits determined pursuant to N.J.A.C. 10A:71-3.3 shall be applied to reduce the primary eligibility date established pursuant to this section.

(d)-(h) (No change.)

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

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

(e) Upon determining to deny parole to an inmate who has been in continuous confinement and who was past eligible at the time of the initial parole release hearing, a two-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above. In such a case, the provisions of (d) above shall not apply except as follows:

1. If, in the opinion of the two-member Board panel denying parole the future parole eligibility date which would be established based on (a) or (b) and (c) above and the time period from the current book eligibility date to the date of the initial parole release hearing is clearly inappropriate.

(e)-(i) recodified as (f)-(j) (No change in text.)

10A:71-7.18 Adult diagnostic and treatment center examination for sex offenders

(a) If a parolee has been sentenced and paroled under provisions of the "Sex Offender Act", N.J.S.A. 2A:164-3 et seq., or N.J.S.A. 2C:47-1 et seq., and if the adult Board panel has revoked parole, a request for a complete examination, containing a copy of the hearing summary of the revocation hearing and the adult Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

(b)-(i) (No change.)

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LABOR

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Field Sanitation

Adopted New Rules: N.J.A.C. 12:102

Proposed: August 7, 1989 at 21 N.J.R. 2224(b).

Adopted: April 30, 1990 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: April 30, 1990 as R.1990 d.258, **with minor technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 39:9A-37 et seq., specifically 34:9A-39.

Effective Date: May 21, 1990.

Expiration Date: May 21, 1995.

Summary of Public Comments and Agency Responses:

The Department of Labor received 15 public comments on proposed new rules N.J.A.C. 12:102-1 concerning field sanitation for seasonal farm workers. The comment period, which would have ended on September 6, 1989, was extended until September 28, 1989 to accommodate those individuals who wished to submit testimony and/or comments at the public hearing. The public hearing was held at 7:00 P.M. on September 28, 1989 at the Hammonton Job Service Office in Hammonton, New Jersey.

The following individuals testified at the public hearing: K. Talbot—Camden Regional Legal Services, Inc.; C. Rawlings—New Jersey Council of Churches; V. Wilk—Farmworkers Justice Fund; J. Perez, J. Pominquez, W. Gonzalez, E. Roblas, J. Acevedo, H. Francesini, A. Irizani, M. Lyons—El Comite de Apoyo a los Trabajadores Agricolas (CATA); Dr. L. Talbot—Bridgeton Area Health Services; A. Muschal—N.J. Department of Agriculture; R. Zangrinski—N.J. Department of Health; B. Sutton—N.J. Farm Bureau; C. Kalson—N.J. Department of the Public Advocate; Dr. H. Frumpkin—University of Pennsylvania; and E. Hensel.

A majority of the individuals who orally testified at the hearing also submitted written testimony and/or public comments. The Department considered all written testimony received as public comments, and has therefore summarized testimony from the public hearing below.

There were seven farm workers who testified at the hearing, and they stated, in relevant part, that there was a need for field sanitation rules and for a procedure for enforcing such rules.

The Department has made one change to the rule upon adoption; specifically, the penalty section at N.J.A.C. 12:102-1.7 has been amended to delete the language concerning the discretion of the Commissioner in assessing penalties. The language as proposed was in direct conflict with the statutory provision concerning penalties, N.J.S.A. 34:9A-40.

COMMENT: The proposed rules are overly technical, detailed and may not meet their specific objectives. In some instances, the rules create different standards than OSHA.

RESPONSE: The Department is not required to adopt the same standards as OSHA. The rules as drafted are similar to those adopted by OSHA, and the Department believes they are less detailed and more specific than are the OSHA standards.

COMMENT: One commenter did not believe that small numbers of workers need stricter standards or more complex standards or a greater degree of protection than the current OSHA standards provide for larger groups. There is no evidence that the OSHA standards are not reasonably satisfactory in protecting farm workers.

RESPONSE: At the present time, the Department has no rules concerning field sanitation. Farms with smaller numbers of workers are precisely those farms which are regulated by the Department. The standards developed are not as strict as OSHA in every instance, just in those areas in which the Department feels the standards cannot be relaxed.

COMMENT: The rules prescribe detailed standards which are so technically specific that compliance will be difficult.

RESPONSE: The Department believes that the standards proposed in the rules are understandable and sufficiently clear, and will allow far better compliance among farm owners than do current standards.

COMMENT: The Economic Impact statement implied that most farm owners are in compliance with the OSHA requirements. The commenter states that there are no statistics to support this assertion.

RESPONSE: The Department had no statistics on which to base this assertion. However, the statement was made based on the impression of Department investigators, who believe that most farm owners are in compliance with existing Departmental policies concerning field sanitation.

COMMENT: One commenter states that the drinking water rules should be modified to remove the 60 degrees Fahrenheit water requirement, and replace it with the OSHA standard of "suitably cool and in sufficient amounts." The water should be in a cooler-type container.

RESPONSE: The Department believes that "suitably cool" can be reasonably interpreted to be 60 degrees Fahrenheit. The rules require the water to be in a portable container which can be tightly closed, and which has a tap. The Department feels that this requirement is more protective than merely having a "cooler-type" container.

COMMENT: With regard to the water being at 500-foot intervals from the work force, one commenter states that the OSHA standard of "reasonably accessible" should be adopted.

RESPONSE: The Department believes that a 500-foot interval provides more of a guideline for farm owners than does the vague "reasonably accessible" standard. By having an exact distance, farm owners will know exactly what is required, and the standard will be more easily enforceable.

COMMENT: One commenter supports the providing of alternative transportation with regard to toilet facilities, and also supports the three-hour exception, which is in conformance with OSHA.

RESPONSE: The Department appreciates the commenter's support, as it feels the two exceptions are reasonable for use on small farms.

COMMENT: For farms under 10 workers, a single lockable toilet could be provided without any undue confusion, rather than separate facilities for males and females.

RESPONSE: The Department believes that the standards in the rules are more appropriate, as they allow separate facilities for males and females.

COMMENT: The standards for farms with 10 or less workers should be less strict than the OSHA standards.

RESPONSE: The Department agrees that, in some areas, the State standards for small farms should be less strict than OSHA. However, there are certain instances in which the standards should be the same as OSHA to provide all farmworkers protection, regardless of the size of the farm.

COMMENT: Ten commenters had concerns with the drinking facilities provision. All of the commenters stated that moving the drinking facilities closer to the work site will result in less time lost from work and less heat-related diseases. If the water is closer, the worker will drink more, as he or she will not lose time from work. The NOISH standards suggest a distance of 200 feet and all commenters supported the 200 foot distance. One commenter suggested that, if the distance is not lessened from 500 to 200 feet, the "readily accessible" language should be retained.

RESPONSE: The Department believes that a 500 foot distance is not unduly far, and will not discourage workers from drinking. The Department believes that by specifying a distance, the farm owners will have a definite standard with which to comply and the Department will be better able to enforce the rules. Thus, the Department does not want to use the "readily accessible" language, as it is vague and will cause problems in assessing administrative penalties.

COMMENT: Eleven commenters had concerns about the drinking cup provisions. They note that the OSHA regulation states that disposable, single-use cups should be used rather than a multi-use non-disposable cup which is used over and over by workers. The multi-use cups are not sanitary, and pass infection and pesticides to the workers.

RESPONSE: The Department has not mandated single-use cups, but does prohibit infection-spreading practices such as "dipping" and common-drinking cups.

COMMENT: Three commenters suggested fountains as an acceptable alternative to single-use cups. Two commenters also asked for a sanitary container for unused cups and a receptacle for disposing of the used cups.

RESPONSE: The Department does not mandate fountains, but would certainly consider them as alternate sources of potable water. The rules currently state that when single-use cups are used, a sanitary container for unused cups and a disposal receptacle shall be provided.

COMMENT: Eleven commenters responded to the toilet facility section. They noted that with regard to toilet facilities, the rule provides that they are not needed if there is a toilet within five minutes' travel time by approved transportation provided by the farm operator. A farm operator or supervisor would have to be present at all times to transport the worker to the toilet. One commenter noted that the vehicle transpor-

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tation exception is impractical. The farm worker would have to ask the supervisor or operator to go to the toilet, which is in conflict with the private cultural values of Hispanic farm workers regarding such matters. Several commenters stated that neither expecting someone to "take" a farm worker to the toilet nor expecting a worker to ask to go is realistic; the net result will be that the worker will use the fields as bathrooms, and risk continued exposure to infections and pesticide residues. Finally, the commenters stated that the produce will be contaminated directly or by handling. There will also be fecal contamination of ground water that poses a threat to public health. OSHA considered this provision when drafting its regulation, and rejected it as impractical. The commenters said the provision should be eliminated.

RESPONSE: The Department has considered the commenters' suggestions, and still is of the opinion that the vehicle transportation provision is reasonable for small farms which employ less than 11 workers. Otherwise, in some instances, a farm owner would have to have toilet facilities for one or two workers, which is impractical

COMMENT: The provisions allowing pit privies as acceptable toilet facilities should be deleted.

RESPONSE: The Department disagrees. The OSHA rules consider "sanitary privies" as acceptable toilet facilities, and the Department agrees with this interpretation.

COMMENT: Nine commenters wrote about the three-hour exception for toilet facilities. Four commenters said that the three-hour exception for using toilet facilities should be changed to one hour, as it is not reasonable to expect people not to have to go to the bathroom for three hours (or up to six hours, if they are moved from field to field). Five commenters said the exception should be eliminated.

RESPONSE: The Department has reviewed the suggestion, and has decided to adopt the three-hour exception. OSHA regulations include the same three-hour exception, and the Department intends to adopt the same standards. Furthermore, the rules provide that workers who perform work in a given field for a period of three hours or less do not need facilities **provided** that at the conclusion of this three-hour period the workers are at a location where the facilities are available (N.J.A.C. 12:102-1.8(b)1) (emphasis added).

COMMENT: Twelve commenters expressed concerns about the handwashing facility provisions. They noted that the handwashing facilities should be located near the toilet and drinking water facilities to minimize parasitical and bacterial infections, pesticide residues and accidental pesticide exposure.

RESPONSE: The proposed rules provide that handwashing facilities shall be located "in the vicinity of" toilet facilities. The OSHA rules provide that the handwashing facilities shall be "accessibly located in close proximity to each other." The Department believes that the two standards are equivalent in terms of the location of the facilities and does not intend to amend the language.

COMMENT: One commenter suggested that N.J.A.C. 12:102-1.6(a)1 through 3 be eliminated. Seven commenters stated that the handwashing facilities should be no more than 200 feet from the workers.

RESPONSE: N.J.A.C. 12:102-1.6(a)1 allows facilities to be within 1,300 feet travel distance and within the vicinity of toilet facilities which is not an excessive distance. N.J.A.C. 12:102-1.6(a)2 allows handwashing facilities to be within 1,300 feet travel or five minutes walking time. The Department believes this to be a reasonable provision for small farms. The Department supports the vehicle transportation exception (N.J.A.C. 12:102-1.6(a)3) for handwashing facilities for the same reason as it supports the exception for the toilet facilities. The OSHA regulations do not provide that handwashing facilities should be located no more than 200 feet from the workers, and the Department is not mandated to make the rules any more stringent than the OSHA regulations.

COMMENT: Eight commenters stated that, in order to be effective, the rules should include provisions for farm worker education concerning: the dangers of inadequate water intake; symptoms of heat-related illness; hazards of pesticide residues and enteric diseases; necessity of handwashing; responsibility of the farm owner to provide disposable cups, adequate drinking water, and handwashing and toilet facilities; and how the farm worker can request an inspection by the New Jersey Department of Labor if there is non-compliance and the fact that such request will be confidential. One commenter suggested pamphlets and/or posters in English and Spanish. One commenter suggested that the Department wage a publicity campaign concerning the new rules.

RESPONSE: The Department is not opposed to education, but believes that the Department of Health is the appropriate agency to conduct training, as the issues are all health-related. The Department does not intend to have a publicity campaign for these rules, as it is not in the practice of conducting such events for any other rules.

COMMENT: One commenter said that it is estimated that the maximum daily cost to provide the facilities as recommended (200 feet to water, disposable cups, adjacent handwashing facilities, training, etc.) would be $1.25 per worker per day, which is less than three percent of employee costs. The commenter supplied a detailed cost analysis with the comment.

RESPONSE: The Department appreciates the cost-analysis provided by the commenter, but is not proposing rules based on cost. The Department proposes rules according to statutory mandates and OSHA suggestions, and, while it is concerned about costs, it is more concerned about adopting standards which are manageable for both the workers and the farm owners.

COMMENT: One commenter suggests that the Department adopt for farms with 10 or less workers the same provisions and level of protection as contained in the OSHA field sanitation standard.

RESPONSE: The Department is not required to adopt the same standards. OSHA itself left the regulation of small farms to states; it can be inferred that they did not intend to require all farms to comply with OSHA standards. The Department has proposed rules which are based, in large part, on OSHA rules.

COMMENT: One commenter stated that toilet facilities should be provided at a distance of no more than 200 feet from the workers. One commenter suggested that the facilities be closer than five minutes' distance.

RESPONSE: The Department disagrees, as it believes that the standards as proposed are adequate. Additionally, OSHA does not require these standards, and the Department is not required to adopt stricter standards than OSHA.

COMMENT: One commenter requested that N.J.A.C. 12:102-1.3(a) should be amended to read: An adequate supply of fresh, cool, potable water shall be provided for workers and placed in locations readily accessible to all employees.

The commenter also suggested that N.J.A.C. 12:102-1.3(a)1 and 2 be omitted.

RESPONSE: The Department believes that the standards, as proposed, are more specific and more easily enforceable than the vague standard suggested. The Department does not intend to eliminate the other two provisions, as explained in a previous response.

COMMENT: One commenter said the section concerning toilet facilities should be amended as follows to reflect the OSHA and ANSI standards:

> Toilet facilities shall be accessibly located and in close proximity to handwashing facilities. The toilet and handwashing facilities shall be located within a one-quarter mile walk of each hand-laborer's place of work in the field. Where, due to terrain, it is not feasible to locate facilities as required above, the facilities shall be located at the point of closest vehicular access.

The commenter also believes that N.J.A.C. 12:102-1.5(a) 1 through 3 should be omitted.

RESPONSE: The Department believes that its standards are more specific, less vague and more easily enforceable than the suggested standard. N.J.A.C. 12:102-1.5(a) 1 through 3 provide the specific requirements which make the rule enforceable, and the Department does not intend to omit these provisions.

COMMENT: One commenter suggested that N.J.A.C. 12:102-1.8(a) be amended to include provisions that require the establishment of a procedure and criteria for evaluating and granting exceptions to the rules. The procedure should include farm worker participation.

RESPONSE: The Department believes that this section adequately insures that any exceptions will be equal to or better than the standards proposed, and wishes to retain the discretion to assess each situation on a case-by-case basis rather than establish general procedures and criteria. Farm worker participation is not necessary, as any standards changed will not be lessened.

COMMENT: Four commenters suggested that a new section concerning reasonable use should be added. The section should include statements concerning the use of and information about the facilities and the importance of using the facilities properly.

RESPONSE: The Department does not feel that a reasonable use section is necessary, especially if the Department of Health conducts education and training programs for all farm workers.

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COMMENT: The term "seasonal farm workers" in N.J.A.C. 12:102-1.1(b)1 must be changed to language equivalent to the OSHA standard to ensure that the rule will cover all instances not covered by OSHA.

RESPONSE: The Department has analyzed the OSHA definition, and believes that the term "seasonal farm workers" is encompassed therein. Thus, the rules will cover farms where 10 or fewer workers are employed.

COMMENT: Two commenters suggested that a provision be added to the rules providing that the rules will cover all situations within the definition of the New Jersey Drinking Water and Toilet Facilities Act, N.J.S.A. 34:9A-37, for which OSHA does not exercise jurisdiction. The State statute covers a broader classification of workers than does OSHA.

RESPONSE: The Department believes that the OSHA standard can be read to include the State definition and the Department does not believe that the State statute is broader than the Federal standard, and does not see the need to add a clarifying provision to the rules. Additionally, OSHA interprets its provision to mean that when there are 11 or more employees it will assume jurisdiction. Thus, there should be no gap in coverage.

COMMENT: Three commenters stated that when separate toilet facilities are required, the separate facilities for men and women should be distinctly marked in English and the native language of the persons using the toilets.

RESPONSE: The Department does not believe that the persons using the toilets need this marking, as only 10 workers will be using them and they will be able to tell by looking at who enters the facility which toilet is for women and which is for men. Also, the OSHA rules do not require such a marking.

COMMENT: Three commenters requested that a toilet paper holder which should be permanently attached to the toilet facility be required.

RESPONSE: The OSHA rules and the proposed rules both require that an adequate supply of toilet paper be provided. OSHA did not require a toilet paper holder, and the Department does not want to adopt rules stricter than Federal standards.

COMMENT: Four commenters suggest that the language "whichever is closer" should be added to the travel distance designations for toilet facilities.

RESPONSE: The Department does not believe that either travel distance for toilet facilities is excessively long, and wants to allow the farm owner to have some flexibility in establishing the location of the facilities.

COMMENT: Four commenters maintain that the vehicle exception for handwashing facilities is not a practical substitute for having the facilities available in accessible walking distance, and that the provision should be deleted.

RESPONSE: The Department disagrees. The vehicle transportation exception is a practical alternative for small farms where there are few employees.

COMMENT: Six commenters note that the rules require "individual towels" to be part of the handwashing facilities. The commenters stress that single-use or disposable towels are necessary for adequate health protection. One commenter suggested a sanitary washing facility and towel dispenser and a container or garbage can for the used towels. One commenter suggested that moist towelettes be prohibited, and that soap and water be provided.

RESPONSE: The rules do provide that water and soap or other cleansing agent should be provided. The Department does not feel that any distinction need to be made between "individual" and "single-use" towels, as the terms are synonymous. Moist towelettes are permissible as long as soap and water are also available.

COMMENT: Three commenters asked that standards for the maintenance of handwashing facilities should be added to the rules; specifically, the OSHA language which requires the facilities to be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition.

RESPONSE: The Department believes that the rules as proposed require potable water, cleansing agent, and towels, and require that the waste water be disposed of in a sanitary manner. The OSHA standards are not significantly different than those proposed by the Department, and no amendment will be made upon adoption.

COMMENT: Four commenters said that water containers should be sanitized daily with soap or detergent. The containers should be corrosion-resistant and made from non-toxic materials that maintain water quality. Finally, the commenters say that the water containers should be marked in English and Spanish as containing water, and should not be used for any other purpose.

RESPONSE: The proposed rules set forth standards for water containers which the Department feels will satisfactorily protect the water quality. The rules do provide that the containers shall be marked and shall not be used for any other purpose at N.J.A.C. 12:102-1.4(c). With regard to multi-lingual marking, the Department has concerns that there may be occasions where Spanish is not the second language. Therefore, the container need only be marked as to its content in one language.

COMMENT: Three commenters stated that complaint procedures for noncompliance should be included in the rules, including nondiscrimination and anti-retaliatory provisions, confidentiality protection and disclosure of investigation procedures. Two commenters suggested a three-day maximum time for investigation.

RESPONSE: The Department is not required to establish these procedures, and indeed may contradict existing statutory provisions if it does so. There are statutory provisions which now exist that allow farm workers to institute civil actions for injunctive relief.

COMMENT: Four commenters noted that N.J.S.A. 34:9A-40 makes penalties or monetary fines mandatory. The rules make such penalties discretionary. The commenters also suggested that enforcement procedures be established.

RESPONSE: The Department agrees in part with the commenter. N.J.A.C. 12:102-1.7 has been changed upon adoption to require penalties to be levied. However, at this time, existing enforcement procedures will be followed, as the Department believes that the more specific rules will make enforcement more efficient and productive.

COMMENT: Two commenters stated that the mobile equipment for toilet facilities assumes that the workers are allowed and/or able to use the equipment to go to toilet and handwashing facilities. This assumption is not valid, as it may not be true in all situations.

RESPONSE: This comment is based on a misunderstanding of the exception. Only the individuals who are actually operating mobile equipment are excepted from the general distance requirements for water and toilet facilities.

COMMENT: One commenter said that to enhance the effectiveness of the rules, a poster or notice should be affixed to toilet facilities and drinking water containers reminding workers of the importance of handwashing.

RESPONSE: The Department considers this to be a form of education which would more appropriately be addressed by the Department of Health.

COMMENT: Thirteen comments were received concerning the toilet facility construction. The commenters said specific language concerning self-locking toilet doors and adequate screening and ventilation should be added to the rules. They advocate doors which are self-closing. The commenters noted that N.J.S.A. 34:9A-38 requires toilets to be adequately screened and ventilated. The commenters urged that Federal language requiring toilet doors to close and latch from the inside be adopted. The commenters state that self-closing doors help eliminate vermin.

RESPONSE: The statute requires that the facilities be adequately screened and ventilated, and thus it is superfluous to reiterate these standards in the rules. The rules provide that the toilets should afford reasonable privacy, and provide that inside locking doors should be provided where applicable.

COMMENT: Five commenters believe that the three-hour exemption for handwashing facilities is inadequate. They note that workers can be moved from field to field, so that the actual time without facilities can be much longer than three hours. Additionally, emergencies such as pesticide spraying can result.

RESPONSE: The Department acknowledges the commenters' concerns but believes that the exception is valid for the reasons explained earlier concerning the toilet facilities. OSHA provides the same exception, and the Department is unwilling to promulgate standards which are stricter than are the OSHA standards.

COMMENT: One commenter questions why the rules are needed, as he believed that the Department currently has a policy for farm workers. The commenter stated that he hoped there were no third-party harassment actions being contemplated.

RESPONSE: The commenter can be assured that there are no third-party harassment actions at this time. The Department believes the rules are necessary to enforce the provisions of the Drinking Water and Toilet Facilities Act, N.J.S.A. 34:9A-37 et seq.

COMMENT: One commenter supports the use of handi-wipes, as he believes that they are better than paper towels for use under field conditions.

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RESPONSE: The Department does not prohibit handi-wipes, as long as water and a cleansing agent are also provided at the handwashing facility.

COMMENT: One commenter does not approve of the 60 degrees Fahrenheit standard for water. Water that meets the potable standard which is 65 degrees Fahrenheit should be acceptable when a day's work is over and the ice has melted. The commenter states that this is not an area of worker dissatisfaction, to his knowledge.

RESPONSE: The Department believes that the 60 degrees Fahrenheit standard is more adequate for drinking water, as cooler water is more refreshing and will be consumed more readily by the workers.

COMMENT: Requiring separate toilet facilities will be an economic hardship, and the requirement should be omitted in the absence of any demonstrated need.

RESPONSE: The Department believes that separate toilet facilities are essential, and will not amend the rule to allow same-sex facilities.

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 102
SEASONAL FARM WORKERS

SUBCHAPTER 1. FIELD SANITATION

12:102-1.1 Purpose and scope

(a) The purpose of this subchapter is to provide reasonable standards for drinking, toilet and washing facilities for seasonal farm workers when working in a field.

(b) This subchapter shall be applicable to all farms subject to N.J.S.A. 34:9A-37 et seq. when 10 or fewer seasonal farm workers are working in a field.

1. If, at any time during a one-year period from the date of inspection, more than 10 seasonal farm workers have been employed, the Federal Occupational Safety and Health Act (OSHA) standards pursuant to 29 CFR 1928.110, shall be applicable.

12:102-1.2 Definitions

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

"Approved" means acceptable to the Commissioner. Any product certified, or classified, or labeled by a nationally recognized testing agency may be deemed to be acceptable, unless specifically banned by order of the Commissioner.

"Central facilities" means drinking, toilet and washing facilities housed at a central location which comply with Federal, State and local regulations and are at least equivalent in all respects to the facilities required by this subchapter.

"Commissioner" means the Commissioner of the Department of Labor of the State of New Jersey or his or her designee.

"Cool" means water which is maintained at a temperature of not more than 60 degrees Fahrenheit.

"Farm operator" means any individual, family member, corporation, partnership, joint venture, firm, company, or other legal entity, or any officers or agents thereof, in immediate possession of any farm as owner or lessee, and, as such, responsible for its management and condition.

"Seasonal farm worker" means any person who is engaged in seasonal or temporary farm work and is a term that may be used interchangeably with the terms "migrant laborer" and "temporary farm worker".

"Unreasonable distance" means a travel distance from a working area in a field of more than 500 feet for drinking facilities and a travel distance of more than 1,300 feet for toilet or washing facilities.

"Potable water" means water which has been tested and approved for compliance with the potable water standards of the New Jersey Department of Health.

12:102-1.3 Availability of water

(a) An adequate supply of fresh, cool, potable water shall be provided for workers in the working area, except when cool potable water facilities are available to the workers:

1. At a central facility within 500 feet travel distance of the working area in the field; or

2. At a location, separate from a central facility, within 500 feet travel distance of the working area in the field.

(b) Upon request of the Commissioner, a farm operator shall provide evidence of the quality of drinking water provided from a non-public water supply system for compliance with (a) above.

12:102-1.4 Water containers

(a) Portable containers used to dispense drinking water shall be capable of being tightly closed, and shall be equipped with a tap.

(b) Water shall not be dipped from containers.

(c) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and shall not be used for any other purpose.

(d) A common drinking cup shall be prohibited.

(e) Where single service cups are supplied, a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

1. Single service cups shall not be used more than once.

12:102-1.5 Toilet facilities

(a) Toilet facilities shall be provided for workers in the working area, except when toilet facilities:

1. Are available to the workers at a central facility within 1,300 feet travel distance or a five-minute walking time of the working area in the field;

2. Are available to the workers at a location, separate from a central facility, within 1,300 feet travel distance or a five-minute walking time of the working area in the field; or

3. Are accessible and immediately available to all the workers at all times within five minutes travel time by approved transportation provided by the farm operator.

(b) Toilet facilities required in (a) above shall be separate for each sex and provided in accordance with Table 1.5(b) below:

TABLE 1.5(b)

1-20 males	1 seat
1-20 females	1 seat

(c) Toilet facilities shall be a suitable type acceptable for the elimination of bodily wastes and may consist of the following types:

1. Pit privies;
2. Chemical toilets (fixed or portable);
3. Combustion toilets;
4. Composting toilets;
5. Recirculating toilets; or
6. Other generally accepted facilities.

(d) Toilet facilities shall be equipped with an adequate supply of toilet paper.

(e) Toilet facilities shall be maintained in a clean and sanitary condition, and in good working order.

(f) Toilet facilities shall be so constructed and designed so as to afford reasonable privacy to the user. Where applicable, doors with inside locking capability shall be provided.

12:102-1.6 Handwashing facilities

(a) Adequate handwashing facilities shall be provided for workers in the working area and in the vicinity of toilet facilities required by this subchapter, except when handwashing facilities:

1. Are available to the workers at a cental facility within 1,300 feet travel distance of the working area in the field and in the vicinity of toilet facilities required by this subchapter;

2. Are available to the workers at a location, separate from a central facility and in the vicinity of toilet facilities, within 1,300 feet travel distance or five minutes walking time of the working area in the field; or

3. In the vicinity of toilet facilities are accessible and immediately available to all the workers at all times within five minutes travel time by approved transportation provided by the farm operator.

(b) Washing facilities shall provide potable water, soap or other cleansing agent and individual towels.

(c) Waste water shall be disposed of in a sanitary and safe manner.

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12:102-1.7 Penalties

Failure to comply with the provisions of this subchapter shall*[, in the discretion of the Commissioner,]* subject the farm operator to a fine pursuant to N.J.S.A. 34:9A-40.

12:102-1.8 Exceptions

(a) The Commissioner may grant exceptions from this subchapter, provided that it shall be clearly evident that such exception will provide for conditions that are equal to or better than the literal requirements set forth in this subchapter.

(b) Toilet and washing facilities are not required where:

1. Workers perform work in a given field for a period of three hours or less, including travel time, provided that at the conclusion of such period the workers are at a location where the facilities are available; or

2. Workers operate mobile equipment, as such workers can carry an adequate supply of potable water on the equipment and are able to travel to toilet and handwashing facilities in accordance with the timeframes set forth at N.J.A.C. 12:102-1.5 and 1.6.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MORTUARY SCIENCE

Adopted Repeal and New Rule: N.J.A.C. 13:36-3.5 Adopted Amendments: N.J.A.C. 13:36-3.6 and 3.7

Proposed: July 3, 1989 at 21 N.J.R. 1820(a).

Adopted: April 3, 1990, by the New Jersey State Board of Mortuary Science, Donald R. Codey, Acting President.

Filed: May 19, 1990 as R.1990 d.273, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:7-38.

Effective Date: May 21, 1990.

Expiration Date: September 27, 1994.

The State Board of Mortuary Science afforded all interested parties an opportunity to comment on the proposed repeal and new rule, N.J.A.C. 13:36-3.5, and on the proposed amendments, N.J.A.C. 13:36-3.6 and 3.7, relating to passing grades, examination review and practical examination requirements. The official comment period ended on August 2, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 3, 1989 at 21 N.J.R. 1820(a). Announcements were also forwarded to the New Jersey State Funeral Directors Association, Mark Samuel Ross, Esq., the Star Ledger and the Trenton Times.

A full record of this opportunity to be heard can be inspected by contacting Maurice McQuade, Executive Director, Board of Mortuary Science, Room 513, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

During the official 30-day comment period, the Board of Mortuary Science received written comments from the New Jersey State Funeral Directors Association and from Robert C. Smith III on behalf of Mercer County Community College. These commenters also responded to the proposal at the public session of the Board's December 5, 1989 meeting. A summary of the comments and the responses of the Board of Mortuary Science follows:

N.J.A.C. 13:36-3.5(a)

COMMENT: Both commenters endorsed the requirement that a candidate for licensure pass the National Board Exam (N.B.E.) with a 75 average.

RESPONSE: The Board acknowledges these comments.

COMMENT: By denying a passing grade to a candidate scoring below 70 on more than one section in each of the two parts of the N.B.E., the Board is requiring a higher passing grade than the 75 overall average required by the National Board. The suggestion was made to leave the passing grade determination to the Conference of Funeral Service Examining Boards, which requires an average of 75 to pass the exam.

RESPONSE: Although the N.B.E. is currently part of the Board's written examination, the Board has no responsibility to use the N.B.E. score or to recognize N.B.E. scoring procedures; score setting is an individual state right. The Board believes it would not be in the best interests of the public or the student to lower established academic standards; both the American Board of Funeral Service Education and Mercer County Community College require a grade of "C" to pass a subject. Currently, students can fail two or three subsections of the N.B.E. and still pass the N.B.E. exam. In fact, Board records show an instance of an individual failing three subsections on the N.B.E., including professional subjects, and yet passing the N.B.E. with more than a 75 percent overall average. The Board has the responsibility to promulgate entry-level requirements stringent enough to assure that only qualified individuals will be licensed to practice mortuary science, and the Board believes this amended rule will achieve that goal.

COMMENT: Because of the labor pool shortage, it seems counterproductive to develop a standard for New Jersey higher than any other state.

RESPONSE: In fact, other states have equal or higher standards. In addition, the Board reiterates that its obligation is to ensure that only truly qualified individuals are licensed to practice mortuary science. The New Jersey examination is not, and should not be, a mechanism to control the number of people licensed annually. The Board also points out that the attrition rate for New Jersey morticians has been high for years and is unrelated to the examination process.

COMMENT: It is possible that when a new curriculum for all colleges of mortuary science goes into effect in September 1990, the National Board will begin reporting scores in three or four sections, rather than two. This will make the proposed regulatory language obsolete.

RESPONSE: The proposed regulatory language is essential in evaluating the N.B.E. scores of current candidates as well as those of candidates who took the two-section N.B.E. in prior years. If the format of the N.B.E. is changed, the Board can amend its regulatory language at that time, if necessary.

N.J.A.C. 13:36-3.5(b)

COMMENT: Refusing to admit any candidate to the New Jersey mortuary jurisprudence exam until the results of the N.B.E. are on file could delay scheduling of the jurisprudence exam. The suggestion was made to admit mortuary school graduates to the exam but not report the results to the candidate until the Board receives the N.B.E. results; jurisprudence exam results would not be recognized for those who do not pass the N.B.E.

RESPONSE: The scheduling of the jurisprudence exam is within the Board's discretion. Examination dates are scheduled to allow the candidate sufficient time to file the required documents with the Board. If the candidate experiences an unexpected delay in receiving his or her N.B.E. scores, concerns can be addressed to the National Board.

N.J.A.C. 13:36-3.6

COMMENT: The proposed examination review procedure, which would no longer permit a candidate to review his or her examination paper but would permit only a review of the examination sheet with the key answer sheet, would deny unsuccessful candidates the opportunity to learn why they failed.

RESPONSE: The Board reuses the examination and has found from past experience that it was unable to maintain its confidentiality when questions were discussed with unsuccessful candidates, who often disseminated to other candidates information received at the review. Importantly, a similar determination by another board not to release exam questions in order to maintain confidentiality was addressed by the Appellate Division of the New Jersey Superior Court in *Schwartz v. New Jersey State Board of Veterinary Medical Examiners,* N.J. App. Div., A-2527-82T1 (February 24, 1984) (unreported). There, the Court stated that "it would be an unreasonable burden upon [the Board] to be required to prepare new questions for each examination. There are also important positive values in the reuse of examination questions. Previously used questions are included in examinations to increase the efficiency and reliability of the evaluation." For these reasons, the Board believes its decision not to review examination questions with candidates subsequent to the exam is sound and outweighs any concern that unsuccessful candidates do not have the opportunity to learn why they failed. These candidates are fully protected by the opportunity to take the examination again.

COMMENT: It was suggested that bias in writing exam questions is unavoidable and that the Board would be unaware of any bias unless

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personal discussion with candidates was permitted. One commenter pointed out, presumably as evidence of the exam's bias, that several capable people failed the May 1989 exam.

RESPONSE: The Board has in place a sophisticated system to develop examination questions and to review test results before final scoring. The exam questions, written from material submitted by Board members who have a high degree of professional expertise, are developed to have one possible answer. The exam is computer graded and an item analysis is provided by the grader. The Board employs a person from the private sector who reviews the examination before it is administered and, after it is administered, reviews the item analysis, deletes questionable material, does a validation study and rescores the entire examination. The Board believes this procedure provides the candidate with the most reliable score; therefore, there is no need to seek candidate feedback regarding the exam content.

As for the comment that several capable people failed the May 1989 exam, two unsuccessful candidates told the Board's executive director that the school they attended did not offer a course in New Jersey mortuary jurisprudence and that they failed the exam because they did not know the material; the Board has found that those tutored in the subject often pass upon reexamination.

Summary of Agency Initiated Change:

In N.J.A.C. 13:36-3.7(b), a technical correction has been made changing the word "rescheduled" to "scheduled."

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

13:36-3.5 Passing grades

(a) To successfully fulfill the examination requirement of N.J.S.A. 45:7-49, a candidate shall:

1. Achieve an average score of not less than 75 on each of the two parts of the National Board Examination and shall not score less than 70 on more than one section in each part; and the candidate shall achieve an average score of not less than 70 on the Mortuary Jurisprudence examination given by the State Board; or

2. When the Board gives a written examination, including a section on mortuary jurisprudence, the candidate shall achieve a score of not less than 70.

(b) The State Board will not admit any candidate who has taken the National Board Examination to the Mortuary Jurisprudence examination until the results of the candidate's National Board Examination are on file with the Board.

13:36-3.6 Examination review procedure

(a) An unsuccessful candidate may apply to the Board for a review of his or her examination papers. Such application shall be submitted to the Board secretary in writing within 10 calendar days following notification of examination results. The Board secretary shall, upon receipt of the candidate's application within the allotted time, arrange a date for the candidate to compare his or her examination sheet with the key answer sheet to ascertain mechanical grading errors, if any.

(b) Such review will take place in the Board office with an observer. The candidate will receive a copy of his or her answer sheet, a copy of the key answer sheet and one blank paper on which to take notes. These documents cannot be removed from the Board office.

13:36-3.7 Practical examination requirements

(a) No candidate will be given the practical examination until after he or she has successfully completed both the written examinations prescribed under N.J.S.A. 45:7-49 and the prescribed period of internship.

(b) Such practical examination shall be held at a place determined by the Board and the examination shall be conducted by one or more Board members. A candidate who has failed the practical examination must wait three months before being *[re]*scheduled for reexamination.

(a)

DIVISION OF CONSUMER AFFAIRS AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY ADVISORY COMMITTEE

Examination Requirements: Authorized Practice Exemptions

Adopted Amendment: N.J.A.C. 13:44C-7.2

Proposed: September 5, 1989 at 21 N.J.R. 2702(a), 22 N.J.R. 327(a).

Adopted: April 20, 1990 by Lawrence M. O'Reilly, Deputy Attorney General In Charge, Division of Consumer Affairs.

Filed: May 1, 1990 as R.1990 d.272, **without change.**

Authority: N.J.S.A. 45:3B-24.

Effective Date: May 21, 1990.

Expiration Date: July 18, 1993.

The Audiology and Speech-Language Pathology Advisory Committee afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:44C-7.2, relating to authorized practice exemptions. The initial comment period ended on October 5, 1989. Announcement of the opportunity to respond to the Committee appeared in the New Jersey Register on September 5, 1989 at 21 N.J.R. 2702(a). Announcements were also forwarded to New Jersey Speech-Language-Hearing Association, American Speech-Language-Hearing Association, Home News, Trenton Times, Courier-Post, Star-Ledger and Jersey Journal. The comment period was subsequently extended to March 7, 1990. Notice of the comment period extension appeared in the New Jersey Register on February 5, 1990 at 22 N.J.R. 327(a). Announcements were also forwarded to the organizations and newspapers listed above and to several other interested parties.

A full record of this opportunity to be heard can be inspected by contacting Richard Weisman, Executive Director, Audiology and Speech-Language Pathology Advisory Committee, Room 500, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

COMMENTS: During the initial comment period, the Committee received a comment from Carlton L. Brown, Coordinator of Audiological Services at the Marie H. Katzenbach School for the Deaf, and 12 letters, all identical, from other parties. The concern expressed was that the Department of Education did not have statutory authority to change the title "speech correctionist" to "speech-language specialist" and that the Committee did not have statutory authority to exempt individuals holding such endorsement from the authorized practice requirements set forth in N.J.A.C. 13:44C-7.1. These commenters stated that legal issues concerning this endorsement were in the hands of the Public Advocate and suggested that the Committee table the proposal, which they viewed as substantive and not technical, pending legal advice.

During the extended comment period, the Committee received another, similar response from Carlton L. Brown, in his capacity as chairman of Fair Licensure Advocates for Speech and Hearing, and 25 letters, all identical, from other parties. These commenters expressed the same concern set forth in the 13 letters previously received by the Committee and requested that the Committee either withdraw the proposal or schedule a public hearing. The Committee also received a letter from the New Jersey Speech-Language-Hearing Association expressing support for the proposed amendment.

RESPONSE: The Committee is satisfied that the amendment is appropriate and in accordance with the intent of N.J.S.A. 45:3B-17; that is, to exempt from licensure requirements individuals who practice speech-language pathology within the school setting. The Division of Law has advised the Committee that N.J.S.A. 18A:6-38 and N.J.A.C. 6:11-2.2 provide the Department of Education with the appropriate statutory and regulatory authority to promulgate regulations concerning certification of individuals practicing in the public schools, and the Public Advocate has issued a similar position in support of the Department's authority. It therefore appears that the Department of Education acted properly and in accordance with its enabling legislation when it promulgated regulations revising the requirements to practice speech-language pathology within the public schools and changing the title of that certification from "speech correctionist" to "speech-language specialist." The Committee's amendment to N.J.A.C. 13:44C-7.2(a)4, as stated in the

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proposal, merely coordinates the terminology of this rule on exemptions with an endorsement properly conferred by the Department of Education in certifying personnel for provision of services within the public schools.

In further support of its position that this amendment is merely a technical change, the Committee points out that it has been apprised by the Department of Education that the speech-language specialist performs substantially similar functions as the individual previously certified as a speech correctionist.

Finally, the Committee declined the commenters' request for a public hearing; the Committee is satisfied that the amendment to N.J.A.C. 13:44C-7.2(a)4 is a technical amendment which is within its statutory authority to promulgate and that the commenters raised no further issues warranting Committee consideration or a public hearing.

Full text of the adoption follows.

13:44C-7.2 Exemptions

(a) The following are exempt from the provisions of this chapter, pursuant to N.J.S.A. 45:3B-17:

1.-3. (No change.)

4. Any person certified as a speech-language correctionist or its successor title, speech-language specialist, by the State Department of Education. However, such person is not exempt under this section for that portion of his or her time spent as a private practitioner or providing services for which a fee may be paid by a recipient of the service.

5.-7. (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF PHYSICAL THERAPY
Language Comprehension Requirements
Adopted Amendment: N.J.A.C. 13:39A-5.7

Proposed: December 18, 1989 at 21 N.J.R. 3856(a).

Adopted: February 12, 1990 by the Board of Physical Therapy, Thomas K. Charles, Chairperson.

Filed: April 20, 1990 as R.1990 d.240, **without change.**

Authority: N.J.S.A. 45:9-37.18(f), 45:9-37.23.

Effective Date: May 21, 1990.

Expiration Date: July 7, 1991.

The Board of Physical Therapy afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:39A-5.7, relating to language comprehension requirements. The official comment period ended on January 17, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on December 18, 1989 at 21 N.J.R. 3856(a). Announcements were also forwarded to the Camden Courier Post, the New Jersey Society of Physical Therapy, the New Jersey Chapter of the American Physical Therapy Association, the Department of Health, the Medical Society of New Jersey, the New Jersey Hospital Association, the New Jersey Chiropractic Society, the New Jersey Association of Osteopathic Physicians and Surgeons, the University of Medicine and Dentistry of New Jersey, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Physical Therapy, Room 513, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

Seven comments were received by mail and one comment was made to the Board at the public session of the Board's January 23, 1990 meeting. Four commenters were in favor of lowering the TOEFL (Test of English as a Foreign Language) score requirement. Regarding the requirement of submission of TOEFL scores upon initial application, one commenter was in favor while two commenters felt it would delay the application process. Finally, the Board received three requests for a public hearing. A summary of the comments received and the responses of the Board follows.

COMMENT: Representatives of the New Jersey Hospital Association, Elizabeth General Medical Center, Health Professionals International and the New Jersey Chapter of the American Physical Therapy Association commented that they were in favor of the revision to the TOEFL score requirement.

RESPONSE: The Board acknowledges the commenters' concurrence with this revision.

COMMENT: The Director of Rehabilitative Medicine at Burdette Tomlin Memorial Hospital commented that he supported the requirement that a physical therapist present his or her TOEFL score at the time of initial application.

RESPONSE: The Board acknowledges the commenter's support for this amendment.

COMMENT: Representatives of Elizabeth General Medical Center and Health Professionals International were of the opinion that requiring submission of TOEFL scores upon application would delay the application process. The Health Professionals International representative believed that since the TOEFL is given abroad only on six regularly scheduled dates annually, an individual may not wait until the next TOEFL is given but may choose instead to apply for licensure in a state which does not require TOEFL scores upon application.

RESPONSE: The Board is of the opinion that if there is a slight delay in the issuance of a temporary license to a foreign-trained applicant, that concern is overridden by the fact that the holder of a temporary license will experience no delay upon qualifying for permanent licensure because the TOEFL scores will already be in the Board's possession. Further, the Board wishes to emphasize that the purpose of the proposed amendment is to avoid the possibility of an applicant practicing in New Jersey, perhaps for as long as one year, without proving competency in English. For these reasons, the Board feels that no modification is required.

COMMENT: Three commenters requested a public hearing on both this proposed amendment and the amendment to N.J.A.C. 13:39A-5.1 concerning educational requirements, which was published on the same date as a separate proposal. The comment of the president of the Medical Center at Princeton addressed the proposed amendment to N.J.A.C. 13:39A-5.1 only. The attorney for Health Professionals International stated that there has been no substantive discussion between the public and the Board about the need for and operation of these proposals. Gwen McCullagh, a Board licensee, stated that there are complex issues here involving not only educational evaluation but immigration issues and processes. She suggested that there are individuals in New Jersey with the expertise to develop and recommend to the Board guidelines for the licensing of qualified foreign-educated physical therapists. McCullagh felt such guidelines would benefit all involved while ensuring that those not qualified are excluded from licensure. She urged the Board to withdraw the reproposed rule amendments for the short time it should take to develop a more comprehensive and equitable process for licensing foreign-educated physical therapists.

RESPONSE: These commenters did not detail specific objections to the TOEFL rule amendment, nor has the Board received a significant objection to the change to N.J.A.C. 13:39A-5.7 which would warrant a public hearing.

Full text of the adopted amendment follows.

13:39A-5.7 Language comprehension requirements

Any applicant for licensure as a physical therapist or a physical therapist assistant who has received his or her physical therapy training in a country other than the United States of America, the United Kingdom, the Republic of Ireland, Canada except Quebec Province, Australia or New Zealand, shall submit to the Board evidence of attainment of a score of at least 550 on the Test of English as a Foreign Language (TOEFL) examination, which test shall have been taken within the two years immediately preceding the filing of the application for licensure. Such evidence must be submitted with the application for licensure. This requirement may be waived for applicants who have received their training in countries other than those listed above upon submission of a written application to the Board demonstrating good cause for the granting of the waiver. In such cases the Board may also require a personal interview with the applicant.

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BUREAU OF SECURITIES
Registration of Securities
Adopted New Rules: N.J.A.C. 13:47A-10.2 through 10.4
Adopted Repeal: N.J.A.C. 13:47A-10.3

Proposed: September 18, 1989 at 21 N.J.R. 2903(a).
Adopted: March 20, 1990 by James McLelland Smith, Chief, Bureau of Securities.
Filed: April 20, 1990 as R.1990 d.241, **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. 49:3-67(a).
Effective Date: May 21, 1990.
Expiration Date: October 5, 1992.

The Bureau of Securities ("Bureau") afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:47A-10.2 through 10.4, relating to the registration of securities. The official comment period ended October 18, 1989; however, the Bureau has summarized and responded to comments received after that date. Announcement of the opportunity to respond to the Bureau appeared in the New Jersey Register on September 18, 1989 at 21 N.J.R. 2903(a). Announcements were also forwarded to:

The Investment Company Institute
The International Association for Financial Planning
The Securities Industry Association
The National Association of Securities Dealers, Inc.
The Trenton Times
The Star Ledger
The New Jersey Law Journal
The New Jersey State Bar Association
Commerce Clearing House, Inc.
The New York Stock Exchange
The American Stock Exchange
and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Bureau of Securities, Two Gateway Center, 8th Floor, Newark, New Jersey 07102.

The Bureau received two comment letters; one from a law firm and one from the Investment Company Institute. Each of the letters supported the concept of uniformity with the other states and the incorporation of standard forms used for the registration of securities; however, both letters suggested various changes.

Summary of Public Comments and Agency Responses:

COMMENT: One letter questioned the value and necessity of the New Jersey Addendum and suggested that in any event there should be a separate addendum for issuers and broker-dealers; that an addendum for a broker-dealer should only cover the lead underwriter or co-managing underwriters of an offering; and lastly, that requiring a New Jersey Addendum for a broker-dealer registered with the Bureau is unnecessary because, it is claimed, such information is already on file and therefore the Bureau can take appropriate action against that broker-dealer.

RESPONSE: The Bureau believes that the New Jersey Addendum is necessary to disclose whether a basis for action exists under N.J.S.A. 49:3-64(a)2viii. The Bureau currently permits the use of more than one New Jersey Addendum. As the availability of information increases, the Bureau may consider amending or eliminating the broker-dealer New Jersey Addendum provided the information currently required by the New Jersey Addendum is the same information needed for purposes of broker-dealer registration. Finally, it should be noted that circumstances may exist to justify denying an offering but not to revoke a broker-dealer registration based on a broker-dealer's disciplinary history.

COMMENT: One writer suggested that the Bureau should not require that copies of a signed opinion of counsel and a security specimen be filed with the Bureau prior to New Jersey effectiveness; and that the Bureau should not require that an opinion of counsel be unqualified and unconditional.

RESPONSE: Since these items are required to be filed with the Securities and Exchange Commission ("SEC") prior to effectiveness, this should pose no undue hardship. Further, the Bureau does allow for effectiveness pending the filing of each of the two items.

The SEC requires that an opinion of counsel be unconditional and unqualified as to whether or not the stock is fully paid and nonassessable. So does the Bureau.

COMMENT: One writer suggested that the Bureau should not require an issuer's consent to service of process when the issuer is not the applicant and when the offering is to be made on a "firm commitment" basis since such firm commitment offerings are not offered on an agency basis. The writer also suggested that the term "corporate resolution" be amended to accommodate organizational forms in addition to corporations.

RESPONSE: The Bureau believes the protection of New Jersey investors mandates that they be given access to the issuer of the securities without resorting to extraordinary legal means to establish jurisdiction. The Bureau has decided to delete the words "together with" and to insert the words "and, if the issuer is a corporation," following the words "Service of Process" to clarify the meaning of the term "corporate resolution".

COMMENT: One writer suggested that the proposed rules should exempt from the consent to service filing requirements broker-dealers who are registered with the Bureau and who have previously filed their consent to service of process.

RESPONSE: For purposes of the proposed rules, it should be noted that a registered broker-dealer which has filed an irrevocable consent to service of process in connection with an application to register with the Bureau need not file another consent as an applicant for securities registration. Note that the issuer may still be required to file such a consent.

COMMENT: One writer suggested that the Bureau amend the proposed rules to permit the filing of documents on paper other than on size 8½ inches by 11 inches (letter size).

RESPONSE: The Bureau believes that this requirement is necessary for record-keeping purposes and that compliance with this subsection will not pose an unreasonable burden or an undue hardship on applicants given the pervasive and sophisticated nature of photocopying machines where reduction of original size documents to 8½ inches by 11 inches (letter size) is commonplace. The Bureau notes that this requirement is similar to Pressler, Current N.J. Court Rules, R. 1:4-9.

COMMENT: One writer suggested that the Bureau modify the requirement providing that "A statement that the maximum and minimum proposed offering prices. . . ." be on file with the Bureau as a requirement for registration by deleting the words "A statement" from paragraph (b)3 of proposed N.J.A.C. 13:47A-10.2.

RESPONSE: The wording contained in this paragraph is taken from the requirement in N.J.S.A. 49:3-61.1c(3). Any writing containing the information required which is on file with the Bureau for the time period required will satisfy paragraph (b)3 of proposed N.J.A.C. 13:47A-10.2.

COMMENT: One writer suggested that the Bureau revise subsection (d) of proposed N.J.A.C. 13:47A-10.2 to avoid what the writer perceived as a conflict with the provisions of subsection (j) of the proposed rule by providing an exception for "shelf" registrations. The writer also suggested that the procedures contained in subsection (j) of proposed N.J.A.C. 13:47A-10.2 may be unrealistic given the reality of the marketing of securities pursuant to shelf registrations.

RESPONSE: Subsection (j) of proposed N.J.A.C. 13:47A-10.2 is an exception to subsection (d) and as such no additional exception need be made. Applicants may pay their registration fees in advance in connection with shelf registration. Shelf registration will be given expedited treatment provided the conditions of subsection (j) are met.

COMMENT: One writer suggested that the Bureau revise subparagraph (a)1xiii of proposed N.J.A.C. 13:47A-10.3 to limit requests by the Bureau for additional documents and information by incorporating a reasonable standard within the provision.

RESPONSE: The Bureau does not consider this comment sufficiently specific or justified to consider amending the current proposed rule.

COMMENT: One writer suggested that the requirement in subparagraph (a)1xii of proposed N.J.A.C. 13:47A-10.2 providing that a marked amendment be forwarded to the Bureau within one business day is inconsistent with the requirement in Form U-1 that the marked amendment be received by the Bureau within two business days.

RESPONSE: The Bureau believes that subparagraph (a)1xii of proposed N.J.A.C. 13:47A-10.2 is at least as accommodating as, and not inconsistent with, the U-1 requirement, because the proposed provision requires only the forwarding of a marked copy of any amendments to the Federal registration statement within one day.

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COMMENT: One writer suggested that the Bureau include an overall provision in the proposed rules permitting the Bureau Chief discretion to allow registration despite non-compliance.

RESPONSE: The Bureau believes that this change is unnecessary because the Bureau Chief is currently authorized to exercise such discretion pursuant to law (see *N.J.S.A.* 49:3-61(b)(19)).

COMMENT: The Investment Company Institute ("Institute") suggested that, although the Bureau's proposed N.J.A.C. 13:47A-10.2 for the registration of securities by coordination is very similar to a resolution adopted by the North American Securities Administrators Association, Inc. ("NASAA") in 1984, the Bureau should follow the procedure for registration of securities of investment companies as set forth in the 1984 NASAA Resolution and eliminate the initial filing of additional documents not required by the 1984 NASAA Resolution.

RESPONSE: Although the Bureau has carefully considered the Institute's comments, it believes that the documents described in proposed N.J.A.C. 13:47A-10.2 are required for a thorough and expeditious review of a coordination filing.

The Bureau believes that the proposed rules in their current form as published on September 18, 1989 at 21 N.J.R. 2903(a) adequately address the concerns of the Bureau and the Bureau has therefore decided to leave the proposed rules as published except for the following changes.

Summary of Changes upon Adoption:

1. At N.J.A.C. 13:47A-10.2(a)1x, the Bureau has decided to delete the words "together with" and to insert the words "and, if the issuer is a corporation," following the words "Service of Process".

2. At N.J.A.C. 13:47A-10.3(a)1x, the Bureau has decided to delete the words "together with" and to insert the words "and, if the issuer is a corporation," following the words "Service of Process".

3. At N.J.A.C. 13:47A-10.4(a)1xi, the Bureau has decided to delete the words "together with" and to insert the words "and, if the issuer is a corporation," following the words "Service of Process".

4. At N.J.A.C. 13:47A-10.2(b)3, the Bureau has added the words "discounts and" which were inadvertently omitted from the proposed text. Regarding the effectiveness of an application for registration by coordination, this paragraph now reads, "A statement that the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file for at least two business days; and," to correspond to the requirements of N.J.S.A. 49:3-61.1c(3).

5. At subsection 1(e) of the New Jersey Addendum, incorporated herein by reference as Appendix A, the Bureau has decided to delete the words "convicted of, pled guilty or nolo contendere ('no contest') to, or found guilty by a court in a civil action or by any state or federal agency of charges" and to insert the words "found by any court in a civil or criminal action or by any state or federal agency to have engaged in any act" following the words "ever been".

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 10. REGISTRATION OF SECURITIES

13:47A-10.1 (Reserved)

13:47A-10.2 Registration by coordination

(a) A person who seeks to register by coordination a security for which a registration statement has been filed under the Securities Act of 1933 shall file with the Bureau the following documents and information.

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i. The New Jersey Addendum, incorporated herein by reference as Appendix A;

ii. One copy of the Registration Statement filed with the Securities and Exchange Commission and each amendment to such registration statement together with all exhibits;

iii. Three copies of the prospectus in the latest form on file with the Securities and Exchange Commission whether or not such prospectus was printed as a separate document;

iv. One copy of the Underwriting agreement, agreement among underwriters and selected dealers agreement or similar agreements between the broker-dealer and the person owning the securities to be sold;

v. One copy of the indenture, if applicable;

vi. One copy of the issuer's charter or articles of incorporation, or if the issuer is not a corporation the similar relevant document, as amended to date;

vii. One copy of the issuer's by-laws as amended to date;

viii. One copy of the signed, unqualified, and unconditional opinion of counsel as to the legality of the security being registered, with a certified English translation if it is in a foreign language, which states that the security, when issued will be legally issued, fully paid, and nonassessable, and, if a debt security, is a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the partnership;

ix. One copy of a specimen of the security or, if not applicable, a copy of the document that represents the interest to be sold and the rights of the parties involved;

x. An irrevocable consent appointing the Chief of the Bureau agent for service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process, *[together with]* ***and, if the issuer is a corporation,*** a corporate resolution executed by the secretary of that corporation, on Form U-2A, Uniform Corporate Resolution;

xi. One copy of each pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

xii. An undertaking executed by the applicant to forward to the Bureau within one business day after filing with the Securities and Exchange Commission a marked copy of any amendments to the federal registration statement, designating the changed, revised or added material or information by underlining and otherwise marking the same;

xiii. Any other document or information requested by the Bureau;

xiv. A check or money order payable to the New Jersey Bureau of Securities, in the amount of $1,000, for each class of securities to be registered. The Bureau may require the applicant to submit a money order or certified check in appropriate instances;

xv. If the securities are being offered and sold by or through a broker-dealer, the identity of the broker-dealer who will offer and/or sell the securities in or from the State of New Jersey and a statement that such broker-dealer is registered with the Bureau pursuant to N.J.S.A. 49:3-56(a); and

xvi. If the securities are being offered and sold directly by the issuer in or from the State of New Jersey through any bona fide officer, director or employee, the name of such officer, director or employee and a statement that the issuer is relying on an exemption from agent registration for such officer, director or employee or that the issuer has filed with the Bureau an issuer qualification application and that such officer, director or employee is registered with the Bureau as an agent.

2. Any document filed with the Bureau pursuant to N.J.S.A. 49:3-61, 49:3-61.1 and 49:3-61.2 within three years preceding the filing of a registration statement may be incorporated by reference pursuant to N.J.S.A. 49:3-62(d) provided that the applicant shall clearly identify in the reference the name of the document, the name of the applicant, the Bureau file number, the date of filing and state that no changes have been made in such documents since the last amendment filed with the Bureau.

3. All documents filed pursuant to this section must be legible, securely bound and on paper no larger than 8½ inches by 11 inches.

(b) An application for registration by coordination shall become effective with the Bureau simultaneously with the registration statement filed with the Securities and Exchange Commission provided the following conditions have been met:

1. All documents and information required by (a) above have been filed with the Bureau; and

2. The application to register securities by coordination:

i. Was filed with the Bureau within 10 calendar days after the initial filing of the registration statement was made with the Securities and Exchange Commission and such application has been on file with the Bureau for at least 10 calendar days; or

ii. Has been on file with the Bureau for at least 30 calendar days; and

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3. A statement that the maximum and minimum proposed offering prices and the maximum underwriting ***discounts and*** commissions have been on file for at least two business days; and

4. No order has been issued pursuant to N.J.S.A. 49:3-64.

(c) The following post effective requirements shall be complied with by an applicant whose securities have been registered with the Bureau by coordination:

1. Three copies of the final prospectus filed with the Securities and Exchange Commission shall be filed with the Bureau no later than two business days afer such prospectus was filed with or forwarded to the Securities and Exchange Commission.

2. Post-effective amendments and supplements required to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933 shall be filed with the Bureau no later than two days after such amendments and supplements were filed with or forwarded to the Securities and Exchange Commission. Post-effective amendments filed with the Bureau will become effective at the same time that effectiveness is granted by the Securities and Exchange Commission, and no new order will issue from the Bureau.

(d) A security may not be registered by Coordination if the application for registration is received by the Bureau after the registration statement has become effective with the Securities and Exchange Commission. Applications which cannot be registered by Coordination must be registered by Qualification pursuant to N.J.S.A. 49:3-61 or Notification pursuant to N.J.S.A. 49:3-61.2.

(e) An application for registration may be withdrawn prior to effectiveness only in the discretion of the Bureau Chief, pursuant to N.J.S.A. 49:3-62(g), provided the Bureau has completed its review of the application and no action is contemplated under N.J.S.A. 49:3-64 or 69. The applicant may request withdrawal by stating the reason for such request, that none of the securities have been offered or sold in or from the State of New Jersey and that both the issuer and the underwriter concur in such request.

(f) Pursuant to N.J.S.A. 49:3-62(g), a registration statement may not be withdrawn within one year of its effectiveness with the Bureau if any securities of the same class which was registered remain outstanding.

(g) A preliminary prospectus may be distributed after the filing with the Bureau of an application for registration by Coordination and before its effectiveness, if such distribution is made for informational purposes only and provided such distribution also complies with federal securities law. The telephone number of a broker-dealer or issuer may not be displayed prominently on the front cover or inside cover or back cover page of a prospectus or preliminary prospectus unless such broker-dealer or issuer has complied with the registration requirements of N.J.S.A. 49:3-47 et seq.

(h) Securities registered by Coordination may, in the discretion of the Bureau, be deregistered under any of the following conditions:

i. An exemption is or has become available pursuant to N.J.S.A. 49:3-50(a);

ii. The securities will not be sold and have been removed from registration with the Securities and Exchange Commission; or

iii. For good cause shown.

(i) An application for registration by Coordination may be deemed by the Bureau to be abandoned under any of the following circumstances:

i. The applicant has not responded for more than 30 days to a request from the Bureau for information concerning the offering; or

ii. The application has been on file with the Bureau for more than 12 months and has been inactive for more than two months.

(j) In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of $1,000 for each security to be registered. The subsequent filing will be expedited provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

13:47A-10.3 Registration by Qualification

(a) A person who seeks to register a security by Qualification shall file with the Bureau the following documents and information:

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i. The New Jersey Addendum, incorporated herein by reference as Appendix A;

ii. One copy of an executed Registration Statement which complies with Securities and Exchange Commission Form S-1, together with all exhibits or if permitted by the Bureau any other appropriate official form issued by the Securities and Exchange Commission;

iii. Three copies of the prospectus whether or not such prospectus was printed as a separate document;

iv. One copy of the Underwriting agreement, agreement among underwriters and selected dealers agreement or similar agreements between the broker-dealer and the person owning the securities to be sold;

v. One copy of the indenture, if applicable;

vi. One copy of the issuer's charter or articles of incorporation, or if the issuer is not a corporation the similar relevant document, as amended to date;

vii. One copy of the issuer's by-laws as amended to date;

viii. One copy of the signed, unqualified, and unconditional opinion of counsel as to the legality of the security being registered, with a certified English translation if it is in a foreign language, which states that the security, when issued will be legally issued, fully paid, and nonassessable, and, if a debt security, is a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the partnership;

ix. One copy of a specimen of the security or if not applicable a copy of the document that represents the interest to be sold and the rights of the parties involved;

x. An irrevocable consent appointing the Chief of the Bureau agent for service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process, *[together with]* ***and, if the issuer is a corporation,*** a corporate resolution executed by the secretary of that corporation on Form U-2A, Uniform Corporate Resolution;

xi. One copy of each pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

xii. Any other document or information requested by the Bureau;

xiii. A check or money order payable to the New Jersey Bureau of Securities, in the amount of $1,000, for each class of securities to be registered. The Bureau may require applicant to submit a money order or certified check in appropriate instances;

xiv. If the securities are being offered and sold by or through a broker-dealer the identity of the broker-dealer who will offer and/or sell the securities in or from the State of New Jersey and a statement that such broker-dealer is registered with the Bureau pursuant to N.J.S.A. 49:3-56(a);

xv. If the securities are being offered and sold directly by the issuer in or from the State of New Jersey through any bona fide officer, director or employee, the name of such officer, director or employee and a statement that the issuer is relying on an exemption from agent registration for such officer, director or employee or that the issuer has filed with the Bureau an issuer qualification application and that such officer, director or employee is registered with the Bureau as an agent; and

xvi. If a registration statement has not been filed with the Securities and Exchange Commission, then those references to the Securities and Exchange Commission contained in Form U-1 shall be inapplicable.

2. Any document filed with the Bureau within three years preceding the filing of a registration statement may be incorporated by reference pursuant to N.J.S.A. 49:3-62(d). The applicant shall clearly identify in the reference the name of the document, the name of the application (for example, issuer, broker-dealer, investment advisor), the Bureau file number, date of filing and the fact that no amendments have been made in such documents since the last amendment filed with the Bureau.

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3. All documents filed pursuant to this section must be legible, securely bound and on paper no larger than 8½ inches by 11 inches.

(b) An application for registration by Qualification shall become effective with the Bureau when the Bureau so orders provided no order has been issued pursuant to N.J.S.A. 49:3-64.

(c) The Bureau may require that the registration by Qualification be subject to one or more of the following conditions.

i. A prospectus containing any designated part of the information specified in the Registration Statement be sent or given to each person to whom an offer is made before or concurrently with:

(1) The first written offer made to such person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(2) The confirmation of any sale made by or for the account of any such person;

(3) Payment pursuant to any such sale; or

(4) Delivery of the security pursuant to any such sale, whichever first occurs;

ii. That any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow. The Bureau may determine the terms and conditions of any escrow required hereunder but shall not reject a depository solely because of location in another state;

iii. That the proceeds from the sale of the registered security in this State be deposited in escrow until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The Bureau may determine the terms and conditions of any escrow required hereunder, but shall not reject a depository solely because of location in another State; and/or

iv. That any security registered by qualification be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the bureau or preserved for any period up to three years as specified by the Bureau.

(d) The following post effective requirements shall be complied with by applicant whose securities have been registered with the Bureau by Qualification:

1. Three copies of the final prospectus shall be filed with the Bureau no later than one business day after such prospectus was available or was distributed to the public whichever occurs first;

2. The registrant shall file a post-effective amendment with the Bureau whenever there occurs any material change in the information contained in the Registration Statement;

3. Post-effective amendments filed with the Bureau will become effective when the Bureau so orders; and

4. No offers or sales may be made or any prospectus distributed during the time the post effective amendment is pending.

(e) An application for registration may be withdrawn prior to effectiveness only in the discretion of the Bureau Chief, pursuant to N.J.S.A. 49:3-62(g), provided that the Bureau has completed its review of the application and no action is contemplated under N.J.S.A. 49:3-64 or 69. The applicant may request withdrawal by stating the reason for such request, that none of the securities have been offered or sold in or from the State of New Jersey and that both the issuer and the underwriter concur in such request.

(f) Pursuant to N.J.S.A 49:3-62(g), a registration statement may not be withdrawn within one year of its effectiveness with the Bureau if any securities of the same class which was registered remain outstanding.

(g) A preliminary prospectus may not be distributed after the filing with the Bureau of an application for registration by Qualification and before its effectiveness unless the Bureau so orders. In the event that the Bureau permits distribution of the preliminary prospectus, such distribution may be made for informational purposes only. The telephone number of a broker-dealer or issuer may not be displayed prominently on the front cover or inside cover or back cover page of a prospectus or preliminary prospectus unless such broker-dealer or issuer has complied with the registration requirements of N.J.S.A. 49:3-47 et seq.

(h) Securities registered by Qualification may in the discretion of the Bureau be deregistered under any of the following conditions:

i. An exemption is or has become available pursuant to N.J.S.A. 49:3-50(a);

ii. The securities will not be sold; or

iii. For good cause shown.

(i) An application for registration by Qualification may be deemed by the Bureau to be abandoned under any of the following circumstances:

i. The applicant has not responded for more than 30 days to a request from the Bureau for information concerning the offering; or

ii. The application has been on file with the Bureau for more than 12 months and has been inactive for more than two months.

(j) Shelf registration may be permitted only in the discretion of the Bureau. Generally shelf registrations will not be permitted unless the securities have been registered with the Securities and Exchange Commission. In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of $1,000 for each security to be registered. The subsequent filing will be expedited provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

13:47A-10.4 Registration by Notification

(a) A person who seeks to register securities by Notification shall file with the Bureau the following documents and information:

1. A completed application Form U-1, Uniform Application to Register Securities, which shall be accompanied by the following:

i. The New Jersey Addendum, incorporated herein by reference as Appendix A;

ii. One copy of an executed New Jersey Form RN-1, Registration Statement for Registration by Notification, incorporated herein by reference as Appendix B, together with all exhibits;

iii. An original and two copies of an executed New Jersey Form RN-2, Statement of Eligibility for Registration by Notification, incorporated herein by reference as Appendix C;

iv. Three copies of the prospectus if any, in the latest form whether or not printed as a separate document;

v. One copy of the underwriting agreement, agreement among underwriters and selected dealers agreement or similar agreements between the broker-dealer and the person owning the securities to be sold;

vi. One copy of the indenture, if applicable;

vii. One copy of the issuer's charter or articles of incorporation, or if the issuer is not a corporation the similar relevant document, as amended to date;

viii. One copy of the issuer's by-laws as amended to date;

ix. One copy of the signed, unqualified, and unconditional opinion of counsel as to the legality of the security being registered, with a certified English translation if it is in a foreign language, which states that the security, when issued will be legally issued, fully paid, and nonassessable, and, if a debt security, is a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the partnership;

x. One copy of a specimen of the security or if not applicable a copy of the document that represents the interest to be sold and the rights of the parties involved;

xi. An irrevocable consent appointing the Chief of the Bureau agent for service of process, executed by the issuer on Form U-2, Uniform Consent to Service of Process, together with a corporate resolution executed by the secretary of that corporation, on Form U-2A, Uniform Corporate Resolution;

xii. One copy of each pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

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xiii. A check or money order payable to the New Jersey Bureau of Securities, in the amount of $1,000, for each class of securities to be registered. The Bureau may require the applicant to submit a money order or certified check in appropriate instances;

xiv. If the securities are being offered and sold by or through a broker-dealer, the identity of the broker-dealer who will offer and/or sell the securities in or from the State of New Jersey and a statement that such broker-dealer is registered with the Bureau pursuant to N.J.S.A. 49:3-56(a); and

xv. If the securities are being offered and sold directly by the issuer in or from the State of New Jersey through any bona fide officer, director or employee, the name of such officer, director or employee and a statement that the issuer is relying on an exemption from agent registration for such officer, director or employee or that the issuer has filed with the Bureau an issuer qualification application and that such officer, director or employee is registered with the Bureau as an agent.

2. Any document filed with the Bureau within three years preceding the filing of a registration statement may be incorporated by reference pursuant to N.J.S.A. 49:3-62(d). The applicant shall clearly identify in the reference the name of the document, the name of the applicant (for example, issuer, broker-dealer, investment advisor), the Bureau file number, date of filing and the fact that no amendments have been made in such documents since the last amendment filed with the Bureau.

3. All documents filed pursuant to this section must be legible, securely bound and on paper no larger than 8½ inches by 11 inches.

(b) An application for registration by Notification shall become effective with the Bureau at three o'clock Eastern Standard Time on the afternoon of the second full business day after all documents and information required by (a) above have been filed with the Bureau provided no order has been issued pursuant to N.J.S.A. 49:3-64.

(c) The following post effective requirements shall be complied with by applicant whose securities have been registered with the Bureau by Notification:

1. Three copies of any final prospectus shall be filed with the Bureau no later than one business day after such prospectus was available or was distributed to the public whichever occurs first;

2. The registrant shall file a post effective amendment with the Bureau whenever there occurs any material change in the information contained in the Registration Statement;

3. Post-effective amendments filed with the Bureau will go effective at three o'clock Eastern Standard Time in the afternoon of the second full business day after all documents and information required to be filed in the amendment have been filed with the Bureau provided no order has been entered pursuant to N.J.S.A. 49:3-64; and

4. No offers or sales may be made or any prospectus distributed during the time the post effective amendment is pending.

(d) An application for registration may be withdrawn prior to effectiveness only in the discretion of the Bureau Chief, pursuant to N.J.S.A. 49:3-62(g), provided that the Bureau has completed its review of the application and no action is contemplated under N.J.S.A. 49:3-64 or 69. The applicant may request withdrawal by stating the reason for such request, that none of the securities have been offered or sold in or from the State of New Jersey and that both the issuer and the underwriter concur in such request.

(e) Pursuant to N.J.S.A. 49:3-62(g), a registration statement may not be withdrawn within one year of its effectiveness with the Bureau if any securities of the same class which was registered remain outstanding.

(f) A preliminary prospectus may not be distributed after the filing with the Bureau of an application for registration by Notification and before its effectiveness unless the Bureau so orders. In the event that the Bureau permits distribution of the preliminary prospectus, such distribution may be made for informational purposes only. The telephone number of a broker-dealer or issuer may not be displayed prominently on the front cover or inside cover or back cover page of a prospectus or preliminary prospectus unless such broker-dealer or issuer has complied with the registration requirements of N.J.S.A. 49:3-47 et seq.

(g) Securities registered by Notification may in the discretion of the Bureau be deregistered under any of the following conditions:

i. An exemption is or has become available pursuant to N.J.S.A. 49:3-50(a);

ii. The securities will not be sold; or

iii. For good cause shown.

(h) An application for registration by Notification may be deemed by the Bureau to be abandoned under any of the following circumstances:

i. The applicant has not responded for more than 30 days to a request from the Bureau for information concerning the offering; or

ii. The application has been on file with the Bureau for more than 12 months and has been inactive for more than two months.

(i) Shelf registration may be permitted only in the discretion of the Bureau. Generally shelf registrations will not be permitted unless the securities have been registered with the Securities and Exchange Commission. In the case of "shelf" registrations, the initial filing with the Bureau shall cover the first takedown. Subsequent takedowns may be registered by filing Form U-1, Uniform Application to Register Securities, together with any supplements or amendments to the registration statement, and a filing fee in the amount of $1,000 for each security to be registered. The subsequent filing will be expedited provided the filing makes a clear reference to the original shelf filing by giving the name of the issuer, the securities registered, the New Jersey registration number and the effective date of the prior registration. Subsequent takedowns which comply with the foregoing shall become effective upon notice by the filing of a supplement or an amendment to the registration statement.

APPENDIX A
NEW JERSEY ADDENDUM TO REGISTRATION STATEMENT

1. Has the issuer, any partner, officer or director of the issuer, any person (as that term is defined in 49(i)) occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering:

(a) Been convicted of:

i. Any crime of embezzlement under state, federal or foreign law?

Yes ___ No ___

ii. Any crime involving any theft, forgery or fraudulent practices in regard to any state, federal or foreign securities law, banking law, insurance law, commodities trading law or any antifraud law?

Yes ___ No ___

(b) Been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business?

Yes ___ No ___

(c) Been the subject of an effective order of the Bureau Chief denying, suspending, or revoking securities registration, or registration as a broker-dealer, agent, or investment advisor?

Yes ___ No ___

(d) Been the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking securities registration, registration as a broker-dealer, agent, or investment advisor, or the substantial equivalent of those terms as defined in the "Uniform Securities Law (1967)," P.L. 1967, c.93 (c.49:3-48 et seq.), or been the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the "Securities Exchange Act of 1934" (15 U.S.C. 78a et seq.) or been the subject of a United States Postal Service fraud order?

Yes ___ No ___

(e) Ever been *[convicted of, pled guilty or nolo contendere ("no contest") to, or found guilty by a court in a civil action or by any state or federal agency of charges]* ***found by any court in a civil or criminal action or by any state or federal agency to have engaged in any act*** involving fraud, or dishonest or unethical practices in the securities business?

Yes ___ No ___

2.(a) Is the issuer, any partner, officer or director of the issuer, any person (as that term is defined in 49(i)) occupying a similar status or performing similar

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functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature?

Yes ___ No ___

(b) Has such entity or person filed a petition under federal bankruptcy laws or any state insolvency law or had a receiver, fiscal agent or similar officer appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within two years before the time of such filing, or any corporation or business association of which such person was an executive officer at or within two years before the time of such filing?

Yes ___ No ___

3. If the answer to any of the questions above is "yes" the following information is required:

(a) Give the citation for each statute under which the relevant action or proceeding was initiated. Give the full title of the action or proceeding, the docket number, the relevant court agency and the date such action or proceeding was initiated.

(b) Describe the activities which gave rise to such action or proceeding.

(c) State the name, address and connection with the issuer, broker-dealer or other person described in questions 1 and 2, for each person who was the subject of such action or proceeding.

(d) Describe the final disposition of such action or proceeding and the present status. (The term final disposition as used herein refers to any conviction, injunction, order, decree, court decision, petition, pleas or other final adjudication of the action or proceeding.)

(e) State whether or not the final disposition has been modified, reversed, suspended, vacated or nullified. If a description of the action or proceeding and the final disposition is not included in the registration statement, the reason for the omission should be set forth in detail on a rider to this addendum. Include all mitigating circumstances.

The undersigned is aware of N.J.S.A. 49:3-54 and understands that this addendum is part of the registration statement filed with the Bureau of Securities, and acknowledges the responsibility to update and keep current the information contained herein so long as this application is pending.

_____
ISSUER

by: _____
(Signature)

_____
(Title)

DATE: _____

APPENDIX B
NEW JERSEY REGISTRATION STATEMENT
FOR REGISTRATION BY NOTIFICATION

All items must be answered. Attach riders where necessary.

I. DESCRIPTION OF ISSUER

A. Name: _____

B. Address: _____

_____

C. Form of organization: _____

State: _____

Date organized: _____

D. General character of business: _____

_____

E. Principal place of business: _____

_____

II. DESCRIPTION OF SUBSIDIARIES
(State the information requested in Question 1 for each significant subsidiary of the issuer.)

_____

_____

_____

_____

III. DESCRIPTION OF APPLICANT
(Complete if applicant is not the issuer.)

A. Name: _____

B. Address: _____

_____

C. Relationship to issuer: _____

IV. INFORMATION REGARDING NONISSUER DISTRIBUTION
(Complete only if offering or any part thereof is for the benefit of selling securityholders.)

A. Name of each person on whose behalf any part of the offering is to be made:

_____

_____

B. Address(es): _____

_____

C. Amount of securities currently held by each selling securityholder: _____

_____

D. Reason (purpose) for making this offering:

_____

_____

_____

_____

V. DESCRIPTION OF SECURITIES

Description of securities	Offering price or proposed offering price	Total offering: No. of shares or units	Total offering: Amount $	Offering in this state: No. of shares or units	Offering in this state: Amount $
		Totals	$		$

VI. INFORMATION AND DOCUMENTS REQUIRED
(See N.J.S.A. 49:3-61.3(b)(10), 61.3(b)(12), and 61.3(b)(14)).

A. States in which a registration statement or similar document in connection with this offering has been or is to be filed.

_____

_____

_____

B. State whether any withdrawal or any adverse order, judgment, or decree has been entered in connection with this offering by the regulatory authorities in any state or by any court or by the Securities and Exchange Commission. _____

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If so, give details. _____

C. (1) Proposed offering price per unit (or the method by which it is to be computed). _____

(2) State whether the price will vary as to any person or class of persons other than underwriters. _____

If so, give details. _____

(3) Is this offering, or any part thereof, to be made other than for cash? ___

If so, give details. _____

D. (1) Estimated aggregate underwriting and selling discounts or commissions and finders fee. Show each means of payment separately (e.g., cash, securities, contracts).

(2) If the selling discounts and commissions are variable, state the basis of determining them, including their maximum and minimum amount.

(3) State the estimated amounts of other selling expenses, including legal, engineering and accounting expenses. _____

E. (1) The name and address of every underwriter, agent, broker-dealer or other recipient of a commission, discount or finders fee. (Submit the underwriting agreement or form of underwriting agreement as an exhibit.)

(2) If the securities are not to be offered through an underwriter, describe the plan of distribution.

(3) Identify the agent or broker-dealer registered in New Jersey who will offer the securities or state the applicable exemption.

F. Description of any stock options outstanding or to be created in connection with this offering.

G. List dollar amount of options held by each of the following:

Name and address	Dollar amount of options held
1. Each director or officer of the issuer or person occupying a similar status.	
2. Any person owning of record, or beneficially if known, at least 10% of the outstanding shares of any class of equity security of the issuer.	
3. Every promoter of the issuer if the issuer was organized within the past 3 years.	
4. If this is a nonissuer distribution, any person on whose behalf this offering is to be made.	
5. Every underwriter or recipient of a finders fee (every person listed in paragraph E).	
6. Every person who holds or will hold 10% or more in the aggregate of such options.	

H. EXHIBITS

Submitted herewith as part of this registration statement are the following documents. (Documents on file may be incorporated by reference.)

1. A statement of eligibility for registration by notification.

2. A copy of the underwriting or selective dealer agreement (or the proposed form).

3. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended to be used in connection with this offering.

4. A consent to service of process of the issuer (with appropriate resolution).

5. The New Jersey Addendum.

6. Financial statements pursuant to N.J.S.A. 49:3-61.2(b)(6), specifically:

(a) A balance sheet of issuer as of a date within 4 months prior to the filing of this registration statement; and

(b) A summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet, and summary of earnings for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than 2 years.

7. The registration fee of $1,000.00.

_____
Name of Applicant

By: _____
(Name and Title)

Date: _____

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STATE OF

COUNTY OF

The undersigned, _____, being first duly sworn, deposes and says:

That he has executed the foregoing application for and on behalf of the applicant named therein; that he is _____ of such applicant and is fully authorized to execute and file such application; that he is familiar with such application; and that to the best of his knowledge, information and belief the statements made in such application are true and the documents submitted therewith are true copies of the originals thereof.

_____
Name

Subscribed and sworn to before me
this ___ day of_____, 19____

_____

_____

NOTARY PUBLIC

In and for the County of_____
State of_____
My Commission Expires:_____
(Notarial Seal)_____

APPENDIX C

STATEMENT OF
ELIGIBILITY FOR REGISTRATION
BY NOTIFICATION
(Pursuant to N.J.S.A. 49:3-61.2)

1. Name of issuer_____

2. Original date of organization of the issuer _____ Number of years issuer has been in continuous operation _____ If issuer has been in continuous operation less than 5 years, give names of predecessors & state length of time each has been in operation: _____

_____

_____

3. Has there been any default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security (of the issuer or any predecessor) with a fixed maturity or a fixed interest or dividend provision? _____

_____

4. State the net earnings of the issuer and any predecessors during the past 3 full fiscal years, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision, which securities are outstanding at the date the registration statement is filed.

Fiscal year ended	Net earnings
1. _____	_____
2. _____	_____
3. _____	_____
Total	_____
Average net earnings (divide total by 3)	_____

5. If the securities of the issuer or any of its predecessors (which do not have a fixed maturity or a fixed interest or dividend provision) have been outstanding for 3 full fiscal years, complete the chart below.

Description of Securities	No. of units now outstanding	Maximum offering price per unit (1) $	Market price per units as of _____ date (1) $	Book value per unit as of _____ date (2) $	Total value (3) $

A.	Total value	$_____
B.	5% of total value	$_____
C.	Average net earnings (restate from Item 4)	$_____

In order to qualify for Registration by Notification, "C" must be greater than or equal to "B".

(1) The maximum offering price or the market price on a day selected by the applicant, but must be within 30 days before the date of filing this registration statement.

(2) Book value must be of a day, selected by the applicant, within 90 days of filing this registration statement. Book value may be used only if there is neither a readily determinable market price nor a cash offering price.

(3) The total value is the product of either (1) the number of units multiplied by the higher of the maximum offering price or the market price, or (2) the number of units multiplied by the book value.

6. If the securities of the issuer or any of its predecessors (which do not have a fixed maturity or a fixed interest or dividend provision) have not been outstanding for 3 full fiscal years, complete the chart below. (Include all securities which will be outstanding if all the securities being offered or proposed to be offered are issued, whether or not they are proposed to be registered or offered in New Jersey.)

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Description of Securities	No. of units to be outstanding	Maximum offering price per unit (1) $	Market price per units as of _____ date (1) $	Book value per unit as of _____ date (2) $	Total value (3) $

A. Total value $ _____

B. 5% of total value $ _____

C. Average net earnings (restate from Item 4) $ _____

In order to qualify for Registration by Notification, "C" must be greater than or equal to "B".

The registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing pursuant to N.J.S.A. 49:3-61.2.

Date: _____

_____
Issuer

By: _____
(Title)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Bureau of Traffic Engineering and Safety Programs

Restricted Parking and Stopping

Routes N.J. 35 in Monmouth County; U.S. 40 in Gloucester County; N.J. 49 in Salem County; N.J. 77 in Gloucester County; U.S. 130 in Burlington County; N.J. 168 in Camden County; and N.J. 12 in Hunterdon County

Adopted Amendments: N.J.A.C. 16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, and 1.62

Proposed: March 19, 1990 at 22 N.J.R. 913(a).

Adopted: April 19, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: April 24, 1990 as R.1990 d.251, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, and 39:4-199.

Effective Date: May 21, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this subsection are designated and established as "no stopping or standing" zones.

1. (No change.)

2. No stopping or standing in the Borough of Red Bank, Monmouth County:

i. Along the northbound (easterly) side:

(1) (No change.)

(2) West Front Street—Riverside Avenue:

(A) From Maple Avenue to a point 35 feet north of the northerly curb line of Allen Place.

(3) (No change.)

ii.-iv. (No change.)

3.-21. (No change.)

(b)-(e) (No change.)

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection are designated and established as "no stopping or standing" zones.

1. No stopping or standing in Franklin Township, Gloucester County:

i.-ii. (No change.)

iii. Along both sides:

(1) Beginning at the westerly curb line of Trail Road to the easterly curb line of Elmwood Avenue.

(2) Between a point 1,000 feet west of the westerly curb line of County Road 555 (Main Lake Road) and a point 1,000 feet east of the easterly curb line of County Road 555 (Main Lake Road).

2.-8. (No change.)

(b) (No change.)

16:28A-1.34 Route 49

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

(c) The certain parts of State highway Route 49 described in this subsection shall be designated and established as "no parking bus stop" 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 westbound (northerly) side in the City of Salem, Salem County:

i. East Broadway:

(1) Far side bus stop:

(A) Market Street—Beginning at the westerly curb line of Market Street and extending 110 feet westerly therefrom.

(2) Near side bus stop:

(A) Front Street—Beginning at the easterly curb line of Front Street and extending 155 feet easterly therefrom.

ii. West Broadway:

(1) Near side bus stop:

(A) Front Street—Beginning at the easterly line of Front Street and extending 200 feet easterly therefrom.

2. Along the eastbound (southerly) side in the City of Salem, Salem County:

i. East Broadway:

(1) Near side bus stop:

(A) New Market Street—Beginning at the westerly curb line of New Market Street and extending 105 feet westerly therefrom.

3.-4. (No change.)

(d) (No change.)

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16:28A-1.41 Route 77

(a) The certain parts of State highway Route 77 described in this subsection are designated and established as "no stopping or standing" zones.

1.-3. (No change.)

4. No stopping or standing in Harrison Township, Gloucester County:

i. Along both sides:

(1) For the entire length within the corporate limits of the Township of Harrison, 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 shall be posted only in areas where an official township resolution has been submitted to the Department.

5. (No change.)

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

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is hereby granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in the Township of Pennsauken, County of Camden:

i. Mid-block bus stops:

(1) (No change.)

(2) Hilton Road—Between Hilton Road and John Tipton Boulevard beginning 200 feet south of the southerly curb line of Hilton Road and extending 135 feet southerly therefrom.

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

4. Along the southbound (westerly) side in Delran Township, Burlington County:

i. Near side bus stops:

(1)-(2) (No change.)

(3) Swedes Run Driveway—Beginning at the northerly curb line of Swedes Run Driveway and extending 120 feet northerly therefrom.

Recodify existing 6. as 5. (No change in text.)

6.-11. (No change.)

(c) (No change.)

16:28A-1.51 Route 168

(a) (No change.)

(b) The certain parts of State highway Route 168 described in this subsection shall be designated and established as "no parking bus stop" 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.-5. (No change.)

6. Along the northbound (easterly) side in Gloucester Township, Camden County:

i. (No change.)

ii. Near side bus stops:

(1) Ninth Street—Beginning at the northerly curb line of Ninth Street and extending 105 feet northerly therefrom.

(2) Woodland Avenue—Beginning at the southerly prolongated curb line of Woodland Avenue and extending 105 feet southerly therefrom.

(3) Asyla Road—Beginning at the southerly curb line of Asyla Road and extending 110 feet southerly therefrom.

(4) Hillcrest Avenue—Beginning at the southerly curb line of Hillcrest Avenue and extending 105 feet southerly therefrom.

(5) Drexel Avenue—Beginning at the southerly curb line of Drexel Avenue and extending 105 feet southerly therefrom.

(6) East Lake Avenue—Beginning at the southerly curb line of East Lake Avenue and extending 120 feet southerly therefrom.

(7) Lincoln Avenue—Beginning at the southerly prolongated curb line of Lincoln Avenue and extending 120 feet southerly therefrom.

iii. Far side bus stops:

(1) Fifth Avenue—Beginning at the northerly curb line of Fifth Avenue and extending 100 feet northerly therefrom.

(2) Cressmont Avenue—Beginning at the northerly curb line of Cressmont Avenue and extending 120 feet northerly therefrom.

(3) East Church Street—Beginning at the northerly curb line of East Church Street and extending 100 feet northerly therefrom.

(4) Coles Road—Beginning at the northerly curb line of Coles Road and extending 120 feet northerly therefrom.

7. Along the southbound (westerly) side in Gloucester Township, Camden County:

i. Far side bus stops:

(1) Almonesson Blenheim Road—Beginning at the southerly curb line of Almonesson Blenheim Road and extending 105 feet southerly therefrom.

(2) Cressmont Avenue—Beginning at the southerly prolongated curb line of Cressmont Avenue and extending 100 feet southerly therefrom.

(3) Hillcrest Avenue—Beginning at the southerly prolongated curb line of Hillcrest Avenue and extending 110 feet southerly therefrom.

(4) Woodland Avenue—Beginning at the southerly curb line of Woodland Avenue and extending 100 feet southerly therefrom.

ii. Near side bus stops:

(1) Lincoln Avenue—Beginning at the northerly curb line of Lincoln Avenue and extending 105 feet northerly therefrom.

(2) West Church Street—Beginning at the northerly curb line of West Church Street and extending 105 feet northerly therefrom.

(3) Lake Avenue—Beginning at the northerly curb line of Lake Avenue and extending 105 feet northerly therefrom.

(4) Elaine Avenue—Beginning at the northerly curb line of Elaine Avenue and extending 105 feet northerly therefrom.

(5) Lakeland Road—Beginning at the northerly curb line of Lakeland Road and extending 105 feet northerly therefrom.

Recodify existing 7.-9. as 8.-10. (No change in text.)

(c) (No change.)

16:28A-1.62 Route 12

(a) The certain parts of State highway Route 12 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. No stopping or standing in Flemington Borough, Hunterdon County along both sides for the entire length within the corporate limits of the Borough of Flemington, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

2. No stopping or standing in Kingwood Township, Hunterdon County along both sides for the entire length within the corporate limits of the Township of Kingwood, 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 shall be posted only where an official township resolution has been submitted to the Department.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Contested Transfer Determinations

Adopted New Rules: N.J.A.C. 19:18

Proposed: March 5, 1990 at 22 N.J.R. 790(a).

Adopted: April 25, 1990 by the New Jersey Public Employees Relations Commission, James W. Mastriani, Chairman.

Filed: April 26, 1990 as R.1990 d.255, **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. 34:13A-5.2; 34:13A-6(f) and 6(g); 34:13A-5.9; and 34:13A-22 et seq.

Effective Date: May 21, 1990.

Expiration Date: May 21, 1995.

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Summary of Public Comments and Agency Responses:
No public comments were received.

Summary of Agency Initiated Changes:

1. The following technical changes have been made to make the rules clearer, better organized, and more readable.

In proposed N.J.A.C. 19:18-2.2(a), the sentence containing paragraphs (a)1 through 7 has been made a separate subsection (b) to make the rule easier to follow.

In proposed N.J.A.C. 19:18-2.2(a)5, recodified as N.J.A.C. 19:18-2.2(b)5, the addition of "between worksites" after "transfers" reflects the governing statutory language in N.J.S.A. 34:13A-25.

Proposed N.J.A.C. 19:18-2.2(b) is recodified as subsection (c) due to the creation of new subsection (b).

In proposed N.J.A.C. 19:18-3.3(d), the sentence was rewritten to make it more readable by putting the "whenever" clause at the end. No words were changed.

In proposed N.J.A.C. 19:18-3.4, subsection designations were added to make the rule better organized and more readable.

In proposed N.J.A.C. 19:18-3.7, the rule was conformed to other rules requiring a filing party to file copies as well as an original and a proof of service.

In proposed N.J.A.C. 19:18-3.8(a) and (b), wording was added to clarify that factual allegations not raised would be deemed to be admitted for the limited purpose of deciding whether to hold an evidentiary hearing.

In proposed N.J.A.C. 19:18-3.11, changes were made to clarify that the rule applies after a hearing and to any transcripts of that hearing.

In proposed N.J.A.C. 19:18-3.11 and N.J.A.C. 19:18-3.14, commas were replaced by parentheticals to make the sentences more readable and to conform stylistically to the Commission's other rules.

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

CHAPTER 18
CONTESTED TRANSFER DETERMINATIONS

SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:18-1.1 Nature of proceedings

N.J.S.A. 34:13A-22 et seq. (P.L. 1989, c.269, effective January 4, 1990) provides that no employer, as defined in N.J.S.A. 34:13A-22, shall transfer an employee between worksites for disciplinary reasons. It further provides that the Commission shall determine whether the basis for a transfer between worksites is predominately disciplinary. The procedures in this chapter are intended to avoid protracted administrative litigation. Contested transfer proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which these procedures are intended to accommodate.

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:18-2.1 Who may file

Any employee, as defined in N.J.S.A. 34:13A-22, or the employee's majority representative may initiate a contested transfer proceeding by filing with the Commission, an original and nine copies of a petition for contested transfer determination together with proof of service of a copy of the petition on the employer. A copy of each petition filed shall be retained in a public docket until the case is closed.

19:18-2.2 Contents of petition for contested transfer determination

(a) A petition[1] shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

(b) Such petition shall contain the following:

1. The full name, address and telephone number of the petitioner;
2. The full name, address and telephone number of the affected employee if the petitioner is an employee organization;
3. The full name, address and telephone number of the employer who has notified the employee of a transfer;
4. The date the employee was notified of the transfer;
5. A statement of the specific factual allegations supporting the contention that the basis for the transfer ***between worksites*** is predominately disciplinary;
6. All documents and affidavits supporting the petition's factual allegations; and
7. A list of any other actions before the Commission or any other administrative agency, arbitrator or court, which the petitioner knows about and which involve the same or similar issues.

*[(b)]****(c)*** The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

[1]Petition forms will be supplied upon request. Address such requests to: Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, New Jersey 08625-0429.

SUBCHAPTER 3. PROCEDURE

19:18-3.1 Intervention

A motion for leave to intervene in proceedings under this chapter shall be filed in writing with the Commission, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Chairman or such other Commission designee, in his or her discretion, may permit intervention to such extent and upon such terms as may be deemed just.

19:18-3.2 Informal conference

A Commission staff agent may hold a conference to clarify the issues in dispute, explore the possibility of settlement, or take stipulations of fact.

19:18-3.3 Amendment; withdrawal; dismissal; consolidation

(a) The Chairman or such other Commission designee may permit the petitioner to amend the petition at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended petition shall conform to the provisions of these rules relating to the original petition for contested transfer determination.

(b) A petition for contested transfer determination shall be dismissed and the case closed if the petitioner files a notice of withdrawal at any time before service of the respondent's answer. After service of the answer, a petition may be withdrawn only with the consent of the Chairman or such other Commission designee. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) The Chairman or such other Commission designee, in his or her discretion, may dismiss the petition on the grounds of lack of jurisdiction, insufficient cause for determination, failure to prosecute or other good reason.

(d) *[Whenever necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, the]* ***The*** Chairman or such other Commission designee, in his or her discretion, may consolidate any separate proceedings, or sever any consolidated proceedings ***whenever necessary to avoid unnecessary costs or delay or to effectuate the purposes of the Act***.

19:18-3.4 Answer

(a) Within 20 days from the service of the petition, the respondent shall file an answer.

(b) The answer shall specifically admit, deny or explain each of the allegations set forth in the petition, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial.

(c) All allegations in the petition, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

(d) The answer shall include a specific factual rebuttal to the petition, accompanied by all supporting documents and affidavits.

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(e) The answer shall also include a statement of facts constituting any affirmative defense.

(f) The answer shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

19:18-3.5 Where to file; number of copies; service

An original and nine copies of the answer shall be filed with the Commission together with proof of service of a copy of the answer on the petitioner and any intervenor.

19:18-3.6 Amendment

The Chairman of the Commission or such other Commission designee may permit the respondent to amend its answer at any time upon such terms as may be deemed just.

19:18-3.7 Reply

Within five days of receipt of the answer, the petitioner may file ***an original and nine copies of*** a reply and any supporting documents and affidavits ***together with proof of service of a copy of the reply on the respondent and any intervenor***. No further replies shall be permitted without permission of the Chairman or such other Commission designee.

19:18-3.8 Request for evidentiary hearing

(a) Any party desiring an evidentiary hearing shall file with the Commission an original and nine copies of a request therefor, together with proof of service of a copy of the request on the other party. The petitioner shall file such a request no later than five days from receipt of the respondent's answer. The respondent shall file such a request no later than five days from the date a reply is due. Failure to file a timely request for an evidentiary hearing shall constitute a waiver of any claim to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends necessitate an evidentiary hearing and shall explain why these issues are substantial and material. Factual allegations not raised shall be deemed to be undisputed ***for purposes of determining whether there shall be an evidentiary hearing***.

(b) Within five days of receipt of a request for a hearing, the other party shall file with the Commission an original and nine copies of a written response, together with proof of service of a copy of the response on the requesting party. The response shall specifically reply to each factual issue alleged to be in dispute by the requesting party and shall also state what, if any, additional factual issues not raised by the requesting party are alleged to be in dispute. Any factual issue not specifically responded to or raised in the response shall be deemed to be undisputed ***for purposes of determining whether there shall be an evidentiary hearing***.

(c) The request for an evidentiary hearing and the response, together with the petition, the answer and any reply, shall constitute the pleadings for the evidentiary hearing.

19:18-3.9 Briefs

(a) In the absence of a hearing, the Chairman or such other Commission designee shall notify each party that it has 14 days from the date of notification to file an original and nine copies of a supporting brief, with proof of service of a copy of such brief on the other party.

(b) Within seven days after receipt of the initial brief, each party may file with the Commission an original and nine copies of a reply brief, together with proof of service of a copy of such brief on the other party. No other briefs shall be served or filed without leave of the Chairman or such other Commission designee.

(c) The Chairman or such other Commission designee, in his or her discretion, may grant written requests for extensions of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

19:18-3.10 Evidentiary hearings; motions

(a) If, following receipt of a timely request for an evidentiary hearing and a response pursuant to N.J.A.C. 19:18-3.8, or after determination without a request, it appears to the Chairman or such other Commission designee that there are substantial and material disputed factual issues, a notice of hearing shall be issued setting forth the time and place for the evidentiary hearing. The Chairman or such other Commission designee shall appoint a hearing examiner to conduct such hearing.

(b) Any motions filed pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-4.1 through 19:14-4.8 on unfair practice proceedings, insofar as applicable.

(c) Any evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-6.1 through 19:14-6.13 on unfair practice proceedings, insofar as applicable.

(d) After the evidentiary hearing, or upon the parties' consent before the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to the disposition of the case. The hearing examiner shall file the original with the Commission, and shall serve a copy on the parties. Upon service on the parties, which shall be complete upon mailing, the case shall be deemed transferred to the Commission.

19:18-3.11 Record before the Commission; exceptions; cross-exceptions

The record before the Commission ***after a hearing*** shall consist of the petition for contested transfer determination, the answer and any replies, the request for evidentiary hearing and any replies, the notice of hearing, *[the]* ***any*** official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and any exceptions, cross-exceptions, briefs, and answering briefs, which shall be governed by the provisions of N.J.A.C. 19:14-7.3*[,]* *(*Exceptions; cross-exceptions; briefs; answering briefs*)*.

19:18-3.12 Oral argument

Proceedings under this chapter shall be submitted for the Commission's consideration without argument unless ordered by the Chairman or such other Commission designee. Requests for oral argument shall be filed by any party along with its initial brief, or where a hearing has been conducted, along with its exceptions or cross-exceptions. Such request shall be made by a separate paper, an original and two copies of which shall be filed with the Commission, together with proof of service of a copy of such request on the other party. The Chairman or such other Commission designee shall notify the parties of the assigned argument date, if permission to argue orally is granted. The Commission may terminate any argument permitted at any time it deems the issues adequately argued.

19:18-3.13 Final determination; decisions in the absence of exceptions

Based on the parties' submissions and any oral argument, or where an evidentiary hearing has been conducted, based on the record in the case as set forth in N.J.A.C. 19:18-3.11 and any oral argument, the Commission or its designee shall issue and serve on the parties its findings of fact and conclusions of law, including its determination as to whether the basis of the disputed transfer was predominantly disciplinary, and may take reasonable action to effectuate the purposes of the Act. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

19:18-3.14 Motion for reconsideration

After the decision of the Commission or its designee, a motion for reconsideration may be filed in accordance with the provisions of N.J.A.C. 19:14-8.4*[,]* *(*Motion for reconsideration*)*.

19:18-3.15 Interim relief

Upon the filing of a petition, the petitioner may apply to the Commission for an order requesting the respondent to show cause why specified interim relief should not be granted pending the disposition of the proceeding. Such a request shall be governed by the provisions of N.J.A.C. 19:14-9.1 through 9.5 on unfair practice proceedings, insofar as applicable.

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EMERGENCY ADOPTIONS

AGRICULTURE

(a)

DIVISION OF DIARY INDUSTRY

Milk Dealers and Stores

Adopted Emergency Repeals and Concurrent Proposed Repeals: N.J.A.C. 2:52-6 and 2:53-3 and 4

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 2:52-7 and 2:53-6 and 7

Emergency Repeals and New Rules Adopted: April 25, 1990 by Woodson W. Moffett, Jr., Director, Division of Dairy Industry.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): April 25, 1990.

Emergency Repeals and New Rules Filed: April 25, 1990 as R. 1990 d.252.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7.

Concurrent Proposal Number: PRN 1990-273.

Emergency Repeals and New Rules Effective Date: April 25, 1990.

Emergency Repeals and New Rule Expiration Date: June 24, 1990.

Submit comments by June 20, 1990 to:
Woodson W. Moffett, Jr., Director
Division of Dairy Industry
New Jersey Department of Agriculture
CN 332
Trenton, New Jersey 08625

The repeals and new rules were adopted on an emergency basis and became effective upon 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. 1:30-4.4). Concurrently, the provisions of the emergency repeals and new 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 the acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the expiration of the emergency period.

The emergency adoption and concurrent proposal follows:

Summary

On April 18, 1990, the United States District Court for the District of New Jersey, in *Beyer Farms, Inc. v. Arthur R. Brown, Jr., et al,* Dkt. No. CA 87-3017, and *State of New York v. Arthur R. Brown, Jr., et al,* Dkt. No. CA 88-1512, issued an order implementing a settlement which enjoined the New Jersey Department of Agriculture, Division of Dairy Industry, from enforcing N.J.A.C. 2:52-6.1 and N.J.A.C. 2:53-4. Upon entering this order, the Court expressly authorized the Division to adopt new, less restrictive regulations which are not inconsistent with its order.

New Jersey's Legislature and courts have recognized that milk is a nutritious, affordable food which is affected with the public interest and that, because milk is highly perishable, milk prices must be regulated to prevent destructive competition and consequent disruption in the supply of reasonably priced milk. Accordingly, the existence of a complete void of regulation in this area pending the adoption of rules through the ordinary procedure poses an imminent peril to the public health and welfare, and the adequate delivery of milk products to the detriment of the public.

In response to the Court order, the Division adopted an emergency repeal of N.J.A.C. 2:52-6.1 which prohibited the wholesale sale of milk at prices below a dealers total average cost and proposes the permanent repeal of N.J.A.C. 2:52-6.1. The Division adopted emergency rules and proposes permanent rules which prohibit the wholesale sales of milk below average variable cost. The emergency rules and the proposed permanent rules are codified as N.J.A.C. 2:52-7.

The average variable cost standard is, by definition, lower than the total average cost standard and allows sales at prices which are lower than those which were possible in the context of the total average cost standard.

In response to the Court's order, the Division adopted an emergency repeal of N.J.A.C. 2:53-4 and proposes the permanent repeal of N.J.A.C. 2:53-4. The Division adopted an emergency rule which provides for modified notice by the stores to change milk suppliers. The Division proposes a permanent rule which does not require notice to or approval by the Division of Dairy Industry prior to changing suppliers. The rule, to be codified as N.J.A.C. 2:53-7.1, permits the store to change suppliers without prior notice to the Division but requires payment of money owed to its present supplier before changing and requires notice to the store's present supplier at least 48 hours before the change is made. This advance notice keeps a supplier from loading perishable, dated milk for a store which does not intend to accept it. Notice to the Division will be given within three days of an agreement to change or add suppliers.

Although the Court was not asked to address the issue of cost applicable to retail stores, in order to comply with the spirit of the Court's order, the Division has adopted an emergency repeal of N.J.A.C. 2:53-3 and proposes the permanent repeal of N.J.A.C. 2:53-3. The Division adopted emergency rules and proposes permanent rules adopting a variable cost standard for determining prices at which stores may sell milk. The emergency rules and the permanent rules are codified as N.J.A.C. 2:53-6.

Because it may be a burden for a store, a small store in particular, to determine its variable cost, the emergency rules and the proposed permanent rules at N.J.A.C. 2:53-6 provide for a proxy to be added to invoice cost which the store may use in lieu of determining its variable cost. The five percent number included in N.J.A.C. 2:53-6.2(b) reflects the best judgment of the Division staff regarding an appropriate proxy figure. If five percent is not appropriate, commenters on these rules should provide documentation for a different percentage and it will be considered prior to the adoption of the permanent rule. The store is not required to use the proxy. It is provided as an option.

Social Impact

The adoption as emergency rules of N.J.A.C. 2:52-7 and N.J.A.C. 2:53-6 and 7 assures that consumers and the milk industry will continue to receive the benefit of stable milk markets and adequate supplies of reasonably priced milk. Failure to adopt the rules would have left a void in the milk control program and posed an imminent peril to the public health and welfare of the State.

The adoption of N.J.A.C. 2:52-7 and N.J.A.C. 2:53-6 and 7 as permanent rules assures the continued operation of an effective milk control program in the consumer's interest. The rules prevent predatory destructive competition and assure stable milk markets and adequate reasonably priced milk supplies to consumers.

As set forth in the Economic Impact statement, the new definitions of "variable costs" at N.J.A.C. 2:52-7.2 and 2:53-6.2 may result in lower prices for milk at both the wholesale and retail levels. Such increased affordability of this wholesome food may result in improvement of the public health, particularly in those segments of the population nutritionally at risk.

Economic Impact

The emergency rules and the permanent rules are driven by economics and benefit New Jersey consumers, retail stores, milk dealers and dairy farmers. New Jersey consumers purchase about 1.9 billion pounds of fluid milk and milk products (excluding cheese, butter and nonfat dry milk) each year at an annual cost exceeding $400 million. The rules adopted herewith benefit the consumers by creating a market environment where adequate supplies of milk are available at reasonable prices to meet consumer demands. The rules provide for a highly competitive market but prevent destructive predatory competition.

The new definitions of "variable cost" in N.J.A.C. 2:52-7.2 and 2:53-6.2, by excluding certain elements of such cost contained in emergency-repealed N.J.A.C. 2:52-6.2 and 2:53-3.2, allow for milk to be sold, both at wholesale and at retail, at prices lower than were possible under the repealed rules. Coupled with the elimination of the requirement for Division approval prior to a licensed store's changing its supplier, a more competitive milk marketplace may result, with lower milk prices for both retailers and consumers. Any negative effect such price reductions may

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entail for milk wholesalers and retailers may be at least partially offset by increased demand due to lower prices. The Division anticipates no impact on its administrative costs.

Regulatory Flexibility Analysis

Approximately 85 percent of the 10,000 retail stores, and approximately 95 percent of wholesale suppliers, are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not impose additional record keeping requirements on such businesses. Proposed new rule N.J.A.C. 2:53-7.1 reduces the reporting requirement under repealed N.J.A.C. 2:53-4 for retail stores by eliminating Division approval of supplier changes and substantially shortening the time period for notice to the supplier being replaced.

Compliance requirements are altered under N.J.A.C. 2:52-7 and 2:53-6 in that the acceptable components of "variable cost" are reduced in number. No increase in capital cost or need for professional services should result from this change, which may lead to lower milk prices. For the benefit of retail stores, a proxy for total variable cost is provided at N.J.A.C. 2:53-6.2 as a fixed percentage which may be added to net invoice cost to determine the lawful selling price of milk. Use of this proxy would eliminate the need to compute variable cost to obtain the lawful selling price.

As the reporting, record keeping and compliance requirements imposed upon small businesses are not increased by the proposed new rules, no differentiation in requirements or exemptions are provided.

Full text of the emergency adopted and concurrent proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 2:52-6 and 2:53-3 and 4.

Full text of the emergency adopted and concurrent proposed new rules follows:

SUBCHAPTER 7. SALES BELOW COST; DEALER

2:52-7.1 Sales below variable cost prohibited

It shall be unlawful and a violation of these rules for any dealer licensee to directly or indirectly be a party to, or assist in, any transaction to sell or offer to sell milk and milk products within the State of New Jersey, or for sale in the State of New Jersey, at less than the variable cost thereof as defined in N.J.A.C. 2:52-7.2; but nothing in this section shall prevent a dealer from meeting the price or offer of a competitor for a product or products of like quality and nature in similar quantities; provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:52-7.2 Variable cost defined

The term "variable cost" as used in this subchapter shall include, but not be limited to, the basic cost of raw or reconstituted milk or derivatives thereof as determined in accordance with the joint State-Federal orders administered by the Division of Dairy Industry and the United States Department of Agriculture in the State of New Jersey; the cost of any added ingredients; and all other variable costs associated with the business of the dealer including the cost of material, labor, receiving, cooling, processing, manufacturing, storing and distributing the products sold; selling expense, maintenance charges, delivery expense, gifts, and free service allocated proportionately to each unit of product sold in accordance with generally accepted accounting principles. The proportioned allocation may be adjusted to reflect efficiencies in packaging different sized containers. Not included in these costs are office expense, salaries of executives and officers, interest, rent, depreciation, license fees, taxes, insurance, advertising, and advertising allowances.

2:52-7.3 Certain costs to be averaged

(a) In computing cost as used in this subchapter, all variable costs of doing business with the exception of raw products and ingredient costs shall be based on average costs for the dealer in question during the previous 12 months, adjusted to appropriately reflect any significant changes in costs of operation in the averaging period or such shorter time as the licensee may have been in business.

(b) In determining cost for a specific account, the value of any gifts and free services must be included in cost to be averaged for the 12-month period, except where a written contract for a specified term exists between the dealer and the recipient customer, the value of such gifts and free services may be amortized over the remaining term of the contract.

(c) All costs of delivery shall be based on average variable costs for the dealer in question during the previous 12 months and allocated proportionately to each unit of product delivered except where specific delivery cost records are maintained for each method and size of delivery, the actual direct cost of the delivery shall be the basis of the allocation and shall be prorated to each unit of product included in the delivery.

2:52-7.4 Raw milk costs defined

As used in this subchapter, the cost for raw and the reconstituted milk shall be the total cost of acquiring the milk or butterfat, or milk solids-not-fat, but shall not be less than the applicable class price under the joint State-Federal orders in the respective New Jersey order areas or in the case of butterfat and milk solids-not-fat, not less than the current market price for such products as announced by the United States Department of Agriculture for the New York City market.

2:52-7.5 Enforcement

The Director shall enforce the provisions of this subchapter by proceeding pursuant to N.J.S.A. 4:12A-39 (monetary penalties) or 4:12A-44 (actions to restrain violations). Proceedings to revoke or suspend, or to refuse to renew, the license of any milk dealer who violates the provisions of this subchapter may be commenced by the Director where the licensee has continued in a course of dealing of such nature to satisfy the Director of that dealer's inability or unwillingness properly to conduct the business of receiving or selling milk in accordance with the provisions of the Milk Control Act, N.J.S.A. 4:12A-1 et seq. Such proceedings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 6. SALES BELOW COST; STORES

2:53-6.1 Sales below variable cost prohibited

It shall be unlawful and a violation of this subchapter for any licensed store to offer for sale or sell milk or milk products at less than the variable cost thereof as defined in N.J.A.C. 2:53-6.2; but nothing in this section shall prevent a store from meeting the price or offer of a competitor for a product or products of like quality sold in similar quantities; provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:53-6.2 Variable cost defined

(a) Except as hereinafter provided, the term "variable cost" as used in this subchapter shall include the net invoice cost of the milk and milk products plus all other variable costs related to the sale of milk and milk products. Such costs will be determined in accordance with generally accepted accounting principles and be allocated proportionately to each unit of product sold. These costs shall include labor, receiving, cooling, storing, selling, distributing, maintenance, delivery, gifts, and free service allocated to each unit of product sold. Not included in these costs are salaries of those engaged in administrative functions, office expenses, interest, rent, depreciation, license fees, taxes, insurance and advertising.

(b) In the absence of proof of a smaller amount, a store may add (as a proxy for total variable cost) five percent of the net invoice cost to determine the lawful selling price for milk and milk products. Also, pursuant to N.J.A.C. 2:53-6.1, a store may meet any price or offer of a competitor.

SUBCHAPTER 7. NOTICE OF INTENT TO CHANGE SOURCE OF SUPPLY

2:53-7.1 Notice of intent

(a) Unless the licensed store and the present supplier(s) mutually agree to different credit and notice terms, a licensed store may change source of supply or engage an additional supply of milk and milk products once it has complied with each of the following requirements:

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1. A store shall pay all indebtedness, less any legal rebates and discounts earned, for fluid milk and milk products purchased from the present supplier(s).

2. A store shall give the present supplier at least 48 hours actual notice of intent to change suppliers. Actual notice shall be given orally or in writing reasonably calculated to be received 48 hours prior to the date and time of the proposed change. Unless the store gives at least 48 hours prior notice to its existing supplier, the store shall not refuse to accept the next scheduled delivery from the present supplier.

(b) The licensed store shall give notice to the Division of Dairy Industry within three business days of an agreement to change or add suppliers. Such notice shall be filed by the store, or the new supplier on its behalf, on the forms provided for that purpose by the Director.

(c) A store changing suppliers without complying with the requirements of (a) above may be cited for a violation of this section. A cited store may request a hearing before an Administrative Law Judge pursuant to the Administrative Procedure Act and the Uniform Administrative Procedure Rules, or at an informal hearing pursuant to N.J.S.A. 4:12A-43, provided that, if the total amount owed is in controversy, the amount not in controversy must be paid and the balance referred to the Director for mediation pursuant to N.J.S.A. 4:12A-24.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES BOAT REGULATION COMMISSION

Boating Regulations Budd Lake

Adopted Emergency New Rules and Concurrent Proposal: N.J.A.C. 7:6-3.13 and 4.9

Emergency New Rules Adopted: April 26, 1990 by Kenneth L. Husted, Chairman, New Jersey Boat Regulation Commission; and April 27, 1990 by Robert J. Del Tufo, Attorney General, Department of Law and Public Safety

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): April 30, 1990

Emergency New Rules Filed: April 30, 1990 as R.1990 d.269

Authority: N.J.S.A. 12:6-1(e), 12:7-34.36 et seq., particularly 12:7-34.40, 12:7-34.49, 12:7-44, and 12:7A-29

Emergency New Rules Effective Date: April 30, 1990

Emergency New Rules Expiration Date: June 29, 1990

Concurrent Proposal Number: PRN 1990-280

Submit comments by June 20, 1990 to:
Captain James W. Momm
New Jersey State Police
Marine Law Enforcement Bureau
P.O. Box 7068
Trenton, New Jersey 08628-0068

These new rules were adopted on an emergency basis and became effective upon 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). Concurrently, the provisions of the emergency rules are being proposed for readoption in compliance with the normal rule-making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon acceptance for filing by the Office of Admistrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order 66 (1978), N.J.A.C. 7:6 expired on December 19, 1988. The New Jersey Boat Regulation Commission ("Commission") and the Department of Law and Public Safety ("Department") reviewed those expired rules and determined that they were necessary, reasonable and proper for the purpose for which they were originally promulgated and, therefore, adopted those expired rules by emergency proceedings on April 6, 1989 (see 21 N.J.R. 1157(a)) in order to maintain the effectiveness of the boating regulations, minimize the disruption to the boating regulatory program, and ensure the continued safety for all persons and vessels in New Jersey territorial waters.

The Commission and Department have determined that there are two additional threats to safe boating and water skiing in New Jersey that are not regulated under the current rules. These threats are: (1) the absence of any special requirements for operation of vessels on Budd Lake, Morris County; (2) the absence of any special requirements for water skiing on Budd Lake, Morris County.

A summary of these emergency new rules follows:

N.J.A.C. 7:6-4.9, addressing the operation of vessels on Budd Lake, Morris County, was added to promote the safe operation of all vessels on Budd Lake.

N.J.A.C. 7:6-3.13, addressing water skiing on Budd Lake, Morris County, was added to promote safe water skiing practices on Budd Lake.

Social Impact

These new rules will have a positive effect on the people of the State by establishing requirements regarding the operation of vessels and water skiing on Budd Lake, Morris County.

Economic Impact

The Commission and Department do not anticipate any economic impacts as a results of these new rules.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because these new rules do not impose any reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules affect the boating public.

Full text of the adopted emergency new rules, amendments and concurrent proposal follows:

7:6-3.13 Budd Lake, Morris County

(a) The ski boat operator shall, when a skier has fallen or has otherwise become disconnected from the tow line, reduce speed and return to the skier in a safe and reasonable manner.

(b) The dropping of skis for the purpose of barefoot or slalom skiing is prohibited, unless the ski is immediately retrieved by a following vessel.

7:6-4.9 Operation on Budd Lake

(a) No vessel shall be operated on Budd Lake on Saturdays, Sundays, and legal holidays between May 15th and September 15th, at a speed in excess of 35 miles per hour, from sunrise to sunset.

(b) No vessel shall be operated on Budd Lake between the hours of sunset and sunrise at a speed in excess of 15 miles per hour.

(c) Any applicant for a permit from the Department for a race or regatta shall submit an application to the Township Clerk, who shall then submit such application to the Department with any comments or recommendations from the Township.

(d) No vessel shall be operated at such a speed that shall cause 100 percent of the hull to come out of the water, except in the case of a race or regatta, where permitted by the rules of such race or regatta.

(e) No vessel shall be operated at a speed in excess of five miles per hour within 50 feet of any shore, wharf, pier, bridge, dock structure, buoy, or person in the water or designated bathing areas which are marked by buoy.

(f) A distance of at least 30 feet shall be maintained between all vessles operating at speeds in excess of five miles per hour.

(g) No person shall operate a personal watercraft on Budd Lake on Saturdays, Sundays or legal holidays between May 15th and September 15th.

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PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Notice of Effective Date of Model Codes

Take notice that the 1990 editions of the BOCA National Building Code, the BOCA National Mechanical Code, the National Electrical Code, and the National Standard Plumbing Code are now available. The effective date for the use of these model codes in New Jersey is hereby set at July 1, 1990, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-123b), which provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." Proposed amendments containing all necessary technical and editorial changes will be published in the New Jersey Register.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session
June 20, 1990

Take notice that the following agenda item is scheduled for Notice of Proposal in the June 18, 1990 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, June 20, 1990 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call Celeste Carpiano at (609) 292-0739 by 12:00 noon Friday, June 15, 1990.

Rule Proposal: N.J.A.C. 6:43 Vocational and Technical Education Program and Standards

Please note: Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the May 2, 1990 monthly public meeting.

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Receipt of Petition for Rulemaking concerning a Volatile Organic Substance, 1,1,1—trichloroethane (methyl chloroform)

Petitioner: East Coast Finishing Corporation.

Authority: N.J.S.A. 26:2C-1 et seq., specifically 26:2C-8, and 52:14B-4(f).

Take notice that on April 2, 1990, the Department of Environmental Protection (DEP) received a petition for rulemaking concerning the control of air pollution by a volatile organic substance, 1,1,1—trichloroethane, commonly called methyl chloroform. The definition of volatile organic substances is found at N.J.A.C. 7:27-16.1.

The petitioner requests that DEP revise the definition of "volatile organic substances" (VOS) to include in the concluding phrase as an excluded organic substance "1,1,1—trichloroethane (methyl chloroform)." Documentation is provided by petitioner to show that 1,1,1—trichloroethane is listed by the Federal Government (Environmental Protection Agency) as an exempt solvent. According to petitioner, use of this substance is permitted in New York, which gives a competitive advantage to New York coating businesses that are permitted to use the chemical.

In accordance with the provisions of N.J.A.C. 7:1-1.2, the Department shall subsequently mail to petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(d)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Receipt of Petition for Rulemaking concerning N.J.A.C. 7:26-9.2(b)1 and 2, and N.J.A.C. 7:26-9.3(b)8

Take notice that on April 9, 1990, the Department of Environmental Protection ("Department") received a petition from Pharmacaps, Inc. requesting amendments to N.J.A.C. 7:26-9.2(b)1 and N.J.A.C. 7:26-9.3(b)8, concerning storage tank requirements for liquid hazardous waste and the time period for storage of liquid hazardous waste in underground tanks.

Specifically, petitioner is requesting an amendment to N.J.A.C. 7:26-9.2(b)1 and 2 to allow the installation of a new underground storage tank for the purpose of containing a liquid hazardous waste, provided that such tank is double-walled and complies in all respects with the technical requirements of the Underground Storage Tank Regulations, N.J.A.C. 7:14B. Petitioner also requests that the Department amend N.J.A.C. 7:26-9.3(b)8 to allow the storage of hazardous waste for 90 days or less in an underground tank, provided that such tank complies with the technical requirements of the Underground Storage Tank Regulations, N.J.A.C. 7:14B. N.J.A.C. 7:26-9.3(b)8 effectively prohibits the usage of underground storage tanks due to its requirement for visual inspection of the outside of the tank.

This petition will be considered by the Department in accordance with the provisions of N.J.A.C. 7:1-1.2. A notice of action on the petition will subsequently be mailed to the petitioner and filed with the Office of Administrative Law.

(e)

DIVISION OF WATER RESOURCES

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan
Public Notice

Take notice that on February 16, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Plainsboro Township. The WMP identifies the existing and proposed sewer service areas of the Stony Brook Regional Sewerage Authority, Middlesex County Utilities Authority, Princeton Meadows Utilities Company, and Firmenich Sewage Treatment Plant (STP). The existing South Brunswick Pumping Station No. 6 will be decommissioned and flows conveyed by gravity sewer to the existing South Brunswick system along Ridge Road. The Firmenich STP is to be expanded by approximately 10,000 gallons per day.

(f)

DIVISION OF WATER RESOURCES

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan
Public Notice

Take notice that on February 16, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality

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Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for South Brunswick Township. The WMP delineates the boundary between the Stony Brook Regional Sewerage Authority and Middlesex County Utilities Authority sewer service areas. Two areas of the Township are designated for individual subsurface sewage disposal systems. The areas of Franklin, Monroe and North Brunswick Townships which South Brunswick services are also delineated.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County and Tri-County Water Quality Management Plans

Public Notice

Take notice that on February 28, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Ocean County and Tri-County Water Quality Management Plans was adopted by the Department. This amendment adopts the Plumsted Township Wastewater Management Plan (WMP). The WMP delineates existing NJPDES permitted facilities and proposed on-site groundwater disposal areas. The remainder of the municipality is designated as being served by individual subsurface sewage disposal systems.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on February 22, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment allows for the construction and operation of an expanded wastewater treatment plant with ground water discharge to replace the existing treatment plant discharging to surface water at the Annandale Stokes Forest Unit, Montague Township. The new treatment plant will be owned and operated by the Department of Corrections.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on April 17, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment expands the Harrison Township sewer service area to include a portion of the proposed Willowbrook (Phase II) Subdivision, which is located in Harrison Township, Block 55, Lots 3 and 10. The remainder of the project site (Phase I) is already located in the Harrison Township sewer service area.

HEALTH

(d)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

N.J.A.C. 8:33

Notice of a One Time Only Moratorium on the Submission of Certificate of Need Applications for Child and Adolescent Intermediate and Special Psychiatric Beds for One Year by the New Jersey State Department of Health

Take notice that the Department of Health, in conjunction with the Health Care Administration Board (HCAB) and the Statewide Health Coordinating Council (SHCC), is removing from consideration for one time only applications for the addition of child and adolescent intermediate and special psychiatric beds for a maximum of one year. No health care services other than these proposed new or expanded psychiatric services are affected by this action. Any certificate of need application for the addition of child and adolescent intermediate and special psychiatric bed services that have been previously filed by any applicant prior to May 21, 1990 is also unaffected by this moratorium.

The Department of Health establishes this one year moratorium in response to a request from the Department of Human Services and in response to recent Certificate of Need applications which are being reviewed without the benefit of applicable planning regulations.

The purpose of this moratorium is to allow sufficient time for the Department, with the assistance of a technical advisory committee, to establish a coordinated Statewide policy regarding the future orderly review of Certificate of Need applications for the addition of child and adolescent intermediate and special psychiatric beds. The one year time period will also permit the Department to study the impact of recently expanded child and adolescent acute psychiatric beds and will permit the development of a methodology for estimating the unmet need for child and adolescent intermediate and special psychiatric beds.

This one year moratorium will become effective with the July 15, 1990 certificate of need review cycle (June 1, 1990 application submission deadline) and will end with the July 15, 1991 certificate of need review cycle (June 1, 1991 application submission date). Should the Department of Health complete its development of Statewide child and adolescent intermediate and special psychiatric bed review criteria prior to this one year time period, the length of the moratorium will be shortened accordingly.

Any inquiries should be sent to:

Henry F. Gerding
Health Systems Specialist
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

(e)

DIVISION OF COMMUNITY HEALTH SERVICES

Notice of Availability of Grants

Local Health Development Services Continuing Education Grant

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

A. Name of grant program: LHDS-Continuing Education Grant, Grant Program No. 91-22-LHD.

B. Purpose for which the grant program funds will be used: The funds will be used to provide affordable continuing education for public health professionals, specifically courses designed for health officers, environmental health specialists and local board of health members. The objective is to keep public health professionals up-to-date in all areas of public health.

C. Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

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D. Groups or entities which may apply for the grant program: Educational institutions such as colleges and universities. Organizations that provide training in health professionals such as nursing associations, health educators, etc.

E. Qualifications needed by an applicant to be considered for a grant: The educational institution must be an accredited college or university with programs in the health related field recognized by the New Jersey Department of Higher Education. Organizations applying must be health related and established as recognized by the New Jersey State Department of Health.

F. Procedures for eligible entities to apply for grant funds: Submit a completed New Jersey Department of Health Application for Health Service Grant.

G. For information contact:

Ron Ulinsky
Chief, Evaluation and Training
New Jersey State Department of Health-LHDS
CN 360
Trenton, NJ 08625
Phone Number: (609) 292-4076

H. Deadline by which applications must be submitted: Varies from July 1, 1990 to September 1, 1990.

I. Date by which applicant shall be notified whether they will receive funds: Approximately eight weeks after completed applications are returned to the Department.

(a)

DIVISION OF ALCOHOL, NARCOTICS & DRUG ABUSE

Availability of Grants
AIDS Research

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

A. Name of grant program: AIDS Research, Grant Program No. 91-76-NAR.

B. Purpose for which the grant program funds will be used: Determine the extent of HIV infection in selected populations. Investigate the course of the disease and evaluate the methods of preventing or reducing the spread of infection. Provide and evaluate risk reduction interventions.

C. Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

D. Group or entities which may apply for the grant program: Local government agencies, State agencies, non-profit corporations, hospitals, universities.

E. Qualifications needed by an applicant to be considered for the grant: Knowledge of HIV and involved populations. Ability to conduct interviews and obtain sera from subjects. Knowledge of risk reduction and prevention education. Ability to conduct statistical analyses and prepare research papers.

F. Procedures for eligible entities to apply for grant funds: Submit complete New Jersey Department of Health Application for Health Services Grant.

G. For information contact:

John F. French, Director, Data Analysis and Epidemiology
Division of Alcoholism and Drug Abuse
CN 362
Trenton, New Jersey 08625-0362
609-292-8930

H. Deadline by which applications must be submitted: May 25, 1990

I. Date by which applicant shall be notified whether they will receive funds: June 1, 1990

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Notice of Common Carrier Applicant

Take notice that Col. Clinton L. Pagano, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)
Frank Zas, Jr.
128-60th St.
Box 385-97
West New York, NJ 07093

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (June 10, 1990) following the publication of an application.

(c)

STATE BOARD OF OPTOMETRISTS

Notice of Receipt of Two Petitions for Rulemaking Practice of Optometry
N.J.A.C. 13:38

Petitioner: New Jersey Academy of Ophthalmology and Otolaryngology.
Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:12-4.

Take notice that on March 9, 1990, petitioner, through its counsel, John D. Fanburg, Esq., filed two petitions with the State Board of Optometrists.

The first petition concerns prescription of pharmaceutical agents. It states that petitioner, a not-for-profit corporation composed of New Jersey licensed physicians, commences this action to require that the Board address and determine that the use and prescription of pharmaceutical and therapeutic measures or agents by optometrists for the purposes of diagnosing and treating deficiencies, deformities, diseases, or anomalies of the human eye is beyond the scope of an optometrist's licensure. Petitioner specifically requests that the State Board of Optometrists construe the provisions of N.J.S.A. 45:12-26 and determine and declare:

(a) The "practice of optometry" shall not include the use and prescription of pharmaceutical agents for the purposes of treating deficiencies, deformities, diseases, or anomalies of the human eye including the removal of superficial foreign bodies from the eye and adnexae.

(b) The use and prescription of pharmaceutical agents by optometrists is beyond the scope of an optometrist's licensure.

The second petition concerns post-surgical care. Petitioner asks the Board to address and determine that the management of post-operative and post-surgical care is beyond the scope of practice of optometry and not within the confines of N.J.S.A. 45:12-1 et seq. Specifically, petitioner requests the State Board of Optometrists to determine and adopt regulations to provide that:

(a) Ophthalmic surgeons are uniquely qualified to perform ophthalmic surgery including cataract surgery.

(b) Ophthalmic surgeons are responsible for providing independent pre-surgical histories and physical examinations as well as post-operative management.

(c) Management of post-surgical care is the practice of medicine and the responsibility of the operating ophthalmologist and not an optometrist.

(d) "Management of post-ophthalmologic surgical care" is defined as personal, first-hand observation by the operating ophthalmologist, or his/her designee with equal training and licensure, of the patient on a regular basis following the surgical procedure.

(e) With respect to cataract surgery, an optometrist shall not accept the delegation of the ophthalmologist's post-surgical responsibilities, to include, but not be limited to monitoring the peak periods of risk of complications following surgery.

After due notice, these petitions will be considered by the State Board of Optometrists in accordance with the provisions of N.J.S.A. 52:14B-4(f).

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TRANSPORTATION

(a)

DIVISION OF SYSTEMS PLANNING
BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS

Transportation Development District
Mercer County
Administrative Order Number 1

Take notice that on April 3, 1990, under the provisions of the New Jersey Transportation Development District Act of 1989, P.L. 1989 c.100 (N.J.S.A. 27:1C), Thomas M. Downs, Commissioner of Transportation, **ordered** that the I-95/295 Corridor located in Mercer County is approved and designated as a Transportation Development District, and delineates its boundaries as set forth in the following text:

Mercer County submitted an application for the creation of a Transportation Development District in portions of Hopewell, Ewing and Lawrence Townships. The Transportation Development District, known as the I-95/295 Corridor, encompasses a high growth area, as evidenced by projected increases in employment and population in excess of 20 percent within the next 10 years. The creation of the District establishes a public/private partnership for the funding of transportation improvements necessitated by the development and growth within the district. The Department of Transportation maintains an official map of the designated Transportation Development District.

The southern boundary is the south right of way line on Upper Ferry and Ewingville Roads between Federal City Road and Scotch Road.

The western boundary runs around properties abutting the intersection of Upper Ferry and Scotch Roads, and proceeds in a northwesterly direction along the east side of Mercer County Airport Runway 16-34, continuing northwesterly across Route I-95 to Nursery Road. The boundary then runs in an easterly direction around undeveloped parcels abutting the north side of Nursery Road to Scotch Road; then runs in a northerly direction around undeveloped parcels abutting Scotch Road, crossing County Route 546 to the Woolsey Brook, approximately 1,500 feet north of the intersection of Scotch Road and County Route 546.

The northern boundary runs easterly around undeveloped properties abutting the north side of County Route 546, and runs easterly across Dublin Road to the intersection of Ingleside and Search Avenues. The right of way line of Search Avenue is the boundary up to, and including, the properties abutting on the east side of Route 31. The boundary proceeds southerly to County Route 546, and then easterly to the intersection of Federal City and Lawrenceville-Pennington Roads.

The eastern boundary runs southerly around vacant properties abutting the east side of Federal City Road from Lawrenceville-Pennington Road to the intersection of Federal City and Ewingville Roads.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Notice of Receipt of Petition for Rulemaking
Employee Licenses
N.J.A.C. 19:40-1.2 and 19:41-1.3

Petitioner: International Union of Operating Engineers, Local 68-68A-68B, AFL-CIO.

Authority: N.J.S.A. 5:12-69c, N.J.S.A. 52:14B-4(f).

Take notice that on April 9, 1990, petitioner filed a petition with the Casino Control Commission requesting amendments to N.J.A.C. 19:40-1.2, concerning the definition of "casino employee", and N.J.A.C. 19:41-1.3(b) and (c), concerning the licensing requirements for casino employees and casino hotel employees.

Specifically, petitioner requests amendments which would provide that only those employees whose duties require or authorize access to restricted casino areas on a "regular" basis must be licensed as casino employees, pursuant to N.J.S.A. 5:12-90. Petitioner states that an employee whose duties do not require or authorize regular access to restricted casino areas should be registered as a "casino hotel employee," pursuant to N.J.S.A. 5:12-91.

After due notice, this petition will be considered by the Casino Control Commission in accordance with N.J.S.A. 5:12-69c.

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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 April 2, 1990 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.1990 d.1 means the first rule adopted in 1990.

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 MARCH 19, 1990

NEXT UPDATE: SUPPLEMENT APRIL 16, 1990

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
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
21 N.J.R. 1475 and 1598	June 5, 1989	21 N.J.R. 3813 and 3986	December 18, 1989
21 N.J.R. 1599 and 1762	June 19, 1989	22 N.J.R. 1 and 88	January 2, 1990
21 N.J.R. 1763 and 1934	July 3, 1989	22 N.J.R. 89 and 272	January 16, 1990
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989	22 N.J.R. 585 and 686	February 20, 1990
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)		
1:1-14.10	Interlocutory review of ALJ ruling	22 N.J.R. 590(a)	R.1990 d.219	22 N.J.R. 1353(a)
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:6A-4.2, 9.1	Scheduling of special education hearing	22 N.J.R. 1295(a)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear	22 N.J.R. 91(a)	R.1990 d.220	22 N.J.R. 1353(b)
Most recent update to Title 1: TRANSMITTAL 1990-2 (supplement March 19, 1990)				
AGRICULTURE—TITLE 2				
2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)	R.1990 d.201	22 N.J.R. 1116(a)
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)	R.1990 d.202	22 N.J.R. 1116(b)
2:32-2.22	Sire Stakes qualifying times at pari-mutuel tracks	22 N.J.R. 3(b)	R.1990 d.203	22 N.J.R. 1116(c)
2:52	Milk processors, dealers and subdealers	22 N.J.R. 888(a)	R.1990 d.271	22 N.J.R. 1553(a)
2:52-6, 7	Milk supply and sale	Emergency (expires 6-24-90)	R.1990 d.252	22 N.J.R. 1629(a)
2:53-3, 4, 6, 7	Milk supply and sale	Emergency (expires 6-24-90)	R.1990 d.252	22 N.J.R. 1629(a)
2:69-1.11	Commercial values of primary plant nutrients	22 N.J.R. 1295(b)		
2:71-2.2–2.6	Jersey Fresh Quality Grading Program	22 N.J.R. 1296(a)		
2:71-2.28, 2.29, 2.31	Fruits and vegetables: fees for inspection and grading	22 N.J.R. 1242(c)		
2:76-6.2, 6.5, 6.6, 6.9–6.12, 6.15–6.17	Farmland preservation program	22 N.J.R. 1244(a)		
2:90	State Soil Conservation Committee rules	22 N.J.R. 1299(a)		
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BANKING—TITLE 3				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:2	Advertising by financial institutions	22 N.J.R. 690(b)	R.1990 d.236	22 N.J.R. 1353(c)
3:16-2.3	Pawnbrokers' sales of unredeemed pledges at public auction	22 N.J.R. 1015(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:41-7.4	Temporary storage of human remains by cemetery company	22 N.J.R. 1185(a)		
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CIVIL SERVICE—TITLE 4				
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4A:2-2.3	Misuse of State property	22 N.J.R. 1015(b)		
4A:4-6.5	Psychological disqualification proceeding	22 N.J.R. 1300(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1.1, 1.3, 1.8, 1.10, 1.21	Family leave	22 N.J.R. 1300(b)		
4A:8-2.4	Family leave	22 N.J.R. 1300(b)		

Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:2-1.1	Department organization	Exempt	R.1990 d.199	22 N.J.R. 1117(a)
5:10-1.6, 1.11, 1.12, 2.2	Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates	22 N.J.R. 275(b)	R.1990 d.230	22 N.J.R. 1354(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:19-4.3	Continuing care retirement communities: administrative correction	———	———	22 N.J.R. 1117(b)
5:22-3	Urban enterprise zone municipalities: tax abatements for residential construction	22 N.J.R. 591(a)	R.1990 d.227	22 N.J.R. 1355(a)
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12–4.15, 4.21, 4.22, 4.24–4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Hazard Subcode	21 N.J.R. 3696(a)	R.1990 d.226	22 N.J.R. 1356(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.14–3.17, 3.20, 3.21	Uniform Construction Code subcodes	22 N.J.R. 909(b)	R.1990 d.253	22 N.J.R. 1554(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2–7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55–7.57, 7.61, 7.67, 7.68, 7.71–7.73, 7.75, 7.76, 7.80–7.82, 7.87, 7.94–7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-7.3, 7.50, 7.116	Barrier Free Subcode: administrative corrections	———	———	22 N.J.R. 1355(b)
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:27	Rooming and boarding houses	21 N.J.R. 3871(a)		
5:27-1.6, 1.9, 2.1, 8.1	Rooming and boarding house licensure: alcohol and drug rehabilitation facilities	22 N.J.R. 912(a)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:71	County offices on aging	22 N.J.R. 1016(b)		
5:80	Housing and Mortgage Finance Agency	22 N.J.R. 277(b)	R.1990 d.248	22 N.J.R. 1556(a)
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)	R.1990 d.247	22 N.J.R. 1556(b)
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)	R.1990 d.246	22 N.J.R. 1557(a)
5:91-1.2, 4.5, 6.2, 7.1–7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.2	Council on Affordable Housing: inclusionary development on environmentally sensitive lands	22 N.J.R. 730(a)	R.1990 d.254	22 N.J.R. 1557(b)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	22 N.J.R. 1016(c)		

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MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:1	Department organization	Exempt	R.1990 d.200	22 N.J.R. 1117(c)
5A:2	Military leave for public employee members of National Guard	22 N.J.R. 1185(b)		
Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)				
EDUCATION—TITLE 6				
6:3-2.1, 2.2, 2.5–2.8	Pupil records	22 N.J.R. 1302(a)		
6:20	School business services	22 N.J.R. 1246(a)		
6:22	School facility planning service	22 N.J.R. 1253(a)		
6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)	R.1990 d.237	22 N.J.R. 1359(a)
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)	R.1990 d.235	22 N.J.R. 1359(b)
Most recent update to Title 6: TRANSMITTAL 1990-3 (supplement March 19, 1990)				
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1C	Ninety-day construction permits	22 N.J.R. 731(a)		
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)	R.1990 d.188	22 N.J.R. 1122(a)
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)		
7:6-3.13, 4.9	Boating and water skiing on Budd Lake	Emergency (expires 6-29-90)	R.1990 d.269	22 N.J.R. 1631(a)
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:7E	Coastal zone management	22 N.J.R. 1188(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)		
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)		
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2	Shellfish growing water classification	22 N.J.R. 1304(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)		
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)	R.1990 d.197	22 N.J.R. 1124(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)	R.1990 d.260	22 N.J.R. 1565(a)
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)	R.1990 d.259	22 N.J.R. 1558(a)
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19-2.2, 6.10	Water supply allocation permits: administrative corrections	———	———	22 N.J.R. 1265(a)
7:19-3.8	Fees for water allocation permits: administrative correction	———	———	22 N.J.R. 1134(a)
7:20-1	Dam safety standards	22 N.J.R. 279(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:25A	Oyster resource management	22 N.J.R. 283(a)	R.1990 d.250	22 N.J.R. 1573(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)	R.1990 d.260	22 N.J.R. 1565(a)
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)	R.1990 d.228	22 N.J.R. 1362(a)

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7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)	R.1990 d.261	22 N.J.R. 1573(b)
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.21, 12.2	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)	R.1990 d.259	22 N.J.R. 1558(a)
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23	Volatile organic substances in consumer products: notice of rule invalidation	———	———	22 N.J.R. 1134(b)
7:27-23.2–23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:28	Radiation protection	22 N.J.R. 890(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:29	Noise control	22 N.J.R. 307(a)	R.1990 d.262	22 N.J.R. 1576(a)
7:29	Noise control: extension of comment period	22 N.J.R. 1045(b)		
7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, 9.3	Pesticide Control Program: certification, registration and permit fees	22 N.J.R. 1314(a)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)		

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8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:19	Newborn Screening Program	22 N.J.R. 733(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)	R.1990 d.187	22 N.J.R. 1134(c)
8:31A	Standard Hospital Accounting and Rate Evaluation (SHARE)	21 N.J.R. 3872(a)	R.1990 d.167	22 N.J.R. 1135(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-3.51	Hospital reimbursement: administrative correction	———	———	22 N.J.R. 1576(b)
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3873(b)	R.1990 d.265	22 N.J.R. 1576(c)
8:31B-5.3	Diagnosis Related Groups classification: correction to proposal and extension of comment period	22 N.J.R. 308(a)		
8:31B-App. XI	Hospital reimbursement: graduate medical education	22 N.J.R. 735(a)	R.1990 d.266	22 N.J.R. 1591(a)
8:33H	Long-term care facilities and services	22 N.J.R. 897(a)		
8:39-25.2	Long-term care facilities: enforcement of nurse staffing requirements	———	———	22 N.J.R. 1161(e)
8:40	Invalid coach and ambulance services	22 N.J.R. 595(a)	R.1990 d.239	22 N.J.R. 1364(a)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4.2	Patient rights (advisory)	21 N.J.R. 2160(b)		
8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)		
8:43G-7.4, 7.6, 7.11, 7.13, 7.27, 7.36	Cardiac services (advisory)	21 N.J.R. 2162(a)		
8:43G-8.3, 8.5, 8.8	Central supply (advisory)	21 N.J.R. 1609(a)		

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8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17, 9.22	Critical and intermediate care (advisory)	21 N.J.R. 2167(a)		
8:43G-10.2, 10.5, 10.7, 10.9	Dietary standards (advisory)	21 N.J.R. 1611(a)		
8:43G-11.2	Discharge planning (advisory)	21 N.J.R. 1612(a)		
8:43G-12.4, 12.6, 12.8	Emergency department (advisory)	21 N.J.R. 1613(a)		
8:43G-13.3, 13.6	Housekeeping and laundry (advisory)	21 N.J.R. 1616(a)		
8:43G-14.2, 14.4	Infection control and sanitation (advisory)	21 N.J.R. 1618(a)		
8:43G-15.6	Medical records (advisory)	21 N.J.R. 2171(a)		
8:43G-16.4	Medical staff standard (advisory)	21 N.J.R. 1621(a)		
8:43G-17.2	Nurse staffing (advisory)	21 N.J.R. 1623(a)		
8:43G-18.4, 18.6, 18.8	Nursing care (advisory)	21 N.J.R. 1624(a)		
8:43G-19.4, 19.6, 19.9, 19.11, 19.28	Obstetrics (advisory)	21 N.J.R. 2926(a)		
8:43G-19.35–19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20.3, 20.5	Employee health (advisory)	21 N.J.R. 2173(a)		
8:43G-21.3, 21.6, 21.8, 21.10, 21.12, 21.14, 21.16	Oncology (advisory)	21 N.J.R. 2926(a)		
8:43G-22.4, 22.7, 22.11, 22.18, 22.21	Pediatrics (advisory)	21 N.J.R. 2926(a)		
8:43G-23.5, 23.7, 23.11	Pharmacy (advisory)	21 N.J.R. 1626(a)		
8:43G-24.5, 24.7, 24.14	Plant maintenance and fire and emergency preparedness (advisory)	21 N.J.R. 2926(a)		
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-27.4, 27.6	Quality assurance (advisory)	21 N.J.R. 1630(a)		
8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.15, 28.17, 28.21	Radiology (advisory)	21 N.J.R. 2174(a)		
8:43G-29.2, 29.4, 29.7, 29.11, 29.14, 29.16, 29.18, 29.22	Physical and occupational therapy (advisory)	21 N.J.R. 2926(a)		
8:43G-30.4, 30.7, 30.10, 30.12	Renal dialysis (advisory)	21 N.J.R. 2926(a)		
8:43G-30.13–30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)		
8:43G-32.6, 32.8, 32.15, 32.17, 32.19	Same-day stay (advisory)	21 N.J.R. 2177(a)		
8:43G-33.4, 33.5, 33.7	Social work (advisory)	21 N.J.R. 1631(a)		
8:43G-34.2, 34.10, 34.12	Surgery (advisory)	21 N.J.R. 2177(a)		
8:43G-35.3	Postanesthesia care: administrative correction	_____	_____	22 N.J.R. 1265(b)
8:43G-35.5, 35.8	Postanesthesia care (advisory)	21 N.J.R. 2926(a)		
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)		
8:57	Reportable communicable diseases and immunization requirements	21 N.J.R. 3897(a)		
8:57-2	Reporting of AIDS and HIV infection	21 N.J.R. 3905(a)	R.1990 d.244	22 N.J.R. 1592(a)
8:57-3.1, 3.2	Reportable occupational and environmental diseases and poisonings	21 N.J.R. 3907(a)	R.1990 d.245	22 N.J.R. 1595(a)
8:57-6	Cancer Registry (recodify to 8:57A)	21 N.J.R. 3909(a)	R.1990 d.242	22 N.J.R. 1596(a)
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:60	Asbestos training courses	22 N.J.R. 736(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a), 22 N.J.R. 214(b), 1137(a))	21 N.J.R. 1790(a)	R.1990 d.263	22 N.J.R. 1598(a)
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b))	21 N.J.R. 3292(a)	R.1990 d.264	22 N.J.R. 1597(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products	22 N.J.R. 596(a)	R.1990 d.267	22 N.J.R. 1597(b)
8:71	Interchangeable drug products	22 N.J.R. 1214(b)		

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HIGHER EDUCATION—TITLE 9				
9:2	Board administrative policies and programs	22 N.J.R. 749(a)		
9:2-14	Student immunization requirements	21 N.J.R. 3605(a)	R.1990 d.189	22 N.J.R. 1137(b)
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:4-2.4	County community colleges: code of ethics	22 N.J.R. 755(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:6	State Colleges: policies and standards	22 N.J.R. 755(b)	R.1990 d.268	22 N.J.R. 1598(b)
9:6-3.7, 3.9, 7	State college promotional and tenure policies; institutional plan	22 N.J.R. 1216(a)		
9:7-3.2	Tuition Aid Grant Program: 1990-91 award table	22 N.J.R. 1318(a)		
9:14	Independent College and University Assistance Act rules	22 N.J.R. 116(a)	R.1990 d.234	22 N.J.R. 1364(b)
	Most recent update to Title 9: TRANSMITTAL 1990-2 (supplement March 19, 1990)			
HUMAN SERVICES—TITLE 10				
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)	R.1990 d.218	22 N.J.R. 1364(c)
10:44B	Community care residences for developmentally disabled	22 N.J.R. 756(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:49-1.1	Medicaid eligibility: administrative correction	_____	_____	22 N.J.R. 1375(a)
10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)		
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: non-legend drugs and products	22 N.J.R. 1217(a)		
10:53	Manual for Special Hospital Services Coverage	22 N.J.R. 765(a)	R.1990 d.256	22 N.J.R. 1598(c)
10:55	Prosthetic and Orthotic Services Manual	22 N.J.R. 4(b)	R.1990 d.194	22 N.J.R. 1140(a)
10:56-3.1, 3.10, 3.12	Dental services: administrative corrections	_____	_____	22 N.J.R. 1375(a)
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)		
10:63-1.2–1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)		
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)	R.1989 d.397	21 N.J.R. 2383(a)
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)	R.1989 d.397	21 N.J.R. 2383(a)
10:81-10.7	Refugee Resettlement Program: eligibility for assistance	22 N.J.R. 1225(a)		
10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)		
10:81-14.18	REACH program: post-AFDC child care	22 N.J.R. 136(a)	R.1990 d.206	22 N.J.R. 1140(b)
10:81-14.18, 14.18A, 14.18B	REACH post-AFDC sliding fee scales	22 N.J.R. 1054(a)		
10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.20, 2.21, 2.23, 2.28, 2.29, 2.31, 2.34–2.38, 3.1, 3.6–3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12, 11.31	Food Stamp Program administration	22 N.J.R. 139(a)	R.1990 d.270	22 N.J.R. 1599(a)
10:89	Home Energy Assistance	22 N.J.R. 599(a)		
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:99	State Use Program for blind and severely handicapped	22 N.J.R. 766(a)		
10:121	Adoption of children	21 N.J.R. 3047(b)		
10:121	Adoption of children: extension of comment period	22 N.J.R. 310(a)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)	R.1990 d.229	22 N.J.R. 1377(a)
10:123-1	Financial eligibility for services through Social Services Block Grant program: extension of comment period	22 N.J.R. 310(b)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:125	Youth and Family Services capital funding program: reopening of public comment period	22 N.J.R. 766(b)		

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10:126A	Family day care standards	22 N.J.R. 13(a)	R.1990 d.223	22 N.J.R. 1377(b)
10:130	Shelters for victims of domestic violence	22 N.J.R. 767(a)		

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10A:2-6	Inmate reimbursement for lost, damaged or destroyed personal property	22 N.J.R. 1320(a)		
10A:2-10	Grants procedure	22 N.J.R. 14(a)	R.1990 d.183	22 N.J.R. 1142(a)
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)	R.1990 d.195	22 N.J.R. 1143(a)
10A:9-4.6	Reduced custody consideration: administrative correction	———	———	22 N.J.R. 1378(a)
10A:16-5.2, 5.5, 5.6, 5.7	Medical and health services: guardianship of an adult inmate	22 N.J.R. 1322(a)		
10A:16-11	Special Medical Units	22 N.J.R. 310(c)	R.1990 d.249	22 N.J.R. 1606(a)
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:22-2.6	Release of confidential inmate or parolee records	22 N.J.R. 898(a)		
10A:32	Juvenile detention facilities	22 N.J.R. 313(a)	R.1990 d.208	22 N.J.R. 1265(c)
10A:71-1.3, 3.2, 3.21, 7.18	Parole Board rules	22 N.J.R. 899(a)	R.1990 d.257	22 N.J.R. 1609(a)
10A:71-3.21	Board panel action: administrative correction	———	———	22 N.J.R. 1265(d)

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11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-20.12, 22.4	Cancellation and nonrenewal of commercial policies	22 N.J.R. 1225(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:1-28	Formation of domestic property and casualty corporation or reciprocal exchange: administrative correction to adoption notice	———	———	22 N.J.R. 1266(a)
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	22 N.J.R. 316(a)		
11:3-8.4	Nonrenewal of automobile policies: administrative correction and extension of comment period	22 N.J.R. 769(a)		
11:3-19	Multi-tier and good driver rating plans	21 N.J.R. 3721(a)		
11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)		
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-31.5, App.	Private passenger automobile insurers: annual Financial Data Report	22 N.J.R. 1026(a)		
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-25	Medicare supplement minimum standards transition rule for 1990	22 N.J.R. 320(a)	R.1990 d.214	22 N.J.R. 1266(b)
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commerical lines policy forms: extension of comment period	21 N.J.R. 3422(a)		

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11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		

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12:16	Unemployment Compensation and Temporary Disability: contributions, records and reports	22 N.J.R. 603(b)	R.1990 d.217	22 N.J.R. 1269(a)
12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)		
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:56-16	Payroll deductions for mass transit commutation tickets	22 N.J.R. 148(a)	R.1990 d.215	22 N.J.R. 1270(a)
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)	Expired	
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:100-5.2	Public employee safety and health: excavations	22 N.J.R. 607(a)	R.1990 d.216	22 N.J.R. 1270(b)
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)	R.1990 d.258	22 N.J.R. 1610(a)
12:120	Asbestos training courses	22 N.J.R. 736(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)		

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12A:10-2.2	Minority and female construction subcontractors: administrative correction	_____	_____	22 N.J.R. 1150(a)
12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	22 N.J.R. 608(a)		
12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)		
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)		
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		

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LAW AND PUBLIC SAFETY—TITLE 13

13:18-1, 3–9, 11	Motor Vehicles: oversize and overwidth vehicles; Motor Fuels Use Tax; connecting devices; insurance termination; Bus Excise Tax; overhangs; uninsured motorists; Division organization	22 N.J.R. 614(a)	R.1990 d.225	22 N.J.R. 1378(b)
13:20-40.1	Motor vehicle registration: reflectorized plates fee	22 N.J.R. 1230(b)		
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)		
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:25	Motorized bicycles	22 N.J.R. 323(a)	R.1990 d.210	22 N.J.R. 1270(c)
13:27-5.5, 5.6	Architecture pre-examination requirements	22 N.J.R. 1326(a)		
13:27-8.6	Landscape architect certification: experience requirement	22 N.J.R. 325(a)		
13:29	Board of Accountancy rules	22 N.J.R. 1042(a)		
13:30	Board of Dentistry rules	22 N.J.R. 149(b)	R.1990 d.205	22 N.J.R. 1145(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 783(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(a)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:33	Practice of ophthalmic dispensers and technicians	22 N.J.R. 154(a)	R.1990 d.204	22 N.J.R. 1148(a)
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.3	Podiatric trainee: countersigning of orders and prescriptions	22 N.J.R. 905(a)		
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)		
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)	R.1990 d.273	22 N.J.R. 1614(a)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists	21 N.J.R. 3855(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		

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13:39A-5.7	Licensure as physical therapist: language comprehension requirement	21 N.J.R. 3856(a)	R.1990 d.240	22 N.J.R. 1616(a)
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:44-2.6	Continuance of veterinary practice	22 N.J.R. 326(b)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)	R.1990 d.272	22 N.J.R. 1615(a)
13:44C-7.2	Audiology and speech language pathology practice exemptions: extension of comment period	22 N.J.R. 327(a)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)		
13:45B-6.1	Private employment agencies and personnel services firms: license, registration, and other fees	22 N.J.R. 906(a)		
13:46	Boxing, wrestling and sparring events	22 N.J.R. 1231(a)		
13:47A-10	Registration of securities	21 N.J.R. 2903(a)	R.1990 d.241	22 N.J.R. 1617(a)
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)		
13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)	R.1990 d.184	22 N.J.R. 1149(a)
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)	R.1990 d.185	22 N.J.R. 1149(b)
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		
13:81	Statewide 9-1-1 emergency telecommunication system	22 N.J.R. 1234(a)		

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14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-4.11	Meter tampering: extension of comment period	22 N.J.R. 327(b)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television	22 N.J.R. 1330(b)		

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14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		

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15A:2-1.1	Department organization	Exempt	R.1990 d.198	22 N.J.R. 1149(c)
15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)		

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16:28-1.10, 1.38, 1.42	Speed limit zones along U.S. 46 in Independence Township, Route 57 in Mansfield Township, and Route 152 in Somers Point and Egg Harbor	22 N.J.R. 787(a)	R.1990 d.231	22 N.J.R. 1378(c)
16:28-1.20, 1.37, 1.81, 1.105	Speed limit zones along U.S. 322, Routes 182, 49, and 284	22 N.J.R. 1340(a)		
16:28-1.25	Speed limit zone along Route 23 in Riverdale Borough	22 N.J.R. 788(a)	R.1990 d.232	22 N.J.R. 1379(a)
16:28-1.55, 1.104, 1.119	Speed limit zones along Routes 54 in Atlantic County, 26 in Middlesex County, and 83 in Cape May County	22 N.J.R. 1060(a)		
16:28-1.57	Speed limit zones along U.S. 30 in Atlantic County	22 N.J.R. 788(b)	R.1990 d.233	22 N.J.R. 1379(b)
16:28-1.57	Speed limit zones along U.S. 30 in Camden County	22 N.J.R. 1343(a)		
16:28-1.80, 1.86	Speed limit zones along Routes 172 and 171 in Middlesex County	22 N.J.R. 1239(a)		
16:28-1.99, 1.108	Speed limit zones along Route 157 in Absecon and Route 82 in Union County	22 N.J.R. 328(a)	R.1990 d.207	22 N.J.R. 1270(d)
16:28A-1.21, 1.33	No stopping or standing zones along U.S. 30 in Berlin and Route 47 in Franklin Township	22 N.J.R. 1239(b)		
16:28A-1.25	Restricted parking along Route 35 in Red Bank	22 N.J.R. 1240(a)		
16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, 1.62	Restricted parking and stopping along Routes 35 in Red Bank, U.S. 40 in Franklin Township, 49 in Salem, 77 in Harrison Township, U.S. 130 in Pennsauken and Delran, 168 in Gloucester Township, and 12 in Flemington and Kingwood	22 N.J.R. 913(a)	R.1990 d.251	22 N.J.R. 1625(a)
16:28A-1.61	Bus stop zones along U.S. 9W in Alpine	22 N.J.R. 1241(a)		
16:30-3.6	Shoulder lane usage along U.S. 1 in West Windsor and Plainsboro	22 N.J.R. 1345(a)		
16:30-10.11	Midblock crosswalk along Route 49 in Fairfield Township	22 N.J.R. 1242(a)		
16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
16:41B	Newspaper boxes on State highways	22 N.J.R. 1346(a)		
16:43	Junkyards adjacent to State highway systems	22 N.J.R. 1061(a)		
16:47	State Highway Access Management Code	22 N.J.R. 1061(b)		
16:47	State Highway Access Management Code: public hearings	22 N.J.R. 1346(b)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1347(a)		
16:48	Route location approval (repeal)	22 N.J.R. 621(b)	R.1990 d.212	22 N.J.R. 1271(a)
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17:2-3.2, 6.24	Public Employees' Retirement System: computation of final compensation	22 N.J.R. 1348(a)		
17:3-6.16	Teachers' Pension and Annuity Fund: mandatory retirement	22 N.J.R. 329(a)		
17:4	Police and Firemen's Retirement System	22 N.J.R. 908(a)		
17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)		
17:5-5.5	State Police Retirement System: outstanding loans at retirement	22 N.J.R. 1348(b)		
17:14-1.2	Minority and female construction subcontractors: administrative correction	———	———	22 N.J.R. 1150(a)
17:16-7.2	State pension fund investments: corporate obligations	22 N.J.R. 1042(b)		
17:16-27.1	State funds investment: certificates of deposit	22 N.J.R. 1349(a)		
17:16-43	State pension fund investments: mortgage-backed passthrough securities	22 N.J.R. 1043(a)		
17:16-50	State pension fund investments: U.S. Treasury futures	22 N.J.R. 1043(b)		
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